

FORSYTH COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: MAY 23, 2019

AGENDA ITEM NUMBER: 6A-6B

- SUBJECT:**
- A. RESOLUTION AUTHORIZING EXECUTION OF A REIMBURSEMENT AGREEMENT WITH WPDA, INC., TO FUND DESIGN AND CONSTRUCTION OF MUNICIPAL INFRASTRUCTURE AT WHITAKER PARK**
 - B. AMENDMENT TO THE FY 2018-2019 BUDGET ORDINANCE TO APPROPRIATE FUNDS FROM GENERAL FUND FUND BALANCE TO SUPPORT THE REIMBURSEMENT AGREEMENT BETWEEN FORSYTH COUNTY AND WPDA, INC., TO FUND DESIGN AND CONSTRUCTION OF MUNICIPAL INFRASTRUCTURE AT WHITAKER PARK**

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

Recommend Approval

SUMMARY OF INFORMATION:

On September 28, 2015, the Forsyth County Board of Commissioners adopted a Resolution authorizing \$2,350,000 in County funds to be reserved from General Fund fund balance for future reimbursement agreements with WPDA, Inc. (Whitaker Park Development Authority) for municipal infrastructure design and construction at Whitaker Park. The County completed one Reimbursement Agreement between Forsyth County, WPDA, Inc., and the City/County Utilities Commission for public water and wastewater infrastructure construction at Whitaker Park in a total amount of \$1,924,206.12, leaving \$425,793.88 in reserved General Fund fund balance.

WPDA has now requested the County authorize a Reimbursement Agreement between Forsyth County and WPDA Inc., for the remaining \$425,793.88, to support the design and construction of a public roadway, to be dedicated to the City of Winston-Salem upon completion. The proposed roadway will extend Akron Drive through Whitaker Park to connect to Reynolds Boulevard. The estimated budget for road design, engineering, and construction is approximately \$4,000,000, and the other sources of revenue for the project are approximately \$2.3 Million from the City of Winston-Salem, and approximately \$1.3 Million from the NC Department of Transportation. Lowder, Inc., was selected as the construction contractor.

This Budget Ordinance Amendment appropriates \$425,793.88 from General Fund fund balance to support the reimbursement agreement between Forsyth County and WPDA, Inc., to reimburse WPDA, Inc. for the design and construction of municipal infrastructure at Whitaker Park.

ATTACHMENTS: YES NO

SIGNATURE: f. Dudley Watts, Jr. /AMS

COUNTY MANAGER

DATE: May 20, 2019

RESOLUTION AUTHORIZING EXECUTION OF A REIMBURSEMENT AGREEMENT WITH WPDA, INC., TO FUND DESIGN AND CONSTRUCTION OF MUNICIPAL INFRASTRUCTURE AT WHITAKER PARK

WHEREAS WPDA, Inc., owns, operates, and is redeveloping Whitaker Park, a 210-acre industrial park located in Winston-Salem;

WHEREAS WPDA proposed to update Whitaker Park's infrastructure for the purpose of marking the site for future development;

WHEREAS on September 28, 2015, the Forsyth County Board of Commissioners authorized \$2,350,000 to be reserved from the General Fund fund balance to fund the design and construction of municipal infrastructure at Whitaker Park, subject to future approval by the Forsyth County Board of Commissioners;

WHEREAS a reimbursement agreement between Forsyth County, WPDA, Inc., and the City/County Utilities Commission to support construction public water and wastewater infrastructure at Whitaker Park in the amount of \$1,768,576 was approved on November 28, 2016, and amended to include an additional \$155,630.12 on February 15, 2018;

WHEREAS WPDA has requested that Forsyth County enter into a Reimbursement Agreement with WPDA, Inc., as private developer, pursuant to the provisions of N.C.G.S. 153A-451 and N.C.G.S. 153A-149(c)(14), to fund the construction of municipal infrastructure improvements, consisting of a roadway extending through Whitaker Park from Akron Drive to Reynolds Boulevard, which will be made in connection with WPDA's redevelopment of Whitaker Park in an amount up to \$425,793.88 for expenses which are not being reimbursed by any other state or local government entity, with such reimbursement being paid quarterly by the County as invoiced by WPDA, Inc., until paid in full, following the execution of a Reimbursement Agreement between the County and WPDA, Inc.;

