

TOWN OF WAKE FOREST

Right-of-Way Encroachment Policy

Purpose

Pursuant to North Carolina General Statute § 160A-296, the Town of Wake Forest has the authority to regulate the use of public streets, sidewalks, alleys and other public passages within its corporate limits. A Right-of-Way Encroachment Agreement is required for the installation of non-standard item(s) within a Town-maintained street right-of-way, sidewalk or parking lot by a private individual, group, business, or homeowner's/business association. A non-standard item is one not installed by the Town of Wake Forest Public Works Department in the exercise of its duties and responsibilities, which conforms to standards in the Manual of Uniform Traffic Control Devices, the City of Raleigh Public Utilities Department, or by utility franchise holders approved by the Town. Encroachments are necessary to ensure that there is no adverse impact to public safety or future roadway or utility needs. Encroachment Agreements are required for all new and existing encroachments. If an encroachment agreement is not obtained, the encroachment is subject to removal.

Types of Encroachment Agreements

1. Major (Include but not limited to)
 - a. Hardscape (pavers, fences, retaining walls)
 - b. Streetscape (benches, bike racks)
 - c. Landscaping (planting, irrigation)
 - d. Utilities (stormwater devices, wells, grease traps, meter repair)
 - e. Building elements (balconies, doors, stairs, landings, ramps)
 - f. Parklet
2. Minor (Include but not limited to)
 - a. Outdoor merchandise
 - b. Street furniture (movable)
 - c. Awnings
 - d. Overhead signage
 - e. A-Frame signage
3. Wireless Telecommunications

Process

1. The applicant is responsible for reviewing this process to see if an encroachment will be permitted. Contact Public Works at 919-435-9570 for questions regarding eligibility. The application review will not begin until a completed application is received.
2. The applicant shall submit to the Town an application, all supplemental documents and fee. The application will consist of:
 - a. Three (3) encroachment agreements (including notary) signed by the applicant.

- b. The applicant shall supply the Town with a Certificate of Insurance for review with the Town designated as an additional named insured. An exception may be granted for irrigation systems installed by single-family detached homeowners. See below for details on requirements for insurance. Applicant is responsible for renewal of the Certificate of Insurance as necessary for the life of the encroachment.
 - c. For major encroachments: Scaled drawings (prepared at 1"=20', 30' or 40') showing detailed Plan and Elevation drawings of the existing conditions and the proposed encroaching item including: R/W lines, signs, trees, curb, gutter, sidewalk, poles, pavement edges, utilities, and vicinity map must be submitted via online review.
 - d. For any encroachment for which a building permit is required, the applicant shall supply the Town with a completed building permit application.
 - e. For minor encroachments: scaled sketch or plans of encroachment.
 - f. Detail or specification of the item to be placed within the right-of-way.
 - g. Narrative detailing the installation procedure and plan notes as necessary.
 - h. A check made to the Town for the Application Fee in the amount set forth from time to time in the Town's Fee Schedule. **NOTE: Once submitted, fee is non-refundable.**
3. The application is reviewed by staff and comments will be provided within 30 days.
 4. Comments are returned to the applicant and any issues must be resolved prior to resubmittal.
 5. A signed encroachment agreement will be issued once the application is approved.
 6. Prior to starting construction, the applicant shall deliver an approved building permit to the Town and Town must be notified a minimum of 48 hours in advance. The applicant is responsible to document, with photos, the existing infrastructure prior to construction. If the applicant fails to report to the Town, the applicant may be held responsible for pre-existing damage at or adjacent to the work site.
 7. The applicant shall arrange an inspection with the Town immediately after completion of the work. Please contact Public Works at 919-435-9570 to arrange an inspection. The applicant shall restore all public property and improvements back to the condition that existed prior to the work. The applicant shall indemnify, defend and hold the Town harmless for any and all costs and damages arising from the applicant's work.
 8. The applicant, upon completion of the encroachments requiring construction drawings, shall submit to the Town as-built drawings of the encroachment showing the precise location of the encroachment, and in the case of encroachments for transmission devices, the drawing shall show all the locations of other utilities in the right-of-way.

INSURANCE COVERAGE REQUIREMENTS

AUTOMOBILE LIABILITY – Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit each occurrence/aggregate.

COMMERCIAL GENERAL LIABILITY – bodily injury and property damage liability as shall protect the contractor and any subcontractor performing work under this contract from claims of bodily injury or property damage which arise from operation of this contract whether such operations are performed by contractor, any subcontractor or any one directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate This insurance shall include coverage for products/completed operation, personal injury liability and contractual liability assumed under the indemnity provision of this contract.

