TO: Chair and Members Planning Committee

COMMITTEE DATE: February 18, 2014

SUBJECT/REPORT NO: City of Hamilton Standard Form Special Sewer Service Agreement and Special Water Service Agreement (PED14025) (City Wide)

WARD(S) AFFECTED: City Wide

PREPARED BY: Mark Inrig (905) 546-2424 Ext. 4303

SUBMITTED BY: Joe-Anne Priel Acting General Manager Planning and Economic Development Department

SIGNATURE:

RECOMMENDATION

(a) That the form and terms of a Special Water Service Agreement, attached as Appendix “A” to Report PED14025, and a Special Sewer Service Agreement, attached as Appendix “B” to Report PED14025, be adopted, as the City’s standard form agreements to carry out installation of temporary service connections to lands directly abutting public highways where no sewers or watermains exist as permitted by the City’s Sewer and Drain By-law and Waterworks By-law, and pursuant to the authority granted by Council in adopting Item 47(c) of the Committee of the Whole minutes on August 22, 2001, authorizing the City to enter into and execute such agreements.

(b) That the Acting General Manager of Planning and Economic Development, or designate, be authorized to make amendments to the standard form Special Water Service Agreement, attached as Appendix “A” to Report PED14025, and Special Sewer Service Agreement, attached as Appendix “B” to Report PED14025, without the need for Council approval where such amendments are deemed to be of a “housekeeping” nature reflecting changes in municipal policy, organizational structure and Provincial legislation, provided such amendments do not change the intent or principles of the agreements.
EXECUTIVE SUMMARY

After conducting a recent review of the City’s Special Water Service Agreement and Special Sewer Service Agreement, the City’s Legal Services Division has advised that these agreements lack sufficient form and content by today’s standards to properly protect the City and clearly define the role and responsibility of a property owner regarding installation of temporary service connections. Without Legal Services’ endorsement of the agreements, the City Clerk’s Division cannot consent to execution of the agreements by the City’s signing officers. This, in effect, has rendered the City with no special service agreements for temporary service connections, which are permitted under its Sewer and Drain By-Law and Waterworks By-Law.

Staff believes there is benefit to maintaining the City’s Special Water Service and Sewer Service Agreements and have enhanced these agreements in consultation with and under the direction of the City’s Legal Services Division. The agreements attached as Appendix “A” and “B” are hereby presented to Council for approval as the City’s standard form agreements for installation of temporary sewer and water service connections for lands that are within the urban service boundary and do not have an abutting sewer or watermain but are within reasonable proximity to an existing sewer or watermain.

Alternatives for Consideration – Page 4

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND

The City’s current standard form Special Water Service Agreement and Special Sewer Service Agreement were developed in the late 1970s and early 1980s, respectively by the former Region of Hamilton-Wentworth. These agreements were created pursuant to the former Regional Sewer and Drain By-law and Waterworks By-law which allowed temporary service connections from a nearby sewer or watermain to lands where no sewer or watermain existed in the road allowance abutting a property, provided the land owner entered into and registered a special service agreement with the municipality. Under the terms of the agreements, when a permanent sewer or watermain was constructed abutting the owner’s lands, the temporary connection was to be removed and replaced with a permanent connection to the new sewer or watermain.
With the exception of minor adjustments to reflect current corporate structure, the form and terms of both special service agreements has remained unchanged since their inception. From a recent review of the agreements, the City’s Legal Services Division advised there is insufficient content, by today’s standards, to properly protect the City and clearly define a property owner’s role and responsibilities with respect to installation and maintenance of a temporary service connection. The Legal Services Division has recommended enhancements to the agreements in the following areas:

- the property owner’s responsibility for construction and maintenance of the temporary service;
- the property owner’s responsibility for restoration of the City’s right-of-way;
- clarification regarding the ownership of the temporary service connection;
- indemnification of the City regarding any liability associated with installation and maintenance of the temporary service connection;
- the owner’s responsibility for removal of the temporary service connection and installation of a permanent connection to the permanent sewer and/or watermain when constructed in the future; and,
- the owner’s responsibility for payment of all sewer/water costs assessed against the property for the new sewer/watermains.

