



## Legislation Text

File #: LM-2019-0723, Version: 1

ORDER OF THE NEW HAVEN BOARD OF ALDERS APPROVING THE EASEMENT, ACCEPTABLE TO CORPORATION COUNSEL, FOR CERTAIN LIMITED PURPOSES RELATING TO THE PROVISION OF UTILITY SERVICES AND EMERGENCY RESPONSE IN CONNECTION WITH THE PETITION, DATED FEBRUARY 15, 2019, SUBMITTED BY SAFETY-KLEEN SYSTEMS, INC. ("SAFETY-KLEEN") FOR THE ABANDONMENT OF A PORTION OF WATERFRONT STREET NORTH OF FORBES AVENUE.  
EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that this Easement is made and entered into this \_\_\_\_ day of January, 2020 by SAFETY-KLEEN SYSTEMS, INC., a Wisconsin corporation having an office at 42 Longwater Drive, Norwell, Massachusetts 02061 (the "Grantor") in favor of CITY OF NEW HAVEN, a municipal corporation existing under the laws of the State of Connecticut ("Grantee").

WHEREAS, the Grantor is the fee owner of certain real property located at 120 Forbes Avenue, New Haven, Connecticut, which premises are more particularly described on Exhibit A ("120 Forbes Avenue") attached hereto and which real property borders all sides of a portion of Waterfront Street, located north of Forbes Avenue ("Waterfront Street") (the "Grantor's Premises"); and

WHEREAS, on or about February 15, 2019, the Grantor filed a petition with the Board of Alders of the City of New Haven to authorize the abandonment or discontinuance (the "Discontinuance") of Waterfront Street and, upon the Discontinuance, the fee interest in Waterfront Street would revert to the Grantor as the owner of the real property located on both sides of Waterfront Street; and

WHEREAS, the Grantee, as a condition to the Discontinuance, has required that said part of Waterfront Street remain available to the Grantee for certain limited purposes relating to the provision of utility services and emergency response; and

WHEREAS, on or about October 23, 2019, the New Haven Board of Alders voted to approve the Discontinuance and the fee interest in Waterfront Street reverted to the Grantor (collectively 120 Forbes Avenue and Waterfront Street are referred to as the "Grantor's Premises"); and

WHEREAS, the Grantor has agreed to grant to the Grantee perpetual, non-exclusive easements over and upon a portion of the Grantor's Premises hereinafter described for the exclusive purposes of providing municipal utility services and emergency ingress and egress from Forbes Avenue to the New Haven Harbor over the Grantor's Premises.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other due and sufficient consideration, the Grantor does hereby give, grant, bargain, transfer and convey unto the Grantee, its successors and assigns a full and perpetual easement (the "Easement") and right of way over, through and across that certain piece or parcel of land, situated in the Town and City of New Haven, in the County of New Haven, and State of Connecticut, being a portion of the Grantor's Premises

consisting of Waterfront Street and that part of 120 Forbes Avenue bounded on the east by the former westerly street line of Waterfront Street, on the southwest by land now or formerly of the State of Connecticut, on the west by land now or formerly of The United Illuminating Company and on the northwest by the harbor line of New Haven Harbor as set forth on a certain map entitled Safety-Kleen Facility, 120 Forbes Ave, New Haven, Connecticut,” prepared by BL Companies and dated 1/10/2019, which map is attached hereto as Exhibit B (the “Easement Area”), and on a drawing entitled Road Discontinuance Plan, prepared by BL Companies, which drawing is attached hereto is Exhibit C (the “Easement Area”), for the purpose of providing Grantee unobstructed access to, over, through and across the Easement Area to the New Haven Harbor for the purposes of carrying out municipal utility services including, but not limited to, using, inspecting, maintaining, repairing, replacing and upgrading any and all mains, laterals, pipes, conduits, cables, manholes, handholes, meters, pumps, alarms, telemetry devices for the provision of water, sanitary sewage, storm drainage and similar public works and public utility purposes and for emergency ingress and egress as Grantee deems necessary.

The Easement granted herein shall be non-exclusive and is granted subject to the terms and conditions hereof. The Easement is granted in common with the rights and privileges of the Grantor, its employees, contractors, agents and business invitees and any public service companies or water pollution control authority which currently or hereafter have facilities located within the Easement Area.