WHEREAS the infrastructure improvements to be reimbursed will be included on the County's Capital Improvement Plan, as required by N.C.G.S. 153A-451;

WHEREAS WPDA, Inc., is willing to comply with the bidding laws of N.C.G.S. 153A-451 and dedicate the roadway to the City of Winston-Salem upon completion to be part of the City's municipal infrastructure;

WHEREAS it is proposed that, upon approval by the Forsyth County Board of Commissioners, County funding for the requested Reimbursement Agreement would come from the County's reserved General Fund fund balance in an amount up to \$425,793.88, for the combined cost of the design and construction to the municipal infrastructure improvements as described herein; and

WHEREAS the Forsyth County Board of Commissioners has analyzed the request and determined that it complies with the provisions of the County's Ordinance Establishing Procedures, Criteria, and Terms Under Which Reimbursement Agreements, May Be Authorized Pursuant to the Provisions of N.C.G.S. 153A-451 approved

September 28, 2015;

NOW, THEREFORE, BE IT RESOLVED, that the Forsyth County Board of Commissioners hereby authorizes the Chairman or County Manager and Clerk to the Board to execute, on behalf of Forsyth County, a Reimbursement Agreement with WPDA, Inc., to fund the design and construction of municipal infrastructure improvements at Whitaker Park in an amount up to \$425,793.88, in a manner consistent with the provisions set forth herein, and the Agreement attached hereto and incorporated herein by reference, subject to a pre-audit certificate thereon by the County Chief Financial Officer and approval as to form and legality by the County Attorney;

BE IT FURTHER RESOLVED, that the infrastructure improvements described herein are hereby included on the County's Capital Improvement Plan as required by the provisions of N.C.G.S. 153A-451; and

BE IT FURTHER RESOLVED, pursuant to the provisions of N.C.G.S. 153A-451, as a party to the proposed Reimbursement Agreement, WPDA, Inc., will comply with Article 8 of Chapter 143 of the General Statutes when WPDA, Inc. awards contracts for work that is subject to a competitive bidding process, if required by law.

Adopted this the 23rd day of May 2019.

NORTH CAROLINA)
)
FORSYTH COUNTY)

REIMBURSEMENT AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2019, by and between the WPDA, Inc., a non-profit corporation with its principal office and place of business in Winston-Salem, N.C., hereinafter called WPDA; and Forsyth County, a political subdivision of the State of North Carolina, hereinafter called the County;

WITNESSETH:

WHEREAS N.C.G.S. 153A-451 authorizes Counties to enter into reimbursement agreements with private developers and property owners for the design and construction of municipal infrastructure, which includes, without limitation, public streets, traffic control devices, sanitary sewer and water lines, stormwater lines, sidewalks, curb and gutter, and their associated facilities;

WHEREAS WPDA has requested that the County enter into a Reimbursement Agreement to reimburse WPDA for expenditures for the design and construction of a public roadway and associated public infrastructure within Whitaker Park in an amount up to four hundred twenty-five thousand, seven hundred ninety-three and 88/100 dollars (\$425,793.88), which amount is not reimbursed by any other source;

WHEREAS the proposed roadway infrastructure design and construction project within Whitaker Park will facilitate future development, increase taxable property, aid and encourage the creation of new jobs within the Park, and update Whitaker Park’s infrastructure for the purpose of marketing the site for future development;

WHEREAS the Forsyth County Board of Commissioners has determined that the proposed project to help fund the design and construction of municipal infrastructure within Whitaker Park meets the procedures, criteria and terms established by the Forsyth County Board of Commissioners in the attached Ordinance adopted September 28, 2015 under which Reimbursement Agreements may be authorized pursuant to the provisions of N.C.G.S. 153A-451;

