

FORSYTH COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: MARCH 18, 2021

AGENDA ITEM NUMBER: 15

SUBJECT: RESOLUTION AUTHORIZING THE ACCEPTANCE OF AN EASEMENT FROM THE CITY OF WINSTON-SALEM RELATING TO THE CONSTRUCTION AND OPERATION OF THE NEW FORSYTH COUNTY COURTHOUSE LOCATED ON CHESTNUT STREET

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

SUMMARY OF INFORMATION:

On December 17, 2020, the Forsyth County Board of Commissioners authorized Balfour Beatty/Samet Corporation, A Joint Venture Partnership to proceed with the construction of the new courthouse on Chestnut Street. This item authorizes the acceptance of an easement from the City of Winston-Salem, which is required to proceed with construction, including construction of a tunnel connecting the Law Enforcement Detention Center to the new courthouse.

Staff recommends acceptance of this easement.

ATTACHMENTS: YES NO

SIGNATURE: _____ DATE: _____
COUNTY MANAGER

RESOLUTION AUTHORIZING THE ACCEPTANCE OF AN EASEMENT FROM THE CITY OF WINSTON-SALEM RELATING TO THE CONSTRUCTION AND OPERATION OF THE NEW FORSYTH COUNTY COURTHOUSE LOCATED ON CHESTNUT STREET

WHEREAS on December 17, 2020, the Forsyth County Board of Commissioners authorized Balfour Beatty/Samet Corporation, A Joint Venture Partnership to proceed with the construction of the new courthouse on Chestnut Street; and

WHEREAS Forsyth County is requesting an easement from the City of Winston-Salem in order to proceed with the new courthouse's existing construction, including a subterranean access for the tunnel connection from the Law Enforcement Detention Center to the new courthouse underneath portions of Second and North Chestnut Streets, access for foundational support and shoring along North Chestnut Street, access for parking and a driveway along Patterson Avenue, and a temporary construction easement along Chestnut Street for construction staging and installation;

NOW, THEREFORE, BE IT RESOLVED, that the Forsyth County Board of Commissioners hereby authorizes the acceptance of an easement, in substantially the same form as that easement attached hereto and incorporated herein by reference, to access portions of the City of Winston-Salem's owned real property located along Patterson Avenue, Second Street, and North Chestnut Street to construct and operate the new courthouse facility within designated portions of the easement area, for consideration of \$1.00;

BE IT FURTHER RESOLVED, by the Forsyth County Board of Commissioners that the Chairman or County Manager and Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, the attached Easement document and any other necessary documents to accept the above-described access easements from the City of Winston-Salem, subject to a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney; and

BE IT FURTHER RESOLVED, that this resolution ratifying interlocal cooperation between Forsyth County and the City of Winston-Salem is hereby spread upon the minutes of the Forsyth County Board of Commissioners.

Adopted this the 18th day of March 2021.

Prepared by: Marilena Jensen-Guthold, City of Winston-Salem

WINSTON-SALEM)	MASTER EASEMENT AGREEMENT
)	FOR FORSYTH COUNTY COURTHOUSE
AND)	
)	(PERMANENT EASEMENTS FOR TUNNEL,
FORSYTH COUNTY)	FOUNDATIONAL FOOTINGS, AND REAR
)	PARKING AREA AND TEMPORARY
)	CONSTRUCTION EASEMENT)
)	

THIS MASTER EASEMENT AGREEMENT (“Easement Agreement”), is made and entered into this the ____ day of _____, 2021 (the “Effective Date”), by and between the City of Winston-Salem, a municipal corporation (the “City”), and the County of Forsyth, a political subdivision of the State of North Carolina (the “County”) (the City and the County, collectively, the “Parties”).

RECITALS:

WHEREAS, the County intends to construct a new courthouse on County-owned property located with a physical address of 175 North Chestnut Street, Winston-Salem, N.C., 27101, and with PIN 6835-36-3241.000 (the “Future Courthouse”);

WHEREAS, the County is the owner of record of the real property and improvements known as the Forsyth County Law Enforcement Detention Center, with an address of 201 N. Church Street, Winston-Salem, N.C. 27101, with PINs 6835-26-9573.000, 6835-36-0718.000, 6835-26-9778.000, 6835-26-9738.000, 6835-26-8748.000, 6835-26-8755.000 (the “Detention Center”);

WHEREAS, construction plans for the Future Courthouse include an underground tunnel in the area indicated on Exhibit A within the area labeled Easement 1 (the “Tunnel Easement Area”) connecting the Future Courthouse to the Detention Center;

WHEREAS, construction plans for the Future Courthouse include installation of permanent underground foundational footings in the area indicated on Exhibit A within the area labeled Easement 1 (the “Foundational Footings Easement Area”);

