

REVIEWED BY:

Jens R. Knudsen, II
Phyllis A. Knudsen
41 Tripp Terrace
Hampton, VA 23666

Consideration: \$0.00

LRSN: 4004684

AFTER RECORDATION RETURN TO:

Hampton City Attorney's Office
22 Lincoln Street
Hampton, VA 23669
(757) 727-6127 (VEM)

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (this "Agreement") made and entered into this ____ day of April, 2016, among 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 **JENS R. KNUDSEN, II** and **PHYLLIS A. KNUDSEN**, residents at 41 Tripp Terrace, Hampton, Virginia 23666 ("Licensee" and "Grantee").

WHEREAS, Licensee owns a parcel of land located at 41 Tripp Terrace, LRSN 4004684 ("Licensee's Property");

WHEREAS, the City is the holder of a drainage easement at the rear of Licensee's Property and owns the right of way between Licensee's Property and the adjacent sound wall (the "City Property");

WHEREAS, Licensee requests use of the City Property to install a 6-foot high wooden fence ("Licensed Improvements"), comprising an area of 4,000 square feet, more or less, as shown on Exhibit "A" of this Agreement ("Licensed Area");

WHEREAS, City staff and local utility companies who reviewed this request have no objection; therefore, staff recommends approval; and

WHEREAS, pursuant to § 34-86 of the City Code, Grantor agrees to grant a license to Licensee to use the Licensed Area for the Licensed Improvements under the following terms and conditions.

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

1. The City as "Licensor" grants a non-exclusive revocable license to Licensee for the Licensed Improvements upon, onto, and under a portion of City-owned right of way identified as Tripp Terrace and the drainage easement on Licensee's Property in the Licensed Area more specifically depicted on Exhibit "A."

2. Licensee agrees to the following:

A. Licensee shall repair all damage to any public improvements inside or outside the Licensed Area caused by, 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 Improvements in the Licensed Area;

B. Licensee may replace the Licensed Improvements; however, any replacements must be installed in the same footprint, or as closely as reasonably practicable, as those originally installed or constructed;

C. The Licensed Improvements shall not connect to the sound wall;

D. The gate shall be installed on the west fence line and in the drainage easement;

E. Licensee shall not prohibit the City from accessing the Licensed Area as needed for inspections, maintenance, and other necessities; and

F. Other than as otherwise granted in this Agreement, Licensee shall keep the Licensed Area free of noxious fumes and additional obstructions.

3. The license granted shall commence on April 13, 2016 and continue unless terminated pursuant to this Agreement.

4. Except as provided in Paragraph 2(B) above, the Licensed Improvements shall remain in the same location as shown on the attached photograph identified as Exhibit "A".

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

6. Licensee may vacate or abandon the Licensed Improvements and terminate this Agreement and any rights and obligations granted at any time upon 30 days' written notice to the City, provided, however, Licensee shall comply with all reasonable conditions imposed by the City regarding termination, including but not

limited to removal of the Licensed Improvements. The Director of Public Works specifically is delegated the responsibility to establish and enforce the conditions of termination.

7. In the event the City reconstructs, widens, changes, or improves Hampton Roads Center Parkway and the reconstruction, widening, changing, or improvement would necessitate relocation of the Licensed Improvements, 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 Improvements 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 Improvements.

8. Licensee 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 required work. Licensee shall 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 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.

9. Licensee acknowledges and accepts any risk of damage to the Licensed Improvements located upon, onto, or under the Licensed Area which have been or may be caused from the construction or maintenance activities of the City in the vicinity of the Licensed Improvements. Licensee further releases, acquits, and discharges the City from any liability for damage to the Licensed Improvements by the City's contractors or by franchised utility companies, provided, however, that nothing contained in this Agreement shall constitute a release of any cause of action that Licensee may have against the City's contractors or any franchise utility companies resulting from damage to the Licensed Improvements. Additionally, and without waiving the City's rights of sovereign immunity, nothing contained in this Agreement shall constitute a release of any claim or cause of action which Licensee may have resulting from damages to the

Licensed Improvements which is caused by the willful, wanton, or intentional act or gross negligence of the City or its agents, volunteers, servants, employees, and officials.

