



PROVINCE DE QUEBEC
TOWN OF KIRKLAND

BY-LAW NO : GEN-2021-55

**BY-LAW CONCERNING MUNICIPAL WORKS
AGREEMENT**

ADOPTION PROCEDURE

Notice of motion :	September 7, 2021
Filing of draft by-law :	September 7, 2021
Adoption of by-law :	October 4 2021
Publication :	October 8 2021
Coming into effect :	October 8, 2021

WHEREAS that under section 145.21 of the *Act respecting land use planning and development* (CQLR, c. A-19.1), any municipality may adopt a by-law that subordinates the issue of a building or subdivision permit or a certificate of authorization or occupancy to the making of an agreement or the payment of a contribution;

WHEREAS pursuant to section 356 of the *Cities and Towns Act* (CQLR, c. C-19), notice of motion of this by-law was given and a draft of this by-law was filed at the regular sitting of the Municipal Council held on August 2, 2021;

WHEREAS copy of this by-law was made available to the public;

WHEREAS the Preamble forms an integral part of this by-law;

MUNICIPAL COUNCIL DECREES THE FOLLOWING:

CHAPTER I - DEFINITIONS

1. In this by-law, the following words have the following meanings:

“agreement”: an agreement within the meaning of the *Act Respecting Land Use Planning and Development* (CQLR c. A-19.1), and entered into under this by-law;

“work-related costs”: incurred costs arising from the planning or performance of the related work, which costs include:

- a) the fees and other costs necessary to prepare the plans and specifications for the work covered by an agreement;
- b) the fees and other costs necessary to ensure supervision of the work covered by an agreement;
- c) the fees and costs necessary for surveying and other services provided by a surveyor and for land surveys;
- d) the fees and legal costs, such as notary’s fees, lawyer’s fees or other fees paid to enter into an agreement or obtain advice relating to negotiations or execution;
- e) the fees and costs for obtaining technical opinions and expert advice other than those covered under paragraph d);
- f) the fees for obtaining authorizations, permits, licences and other permissions of the kind required for the negotiations or for performing the work under an agreement;
- g) the required drilling, soil characterization and decontamination costs;
- h) the fees related to obtaining financial guarantees and any other similar fees;
- i) the fees related to insurance;
- j) the interest expense on a loan;
- k) any other costs expressly included as work-related costs in an agreement as work-related costs as defined in this section, if applicable.

“applicant”: any person, association or consortium of persons which applies for a permit whose issuance is subject to this by-law;

“site”: an area covered by a development project, as described or shown in the agreement concerning the project;

“oversizing”: difference between the size or quality of an infrastructure required by the Town and those required solely for constructing the submitted development project;

“connection work”: work which, in the Town’s opinion, is required to allow the new infrastructure and equipment (irrespective of whether it will become Town property) on a project site to be connected to or seamless integrated with other existing municipal infrastructure or equipment, such

as the road, water distribution, sewer and public utilities and any measure intended to reduce the impact of the project on municipal networks or the Town environment. The work may include, but is not limited to, the alteration of sidewalks, pavement or traffic lights, the installation of signs, the installation or alteration of mains and hydraulic equipment, the relocation of public utilities and any related work;

“zone”: zone within the meaning of the Town’s Zoning By-law;

“Town”: Town of Kirkland.

CHAPTER II - AGREEMENT AS A CONDITION FOR ISSUING A PERMIT

2. No construction or subdivision permit may be issued for any construction, work or land whatsoever without the applicant and the Town having first signed an agreement to plan and organize the performance of the municipal infrastructure and equipment work (hereafter jointly: “municipal works”) which the Town deems necessary to carry out the project submitted by an applicant and related to the permit concerned. Such agreement shall also cover the terms and conditions for assuming or sharing the cost of the work;
3. However, article 2 does not apply to a project that concerns one single family, two-family or semi-detached structure or to the land on which it is planned to be built, if applicable.
4. Notwithstanding article 2, the Town reserves the right to decide, by resolution, not to enter into an agreement when doing so is not appropriate. In such cases, the resolution of Council shall replace the agreement for the permit concerned by this by-law to be issued.
5. The conditions stipulated in this by-law for obtaining certain permits are in addition to any others imposed by Town by-laws and regulations.

