

# CITY OF HIGH POINT

## AGENDA ITEM



**Title:** Right-Of-Way Encroachment RE-17-0003  
(High Point University)

**From:** Lee Burnette, Planning & Development  
Director

**Meeting Date:** May 15, 2017

**Advertising Date:** Not Applicable

**Advertised By:** Not Applicable

**Public Hearing:** No

**Attachments:** A. Staff Memo  
B. Agreement  
C. Location Map  
D. Site Plan

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### PURPOSE:

A right-of-way encroachment request by High Point University for a proposed wrought-iron fence with brick columns that will encroach approximately 10 feet within an unopened section of the Fifth Street right-of-way.

### BACKGROUND:

Staff memo and the Technical Review Committee's recommendation is enclosed.

### BUDGET IMPACT:

There is no budget impact.

### RECOMMENDATION / ACTION REQUESTED:

A. On April 26, 2017 the Technical Review Committee recommended approval of Right-Of-Way Encroachment RE-17-0003.

**CITY OF HIGH POINT  
PLANNING AND DEVELOPMENT DEPARTMENT**

**RIGHT-OF-WAY ENCROACHMENT**

**RE-17-0003**

**May 15, 2017**

<b>Request</b>	
<b>Applicant:</b> High Point University	<b>Proposal:</b> Construct a wrought-iron fence with brick columns that will encroach approximately 10 feet within an unopened section of the Fifth Street right-of-way.

<b>Adjacent Streets</b>		
<b>Name:</b>	<b>Classification:</b>	<b>R/W Width:</b>
Fifth Street	Local	100 feet (divided with median)

**Analysis**

The applicant is requesting an encroachment agreement for a proposed a wrought-iron fence with brick columns, intruding approximately 10 feet into the street right-of-way along an unopened section of Fifth Street.

The Technical Review Committee reviewed this request on April 26, 2017 and determined that the proposed encroachment would not affect public safety or interfere with street or utility maintenance needs. Fifth Street is an unopened public right-of-way and is not maintained by the City.

The site plan for the proposed structure is attached depicting its approximate location and the associated encroachment.

**Recommendation**

Based upon TRC's review, the existing structure will not affect public safety or interfere with street or utility maintenance. Staff recommends approval of this requested right-of-way encroachment.

**Report Preparation**

This report was prepared by Planning and Development Department staff member Justin S. Westbrook, CZO and was reviewed by Robert L. Robbins, AICP and G. Lee Burnette, AICP.

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

Prepared by: JoAnne Carlyle, City Attorney

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

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

**NTC**

THIS ENCROACHMENT AGREEMENT AND FENCE EASEMENT (Agreement) made this 15<sup>th</sup> day of May, 2017, 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 rights of way, and in said City Park as described on attached Exhibit A; an

**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

If to University

High Point University  
Attn: Barry Kitley  
1 North University Parkway  
High Point, NC 27268

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 Exhibit, 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**

\_\_\_\_\_  
**JoAnne Carlyle, City Attorney**

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

**ATTEST:**

**SEAL**

\_\_\_\_\_  
**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.

