

PREPARED BY & AFTER RECORDATION RETURN TO:
City of Hampton Virginia
Office of the City Attorney (PAM)
22 Lincoln Street, 8th Floor
Hampton, VA 23669
(757) 727-6127

This Encroachment Agreement is exempt from recordation taxes under Code of Virginia §58.1-811(C)(4) and from Clerk's fees under Virginia Code § 17.1-266 and § 17.1-279(E)

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (this "Agreement") made and entered into this 12th day of December, 2018, between the **CITY OF HAMPTON, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia located at 22 Lincoln Street, Hampton, Virginia 23669 (the "City" and "Grantor"), and **INNOVATIVE DEVELOPMENTS, LLC**, a Virginia limited liability company located at 801 Broad Street, Suite 1-G, Portsmouth, VA 23707 ("Licensee" and "Grantee").

WHEREAS, the City owns the right-of-way in the Kecoughtan Area of the City commonly known as Hobson Avenue (the "Property");

WHEREAS, Licensee owns that certain parcel of property identified as 408 Hobson Avenue, and identified in the City's property records as RPC 1004245 ("Licensee's Parcel");

WHEREAS, Licensee is developing Licensee's Parcel to build a single family dwelling and requests permission to encroach into an area of the Property comprising 750 square feet, more or less, as illustrated on Exhibit "A" which is attached hereto and incorporated herein ("Licensed Area"), to be used for the installation of a private water line (the "Licensed Improvement");

WHEREAS, the purpose of the Licensed Improvement is to extend an existing private water line to the Licensee's parcel on the northeast side of the Property; and

WHEREAS, pursuant to Hampton City Code §34-86, the City agrees to grant Licensee a revocable license for Use of the Licensed Area and installation of the Licensed Improvement, subject to certain terms, conditions, and agreements, as specified herein.

NOW, THEREFORE, in consideration of these covenants, the parties agree as follows:

1. The recitals are accurate and are incorporated herein as stated above.
2. The City:
 - A. Grants a non-exclusive revocable license (the "Revocable License") to Licensee for the installation and operation of the Licensed Improvement upon and under the Property in the Licensed Area which shall commence on December 12, 2018 and continue unless and until terminated pursuant to this Agreement; and
 - B. Shall not be responsible for the installation, repair, replacement, maintenance of the Licensed Improvement, or any damage to the Licensed Improvement that may result from work performed in the right-of-way by the City, its employees, contractors, agents, or other licensees.
3. Licensee agrees at its sole cost and expense to:
 - A. Not install the Licensed Improvement prior to (1) receiving approval from Newport News Waterworks; and (2) installation of a new sewer line connection by the City's Department of Public Works (Wastewater Division).
 - B. Repair any damage to existing right-of-way, sidewalks and brick, landscaping, or other public improvements inside or outside the Licensed Area, caused by or resulting from or arising out of any act on the part of Licensee, its subcontractors, agents, or employees under or in connection with this Agreement, or maintenance or repair of the Licensed Improvement in the Licensed Area;
 - C. Promptly provide an as-built survey depicting the exact location of the Licensed Improvement, following its installation;
 - D. Maintain at least a 12" vertical separation between the new water line and existing force mains, gas lines, and other utilities;
 - E. Retain ownership of the Licensed Improvement;

F. Maintain and repair the Licensed Improvement;

G. Remove and replace the Licensed Improvement if any utilities in the Licensed Area require maintenance;

H. Ensure the Licensed Improvement does not restrict the City's ability to inspect and maintain the Property or infrastructure in the Licensed Area;

I. Abide by all utility regulations when crossing existing utilities, including but not limited to, avoiding any interference with other utilities;

J. Abide all other city, state, and local laws and regulations that may be applicable to the installation and maintenance of the Licensed Improvement; and

K. Except as otherwise provided herein, keep the Licensed Area in a neat and clean manner, free of noxious fumes and any obstructions so as not to cause disruption or hazard to pedestrian or vehicular traffic on or through the Property.

4. This Agreement pertains only to the Licensed Area and shall not pertain to other areas of the Property, any other property owned by the Grantor, or the property of any other property owner in the vicinity of the Licensed Area.

5. Licensee shall not use the Licensed Area for any purpose other than the purposes set forth in this Agreement.

6. In the event the City reconstructs, widens, changes, or improves Hobson Avenue and the reconstruction, widening, changing, or improving would necessitate relocation of the Licensed Improvement, Licensee agrees that, upon receipt of written notice accompanied by plans for such work from the City Manager or her authorized designee, within a reasonable time and at its sole expense, Licensee shall relocate its Licensed Improvement to conform with the City's plans. The City agrees to consider granting an additional license to Licensee if deemed necessary for relocation of the Licensed Improvement.

