

CITY OF HAMILTON

***PUBLIC WORKS DEPARTMENT
Capital Planning & Implementation Division***

Report to: Chair and Members Public Works Committee	Submitted by: Gerry Davis Acting General Manager Public Works Department
Date: March 14, 2007	Prepared by: Mike Bingham Extension 1301

**SUBJECT: Intrusive Environmental Investigations on City Owned Lands by
External Parties Program (PW07040) - (City Wide)**

RECOMMENDATION:

- (a) That the "Intrusive Environmental Investigations on City owned Property by External Parties" Policy, attached as Appendix A to Report PW07040, including the associated Permits be endorsed and approved;
- (b) That the 2007 User Fees and Charges applicable to the Policy proposed herein, as approved by Council on February 15, 2007 in adopting Item 3 of Committee of the Whole Report 07-004, be implemented effective the date of Council approval of this Report;
- (c) That the General Manager of Public Works be authorized and directed to proceed with implementation of this Policy;
- (d) That authority to institute minor changes to the Policy in consideration of experience with its implementation be delegated to the General Manager of Public Works; and
- (e) That the General Manager of Public Works or his/her designate be authorized to execute any agreements flowing from the Policy, including, but not limited to, any Remediation Agreement, in a form acceptable to the City Solicitor.

Gerry Davis
Acting General Manager
Public Works

SUBJECT: Intrusive Environmental Testing on City Owned Lands by External Parties Program (PW07040) - (City Wide) - Page 2 of 6

EXECUTIVE SUMMARY:

City of Hamilton Staff recommend the immediate adoption of the proposed Intrusive (*any observations made beneath the surface*) Environmental Testing on City Owned Property by External Parties Policy (commonly referred to as the Monitoring Well Policy) in order to address requests from private citizens and entities to access City-owned land for the purposes of environmental testing and/or remediation. This Report outlines the issues, the history, the development, and Policy details about the “Intrusive Environmental Testing on City Owned lands by External Parties Program”

BACKGROUND:

The information contained within this Report has City wide implications.

The Issue

Private Landowners are approaching the City with requests to access City owned lands for the purpose of investigating subsurface environmental conditions (“applicant”). Such a request normally flows from an investigation of the applicant’s own property adjacent to the City property and the private landowner is attempting to fully delineate the extent of the impact caused by their operation. The requests may be part of a voluntary decision to remediate the private property in order to obtain a Record of Site Condition or part of a regulatory requirement stemming from a proposed land change, fuel station decommissioning, or an Order from the Ontario Ministry of Environment (MOE”). Usually the applicant seeks permission to enter the City owned property, dig or drill into the ground, remove soil for analysis, and possibly install wells to analyse the ground water and/or soil vapour over time.

The Drivers

The City currently has no formal mechanism in place to deal with these requests and, to date, they have been dealt with on a one-off basis. A comprehensive Policy is required in order to address the following in a consistent and transparent manner:

- Liabilities relating to work conducted on City-owned property and those stemming from potential contamination emigrating from adjacent private lands;
- Cost-recovery of staff time and the engagement of City consultants relating to these requests;
- Financial burden of mitigating environmental impacts are conveyed to the Permit Holder;
- Ensuring that contamination emigrating from private property is identified on City-owned property and properly remediated in accordance with MOE standards and governing legislation;
- Proper oversight of intrusive environmental monitoring and decommissioning of monitoring wells installed in City-owned property; and
- Retention of environmental monitoring data for remediation purposes, as well as future use and reference (i.e. City projects and infrastructure maintenance).

CSMP Sub-Committee

The development of this Program began as an item of related business to the City’s highly acclaimed Contaminated Sites Management Program (CSMP). The steering committee, comprised of representatives from across the City, fully endorsed the

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development of the Intrusive Environmental Testing on City Owned Lands by External Parties Policy at the 2006 annual meeting. A sub-committee was created comprised of representatives from: Legal Services Division of the City Manager's Office, Risk Management Section of the Corporate Services Department, the Design Section of the Capital Planning and Implementation Division of the Public Works Department and led by the Strategic and Environmental Planning Section of the Capital Planning and Implementation Division of the Public Works Department. The committee involved the Ontario Ministry of Environment (MOE) at an advisory level in the development of the Program.

The CSMP sub-committee prepared and reviewed the Policy and attached Permit template and applicant's checklist. The Policy is attached as Appendix A and the checklist as Appendix B.