WHEREAS on May 23, 2019, the Forsyth County Board of Commissioners adopted a Resolution Ratifying and Authorizing Execution of a Reimbursement Agreement with WPDA, Inc. to Fund Design and Construction of Municipal Infrastructure at Whitaker Park;

WHEREAS the Forsyth County Board of Commissioners has included the Whitaker Park municipal infrastructure design and construction project in the County’s Capital Improvement Plan as municipal infrastructure which serves the developer and the property owner as required by N.C.G.S. 153A-451; and

WHEREAS WPDA has solicited bids for the construction of the municipal infrastructure improvements in accordance with Article 8 of Chapter 143 of the North Carolina General Statutes for work that would have been subject to such statutes if the contract had been awarded by the County;

In consideration of receipt of an appropriation of funds from Forsyth County for the construction of the municipal infrastructure, in an amount not to exceed four hundred twenty-five thousand, seven hundred ninety-three and 88/100 dollars (\$425,793.88), and the mutual agreement contained herein, the

County and WPDA, named hereinabove, do hereby agree to abide by the terms of this Agreement as set forth herein.

Now, therefore, in consideration of the above and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

(1) WPDA covenants and agrees to expend the County funds which are the subject of this Agreement and perform services in consideration of the receipt of funds subject to the following provisions and restrictions:

- (a) WPDA shall design and construct roadway infrastructure improvements (hereinafter the "Improvements") within Whitaker Park as set forth in Exhibit A attached hereto, constructed in accordance with the requirements of the City of Winston-Salem for acceptance as a City street.
- (b) Upon completion of the Improvements, WPDA shall dedicate such Improvements to the City of Winston-Salem as a public City street.
- (c) Funds under this contract will be paid by the County to WPDA on a reimbursement basis pursuant to the provisions of N.C.G.S. 153A-451 upon the County's receipt of adequate documentation.
- (d) WPDA agrees to hold the County harmless from liability for any expenses which may be claimed against the County due to the administration of WPDA's contract to construct the Improvements.
- (e) WPDA shall contractually require its contractors comply with state and federal law in the performance of their obligations, including, but not limited to Article 2 of Chapter 64 of the North Carolina General Statutes relating to the required use of the federal E-Verify program to verify the work authorization of newly hired employees. Failure of WPDA to comply with this provision or to contractually cause its contractors to comply could result in the unenforceability of this contract under North Carolina law.
- (f) WPDA hereby certifies that it is not on the North Carolina State Treasurer's lists of persons engaging in business activities in Sudan (Darfur) or in Iran, or boycotting Israel, prepared pursuant to NCGS §§ 147-86.43, 147-86.58, and 147-86.81, nor will Provider utilize for this Agreement any subcontractor on such lists.
- (g) The proposed project to help fund the construction of the Improvements must meet the criteria established by the Forsyth County Board of Commissioners by September 25, 2015, ordinance under which Reimbursement Agreement may be authorized pursuant to N.C.G.S. 153A-451.
- (h) The County may suspend or terminate payment of County funding hereunder in whole or in part if WPDA fails to complete the construction of the Improvements on or before December 31, 2020, unless such delay is due to an event of Force Majeure.
- (i) The County contribution for the construction of the Improvements of up to four

hundred twenty-five thousand, seven hundred ninety-three and 88/100 dollars (\$425,793.88) must not be reimbursed to WPDA by any other source.

- (j) WPDA agrees to solicit bids in accordance with Article 8 of Chapter 143 of the North Carolina General Statutes when awarding contracts for the construction of the Improvements to the extent that such would have been required if the contract had been awarded by the County.
- (k) The County will make no payment under this Agreement so long as there is an outstanding debt or obligation due the County by WPDA. WPDA agrees that any debt it owes the County will be offset against any payments otherwise due WPDA under this Agreement.

(2) This Agreement is subject to termination for reasons described herein or in attachments hereto. The County may execute an extension of this Agreement in its discretion and in accordance with such additional conditions as it may require.

