

INSTRUCTIONS FOR COMPLETING ENCROACHMENT LICENSE FORM

To obtain an encroachment agreement from the City of Fort Wayne, the attached form is submitted to the City of Fort Wayne Right of Way Department along with a \$75.00 non-refundable processing fee. City of Fort Wayne staff members review the encroachment application, and recommend approval or denial. The recommendations are forwarded to the Board of Public Works for final determination of approval or denial of the encroachment request.

A legal description of the real estate affected by the request is required as part of the application.

A drawing labeled Exhibit "A" is required. The drawing should detail a plan and profile/elevation view of the encroachment (including length, width, height) as it relates to the property and to the City controlled public right of way. The encroachment must be dimensionally tied to a fixed reference point. The drawing should clearly show property lines, right of way lines, street edges, sidewalks, at-grade City or utility infrastructure, and height above the right of way, if applicable. The drawing should be placed in the document immediately before the final signature pages.

Application can be typed or printed. Use black ink only.

The title-holder of the property involved must sign the application, and a notary public must affirm the owner's signature.

Two originally signed and notarized documents are necessary – one for the Board of Works and one that will be returned to the applicant after Board approval since the Records Office will require an original document. If the applicant desires an originally signed document as well, three signed documents must be submitted. The Right of Way Department will mail the approved agreement to the applicant.

The Board of Works, upon approval of the application, will complete the date field on page 1.

A description of the type of encroachment (i.e. building, sign, irrigation system, awning, fence, etc.) and the location is marked in the blank space in the "WITNESSETH" section of the document.

An approved encroachment license must be recorded with the Allen County Recorder's Office, Rm 100, City-County Building to be valid. The applicant is solely responsible for recording the document. Recording fees for encroachment agreements are \$25.00. Do not record this instruction sheet.

The applicant is expected to contact the Right of Way Department within 30 days following Board approval in order to supply evidence that demonstrates that the document was properly recorded. Failure to do so will result in an order to remove any encroachments previously placed.

Contact the City of Fort Wayne Right of Way Department for questions specific to the encroachment request or process at 427-6155.

Contact the Allen County Records Office at 449-7165 for questions pertaining to the recording process.

ENCROACHMENT LICENSE AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20__ by and between the CITY OF FORT WAYNE, INDIANA by and through its BOARD OF PUBLIC WORKS ("Board") and _____ ("Owner")

WITNESSETH:

WHEREAS, Applicant has requested permission from the Board to place upon City right-of-way and or property a _____, located at _____.

A legal description of the City's property and a diagram showing the nature and extent of the said encroachment and intended location of same upon the right-of-way, are so noted on the attached Exhibit "A", made a part hereof; and WHEREAS, the Board will grant the Applicant a license subject to the terms and conditions herein stated.

NOW, THEREFORE, IN CONSIDERATION OF THE PAYMENT TO THE CITY OF FORT WAYNE OF THE SUM OF \$75.00 BY APPLICANT, IT IS AGREED AS FOLLOWS:

1. The Board, subject to the terms and conditions hereof, does hereby grant to the Owner the revocable right and license to place upon the City's right-of-way, said encroachment as noted on this document and on the attached Exhibit "A". Final approval of the said encroachment, the quality of same, and the placement location shall be that of the Board's, after appropriate approval by all planning agencies. The approved encroachment shall not be altered during the period of the license.
2. In the construction, erection and maintenance of the said encroachment, the Owner shall agree not to damage or destroy any City property.
3. Said encroachment shall not in any material fashion interfere with or obstruct any access to the City property by the City and/or its utilities and/or any other utility company, nor shall the said encroachment in any way encroach or impair or interfere with the streets or sidewalks or with the free and safe flow of foot and vehicle traffic. It is understood and agreed that the Board shall have the right, as shall any other authorized utility, to remove the encroachment in the event access is required by the City, its utilities, or any other authorized utility company and that the Owner shall not be entitled to any reimbursement for such removal.
4. The Owner agrees to indemnify and hold harmless the City, or any other authorized utility from and against all liability and claims of any kind or character, including but not limited to possible damage, death, and personal injury resulting from construction, erection, maintenance and existence and placement of the said encroachment. If requested, the Applicant shall provide to the Board proof of insurance in amounts deemed appropriate by the Board and so insuring the City and all of its boards, utilities, commissions, agents and employees, from and against any liability as provided in this agreement.

