

MUNICIPALITY OF PONTIAC

MRC DES COLLINES-DE-L'OUTAOUAIS

BY-LAW No. 08-12

Entitled : « BY-LAW REGARDING AGREEMENTS IN RELATION WITH MUNICIPAL WORK »

Whereas according to section 145.21 of the *Land Use Planning and Development Act* (L.R.Q., c. A-19.1), a municipality may adopt a by-law regarding the issuance of a building or subdivision permit or a certificate of authorization or occupancy and the conditions attached there to, namely an agreement between the applicant and the Municipality concerning works related to municipal infrastructures and installations and the reimbursement or sharing of costs related to these works;

Whereas a notice of motion regarding the adoption of this by-law was given during a special council meeting on October 2, 2012;

Therefore, the Council of the Municipality of Pontiac orders and decrees the following:

SECTION 1 : DEFINITIONS

For the purpose of this by-law and any resultant agreement, the following words and expressions have the meaning hereafter given:

1.1 Beneficiary of works

The word « beneficiary of works » refers to any person, other than the proprietary, identified in the schedule of the agreement drawn up in relation thereto, who benefits from all or part of the municipal works provided under the terms of said agreement made in accordance with this by-law. The beneficiary may be the taxpayers of a sector or the municipality in general.

For the purpose of this by-law, a person benefits not only when the person actually uses the service or good but, also when the service or good benefits or is likely to benefit the immovable owned by a person.

1.2 Provisional acceptance

The expression “provisional acceptance” means that all of the construction related to municipal works are acceptable and ready to be used for the purpose it was designed. Provisional acceptance is recommended by the professionals designated for the project and approved by the Municipality. A provisional acceptance may include conditions set by the Municipality and provided in the agreement made in accordance with this by-law.

1.3 Final acceptance

Construction related to municipal works is complete and all of the deficiencies have been corrected unconditionally. Final acceptance is recommended by the professionals designated for the project and approved by the Municipality.

1.4 Applicant

The term “applicant” refers to a person who submits a request to the Municipality for a building or subdivision permit subject to this by-law.

1.5 Permit holder

The term “permit holder” refers to a person who has made an agreement with the Municipality regarding municipal works in accordance with this by-law.

1.6 Municipal works

The expression “municipal works” refers to all work pertaining to municipal infrastructures and installations intended for public use including among others and without restricting the generality of the foregoing:

- all construction and grading of streets (including the section of the street along intersecting properties), from the initial tree cutting and clearing or filling to paving, sidewalks, lighting systems and electrical power supply, including all intermediate steps, including street drainage work, ditching, construction and installation of culverts, bridge construction, all works related to storm water collection and drainage systems, providing an outflow;
- all construction work related to sewage and water supply mains, as well as the installation of hydrants;
- all work related to laying out pedestrian trails, bike paths and buffer zones as well as landscaping;

By the same token, the term “municipal works” includes:

- a) costs related to project analysis, preparation of plans and specifications as well as technical recommendations;
- b) costs related to monitoring of works;
- c) costs related to surveying, staking out and topographic surveys
- d) costs related to the inspection of materials, including analysis and testing
- e) costs related to legal services
- f) all taxes, including provincial and federal sales taxes.

1.7 **Regular infrastructures or installations**

The terms “infrastructures” or “municipal equipment” refer to infrastructures or municipal equipment hereafter described, having the dimensions or clearance outline hereafter specified:

1.7.1 **street (including the curb)**

- a) local access
 - road allowance: 15 metres
 - pavement: 9 metres
- b) collector:
 - road allowance: 20 metres
 - pavement: 12.5 metres
 - sidewalk: 1.5 metres
- c) pedestrian walkway:
 - allowance 6.00 metres
- d) water main:
 - diameter 200 mm
- e) sanitary ducts:
 - diameter 300 mm
- f) storm sewer ducts:
 - diameter 450 mm
- g) various drainage works (ditches, pipes up to 1.2 metres, culverts and other similar works (if necessary)
- h) pumping station (if necessary)
- i) street lighting
- j) road signs
- k) postal kiosk (if necessary)

1.8 **Oversize**

The term “oversize” refers to all works having larger dimensions or clearance outlines than those of standard infrastructures or equipment.