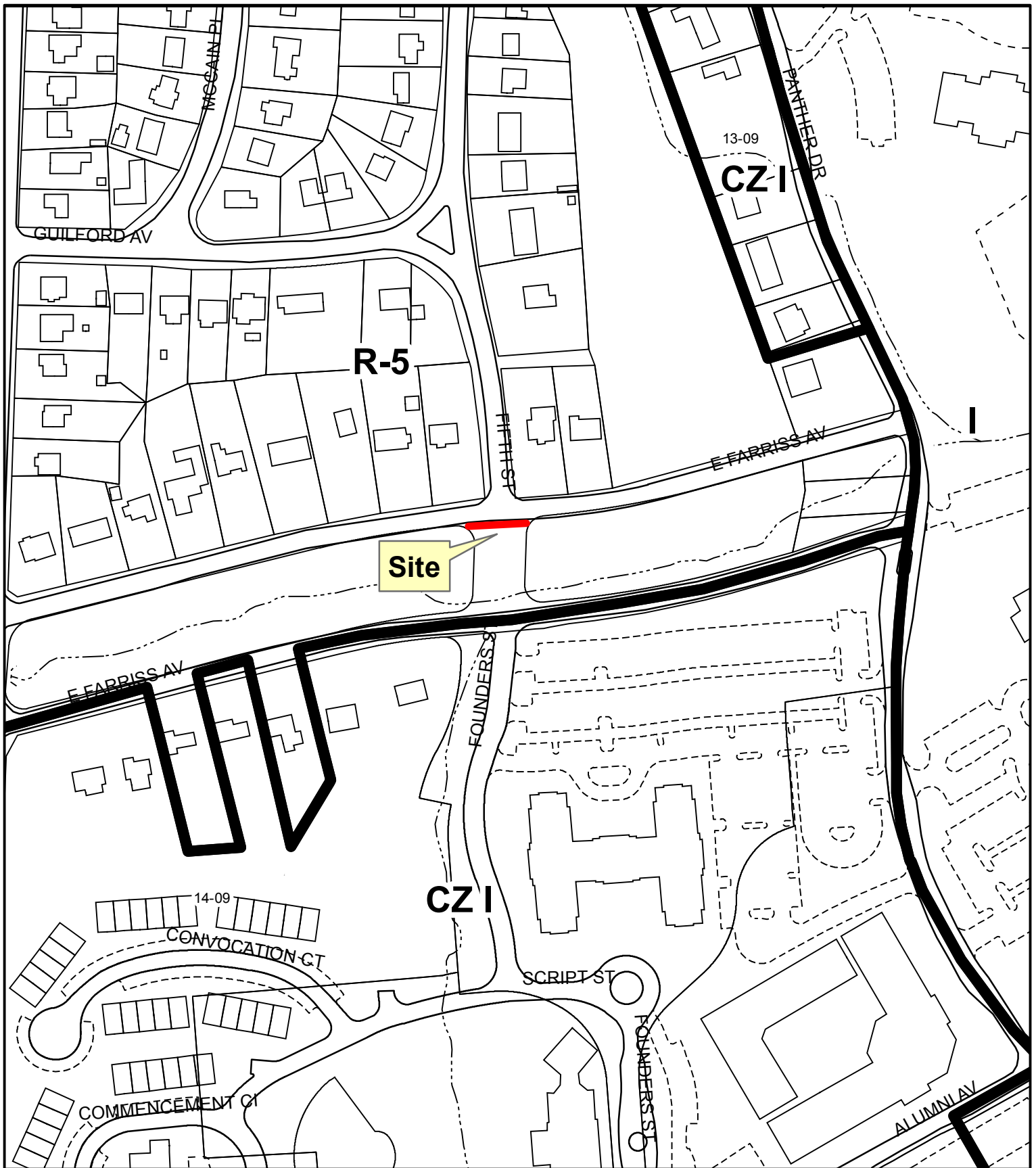
Witness my hand and official seal this the \_\_\_\_\_ day of May, 2017.

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

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







**RIGHT-OF-WAY ENCROACHMENT RE-17-0003**

**High Point University  
Fifth Street**

**Existing Zoning Boundary**  
**Subject Property Boundary**



**Planning & Development  
Department**

**City of High Point**

**Date: May 15, 2017**



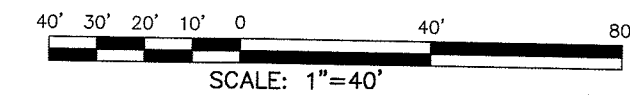
**Scale: 1"=200'**

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2017\pz\re17-0003.mxd



# EXHIBIT A (Site Plan)

## ENCROACHMENT AGREEMENT EXHIBIT FOR CITY OF HIGH POINT AND HIGH POINT UNIVERSITY FOR FENCE ENCROACHMENTS WITHIN E. FARRISS AVENUE, FIFTH ST., AND PARK AREAS CITY OF HIGH POINT GUILFORD COUNTY — NORTH CAROLINA