CHAPTER III - MUNICIPAL WORKS TO BE COVERED BY AN AGREEMENT

6. The municipal infrastructure and equipment works to be covered by an agreement are those necessary, in the Town’s opinion and following discussions with the applicant, to carry out the project previously submitted by the applicant when applying for the permit concerned, and which shall cover all of the following:
 - a) the water distribution and sewer systems (sanitary and storm) and all appurtenances (for example: fire hydrant, gate, manifold chamber, air or water release valve, pressure control mechanism, water meters, electrical and mechanical services, manhole, pumping station, catch basin, impounding structure, filtration structure, water treatment structure, etc.), their looping and utility connections;
 - b) the road, bike and pedestrian networks and all appurtenances, which may include, without being limited to, their lighting fixtures, urban furniture, plantings, signage, traffic lights, traffic calming measures, sidewalks, curbs, decorative objects, bridges, footbridges and street markings;
 - c) all equipment and infrastructure necessary to offer public or active transit or provide access to points of service;
 - d) the burying of cable networks of any type whatsoever;
 - e) mitigation of the project’s impact on the environment;
 - f) connection work;
 - g) any other infrastructure or equipment which could normally be put in place or taken over by local municipalities under their authority.
7. The agreement may cover municipal works which are intended to serve not only the immovables covered by the permit whose issuance is subject to entering into the agreement concerned but also other immovables on Town territory, irrespective of where they are located.
8. Without being limited thereto, the foregoing applies to situations where a permit is requested in connection with an immovable that has already been the subject of an agreement since it was part of the site of a project that has already been the subject of another covered permit.

CHAPTER IV - CONTENT OF THE AGREEMENT

9. The agreement, a standard text of which is attached as Schedule A to this by-law, may contain any provision that the parties mutually agree to include, but must, in all cases, provide for the following:
- a) a designation of the parties;
 - b) a detailed description of the overall project;
 - c) a delimitation of the site;
 - d) a description of the work and designation of the party responsible for all or part of its completion;
 - e) a determination of the costs related to the work for which the applicant is responsible;
 - f) the date by which the work is to be completed by the applicant, which work may be divided into phases whose completion may be conditional on that of certain phases of the project submitted by the applicant and detailed in the agreement;
 - g) the penalty collectable from the applicant in the event of a delay in completing the work for which the applicant is responsible, if applicable;
 - h) the terms of payment, if applicable, by the parties of the costs related to the work and the interest payable on a required payment;
 - i) the financial guarantees required of the applicant, as well as their nature, purpose, scope and duration.
10. The following provisions shall be part of every agreement, shall be considered to be part thereof if they do not appear therein and shall take precedence over any other contrary stipulation which may be contained in an agreement, if applicable:
- a) “The applicant shall assume 100% of the cost of completing all the municipal works, infrastructure and equipment covered hereunder and which are on the site of the project and all costs incidental to such work.”;
 - b) “The applicant shall assume 100% of the cost of all the connection work and all costs incidental to such work.”;
 - c) “The applicant shall assume 100% of the cost of all municipal works, infrastructure and equipment which are covered hereunder at the applicant’s request or are necessary for the viability of the project, despite the fact they are not on the site and all the costs incidental to such work.”;
 - d) “Any financial undertaking by the Town included herein is conditional on the obtaining of the approvals of a minister, persons qualified to vote or other persons, as required by law as a precondition for the Town to make the expenditure concerned by the aforementioned financial undertaking.”.
11. The Town shall not be held responsible due to failure to obtain the above- mentioned approvals, provided the Town has exercised due diligence in attempting to obtain them.

CHAPTER V - OWNERSHIP OF MUNICIPAL INFRASTRUCTURES AND EQUIPMENT

12. Once all the obligations imposed on the applicant under the agreement concerning municipal works (or a phase of the project) have been fulfilled to the Town’s satisfaction, the immovables, infrastructures and equipment covered under the agreement shall be transferred to the Town free of charge.
13. If the municipal infrastructures and equipment are not located on the public right-of-way, all servitudes deemed necessary by the Town shall also be granted free of charge.
14. All fees related to the acts of transfer and deeds of servitude, which includes the fees required to make them opposable, are the responsibility of the applicant, although the Town selects the professionals and is their client, despite the applicant’s directly paying the invoices.

CHAPTER VI - MISCELLANEOUS PROVISIONS

15. An applicant who is a party to an agreement may not be registered in the Registre des entreprises non

admissibles aux contrats publics maintained by the Autorité des marchés publics.

- 16. When an authorization granted by the Autorité des marchés publics is required under section 21.17 of the Act Respecting Contracting by Public Bodies (CQLR c. C-65.1), the applicant shall provide a copy of it to be appended as a schedule to the agreement and shall maintain it in effect as long as doing so is mandatory.
- 17. The applicant shall obtain all required authorizations, if applicable, in order to perform lobbying activities as part of the application of this by-law.

