



PROVINCE DE QUEBEC
TOWN OF KIRKLAND

BY-LAW NO : AGR-2022-57

**BY-LAW CONCERNING MUNICIPAL WORKS
AGREEMENT**

DRAFT

ADOPTION PROCEDURE

Notice of motion :	June 13, 2022
Adoption – draft :	June 13, 2022
Publication :	June 14, 2022
Public consultation :	June 21, 2022
Adoption of by-law :	July 4, 2022
Publication :	July 8, 2022
Coming into effect :	July 8, 2022

WHEREAS pursuant to sections 145.21 and following 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 on the carrying out of works relating to municipal infrastructures and equipment and on the payment or sharing of the costs related to such work;

WHEREAS pursuant to section 356 of the *Cities and Towns Act* (CQLR, c. C-19), notice of motion of this by-law was given, a draft by-law was filed and adoption of the draft by-law was made at the regular sitting of the Municipal Council held on June 13, 2022;

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 section 145.21 of the *Act Respecting Land Use Planning and Development* (CQLR c. A-19.1) on the carrying out of works relating to municipal infrastructures and equipment and on the payment or sharing of the costs related to such works;

“work-related costs” : incurred costs arising from the planning or performance of the works covered by an agreement, which costs include :

- a) the fees and other costs necessary to prepare studies, plans and specifications for the works covered by an agreement;
- b) the fees and other costs necessary to ensure supervision of the works 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 fees, lawyer fees or other fees incurred for entering into an agreement or for obtaining advice regarding its negotiation or execution;
- e) the fees and costs for obtaining technical descriptions, technical opinions and expert advice other than those covered under paragraph d);
- f) the fees for obtaining authorizations, permits, licences and other permissions of this nature required for the negotiation or performance of the works under an agreement;
- g) the cost required for quality control of materials (laboratories), drilling, characterization and decontamination of soils required;
- 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) contingency costs and any other costs similar to work-related costs within the meaning of this section, if applicable.

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

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

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

“connection works” : works that, in the Town’s opinion, are required on the site of a project to allow for the connection or seamless integration of new infrastructure or equipment (irrespective of whether

it will become Town property or not) with other existing municipal infrastructure or equipment, such as roads, water distribution, sewer and public utilities and any measure intended to reduce the impact of the project on municipal networks or the Town environment. Such works may include, without being 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 works;

“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. This by-law applies to the entire territory of the Town, to all categories of use and is intended to subject the issuance of a building or subdivision permit or a certificate of authorization for a residential, commercial, institutional or industrial development project requiring municipal works to the conclusion of an agreement between the Town and the applicant concerning the carrying out of works relating to municipal infrastructures and equipment and the assumption by the applicant of the costs relating to such works, with certain exceptions.
3. Unless waived by resolution to enter into an agreement, no construction or subdivision permit or certificate of authorization may be issued for any construction, works or land whatsoever without the applicant and the Town having first entered into an agreement to plan and organize the performance of municipal infrastructure and equipment works which the Town deems necessary to carry out the project submitted by the applicant. Such agreement shall also include the terms and conditions for assuming responsibility and sharing the cost of these works;
4. This by-law does not apply to projects that concern only one single family, two-family or semi-detached dwelling or to the land on which it is planned to be built, if applicable.
5. It is the prerogative of the Municipal Council to authorize and receive municipal works, whether for construction or upgrading. As such, an authorization in principle for municipal works or the approval of a comprehensive plan or zoning standards for a site does not deprive the Municipal Council of its discretionary power to assess the appropriateness of a project (particularly in light of the capacity of the infrastructure and equipment) and does not confer any right on the applicant with respect to the execution of municipal works. Only the resolution authorizing the signing of the agreement constitutes rights under this by-law and is binding on the Town.
6. The conditions stipulated in this by-law for obtaining certain permits are in addition to any requirements otherwise provided for in the by-law of the Town.

CHAPTER III - MUNICIPAL WORKS TO BE COVERED BY AN AGREEMENT

7. The municipal works to be covered by an agreement are the construction, upgrading or alteration works that, according to the Town, following discussions with the applicant, are useful 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 base and paving, lighting fixtures, urban furniture, plantings, signage, traffic lights, traffic calming measures, sidewalks, curbs, decorative objects, bridges, footbridges and street markings;
 - c) any equipment and infrastructure required for the provision of public or active transportation or access to points of service;
 - d) any development of public places, parks, playgrounds, water games, recreational facilities, green spaces and multifunctional paths, including municipal equipment (such as water fountains, children's play structures, urban furniture, training circuits, sports fields, skating rinks, etc.)

