

**TOWNSHIP OF SOUTH FRONTENAC  
BY-LAW 2021-26**

**BEING A BY-LAW TO AUTHORIZE THE MAYOR AND THE CLERK TO EXECUTE A SITE PLAN AGREEMENT BETWEEN THE CORPORATION OF THE TOWNSHIP OF SOUTH FRONTENAC AND MOBILE KITCHENS CANADA INC.**

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**WHEREAS** a Site Plan and Site Plan Agreement have been prepared to the satisfaction of the Township of South Frontenac;

**NOW THEREFORE THE CORPORATION OF THE TOWNSHIP OF SOUTH FRONTENAC BY ITS COUNCIL, HEREBY ENACTS AS FOLLOWS:**

1. THAT the Mayor and the Clerk are hereby authorized to execute a Site Plan Agreement between the Corporation of the Township of South Frontenac and Mobile Kitchens Canada Inc., a copy of which is attached hereto forming part of this By-law.
2. THAT the Agreement shall be registered on title of the property described as 3790 Davidson Road, Part 1 on 13R13143, Part 1 and 2 on 13R19824, Part 1 on 13R21348; Part of Lot 19, Concession 2, (formerly in the geographic Township of Loughborough) now the District of Storrington, Township of South Frontenac.
3. THIS BY-LAW shall come into force and effect in accordance with Section 41 of the Planning Act 1990, either upon the date of passage or as otherwise provided by the said Section 41.

**Dated at the Township of South Frontenac this 18<sup>th</sup> day of May, 2021.**

**Read a first and second time this 18<sup>th</sup> day of May, 2021.**

**Read a third time and finally passed this 18<sup>th</sup> day of May, 2021.**

**THE CORPORATION OF THE  
TOWNSHIP OF SOUTH FRONTENAC**

  
\_\_\_\_\_  
Ron Vandewal, Mayor

  
\_\_\_\_\_  
Angela Maddocks, Clerk

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## SITE PLAN CONTROL AGREEMENT

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THIS AGREEMENT made in triplicate this 20<sup>th</sup> day of May, 2021.

**BETWEEN:**

**MOBILE KITCHENS CANADA INC.**

hereinafter referred to as the "OWNER"

OF THE FIRST PART

- and -

**THE CORPORATION OF THE TOWNSHIP OF SOUTH FRONTENAC**

hereinafter referred to as the "Municipality"

OF THE SECOND PART

WHEREAS the Owner has made an application to the Municipality for permission to develop those lands more particularly described on Schedule "A" attached hereto (the "Owner's Lands");

AND WHEREAS the Council of The Corporation of the Township of South Frontenac passed Site Plan Control Area By-law No. 2003-25 for the approval of site plans and designating industrial properties as a Site Plan Control Area pursuant to the Planning Act, as amended;

AND WHEREAS the Council of The Corporation of South Frontenac has approved those plans for the development of the Owner's Lands set out in Schedule "C" to this Agreement (the "Site Plan Drawings"), subject to the Owner entering into a Site Plan Control Agreement with the Municipality;

AND WHEREAS the Corporation of the Township of South Frontenac is authorized to enter into this agreement and register it against the title to the Lands pursuant to section 41 of the Planning Act;

NOW THEREFORE WITNESSETH that in consideration of the mutual covenants and agreements contained herein, the parties agree each with the other as follows:

- 1) The Owner shall, at its sole risk and expense and to the satisfaction of the Municipality, develop the Owner's Lands in accordance with the Site Plan Drawings, and shall construct, use, and maintain those facilities and works set out in the Site Plan Drawings in accordance with the terms of this Agreement. The Site Plan Drawings listed in Schedule "C" are hereby incorporated by reference into this Agreement. The originals of the Site Plan Drawings are on file in the offices of the Municipality and shall govern in the event of any dispute.

2) The following Schedules are attached to and form part of this Agreement:

<b>Schedule "A"</b>	-	Description of Lands
<b>Schedule "B"</b>	-	Security for Works
<b>Schedule "C"</b>	-	Site Plan Drawings
<b>Schedule "D"</b>	-	Grants of Easement and Other Public Lands
<b>Schedule "E"</b>	-	Municipal Conditions
<b>Schedule "F"</b>	-	Approving Authorities and Agencies