1.9 **Municipality**

The term “Municipality” refers to the Municipality of Pontiac.

SECTION 2 : DISCRETIONARY POWER OF THE MUNICIPAL COUNCIL

The Council of the Municipality is responsible for planning the development of the territory and therefore has entire discretion at all times to decide of the appropriateness of making an agreement with regards to municipal works to service one or several properties or structures.

SECTION 3 : SCOPE

This by-law applies to the entire territory of Pontiac.

SECTION 4 : SUBJECT TO AN AGREEMENT

The issuance of a building or subdivision permit or certificate of authorization pertaining to any of the following categories of property or construction is subject to a prerequisite agreement between the applicant and the Municipality:

4.1 Properties and constructions subject to an agreement

This by-law applies to any land or construction not yet serviced by the range of municipal works.

4.2 Municipal works subject to an agreement

The municipal works subject to an agreement are infrastructures and installations consisting of water supply systems, storm and sanitary sewers, road works, sidewalks, pedestrian walkways and street lighting as well as all incidental and related work, including also the acquisition of immovable or right-of- ways required to complete the works ;

The agreement may also pertain to infrastructures and installations, wherever they may be, if they are required for servicing other immovable on the territory of the municipality.

SECTION 5 : THE MAKING OF AN AGREEMENT

- 5.1. The municipal council may entrust all or part of the works pertaining to municipal services to the applicant, according to the terms and conditions provided in this by-law.
- 5.2. An agreement must be made with the applicant prior to undertaking construction work pertaining to municipal services.
- 5.3. Being so, a building or subdivision permit, or a certificate of authorization or occupancy will not be issued to an applicant until such time as an agreement has been made in accordance with this by-law,
- 5.4. Construction work pertaining to municipal services is carried out in compliance with the standards and provisions respecting the deployment of public services.
- 5.5. The agreement must include especially the following elements:
 1. Designation of the parties;
 2. Description of the works and naming of the party responsible for their completion in part or in whole;
 3. Date by which the works must be completed by the permit or certificate holder, if applicable;
 4. Determination of the costs of the works to be completed by the permit or certificate holder;
 5. Penalty to be collected from the permit or certificate holder in case of delays in completing the assigned works;
 6. If applicable, the terms and conditions of payment by the permit or certificate holder for the cost of works and the interest fee for amounts due and payable;
 7. When applicable, the terms and conditions of remittance of the shared-cost contribution, payable by the beneficiaries of the works, by the Municipality

to the permit or certificate holder ; the terms and conditions of remittance of the shared-cost contribution must stipulate a deadline by which the Municipality must reimburse, if applicable, to the permit or certificate holder a contribution owed ;

8. Financial guarantees required from the permit or certificate holder.

SECTION 6 : TERMS AND CONDITIONS REGARDING COST- SHARING

The holder must assume 100 % of the cost of the work to be carried out according to the agreement except in the following situation:

- a) in the case where the Municipality requires an oversizing as defined in this by-law or when the construction of a pumping station, a retention basin or a surge station and related interception and collection facilities or any other similar equipment is necessary and these works or equipment benefit both the holder and persons other than the holder (beneficiary of works), the cost of the works to be carried out is shared between the holder and the beneficiaries of the works on a pro-rata basis of the benefit gained from the works or equipment.

SECTION 7 : MANAGEMENT OF THE WORKS

The Municipality may be the principal contractor, in which case the cost of the works is the cost submitted by the tenderer whose bid conforms and is approved by the Municipality, plus all costs which are not included in the bid but which are considered to be related to the municipal works.

The holder may be the principal contractor for the municipal works and, in this case, the cost of completing the works for which the Municipality is responsible, according to section 6 a), is deemed to be the cost estimated by the engineer mandated for the project and approved by the municipal council.

