SUBJECT: Developer’s Option to Construct Parks (PW07098) - (City Wide)

RECOMMENDATION:

(a) That Appendix "A" attached to Report PW07098 is hereby approved as the standard form Parkland Development Financial Agreement;

(b) That the General Manager of Public Works, in consultation with the City Treasurer, the City Solicitor and the General Manager of Planning and Economic Development, or their respective delegates, is hereby authorized to make minor amendments to the approved form as may be required in specific cases;

(c) That the Mayor and Clerk are hereby authorized to execute Parkland Development Financial Agreements in situations where all of the following criteria have been met, namely;

(i) that the subject lands must relate to a park/open space area whose park development costs are included in the City’s Development Charges background study which the current Development Charge By-law is based on;

(ii) that the subject lands are required to be dedicated to the City pursuant to a condition of Draft Plan approval;

(iii) that the developer has agreed to construct all required park works as part of the development of a plan of subdivision, and

(iv) that the City has agreed to reimburse the developer for the City share of the said park works in accordance with the City’s Development Charges By-law 04-145, as amended.
EXECUTIVE SUMMARY:

The City of Hamilton now offers options to developers when it comes to the development of parkland as part of new subdivision growth.

Through consultation with the development community’s representative, the Hamilton Halton Homebuilders Association (HHHBA), it was clear that not all developers in Hamilton would be interested in participating in the construction of complete parks. However, Public Works staff wanted to ensure that the Option was available to those developers that would be interested in doing such work as part of their subdivision construction. Therefore, developers in the City of Hamilton can now choose one of two options when it comes to parkland development.

Option I is the traditional development model for the City of Hamilton. Developers that have parkland on their property are responsible for the minimum requirements with respect to that parkland, namely grading, seeding, and fencing, to the satisfaction of the City. The parkland is assumed in that condition, and the rest of the parkland development is undertaken by the City’s staff in the Capital Planning and Implementation Division (CP&I) of Public Works. The City would then add the park amenities such as playgrounds, sports fields, site furniture, spray pads and multi-purpose courts at a later time, generally after the adjacent residential homes were complete.

Option II is the new optional development model for the City of Hamilton, where developers can undertake the development of the complete park as part of their subdivision development process. This option has not been previously explored in the City of Hamilton, although prior to amalgamation the former City of Stoney Creek and the former Town of Dundas utilized this Option to Developers. Also, many other Greater Toronto Area (GTA) municipalities utilize this method on a regular basis and the benefit of this Option is supplying the finished parkland to the neighbouring community more quickly than Option 1. Both the City and the developer must be in agreement for this option to be exercised.

Considering the practicality of the City entering into an agreement with Developers to undertake park development on behalf of the City, a standard Parkland Development Financial Agreement has been written by staff to assist in this purpose (see Appendix “A”).

BACKGROUND:

Parkland and open spaces, particularly open spaces with trails, provide an important amenity to the citizens of Hamilton. As more area in Hamilton is developed, it is important to match this development with a supply of active and passive recreational facilities through the acquisition and construction of parkland and open spaces.

Municipalities can acquire parkland either through direct purchase of the land, or through parkland dedication from development. Municipalities are granted the authority, by the Planning Act, 1994, to accept dedicated land for park purposes as part of a development process. Each municipality has the responsibility to pass By-laws to enforce the Planning Act.

The City of Hamilton has created a Parkland Dedication By-law to define how the City is
to acquire parkland from development. The Hearings Sub-Committee meeting of July 3rd, 2003 reviewed standardization of dedication of parkland by developers. The intent was to standardize parkland dedication and cash-in-lieu policies across the amalgamated City of Hamilton. The recommendations were founded in a report by J.H. Stevens, Planning + Development Consultants and reviewed with the Hamilton Halton Home Builders Association (HHHBA). The report outlined the parkland dedication policies and cash-in-lieu of parkland policies that the City requires from the development industry led by Planning and Economic Development of the City of Hamilton. Consequently on July 9, 2003, City Council adopted Report No's PD03171, FCS03118, and PW03087.

Additionally, the City has amended the Zoning By-law and Official Plan to reflect the desired parkland criteria for new and redeveloped parkland in the City in 2006.

Currently the Open Space Development and Park Planning Section of Public Works of the City of Hamilton is finalizing a Landscape Development Manual draft for the use of developers, consultants, and City staff in defining the park planning process. The goal of this document is to act as a tool to guide the parks and open spaces development process for the development community, as well as their consultants, and internal City staff. The manual shall define the expectations by the City for the supply of parkland within the City in an unambiguous manner, thereby helping the development community, both City and developer’s consultants, and City staff to understand how parkland and open spaces are to be created.