Development staff has completed enhancements to both special service agreements and the Legal Services Division has approved the revised form and content. Staff are recommending that the agreements attached as Appendix “A” and “B” to Report PED14025 be adopted by Council as the City’s standard form for Special Sewer Service Agreement and Special Water Service Agreement as contemplated by, and pursuant to, Sewer and Drain By-law 06-026 and Waterworks By-law R84-026 and the authority to execute such agreements as approved by Council on August, 22, 2001 in adopting Item 47(c) of the Committee of the Whole minutes.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The Special Water Service Agreement, attached as Appendix “A” to Report PED14025, and the Special Sewer Service Agreement, attached as Appendix “B” to Report PED14025, are the City’s standard form agreements to enable installation of temporary private service connections for lands that do not directly abut a municipal sewer or watermain as permitted by the City’s Waterworks By-Law R84-026 and Sewer and Drain By-law 06-026.

RELEVANT CONSULTATION

Enhancements to the City’s Special Sewer Service Agreement and Special Water Service Agreement were carried out by Growth Management Division staff under the direction of, and in consultation with, the City’s Legal Services Division.
ANALYSIS AND RATIONALE FOR RECOMMENDATION

The City’s Legal Services Division was unable to endorse the terms and content of the City’s existing Special Sewer Service and Special Water Service Agreements. For this reason the City Clerk’s Division are unable to recommend execution of the agreements by the City’s signing officers. Therefore, in essence, the City has no special service agreements to accommodate property owners whose lands meet the criteria for installation of temporary service connections in accordance with the authority granted by Council on August 22, 2001 and as contemplated by the City’s Sewer and Drain By-law and Water Works By-law. Staff believes there is benefit to both the public and the City in maintaining the use special service agreements for temporary service connections.

ALTERNATIVES FOR CONSIDERATION

Upon review of the use of temporary service connections, staff considered two alternatives.

1. The City could suspend the practice of allowing temporary service connections and discontinue the use of special service agreements; or,

2. The City could enhance the special service agreements to better reflect current requirements of the City regarding a land owner’s responsibility for installation, maintenance and ownership of temporary service connections.

Staff felt that the first alternative is far too rigid and unjustifiable considering there is insufficient documentation to build an argument that would support any argument claiming the use of temporary service connections is a hindrance to the municipality. In addition, Alternative 1 would require amendments to the City’s Sewer and Drain By-law and Water Works By-law.

There is a benefit to be realized by property owners and the City in allowing the use of temporary service connections to lands within the urban boundary. Temporary service connections raise the level of municipal service experienced by a property owner and avoid potential health risks to the municipality that can occur with failing cisterns and septic tanks. For this reason staff recommend Alternative 2.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1
A Prosperous & Healthy Community

*WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.*
Strategic Objective

1.2 Continue to prioritize capital infrastructure projects to support managed growth and optimize community benefit.

Strategic Priority #2

Valued & Sustainable Services

*WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.*

Strategic Objective

2.3 Enhance customer service satisfaction.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED14025 – Special Water Service Agreement
Appendix “B” to Report PED14025 – Special Sewer Service Agreement

MI/mah
SPECIAL WATER SERVICE AGREEMENT

Dated this day of , 20 .

BETWEEN:

(hereinafter referred to as the "Owner")

OF THE FIRST PART

- and -

CITY OF HAMILTON

(hereinafter referred to as the "City")

OF THE SECOND PART

WHEREAS the Owner is the registered owner in fee simple of the land (more particularly described in Schedule "A", attached hereto) which abuts the side of , in the former , now in the City of Hamilton, Ontario and in which said road there is no watermain;

AND WHEREAS the said Owner has applied to the City for permission to connect a temporary private water service connection from said land to the existing watermain located on , in the former , now in the City of Hamilton, Ontario;

AND WHEREAS on the 22nd day of August 2001, the Council of the City approved of Item 47 (c) of the Committee of the Whole and thereby granted such permission upon the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the mutual covenants hereinafter contained, the City and the Owner hereby mutually covenant and agree each with the other as follows:

1. The Owner shall, upon signing this Agreement, make application in the form provided by the City for permission of the City to make a temporary connection to the City's watermain located on , in the former , now in the City of Hamilton, Ontario (hereinafter referred to as "the said watermain") from the Owner's land as described on Schedule "A" to this Agreement.

2. Upon approval of the application referred to in Section 1 herein by the City, the City agrees to issue a permit to allow the Owner to connect to the said watermain.

3. The Owner agrees to comply with all conditions, requirements, and terms of the said permit and pay all applicable fees related to issuance of such permit and administration of this Agreement by the City, all in accordance with the City's Tariff of Fees By-law, as amended.

4. The Owner agrees to obtain at his own expense any easements required to facilitate the temporary water service connection aforesaid.
5. The Owner covenants and agrees to:
   a) construct the temporary water service connection pursuant to By-law R84-026, as amended from time to time and in accordance with good engineering practices, City standards and specifications; and,
   b) restore all City roads, curbs, sidewalk and boulevards to the satisfaction of the Senior Director of Growth Management Division.