SECTION 8: TERMS OF PAYMENT

When the Municipality is the principal contractor the holder's contribution is payable in accordance with the terms provided in the agreement.

When the holder is the principal contractor, the Municipality's contribution, if applicable, is paid upon provisional acceptance of the portion of the works completed. A sum equivalent to 10% of the value of the works completed is held back by the Municipality.

Upon final acceptance, the Municipality will remit the portion of its contribution corresponding to the works completed since the provisional acceptance was issued, as well as the 10% holdback, upon remission of the financial guarantees, by the holder, required according with section 14.

SECTION 9 : CONSTRUCTION SCHEDULE

The applicant must provide a construction schedule for the works. This schedule must show the various stages of the project and specifically the following:

- a) filing date for the subdivision project plan, the topographic plan and any other document required for a project study;
- b) desired filing date for the project feasibility study pertaining to the watershed, if necessary;
- c) desired date for starting the municipal works;
- d) desired date for the street opening as a public street;
- e) if the applicant intends to do the municipal works in phases, the dates and timing of the various phases until the work is completed must be indicated;

SECTION 10 : APPROVAL OF THE DEVELOPMENT PLAN

Prior to the preparation of preliminary plans and specifications and signing an agreement, the applicant must have the project plan provided with his request for a subdivision permit approved by the Municipality. This approval is not to be considered as a confirmation of the issuance of a subdivision permit. The applicant must provide a topographic plan for the project as well as any other document required for the analysis of the project.

SECTION 11 : WATERSHED STUDY

Upon request from the planning department officer, a feasibility study of the project with respect to the watershed must be conducted at the applicant's expense. The applicant must mandate an engineer to conduct this study. The Municipality may at any time request any information related to this study from the mandated engineer.

SECTION 12 : PREPARATION OF PLANS AND SPECIFICATIONS AND SITE SUPERVISION

a) The following rules apply when the Municipality is the principal contractor:

Following the approval of the project plan by the Municipality and upon receipt from the applicant of a sum of money or an irrevocable bank letter of credit for an amount to be determined upon signing of the agreement, the Municipality mandates:

- an engineering consulting firm for the preparation of plans and specifications and site supervision.
- a laboratory for the geotechnical site investigation, analysis and tests
- a laboratory for the televised inspections, if needed.

The coordination is done by the Municipality. A first draft of the plans and specifications will be submitted to the applicant at a coordination meeting scheduled by the Municipality for an information and project status update. The draft is submitted for the purpose of informing the applicant and the Municipality of the scope of the municipal works required. This draft is a prerequisite to making an agreement.

The plans and specifications are the property of the Municipality who will provide a copy to the applicant

The deposit is used to pay engineering and laboratory costs in part or in whole. The Municipality will not reimburse any interests on this sum. Furthermore, if the amount deposited is insufficient, the applicant must make up the difference between the amount deposited and the actual cost.

b) When the applicant is the principal contractor, he mandates:

- an engineering firm for the preparation of plans and specifications, and site supervision, amongst the engineering firms included on a list produced by the Municipality;
- a laboratory for a geotechnical study, analysis and tests;
- a laboratory for televised inspections.

The applicant must have the plans and specifications approved in stages, by the Municipality.

SECTION 13 : SIGNATURE OF AN AGREEMENT

The applicant who wishes to carry out a project must enter into an agreement with the Municipality and sign said agreement within 12 months of the submission of preliminary plans and specifications, in default of which it is deemed that the applicant has refused to sign the agreement and the Municipality keeps the deposit in accordance with section 12, up to the maximum of expenses it incurred to carry out the project.

The plans and specifications, notices of modifications, inspection reports, analysis and tests are binding upon the holder and are considered the Municipality's requirements to take ownership of the public services.

The holder must :

- at all times, allow access to structures or works to be inspected and tested ;
- accommodate inspections and tests;
- restore structures and works that have been altered due to inspections and tests ;
- assume the cost of works carried out to expose and restore structures and works that were covered prior to the required inspections and tests carried out and approved by the authorized engineer.