WHEREAS, construction plans for the Future Courthouse include shoring and tieback anchors to ensure lateral support of neighboring properties during construction, which the County proposes to leave in place, within the area shown on Exhibit A within the area labeled Easement 1 (the “Shoring Easement Area”);

WHEREAS, construction plans call for bollards and planters within the area labeled Easement 1 (“the “Bollard and Planter Easement Area”);

WHEREAS, construction plans for the Future Courthouse include parking spaces and driveway/rear access in the area indicated on Exhibit A within the area labeled Easement 2 (the “Parking and Drive”);

Easement Area”);

WHEREAS, construction will require temporary access and displacement of City right of way in order to stage, install, and construct the Future Courthouse in the areas indicated on Exhibit A and labeled “Temporary Construction Easement” (the “Temporary Construction Easement Area”).

WHEREAS, construction plans for the Future Courthouse include installation of concrete bollards.

WHEREAS, the City, in the exercise of authority conferred upon it by statute, will grant the County, its successors and assigns, a perpetual easement for the construction, operation, inspection, maintenance, and repair within the Tunnel Easement Area, Foundational Footings Easement Area, and Parking and Drive Easement Area, subject to this Easement Agreement.

WHEREAS, the City, in the exercise of authority conferred upon it by statute, will grant the County, its successors and assigns, an easement for the construction, operation, inspection, maintenance, and repair of the Future Courthouse in the Temporary Construction Easement Area.

NOW, THEREFORE, in consideration of the foregoing and the fulfillment of the public benefit purposes, the Parties agree as follows:

- 1) Upon the following terms, the City hereby grants to the County and its successors and assigns, a permanent easement, right, and privilege to construct, operate inspect, maintain, and repair:
 - a. A tunnel in the Tunnel Easement Area;
 - b. Permanent underground foundational footings in the Foundational Footings Easement Area;
 - c. Shorings and tieback anchors in the Shoring Easement Area;
 - d. Bollards and planters in the Bollard and Planter Easement Area;
 - e. Parking and driveway/rear access in the Parking and Drive Easement Area.

The tunnel, foundational footings, and parking and driveway shall be referred to collectively as the “Improvements”.

- 2) Upon the following terms, City hereby grants to the County and its successors and assigns, a temporary construction easement to enter, re-enter, stage, install, dig, build, erect, maintain, repair, and rebuild the Future Courthouse in the Temporary Construction Easement Area. The duration of the temporary construction easement shall run from the Effective Date and shall endure until the issuance of a Certificate of Occupancy for the Future Courthouse.
- 3) The construction, operation, inspection, maintenance, and repair of the above-described Improvements will be accomplished in accordance with the City’s current policies and procedures for accommodating the use of public rights-of-way, and any subsequent amendments, thereto, and in accordance with all applicable federal, state, and local laws, rules, and regulations. Information pertaining to the City’s policies and procedures may be obtained from the City Public Works Department.
- 4) The County binds and obligates itself, without any cost to the City, to construct, operate, inspect,

maintain, and repair the Improvements, and perform any and all activities permitted by this Easement Agreement, in such safe and proper condition and manner so as not to: a) interfere with travel upon any impacted public rights-of-way (except as permitted by Winston-Salem and the NCDOT, in advance, in writing), b) endanger the traveling public, pedestrians, vehicular traffic, and other passersby, or c) damage, obstruct, or interfere with the public rights-of-way, any public or existing City-approved private infrastructure of record, fixtures, structures, or improvements located in the public rights-of-way, , operation, inspection, maintenance, repair, rehabilitation, reconstruction of the same (except for obstruction or interference as permitted by Winston-Salem and the NCDOT, in advance, in writing) excluding material enlargements. The County also undertakes to reimburse the City, within sixty (60) days of the date of invoice, for any cost the City actually incurs for repairs of its rights-of-way/roadways, infrastructure, fixtures, structures, and improvements, which the City deems are reasonably necessitated by the existence, construction, operation, inspection, maintenance, and/or repair of the Improvements, or any other activities which the County is permitted to perform under this Easement Agreement, to the extent caused by the County and/or its officials', officers', employees', agents', invitees' (specifically including, but not limited to, pre-trial detainees'), or licensees' negligent or reckless acts or omissions, or intentional misconduct. The County and its officials, officers, employees, agents, invitees (specifically including, but not limited to, pre-trial detainees), and licensees shall, hereafter, be referred to, collectively, as the "County Parties" and each, individually, as a "County Party".