(3) WPDA shall provide the County reports and information as follows:

(a) WPDA shall provide on a quarterly basis a report of all funds received and expended for the construction of the Improvements and a report of the bidding and contracting activities for the Improvements. WPDA shall provide on an annual basis by June 30 of each year a report of the status of the design and construction of the Improvements and the work performed in the past year. WPDA will supply such records, information and verification as may reasonably be requested by the County relating to the expenditure of County and other funds related to the construction of the Improvements. WPDA agrees that the County shall have access to the records and premises of WPDA at all reasonable times, and WPDA agrees to submit such reports as the County shall request pertaining to the funds appropriated herein or the operations WPDA.

(b) WPDA shall maintain a written accounting and documentation of all receipts and disbursements relating to the County funds which are the subject of this Agreement. The County reserves the right to require a certified audit pertaining to the use of the County funds, or may perform the audit through the use of its staff.

(4) WPDA shall furnish to the County a copy of their annual audit report performed by a certified public accountant as soon as such becomes available to WPDA but no later than six (6) months following the WPDA's fiscal year end.

(5) (a) The County may suspend or terminate the payment of County funds in whole or in part for any default under this Agreement by WPDA which is not cured within ten (10) business days following receipt of notice to cure from the County. The following actions, if not cured within ten (10) business days following receipt of notice to cure, shall be a default:

- (i) Ineffective or improper use of County funds;
- (ii) Failure to comply with the terms and conditions of the Agreement;
- (iii) Submission to the County of reports which are incorrect or incomplete in any material respect;
- (iv) Any other material violation of this Agreement.

(b) In the event of Force Majeure, as defined herein, the Parties may mutually agree to extend the time period for performance under this Agreement for a period of time which is reasonably necessary to achieve performance without committing a breach of this Agreement.

(c) In addition, the County may suspend or terminate payment of County funds in whole or in part if WPDA fails to complete the construction of the Improvements on or before December 31, 2020 (subject to an event of Force Majeure, as defined herein, in which case, the time to perform under the Agreement may be extended by mutual agreement as set forth in subpart (6)(b) above), or to make other satisfactory progress toward meeting the project services which are the subject of this Agreement; and the determination of whether satisfactory progress has been made shall be in the reasonable discretion of the County.

(d) If the payment of County funds is suspended or terminated because WPDA has defaulted under this Agreement, which default remains uncured, by wrongfully seeking and receiving funds from the County in violation of this Agreement, WPDA, will promptly return the portion of the funds which the County determines were received by WPDA in violation of this Agreement.

(e) For the purpose of this Agreement, the term "Force Majeure" shall mean an event which is beyond the control of either party that substantially affects a party's ability to perform in a timely manner, including, but not limited to tornadoes, fire, floods, hurricanes or other natural disasters, confiscation or the exercise of eminent domain by any governmental authority, strikes, lockouts, riots, or other labor troubles or a national emergency, or similar causes not within either party's control, except that in no event shall the inability to fund the obligations as set forth under this Agreement be deemed an event of Force Majeure.

(7) Any and all alterations in the Budget, Restrictions and Conditions, or Reporting Requirements attached hereto relating to the County funds which are the subject of this Agreement shall be subject to prior review and written approval by the County.

(8) This Agreement and the County funds which are the subject of this Agreement are expressly nonassignable without the prior written consent and approval of the County.

(9) Non-expendable property purchased under this Agreement shall remain the property of WPDA, unless the attached Budget or conditions provide that such property shall become the property of the County.

(10) WPDA shall operate as an independent contractor, not employees of the County, and the County shall not be responsible for any acts or omissions of WPDA or for the negligent or intentional acts or omissions of WPDA's employees, agents, contractors, or other representatives or their willful or criminal conduct at Whitaker Park during the course of the construction of the Improvements. WPDA agrees to hold the County harmless from and against any and all claims, expenses including attorney fees, costs or liability for acts or omissions of WPDA or WPDA's employees, agents or other representatives relating to or arising during the course of the performance of this Agreement.

(11) Except as set forth in this Agreement, the County shall not be liable to WPDA for any expenses paid or incurred by WPDA unless otherwise agreed in writing.