- 3) The Owner shall comply with any amendments, additions or deletions to the Site Plan Drawings that the Municipality may reasonably require after the date of this Agreement in order to better ensure the proper and orderly development of the Owner's Lands and the construction of the works and facilities required by this Agreement.
- 4) Without limiting the generality of the Owner's obligations set out in clause 1 of this Agreement, the Owner covenants and agrees to develop the Owner's Lands in accordance with those municipal conditions set out in Schedule "E" to this Agreement.
- 5) Prior to the commencement of any construction, the Owner agrees to obtain all other permits and approvals required by any other agency or authority having jurisdiction, including, without limiting its generality, those agencies and authorities set out in Schedule "F" to this Agreement.
- 6) The Owner shall deliver to the Municipality those deeds or grants of easement or rights-of-way set out on Schedule "D".
- 7) The Municipality acknowledges and agrees that a cash-in-lieu of parkland payment is not required for this development.
- 8) As security for the performance of the Owner's obligations under this Agreement, the Owner shall deposit with the Treasurer of the Municipality an irrevocable letter of credit of a Canadian chartered bank or other financial security in a form satisfactory to the Municipality in accordance with the requirements in Schedule "B". The Municipality shall not draw down on the letter of credit or other security unless the Owner is in default in the performance of an obligation under this Agreement and such default continues for more than fifteen (15) days after the Municipality delivers written notice to the Owner requiring the Owner to remedy the default.
- 9) Upon completion of all works and facilities and prior to the release of any securities, the Owner shall deliver to the Municipality the certificate of a consulting engineer licensed under the Professional Engineers Act (Ontario) confirming that all works and facilities have been installed in accordance with this Agreement.
- 10) Except as may otherwise be provided for in this Agreement, the Owner shall complete the construction of all works and facilities within six (6) months of the date of occupancy of the building; but in cases of undue hardship, the Municipality may extend in writing any time for completion required by this Agreement.
- 11) If any lien is claimed pursuant to the Construction Lien Act for the supply of services or material in connection with the construction or maintenance of any portion of the works or facilities located on a public street or highway or any lands owned by the Municipality or any other public authority, the Owner shall be considered in default under this Agreement and shall continue to be in default until all liens are discharged,

and the Municipality may, in its absolute discretion, use the security deposited by the Owner to pay into court any amounts required to discharge all liens plus costs.

- 12) If any portion of the Works or facilities will be located on a public street or highway or any lands owned by the Municipality or any other public authority, the Owner shall, as a condition of this Agreement, keep in force until such works or facilities have been approved by the Municipal Engineer a comprehensive plan of public liability and property damage insurance acceptable to the Municipality that provides insurance coverage in respect of any one occurrence to the limit of at least five million dollars (\$5,000,000) exclusive of interest and costs, against loss or damage resulting from bodily injury to, or death of one or more persons and loss of or damage to property. The policy shall name the Municipality as a named insured.
- 13) The policy shall provide coverage against all claims for all damages or injury including death to any person or persons or damage to any property of the Municipality or any other public or private property resulting from or arising out of any act or omission on the part of the Owner or any of its servants or agents during the construction or maintenance of the works. The policy shall include completed operations coverage liability, blanket written contractual liability with respect to non-owned licensed vehicles and shall have no exclusion pertaining to shoring, blasting (unless a separate certificate of insurance for blasting is provided prior to the start of blasting), excavating, underpinning, demolition, pile driving, caisson work and work below ground surface including tunnelling and grading. The issuance of a policy of insurance shall not be construed as relieving the Owner from responsibility for other or larger claims, if any, for which the Municipality may be held responsible.
- 14) The Owner shall provide the Municipality with a Certificate of insurance in a form satisfactory to the Municipality together with such proof as the Municipality may require that all premiums on the policies of insurance have been paid and that they are in full force and effect. If the Owner fails to pay premiums or otherwise keep the policies in force, the Municipality may pay premiums or take out additional policies as it considers necessary and the Owner shall pay all costs.
- 15) In the event the Owner is in default in the performance of any obligation under this Agreement and such default continues more than fifteen (15) days after the Municipality delivers written notice to the Owner requiring the Owner to remedy the default, the Municipality may, without further notice to the Owner, do such thing at the Municipality's expense as it may reasonably require necessary to remedy the default, and the Municipality may recover the expense incurred in doing such thing by action or the same may be recovered in like manner as municipal taxes in accordance with the provisions of Section 446 of the Municipal Act, 2001, S.O., 2001, C. 25, as amended.
- 16) Time shall be of the essence of this Agreement and of any extension of time that may be agreed upon by the parties.
- 17) The Municipality will make reasonable efforts with the number of personnel available to it to inspect the works and facilities to be constructed in accordance with the Site Plan Drawings and this Agreement, but the Owner shall indemnify and save harmless the Municipality, its servants, agents and contractors from any responsibility or liability arising directly or indirectly from any failure or delay in completing such inspections.