- e) any burial of cable networks of any kind;
- f) any mitigation of the impacts of the project on its environment;
- g) any connection works;
- h) any other infrastructure or equipment that is normally developed or undertaken by local municipalities under their jurisdiction.

(hereinafter collectively referred to as : "municipal works")

8. 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.

CHAPTER IV - FILING AND ANALYSIS

9. In order to enter into an agreement with the Town to carry out municipal works, the applicant shall submit a written request to the Urban Planning and Environment Department.
10. In support of the request, the applicant shall, among other things, provide the following information and documents :
- a) the applicant's official name, contact information and the contact information of the duly authorized contact person with whom the Town will deal;
 - b) title deeds establishing the applicant's ownership of the land to which the application relates. In the absence of title, the applicant must demonstrate that he or she has certain rights granted by the owner (accepted offer to purchase, option to purchase, etc.) which must eventually lead to the transfer of ownership of the land to the applicant;
 - c) a site plan, for example a projected or actual subdivision plan, a cadastral parcelling plan prepared by a land surveyor showing all of the land affected by the project in terms of streets and lots to be built on, as well as wetlands, watercourses, slopes or other constraints;
 - d) the names and contact information of all of the applicant's professionals (engineers, urban planners, architects and landscape architects, etc.). These professionals must be able to clearly establish their expertise in the municipal works to be performed. Failure to do so may result in the Town requiring their replacement;
 - e) a detailed and itemized budget estimate for the project and the municipal works to be performed, prepared by a professional;
 - f) any preparatory studies that may be required by the Town;
 - g) all required technical documents, plans, specifications and design parameters;
 - h) a detailed preliminary design plan indicating, in particular and where applicable, the phases of development, the projected streets, the integration of the project with the existing street network, the location of spaces reserved for public places, parks, playgrounds, water games, recreational facilities and green spaces, the location of pedestrian paths, multipurpose trails and bicycle paths, the location of spaces reserved for equipment and buildings of water distribution and sewer systems, the location of reserved spaces for post office boxes, sewer, water, storm and public utility connections, as well as the location of the lighting system;
 - i) an assessment of the technical impacts of the project, including a review of the capacity of existing municipal systems to supply potable water, the capacity to capture stormwater and manage drainage from the site and neighbouring properties at the project boundary, and the capacity to intercept and treat wastewater;
 - j) an environmental characterization identifying, among other things, any body of water or watercourse, the protection zone of any body of water or watercourse, any wetland and any other constraint identified in the municipal by-laws, as well as the drainage of the site and of the neighbouring properties at the project boundary, the proposed compensations, the areas of constraint on the site and on the immediate environment of the latter, if applicable;
 - k) the written confirmation of an agreement with the urban agglomeration of Montréal relating to

agglomeration infrastructures and equipment, if applicable;

- l) the written confirmations of the various agreements already concluded with the companies relating to public utility services (electricity, gas, cable television, telephone and others), if applicable;
- m) any other documents or information deemed necessary or required by the Town.

11. The Town may, at any time, require that such studies, plans, specifications, estimates and other documents be corrected or amended to meet the Town's expectations and needs.

CHAPTER V - CONTENT OF THE AGREEMENT

12. Upon receipt of documents and information deemed sufficient by the Town, the Town shall prepare and forward to the applicant a draft agreement for the performance of the municipal works.

13. 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 shall include the following :

- a) a designation of the parties and a resolution authorizing the applicant to deal with the Town;
- b) a detailed description of the overall project;
- c) a plan and title to the site;
- d) a description of the works and designation of the party responsible for all or part of their completion - the applicant shall be identified as the project manager;
- e) the determination of the costs of the municipal works, the manner in which they shall be borne and the sharing of the costs of such works;
- f) the date by which the works are to be completed, which works 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, if any, applicable for delay in performing the municipal works for which the applicant is responsible;
- h) the terms of payment of the costs of the municipal works and the interest payable on any installment due;
- i) the financial guarantees and insurance required of the applicant and the nature, purpose, extent and duration thereof;
- j) the applicant's liability in relation to all damages that may be caused to any person as a result of the works covered by the agreement;
- k) the terms and conditions for the transfer to the Town of municipal infrastructures and equipment and any required servitudes.

14. The Town may, at its discretion, make amendments to the standard agreement.

15. Generally, except in the case of oversizing works where the Town may provide for a different cost sharing arrangement, the applicant shall be responsible for 100% of the costs of the municipal works, including all work-related costs and connection works, unless otherwise agreed.