10. Licensee shall maintain at its expense in effect throughout the term of this Agreement, general liability insurance covering the Licensed Improvements in an amount at least equal to current liability coverage on Licensee's Property. Such insurance shall be with a company satisfactory to the City. Any deductible provision of this insurance shall be subject to approval by the City Attorney's office. The insurance specifically shall insure the Licensee against all liability assumed by it under the terms of this Agreement and the license granted, as well as any liability imposed by law and shall insure both the City and Licensee and shall be endorsed 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 Certificate of Insurance 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.

11. Licensee may not sublet or assign the rights granted under this Agreement without the prior written consent of the City.

12. 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: Jens R. Knudsen, II
Phyllis A. Knudsen
41 Tripp Terrace
Hampton, VA 23666

Either party may change its address for notice purposes by giving notice 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.

13. Licensee shall pay all sums as required under this Agreement in the amount and at the times and in the manner provided and shall keep and perform all terms and conditions on its part to be kept and performed; and at the expiration or sooner termination of this Agreement or revocation of the license granted, peacefully and quietly surrender to the City the rights subject to the license granted. Licensee shall remove the Licensed Improvements 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. In the event Licensee has not removed the Licensed Improvements within 30 days of receipt or deemed receipt of the City Manager's written request to remove the Licensed Improvements, the Licensed Improvements shall become the property of the City, with the City reserving the right to remove the Licensed Improvements; and the expense of said removal to be paid by Licensee which shall be collected as real estate taxes are collected if not paid by Licensee.

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

15. The covenants and conditions contained in this Agreement, subject to the provisions of assignment, transfer, or subletting, shall apply to and bind the heirs, successors, executors, administrators, and assigns of the parties; and the parties shall assume joint and several liability.

16. The license granted under this Agreement is revocable by the City Council upon giving the Licensee 30 days' written notice of revocation, which right of revocation shall not be exercised unreasonably.

17. The City Council delegates to the City Manager the right to revoke the granted license for violation of Paragraph No. 19 of this Agreement subject to the terms of this Agreement.

18. This Agreement is a Virginia contract deemed executed and accepted in the City of Hampton; and all questions with respect to any of its provisions 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.

19. 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 exercising good-faith effort to effect such cure and proves such good-faith effort to the satisfaction of the City. Upon failure of the Licensee to cure the default, the City may immediately cancel and terminate this Agreement which operates as a revocation of the granted license as of the mailing date of the default notice. Upon termination, Licensee shall cease performance of any further activities under this Agreement.

20. This Agreement contains the final and entire agreement between the parties and contains all the agreed-upon terms and conditions, it being the intent of the parties that neither shall be bound by any unwritten terms, conditions, or other representations.

[SIGNATURES APPEAR ON THE 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

ATTEST:

Katherine Glass, Clerk of Council

Approved as to Form & Legal Sufficiency:

Approved as to Content:

By: _____
Deputy City Attorney

By: _____
Department of Public Works

LICENSEE:

By: J.R. Knudsen
Jens R. Knudsen, II

COMMONWEALTH OF VIRGINIA:
City of Hampton, to wit:

I hereby certify on this 25th day of MARCH, 2016, that the foregoing Encroachment Agreement was acknowledged before me by Jens R. Knudsen, II. He is known to me personally or provided DRIVERS LICENSE as identification.

[Signature]
Notary Public

My Commission Expires: 5/31/17
Registration No.: 7563892



* * * * *

By: Phyllis Knudsen
Phyllis A. Knudsen

COMMONWEALTH OF VIRGINIA:
City of Hampton, to wit:

I hereby certify on this 25th day of MARCH, 2016, that the foregoing Encroachment Agreement was acknowledged before me by Phyllis A. Knudsen. She is known to me personally or provided DRIVERS LICENSE as identification.