It is envisioned that this document would define the responsibilities of the various City of Hamilton departments throughout the parks and open space development process. As well, the manual would outline the technical requirements for parkland and open space development, including providing standard details and specifications. Specific approval requirements would be clearly laid out to ensure a smooth progression through the development process, led by the Planning and Economic Development Department of the City of Hamilton.

The idea of the creation of this manual was presented to the Hamilton Halton Home Builders Association (HHHBA) prior to the initiation of the manual creation and stakeholders committee. At this meeting, a presentation was made to the members of the HHHBA to inform them of the intent of the City to create a manual to guide the process of park and open space development. The members had many comments and concerns regarding the proposal and the current practice of parkland creation in the City of Hamilton. As a result of this presentation, representatives from the HHHBA were invited to be a part of a stakeholders committee for the creation of the manual.

To achieve the goals of the City for this manual, a stakeholders committee was established to guide the creation of the manual. This stakeholder committee was comprised of representatives from the Developer’s Liaison Committee, internal City of Hamilton staff, and the City’s consultant hired to complete the manual. It is anticipated that the draft manual will be finalized by Summer 2007. It is the intent to present the draft manual to the HHHBA in the Fall of 2007 for final comments.

Developers in the City of Hamilton can now choose one of two options when it comes to parkland development.
Option I is the traditional development model for the City of Hamilton. Developers that have parkland on their property are responsible for the minimum requirements with respect to that parkland, namely grading, seeding, and fencing, to the satisfaction of the City. The parkland is assumed in that condition, and the rest of the parkland development is undertaken by the City’s staff in the Capital Planning and Implementation Division (CP&I) of Public Works. The City would then add the park amenities such as playgrounds, sports fields, site furniture, spray pads and multi-purpose courts at a later time, generally after the adjacent residential homes were complete.

Option II is the new optional development model for the City of Hamilton, where developers can undertake the development of the complete park as part of their subdivision development process. This option has not been previously explored in the City of Hamilton, although many other Greater Toronto Area (GTA) municipalities utilize this method on a regular basis and the benefit is supplying the finished parkland to the neighbouring community more quickly than Option 1. Both the City and the developer must be in agreement for this option to be exercised.

Considering the practicality of the City entering into an agreement with Developers to undertake park development on behalf of the City, a standard Parkland Development Financial Agreement has been written by staff to assist in this purpose. (see Appendix “A”).

The necessary pre-conditions under which the City would entertain an Option II approach and enter into the required Parkland Development Financial Agreement with the Developer are as follows: These circumstances - the Secondary Plan designation; the draft plan approval; the parkland dedication; the developer election of Option 2; the City's agreement to go with this approach; and the availability of funding for the non-DC share of the costs.

The City will enter into an agreement with a Developer provided the following criteria is met:

(i) the subject lands are designated for park and open space in an approved Secondary Plan;
(ii) the subject lands are required to be dedicated to the City pursuant to a condition of Draft Plan approval;
(iii) the developer has agreed to construct all required park works as part of the development of a plan of subdivision, and
(iv) the City has agreed to reimburse the developer for the City share of the said park works in accordance with the City's Development Charges By-law 04-145, as amended.

ANALYSIS/RATIONALE:
Staff explored the Option of Developer’s building parks through the review of the process with the Development Liaison Committee. Since this review, the City, over the last several months, has been approached by developers to undertake Option II, the option to developers to construct the completed park as part of the subdivision development process.
The objectives in promoting Option II are as follows:

- To maintain contact with and feedback from the development industry.
- To add a second option for developing parks by creating the Option for developers to complete the park construction.
- To reduce the overall financial cost of park development to the City.
- To improve the timing of delivery of parks to the residents of the City.
- To integrate Development Charges with park creation.
- To communicate with the Ward Councillor's office on the proposed park development.

Considering the practicality of the City entering into an agreement with Developers to undertake park development on behalf of the City, a standard Parkland Development Financial Agreement has been written by staff to assist in this purpose (see Appendix “A”).

**ALTERNATIVES FOR CONSIDERATION:**

Staff could prepare individual reports for each occurrence of the Developer's building parks and the related Parkland Development Financial Agreement to: firstly, obtain approval of the standard form parks development financial agreement by Council and; secondly, acquire "delegated authority" for the City to enter into the standard form agreement, when park development arises out of approval of a plan of subdivision.

This report is recommending one approval by Council as opposed to individual approvals of each financial agreement. The other option is for the City solely continuing to build parks as opposed to Developers building parks, but this is "not recommended".

