

FORSYTH COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: APRIL 26, 2018 AGENDA ITEM NUMBER: 12

SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF A RIGHT OF WAY ENCROACHMENT AGREEMENT WITH THE CITY OF WINSTON-SALEM TO FACILITATE THE CONSTRUCTION AND MAINTENANCE OF SIDEWALK STEPS WITH HANDRAILS EXTENDING TO THE REYNOLDA MANOR BRANCH LIBRARY AT 2893 FAIRLAWN DRIVE, WINSTON-SALEM, NORTH CAROLINA

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS: Recommend Approval

SUMMARY OF INFORMATION: See Attached

ATTACHMENTS: YES NO

SIGNATURE: *J. Dudley Watts, Jr.* DATE: April 25, 2018
COUNTY MANAGER

**RESOLUTION AUTHORIZING EXECUTION OF A RIGHT OF WAY
ENCROACHMENT AGREEMENT WITH THE CITY OF WINSTON-SALEM TO
FACILITATE THE CONSTRUCTION AND MAINTENANCE OF SIDEWALK STEPS
WITH HANDRAILS EXTENDING TO THE REYNOLDA MANOR BRANCH
LIBRARY AT 2893 FAIRLAWN DRIVE, WINSTON-SALEM, NORTH CAROLINA**

WHEREAS, Forsyth County desires to encroach on the right-of-way of the public road designated as Fairlawn Drive in the City of Winston-Salem, with such encroachment being comprised of sidewalk steps with handrails that extends from the sidewalk down to the Reynolda Manor Branch Library building located at 2893 Fairlawn Drive, Winston-Salem, North Carolina; and

WHEREAS, the City of Winston-Salem has agreed to grant Forsyth County the right and privilege to make the encroachment shown on the plan sheet(s), specifications, and special provisions (hereinafter, the "Facilities"), in the location depicted, therein, which plan sheet(s), specifications, and special provisions are incorporated, herein, and made a part, hereof, upon the conditions stated in the attached Right of Way Encroachment Agreement; and

WHEREAS, Forsyth County and the City of Winston-Salem are authorized pursuant to the provisions of N.C.G.S. 160A-460, et seq. to enter into the attached Right of Way Encroachment Agreement;

NOW, THEREFORE, BE IT RESOLVED that the Forsyth County Board of Commissioners hereby authorizes the County Manager to execute, on behalf of Forsyth County, the attached Right of Way Encroachment Agreement, subject to a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney.

BE IT FURTHER RESOLVED that the County Manager is authorized to execute, on behalf of Forsyth County, subsequent contracts or contract amendments with the City of Winston-Salem relating to this Right of Way Encroachment Agreement, subject to a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney.

BE IT FURTHER RESOLVED that this Resolution ratifying interlocal cooperation between Forsyth County and the City of Winston-Salem, is hereby spread upon the minutes of the Forsyth County Board of Commissioners.

Adopted this the 26th day of April 2018.

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

ROUTE Fairlawn Drive

PROJECT Sidewalk Steps and Handrail

CITY OF WINSTON-SALEM

RIGHT OF WAY ENCROACHMENT AGREEMENT

-AND-

PRIMARY AND SECONDARY HIGHWAYS

FORSYTH COUNTY

THIS AGREEMENT, is made and entered into this, the 4th day of April 2018, by and between the City of Winston-Salem, party of the first part, a North Carolina municipal corporation, located at 101 N. Main Street, Winston-Salem, N.C. 27101, and Forsyth County party of the second part, with offices at 201 N Chestnut Street, Winston-Salem, NC 2710 (hereinafter, each, individually, a "Party", and collectively, the "Parties").