[Signature]
Notary Public

My Commission Expires: 5/31/17
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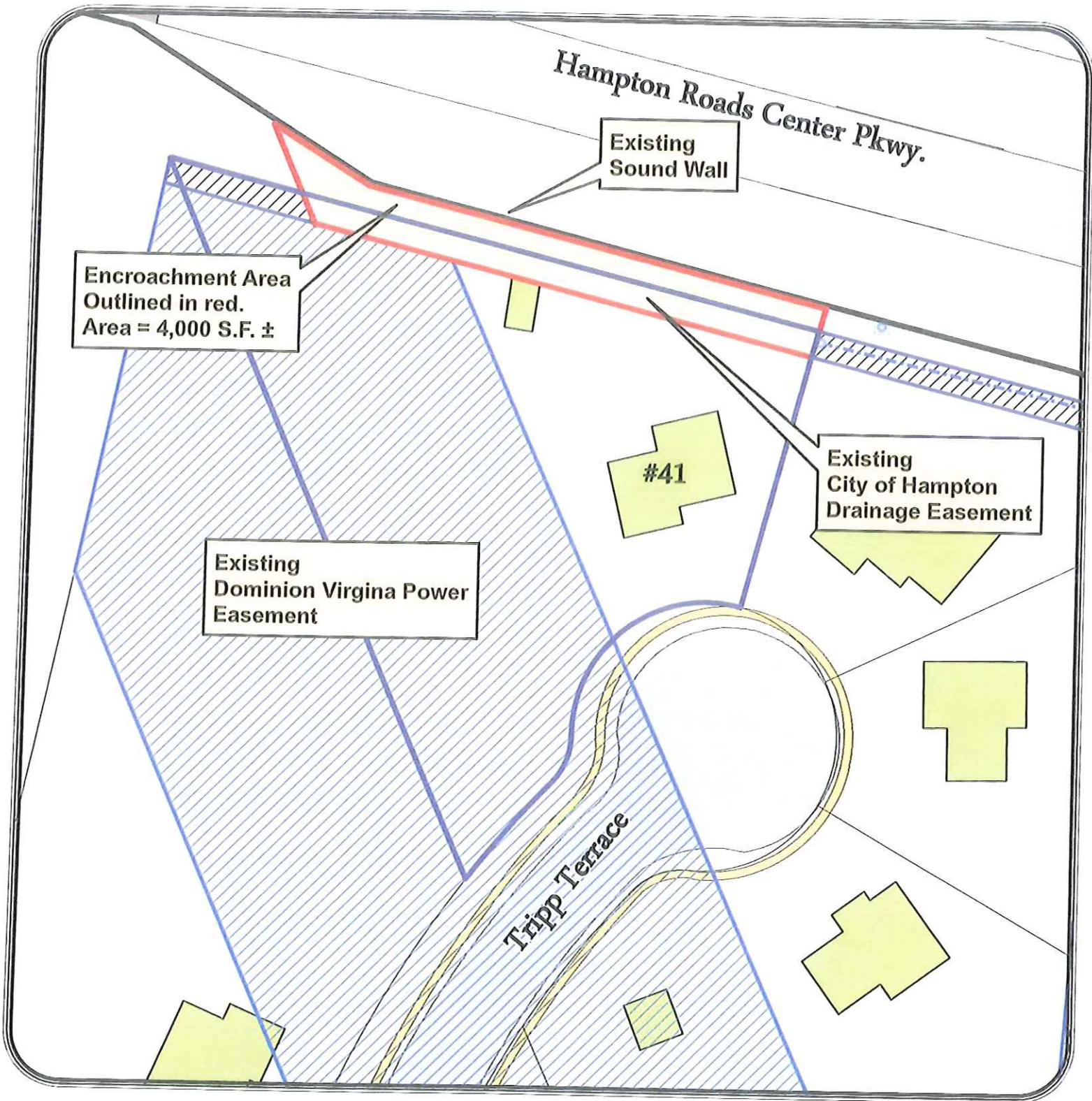
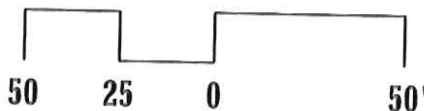