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial Implications**

Traditional park facilities are eligible for reimbursement through Development Charges (DCs) – up to a maximum of 90% recoverable. The other 10% would be financed from the general parkland reserve or another source. Reimbursement of park construction will be permitted according to the above guidelines and City approval of drawings and cost estimates, up to the maximum amount allocated by the DC by-law and calculated by the City of Hamilton staff based on standard unit costs for park design and open space design for the design and construction of the park or trail in question. Reimbursement of the DC Share shall be by way of DC credits or by payment schedule in the total amount of the DC Share relating to the said Works as set out in the Parkland Development Financial Agreement. The amount allocated to the park by the DC by-law includes design fees for developer's consultant. All cost estimates must include the design consultant fees.

The DC and non-DC City Share would be submitted for approval in the Capital Budget and reimbursed once the park development is complete and the City assumes ownership.

Upgraded features are at the developer's cost, and may be subject to a Perpetual Maintenance Fund contribution by the developer for future maintenance costs.
Staffing and Maintenance Implications

Operational impacts are identified and submitted through the Capital Budget process.

Legal Implications

The Parkland Development Financial Agreement is an agreement within the meaning of Section 37 of the Development Charges By-law 04-145 which deals with reimbursement of the development charge portion of the cost of identified growth-related park works to a developer who chooses to front-end the said works. The agreement may be entered into as a part of the subdivision approval process for a particular development. The agreement is entirely at the option of the City in each case and may only be entered into when all of the applicable criteria identified in this report have been met.

POLICIES AFFECTING PROPOSAL:

• In accordance with the Planning Act, Developers in the City of Hamilton must apply to the City for approval of any proposed subdivision development. Planning policies established by the Planning and Economic Development Department determine the process and timing of such applications.

• The City of Hamilton 2006 Official Plan and Zoning By-law amendment to establish an amalgamated strategy for parklands and open spaces (Council Report PED06152, June 14, 2006).

• Secondary Plans provide future direction, and include a land use plan (map) and accompanying land use policies, similarly to a Neighbourhood Plan. However, unlike Neighbourhood Plans, Secondary Plans are adopted by Council and Planning and Economic Development Department as amendments to the City’s Official Plan and is regulated by the Planning Act. Secondary Plans identify the specific ‘type’, number and location of park and open space required to serve the needs of the residents in the area, ensuring that planning and design of Open Space Systems are consistent with the City of Hamilton’s overall design objectives for the various classifications of parks.

• The City of Hamilton has specific policies when it comes to Parkland Dedication. All new developments are required to provide Parkland Dedication to the City, as per the Ontario Planning Act. The Parkland Dedication By-Law (2004) indicates any greenfield development, brownfield development, or increase in density development within the City is required to contribute parkland or cash-in-lieu of parkland.


• The City of Hamilton’s Trails Master Plan is a comprehensive document which prescribes a multi-use, off-road and on-street systems into a fully integrated, City-wide based recreational trail system. This document is intended to guide trail systems, development and management throughout the City from the present into the future, providing clear direction and decision making capabilities. The intent is to create a multi-purpose system that caters to the broadest range of users possible to improve a community’s quality of life by providing opportunities to participate in outdoor fitness and recreation, helping the City meet its corporate goal of creating a “healthy, safe and green City”.
• Barrier-Free Design Guidelines Manual for the City of Hamilton. The City has an obligation to provide facilities that are accessible for all citizens and therefore imperative that all park and open space development consider the guidelines.

• The Provincial Greenbelt Act (2005) protects environmentally sensitive land, including agricultural land, within the Golden Horseshoe from urban development and sprawl. Landowners must consult this act to determine the impact of the legislation on their properties.

• Conservation Authorities are involved in the Planning Act through the Provincial Policy Statement. They are the commenting authorities on “natural hazards” that are affected by development. The Conservation Authorities impose restrictions both on the development according to the projected impacts of the development on the regulated area and on developments where there is no development application required.

• The Niagara Escarpment Commission (NEC) is an agency that controls development on the Niagara Escarpment, a World Biosphere Reserve. The NEC outlines the regulated area, the policies guiding the commission, and the process to apply for development approval along the escarpment.

• City of Hamilton’s Engineering Guidelines for Servicing Land Under Development Applications

**RELEVANT CONSULTATION:**

Legal Services Division, City Manger’s Office
Budgets & Finance Division, Corporate Services Department
Development and Real Estate Division, Planning and Economic Development
Culture and Recreation Division, Community Services
Operations and Maintenance Division, Public Works Department
Capital Planning & Implementation Division, Public Works Department

**CITY STRATEGIC COMMITMENT:**

By evaluating the “Triple Bottom Line“, (community, environment, and economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☒ Yes ☐ No
Partnerships are promoted and outdoor educational opportunities are enhanced.

