



**MEMORANDUM**

**TO:** Strib Boynton, City Manager

**FROM:** *Rm* Randy McCaslin, Assistant City Manager

**SUBJECT:** Encroachment Agreement with High Point University

**DATE:** November 27, 2013

In accordance with the Memorandum of Understanding approved by the City Council on October 21, 2013, enclosed you will find a right of way encroachment and fence easement agreement with the University. This agreement will allow HPU to erect their fence, signage, and welcome center in the right of way and City owned property along the southern section of East Farris Avenue adjacent to the campus. The City retains the right of way and all utility easements associated with this section of East Farris Avenue, and will continue to provide all services to the residents of this area. The street will remain open to all vehicular traffic.

High Point University's engineer, Dan Pritchett, and I will be available at the December 2 City Council meeting to answer questions.

**DRAWN BY:**  
**RETURN TO:**

**NORTH CAROLINA**  
**GUILFORD COUNTY**

**RIGHT OF WAY  
ENCROACHMENT AGREEMENT  
AND FENCE EASEMENT**

THIS ENCROACHMENT AGREEMENT AND FENCE EASEMENT (Agreement) made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, between **THE CITY OF HIGH POINT**, a municipal corporation existing under the laws of the State of North Carolina (the "City") and **HIGH POINT UNIVERSITY**, a North Carolina nonprofit corporation, (the "University").

**W I T N E S S E T H**

**WHEREAS**, the City owns the public right of ways known as N. Centennial Street, E. Farriss Ave., and a section of unimproved Fifth Street as shown on a map entitled "Plat No. 2, Sherwood Park" as recorded in Plat Book 11 Page 67 of the Guilford County Register of Deeds; and

**WHEREAS**, the City owns property lying between two 34-foot right of ways of the northern and southern margins of E. Farriss Ave., indicated as City Park on the above referenced "Plat No. 2, Sherwood Park", said City Park being transferred to the City of High Point in Deed Book 921 Page 518 of the Guilford County Register of Deeds; and

**WHEREAS**, the University desires, for its interest and convenience, to construct, maintain, and put in place a decorative fence and wall constructed of brick or metal, or a combination of the two materials, hereafter known as "Improvements", in said public right of ways, and in said City Park as described on attached Exhibits; and

**WHEREAS**, the University desires, for its interest and convenience, to construct, maintain, and put in place a Welcome Center and associated landscape islands, hereafter know as “Improvements”, in said public right of way of the southern section of E. Farriss Avenue’s 34-foot right of way as described on attached Exhibits; and

**WHEREAS**, the City under the terms and conditions herein set forth, is willing to allow the above described Improvements to be made, and allow the University to encroach upon the above-referenced City-owned right of ways, and grant an easement upon the above referenced City-owned park.

**NOW, THEREFORE**, in consideration of the promises and other good and valuable consideration, the receipt of which is hereby acknowledged, the University hereby covenants and agrees that:

1. The University is responsible for any and all expenditure of labor or materials required in the installation, erection, repair, maintenance or location of the above-referenced Improvements.

2. The University is responsible for any and all labor or expense, which results from any and all future maintenance and repair of such Improvements, and the removal or dismantling of the Improvements if and when the Improvements are removed.

3. The University is to be fully responsible for any and all property damage or injury to or death of any person which results from any and all negligence, omission, defect in design, maintenance or workmanship created by the University, its agents, employees, contractors or subcontractors in connection with the Improvements, or any cause of action arising out of the installation, maintenance, location, or existence of said Improvements or any other cause of action arising out of the planting, installation, maintenance, location, or existence of said Improvements (collectively, “Claims and Causes of Action”).

4. The University agrees:

- (a) to hold the City, its officers, agents and employees harmless from any and all liability arising out of any such Claims and Causes of Action, and
- (b) to defend the City, its officers, agents and employees and pay all attorney fees in any and all actions brought as a result of such Claims and Causes of Action; and
- (c) indemnify the City, its officers, agents and employees against any and all loss sustained by reason of such Claims and Causes of Action.