6. Until the temporary water service connection permitted by this Agreement is removed, it is understood and agreed between the parties to this Agreement that the Owner and its successors and assigns of the Land is:
   a) the sole owner of the temporary water service connection; and,
   b) responsible to keep the temporary water service connection in compliance with the City’s by-laws, including the payment of water rates; and,
   c) responsible to maintain operation of the temporary water service connection and carry out all associated repairs pursuant to By-law No. R84-026, as amended from time to time and in accordance with good engineering practices, City standards and specifications, including replacement of the temporary water service connection, if necessary to maintain operation; and,
   d) responsible and required to obtain all necessary permits to carry out any repair or replacement required to maintain operation of the temporary water service connection; and,
   e) responsible for all costs, expenses and claims relating to operation and maintenance of the temporary water service connection.

7. The City agrees to provide water service capable only of servicing the existing zoned uses and buildings on the Owner's land at the time a permit is issued.

8. The Owner covenants and agrees:
   a) not to petition against or oppose the construction of any City services including any sewer or watermain in any highway upon which any part of the Owner’s land abuts; and,
   b) that if the Owner’s name or the name of any of the Owner’s successors in title appear on any such petition, the same may be disregarded in determining the number of owners petitioning against any such proposed work and in determining the value of the lands to be specially assessed.

9. The Owner agrees that when a watermain of any kind is laid in any highway immediately in front of or alongside the land described in Schedule ‘A’ of this Agreement, the Owner shall:
   a) make an application to the City for all necessary permits to connect the private portion of the water service connection to the new watermain immediately in front of or alongside the land described in Schedule ‘A’ of this Agreement; and,
   b) pay to the City all applicable permit application fees and all fees and charges assessed by the City under by-law for the privilege to connect the land described under Schedule ‘A’ of this Agreement to a new watermain; and,
   c) disconnect and remove the temporary water service connection permitted by this Agreement, and install a permanent water service connection to such new
The Owner agrees that the City may, at the Owner’s expense, disconnect the temporary water service connection permitted under this Agreement and connect a permanent water service connection to a watermain in the road abutting the Owner’s lands, without notice by the City, when such a watermain is installed.

The Owner acknowledges and agrees that the City shall not be responsible for or liable for any:

a) loss or damage that may occur to the temporary water service connection, or to any part or parts thereof installed by the Owner pursuant to this Agreement; and,

b) materials or other things used and employed in finishing and completing the work by the Owner or any part or parts thereof where such materials or other things have not been specified or specifically approved by the City; and,

c) injury to any person or persons, including workers and the public, during the construction of the said temporary water service connection or the maintenance thereof by the Owner pursuant to the provisions of this Agreement; and,

d) damage caused by the storage, handling or use of explosives by the Owner or its employees, agents or contractors; and,

e) damage by the Owner to the property of any person while the Owner is carrying out any of its work in respect of this Agreement; and,

f) damage caused by operation of the temporary water service connection; and,

g) damage caused by the installation of a watermain and of a permanent water service connection should a watermain in the road abutting the Owner’s lands be installed.

The Owner covenants and agrees, at the Owner’s expense, to defend, indemnify and forever save harmless the City, its employees, personnel, servants, contractors and agents from and against all actions, causes of action, interest, claims, demands, costs, (including legal costs) charges, damages to any persons or property or legal interest, including without limiting the foregoing, any damages for which the City may be held liable on account of a violation or alleged violation of a construction industry collective agreement, expenses, prosecutions, fines, rights of contribution, and loss which the City may, at any time, bear, incur, be liable for, sustain or be put to for any reason, on account of or by reason of or in consequence of, arising directly or indirectly from:

a) the City entering into this Agreement; and,

b) the implementation of the provisions of this Agreement by the Owner, its employees, agents, assignees or contractors; and,

c) any failure by the Owner to fulfill its obligations under this Agreement.

Notwithstanding any provision of this Agreement, the City shall not be liable for, and no provision of this Agreement shall be construed as imposing upon the City
any liability arising directly or indirectly out of the provisions of this Agreement for any loss, damage or damages suffered by the Owner, or any employee, servant or agent of the Owner, or to any property of the Owner or any other person by reason of:

a) any inspection carried out by the City or by a duly authorized employee, servant, contractor or agent of the City under any by-law of the City, under this Agreement or otherwise; and,

b) the failure of the City or of any duly authorized employee, contractor or agent of the City to carry out any inspection under any by-law of the City, this Agreement or otherwise; and,

c) the approval or failure to approve of any matter or thing, arising directly or indirectly out of the provisions of this Agreement, by the City or any duly authorized employee, servant, contractor or agent of the City.

