

MUNICIPAL ACCESS AGREEMENT

Dated: January 18, 2018

Between

WILLIAM AND LINDA MARCK

(the "Owner")

And

THE CORPORATION OF THE TOWN OF KINGSVILLE

(the "Town")

WHEREAS the Owner is the owner of Lot 114 Plan M20 known locally as 157 Sumac Drive in the Town of Kingsville, County of Essex (the "Owner's Lands");

AND WHEREAS the Town proposes to remove trees (the "works") located on Town property behind the Owner's Lands and requires temporary access over the Owner's Lands for persons and vehicles to and from Block D Plan M20;

AND WHEREAS the Town has hired a contractor to complete the removal of the trees on the Town's behalf;

AND WHEREAS the Town and the Owner have agreed to the Town using the Owners Lands for the temporary access on the terms and conditions of this Agreement.

NOW THEREFORE IN CONSIDERATION of the undertakings and agreement hereinafter expressed and upon the terms hereinafter set forth the Town and Owner mutually covenant and agree as follows:

1. The Owner grants, transfers and conveys to the Town, the free, uninterrupted and unobstructed right, or rights in the nature of a non-exclusive temporary access on, over, upon and through the existing access on the Owner's Lands in the location shown as "6.0 m Temporary Easement" on the Plan attached as Schedule "A" to in this Agreement (the "Laneway") for the purposes of constructing, using, operating and maintaining a temporary access for persons and vehicles to and from Block D Plan M20 for the use and benefit of the Town for tree removal, at the Town's sole cost and expense (the "Temporary Access").
2. The Owner hereby consents to the use of the easement for the Temporary Access on the terms and conditions of this Agreement specifically listed herein.
3. The aforesaid rights and access are hereby granted on the following terms and conditions which are hereby mutually covenanted and agreed to by and between the Owner, and the Town.

- a) The Town and its employees, agents, contractors and workmen and other persons duly authorized by the Town, at all times and from time to time, may enter on the easement with their machinery, material, vehicles and equipment for all purposes necessary or incidental to the exercise of the rights and easements herein granted.
- b) The Town agrees that the work will be completed on or before April 30th, 2018.
- c) The Town shall, during the term of this agreement keep the easement and adjacent lands free and clear of all debris, garbage and other litter deposited on the Owner's Lands by users of the easement to the same extent that a reasonable landowner would do.
- d) The Owner shall not in any way interfere with the rights and easements hereby granted to the Town or do or suffer to be done any other thing which might injure or damage the Temporary Access.
- e) The Town agrees to exercise care to avoid damaging the Owner's property in any manner not consistent with the purpose for which this agreement is issued. If the Owner's property is damaged by the Town, its employees, agents, contractors, workmen or other persons duly authorized by the Town during the course of the works, the Town shall ensure, as far as reasonably possible, that the Owner's property is restored to the condition it was in immediately prior to the works being undertaken.
- f) The Town shall indemnify and save completely harmless the Owner, including defending the Owner, from and against all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly or in any way connected with the construction and operation of the Temporary Access by the Town. The Town shall defend at its expense any actions, suits, claims or demands whatsoever against the Owner resulting from the construction and operation of the Temporary Access by the Town. In the event that any court finds that the Owner or any person that the Owner is responsible for in law has contributed to such loss, then the Owner shall be responsible for the payment of such portion of the loss.
- g) Prior to commencing any work the Town shall take out and keep in full force and effect until this Agreement is terminated, at its sole cost and expense, Commercial General Liability insurance applying to all operations of the Temporary Access which shall include coverage for bodily injury liability, property damage liability, products and completed operations liability, contractor's protective liability, contractual liability, non-owned automobile liability, contingent employers liability and employees as additional insureds.

This policy shall be written with limits of not less than FIVE MILLION DOLLARS (\$5,000,000) exclusive of interest or costs, per occurrence and shall include the Owner as an additional insured;

h) The rights and easements hereby granted shall commence on the date that the Agreement is executed by all parties and shall terminate at such time as the works are completed. In any event, this Agreement shall terminate on April 30th, 2018.

4. The rights and easements hereby granted shall endure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns including successors in title from time to time of the Owner's Lands

5. The Town shall pay all its costs associated with the preparation of this Agreement and the Town agrees to reimburse the Owner for 100% of any reasonable legal fees incurred by the Owner to review and revise this agreement.

IN WITNESS WHEREOF of the parties hereto have executed this Agreement by affixing thereto their hands and corporate seals as duly attested by the hands of their proper signing officers in that behalf

WILLIAM AND LINDA MARCK
(Owners of 157 Sumac Dr.)

THE CORPORATION OF THE TOWN OF KINGSVILLE

Mayor, Nelson Santos

Clerk, Jennifer Astrologo