CHAPTER VII – REPEALLING AND FINAL PROVISIONS

- 18. By-law 94-56 and its amendments are repealed.
- 19. The present by-law comes into effect in accordance with the law.

(Michel Gibson)

Mayor

(Annie Riendeau)

Town Clerk

**SCHEDULE A
MODEL AGREEMENT**

AGREEMENT REGARDING THE PERFORMANCE OF CERTAIN MUNICIPAL WORK

BETWEEN:

TOWN OF KIRKLAND, a legal person established in the public interest, having its head office at 17220 Hymus Boulevard in Town of Kirkland, Province of Quebec, H9J 3Y8, herein acting and represented by (name, title) and by (name, title), duly authorized for the purposes hereof by a resolution of its Council appended as Schedule 1 and bearing the number (resolution number).

AND

hereinafter: the “**TOWN**”

(**CORPORATE NAME**), a legal person established for private interest, constituted under (reference to the incorporating act), having its main place of business at (address), acting and represented for the purposes hereof by a resolution adopted by the board of directors of said legal person on (date), which is appended as Schedule 2, after having been certified as compliant by an officer or director registered as such with the Registraire des entreprises du Québec;

OR

(Natural person’s name, residential address, location and date of birth)

hereinafter: the “**APPLICANT**”

THE PARTIES HEREBY AGREE AS FOLLOWS:

1) Detailed description of the project

This agreement concerns the following project: (detailed description or drawings deemed satisfactory by the Town and appended hereto. When the project is divided into phases accepted by the Town, the project description shall clearly identify the phases and the work to be performed in each of them).

2) The site

The project site in its entirety, including all of its phases, if applicable, is as follows: (detailed description or drawing of the site deemed satisfactory by the Town and appended hereto).

3) Description of the work and designation of the party responsible for performing all or part of it

The work

The municipal works to be performed in connection with the project, including that for which the Town is responsible, if applicable, is illustrated in the documents appended in Schedule X and described as follows: (If applicable, specify the works for the various phases of the project and describe the infrastructure work on the site, the infrastructure work that will be completed at the request of the Applicant or crucial to the viability of the Applicant’s project off site, the connection work and the oversizing work).

Responsibility for performing the work

- a) Work which the Applicant is responsible for performing:
- i. The work which the Applicant is responsible for performing is as follows: (or is specified in Schedule X).
 - ii. The plans and specifications will be prepared by: (specify the persons responsible for the services retained by the Applicant OR by the Town for that purpose OR state that the Town will assume responsibility for them).

All plans and specifications shall be approved in writing by the Town, represented for this purpose by the Director of Engineering or any person whom the Director General designates to act on his behalf, before the work may begin, without such acceptance establishing the Town's responsibility for the plans and specifications.

- iii. The work shall be performed under the supervision of: (specify the persons responsible for the services retained by the Applicant OR by the Town for that purpose OR state that the Town shall act as the site supervisor).

The Town may carry out, at the Applicant's expense, all inspections and tests which it deems necessary or may require the Applicant to have them performed and to provide a copy of the results to the Town.

The supervisor is responsible for provisionally and definitively accepting the work. The supervisor is responsible for verifying and certifying the compliance of the work, although, unless the supervisor has been selected by the Town, the Applicant is jointly responsible for all the faults committed by his or her supervisor, if applicable. However, before definitively accepting the work, the supervisor shall meet with the Town and demonstrate to it that such definitive acceptance is justified.

- b) The work to be carried out by the Town, if any, including preparation of the plans and specifications and site supervision, are as follows: (OR are those specified in Schedule X):

4) Determination of cost sharing

- a) The Applicant shall assume 100% of the costs related to the preparation of any document which the Applicant may append hereto.
- b) The Applicant shall assume 100% of the cost of completing all the municipal works, infrastructure and equipment covered hereunder which are on the site of his or her project and all costs incidental to such work.

These costs total an estimated \$X, which amount is broken down in detail in the document appended in Schedule X. This cost breakdown, in addition to those related to the municipal works per se, shall clearly indicate the costs for each category of incidental costs, as listed in section 1 of the By-law.

(if the project is divided into phases, adapt the paragraph to clearly distinguish between them)

- c) The Applicant shall assume 100% of the cost of all connection work and all costs incidental to such work.

These costs total an estimated \$X, which amount is broken down in detail in the document appended in Schedule X. This cost breakdown, in addition to those related to the municipal works per se, shall clearly indicate the costs for each category of incidental costs as listed in section 1 of the By-law.

(if the project is divided into phases, adapt the paragraph to clearly distinguish between them)

- d) The Applicant shall assume 100% of the cost of all municipal works, infrastructure and equipment which are covered hereunder at the Applicant's request or are necessary for the viability of the project, despite the fact they are not on the site, and all the costs incidental to such work.