16. 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, covered hereunder and which are on the site of the project and all work-related costs.";
- b) "The applicant shall assume 100% of the cost of all the connection works and all work-related costs.";
- c) "The applicant shall assume 100% of the cost of all municipal works which are covered hereunder at the applicant's request or that are useful to the viability of the applicant's project, despite the fact they are not on the site and all work-related costs.";

- 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."

CHAPTER VI – ACCEPTANCE OF AGREEMENT

17. When the proposed agreement meets the requirements of the Town and the provisions of this by-law, it shall be submitted to Municipal Council for approval to :
 - a) authorize the municipal works to proceed;
 - b) any letters of authorization that may be required by the MELCC;
 - c) authorize the signature of the agreement with the applicant;
 - d) set any other terms and conditions.
18. The Town retains full discretion as to whether or not to accept any infrastructure and equipment and whether or not to municipalize any infrastructure and equipment. The Town also reserves the right to request additional works, including the correction of deficiencies, prior to accepting any transfer of property.
19. By signing the agreement provided for in this by-law, the applicant agrees to comply with all requirements set out in the by-law and the agreement.
20. The agreement shall be binding upon the applicant, its successors and assigns. This agreement may not be assigned or transferred without the prior written approval of the Town.

CHAPTER VII - OWNERSHIP OF MUNICIPAL INFRASTRUCTURES AND EQUIPMENT

21. 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.
22. 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.
23. 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 VIII – APPLICATION

24. Employees of the Urban Planning and Environment Department and the Town Clerk and Legal Affairs Department shall be responsible for the enforcement of this by-law.
25. In the performance of their duties, the personnel in charge may, among other things, visit and examine any property at any reasonable time, issue a notice to the owner or applicant to correct a situation that constitutes a violation, order the municipal works in progress to be stopped, take photographs, conduct analyses and any other powers required for the purposes of this by-law and the agreement with the applicant.

CHAPTER IX - MISCELLANEOUS PROVISIONS

26. 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*.
27. 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.
28. 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 X- REPEALLING AND FINAL PROVISIONS

29. By-law 94-56 and its amendments are repealed.

30. The present by-law comes into effect in accordance with the law.

(Michel Gibson)

Mayor

(Annie Riendeau)

Town Clerk

DRAFT

**SCHEDULE A
MODEL AGREEMENT**

AGREEMENT REGARDING THE PERFORMANCE OF CERTAIN MUNICIPAL WORKS

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 Municipal Council appended as Schedule 1 and bearing the number **(resolution number)**. Hereinafter the “**TOWN**”

AND

(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 hereby by **(name, title)**, duly authorized to execute this Agreement by virtue of a resolution adopted by the Board of Directors of this corporation on **(date)**, which resolution 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) Purpose of the agreement

This agreement is binding upon the applicant and its successors and assigns. This agreement may not be assigned or transferred without the prior written consent of the Town.

This agreement is for the performance of municipal works, connection works and work-related costs, as defined in By-law No. AGR-2022-57 entitled : *By-law concerning agreements relating to municipal works*.

2) 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 works to be performed in each of them)**.

The project description is by no means limiting. Any lesser and included tasks necessary to achieve the intended results shall be considered an integral part of the project and shall be performed by the applicant at its own expense.

3) The site

The project site in its entirety, including all of its phases, if applicable, is as follows : **(detailed description to the Town's satisfaction of the site or site illustrated to the Town's satisfaction in an attached document)**.

4) Description of the works and designation of the party responsible for performing all or part of them

4.1) Works description

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 works on the site, the infrastructure works that will be completed at the**

request of the applicant or useful to the viability of the applicant's project off site, the connection works and the oversizing works).

The applicant shall act as the prime contractor for all municipal works.

Throughout the duration of the works, the applicant shall take into account all requests and other particulars required by the Town.

4.2) Party responsible for carrying out the works

a) Works which the applicant are responsible for performing :

- 1) The works which the applicant are responsible for performing are as follows : (or is specified in Schedule X).
- 2) 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, before the works may begin, without such acceptance establishing the Town's responsibility for the plans and specifications.

To this end, the Town confirms the mandate of the firm, which will act on behalf of the Town as consulting engineer for the entire project.

The consulting engineer will support the Town in the analysis of technical documents, studies, execution of the works, supervision, acceptance and throughout the project.

Professional fees and other charges billed by the Town's Consulting Engineer shall be paid in full by the applicant within thirty (30) days of the billing date, failing which the Consulting Engineer may immediately request a suspension of the works.

The applicant agrees to co-operate fully with the Town, the Consulting Engineer and any other professionals engaged by the Town at the applicant's expense and to take into account any special requirements made by the Town. The Town may engage, at the applicant's expense, any person to ensure that the plans and specifications, the supervision of the works, the quality control of the works and the materials incorporated therein meet the requirements of the Town.