- 18) The Owner hereby grants to the Municipality, its servants and contractors, a licence to enter the Owner's Lands during normal operating hours for the purpose of inspecting the works and facilities and to perform any work arising from or the result of any default by the Owner under this Agreement.
- 19) It is the intent of this Agreement that the Municipality shall not incur any expense for the development of the Owner's Lands and every obligation of the Owner under this Agreement shall be deemed to include the words "at the expense of the Owner", unless specifically stated otherwise.
- 20) The Owner agrees to pay the legal, engineering, landscape architectural, planning and administrative costs incurred by the Municipality to process the Site Plan Drawings, including but not limited to, the preparation of this Agreement and all plans and specifications, and the supervision and inspection of the Works.
- 21) All invoices, costs and expenses received or incurred by the Municipality and payable by the Owner shall be paid within thirty (30) days of the Municipality's invoice or demand for payment to the Owner, failing which the Owner shall be in default under this agreement and shall continue in default until payment plus all accrued interest is made in full.
- 22) Interest shall be paid by the Owner on all overdue amounts at the same rate per annum and calculated in the same manner as the Municipality charges on overdue municipal taxes and any payments received shall be applied first on account of accumulated interest and then on the outstanding amount.
- 23) The Owner consents to the registration by the Municipality at the Owner's expense of this Agreement against the title to the Owner's Lands and, in accordance with s. 41(10) of the Planning Act, all of the terms and conditions of this Agreement may be enforced against the Owner and any and all subsequent owners of the Owner's Lands.
- 24) The Owner shall ensure that the requirements of this Agreement and the Site Plan Drawings are brought to the attention of its contractors, employees and workers prior to the start of any construction.
- 25) All covenants in this Agreement shall be construed as being joint and several and that, when the context so requires or permits, the singular number shall be read as if the plural were expressed, and the masculine gender as if the feminine or neuter gender, as the case may be, were expressed.
- 26) Notwithstanding any other provision to the contrary, this Agreement shall, at the option of the Municipality, lapse and be of no further force and effect if the building permit expires or is revoked, or if construction of the building shown on the Site Plan Drawings is not commenced within two (2) years of the date of this Agreement.
- 27) The Owner covenants and agrees that nothing in this Agreement releases the Owner from the obligation to comply with the provisions of all other by-laws of the Municipality that may now or in future be in effect.
- 28) Any dispute between the parties with respect to this Agreement shall, at the request of a party, be submitted to arbitration pursuant to the Arbitrations Act and the decision of the arbitrator or, if more than one, the decision of a majority shall be final and binding on the parties.

- 29) Each party shall pay its own costs of the arbitration and shall share equally the costs of the arbitrator(s).
- 30) The Owner agrees that if any section, clause or provision of this Agreement, is for any reason declared by a Court of competent jurisdiction to be invalid the same shall not affect the validity of the Agreement as a whole or any part thereof, other than the section, clause, or provision so declared to be invalid and it is hereby declared to be the intention that all the remaining sections, clauses or provisions of this Agreement shall remain in full force and effect, notwithstanding that one or more provisions thereof shall be declared to be invalid.
- 31) This Agreement shall enure to and be binding upon the parties hereto, and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have by the hands and seals executed this agreement as of the first date set out above.

SIGNED, SEALED AND DELIVERED:

**THE CORPORATION OF THE TOWNSHIP OF  
SOUTH FRONTENAC**

  
\_\_\_\_\_  
Ron Vandewal – Mayor

  
\_\_\_\_\_  
Angela Maddocks – Clerk

*We have authority to bind the Corporation*

**MOBILE KITCHENS CANADA INC.**

  
\_\_\_\_\_  
David Craig - President

*I have authority to bind the Corporation*

**SCHEDULE "A"****DESCRIPTION OF LANDS****Legal Description**

Part 1 on 13R13143, Part 1 and 2 on 13R19824, Part 1 on 13R21348; Part of Lot 19, Concession 2, District of Loughborough, Township of South Frontenac, County of Frontenac

**Civic Address**

3790 Davidson Road

PIN 36294-1251

**SCHEDULE "B"****SECURITY FOR WORKS**

In accordance with clause 8 of this Agreement, the Owner shall deposit with the Treasurer of the Municipality at the time of entering this Agreement a letter of credit or other security acceptable to the Municipality in the amount \$46,500.00 as security for the performance of all the Owner's obligations under this Agreement.