The Grantor, its successors and assigns, shall be forever barred and prohibited from erecting any permanent structure within and upon the Easement Area, but may install and maintain, at Grantor’s sole cost and expense, emergency access gates with locking hardware (including a secure key box or equivalent device) consistent with the port security requirements of the United States Coast Guard applicable to New Haven Harbor and the rapid access requirements of the New Haven Fire Department and otherwise to the then-applicable standards required by any federal, state or local governmental authority having jurisdiction thereof; provided the Grantor shall provide the Grantee with access to such emergency access gates and locking hardware. The Grantor may install gravel for vehicle parking and circulation purposes, related lighting and drainage improvements, and landscaping, and may park vehicles of any kind within the Easement Area provided that the foregoing shall not impede free passage across the Easement Area unless Grantor shall have created a vehicle circulation route over and across adjacent portions of the Grantor’s Premises, which Grantee shall have a license to use at any time when parked vehicles impede access across the Easement Area. The Grantor shall be responsible, at its sole cost and expense, for maintaining the Easement Area, including but not limited to, snowplowing and other required maintenance.

The Grantee shall not, in the exercise of the Easement granted, unreasonably interfere with the Grantor’s use and enjoyment of the Grantor’s Premises; provided, however, nothing contained herein shall be construed as a limitation upon the exercise by Grantee of any of its powers under the Code of Ordinances for the City of New Haven or the Connecticut General Statutes or to limit any of the immunities or defenses of the Grantee with respect to the provision of emergency and other public services. Nothing contained in this Easement shall be construed to diminish or restrict the rights of any public service company, water pollution control authority or owner of any other premises bounding Waterfront Street to continue to use, maintain, repair and replace their facilities and fixtures within the Easement Area to the same extent as done prior to the Discontinuation; provided, however, in each case Grantor, Grantee, public service companies and other persons shall comply with federal, state and local law, ordinances and regulations and orders and directives thereunder

including, without limitation, the regulations, orders and directives of the United States Coast Guard or other federal authority with respect to the safety and security of port facilities.

Without limiting the foregoing proviso, the parties acknowledge that the Grantor's Premises, including the Easement Area, is regulated by the regulations, orders and directives of the United States Coast Guard. As of the date hereof, the United States Coast Guard Maritime Security Level ("MARSEC Level") is MARSEC Level One and, as a result thereof, the following security provisions must be complied with as a condition of entry upon the Easement Area:

1. Non-emergency Entry or Inspection:

- a. Grantor's Terminal Manager must be notified of any personnel entering this area prior to entry.
- b. If Grantee's or Grantee's contractors' personnel do not have a Transportation Workers Identification Credential ("TWIC") they must produce another form of government-issued identification and be escorted by a person with a TWIC at a ratio of no more than 5 non-credentialed individuals to 1 TWIC-credentialed individual.
- c. Grantee and Grantee's contractors shall cooperate with Grantor's terminal management to minimize any disruption to Grantor's operations consistent with the completion of Grantee's work in the Easement Area.
- d. Grantee and Grantee's contractors shall enter the Easement Area only during normal working hours for Grantor's terminal facility unless Grantor's terminal management provides prior written (including email or other electronic record) permission for one or more supplemental times of entry.
- e. No dangerous substances or devices will be allowed on the Easement Area without authorization from Grantor's terminal management.
- f. Grantor may require any person entering the Easement Area to submit to a search of their person, personal effects and vehicles.
- g. The access granted by this instrument is for access by land only and in the event Grantee wished to access the Easement Area from the water, prior written (including email or other electronic

record) permission by the Grantor's terminal management shall be required.

2. Emergency entry:

a. Grantee's emergency personnel should be granted access through a lock box and, to the extent practical under the emergency conditions, notify Grantor's terminal management when entry is being made.

b. Except for Grantee's personnel who are "emergency responders" within the meaning of 33 C.F.R. §101.514(d) (as such provision may be amended or superseded) and have credentials establishing their status as such, entry may be made only by personnel with TWICs.

In the event the MARSEC Level applicable to the Easement Area is changed, superseded or compliance therewith requires different procedures as a result of a different MARSEC Level having been declared thereunder, the parties acknowledge that the foregoing security provisions may be changed or updated and the parties shall cooperate with each other to update the same.

Grantee further agrees that it shall provide Grantor such information as shall be reasonably sufficient to confirm the identity and authorization from Grantee for all persons Grantee anticipates will require routine and repeated access to the Easement Area, to be kept on file by Grantor at the Grantor's Premises; the Grantor shall take reasonable precautions to safeguard any such documentation.

The easement and rights conveyed hereby of shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.