WORKERS' COMPENSATION INSURANCE – Meet the statutory requirements of the State of North Carolina and Employers Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit, providing coverage for employees and owners.

The Town shall be named as an **additional insured** and the statement should read: “Town of Wake Forest is to be added as an additional insured as evidenced by an endorsement attached to this certificate.” Only “A” rated insurance companies will be acceptable to the Town. In the event the contractor fails to maintain and keep in force the insurance herein required, the Town reserves the right to cancel and terminate the contract without notice. The policies shall not be cancelled without 90 days prior notice to the Town.

[FORM OF ENCROACHMENT AGREEMENT]

Prepared by and Mail after Recording to:

WYRICK ROBBINS YATES & PONTON LLP (CVA), 4101 Lake Boone Trail, Suite 300, Raleigh, North Carolina 27619

STATE OF NORTH CAROLINA

TOWN OF WAKE FOREST
ENCROACHMENT AGREEMENT

COUNTY OF WAKE

THIS AGREEMENT, being made this ___ day of _____, 20__, (“Effective Date”) by and between _____, hereinafter referred to as "Applicant," and the Town of Wake Forest, a North Carolina municipal corporation, hereinafter referred to as the "Town."

WITNESSETH:

THAT WHEREAS, Applicant requests access and permission to construct, install and maintain the following improvements at the following location described within or near the corporate limits of the Town of Wake Forest owned by the Town:

Location: _____

Improvements: _____

WHEREAS, Applicant will construct, install, and thereafter maintain the aforementioned Improvements within the public rights-of-way ("Encroachments") serving the Town for Applicant's sole interest and convenience and that of current and future residents and property owners of Town; that the Encroachments shall be installed in accordance with the site plan and design documents attached hereto as Exhibit A and incorporated herein by reference as though fully set forth (the "Plans"), and any other such standards or requirements as the Town has required as of the date hereof; and

WHEREAS, the Town, under the terms and conditions herein set forth, is willing to allow the Encroachments upon Town-owned rights-of-way; and

WHEREAS, Applicant has paid to the Town the applicable development fee to partially defray the administrative costs of the Town in processing Applicant's request.

NOW, THEREFORE, in consideration of these promises, the required development fees in hand paid, the receipt and sufficiency of which are hereby acknowledged, and other consideration, Applicant and the Town hereby covenant and agree: Applicant is hereby granted a license to encroach upon the Property by constructing, installing, and thereafter maintaining the Encroachments for its sole interest and convenience and that of current and future residents and property owners in Town; that the Encroachments shall be installed in accordance with Plans and any other such standards or requirements as the Town has required as of the date hereof.

1. Applicant is responsible for any and all expenditures of labor or materials required for the planning, installation, erection, repair, maintenance and removal if ordered by the Board of Commissioners of the Town, of the above-referenced Encroachments.

2. Applicant is to be fully responsible for any and all property damage or injury 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 or contractors relating to the Encroachment, or any cause of action arising out of the installation, erection, repair, maintenance, location or removal of said Encroachment.

3. Applicant agrees to and does hereby hold the Town, its officers, board members, and employees harmless from any and all liability arising out of such negligence, omission, defect, or other cause of action; that it will defend the Town, its officers, board members, and employees, and pay all attorney fees in any and all actions brought as a result of such; and that it will indemnify the Town, its officers, board members, and employees against any and all loss sustained by reasons of such negligence, omission, defect, or other cause of action arising out of the installation, erection, repair, maintenance, location or removal of said Encroachments.

4. All notices required herein shall be deemed given by depositing such in the United States mail, first class, and addressed to:

To Town: Town of Wake Forest Public Works Department
 234 Friendship Chapel Road
 Wake Forest, NC 27587

To Applicant: _____

5. In the event there is a dispute between the parties concerning the interpretation of the terms of this Agreement or their respective rights and obligations hereunder, such dispute or controversy shall be adjudged pursuant to the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action related hereto shall be Wake County Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

6. Applicant agrees to abide by all applicable laws, statutes, ordinances and code provisions.

7. This agreement shall not divest the Town of any rights or interest in said right-of-way, and for any reason or no reason the Town may terminate this Encroachment Agreement by giving applicant one (1) month's advance written notice of termination. Prior to the termination date, Applicant shall remove or relocate, at its own expense, all or part of the Encroachments as specified by the Town.