5. The granting of a license hereunder, does not relieve the Owner or any other person from obtaining any other relevant permits, permissions and the like, with respect to the construction and placement of the encroachment and such construction and placement shall be subject to all appropriate federal, state and local laws, ordinances, rules and regulations. The grant of license hereunder is specifically subject to compliance with all sign codes and ordinances as now or hereafter in force.
6. While this Agreement is in effect, the encroachment shall be maintained by Owner in a neat and orderly fashion and the license shall not in any way prejudice or preclude the City with respect to the future use of the City's property, or right-of-way including that portion upon which the encroachment is located.
7. It is understood and agreed that this Agreement may be terminated at any time by the Board and upon such termination the Applicant shall promptly remove or cause to be removed from the City's property, the encroachment at the Owner's sole cost, repairing any damage done to the City property as occasioned by such removal.
8. This Agreement and the license herein granted, in no way confers upon the Owner any right or title to the City's property and the rights of the Owner are limited to the terms and conditions hereof.
9. This Agreement shall be binding upon the Owner and its successors and assigns and shall be construed in accordance with the laws of the State of Indiana.
10. The Owner is responsible for recording this agreement with the Allen County Recorders Office located on the 2nd Floor, Room 206 of the City County Building, Fort Wayne, Indiana, and the recorded original agreement will be provided to the Board of Public Works Office. Failure to record this agreement shall result in immediate termination of agreement.
11. This Agreement only allows the encroachment and thus does not take the place of any other permits necessary to do work in the right-of-way.

**NOTICE OF RECOGNITION OF ENCROACHMENT UPON
CITY OF FORT WAYNE CONTROLLED PROPERTY AND
PROVISIONS ALLOWING THE TEMPORARY CONTINUANCE OF SAME**

Pursuant to I.C. 36-9-2-5, 6 & 7 as added by Acts 1980, P.L. 211-4, you are hereby notified the following described condition upon and over the following described real estate constitutes an illegal encroachment, to wit: (legal description and address of encroachment should be inserted here)

Legal Description – (describe the extent of the encroachment within the right of way)

The encroachment as above described will be permitted to remain and continue until such time that the Fort Wayne Board of Public Works shall determine that such encroachment is in any way impairing or interfering with the streets or with the free and safe flow of traffic thereon. Owner shall be, and remain, liable for any and all damages or claims therefore, resulting from the continuing encroachment; and the continued existence of such encroachment shall not in any way prejudice or preclude the City's rights with respect to the future use of that portion of the City's right-of-way bearing the encroachment.

The encroachment as same now exists shall in no manner be added to or enlarged in its present scope or dimensions without prior written approval of the Fort Wayne Board of Public Works.

ENCROACHMENT REPORT

Date: _____
Contract No. N/A unless federal project
Project No. N/A unless federal project
Station: N/A unless federal project

Title Holder's Name and Address:

Tenant's Name and Address:

Address of Encroachment:

Center Line Road to R/W Line: (property line)

Extent of encroachment
into the right of way: _____ X _____ X _____ (width x length x height)

Height from Sidewalk to
bottom of encroachment, if applicable _____

Date Placed: _____

It has been determined that this encroachment in no way impairs the street or interferes with the free and safe flow of traffic thereon and it is recommended the encroachment be permitted to remain.

Insert Exhibit "A" (plan/profile drawing or drawings) after this page but prior to final signature pages, and mark the drawings as Exhibit "A".

**NOTICE OF RECOGNITION OF ENCROACHMENT UPON CITY CONTROLLED
PROPERTY AND PROVISIONS ALLOWING CONTINUANCE OF SAME**

This notice, as hereby recorded, shall be binding upon everyone currently claiming any interest in and to the afordescribed real estate, and shall be binding upon any and all persons claiming any such interest in the future.

STATE OF INDIANA
CITY OF FORT WAYNE

BOARD OF PUBLIC WORKS

Shan Gunawardena, Chair

Kumar Menon, Member

Chris Guerrero, Member

ATTEST: _____
Michelle Fulk-Vondran, Clerk

Date

ACKNOWLEDGEMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this ___ day of _____, 20__ personally appeared the within named **Shan Gunawardena, Kumar Menon, Chris Guerrero, and Michelle Fulk-Vondran** by me personally known, who being by me duly sworn said that they are respectively the **Chair, Members and Clerk of the Board of Public Works** of the **City of Fort Wayne, Indiana**, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said **City** for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Notary Public

Printed Name of Notary

My Commission Expires:

Resident of _____ County.

We, the owners of the described property, hereby accept the conditions of said Encroachment License.

Sign: _____
Title Holder

Print: _____
Title Holder

ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

Before me, the undersigned, a Notary Public in and for said County and State, this _____ day of _____, 20____, personally appeared _____.

IN WITNESS WHEREOF, I have hereunto set my name and affixed my official seal.

NOTARY PUBLIC (Signed)

NOTARY PUBLIC (Printed)

My Commission expires: _____

Resident of _____ County

This instrument prepared by: _____
Print Name