W I T N E S S E T H:

THAT, WHEREAS, the party of the second part desires to encroach on the right-of-way of the public roads designated as Fairlawn Drive in the City of Winston Salem, with such encroachments being comprised of sidewalk steps with handrails that extend from the sidewalk down to the library building at 2893 Fairlawn Drive; and

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part, in the exercise of authority conferred upon it by statute, is willing to permit the encroachment within the limits of the right-of-way, as indicated, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, IT IS AGREED that the party of the first part, hereby, grants to the party of the second part the right and privilege to make the encroachment shown on the attached plan sheet(s), specifications, and special provisions (hereinafter, the "Facilities"), in the location depicted, therein, which plan sheet(s), specifications, and special provisions are incorporated, herein, and made a part, hereof, upon the following conditions, to wit:

That the construction, installation, operation, use, inspection, maintenance, alteration, repair, reconstruction, removal, and relocation of the above-described Facilities, and any other activities conducted in connection, therewith, (hereinafter, collectively, but omitting the terms "alteration" and "relocation", the "Permitted Activities") will be accomplished in accordance with the City's then current ordinances, policies, and procedures for accommodating such improvements on street rights-of-way, and in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the City Code, the Unified Development Ordinance, the N.C. State Building Code, and the terms of the encroachment permit. Information as to the City's ordinances, policies, and procedures may be obtained from the Streets and Public Works Departments.

That the said party of the second part binds and obligates itself and its successors and assigns, at their sole cost and expense: 1) to install, operate, and maintain the encroaching Facilities in such safe and proper condition, and to perform the Permitted Activities (and any alteration or relocation of the Facilities required by the party of the first part, as set out below), in such a manner, that neither the Facilities, their alteration or relocation, nor the Permitted Activities will interfere with, or endanger travel upon, said highway, nor obstruct, nor interfere with the proper operation, maintenance, repair, and reconstruction, thereof, 2) to reimburse the party of the first part for any cost it incurs for the inspection, maintenance, repair, reconstruction, or replacement of the party of the first part's right-of-way and structures, as the party of the first part, in its sole and absolute discretion, deems necessary due to the installation and existence of the Facilities, the conduct of the Permitted Activities, or the alteration or relocation of the Facilities, and 3) if the party of the first part shall decline to issue permanent permitting for any portion of the Facilities (specifically to include signage) or if, at any time, the party of the first part shall require the removal of, or changes in the location of, the said Facilities, in order to fulfill a public purpose or because the encroachment violates the applicable provisions of the City Code, the Unified Development Ordinance, the N.C. State Building Code, or the terms of the encroachment permit, or for any other reason, whatsoever, then, and in that case, to promptly remove, alter, and/or relocate the said Facilities to conform to said permitting and requirements, again, all without any cost to, or liability or obligation on the part of, the party of the first part. The party of the second part, hereby, agrees that should it fail to remove, alter, or relocate the Facilities within thirty (30) days of the party of the first part's request, therefor, the party of the first part may remove, alter, or relocate the Facilities and charge the costs, thereof, to the party of the second part. The party of the second part, furthermore, agrees, that the party of the first part may impose a lien on any property the party of the second part owns adjacent to the site of the encroachment, in order to secure the payment of the aforementioned costs. In the event of an emergency, or in the event that the party of the first part determines, in its sole and absolute discretion, that a threat exists to the right-of-way, to any real or personal property of the party of the first part, or to the public, the party of the first part shall have the right to immediately alter, remove, or relocate the Facilities, without notice to the party of the second part, and without liability or obligation for resultant damage.

That the party of the second part agrees to provide, during the conduct of the Permitted Activities and the alteration and relocation of the Facilities, the proper signs, signal lights, flagmen, and other warning devices required by the latest Manual on Uniform Traffic Control Devices for Streets and Highways, as subsequently amended and supplemented, for the protection of traffic. Information pertaining to the aforementioned Manual may be obtained from the City Engineer of the party of the first part.

That the party of the second part, hereby, agrees to release, indemnify, defend, and save harmless the party of the first part and its officials, officers, employees, and agents from and against any and all claims, suits, actions, losses, damages, costs, expenses, impairments, obligations, liabilities, judgments, reasonable attorneys' fees, and costs of litigation, of any nature, whatsoever, including, but not limited to, claims for special, incidental, indirect, and consequential damages, arising from, occasioned by, or, in any manner connected with: 1) the presence, alteration, or relocation of the Facilities, including the alteration, removal, and/or relocation of the Facilities by the party of the first part, as outlined two (2) paragraphs prior, 2) the conduct of the Permitted Activities, 3) the breach by the party of the second part of any provision of this Agreement, and any corollary claims or damages, 3) the introduction, by either

Party, of any environmental contaminant or hazardous waste or substance ("hazardous substance", as defined by federal regulation—CERCLA) into, over, or beneath the right-of-way, in connection with the exercise by either Party of its rights or responsibilities under this Agreement, and 4) the exacerbation, by either Party, of any existing environmental condition or contamination within, over, or beneath the right-of-way, in connection with the exercise by either Party of its rights or responsibilities under this Agreement. This indemnification obligation shall survive the termination of this Agreement and accompanying encroachment of the Facilities.