8. Without affecting the rights of the Town set forth in Paragraph 8 herein above, the Town further retains the right and privilege to remove or alter the Encroachments whenever an emergency or other situation requires prompt action, and the Town may recover the cost associated with removing or altering the Encroachments from Applicant.

9. 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 \$1,000,000.00 covering full liability for any and all personal injury, property damage or wrongful death caused by the construction, maintenance, location, repair, removal or visual obstruction of said Encroachments. Applicant shall furnish the Town on the Effective Date and each July of each calendar year while this Encroachment Agreement is effective, without demand, 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. Both Applicant and the Town shall be named as insured parties. In the event of any change in the insurance policy, Applicant shall give the Town thirty (30) days' notice of such change. Should Applicant fail to pay premiums upon said insurance or to perform any of the agreements, terms or conditions herein contained, the Town, at its option, by written notice may declare this agreement cancelled and terminated and all rights acquired hereunder by Applicant shall thereupon terminate.

10. Applicant, upon completion of the Encroachments, and promptly upon request by the Town, shall submit to the Town as-built drawings of the Encroachments showing the precise location of the Encroachments, and in the case of encroachments for transmission or telecommunications devices, the as-built drawing shall show the locations of all other utilities in the Property.

11. Applicant shall obtain all necessary permits from the Public Works Department of the Town of Wake Forest ("Public Works") prior to installation of the Encroachments.

12. Applicant shall contact "NC 811" seventy-two (72) hours prior to excavation activities within the Property and shall in all cases remain ten feet (10') from existing utilities during any and all activities related to the Encroachments.

13. Applicant agrees to provide written notification to the Public Works at least 48 hours prior to performing any construction relating to the Encroachments that involves the cutting or breaking of any roadway or walkway pavement and shall submit to Public Works an online lane closure form for any such roadway or sidewalk closure prior to any such activity. Construction, installation, and maintenance activities are restricted from blocking or closing a right-of-way at certain times of the day. These activities are prohibited during the following times: 7:00-9:00 am, Monday – Friday; 4:00-6:00pm, Monday – Friday and all other times designated by the Town.

14. To the extent permitted by North Carolina law, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Encroachment Agreement. The parties further agree, to the extent permitted by law, to conform with the provisions and intent of the Town of Wake Forest Ordinance 1969-889, as amended. Said provision is hereby incorporated into this Encroachment Agreement for the benefit of the Town and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as provided by law.

15. The rights conveyed to Applicant under this Encroachment Agreement shall be personal to the Applicant and non-transferrable to any other party unless the Town provides its prior written consent thereto.

16. In the case of noncompliance with any term of this Encroachment Agreement by Applicant, the Town reserves the right to stop all work immediately until the Encroachment and all work and disturbances relating thereto have been brought into compliance or removed from the right of way at no cost to the Town.

17. The Town and Applicant agree that this Encroachment Agreement shall become void if actual construction of the work contemplated herein is not begun within one (1) year from the date of authorization by the Town unless written waiver is secured by the Applicant from the Town.

18. Site Specific requirements: Applicant shall comply with the following special requirements of the Town:

(The remainder of this page is intentionally left blank. The next two pages are signature pages.)

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first written above.

ATTEST:

TOWN OF WAKE FOREST

Print Name: _____

Print Name: _____

Sign Name: _____

Sign Name: _____

Title: _____

Title: Public Works Director or Designee

NORTH CAROLINA
WAKE COUNTY

I certify that _____, of the Town of Wake Forest, personally appeared before me this day and certified to me under oath or by affirmation that she is not a named party to the foregoing document, has no interest in the transaction, _____ signed the foregoing document as a subscribing witness, and either (i) witnessed sign the foregoing document, or (ii) witnessed the principal acknowledge the principal's signature on the already-signed document.

Today's Date: _____, 20__

[Notary's signature as appears on seal]

[Notary's printed name as appears on seal]

My commission expires: _____

[Affix Notary Seal in Space Above]

[SEAL]

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first written above.

APPLICANT: _____

Print Name: _____

Sign Name: _____

Title: _____

NORTH CAROLINA

_____ COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: _____, _____ for _____.

Today's Date: _____, 20__

[Notary's signature as appears on seal]

[Notary's printed name as appears on seal]

My commission expires: _____

[Affix Notary Seal in Space Above]

Exhibit A
To
Encroachment Agreement
Site Plan and Location of Encroachments