The applicant shall follow up regularly with the Consulting Engineer.

- 3) The works 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 site supervisor is responsible for provisionally and definitively accepting the municipal works and is responsible for verifying and certifying the compliance of the works. Unless the site supervisor has been imposed by the Town, the applicant is jointly liable for all faults committed by the site supervisor, if applicable. Before definitively accepting the municipal works, the site supervisor shall meet with the Town and demonstrate to it that such definitive acceptance is justified.

b) The works 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)

5) Determination of cost sharing

- a) The applicant shall assume 100% of the costs related to the preparation of any document to be attached to this agreement.
- b) The applicant shall assume 100% of the cost of completing all the municipal works covered hereunder which are on the site of the project and all work-related costs.

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 works and all work-related costs.

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 which are covered hereunder at the applicant's request or that are useful to the viability of the applicant's project, despite the fact they are not on the site, and all work-related costs.

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 works 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.

- f) 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.

6) Obligations and responsibilities of the applicant

6.1) Obligations

The obligations of the applicant include, but are not limited to, the following :

- 1) to perform all agreed-upon municipal works, to notify the Town of any changes and to obtain prior written approval for any changes;
- 2) to comply with all applicable standards and regulations and to hold all required licenses and authorizations;
- 3) obtain from any agency or department having jurisdictional authority, the necessary authorizations to carry out the works. For works for which a certificate of authorization has been issued by the MELCC, issue a certificate attesting that the works have been carried out in accordance with the rules of the trade and in compliance with the plans and specifications;
- 4) ensure the control of materials and carry out all tests, expert opinions, analyses and additional controls that may be requested by the Town;
- 5) maintain constant surveillance of the work site and take all necessary measures to ensure the safety of property and persons during the works and between the various stages of the works. Public areas shall be kept clean and safe at all times;
- 6) minimize the impact of municipal works on neighbouring properties (water quality and pressure, dirt, noise, obstruction, etc.);
- 7) to keep public roads free of materials or dirt at all times;
- 8) contact the various utility companies to coordinate their works with existing facilities and obtain the required notarized servitudes;

- 9) provide the Town with a copy of all studies, approvals received, measurements, plans and specifications, as-built drawings and specifications in the format desired by the Town and a copy of contracts, warranties and insurance policies provided to the Town, if any, by any Contractor performing the municipal works or by any other major subcontractor;
- 10) make any required changes, repairs or adjustments in accordance with the Town requirements within forty-eight (48) hours of receiving notice that the municipal works are non-conforming or requires changes, adjustments or repairs;
- 11) pay within thirty (30) days of receipt, the Town's invoices for the consulting engineer and for any other professional mandated by the Town as well as any sums spent by the Town on the project.

6.2) Responsibilities

By this agreement, the applicant agrees to indemnify the Town from and against all claims of any nature whatsoever arising out of the performance of the municipal works.

The applicant's responsibility is complete and absolute. The Town's supervision and approvals shall be for the purpose of the proper execution of the works only and shall not relieve the applicant of its full responsibility.

The applicant shall be fully responsible for the site, signage, works, maintenance, equipment and all matters relating to the project until the municipal works are transferred to the Town.

The applicant shall be liable for any damage to property or to any person caused by or on account of the municipal works performed by or on behalf of the applicant, or resulting from poor or faulty maintenance until the municipal works are transferred to the Town.

The applicant undertakes to indemnify and hold the Town harmless from any claims or lawsuits against the Town which will be handed over to the applicant upon receipt. The applicant undertakes to take all necessary steps to respond to such claims, to take up the cause of action on behalf of the Town and to forward the same to the applicant's insurer.

7) Financial guarantees

- a) When the applicant carries out municipal works, 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 municipal works 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.

The letter or cheque shall be returned to the applicant upon provisional acceptance of the municipal works and the applicant has remitted the provisional guarantee to the Town.

- b) When the Town carries out works whose cost are 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 these works and estimated incidental expenses. 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 works. 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 works can be performed. Once the works have been definitively accepted, any unused amount shall be remitted to the applicant without interest.

- c) The following infrastructure or equipment works 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 : [\(list or append the works to be guaranteed by a five-year maintenance bond. Specify the alternate guarantee, if applicable.\)](#).

8) Works completion deadline

- a) The applicant hereby agrees to complete all of the municipal works covered by this Agreement by _____. (If work is to be done in phases, describe the phased schedule.)
- b) Each party responsible for performing works shall append, in a schedule to this agreement, a detailed works schedule specifying the expected progress on the works. The Town shall accept or refuse any schedule submitted by the applicant intended to become part hereof.
- c) 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 works for which the applicant is responsible (or for a specific phase), the financial guarantees guaranteeing performance of the works 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 works at the applicant's entire expense.

