

# CITY OF HIGH POINT

## AGENDA ITEM



**Title:** Marsh Furniture Parking Encroachment

**From:** Mark McDonald, Transportation Director

**Meeting Date:** Monday July 20, 2015

**Public Hearing:** No

**Advertising Date:** NA

**Advertised By:** NA

**Attachments:** Right of Way Encroachment Agreement  
Map  
Letter of Understanding

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### **PURPOSE:**

Consideration of a request by Marsh Furniture Company to construct additional parking along S. Centennial Street, between Kearns Avenue and S. Main Street.

### **BACKGROUND:**

Marsh Furniture is a leading employer in south High Point, and a recent facilities expansion has led to increased employment at their plant on S. Centennial Street. To accommodate the new employees, the company desires to expand an existing parking lot along the west side of S. Centennial. The 28 parking spaces in this lot, which was constructed in 2006-06, are directly accessed from S. Centennial and occupy portions of right-of-way owned by Norfolk Southern Railroad (NS) and the City.

Marsh has reached agreement with NS for the expansion of parking into the area once used for a rail line. City right-of-way for S. Centennial Street abuts the NS property, and extends approximately 18 feet from the western edge of pavement. The estimate area of the right-of-way to be used is 1,800 square feet.

The addition of ten (10) parking spaces immediately adjacent to the existing parking will require approximately 3,000 square feet of new pavement. Based on the size of the abutting lot, and other impervious areas around the plant, this addition would not require a watershed plan review. Since this parking is not required for the site, landscaping is not required, although Marsh proposes to add new landscaping south of the lot towards S. Main Street.

### **BUDGET IMPACT:**

Marsh Furniture Company will assume all costs for the construction and future maintenance of the proposed parking area and landscaping to be planted at the southern end of the lot.

### **RECOMMENDATION / ACTION REQUESTED:**

Staff from Transportation and Planning have reviewed the request from Marsh Furniture, and has no objections to the proposed parking and landscaping. Approval of the encroachment agreement is recommended.

**DRAWN BY: JoAnne L. Carlyle, City Attorney**  
**RETURN TO: City Attorney, P.O. Box 230, High Point, NC 27261**

**NORTH CAROLINA**

**GUILFORD COUNTY**

**RIGHT OF WAY  
ENCROACHMENT AGREEMENT**

**NTC:**

THIS AGREEMENT (Agreement) made this \_\_\_\_\_ day of \_\_\_\_\_, 2015, between **THE CITY OF HIGH POINT**, a municipal corporation, located at 211 South Hamilton Street, High Point, North Carolina 27260 existing under the laws of the State of North Carolina (the "City") and \_\_\_\_\_, a \_\_\_\_\_ in the state of North Carolina, located at \_\_\_\_\_, hereinafter known as the ("Applicant.")

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

**WHEREAS**, the City owns the a public street right of way located at \_\_\_\_\_; and

**WHEREAS**, the Applicant desires, for its interest and convenience, to construct and extend its existing paved area not more than one hundred (100) feet to accommodate eleven (11) new parking spaces and to provide landscape improvements around the site (collectively the paved area and landscaping referred to as "Improvements") which will cross a currently held public street right of way as shown on Attachment A; 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 Applicant to encroach upon the above-referenced City-owned right of way; and

**WHEREAS**, the Applicant has paid to the City the sum of \$100.00, which partially defrays the administrative costs of the City.

**NOW, THEREFORE**, in consideration of the premises and \$100.00 in hand paid receipt of which is hereby acknowledged and other consideration, the Applicant hereby covenants and agrees that:

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

2. The Applicant 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 they are removed.

3. The Applicant will fully indemnify and hold harmless the City 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 Applicant, its agents, employees, contractors or subcontractors in connection with the construction and maintenance of the Improvements, or any cause of action arising out of the installation, maintenance, or location of said Improvements (collectively, "Claims and Causes of Action"). The Applicant will be responsible for defending any and all such claims, as provided in Section 4 below.

4. The Applicant 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, councilors 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 Applicant, during the life of this agreement, agrees to procure or cause to be procured from a responsible insurance carrier or carriers, authorized under the laws of the State of North Carolina, insurance in the minimum amounts of One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate, combined single limit for personal injury, property damage, or wrongful death caused by construction, maintenance, location, repair or visual obstruction of said encroachment with the City of High Point being included as additional insured as respects work under this Agreement. Applicant shall furnish the City upon the City's request, but no more than once in any 12 month period, a certification from the insurance carrier or carriers with whom the insurance herein mentioned is carried, stating that such compensation is covered by such carrier or carriers and showing such insurance to be in full force and effect (or proof of self-insurance as referenced below). Applicant shall give the City at least 30 days advanced written

notice of any cancellation of any required coverage that is not replaced. Should Applicant fail to pay premiums upon said insurance, or should Applicant fail to obtain said insurance, or to perform any of the agreements, terms, or conditions herein contained; the City at its option, by written notice may declare this agreement cancelled and terminated and all rights acquired hereunder by Applicant shall thereupon terminate, except Applicant shall still be responsible for removing the Equipment from the right of way. In lieu of the foregoing, Applicant may self-insure for any or all of the coverages set forth above.