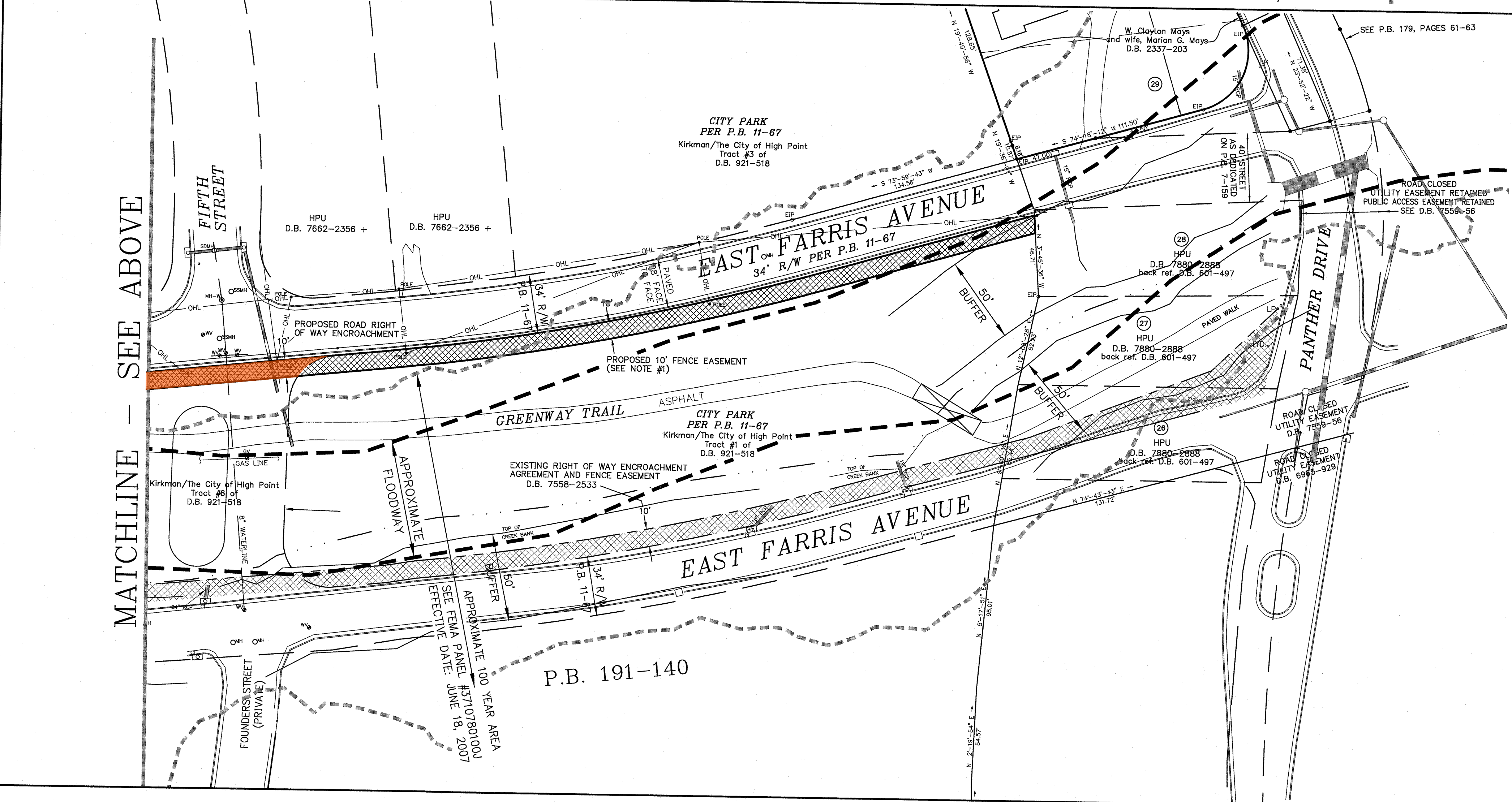
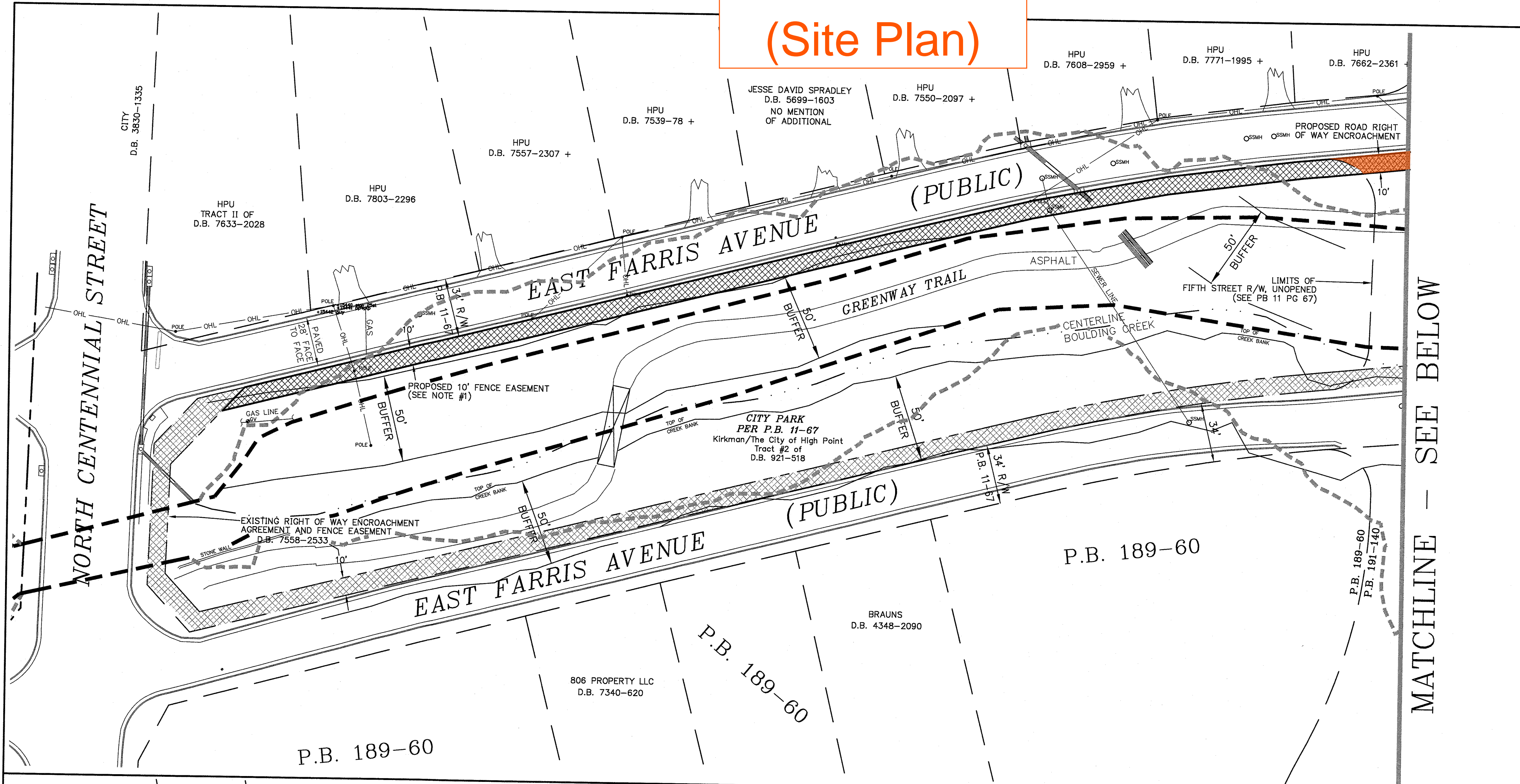
Approved by the Technical Review Committee for 2 years, subject to the approval of a separate land-disturbing permit and/or erosion control plan, and may be extended in accordance with the provisions of Section 9-6-6(e) of the High Point Development Ordinance.