Policy:

The Policy sets out specific criteria for an applicant to consider and address prior to submitting an appropriate application and supporting submissions. Four (4) types of applications and corresponding criteria for assessment are contemplated by the Policy with respect to environmental monitoring: (1) Road Allowance - borehole or other non-permanent sampling; (2) Road Allowance - monitoring wells and other permanent installations; (3) Non-Road City-Owned Property - borehole or other non-permanent sampling; and (4) Non-Road City-Owned Property - monitoring wells and other permanent installations. The applicant will submit various work plan details in accordance with the Policy criteria and specifics of the monitoring. Once accepted, the applicant will be issued a Permit and will be required to submit further documentation in accordance with the Policy. The Permit and Policy, as well as the submission of all required documentation by the applicant, will form the legally binding contract between the City and the applicant. Should testing result in the need for remediation efforts, the applicant will be bound to enter into a Remediation Agreement in a form acceptable to the City Solicitor.

Policy Status

Currently there are outstanding requests from applicants to access City-owned property and more such requests are anticipated in the future. These requests will continue to be dealt with on a case by case basis in advance of the pending Policy

Policy Scope

The Policy applies to all lands owned by the City of Hamilton, including roadways. Where applications are received for lands other than roadways the Real Estate Section will participate by identifying pending or potential land transfer issues and assisting the Design Section in identifying other Departments with interest in the property that could be impacted by the testing or installations.

The Policy will be applied retroactively to any and all external party's installations currently existing on City owned lands. Once the installations are identified the City will approach the responsible party, if available, and the party will have 60 days to comply with this Policy. The responsible parties may chose to properly abandon and decommission their installations in accordance with the Policy and provide adequate

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proof of such, or if the installations are supporting ongoing monitoring than the party will be required to obtain a Permit under this Policy to proceed with the City's consent.

Other Municipalities

The City of Calgary implemented a similar program in 2002. Their approach included a by-law and license of occupation procedure.

Other Municipalities were canvassed including several Ontario cities with similar demographics to the City of Hamilton. Although most of these municipalities shared Hamilton's concerns, none of them possessed anything similar to the Policy proposed herein.

Updating Policy:

City staff recognize that changes may be necessary to ensure the efficiency of success of the Policy in light of the changing regulatory climate. As Hamilton's proposed Policy is under development, challenges and complexities have yet to materialize. In recognition of the potential need for minor changes, the recommendations include a delegation of authority to the General Manager of Public Works to make minor Policy changes, such as; insurance requirements, working times, notification requirements, etc. In the event that significant changes are required, Council's approval will be sought.

ANALYSIS/RATIONALE:

The City of Hamilton is approached by external applicants roughly four times per annum for this type of request (based on 2006 applications.) The volume of requests is expected to rise in consideration of growing environmental legislation and mounting requirements for environmental liability assessment, particularly from financial lending institutions. To date, these requests have been dealt with on a one-off basis. The costs associated with the administration of these applications are currently un-recoverable. The costs associated with the potential resultant liabilities or future liabilities are impossible to quantify but definitely significant. This Report proposes a full cost recovery, with a phased application and fee structure that ensures the applicants are billed for the cost of each phase only when and if they reach that phase. If applications are rejected or withdrawn no additional fees are applied. When applications are accepted a second phase is initiated with cost recovery for that portion (more significant fees as this latter phase involves legal reviews). Further, the Policy addresses issues related to liability, access and entry to City-owned lands and roads, environmental monitoring, public notification and remediation, as well as requiring a letter or credit (bank draft naming the City as the beneficiary in the amount of \$15,000) to ensure proper performance of the applicant's obligations. The Policy provides much needed control and consistency for dealing with these requests in the City of Hamilton and will prove valuable in the short and long term.

In conclusion, a comprehensive and consistent approach to deal with external requests for intrusive environmental testing and remediation is required. The proposed Policy is consistent with one other innovative Canadian municipality and will provide an exemplary model for other Ontario municipalities as the frequency of these requests increases in response to Ontario's mounting environmental legislation.

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ALTERNATIVES FOR CONSIDERATION:

1. Status Quo

Maintaining the status quo would entail dealing with these requests on a one-off basis, which lends itself to an inconsistent approach and the inability of the City to properly track and monitor these kinds of testing on City-owned property. Further, it suggests an inefficient use of staff time as every request is individually assessed without a set of guideline criteria and no ability to collect for cost recovery.

2. Policy as proposed

This alternative provides a consistent and comprehensive approach to managing these requests. The Policy allows for continual improvement with minor amendments, to maintain its efficiency and effectiveness. Council will be updated when changes occur and from time to time to communicate the Policy's performance.

Staff recommends the implementation of alternative 2.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial implications include an amendment to the 2007 - User Fees Schedule to allow for the collection of fees to recover administration costs. The Fees are as follows;

First Application Fee - \$600 total, Renewal Application Fee \$300 total (see Policy Sec. 5 for breakdown of fees).

There are no levy or rates funds required to implement this Program.

Staffing implications are estimated to involve the use of roughly 2 Full Time Employee days from the Public Works Department per application. Additional staff time will be required to review incoming reports, ensure compliance with applicable legislation prior to releasing securities, and closing of the file.

General awareness training was originally presented in the CSMP annual 2006 training and the new Policy will be communicated in subsequent sessions. The staff involved in the development of the Policy will be the same staff required to implement the Policy so there is no need for advanced training specific to implementation.