(12) WPDA shall maintain, at its sole expense, the following insurance coverage:

(a) Commercial General Liability Insurance. WPDA shall maintain occurrence version

commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall be no less than two times the occurrence limit. Such insurance limit shall be primary with respect to any insurance or self-insured retention programs covering the County, its officials, officers and employees.

(b) Business Automobile Liability Insurance. WPDA shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles.

(c) Workers' Compensation and Employers' Liability Insurance. WPDA shall maintain workers' compensation insurance with North Carolina statutory limits and employers' liability insurance with limits of not less than \$100,000 each accident.

(d) WPDA shall, prior to commencement of services, furnish the County with properly executed certificates of insurance which shall clearly evidence all insurance required in this section. WPDA shall place such insurance with insurers authorized to do business in North Carolina and having A.M. Best Company ratings of not less than A:VII. Any alternatives to this requirement shall require written approval of the County's Risk Manager.

(e) WPDA understands and acknowledges that these insurance coverage requirements are minimums and that they do not restrict or limit the hold harmless provisions of this agreement.

(13) WPDA has no authority to enter into contracts or agreements on behalf of the County.

(14) WPDA declares that it has or will comply with all federal, state and local laws regarding business permits, certificates, and licenses that may be required to carry out the activities to be performed under this Agreement.

(15) This Agreement shall be governed by North Carolina law, except that provisions regarding conflicts of laws shall not apply.

(16) WPDA agrees to be responsible for, and to appropriately supervise, its employees, agents, or other representatives who are onsite at Whitaker Park during the course of construction of the Improvements.

(17) Involuntary or binding mediation, arbitration, negotiation, or other settlement procedure of disputes, if any, shall not apply.

(18) Any notices required to be sent under this Agreement shall be sent to the Parties at the following addresses:

If to WPDA:

WPDA, Inc.
Attn: Robert E. Leak, Jr.
1080 W. 4th Street
Winston-Salem, N.C. 27101

If to the County:

Forsyth County Manager
Forsyth County Government Center
201 N Chestnut Street
Winston-Salem, N.C. 27101

With a Copy to:
Forsyth County Attorney
Forsyth County Government Center
201 N Chestnut Street
Winston-Salem, N.C. 27101

When this Agreement provides that any notice is required or permitted, such notice shall be in writing, and it shall be sent via the United States Postal Service, certified with a return receipt requested, or through any other nationally-recognized delivery service with signature required as provided for hereinabove.

(19) The attached Exhibits are as follows:

Exhibit A: Whitaker Park East plan.

The above-named Exhibit is incorporated herein by reference.

IN WITNESS WHEREOF, WPDA and the County have caused this Agreement to be legally executed as of the day and year first above written, the corporate seal of each having been affixed hereto by its proper officers, all as provided by law.

[Signatures on next page]

WPDA, Inc.

By: _____

Printed Name: _____

Title: _____

WITNESS
Printed Name: _____

(SEAL)