That the party of the second party agrees to obtain and maintain in continuous effect, during the pendency of the encroachment, and for one (1) year, thereafter, an insurance policy, satisfactory to the party of the first part, and naming the party of the first part as additional insured, on a primary and non-contributory basis, to secure the party of the second part's indemnification and other obligations, hereunder. Original, signed certificates, evidencing such insurance or such other evidence of coverage acceptable to the party of the first part, shall be provided to the party of the first part, prior to the installation of the Facilities.

That the party of the second part agrees to restore all areas disturbed during the conduct of the Permitted Activities and the alteration or relocation of the Facilities, to the satisfaction of the City Engineer of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during the conduct of the Permitted Activities and the alteration or relocation of the Facilities to prevent the erosion of soil; the silting or pollution of rivers, streams, lakes, reservoirs, other water impoundments, ground surfaces, or other property and the pollution of the air. The party of the second part shall comply with applicable federal, state, and local laws, rules, regulations, and ordinances, relating to pollution prevention and control, including, but not limited to those of the North Carolina Division of Environmental Management and the North Carolina Sedimentation Control Commission. Whenever the conduct of the Permitted Activities or the alteration or relocation of the Facilities disturbs the ground surface and existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise re-establish the grass cover to the satisfaction of the City Engineer of the party of the first part.

That the party of the second part agrees, at its sole cost and expense, to inspect and perform any maintenance, alteration, repair, or reconstruction to improvements within the subject right of way (including components of utility systems) made necessary by the conduct of the Permitted Activities and/or the presence, alteration, or relocation of the encroaching Facilities, such work to include that which the party of the first part, in its sole and absolute discretion, deems necessary to protect the integrity of its right-of-way or utility system or to ensure the safety of the public, provided that the party of the second part shall not undertake any such work to improvements other than its own, without the express, written authorization of the party of the first part and, then, only in compliance with the party of the first part's written instruction. The party of the second part, furthermore, acknowledges and agrees that the party of the first part shall have the right, at any time, during normal working hours, to inspect the Facilities and determine whether the party of the second part has complied with the terms of this Agreement. In no event, however, shall the party of the first part's right to order or perform inspection, maintenance, alteration, repair, reconstruction, relocation, or removal, as herein described, confer an obligation on the party of the first part to assume responsibility for the performance or cost, thereof.

That the party of the second part agrees to have available, at the site of the encroachment, at all times during the conduct/pendency of the Permitted Activities (other than during the ordinary operation, use, maintenance, and inspection of the Facilities) and, at all times during the alteration or relocation of the Facilities, a copy of this Agreement, showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work, unless evidence of approval can be shown. In the event that the party of the first part halts work on the Facilities or any Permitted Activity, the party of the first part shall incur no liability, cost, or obligation to the party of the second part or anyone claiming by, through, or under said party, as a result, thereof.

That, if any of the work, Permitted Activities, or alteration or relocation of Facilities, referenced in this Agreement is to be performed on a completed highway, open to traffic, the party of the second part agrees to give written notice to the City Engineer of the party of the first part of the commencement of the work, Permitted Activity, alteration, or relocation, prior to its commencement, and of the completion of same, upon its completion. Unless specifically requested by the party of the first part, written notice of the completion of work, Permitted Activity, and alteration or relocation of the Facilities, on highway projects under construction, will not be required.

That, in the case of non-compliance with the terms of this Agreement by the party of the second part, the party of the first part reserves the right to stop all work, Permitted Activity, and the alteration or relocation of the Facilities, until the Facilities have been brought into compliance or removed from the right-of-way, at no cost to the party of the first part. In the event that the party of the first part halts work on the Facilities, their alteration or relocation, or any Permitted Activity, the party of the first part shall incur no liability, cost, or obligation to the party of the second part or anyone claiming by, through, or under said party, as a result, thereof.