Should the reports that are submitted in consideration of this Policy require a professional peer review, the Policy includes an obligation for the applicant to provide funds to retain these services at the City's discretion (failure to provide these funds constitutes a default on the Permit and allows the City to access the Permit Holders Letter of Credit to undertake the work). The review would involve minimal staff time to organize and staff costs are recovered by the user fees for the Policy.

Legal issues with respect to liability pertaining to on-site environmental contamination caused by off-site migration from private property and that related to work conducted on City-owned property for the purpose of contamination identification and remediation are dealt with in the Policy.

POLICIES AFFECTING PROPOSAL:

The Policy further establishes the Public Works Department Vision of being recognized as a leader of environmental and innovative excellence, in alignment with the Public

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Works Strategic Plan. The Policy will be presented to other Canadian Municipalities through award submissions and educational presentations.

The City's Contaminated Sites Management Program policies are further supported with the implementation of this Policy.

The Corporate Environmental Policy is supported with this proposal in that it balances the need to investigate and remedy contamination that has migrated onto City owned lands with the responsibilities of protecting the ratepayers from unnecessary financial burden.

There are no other Municipal policies that affect this Policy nor are there any policies that will be altered or affected by this Policy.

RELEVANT CONSULTATION:

Public Works Department
Legal Services, City Managers Office
Risk Management, Corporate Services Department
Real Estate Section, Planning and Economic Development Department
Health, Safety & WSIB Section of the Human Resources Department
Ontario Ministry of Environment
CSMP Interdepartmental Steering Committee
City of Calgary
Region of Waterloo
Canadian Brownfields Network
Inter-municipal Southern Ontario Environmental Management group

CITY STRATEGIC COMMITMENT:

By evaluating the "Triple Bottom Line", (community, environment, 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

Private sources of contamination are recorded and publicly available with no financial burden to rate payers

Environmental Well-Being is enhanced. Yes No

Private sources of contamination migrating onto City property is evaluated, documented, and dealt with without financial burden to the rate payers

Economic Well-Being is enhanced. Yes No

Costs associated with clean-up or further investigation of City owned lands in consideration of external parties testing is deferred to the applicant, along with any administrative costs associated

Does the option you are recommending create value across all three bottom lines?

Yes No

Yes, it manages environmental concerns that result from operations external to the Corporation to reduce or eliminate impact to the public without significant additional costs to the rate payers

Do the options you are recommending make Hamilton a City of choice for high performance public servants? Yes No



Hamilton

Intrusive Environmental Investigations on City Owned Property Policy

City of Hamilton

PW-P-101-00

March, 2007

Strategic and Environmental Planning
Capital Planning and Implementation Division
Public Works Department
City of Hamilton

1. Introduction

This Policy outlines the requirements of the approval and implementation process to obtain permission for parties external to the City of Hamilton to undertake intrusive environmental investigations on property owned by the City and subsidiaries of the City. The Policy includes Environmental Monitoring Permit templates attached as Schedule A. The Policy and Schedule "A" are supporting documentation for the associated Report to the Public Works Committee PW07040 as Appendix "A" of the Report.

1.1. Purpose

To ensure a consistent approach to reviewing and approving applications by parties external to the City requesting permission to conduct intrusive environmental testing on City Owned Lands. To ensure these lands are investigated accurately and diligently and that any remedial action required is undertaken to protect the Public and the City's interests at the expense of the Environmental Monitoring Permit Holder.

1.2. Scope

- 1.2.1. This Policy applies to any party external to the City of Hamilton wishing to conduct intrusive environmental testing on any City owned Property, except for those parties directed to conduct such testing by City of Hamilton officials or their designates.
- 1.2.2. This Policy applies to any existing situation whereby a Party external to the City has installed monitoring locations on City Owned Lands without an enforceable, valid and properly executed agreement with the City, which is still in force at the time this Policy is passed. In these cases, when the City becomes aware of this situation the external party has 60 days to comply with this Policy. The external party responsible for these situations may apply for a Environmental Monitoring Permit or comply with the conditions pertaining to the termination of a Environmental Monitoring Permit within the 60 day period commencing the first day that the responsible party is notified by the City of their obligations under this Policy. Any application under these circumstances must include all information gathered by the offending party on City-owned property, including, but not limited to: testing results, locations of existing testing, depth of monitoring wells and information pertaining to their construction/installation.