The parties acknowledge and agree that the amount of the security is based on the Estimated Cost of the Site Works dated October 10, 2019 prepared by Forefront Engineering Inc., attached as Appendix 1 to this Schedule.

Upon completion to the satisfaction of the Municipality of the works and facilities to be constructed in accordance with this agreement and the performance by the Owner of all other obligations under this Agreement, and upon receipt of the certificate of the consulting engineer required by clause 9 of this Agreement, the security or any balance thereof remaining shall be returned to the Owner.

## Appendix 1 to Schedule "B"



FOREFRONT Engineering Inc.  
1329 Gardiners Road, Suite 210  
Kingston, ON, Canada K7P 0L8

613 634 9009 tel  
888.884.9392 fax

October 10, 2019

David Craig  
MKC Mobile Kitchens Canada  
3790 Davidson Road  
Inverary, ON K0H 1X0

**Project:** Mobile Kitchens  
**Regarding:** Site Plan – Security for works

Dear Mr. Craig,

As requested by the Township, we have prepared a cost estimate for the site works for the proposed Mobile Kitchens re-development with a breakdown of the site works below.

Mobile Kitchens Site Works		
Site Works Items	Estimated Cost	Security (50% / 100%)
<b>On-site (50% security required)</b>		
Grading	\$20,000	\$10,000
Granulars	\$30,000	\$15,000
Ditching	\$10,000	\$5,000
Septic modifications	\$5,000	\$2,500
Topsoll, seed, sod, landscaping	\$10,000	\$5,000
<b>Total On-site</b>	<b>\$75,000</b>	<b>\$37,500</b>
<b>Off-site (100% security required)</b>		
Asphalt at entrance	\$5,000	\$5,000
Boulevard reinstatement	\$2,000	\$2,000
Rip-rap	\$2,000	\$2,000
<b>Total Off-site</b>	<b>\$9,000</b>	<b>\$9,000</b>
<b>Total Securities</b>		<b>\$46,500</b>

Please contact this office if you require any additional information.

Sincerely,  
**FOREFRONT ENGINEERING INC.**

Doug Prinsen, P.Eng.  
Project Manager  
Doug.Prinsen@Forefronteng.ca

**SCHEDULE "C"****SITE PLAN DRAWINGS**

**Dwg No. SP Site Plan**, Mobile Kitchens Canada, 3790 Davidson Road, Scale 1:300, Date March 2020, Prepared by Forefront Engineering Inc., Rev. 4 As Per Agency Comments, 20/04/2021

**Dwg No. D1 Details**, Mobile Kitchens Canada, 3790 Davidson Road, Scale 1:300, Date March 2020, Prepared by Forefront Engineering Inc., Rev. 4 As Per Agency Comments, 20/04/2021

**SUPPORTING STUDIES**

**3790 Davidson Road Stormwater Management**, Date February 11, 2021, Prepared by Forefront Engineering Inc., Stamped by Doug Prinsen March 22, 2021

**Acoustic Assessment Report**, Mobile Kitchens, 3790 Davidson Road, Date February 22, 2021, Prepared by J.E. Coulter Associates Limited

**All drawings and studies incorporated by reference into this Agreement are on file in the Municipal Offices and shall govern in the event of any dispute.**

**SCHEDULE "D"**

GRANTS OF EASEMENT AND OTHER PUBLIC LANDS

None required.

**SCHEDULE "E"****MUNICIPAL CONDITIONS**

The Owner further covenants and agrees to develop the Owner's Lands in accordance with the following Municipal Conditions:

1. The Owner shall ensure that all exterior lighting and signs shall be installed in accordance with the Site Plan Drawings and direct any light emitted from them downwards and away from adjacent uses or streets in accordance with the approved plans. All exterior lighting is required to be dark sky compliant.
2. The Owner agrees to construct all exterior garbage storage areas as indicated on the approved Site Plan.
3. The Owner agrees to construct all works and facilities in a good and workmanlike manner and, where applicable, according to the Municipality's normal standards and specifications.
4. The Owner agrees to take all reasonable precautions to reduce dust, noise and other nuisances and to ensure public safety during the development of the Owner's Lands and construction of the works and facilities required by this Agreement;
5. The Owner agrees to complete all landscaping within six months of obtaining an occupancy permit from the Chief Building Official.
6. The Owner shall be responsible for installing and maintaining all sediment and erosion controls in accordance with the approved Site Plan Drawings and best management practices prior to and during construction activities.
7. The Owner agrees to construct and maintain all storm water facilities in accordance with the approved Storm Water Management Report (Forefront Engineering Inc., February 11, 2021, stamped by Doug Prinsen March 22, 2021) to the satisfaction of the Municipality.
8. The Owner agrees to implement noise attenuation measures, in accordance with the approved Acoustic Assessment Report (J.E. Coulter Associates Limited, February 11, 2021), including but not limited to, mounting any ventilation equipment on the west façade of the building out of sight of the residences, constructing a minimum 1.5 metre high acoustic fence on top of the existing berm along the property's eastern edge, and constructing a 2.0 metre high acoustic fence where the existing berm tapers off at the southern edge of the site.
9. The Owner agrees to obtain the approval of Hydro One Networks Inc prior to connecting to or relocating existing hydro services.
10. The Owner agrees to deliver an AutoCAD reproducible CD suitable to the Municipality containing the approved Site Plan Drawings. The Owner agrees to further deliver to the Municipality an electronic copy of the "as-built" drawings in both AutoCAD and PDF formats within six months of the completion of each phase of the works, to the satisfaction of the Municipality.

11. The Owner agrees to provide a letter from a qualified professional engineer certifying in a form satisfactory to the Municipality that the storm water management system located on the Owner's Lands has been constructed in accordance with the Site Plan Drawings.
12. The Owner agrees to develop the Owner's Lands generally in accordance with the Municipality's site plan control guidelines in effect on the date of this agreement, a copy of which the owner hereby acknowledges receiving.
13. The Owner shall ensure that any snow removed from the parking lot areas shall be stored within the designated areas identified on the Site Plan Drawings. Should the designated areas be insufficient, any additional snow shall be disposed of off-site and not in designated parking areas.
15. The Owner is required to obtain a permit for construction of the sewage system from the Municipality.
16. The Owner is required to ensure that the parking lot and all site plan requirements are completed prior to the release of securities.
17. The Owner is required to submit a grading security in the amount of \$46,500.00 prior to the issuance of a building permit. The security shall be released upon the approval of a certificate stamped by the Owner's Engineer confirming that grading generally conforms to the Site Plan. If the Municipal Engineer rejects a lot grading certificate, the cost for any further review shall be deducted from the deposit.
18. The Owner is required to ensure that there shall be no open storage of goods and materials within the 22 metres of residential properties, in accordance with Zoning By-law No. 2003-75.
19. The Owner is required to apply for and obtain any required approvals under the Planning Act for the future building addition identified on the approved Site Plan prior to the Municipality issuing a building permit for the future building addition.

**SCHEDULE "F"****APPROVING AUTHORITIES AND AGENCIES**

The Owner shall be responsible for obtaining all permits and approvals required for the development of the Owner's Lands from all applicable agencies and authorities having jurisdiction, including but not limited to the following:

<b><u>APPLICABLE LAW</u></b>	<b><u>AGENCY</u></b>
1. The Ontario Building Code	The Township of South Frontenac Building Department 4432 George Street, PO Box 100 Sydenham, ON K0H 2T0 Phone: (613) 376-3027
2. Sign Permit	The Township of South Frontenac Building Department 4432 George Street, PO Box 100 Sydenham, ON K0H 2T0 Phone: (613) 376-3027
3. Entrance Permit	The Township of South Frontenac Public Services Department 2490 Keeley Road, PO Box 100 Sydenham, ON K0H 2T0 Phone: (613) 376-3027
4. O. Reg. 148/06 Permit for Works in Regulated Areas	Cataraqui Conservation 1641 Perth Road, PO Box 160 Glenburnie, ON K0H 1S0 Phone: (613) 546-4228
5. Labour Approvals	Ministry of Labour 51 Heakes Lane Kingston, ON K7M 9B1 Phone: (613) 545-0989
6. Public Water Connection Approvals	Utilities Kingston 85 Lappan Lane, P.O. Box 790 Kingston, ON K7L 4X7 Phone: (613) 546-0000
7. Ontario Hydro	Ontario Hydro 1037 Sydenham Road, P.O. Box 910 Kingston, ON K7L 4Y1 Phone: (800) 369-7536

**8. Bell Canada**

**Bell Canada**  
450 Princess Street  
Floor 2, PO Box 460  
Kingston, ON K7L 1C2  
Phone: (613) 389-4000

**9. Cable**

**TVCOGECO Kingston**  
170 Colborne Street  
Kingston, ON K7L 5M7  
Phone: (613) 544-6311