5. The University, prior to construction of the Improvements, agrees to submit to the City detailed Construction Drawings and shall secure approval from the City of all permits required for the construction of the Improvements.

6. The University agrees to abide by all lawful statutes and ordinances governing installation of the Improvements as contemplated herein.

7. This Agreement shall not divest the City of any rights or interest in said rights of way or the City-owned Park.

8. The University shall contact "NC One Call Center" prior to excavation where and in the manner required by the NC One Call law.

9. This Agreement shall be binding upon and ensure to the benefit of all of the parties hereto and their heirs, personal representatives, grantees, successors, and assigns.

10. All matters relating to this Agreement shall be governed by laws of the State of North Carolina without regard to its choice of law provisions, and venue for any action related to the Agreement shall be Guilford County Superior Court or the United States District Court for the Middle District of North Carolina.

12. All notices required herein shall be deemed given by depositing such in the United States Mail, first class, and addressed as follows:

If to City:

City of High Point  
Office of the City Manager  
P.O. Box 230  
High Point, NC 27261  
Attn: City Manager

If to University

High Point University  
Attn: Christopher H. Dudley, Chief of Staff  
833 Montlieu Avenue  
High Point, NC 27262

NOW, THEREFORE, the City, for and in consideration of these promises and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant to the University, its successors and assigns, a revocable encroachment and easement for the Grantee's Improvements, as described in the attached Exhibits, for so long as the property and right of ways are not needed by the Grantor.

IN WITNESS WHEREOF, the City of High Point has caused this instrument to be signed by its Mayor and attested by its Clerk and its seal to be affixed by the duly-granted authority of its City Council, the day and year first above written.

**APPROVED AS TO FORM BY:**

**CITY OF HIGH POINT**

\_\_\_\_\_  
**City Attorney**

**By:**\_\_\_\_\_  
**Bernita Sims, Mayor**

**ATTEST:**

**SEAL**

\_\_\_\_\_  
**Lisa B. Vierling**  
**City Clerk**

**NORTH CAROLINA**  
\_\_\_\_\_**COUNTY**

I, \_\_\_\_\_, a Notary Public of said county and state do hereby certify that Lisa B. Vierling is known to me as City Clerk of the City of High Point; that she personally appeared before me this date; and, that by authority duly given, and as the act of the said City of High Point, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal, and attested by herself as its clerk.

Witness my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

My commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

*"Shaping  
a more livable  
High Point"*

PLANNING AND DEVELOPMENT DEPARTMENT  
DEVELOPMENT SERVICES DIVISION  
CITY OF HIGH POINT  
NORTH CAROLINA

Staff Use Only  
Filing Date: \_\_\_\_\_  
Case No.: \_\_\_\_\_  
Payment: \_\_\_\_\_  
Approval Date: \_\_\_\_\_

RIGHT-OF WAY ENCROACHMENT PETITION

To the City Council of the City of High Point:

We, the undersigned, owners of the land abutting upon the street rights-of-way herein to be encroached, do hereby petition the City Council to grant an encroachment agreement hereinafter generally described as follows:

Location of Encroachment N. Centennial St. at the intersection with  
E. Farriss Ave. and E. Farriss Ave. between N. Centennial  
St. and W. College Dr. , including Fifth St. Right-of-way

Legal Description of Encroachment Area (Metes and Bounds): (See PB 11 PG 67)

See attached Exhibit

(1) High Point University

Property Owner (printed name)

[Signature]  
Property Owner's Signature

833 Montlieu Ave. 336-841-9346

Address High Point, NC Phone

(2)

Property Owner (printed name)

Address

Phone

Property Owner's Signature

(use additional sheets, if necessary)