7. It is understood and agreed that Licensee hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Licensee, its subcontractors, agents, or employees under or in connection with this Agreement or the performance or failure to perform any work required hereunder. Licensee agrees to indemnify and hold harmless the City, and its

agents, volunteers, servants, employees, and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses, suffered by any indemnified party or entity as a result of claims or suits, due to, arising out of, or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Agreement, and (c) the performance of work by the Licensee or those for whom Licensee is legally liable. Upon written demand by the City, Licensee shall assume and defend at Licensee's sole expense any and all suits or defense of claims made against the City, its agents, volunteers, servants, employees, or officials.

8. Licensee acknowledges and accepts any risk of damage to the Licensed Improvement located under and along the Property which may be or has been caused from the construction or maintenance activities of the City in the vicinity of the Licensed Improvement. Licensee hereby releases, acquits, and discharges the City from any liability for damage to the Licensed Improvement by the City's contractors or by City-franchised utility companies. Further, and without waiving the City's rights of sovereign immunity or any defenses available to municipal corporations, nothing contained herein shall constitute a release of any claim or cause of action which Licensee may have resulting from damages to the Licensed Improvement which is caused by the gross negligence of the City or its agents, volunteers, servants, employees, and officials.

9. Licensee shall maintain at its expense throughout the term of this Agreement, general liability insurance covering the Licensed Improvement in an amount at least equal to the current liability coverage in Licensee's Parcel. Such insurance shall be with a company satisfactory to the City. Any deductible provision of said insurance shall be subject to the approval of the City Attorney's Office. Such insurance specifically shall insure the Licensee against all liability assumed by it under the terms of this Agreement and the license granted hereunder as well as any liability imposed by law and shall insure both the City and Licensee but shall be so endorsed as to create the same liability on the part of the insurer as if separate policies had been written for the City and Licensee. Licensee shall provide the City's Risk Management Administrator with a Certificate of Insurance naming the City as an additional insured, which shall be in a form satisfactory to the City and the City Attorney's Office. Licensee shall provide the City's Risk Management Administrator the Insurance Certificate annually without demand. Each insurer mentioned in this section shall agree by endorsement on the policy or policies issued by it or by independent instrument furnished to the City that it will give the City at least 30 days' written notice before the policy or policies in question shall be altered or cancelled.

10. Pursuant to Hampton City Code §34-86(f) this Agreement and the license granted herein is neither transferable nor assignable.

11. Any notice, communication, or request under this Agreement by the City or Licensee shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next business day service), or (c) hand delivery if receipt is evidenced by a signature of the addressee or authorized agent, and addressed to the applicable parties as follows:

As to Grantor: City of Hampton, Virginia
Director of Public Works
Fourth Floor
22 Lincoln Street
Hampton, VA 23669

Copy to: City of Hampton
City Attorney's Office
Eighth Floor
22 Lincoln Street
Hampton, VA 23669

As to Licensee: Mr. Christopher S. Davis
Innovative Developments, LLC
801 Broad Street, Suite 1-G
Portsmouth, VA 23707

Either party may change its address for notice purposes by giving written notification thereof to the other party, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

12. Licensee shall pay all required sums hereunder, if any, in the amount and at the times and in the manner herein provided and shall keep and perform all terms and conditions hereof on its part to be kept and performed.

13. Failure of the City to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed a waiver of such term, covenant, or condition herein contained.

14. The covenants and conditions contained herein, subject to the provisions as to assignment, transfer, or subletting, shall apply to and bind the heirs, successors, executors, administrators, and assigns of all parties hereto; and all parties shall be jointly and separately liable hereunder.

15. Termination and Revocation. In addition to any other method prescribed herein, the Licensee may terminate and the City Council may revoke this Agreement as follows:

A. Licensee may terminate this Agreement and any rights and obligations granted herein at any time upon 30 days' written notice to the City delivered pursuant to the provisions of Section 11. Licensee shall comply with any reasonable conditions imposed by the City regarding said termination, including but not limited to removal of the Licensed Improvement, as those conditions may be determined by the City Manager, in consultation with the Director of Public Works.

B. City Council may revoke this Agreement for any reason upon delivery to Licensee 30 days' written notice of revocation to the delivered pursuant to the provisions of Section 11. For this purpose, the City Council hereby delegates to the City Manager any and all rights to revoke or otherwise terminate this Agreement as provided herein.