That this Agreement shall be recorded by the party of the second part, at its sole expense, shall inure to the benefit of all the successors and assigns of both Parties, shall be binding upon all of the successors and assigns of the party of the second part, and shall, furthermore, constitute a restrictive covenant, running with any property of the party of the second part that is adjacent to the right-of-way. All future transferees of the Facilities and that property of the party of the second part, adjacent to the right-of-way, shall be subject to the restrictive covenant that they shall construct, install, operate, use, inspect, maintain, alter, repair, reconstruct, remove, and relocate the Facilities in accordance with this Agreement.

That it is agreed by both Parties that this 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 party of the first part, unless written waiver is secured by the party of the second part from the party of the first part.

That nothing herein contained shall be construed as a waiver, by the party of the first part, of the defense of governmental immunity or of any other defense, immunity, or limitation of liability available, at law.

IN WITNESS, WHEREOF, each of the Parties, hereto, has caused this Agreement to be executed under seal, by its duly authorized representative, on the day and year first written above.

ATTEST:

CITY OF WINSTON-SALEM

BY: _____
Gregory M. Turner
Assistant City Manager

ATTEST:

FORSYTH COUNTY

BY: _____
NAME: _____
TITLE: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

I certify that the following person personally appeared before me this day, and I have seen satisfactory evidence of the principal's identity, by current state or federal identification with the principal's photograph in the form of a valid driver's license, with such principal acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: _____, as owner of 2839 Fairlawn Dr., Winston-Salem, NC.

Signature of Notary Public for the State of North Carolina
Date: _____
My Commission Expires: _____

Affix Seal:

STATE OF NORTH CAROLINA
COUNTY OF _____

I certify that the following person personally appeared before me this day, and I have seen satisfactory evidence of the principal's identity, by current state or federal identification with the principal's photograph in the form of a NC driver's license, with such principal acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Gregory M. Turner, as Assistant City Manager for the City of Winston-Salem, North Carolina.

Signature of Notary Public for the State of North Carolina
Date: _____
My Commission Expires: _____

Affix Seal:

INSTRUCTIONS

When the applicant is a corporation, this agreement must have the corporate seal; and be attested by the corporation secretary. In the space provided in this agreement for execution, the name of the corporation shall be typed above the name and title of all persons signing the agreement should be typed directly below their signature.

This agreement must be accompanied in the form of an attachment, by plans or drawings showing the following applicable information:

1. All roadways and ramps
2. Right of way lines and where applicable, the control of access lines
3. Location of the existing and/or proposed encroachment
4. Length, size and type of encroachment
5. Method of installation
6. Dimensions showing the distance from the encroachment to edge of pavement, shoulders, structures, etc.
7. Location by highway survey station number. If station number cannot be obtained, location should be shown by distance from some identifiable point, such as a bridge, road, intersection, etc.
8. Drainage structures or bridges if affected by encroachment (show vertical and horizontal dimensions from encroachment To nearest part of structure)
9. Method of attachment to drainage structures or bridges
10. Manhole Design
11. On underground utilities, the depth of bury under all traveled lanes, shoulders, ditches, sidewalks, etc.
12. Length, size and type of encasement where required.
13. On underground crossings, notation as to method of crossing - boring and jacking open cut, etc.
14. Location of vents.

GENERAL REQUIREMENTS

1. Any attachment to a bridge or other drainage structure must be approved by the Engineering Division prior to submission of encroachment agreement to the City Engineer.
2. All crossings should be as near as possible normal to the centerline of the highway.
3. Minimum vertical clearances of overhead wires and cables above all roadways must conform to clearances set out in the National Electric Safety Code.
4. Encasements shall extend from ditch line to ditch line in cut sections and 5' beyond toe of slopes in fill sections.
5. All vents should be extended to the right-of-way line or as otherwise required by the Department.
6. All pipe encasement as to material and strength shall meet the standards and specifications of the Department.
7. Any special provisions or specifications as to the performance of the work or the method of construction that may be required by the Department must be shown on a separate sheet attached to encroachment agreement provided that such information cannot be shown on plans or drawings.
8. The City Engineer should be given notice by the applicant prior to actual starting of installation included in this agreement.
9. Work will not begin until a written permit has been obtained from the City Engineering Division.