

RETURN TO: Randy McCaslin, Assistant City Manager
City of High Point
P.O. Box 230
High Point, NC 27261

NORTH CAROLINA
GUILFORD COUNTY

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

THIS ENCROACHMENT AGREEMENT AND FENCE EASEMENT (Agreement) made this 2nd day of December, 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").

WITNESSETH

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.

APPROVED AS TO FORM BY:

JoAnne Carlyle
JoAnne Carlyle, City Attorney

CITY OF HIGH POINT

By: Bernita Sims
Bernita Sims, Mayor

ATTEST:

Lisa B. Vierling
Lisa B. Vierling
City Clerk



NORTH CAROLINA
GUILFORD COUNTY

I, Cynthia C. Duncan-Smith, 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 5th day of December, 2013.

My commission Expires: 1/18/2015

Cynthia C. Duncan-Smith
Notary Public

CYNTHIA C. DUNCAN-SMITH
NOTARY PUBLIC
GUILFORD COUNTY, NC

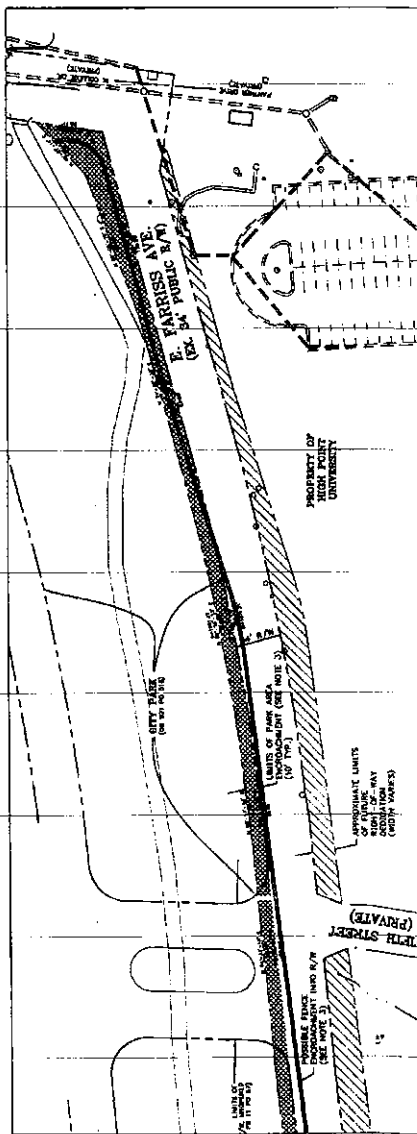
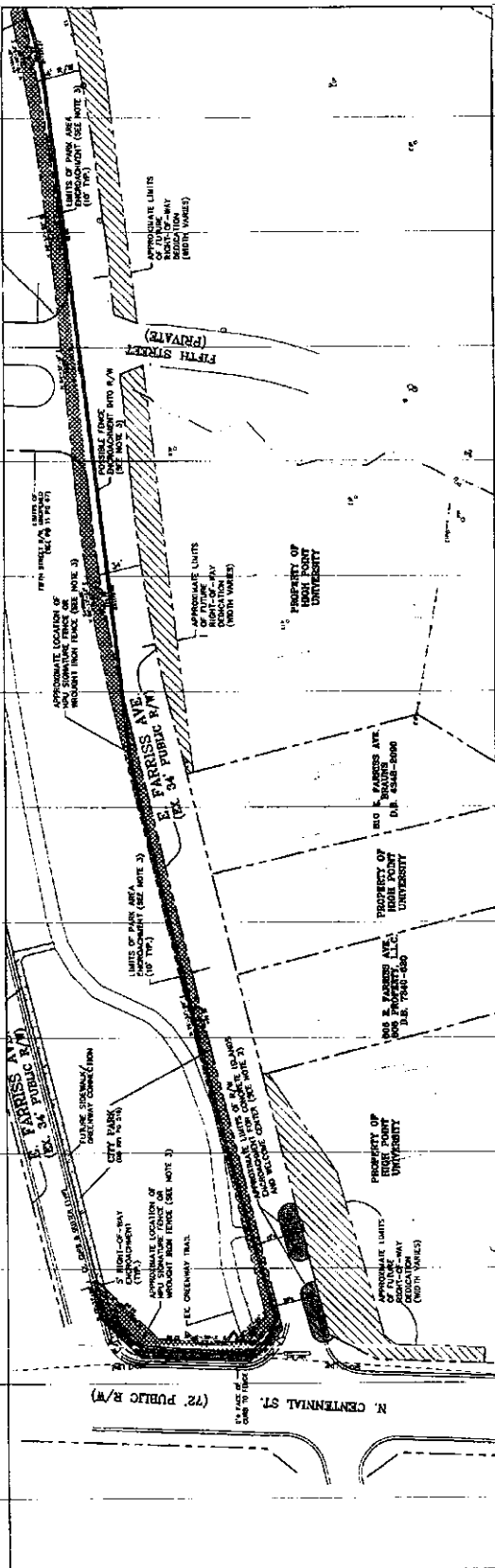
CITY OF HIGH POINT AND HIGH POINT UNIVERSITY FOR ENCROACHMENTS WITHIN N. CENTENNIAL ST., E. FARRISS AVENUE, FIFTH ST., AND PARK AREAS CITY OF HIGH POINT CULFORD COUNTY, NORTH CAROLINA

NOVEMBER, 2012
JOB NO. 20-312

SCALE: 1"=40'



BEFORE YOU USE
CALL OR VISIT
E.C. ONE-CAL CENTER
ITS THE LAW



As indicated, the following encroachment is shown for the purpose of a preliminary plan showing only. The City of High Point is not responsible for the accuracy of the information shown on this plan. The City of High Point is not responsible for the accuracy of the information shown on this plan.

- NOTES:
1. THE LIMITS OF ENCROACHMENT AREAS INDICATED ON THIS PLAN ARE BASED UPON PRELIMINARY INFORMATION AND ARE NOT TO BE USED FOR CONSTRUCTION OR FOR ANY OTHER PURPOSE. THE CITY OF HIGH POINT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION SHOWN ON THIS PLAN.
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JAMESTOWN ENGINEERING GROUP, INC.
CONSULTING ENGINEERS
117 E. MAIN STREET
JAMESTOWN, N.C. 27282



SHEET NO. 1