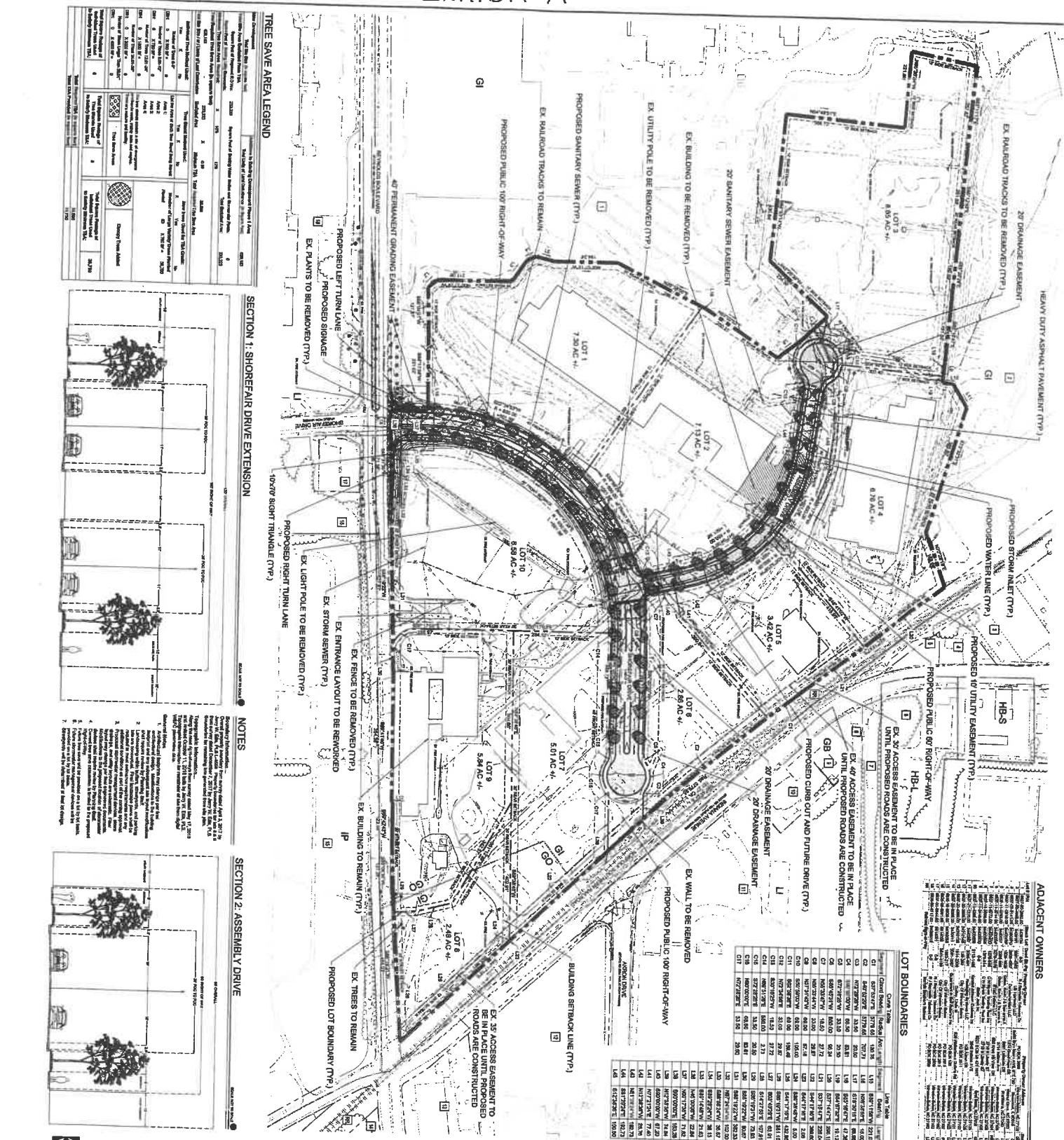
Forsyth County

By: _____

ATTEST:

Clerk to the Board of Commissioners

(SEAL)



ADJACENT OWNERS

LOT BOUNDARIES

Lot	Owner	Address	Area
1
2
3
4
5
6
7
8
9
10
11

LOT BOUNDARIES

Lot	Area (AC +/-)	Area (SQ FT)
1	7.26	312,000
2	17.2	742,000
3	8.78	379,000
4	8.78	379,000
5	3.82	165,000
6	2.88	124,000
7	5.07	219,000
8	5.07	219,000
9	5.07	219,000
10	5.89	256,000
11	2.48	107,000

OVERALL BOUNDARY

Line	Area (AC +/-)	Area (SQ FT)
1
2
3
4
5
6
7
8
9
10
11

SECTION 1: SHOREFAIR DRIVE EXTENSION

SECTION 2: ASSEMBLY DRIVE

Notes regarding drive extensions, easements, and utility lines.