SECTION 14 : FINANCIAL GUARANTEES

In order to guarantee the proper fulfilment of the holder's each and every obligation, the applicant must provide, at the time of signing the agreement or, at the latest, at the time the certificate of authorization is issued by the Québec Ministry of Environment, the following guarantees, of which the option, the amount and the type are specified in the agreement:

a) when the Municipality is the principal contractor, a letter from a bank confirming an irrevocable bank credit or another similar form of payment item issued by an institution duly authorized to do so within the province of Québec, made payable to the Municipality, and cashable upon request from the Municipality to the financial institution;

b) when the holder is the principal contractor, a performance bond as well as a bond guaranteeing the total payment of the labour and materials, both bonds to be issued by an institution duly authorized to issue a letter of indemnity within the province of Québec. The Municipality must be designated as the beneficiary of these bonds;

and

a maintenance bond valid for two years beginning on the date of the final acceptance of the works.

The municipal works may not begin prior to signing the agreement and the presentation of the financial guarantees except for the maintenance bond which is submitted prior to the transfer of the street.

In the case where there is a refusal to provide the required guarantees within the specified time limit, it is deemed that refuses to make an agreement pertaining to municipal works and the Municipality retains the amount deposited, if need be, in accordance with section 12, up to the maximum of expenses it incurred to carry out the project.

SECTION 15 : RESPONSIBILITY

When the holder is the principal contractor, he must agree to indemnify and hold the Municipality harmless from any claim whatsoever which may result from the execution of works and agree to take up the defence on its behalf in any lawsuit.

SECTION 16 : CONTRIBUTION TO A SPECIAL FUND FOR PARKS, PLAYGROUNDS AND NATURAL AREAS

If a development project is to be completed in several stages and the parcel of land to be transferred as a park, playground or natural area, in accordance with the subdivision by-law, is included in one of the later stages not included in the subdivision plan, the holder must remit either in money or by way of a bank letter of credit, an amount equivalent to the price of the land to be transferred according to the subdivision by-law in force for the property to be transferred. The holder must also agree to transfer the properties when developing the later stage. If the later stage of the development is not carried out within the scheduled time frame, the Municipality requires the transfer or keeps the money as compensation and deposits it in the special fund for parks, playgrounds and natural areas.

SECTION 17 : TRANSFER OF A STREET

When the Municipality is the principal contractor, the holder agrees to transfer free of charge to the Municipality, the street or streets described in the agreement, within 30 days of signing this agreement, by notary, as well as pedestrian walkways, bike paths and other required right-of-ways. A draft deed must be submitted to the Municipality within 15 days of signing the agreement.

When the holder is the principal contractor, he must transfer free of charge to the Municipality, by notarized agreement, the street or streets described in the agreement, as soon as the provisional or final acceptance is received by the Municipality and the guarantees have been submitted. Furthermore, the holder must provide a document certifying that the professional fees have been paid.

SECTION 18 : SHARED-COST CONTRIBUTION FROM A BENEFICIARY OTHER THAN THE DEVELOPER

If in pursuance of an agreement, the construction of municipal works benefits another person, the holder assumes the costs and the Municipality agrees to not collect any remittance from the beneficiaries involved.

SECTION 19 : JOINT AND SEVERAL AGREEMENT

In the case where there is more than one applicant or holder, each applicant or holder must make a joint and several agreements with the others and the Municipality for each and every obligation stipulated in this by-law or in the agreement.

SECTION 20 : PENALTY

In the case of a delay by the holder in carrying out the municipal works he is responsible for, according to the schedule provided in the plans and specifications, the Municipality may exercise its rights under the terms of the financial guarantees provided by the holder.

SECTION 21: COMING INTO FORCE

This by-law will come into force following the completion of formalities as provided by the *Land Use Planning and Development Act* (L.R.Q., chapter A-19.1) and cannot be amended save by another by-law in accordance with the provisions of said Act.

GIVEN IN PONTIAC (QUEBEC), this 24th day of October, *two thousand and twelve*.

Edward J. McCann
Mayor

Sylvain Bertrand
Director General / Secretary-treasurer