C. At the expiration or sooner termination of this Agreement or the revocation of the license granted for any reason, Licensee shall peacefully and quietly surrender to the City the rights granted hereunder. Licensee shall remove the Licensed Improvement at the written request of the City Manager to Licensee after the termination or expiration of this Agreement or the revocation of the license granted thereunder. In the event Licensee has not removed the Licensed Improvement within 30 days of receipt or deemed receipt of the City Manager's written request to remove the Licensed Improvement, the Licensed Improvement shall become the property of the City, with the City reserving the right to remove the Licensed Improvement; and the expense of said removal to be paid by Licensee which shall be collected in the same manner as real estate taxes are collected if not paid by Licensee.

16. This Agreement is a Virginia contract deemed executed and accepted in the City of Hampton; and any and all questions with respect to any of the provisions herein shall be instituted, maintained, and contested in a court of competent jurisdiction in the City of Hampton, Virginia. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia, without regard to choice of laws.

17. In the event Licensee is for any reason or through any cause be in default under any of the terms of this Agreement, the City shall give Licensee written notice of such default by certified mail, return receipt requested, at the address set forth in Paragraph No. 12 of this Agreement. Unless otherwise provided, Licensee shall have 10 days from the date such notice is deemed given in Paragraph No. 12 above in which to cure the default, provided, however, that if it is impossible to cure such default within 10 days, the cure period provided herein shall

be extended as long as Licensee is using good faith effort to effect such cure and proves such good faith effort to the satisfaction of the City. Upon Licensee's failure to cure the default, the City immediately may cancel and terminate this Agreement which operates as a revocation of the license granted thereunder as of the mailing date of the default notice. Upon termination, the Licensee shall cease performance of any further activities under the Agreement.

18. This Agreement is entered into based upon the information given by the Licensee on and with the Encroachment Application (the "Application"), which is incorporated in and made part of this Agreement. Licensee must advise the City in writing of any change to the information provided on or with the Application. The City may terminate this Agreement if Licensee materially misrepresented any information in the Application.

19. This Agreement contains the final and entire agreement between the parties hereto and contains all the terms and conditions agreed upon; it being the intent of the parties that neither shall be bound by any terms, conditions, or other representations not herein written.

20. The individuals executing this Agreement represent and warrant that each are duly authorized to execute it in their representative capacities as indicated, and are able to bind each respective party to perform the obligations set forth herein.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

WITNESS the following signatures and seals as of the date first written above. .

GRANTOR:

CITY OF HAMPTON, VIRGINIA

By: _____
City Manager / Authorized Designee

COMMONWEALTH OF VIRGINIA:

City of Hampton, to wit:

I hereby certify on this _____ day of _____, 2018, that the foregoing Encroachment Agreement was acknowledged before me by _____, City Manager or her Authorized Designee for the City of Hampton, Virginia." She/He is known to me personally.

Notary Public

My Commission Expires: _____
Registration No.: _____

ATTEST:

Katherine Glass, Clerk of Council

COMMONWEALTH OF VIRGINIA

City of Hampton, to-wit:

I hereby certify on this _____ day of _____, 2018, that the foregoing Encroachment Agreement was acknowledged before me by Katherine K. Glass, Clerk of Council for the City of Hampton on the City's behalf. She is known to me personally.

Notary Public

My Commission Expires: _____
Registration No. _____

Approved as to Form:

Approved as to Content:

By: _____
Sr. Deputy City Attorney

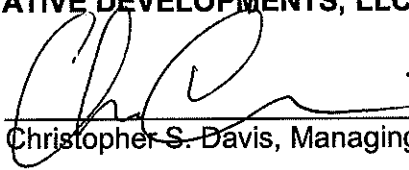
By: _____
Department of Public Works

[Signatures Continue on the Following Page.]

LICENSEE / GRANTEE:

INNOVATIVE DEVELOPMENTS, LLC


By:


Christopher S. Davis, Managing Member

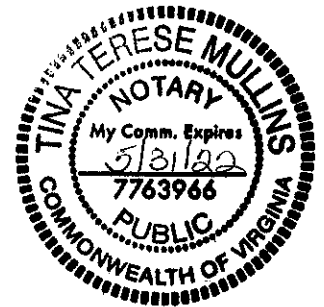
COMMONWEALTH OF VIRGINIA:

City of Hampton, to wit:

I hereby certify on this 6 day of December, 2018, that the foregoing Encroachment Agreement was acknowledged before me by Christopher S. Davis, on behalf of Innovative Developments, LLC, on its behalf in his capacity as the managing member. He is known to me personally or provided VADL as identification.


Notary Public

My Commission Expires: 5/31/22
Registration No.: 7763966



[End of Signatures.]