NOTES

1. All dimensions are in feet and inches.
2. All areas are in acres and square feet.
3. All easements are shown in dashed lines.
4. All utility lines are shown in solid lines.
5. All buildings are shown in solid lines.
6. All trees to be removed are shown in solid lines.
7. All trees to remain are shown in dashed lines.
8. All fences to be removed are shown in solid lines.
9. All fences to remain are shown in dashed lines.
10. All storm sewers are shown in solid lines.
11. All sanitary sewers are shown in solid lines.
12. All water lines are shown in solid lines.
13. All utility poles are shown in solid lines.
14. All building layouts are shown in solid lines.
15. All access easements are shown in solid lines.
16. All drainage easements are shown in solid lines.
17. All utility easements are shown in solid lines.
18. All public right-of-way are shown in solid lines.
19. All private right-of-way are shown in solid lines.
20. All proposed roads are shown in solid lines.
21. All existing roads are shown in solid lines.
22. All proposed buildings are shown in solid lines.
23. All existing buildings are shown in solid lines.
24. All proposed trees are shown in solid lines.
25. All existing trees are shown in solid lines.

WHITAKER PARK EAST

OWNER/DEVELOPER: ...

PREPARED BY: ...

DATE: ...

SCALE: 1" = 100'

WHITAKER PARK EAST

WINSTON-SALEM, NC

PRELIMINARY SUBDIVISION PLAN

G-801

stimmel

CIVIL ENGINEERING
LAND PLANNING
SURVEYING
Winston-Salem, NC 27103
www.stimmel.com

PRELIMINARY DRAWING

SEAL
PROJECT NUMBER: G-801

**FORSYTH COUNTY, NORTH CAROLINA
AMENDMENT TO
2018-2019 BUDGET ORDINANCE**

FROM: BUDGET & MANAGEMENT

MEETING DATE: May 23, 2019

EXPLANATION: On September 28, 2015, the Forsyth County Board of Commissioners adopted a Resolution authorizing \$2,350,000 in County funds to be reserved from General Fund fund balance for future reimbursement agreements with WPDA, Inc. (Whitaker Park Development Authority) for municipal infrastructure design and construction at Whitaker Park. The County completed one Reimbursement Agreement between Forsyth County, WPDA, Inc., and the City/County Utilities Commission for public water and wastewater infrastructure construction at Whitaker Park in a total amount of \$1,924,206.12, leaving \$425,793.88 in reserved General Fund fund balance.

WPDA has now requested the County authorize a Reimbursement Agreement between Forsyth County and WPDA Inc., for the remaining \$425,793.88 to support the design and construction of a public roadway, to be dedicated to the City of Winston-Salem upon completion. The proposed roadway will extend Akron Drive through Whitaker Park to connect to Reynolds Boulevard. The estimated budget for road design, engineering, and construction is approximately \$4,000,000, and the other sources of revenue for the project are approximately \$2.3 Million from the City of Winston-Salem, and approximately \$1.3 Million from the NC Department of Transportation. Lowder, Inc., was selected as the construction contractor.

This Budget Ordinance Amendment appropriates \$425,793.88 from General Fund fund balance to support the reimbursement agreement between Forsyth County and WPDA, Inc., to reimburse WPDA, Inc. for the design and construction of municipal infrastructure at Whitaker Park.

**BE IT ORDAINED BY THE FORSYTH COUNTY BOARD OF COMMISSIONERS THAT THE
2018-2019 BUDGET ORDINANCE IS HEREBY AMENDED AS FOLLOWS:**

INCREASE:	<u>SECTION 1. REVENUES.</u> GENERAL FUND COMMITTED FUND BALANCE	<u>\$425,793.88</u>
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INCREASE:	<u>SECTION 2. EXPENDITURES.</u> GENERAL FUND COMMUNITY & ECONOMIC DEVELOPMENT	<u>\$425,793.88</u>
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NATURE OF TRANSACTION:
 Additional Revenue Available
 Transfer within Accounts of
 Same fund
 Other: Transfer to different fund

**APPROVED BY BOARD OF COUNTY
COMMISSIONERS AND ENTERED ON
MINUTES DATED _____
AGENDA ITEM NUMBER _____**