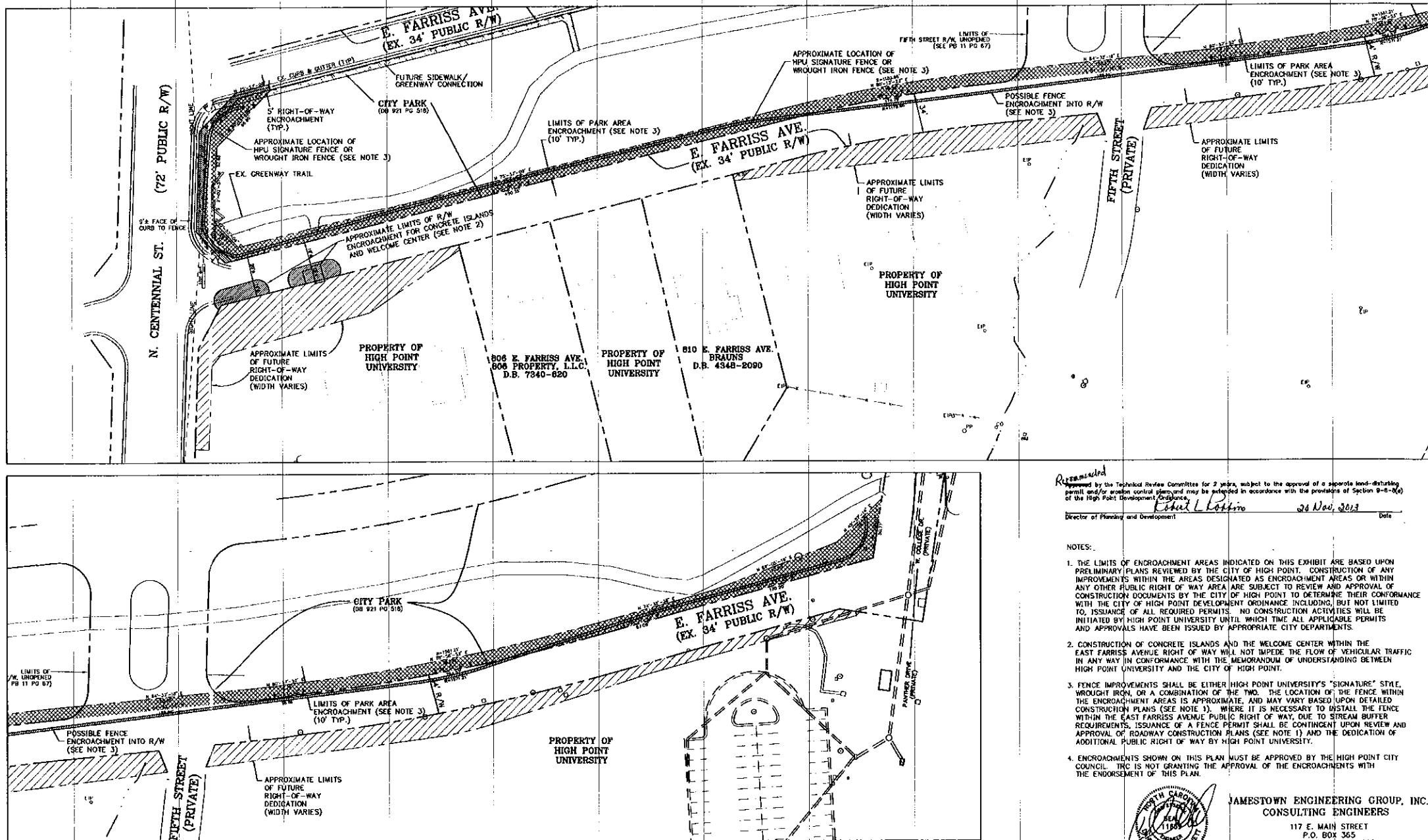
BEFORE YOU DIG!  
CALL 1-800-632-4949  
N.C. ONE-CALL CENTER  
IT'S THE LAW!