These costs total an estimated \$X, which amount is broken down in detail in the document appended in Schedule X. This cost breakdown, in addition to those related to the municipal works per se, shall clearly indicate the costs for each category of incidental costs, as listed in section 1 of the By-law.

(if the project is divided into phases, adapt the paragraph to clearly distinguish between them)

- e) For each oversized infrastructure, the Town assumes the percentage it determines of the cost of all the work identified hereinafter, structure by structure, on identified in Schedule X.

These costs total an estimated \$X, which amount is broken down in detail in the document appended in Schedule X. This cost breakdown, in addition to those related to the municipal works per se, shall clearly indicate the costs for each category of incidental costs, as listed in section 1 of the By-law.

5) Payment

Once a month, a party which has performed work whose costs are payable by the other party shall be entitled to receive payment based on the progress of the work.

For all monthly payment requests, the creditor party shall submit to the other party a detailed progress estimate. All supporting documents shall accompany the payment request and no unjustified payments shall be made.

The payer party shall issue the payment for which the payment request has been submitted in the forty-five (45) days following receipt of the request, after which the amount claimed shall bear interest at the rate of X% until payment is made.

6) Financial guarantees

- a) When the Applicant carries out work, he shall, in order for the first construction or subdivision permit for the entire project or, if applicable, the first construction or subdivision permit for each of the project phases, to be issued, provide to the Town a standby letter of credit or certified cheque payable to it issued by a duly authorized financial institution, in an amount equal to X% of the cost of the work to be borne by it under this agreement. This standby letter of credit, if applicable, shall be cashable within the territory of Town on first request, notwithstanding any dispute between the parties, and shall state that it is cashable by the Town if it is not renewed 60 days before it expires.

The standby letter of credit or certified cheque may be cashed by the Town in order to complete, at the Applicant's expense, any work which has not been completed by the planned date, as specified in section 7.

The letter or cheque shall be returned to the Applicant once the work whose performance it guaranteed has been definitively accepted.

- b) When the Town carries out work whose cost is to be paid by the Applicant, the preceding paragraph, with the necessary changes, shall apply; however, the guarantee which the Applicant must provide shall be only in the form of a certified cheque equal to 100% of the total cost of this work and to the costs related to this work as estimated in clause 4 hereof. The Town may charge an additional amount for contingencies.

This cheque shall be cashed upon receipt by the Town and the amount deposited shall be used first for the progress-based payments owed by the Applicant to the Town throughout the work. Unless the Town has received an amount deemed sufficient for contingencies, any additional amount related to a change directive or otherwise must be remitted to the Town before such additional work can be performed. Once the work has been definitively accepted, any unused amount shall be remitted to the Applicant without interest.

- c) The following infrastructure or equipment work may be accepted provisionally only if they are guaranteed by a five-year (5-year) maintenance bond payable to the Town or any other guarantee deemed adequate by the Town and hereinafter specified: [\(list or append the work to be guaranteed by a five-year maintenance bond. Specify the alternate guarantee, if applicable.\)](#).

7) Work completion deadline

- a) Each party responsible for performing work shall append, in a schedule to this agreement, a detailed work schedule specifying the expected progress on the work. The Town shall accept or refuse any schedule submitted by the Applicant intended to become part hereof.
- b) Unless otherwise specified, no penalty shall be owed to another party for a delay. However, if the Applicant is late by more than 10% of the total period of time planned to complete all the work for which the Applicant is responsible (or for a specific phase), the financial guarantees guaranteeing performance of the work shall be cashed by the Town by right and without this releasing the Applicant from the Applicant's responsibility for all harm suffered by the Town, which may or may not assume responsibility for the unperformed work at the Applicant's entire expense.

8) Termination

If a party does not remedy a default in the 60 days following a written notice from the other party, the other party may unilaterally terminate this agreement.

The party which terminates the agreement for this reason shall retain all its remedies against the defaulting party.

9) Insurance

(Based on the nature of the work and size of the work site, include the required insurance coverage.)

10) Municipalization of infrastructure and equipment

The Applicant undertakes to transfer the ownership of any infrastructure or equipment and to grant any servitude which, in the opinion of the Town, is required, free of charge, in accordance with the By-law,

11) Notice

Any notice, communication or correspondence between the parties hereto shall be sent by email.

For the Town: (address and name of the person responsible)

For the Applicant: (address and name of the person responsible)

12) Signatures

Per Town of Kirkland:

Date:

(name, title)

(name, title)

Per the Applicant:

Date:

(name, title)