2. Definitions

Term	Definition	Source
Business Day	Any day other than a Saturday, Sunday, public holiday, day on which the administrative offices of the City of Hamilton are closed, or other day on which banks in Ontario are authorized or required by law to be closed.	Standard in City contracts
City Owned Lands	All properties owned by the corporation of the City of Hamilton.	Specific to this Policy
Intrusive Environmental Testing	Any onsite environmental investigation that involves sub-surface work.	Specific to this Policy
In situ	In situ can refer to where a clean up or remediation of a polluted site is performed using and simulating the natural processes in the soil, contrary to ex situ where contaminated soil is excavated and cleaned elsewhere, off site.	Specific to this Policy
Environmental Monitoring Permit Holder	The person named on the Environmental Monitoring Permit. This person has the primary responsibility of ensuring conformance to this Policy.	Specific to this Policy
Project	A project will be defined as an environmental investigation for one parcel of land or multiple parcels of adjacent land. For the purpose of this procedure all projects will provide substantiating evidence that contamination has entered the city owned land from the project site.	Specific to this Policy
Roadway	Any land owned by the City that is primarily used for vehicular transportation.	Specific to this Policy
Utilities	Means the City and any other party authorized by the City or otherwise legally entitled to locate infrastructure in, on or under the Lands in order to convey potable water, storm water, sewage or to distribute natural gas, electricity, telephone services, television cable services, internet transmission services or other data transmission services.	Specific to this Policy
Installation	Any material, fixture (including, but not limited to, boreholes, monitoring wells, buried pipe, fitting, electrical cables, wellhead access boxes, cable, conduit, manholes), apparatus, or other means of transmitting or supporting the transmission of any physical material such as gaseous liquid hydrocarbons, water, storm water or vapors placed in, on or under the Lands during the term.	Specific to this Policy

3. The Environmental Monitoring Permit

The City grants to the Environmental Monitoring Permit Holder, its officers, agents, employees, consultants and contractors, the right to use and occupy the Lands for the purpose of conducting the environmental investigations as described in the work program and site plan attached to the Environmental Monitoring Permit and for no other purposes whatsoever, in accordance with the terms and conditions of this Policy.

3.1. The Environmental Monitoring Permit Holder acknowledges and agrees that:

- 3.1.1. Ownership and title to the Lands are vested in the City and that by obtaining an Environmental Monitoring Permit no interest in Land of any kind shall pass to the Environmental Permit Holder;
- 3.1.2. the Environmental Monitoring Permit Holder's use of and access to the Lands under this Policy shall be and remain a Environmental Monitoring Permit;
- 3.1.3. the Environmental Monitoring Permit Holder shall not register, or cause to be registered any instrument claiming an estate, interest or property right in either the Lands in any real or personal property registry;
- 3.1.4. construction of any Installation on the Lands other than that shown on the approved site plan is not permitted. In order to install any additional Installations on the Lands, the Environmental Monitoring Permit must be amended in writing. Each amendment of the Environmental Monitoring Permit is subject to an amendment fee equal to that of the Environmental Monitoring Permit processing fee (see section 5.2); and
- 3.1.5. third Party Attachments. The Environmental Monitoring Permit Holder, its employees, agents and contractors shall only utilize its Installations for its own use and shall not permit any other person to attach or use its Installations without the written consent of the City.

4. Environmental Monitoring Permit Types

There are four different types of Environmental Monitoring Permits applicable to Intrusive testing on City owned property; they differ in their property type and testing methodology. There are two Environmental Monitoring Permits specific to testing on Roadways, one for testing that involves the Installation of permanent structures (monitoring wells, vapor extraction devices, etc.) and a second for short term testing (including boreholes, testpits and other excavations for the purpose of obtaining one-time samples / observations). The other two Environmental Monitoring Permits are applicable to City owned properties other than Roadways and each is specific to the types of intrusive testing proposed (permanent Installation versus short term). There are specific requirements that the applicant must satisfy depending on the type of Environmental Monitoring Permit required, these specific requirements are outlined throughout the Policy where appropriate.

4.1. Permanent Installations on Roadway

These Environmental Monitoring Permits will be required for the Installation and creation of longer term (up to one year) monitoring locations in the City's Roadways. Other than the general criteria outlined below (sec 6.1), the following more specific criteria will be assessed in consideration of the application;

The City will determine if the supporting information supplied with the application indicates that contamination, if encountered, would best be remediate using an extractive device or in-situ technologies such as bio-remediation. In consideration of this approach to remediation, the City will allow for the Installation of permanent structures if the applicant can demonstrate that the Installations will subsequently assist in the performance monitoring of the proposed remediation approach.

4.2. Short Term Testing on Roadways

These Environmental Monitoring Permits will be issued for testing that is proposed in the Roadway but will not require subsequent observations. The applicant must demonstrate the need to make one-time observation of the subsurface in addition to the general criteria outline below (sec 6.1).

4.3. Permanent Installations on Lands other than Roadways

These Environmental Monitoring Permits will be required for the Installation and creation of longer term (up to one year) monitoring locations on lands other than Roadways. Other than the general criteria outlined below (sec 6.1), the following more specific criteria will be assessed in consideration of the application;

The City will determine if the supporting information supplied with the application indicates that contamination, if encountered, would best be remediated using an extractive device or in-situ technologies such as bio-remediation. In consideration of this approach to remediation, the City will allow for the Installation of permanent structures if the applicant can demonstrate that the Installations will subsequently assist in the performance monitoring of the proposed remediation approach.