SCALE: 1"=40'

# CITY OF HIGH POINT AND HIGH POINT UNIVERSITY FOR ENCROACHMENTS WITHIN N. CENTENNIAL ST., E. FARRISS AVENUE, FIFTH ST., AND PARK AREAS

CITY OF HIGH POINT  
GUILFORD COUNTY - NORTH CAROLINA

NOVEMBER, 2013  
JOB No. 2013122



Reviewed  
Approved by the Technical Review Committee for 2 years, subject to the approval of a separate land-disturbance permit and/or erosion control plan, and may be extended in accordance with the provisions of Section 8-4-3(a) of the High Point Development Ordinance.  
Robert L. Lott  
Director of Planning and Development  
24 Nov. 2013  
Date

- NOTES:
1. THE LIMITS OF ENCROACHMENT AREAS INDICATED ON THIS EXHIBIT ARE BASED UPON PRELIMINARY PLANS REVIEWED BY THE CITY OF HIGH POINT. CONSTRUCTION OF ANY IMPROVEMENTS WITHIN THE AREAS DESIGNATED AS ENCROACHMENT AREAS OR WITHIN ANY OTHER PUBLIC RIGHT OF WAY ARE SUBJECT TO REVIEW AND APPROVAL OF CONSTRUCTION DOCUMENTS BY THE CITY OF HIGH POINT TO DETERMINE THEIR CONFORMANCE WITH THE CITY OF HIGH POINT DEVELOPMENT ORDINANCE INCLUDING, BUT NOT LIMITED TO, ISSUANCE OF ALL REQUIRED PERMITS. NO CONSTRUCTION ACTIVITIES WILL BE INITIATED BY HIGH POINT UNIVERSITY UNTIL WHICH TIME ALL APPLICABLE PERMITS AND APPROVALS HAVE BEEN ISSUED BY APPROPRIATE CITY DEPARTMENTS.
  2. CONSTRUCTION OF CONCRETE ISLANDS AND THE WELCOME CENTER WITHIN THE EAST FARRISS AVENUE RIGHT OF WAY WILL NOT IMPEDE THE FLOW OF VEHICULAR TRAFFIC IN ANY WAY IN CONFORMANCE WITH THE MEMORANDUM OF UNDERSTANDING BETWEEN HIGH POINT UNIVERSITY AND THE CITY OF HIGH POINT.
  3. FENCE IMPROVEMENTS SHALL BE EITHER HIGH POINT UNIVERSITY'S "SIGNATURE" STYLE, WROUGHT IRON, OR A COMBINATION OF THE TWO. THE LOCATION OF THE FENCE WITHIN THE ENCROACHMENT AREAS IS APPROXIMATE, AND MAY VARY BASED UPON DETAILED CONSTRUCTION PLANS (SEE NOTE 1), WHERE IT IS NECESSARY TO INSTALL THE FENCE WITHIN THE EAST FARRISS AVENUE PUBLIC RIGHT OF WAY, DUE TO STREAM BUFFER REQUIREMENTS, ISSUANCE OF A FENCE PERMIT SHALL BE CONTINGENT UPON REVIEW AND APPROVAL OF ROADWAY CONSTRUCTION PLANS (SEE NOTE 1) AND THE DEDICATION OF ADDITIONAL PUBLIC RIGHT OF WAY BY HIGH POINT UNIVERSITY.
  4. ENCROACHMENTS SHOWN ON THIS PLAN MUST BE APPROVED BY THE HIGH POINT CITY COUNCIL. TRC IS NOT GRANTING THE APPROVAL OF THE ENCROACHMENTS WITH THE ENDORSEMENT OF THIS PLAN.



JAMESTOWN ENGINEERING GROUP, INC.  
CONSULTING ENGINEERS  
117 E. MAIN STREET  
P.O. BOX 365  
JAMESTOWN, N.C. 27282

SHEET NO.  
1

201311221222ENCROACHMENTS.DWG PLOTTED AT: 400 NEW NO 15 48 27 2013