Environmental Well-Being is enhanced. ☒ Yes ☐ No
Ecological function and the natural heritage system are protected.

Economic Well-Being is enhanced. ☒ Yes ☐ No
Hamilton’s high-quality environmental amenities are maintained and enhanced.

Does the option you are recommending create value across all three bottom lines? ☒ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☒ Yes ☐ No
APPENDIX A
PARKLAND DEVELOPMENT FINANCING AGREEMENT

THIS AGREEMENT made in quadruplicate on the xx day of xx month, xx year
BETWEEN:

XX Developer
(hereinafter called the" Developer")
-and-

CITY OF HAMILTON
(hereinafter called the “City”)

WHEREAS the Developer is the registered owner of the lands more particularly described in Schedule “A” hereto, which lands are hereinafter referred to as the “Lands”;

AND WHEREAS the City has approved a draft plan of subdivision for the Lands subject to certain terms and conditions;

AND WHEREAS as a condition of the said draft plan approval, the Developer is required to construct certain works, more particularly described in Schedule “B” attached hereto and forming part of this Agreement, which works are hereinafter referred to as the “Works”

AND WHEREAS the Works have been identified in the City’s Development Charges By-law 04-145, which by-law applies to the Lands and charges thereunder are payable by the Developer in accordance with the Development Charges Act 1997, S.O. 1997, c 27;

AND WHEREAS the City has agreed to reimburse the Developer for the value of the growth related portion of the said Works, as determined by the City’s Development Charge By-Law, the cost of which is hereinafter referred to as the “City Share”, to the extent and in a manner hereinafter set out;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of the Lands, and of the said draft plan approval, and of the mutual covenants and agreements herein contained, the receipt and sufficiency of which is acknowledged, the Parties hereto mutually covenant and agree as follows, namely:

1. The Developer hereby covenants and agrees to undertake and complete the construction of the Works to the satisfaction of the City in accordance with an agreement entered into between the Parties respecting the same.

2. The City hereby covenants and agrees to reimburse the Developer for the City Share.

3. The City Share shall be set out in Schedule “B” attached to and forming part of this Agreement.
4. The Parties mutually covenant and agree that the said reimbursement of the City Share shall be by way of Development Charge credits or by payment schedule in the total amount of the City Share relating to the said Works as set out in Schedule “B”. A credit will be applied against the Development Charge otherwise payable prior to the issuance of a building permit for each lot finally approved on the Lands. The amount of the said credit shall be equivalent to the Soft Services Component of the City’s Development Charge in effect at the time of the application for the said building permit.

5. At such time as the total amount of the credits applied as aforesaid equals the nominal amount of the City Share set out in Schedule “B” for the works, the Developer agrees that no further credits shall be applicable and that the full amount of the Development Charge shall be payable for any additional building permit issued in respect of the Lands.

6. The Developer covenants and agrees that it has not, and will not file a complaint under the Development Charges Act with respect to the calculation and application of the City’s Development Charge to the Lands, including the quantum of the said charge and the quantum of the Soft Services Component thereof.

7. The Developer acknowledges having obtained independent legal advice with respect to the terms of this Agreement prior to its execution, and further acknowledges and agrees that it understands the said terms and its further obligations and liabilities hereunder.

8. This Agreement contains the entire and only understanding between the Parties relating to the subject matter hereof and supersedes all prior agreements, arrangements, promises, representations, or other understandings, whether written or oral, between then in relation thereto. This Agreement shall not be amended in any way except in writing of equal formality, including all necessary prior approvals, as this Agreement.

9. This Agreement shall ensure the benefit of, and be binding upon, the Parties hereto and their respective successors, assigns and trustees.

10. The Developer shall design, develop and construct Park Blocks ____, in accordance with the Landscape/Construction Drawings prepared by a qualified Landscape Architect, who is a full member in good standing of the Ontario Association of Landscape Architects hereinafter called the “the Developer’s Landscape Architect”, and the drawings of which are to be approved by the City. These Works constitute projects incorporated in the City’s Development Charges bylaw.

11. The City shall pay to the Developer the costs of these works as set out in Schedule “B” in an amount agreed to by the City and the Developer by way of Development Charge credits or in accordance with a written payment schedule satisfactory to the City.
12. The Developer acknowledges that the City share herein identified and quantified is less than 100% of the total actual cost of the works. Reimbursement of any additional amount by the City to the Developer is subject to further Council approval. The execution of this agreement by the City does not constitute a guarantee or commitment by the City that any additional funding for the subject works will be available. The Developer further acknowledges and agrees that it is undertaking the works pursuant to this agreement at its sole risk with respect to the unfunded balance of the actual costs thereof.