14. The Owner shall, at his own expense, register this Agreement against the land described in Schedule "A" attached hereto, and shall provide the City with a duplicate registered copy thereof as part of the application pursuant to Section 1 of this Agreement for permission to connect to the City’s watermain. In the event the Owner fails or refuses to provide the City with a duplicate registered copy of this Agreement, the Owner shall not be eligible for a permit to connect to the City’s watermain.

15. This Agreement shall inure to the benefit of and be binding upon the City, the Owner, their respective heirs, executors, administrators, successors and assigns.

16. This Agreement shall be read with such changes of gender and number as the context may require.

17. Schedule "A", attached hereto, is included in and forms part of this Agreement.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

SIGNED, SEALED AND DELIVERED)

CITY OF HAMILTON)

in the presence of:

R. Bratina, Mayor

R. Caterini, Clerk

OWNER:

witness

signature

name & address

(print full name)

(print full address)
SCHEDULE “A”

To the Special Water Service Agreement dated:

LEGAL DESCRIPTION OF THE LANDS
SPECIAL SEWER SERVICE AGREEMENT

Dated this day of , 20 .

BETWEEN:

(hereinafter referred to as the "Owner")
OF THE FIRST PART

- and –

CITY OF HAMILTON

(hereinafter referred to as the "City")
OF THE SECOND PART

WHEREAS the Owner is the registered owner in fee simple of the land (more particularly described in Schedule “A”, attached hereto) which abuts the side of , in the former , now in the City of Hamilton, Ontario and in which said road there is no sewer;

AND WHEREAS the said Owner has applied for permission to install the public portion of a temporary sewer lateral (hereinafter referred to as "the temporary sewer lateral") from the private portion of a sewer lateral in the said parcel of land to the main sewers in , in the City of Hamilton, in the Province of Ontario; and

AND WHEREAS on the 22nd day of August 2001, the Council of the City approved of Item 47 (c) of the Committee of the Whole and thereby granted such permission upon the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the mutual covenants hereinafter contained, the City and the Owner hereby mutually covenant and agree each with the other as follows:

1. The Owner shall, upon signing this Agreement, make application in the form provided by the City for permission of the City to make a temporary connection to the City’s sewer located on , in the former , now in the City of Hamilton, Ontario (hereinafter referred to as "the said sewer") from the Owner’s land as described on Schedule “A” to this Agreement.

2. Upon approval of the application referred to in Section 1 herein by the City, the City agrees to issue a permit to allow the Owner to connect to the said sewer.

3. The Owner agrees to comply with all conditions, requirements, and terms of the said permit and pay all applicable fees related to issuance of such permit and administration of this Agreement by the City, all in accordance with the City’s Tariff of Fees By-law, as amended.

4. The Owner agrees to obtain at his own expense any easements required to facilitate the temporary sewer lateral aforesaid.
5. The Owner covenants and agrees to:
   a) construct the temporary sewer lateral pursuant to By-law No. 06-026, as amended from time to time and in accordance with good engineering practices, City standards and specifications; and,
   b) restore all City roads, curbs, sidewalk and boulevards to the satisfaction of the Senior Director of Growth Management Division.

6. Until the temporary sewer lateral permitted by this Agreement is removed, it is understood and agreed between the parties to this Agreement that the Owner and its successors and assigns of the Land is:
   a) the sole owner of the temporary sewer lateral; and,
   b) responsible to keep the temporary sewer lateral in compliance with the City’s by-laws, including the payment of sewer rates; and,
   c) responsible to maintain operation of the temporary sewer lateral and carry out all associated repairs pursuant to By-law No. 06-026, as amended from time to time and in accordance with good engineering practices, City standards and specifications, including replacement of the temporary sewer lateral, if necessary to maintain operation; and,
   d) responsible and required to obtain all necessary permits to carry out any repair or replacement required to maintain operation of the temporary sewer lateral; and,
   e) responsible for all costs, expenses and claims relating to operation and maintenance of the temporary sewer lateral.