4.4. Short Term Testing on Lands other than Roadways

These Environmental Monitoring Permits will be issued for testing that is proposed in lands other than a Roadway but will not require subsequent observations. The applicant must demonstrate the need to make one-time observation of the subsurface in addition to the general criteria outline below (sec 6.1).

5. Fees and Monetary Considerations

5.1. Application review fee, due upon submittal of application and supporting documents

Application review by SEP	\$200*
Application work plan review by Design	\$200*

5.2. Environmental Monitoring Permit processing fee, due once the Application is accepted

Design section Environmental Monitoring Permit preparation	\$100*
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5.3. Application for Environmental Monitoring Permit extension review fee, due upon submittal of renewal application and supporting documents**

Application review by SEP	\$200*
Design section Environmental Monitoring Permit extension preparation	\$100*

* **Subject to change (fees will be amended through the annual user fee review process) and subject to applicable taxes.**

** **These fees will not be added to the User fees Schedule until 2008 as there will be no annual renewals in 2007.**

5.4. Letter Of Credit

The Environmental Monitoring Permit Holder must provide the City with an irrevocable Letter of Credit from a Canadian banking institution acceptable to the City in the amount of \$15,000 naming the City as the beneficiary. The letter of credit must include conditions for the City to draw up to the amount of \$15,000 to recover costs associated with the Environmental Monitoring Permit Holders default of their obligations in this Policy and the Environmental Monitoring Permit or to retain the services of a Qualified Person (as per the Record of Site Condition Regulation, Ontario Regulation 153/04; as amended or any successor regulation or legislation – “RSC Regulation”) to conduct additional verification / validation investigations or to peer review reports submitted to the City by the Environmental Monitoring Permit Holder in consideration of the Environmental Monitoring Permit or monitoring report. The Letter of Credit must remain in place and in effect until all parties named on the document agree to terminate it, but not longer than one year following the termination of the Environmental Monitoring Permit in accordance with this Policy and conditions stated on the Environmental Monitoring Permit, if any. Environmental Permit Holder agrees to provide further financial security in a form and amount acceptable to the General Manager of Public Works in the event that remediation efforts are required, in the opinion of the City, by the Environmental Permit Holder, whether this will be conducted under an extension of the Environmental Monitoring Permit OR via Remediation Agreement.

6. **Environmental Monitoring Permit Application Process**

6.1. Completion of project review (needs assessment) by Strategic and Environmental Planning Section

The Strategic and Environmental Planning section of Public Works will review the justification and recommend whether or not the request should proceed based on the following criteria. The City may tentatively reject the request until further information is provided.

6.1.1. Previous Reports on Adjacent Lands

The applicant must submit complete environmental report(s) from the lands adjacent to the City owned property that is suspected to have been impacted by operations undertaken on the adjacent land. The report(s) must demonstrate that the extent of excavation or bore holes immediately adjacent to the property boundary between the City owned and private lands contain contaminant parameters above the limits prescribed in RSC Regulation specific to Community Use. The sampling and analysis must have been undertaken by qualified persons as described in RSC Regulation. The City may request further information if there is question to the validity or accuracy of the information included in the report.

6.1.2. Lack of Alternative Locations

The City does not support unnecessary disruption of traffic or access to public facilities. In general, the City would prefer the applicant to look at properties on the opposite side of the City Owned Lands unless the contamination is such that public occupation of the impacted lands could result in a risk to human health. Otherwise, the applicant must demonstrate that alternative locations have been sought and are not available.

6.2. Completion of Work Plan Review by Design Section

- 6.2.1. The applicant shall provide a proposed work plan which meets all applicable Municipal, Provincial, and Federal legislation. The work plan shall include a scaled drawing depicting all structures on and adjacent to the testing location; existing Utilities (sewer, water, hydro, gas, phone, etc.), street improvements, rights-of-way, Utility easements, if any, and other pertinent information related to the site. The work plan will be submitted with the initial application and form "Appendix A" of the Environmental Monitoring Permit if accepted.
- 6.2.2. If the property is a City owned Roadway, the applicant shall provide Traffic Protection Plans, for each Hole location as required, to meet all requirements of the Ministry of Labour (Book 7 of the Ontario Traffic Manual, issued by the Ministry of Transportation) and the Occupational Health and Safety Act; as amended and as it exists from time to time. A copy of each for the purposes of record shall be provided to the City inspector at the time of inspection.
- 6.2.3. If the Property is a City owned property other than a Roadway, the design section will approach the Real Estate Section for comments specific to pending land transfers and to assist them in identifying other Departments that may be impacted by the proposed testing and related remedial works. The applicant must satisfy the concerns of the commenting Departments at this time or include provisions in the Work Plan to satisfy their concerns.