9) Provisional acceptance

On or before the date of completion of the works, the applicant shall file with the Town a certificate of compliance for all works completed and all required final documents, including a copy of the as-built plans authenticated by the applicant's engineer.

The applicant shall also provide the Town with a provisional guarantee, in an amount equal to at least 2.5% of the estimated cost of the works provisionally accepted, valid for a period of one year from the date of provisional acceptance of all or part of the works by the Town, to cover any defects, breakage, damage or deficiencies that may occur in connection with the works performed and covered by this agreement.

During this one year period, the applicant shall correct any irregularities or make any changes requested by the Town.

10) Final acceptance

At the expiration of the one-year interim warranty period, the Town and the applicant shall review the municipal works to ensure that it is in compliance, to the satisfaction of the Town, taking into account normal wear and tear.

The Town shall take final acceptance of the municipal works performed by the applicant and shall not release the one-year interim warranty to the applicant until the municipal works are deemed to be in compliance and the remedial works have been completed.

11) Default

The applicant shall comply with the obligations imposed upon it by the By-law or this Agreement.

The applicant is in default if :

- 1) the applicant abandons, refuses to perform or fails to fully perform the municipal works within the time specified;
- 2) the municipal works does not conform to the plans and specifications, applicable standards or is not performed in a workmanlike manner;
- 3) it becomes insolvent, bankrupt, makes an assignment, files a proposal or takes advantage of any legislation favouring arrangements with creditors;
- 4) he refuses to renew any guarantee or insurance within the prescribed time;
- 5) if a mortgage is registered against the real property where the municipal works are to be performed;
- 6) neglects, refuses or delays the assignment to the Town;
- 7) sells or assigns the rights under this agreement without the written consent of the Town;
- 8) fails to comply with any of the provisions described in this agreement or the by-law;
- 9) fails to comply with any applicable law, regulation or order;
- 10) fails to represent the Town or deal with claims within a reasonable time.

In the event of default, the Town may invoke the bank letter of guarantee and forfeit the security paid as liquidated damages due and payable.

Any default in the performance of the municipal works shall be promptly remedied at the sole expense of the claimant. The Town reserves all rights of recourse for all losses, damages and costs arising from the default of the applicant.

In the event of default, the Town may invalidate any permits issued and order the stoppage of any municipal works in progress.

In addition, if any of the provisions necessary for the completion of the project do not meet the approval requirements required by law, the agreement may become invalid and of no force and effect, without compensation.

12) Insurance

(Depending on the nature of the works and the size of the site, include required insurance coverage)

The applicant is responsible for the payment of all insurance premiums.

The applicant shall carry liability insurance, among other things. The Town may require liability insurance in an amount deemed sufficient by the Town. Such insurance shall name the Town as an additional insured and shall be provided to the Town prior to the commencement of works.

Such liability insurance shall be in effect from the date of commencement of the works and shall remain in effect until the transfer of the municipal works to the Town.

The Town may require any other insurance it deems necessary.

13) Transfer of infrastructures and equipment

The applicant agrees to convey the ownership of all infrastructure and equipment and to grant any servitudes required by the Town, at no cost, in accordance with the by-law.

The conveyance includes the land used for the street right-of-way, the land on which the equipment and infrastructure are located, the parks and green spaces and any other area affected by the municipal works. This commitment covers all the infrastructure and equipment installed as well as the servitudes that are necessary for their use and maintenance.

The Town shall select the notary public to act as executor and the applicant shall be responsible for all costs related to the deed for all parties and all required survey costs.

The assignment shall take place upon application by the Town after provisional acceptance of the municipal works, unless the Town directs otherwise. Following the transfer, the Town shall become the owner of and responsible for the maintenance of the infrastructure and equipment so transferred, subject to applicable warranties and the one-year interim warranty.

The lots, infrastructure and equipment so conveyed shall be free and clear of all encumbrances, mortgages, legal hypothecs, charges, servitudes and encumbrances whatsoever, except for servitudes granted to public utility companies.

The Town retains full discretion as to the acceptance of any infrastructure and equipment.

The Town also retains the discretion to municipalize or not municipalize any infrastructure and equipment at any time. The Town also reserves the right to request additional works, including the correction of deficiencies, prior to accepting any transfer.

14) 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)

15) Signatures

Per Town of Kirkland:

Date:

(name, title)

(name, title)

Per the applicant:

Date:

(name, title)

DRAFT