7. The Owner covenants and agrees:
   a) not to petition against or oppose the construction of any City services including any sewer or watermain in any highway upon which any part of the Owner’s land abuts; and,
   b) that if the Owner’s name or the name of any of the Owner’s successors in title appear on any such petition, the same may be disregarded in determining the number of owners petitioning against any such proposed work and in determining the value of the lands to be specially assessed, and

8. The Owner agrees that when a sewer of any kind is laid in any highway immediately in front of or alongside the land described in Schedule ‘A’ of this Agreement, the Owner shall:
   a) make an application to the City for all necessary permits to connect the private portion of the sewer lateral to the new sewer immediately in front of or alongside the land described in Schedule ‘A’ of this Agreement; and,
   b) pay to the City all applicable permit application fees and all fees and charges assessed by the City under by-law for the privilege to connect the land described under Schedule ‘A’ of this Agreement to a new sewer; and,
   c) disconnect and remove the temporary sewer lateral permitted by this Agreement, and install a permanent sewer lateral to such new sewer at the Owner’s expense.
9. The Owner agrees that the City may, at the Owner's expense, disconnect the temporary sewer lateral permitted under this Agreement and connect a permanent sewer lateral to a sewer in the road abutting the Owner's lands, without notice by the City, when such a sewer is installed.

10. The Owner acknowledges and agrees that the City shall not be responsible or liable for any:
   a) loss or damage that may occur to the temporary sewer lateral, or to any part or parts thereof installed by the Owner pursuant to this Agreement; and,
   b) materials or other things used and employed in finishing and completing the work by the Owner or any part or parts thereof where such materials or other things have not been specified or specifically approved by the City; and,
   c) injury to any person or persons, including workers and the public, during the construction of the said temporary sewer lateral or the maintenance thereof by the Owner pursuant to the provisions of this Agreement; and,
   d) damage caused by the storage, handling or use of explosives by the Owner or its employees, agents or contractors; and,
   e) damage by the Owner to the property of any person while the Owner is carrying out any of its work in respect of this Agreement; and,
   f) damage caused by operation of the temporary sewer lateral; and,
   g) damage caused by the installation of a sewer and of a permanent sewer lateral should a sewer in the road abutting the Owner's lands be installed.
   h) damage that may occur to the temporary sewer lateral, the private portion of the sewer lateral or the Owner's property caused as a result of back water from the said sewer in .

11. The Owner covenants and agrees, at the Owner's expense, to defend, indemnify and forever save harmless the City, its employees, personnel, servants, contractors and agents from and against all actions, causes of action, interest, claims, demands, costs, (including legal costs) charges, damages to any persons or property or legal interest, including without limiting the foregoing, any damages for which the City may be held liable on account of a violation or alleged violation of a construction industry collective agreement, expenses, prosecutions, fines, rights of contribution, and loss which the City may, at any time, bear, incur, be liable for, sustain or be put to for any reason, on account of or by reason of or in consequence of, arising directly or indirectly from:
   a) the City entering into this Agreement; and,
   b) the implementation of the provisions of this Agreement by the Owner, its employees, agents, assignees or contractors; and,
   c) any failure by the Owner to fulfill its obligations under this Agreement.

12. Notwithstanding any provision of this Agreement, the City shall not be liable for, and no provision of this Agreement shall be construed as imposing upon the City any liability arising directly or indirectly out of the provisions of this Agreement for any loss, damage or damages suffered by the Owner, or any employee, servant
or agent of the Owner, or to any property of the Owner or any other person by reason of:

a) any inspection carried out by the City or by a duly authorized employee, servant, contractor or agent of the City under any by-law of the City, under this Agreement or otherwise; and,

b) the failure of the City or of any duly authorized employee, contractor or agent of the City to carry out any inspection under any by-law of the City, this Agreement or otherwise; and,

c) the approval or failure to approve of any matter or thing, arising directly or indirectly out of the provisions of this Agreement, by the City or any duly authorized employee, servant, contractor or agent of the City.

13. The Owner shall, at his own expense, register this Agreement against the land described in Schedule "A" attached hereto, and shall provide the City with a duplicate registered copy thereof as part of the application pursuant to Section 1 of this Agreement for permission to connect to the City's sewer. In the event the Owner fails or refuses to provide the City with a duplicate registered copy of this Agreement, the Owner shall not be eligible for a permit to connect to the City's sewer.

15. This Agreement shall inure to the benefit of and be binding upon the City and the Owner, their respective heirs, executors, administrators, successors and assigns.

16. This Agreement shall be read with such changes of gender and number as the context may require.

17. Schedule "A", attached hereto, is included in and forms part of this Agreement.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

SIGNED, SEALED AND DELIVERED

CITY OF HAMILTON

in the presence of:

R. Bratina, Mayor

(c/s) R. Caterini, Clerk

OWNER:

witness

signature

name & address

(print full name)

(print full address)
SCHEDULE “A”

To the Special Water Service Agreement dated:

LEGAL DESCRIPTION OF THE LANDS