Director of Planning and Development

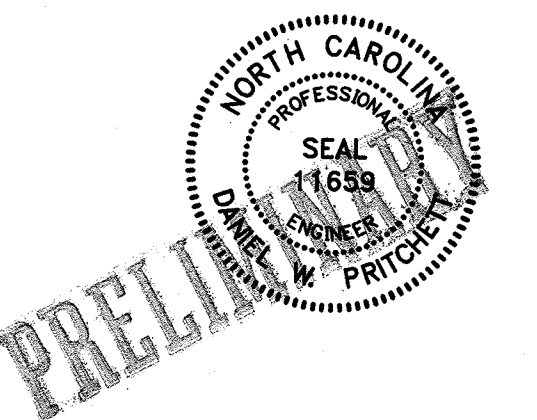
Date

### NOTES:

1. CONSTRUCTION OF ANY IMPROVEMENTS WITHIN THE AREAS DESIGNATED AS ENCROACHMENT AREAS OR WITHIN ANY OTHER PUBLIC RIGHT OF WAY AREA 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. FENCE IMPROVEMENTS SHALL BE EITHER HIGH POINT UNIVERSITY'S "SIGNATURE" STYLE, WROUGHT IRON, OR A COMBINATION OF THE TWO.
3. 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.
4. CALL 1-800-632-4949 BEFORE DIGGING. GAS LINES ARE LOCATED WITHIN SUBJECT PROPERTY.



LEGEND			
○ EIP	EXISTING IRON PIN FOUND	● PP	POWER POLE
● NIP	NEW IRON PIN SET	● LP	LIGHT POLE
○ R/W	RIGHT-OF-WAY	● UP	UTILITY POLE
SF	SQUARE FEET	○ MH	MANHOLE
D.B.	DEED BOOK	○ SSMH	SANITARY SEWER MANHOLE
U.E.	UTILITY EASEMENT	○ CO	SEWER LINE CLEAN OUT
N/F	NOW OR FORMERLY	● HYD	FIRE HYDRANT
EX.	EXISTING	● WV	WATER VALVE
CONC.	CONCRETE	□ WM	WATER METER
RCP	REINFORCED CONCRETE PIPE	● GV	GAS VALVE
YI	YARD INLET		
CLF	CHAIN LINK FENCE		
— OHL —	OVERHEAD UTILITY LINES		
— ADJ —	ADJOINERS		
— R/O —	RIGHT-OF-WAY		
— EASE —	EASEMENT		
— — —	PROPERTY LINE NOT SURVEYED		



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

**JAMESTOWN ENGINEERING GROUP, INC.**  
117 EAST MAIN STREET  
P.O. BOX 365  
JAMESTOWN, N.C. 27282  
Telephone (336) 886-5523

DATE JAN. 10, 2017 SCALE 1"=40'  
JOB No. 2016-096  
SURVEY BY J.T. PLATTED BY J.B.S.

**JEG** INC.