- 5) The County agrees to provide, during any construction, operation, inspection, maintenance, or repair of the Improvements, proper signs, signal lights, flagmen, and other warning devices for the protection of traffic, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and any amendments or supplements, thereto. Information as to the above rules and regulations may be obtained from the City Engineer. The County agrees to provide the City at least five (5) business days' advance, written notice, prior to any non-emergency inspections, maintenance, or repairs.
- 6) Subject to the limitation of liability below, the County, hereby, agrees to release, indemnify, defend, and save harmless the City and its officials, officers, employees, and agents from and against any and all claims, suits, actions, losses, damages, costs, expenses, impairments, obligations, liabilities, judgments, reasonable attorneys' fees, and costs of litigation, of any nature, whatsoever (including, but not limited to, claims for special, incidental, indirect, and consequential damages), arising from or occasioned by: (i) the construction, existence, operation, inspection, maintenance, repair, or lack thereof, of the Improvements, including, but not limited to, any damage occasioned thereby to any public infrastructure, fixtures, or improvements or to any City-approved third-party or private infrastructure of record; (ii) the performance of any other activities permitted under this Easement Agreement, (iii) the use of the Improvements by the public and the use by any County Parties; (iv) the breach by the County of any provision of this Agreement, and any corollary claims or damages, (v) the introduction by any County Party of any environmental contaminant or hazardous waste or substance (as defined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) into, over, or beneath the easement area; or (vi) the exacerbation by any County Party of any existing environmental condition or contamination within, over, or beneath the easement area (but only to the extent of the exacerbation). This indemnification obligation shall survive the expiration or

earlier termination of this Agreement. Notwithstanding the forgoing, the indemnification obligation of the County shall only apply to the extent that the County Parties' actions or omissions were negligent or reckless, or involved misconduct by a County Party.

- 7) Nothing herein contained shall be construed as a waiver by either Party, as to third parties to this Agreement, of the defense of governmental immunity or of any other defense, immunity, or limitation of liability available at law or in equity.
- 8) The County agrees to obtain and maintain in continuous effect, for the duration of the easement, and for one (1) year thereafter, an insurance policy, satisfactory to the City, naming the City as additional insured, on a primary and non-contributory basis, to secure the County's obligations hereunder. The County shall similarly require, by contract, that all its contractors, subcontractors, agents, and consultants engaged in work on the Improvements obtain and maintain in continuous effect appropriate insurance policies to cover any period during which said contractors, subcontractors, agents, and consultants are engaged in work on the Improvements. The County will secure evidence of all its contractors' insurance policies, in the form of certificates of insurance, which shall be made available to the City on demand. The County shall require its contractors the City an additional insured on their general and automobile liability insurance policies, to the limited extent that County activities occur upon the City's property or Right of Way. The County shall be as fully responsible to the City for the acts and omissions of its contractors, subcontractors, agents, and consultants, and of persons employed by them as it is for the acts and omissions of persons directly employed by the County. Original, signed certificates, evidencing such insurance or such other evidence of coverage acceptable to the City, shall be provided to the City contemporaneously herewith or, at the latest, within ten (10) business days of the execution by the County of this Easement Agreement. Notwithstanding the foregoing, the County may elect to self-insure, in lieu of maintaining insurance policies.
- 9) The County acknowledges that (i) the City will assume no responsibility for any damages and claims for damage to the Improvements where they intersect the public rights-of-way, connect with any building, or otherwise, and the County and its successors and assigns, hereby, agree to release the City from liability for any such damages and claims for damage and (ii) the City will assume no responsibility for use of the Improvements by the public or any officials, officers, employees, agents, invitees (including, but not limited to, pre-trial detainees), or licensees of the Parties.
- 10) The County agrees to restore (i) all City-approved, third-party infrastructure existing on the date that this Easement Agreement is executed, (ii) all City-owned areas, and (iii) all public infrastructure, fixtures, structures, and improvements disturbed during the construction, operation, inspection, maintenance, alteration, repair, and reconstruction of the Improvements, to the satisfaction of the City Engineer, except as otherwise agreed by the Parties.
- 11) The County agrees to inspect and/or allow the City and its employees and agents reasonable access to inspect the Improvements, for compliance with City policies and regulations. The County shall promptly perform any repairs to the Improvements the City reasonably deems necessary to ensure the safety of the public rights-of-way and the traveling public and such repairs shall not interfere with the public rights-of-way or the infrastructure, fixtures, and

improvements located therein. If the County fails to promptly inspect or repair the Improvements, as the City reasonable deems necessary to ensure the safety of the public rights-of-way and the traveling public, the City may do so and charge the reasonable costs, thereof, to the County. In no event, shall the City's right to inspect and order repairs to the Improvements confer an obligation on the City to assume responsibility therefor.