6. The Applicant, upon completion of the installation of the Improvements, shall submit to the City revised drawings in the form of an AutoCad (.dwg) file for retention by the City if the actual installation differs significantly from the installation shown on the drawings (in such event, the Applicant shall secure approval of the City prior to the differing installation).

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

8. This Agreement shall not divest the City of any rights or interest in said right of way.

9. This Agreement shall be revocable at will by the High Point City Council by sufficient advance written notice to the Applicant to allow the Applicant to relocate its Improvements in the event that the City is undertaking a road maintenance or improvement project within the public right of way where the Improvements are located with which the Improvements conflicts; and this Agreement shall be terminable by the Applicant by written notice to the City in the event of and following removal of the Improvements.

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

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

12. 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.

13. 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  
Public Services Department  
P.O. Box 230  
High Point, NC 27261  
ATTN: Public Services Director

If to Applicant:

Marsh Furniture Company

William Bumgarner, VP of Human Resources

1001 South Centennial Street

P.O. Box 870

High Point, NC 27261-0870

14. This represents the complete Agreement of the parties; any modification of any terms set forth in this Agreement shall be in writing and signed by both parties.

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.

APPLICANT

(Corporate Seal)  
*if corporation*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, a Notary Public of the County and State, do hereby certify that \_\_\_\_\_, personally came before me this day and acknowledged that he/she is \_\_\_\_\_, and that he/she, as \_\_\_\_\_ being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, 2015.

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

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

ATTEST:

CITY OF HIGH POINT

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

By: \_\_\_\_\_  
William S. Bencini, Jr., Mayor

NORTH CAROLINA

GUILFORD 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.

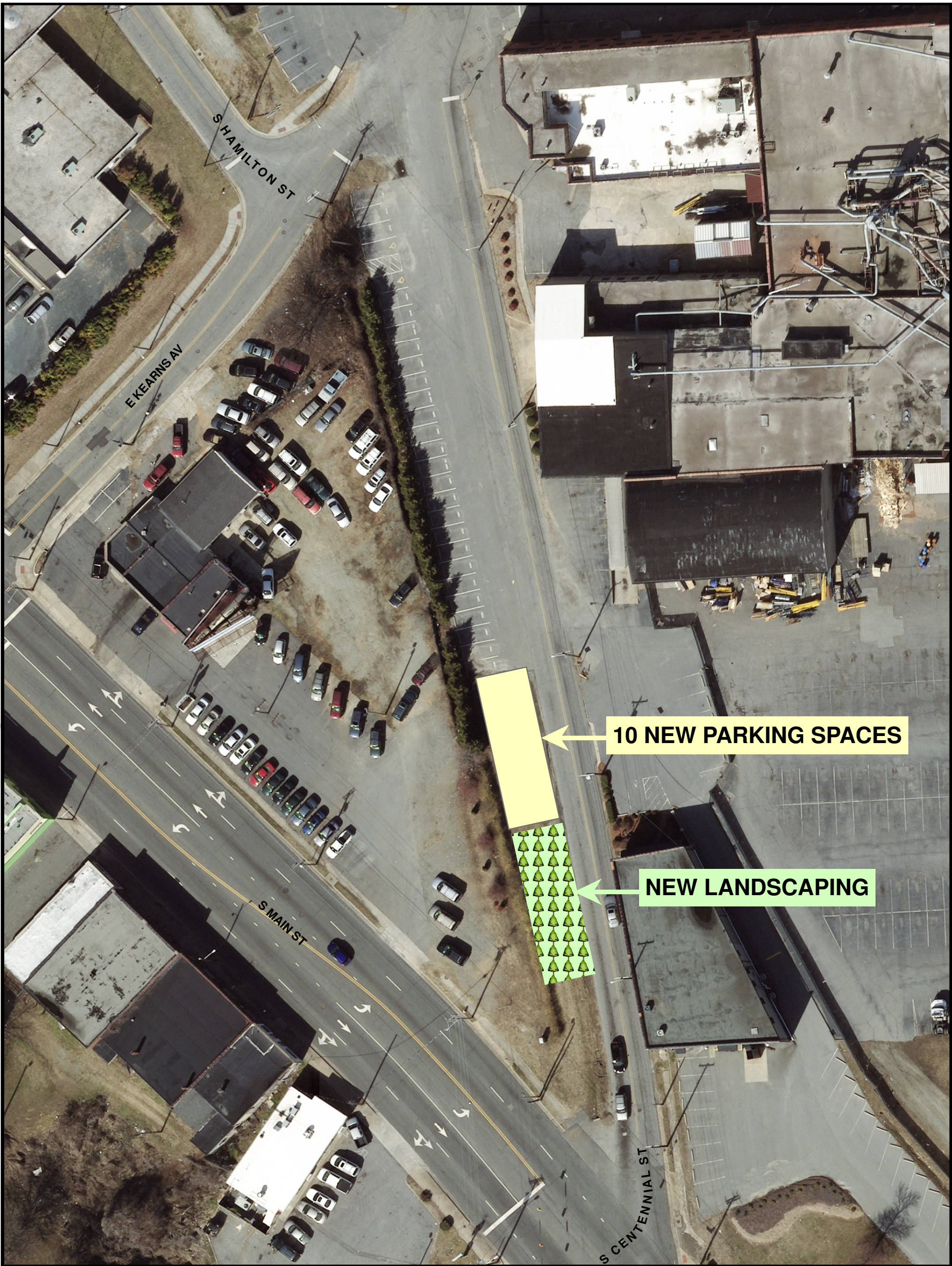
Witness my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, 2015.