6.3. Submittal of site health and safety plan

The applicant must submit a site specific Health and Safety Plan as approved by a certified Health and Safety professional. The plan shall address all aspects of work to be performed on the City Owned Lands. The site health and safety plan will be forwarded to the City for use while inspecting the site. The plan shall outline any designated substances present or potentially present and provide details regarding any other hazards that may be encountered or could be released or exposed to the environment. The plan shall include procedures and personal protective equipment as per the Ontario Occupational Health and Safety Act and Regulations.

7. **Issuance of Intrusive Testing Environmental Monitoring Permits**

7.1. Environmental Monitoring Permit Administration fee

The Environmental Monitoring Permit issuance fee is required once the City is satisfied that the application is warranted and any concerns specific to the proposed works are adequately managed. The fees are per sec 5.2

7.2. Additional Permissions

- 7.2.1. If the Environmental Monitoring Permit application involves investigation in the Roadway a lane closure Environmental Monitoring Permit is required from the Traffic Section of Public Works.
- 7.2.2. If the Environmental Monitoring Permit application involves investigation on property adjacent to a school, the applicant is required to notify the school board.
- 7.2.3. If the Environmental Monitoring Permit application involves investigation in lands owned by the City and designated Conservation Management in the Official Plan, the applicant must obtain written approval from the governing Conservation Authority prior to issuance of the Environmental Monitoring Permit.

7.3. Environmental Monitoring Permit Issuance

Once all of the aforementioned requirements have been met to the satisfaction of the General Manager of Public Works a Environmental Monitoring Permit shall be drafted by the City's Design section using the attached template (Schedule A). Once the Environmental Monitoring Permit is prepared, to the satisfaction of the General Managers Office and the pre-execution terms and conditions as outlined in the Policy have been met, it will be signed by the applicant and copies filed with the City of Hamilton's Clerks and Legal Services Divisions of the City Managers Office, and The Public Works Department.

7.4. Environmental Monitoring Permit Use

Once the Environmental Monitoring Permit is issued the Environmental Monitoring Permit Holder is bound by the conditions of this Policy and any additional conditions as deemed necessary by the City. Additional conditions will be documented on the Environmental Monitoring Permit.

8. **Implementation of Works**

8.1. Compliance with Applicable Legislation

All intrusive environmental testing will be completed in accordance with applicable legislation.

8.1.1. Additional Compliance Requirements

If the authorized testing involves drilling into the subsurface the Environmental Monitoring Permit Holder will comply with Ontario Water Resources Act R.R.O. 1990, REGULATION 903, Amended to O. Reg. 128/03, WELLS. The well owner for the purpose of the regulation will be the City of Hamilton though any and all responsibilities in consideration of Regulation 128/03 will become the responsibility of the Environmental Monitoring Permit Holder, unless the Environmental Monitoring Permit Holder was directed in writing to leave some or all of the wells in place after the work is completed or the Environmental Monitoring Permit is terminated. In this case the City deems the wells useful for other reasons and will assume responsibility for these wells.

8.2. Notifications

8.2.1. Local businesses, residences, and property owners potentially affected by the proposed work shall be notified in writing a minimum of 7 days prior to field operations as to when, how, and how long they will be or may be affected. The letter of notification shall also include contact names and telephone numbers of both the environmental consultant and the City representative (as stated on the Environmental Monitoring Permit). The letter shall be prepared to the satisfaction of the City and delivered by the applicant.

8.2.2. At least twenty-four (24) hours prior to covering a Utility (unless otherwise specified by that Utility), the Environmental Monitoring Permit Holder must contact the Utility directly, either in person or by telephone, to allow for an inspection. The Environmental Monitoring Permit Holder must take all necessary precautions to protect and secure the Lands while a Utility is exposed.

8.2.3. The Hamilton Street Railway Company ("HSR")

8.2.3.1. HSR requires 7 days notice if work is on a bus route and/or interferes with a bus-stop for lane restrictions.

8.2.3.2. If the road is required to be closed as part of the works proposed under the Environmental Monitoring Permit application the applicant must give HSR 14 days prior notice.

8.2.4. A contractor identification sign including a **24 hour emergency number** must be displayed at all times whether the site is attended or not at times when activities undertaken pursuant to this Policy are underway.

8.3. Working Hours

8.3.1. No works are Environmental Monitoring Permitted on major arterial streets during the hours of 7am to 9am and 3pm to 6pm Monday to Friday, with the exception of emergencies or special permission from the Traffic and Operations Section.

8.3.2. The Environmental Monitoring Permit Holder must comply with any directive issued by the City and any reasonable directive issued by a Utility with respect to the manner in which the Environmental Monitoring Permit Holder carries on its operations on the City owned lands and will not commence operations until any objections by the City or the affected Utilities have been resolved to the City's satisfaction.