- 12) During construction, the County agrees to have available, at the site of the construction, at all times during the construction, maintenance, alteration, repair, or reconstruction of the Improvements, a copy of this Easement Agreement, evidencing the City's approval of the aforementioned activities. The City reserves the right to stop all work, unless the County can produce evidence of such approval. In the event the City halts work on the Improvements, the City shall incur no cost or liability to the County or anyone claiming by or through the County, as a result thereof, unless the City unreasonably delays work at the site.
- 13) If the County breaches any term of this Easement Agreement, the City may stop all work on the offending Improvements until the County cures its breach. In the event the City halts work on the Improvements, the City shall incur no cost or liability to the County or anyone claiming by or through the County, as a result thereof, unless the City unreasonably delays work at the site. The City shall also have the right, in the event of a breach of this Agreement by the County, following written notice to the County and a reasonable period to cure, as the City shall determine, to suspend this Easement Agreement, until such breach is cured. Provided that if the City determines that a threat exists to the safety of the public rights-of-way, the public infrastructure, fixtures, or improvements located in the public rights-of-way, or to the traveling public, the City may immediately suspend this Easement Agreement, without prior written notice until such time as the threat has been abated or corrected and undertake whatever corrective measures the City deems necessary to protect the integrity of the public rights-of-way, infrastructure, fixtures, and improvements, and the safety of the traveling public. The County shall pay the reasonable costs, thereof.
- 14) This Agreement is intended to be binding upon and to run with the land described herein as an easement and to bind the successors and assigns of the County and the City. All future transferees of the Improvements shall be subject to the restrictive covenant that they will operate, use, inspect, maintain, alter, repair, and reconstruct the Improvements in accordance with this Easement Agreement. However, nothing to the contrary herein contained withstanding, neither party may assign its rights in the Tunnel Easement under this Easement Agreement, without the other Party's prior written consent, not to be unreasonably withheld.
- 15) This Easement Agreement may only be amended by a written agreement signed by the City and the County or their respective successors and assigns. This Easement Agreement, along with the building permits and sealed construction plans, contains the entire agreement between the Parties.
- 16) The invalidity of any provision of this Easement Agreement, will, in no way, affect any other provisions, herein contained, which shall remain in full force and effect.
- 17) No failure on the part of the City or the County to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or

affect the right of the City or the County, as applicable, to enforce the same in the event of a subsequent breach or default. Enforcement of this Agreement shall be at the discretion of the City and the County, and any forbearance by the City or the County to exercise its rights hereunder shall not be deemed a waiver by the City or the County, as applicable, of its rights to subsequently enforce such breach, occurrence or situation then existing, or as may occur, develop or exist in the future.

- 18) This Easement Agreement shall be construed in accordance with the laws of the State of North Carolina. The venue for any litigation pertaining, hereto, will be the Forsyth County Superior Court. This Easement Agreement is deemed by the County and the City to be a document signed under seal.
- 19) The parties' performance under this Agreement is subject to acts of God, war, government regulation, terrorism, disaster, or any other emergency beyond the parties' control, making it illegal or impossible to perform their obligations under this Agreement.
- 20) A copy of this Easement Agreement and any subsequent modification or amendment, hereof, shall be filed in the office of the Forsyth County Register of Deeds.
- 21) Whenever written notice shall be required hereunder, then, notices must be in writing and delivered either (a) by hand delivery with signature acknowledgement obtained or (b) by nationally recognized overnight delivery service with signature release required to the addresses provided below.

CITY:
Lee Garrity
City Manager, City of Winston-Salem
101 N. Main Street
Winston-Salem, NC 27101
Tel. No. 336. _____

WITH A COPY TO:
Marilena Jensen-Guthold
Assistant City Attorney
101 N. Main Street, Suite 134
Winston-Salem, NC 27101
Tel. No. 336-747-7405

THE COUNTY:

J. Dudley Watts, Jr. County Manager
201 N Chestnut St,
Winston-Salem, NC 27101

WITH A COPY TO:

B. Gordon Watkins
County Attorney
201 N Chestnut St,
Winston-Salem, NC 27101

[Remainder of page intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed in the day and year first above written.

ATTEST: (SEAL) CITY OF WINSTON-SALEM,
a municipal corporation

By: _____
Sandra Keeney, City Secretary

By: _____
Lee D. Garrity, City Manager

This instrument has been pre-audited
in the manner required by....

Approved as to form and legality

this ____ day of _____, 2021.

this ____ day of _____, 2021.

By: _____
Lisa M. Saunders, Chief Finance Officer

By: _____
Angela I. Carmon, City Attorney

**

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

I certify that _____ personally appeared before
me this day and acknowledged to me that he or she voluntarily signed the foregoing
document for the purpose stated therein and in the capacity indicated.

Date: _____

(official signature of Notary)
_____, Notary Public
(Notary's printed or typed name)

(Official Seal)

My commission expires: _____

FORSYTH COUNTY, NORTH CAROLINA

(SEAL)

By: _____
J. Dudley Watts, Jr, County Manager

ATTEST:

Ashleigh M. Sloop, Clerk to the Board

Date: _____