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

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

## EXHIBIT A





# MARSH FURNITURE PARKING PROPOSAL



MAP PREPARED BY  
HIGH POINT MPO  
211 S. HAMILTON STREET  
HIGH POINT, NORTH CAROLINA 27260  
JULY 2015

This map is provided as a public information resource and every reasonable effort has been made to assure the quality of the map. This data information and related graphics are not legal documents and are not intended to be used as such. The City of High Point makes no warranty, express or implied, as to the accuracy, reliability, utility or completeness of this information. The City of High Point assumes no liability either for any errors, omissions, or inaccuracies in the information provided regardless of the cause of such or for any decision made, action taken, or action not taken by the user in reliance upon any maps or information provided herein.





July 20, 2015



Mr. Bill Bumgarner  
Marsh Furniture  
1001 S. Centennial Street  
High Point, NC 27260

**RE: Letter of Understanding: Use of S. Centennial Right-of-Way for Additional Parking and Landscaping**

Dear Mr. Bumgarner:

Pursuant to your request on behalf of Marsh Furniture Company ("Marsh") to construct additional parking and new landscaping along the west side of S. Centennial Street between Kearns Avenue and S. Main Street, the City of High Point ("the City") offers the following conditions of approval:

- 1) Marsh proposes to extend an existing paved area used for 90-degree on-street parking approximately 101 feet southward to accommodate up to 11 new parking spaces for employees. The area to be used for this expansion lies partially on public street right-of-way, and partially on railroad right-of-way. Adequate depth for vehicles to back out of the proposed spaces without backing into the street must be provided, estimated at a minimum 30 feet from the existing edge of pavement on S. Centennial Street. If permission from the controlling railroad to use their right-of-way cannot be obtained, or if the minimum depth cannot be achieved, this agreement shall be void.
- 2) The City acknowledges that the desired project to be constructed by Marsh does not meet the requirements for plan review by the Technical Review Committee (TRC), the Watershed Review Committee (WRC), or other independent departmental reviews. No special permits are required. Marsh has, however, provided a sketch plan of the plant site and the proposed additions for documentation purposes.
- 3) Permanent or temporary landscaping is not required. Marsh, however, desires to install and maintain landscaping within the railroad and street rights-of-way at the south end of the proposed improvements. The proposed landscaping and any desired hard features (e.g., block bordering) shall not be placed any closer than 8 feet to the western edge of pavement of S. Centennial Street, and shall not extend southward beyond the right-of-way for S. Main Street.
- 4) Construction of the paved parking area to City development standards is strongly encouraged. A lane/road closure permit must be obtained by Marsh or their general contractor from the City Department of Transportation for construction that may require the temporary closure of any part of S. Centennial Street. Closures and traffic control shall be established and maintained in conformance with the Federal ***Manual on Uniform Traffic Control Devices*** (MUTCD), including but not limited to the use of signing, barricades, cones, barrels, and flaggers.

July 20, 2015



- 5) The City assumes no liability or responsibility for the activities under this Letter of Understanding. Marsh agrees to indemnify and hold harmless the City from any claims arising from or relating to the activities under this Letter of Understanding.
- 6) Marsh shall be required to execute an encroachment agreement provided by the City and be subject to the terms of that agreement.

**THE CITY OF HIGH POINT**

Reviewed and recommended by:

\_\_\_\_\_  
Mark V. McDonald, P.E.  
Transportation Director

Date: \_\_\_\_\_

\_\_\_\_\_  
JoAnne Carlyle  
City Attorney

Date: \_\_\_\_\_

Approved by:

\_\_\_\_\_  
Randy E. McCaslin  
Deputy City Manager

Date: \_\_\_\_\_

\_\_\_\_\_  
Mollie Marsh Brugh  
CEO/President, Marsh Furniture Company

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Lisa Vierling, City Clerk

Attest: \_\_\_\_\_  
Secretary, Marsh Furniture Company