8.4. Working Conditions

When the Environmental Monitoring Permit Holder performs any operations on the City Owned Lands, the following terms and conditions shall apply:

8.4.1. Excavation

The Environmental Monitoring Permit Holder may not use or Environmental Monitoring Permit the use of an excavating machine within the "safe limit of approach" as specified by the applicable Utility. In the event that any Operations must be carried out within the safe limit of approach, then before proceeding to excavate the Lands, the Environmental Monitoring Permit Holder must fully expose and protect all the Utilities (including water service valves to houses adjacent to the Lands) by non-invasive excavation techniques.

8.4.2. Markers

The Environmental Monitoring Permit Holder must install and maintain during performance of the operations suitable markers indicating the location of the Utilities in the Lands and, thereafter must install and maintain suitable aboveground markers indicating the location of the Environmental Monitoring Permit Holder's Installations in the City Owned Lands and Roadways. The Environmental Monitoring Permit Holder must provide the City with details about the location of their Installations including; the method chosen for locating the Installations, and the resulting survey indicating the locations in reference to known existing features identified in consultation with the City.

8.4.3. Work Quality

The Environmental Monitoring Permit Holder must carry out all operations in a proper and diligent manner, in accordance with good engineering and construction practices and in accordance with all City of Hamilton specifications.

8.4.4. Damage

The Environmental Monitoring Permit Holder will conduct the operations in such a manner as to cause minimal damage to all affected areas.

8.4.5. Environmental Monitoring Permit

During its operations pursuant to this Policy, the Environmental Monitoring Permit Holder must have a copy of this Environmental Monitoring Permit available at the work site for review by City representatives.

8.4.6. Location of Installations

The Environmental Monitoring Permit Holder must construct the Installations in accordance with the site plans shown in Appendix "A" to the Environmental Monitoring Permit.

8.4.7. Equipment Weight

The Environmental Monitoring Permit Holder must ensure that the weight of any equipment used in the operations crossing over the City Owned Lands will not cause any damage to the Utilities, landscaping or improvements on or under said lands.

8.4.8. Supports

The Environmental Monitoring Permit Holder must support exposed Utilities as required, or as directed by the Utilities, while conducting the operations.

8.4.9. Back Fill

The Environmental Monitoring Permit Holder must backfill any excavated area and restore the surface of the lands in accordance with The City of Hamilton Road Use Bylaw 86-77 or any successor bylaw (for Permits in the Roadway) or back to its pre-investigation state. The City, at its sole discretion, may require special backfill material to obtain the desired level of compaction or thermal resistance.

8.5. Maintenance of Lands

8.5.1. The Environmental Monitoring Permit Holder must maintain the working area, City Owned Lands and Roadways in good order and condition and carry out expeditiously all necessary repairs and emergency work arising out of the operations performed under the Environmental Monitoring Permit. The Environmental Monitoring Permit Holder must maintain the Installations (i.e., repair missing lids, caps, differential settling, erosion, trip hazards) throughout the term of the Environmental Monitoring Permit. In the event that a Utility suffers contact damage or other damage as a result of the operations, the Environmental Monitoring Permit Holder must immediately notify the City and the affected Utility.

8.5.2. In the event that a portion of the Installations is no longer accessible or performing as per design (i.e., damaged beyond repair, lost), the Environmental Monitoring Permit Holder will document the decommissioning or replacement of that portion of the Installation in accordance with the terms of this Policy and applicable legislation. If applicable, the Environmental Monitoring Permit Holder will demonstrate reporting to a regulatory authority to remove or replace that portion of the Installation from the monitoring network or remediation system and abandonment of the Installation if required.

8.6. Damage to Environmental Monitoring Permit Holder's Installations

In the case of damage to the Environmental Monitoring Permit Holder's Installations on the lands or emergency related to the Installations, the Environmental Monitoring Permit Holder will commence the necessary work to repair the damage and will forthwith give the City and any affected Utilities verbal and written notice of such damage or emergency related to the Installations and of the repair work. The City will advise if and under what conditions the repair work must proceed. The Environmental Monitoring Permit Holder must comply with any such conditions as well as those that may be imposed by an affected Utility.

8.7. Contractors

The Environmental Monitoring Permit Holder's obligation to comply with all of the terms and conditions of this Policy is not affected if the Environmental Monitoring Permit Holder engages a contractor(s) to perform any portion of the operations. No contractor or subcontractor, consultant, etc. shall be authorized to conduct work on behalf of the Environmental Monitoring Permit Holder unless approved in advance by the City. The Environmental Monitoring Permit Holder shall ensure that any contractor engaged to perform operations contemplated in the Environmental Monitoring Permit is properly qualified in all respects and adequately insured to cover all risks arising from the course of performing the operations. The City may require the Environmental Monitoring Permit Holder to provide sufficient evidence that the contractor has adequate insurance in place. The existence of a contractor's policy of insurance does not lessen the Environmental Monitoring Permit Holder's own insurance requirements set out herein.