Exhibit "A" - Public Property & Easement Encroachment Located at 41 Tripp Terrace

Prepared by: CITY of HAMPTON
 Dept. of Public Works - Engineering Services

Scale: 1" = 50'



Map printed: 23 March, 2016



DISCLAIMER Although the information contained herein is believed to be reliable, no warranty, expressed or implied, is made regarding the accuracy, completeness, legality, reliability, or usefulness of any information, either isolated or in the aggregate, unless expressly specified. Neither is this information intended as a substitute for applicants' obligation to retain its own independent professional advice from an engineer, surveyor, attorney, or the like.

HOMEOWNERS POLICY
TRAVELERS PROPERTY CASUALTY INSURANCE COMPANY



YOUR POLICY NUMBER:
953355602 633 1

YOUR AGENCY'S NAME AND ADDRESS:
GEICO INSURANCE AGENCY, INC.*
ONE GEICO BLVD.
FREDERICKSBURG VA. 22412

NAMED INSURED:

JENS R. KNUDSEN II
41 TRIPP TER
HAMPTON, VA 23666

FOR POLICY SERVICE CALL: 1-800-841-3005, PYMTS 1-877-205-5772
FOR CLAIM SERVICE CALL: 1-800-CLAIM33 (252-4633)

THIS FORM SERVES AS EVIDENCE OF INSURANCE. YOU WILL BE RECEIVING YOUR COMPLETE POLICY PACKAGE WHICH SUPERCEDES AND REPLACES THIS FORM.

POLICY PERIOD

FROM :12-9-2015 TO :12-9-2016 12:01 A.M.
STANDARD TIME AT THE RESIDENCE PREMISES

LOCATION OF RESIDENCE PREMISES

41 TRIPP TER
HAMPTON, VA 23666

SECTION I - PROPERTY COVERAGES

LIMITS OF LIABILITY

| | |
|-----------------------|-----------|
| A - DWELLING | \$246,000 |
| B - OTHER STRUCTURES | \$24,600 |
| C - PERSONAL PROPERTY | \$172,200 |
| D - LOSS OF USE | \$73,800 |

SECTION I - DEDUCTIBLE

\$500 / SPECIAL 3% HURRICANE DEDUCTIBLE

SECTION II - LIABILITY COVERAGES

LIMITS OF LIABILITY

| | |
|--|-----------|
| E - PERSONAL LIABILITY (BODILY INJURY AND PROPERTY DAMAGE) | \$300,000 |
| F - MEDICAL PAYMENTS TO OTHERS (EACH PERSON) | \$2,000 |

POLICY FORMS AND ENDORSEMENTS HO-3 VA (07-08), HO-61-B-VA (12-06) GUNS \$5,000, HO-85-VA (06-11), HO-165 (12-06), HO-182 (06-06), HO-300-VA (01-15), ADDITIONAL INSURED: CITY OF HAMPTON CITY ATTORNEYS OFFICE INCLUDES HOME REPLACEMENT COST WHICH PROVIDES AN ADDITIONAL 25% OF COVERAGE A AMOUNT

TOTAL ANNUAL PREMIUM:

\$1,241.00

| | | |
|--|---|---|
| 1ST MORTGAGEE LOAN NUMBER: #1156783756 JPMORGAN CHASE BANK, NA ITS SUCCESSORS AND OR ASSIGNS PO BOX 47020 DORAVILLE, GA 30362 | 2ND MORTGAGEE LOAN NUMBER: #0084584044 USAA FSB C/O US BANK NATIONAL ASSOCIATION ITS SUCCESSORS AND OR ASSIGNS ATIMA PO BOX 7298 SPRNGFIELD, OH 45501 | 3RD MORTGAGEE LOAN NUMBER: # USAA FSB C/O US BANK NATIONAL ASSOCIATION ITS SUCCESSORS AND OR ASSIGNS ATIMA P O BOX 7298 SPRINGFIELD, OH 45501 |
|--|---|---|

AGENT:

INSURED COPY

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HAMPTON, VA 23666

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