13. General Parkland Requirements

13.1 Where the City of Hamilton is responsible for the payment of items that include a “City Share” of the cost, the Tender Documents shall be approved by the City prior to being released by the Developer for the purpose of obtaining competitive prices and the following tendering procedure shall be used:

13.1.1 Any Works where the City’s share of the cost is in excess of $50,000 + GST shall be tendered by an open tender (i.e. public notice in the Hamilton Spectator, the Hamilton Construction Association, etc.)

13.1.2 The tenders shall close at the Consultant’s office (if local) or at City Hall if the Consultant is from out of town.

13.1.3 A City representative will be present at the opening of the tenders to witness the bids received and shall be immediately provided with copies of the Schedule of Quantities of the three (3) low bidders.

13.1.4 The Developer may select the Contractor of his choice for the Works, but the City shall pay for its share of the Works only on the basis of the overall low bidder (unless there is a justified reason to choose another bid, i.e. tender disqualification, poor performance of contractor, etc.)

13.1.5 The Developer shall not enter into any general contract or subcontract to do the City’s Work or any portion thereof pursuant to the release of approved Tender Documents until the City has approved the said contract.

13.1.6 The Developer’s Landscape Architect shall certify on the Statements of City’s share of the Works that the City’s share is based on the prices submitted by the low bidder that has been accepted by the City and shall provide supporting documentation where necessary.

13.2 Securities of 100 % shall be put forward by the Developer of the parkland development to ensure that conditions of the parkland development financial agreement are met. In the event that the developer does not fulfill the required obligations, the City’s Public Works Director of Capital Planning and Implementation, will use the securities to complete the works.
13.3 If the Developer should neglect to perform the City’s Work properly or otherwise fails to comply with the requirements of this Section to a substantial degree, the City’s Public Works Director of Capital Planning and Implementation, without prejudice to any other right or remedy it may have including without limitation, the right to proceed without notice contained in this Section, may notify the Developer in writing that it is in default of its contractual obligations and instruct it to correct the default in fifteen (15) working days immediately following the receipt of such notice.

13.4 If the City and the Developer cannot agree on an acceptable timetable for correction the City may terminate the Developer’s right to continue with the City’s Work in whole or in part and charge to the securities posted for any costs which the City would not have been responsible for.

13.5 When a change in the City’s Work is proposed or required the Developer shall present to the City for approval its claim for a change and the price with appropriate documentation.

13.6 The Developer shall provide performance and maintenance guarantees in forms and amounts satisfactory to the City. The City shall pay the Developer the amount of monthly invoices less a 15% holdback made up of a 10% substantial completion holdback and a 5% maintenance holdback. The 10% holdback is subject to the provisions of the Construction Lien Act.

13.7 The Developer shall remain responsible for any and all guarantees for the Works for a period of twenty-four (24) months from the date of the approval of substantial completion of the Works.

13.8 The City shall become responsible for the maintenance of the Park Block on the date of the release of the 10% holdback and the 5% maintenance holdback provided:

13.8.1 A period of twenty-four months (24) from the date of the approval of substantial completion of the Works has elapsed and,

13.8.2 All Works have been completed and inspected to the satisfaction of the City’s Public Works Director of Capital Planning and Implementation.

13.9 The Developer shall agree to place a sign on the parkland block indicating the facilities to be placed on the parkland to the satisfaction of the City’s Public Works Director of Capital Planning and Implementation, and that this sign be in place prior to the abutting properties being offered for sale.
IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement.

SIGNED, SEALED & DELIVERED
In the presence of

Approved as to Form

Legal Services

Peter Barkwell, City Solicitor

CITY OF HAMILTON

)________________________(c/s)
)Fred Eisenberger, Mayor

)____________________________
)Kevin Christenson, City Clerk

I/We have authority to bind the corporation
SCHEDULE “A”

to the Agreement made on the xx day of xx month, xx year.

Legal Description of Land

SCHEDULE “B”

to the Agreement made on the xx day of xx month, xx year.

The Developer shall construct and pay the Total Cost of Works listed on this schedule and the City shall reimburse the Developer for the total amount of the City Share in accordance with the terms and conditions of the attached Agreement.

ESTIMATE OF COSTS OF WORKS TO BE CARRIED OUT BY THE DEVELOPER

ESTIMATE OF COSTS OF WORKS TO BE CARRIED OUT BY THE CITY