9. Termination, Extension, Transfer, and Relocation

9.1. Termination of Environmental Monitoring Permit

9.1.1. The Environmental Monitoring Permit may be revoked at any time by the General Manager of Public Works; if the Environmental Monitoring Permit is revoked the Environmental Monitoring Permit Holder will be informed in writing and will have thirty (30) days to complete the removal of any Installations and abandonment of wells (if directed to do so by the City, in some instances the City will require the Environmental Monitoring Permit Holder to leave some or all of the Installations in place and would in this situation assume the sole responsibility as the well owner) as per Ontario Regulation 903 under the Ontario Water Resources Act; as amended or any successor regulation or legislation ("Water Reg").

9.1.2. Prior to expiration of the Policy the applicant will ensure the removal of any Installations and abandonment of wells (if directed to do so by the City, in some instances the City will require the Environmental Monitoring Permit Holder to leave some or all of the Installations in place and would in this situation assume the sole responsibility as the well owner) as per the Water Reg and the public property is reconstructed to the satisfaction of the Design section in accordance with this Policy.

9.2. Environmental Monitoring Permit Extension

The applicant may apply to extend the Environmental Monitoring Permit no less than 45 days before the expiration of the existing Environmental Monitoring Permit. The Design section will receive the application, including the fee and supporting documentation and subsequently circulate the request for extension to the Strategic and Environmental Planning (SEP) for review. The Design section will issue an extension based on the recommendations from the SEP section. If the original application required circulation to other City departments for approval, so too will the renewal application. An administration fee in accordance with sec 5.3 of this Policy will be applied for each Environmental Monitoring Permit extension application, and is due at the time of application.

9.3. Assignment to Another Party

The Environmental Monitoring Permit Holder may neither assign nor transfer the Environmental Monitoring Permit or any of the rights and privileges thereby granted without the prior written consent of the City, which consent may be withheld in the City's sole discretion. Together with any request for such consent, the assignor must provide the other party with the assignee's written confirmation that the assignee is familiar with the terms of this Policy and agrees to be bound by the terms of this Policy and any additional conditions contained in the Environmental Monitoring Permit.

9.4. Acknowledgement of Risk of Relocation and Removal

The Environmental Monitoring Permit Holder acknowledges that the City may at any time, and for any valid public purpose, require that the Installations be relocated horizontally or vertically within the City Owned Lands and/or Roadways or be removed altogether. The Environmental Monitoring Permit Holder accepts this risk and agrees to relocate or remove the Installation(s) within ninety (90) days of notice at its sole cost and expense, to the satisfaction of the City.

10. **Environmental Monitoring Permit Holder Obligations**

10.1. The Environmental Monitoring Permit Holder must:

10.1.1. decommission all monitoring wells within one (1) year of receiving the Environmental Monitoring Permit from the City (if directed to do so by the City, in some instances the City will require the Environmental Monitoring Permit Holder to leave some or all of the Installations in place and would in this situation assume the sole responsibility as the well owner);

10.1.2. submit a detailed remediation plan, if the suspected contamination is verified, that outlines the proposed methodology for subsequent remedial work. The plan must be prepared in consultation with the City and agreed to by the City, in its sole discretion. The Environmental Monitoring Permit Holder acknowledges that a Environmental Monitoring Permit extension may be required as part of the remedial works. Further, the Environmental Monitoring Permit Holder agrees to execute a Remediation Agreement in a form acceptable to the City Solicitor upon request by the City. The Remediation Agreement may include more comprehensive insurance requirements and/or any other requirements required by the City in its sole discretion.

10.1.3. reclaim all disturbed areas;

10.1.4. use only environmentally clean soil in any land reclamation;

- 10.1.5. ensure that a minimum topsoil depth of 200mm is placed over any disturbed landscaped areas;
- 10.1.6. replace and/or repair to their original condition any fences, gates, curbs and any other structures or improvements that may have been removed, altered, or damaged as a result of the operations;
- 10.1.7. backfill and compact any vapour extraction trench to the City's Standard Specifications
- 10.1.8. remove all casings and fill all boreholes with lean mix concrete slurry. If the boreholes are made in asphalt or pavement, the boreholes must be filled to the bottom of the pavement and then asphalted to match the surface. If the boreholes are made in concrete, the boreholes must be filled with class "A" concrete to match the existing surface, all backfilling must comply with The City of Hamilton Road Use Bylaw 86-77 or any successor bylaw.
- 10.1.9. rehabilitate the trench surface to a condition the same or better than its preconstruction state including all improvements and landscaping;
- 10.1.10. remove all debris brought onto the City Owned Lands or Roadways by the Environmental Monitoring Permit Holder; and
- 10.1.11. reseed any areas that may have been disturbed as a result of the operations to grass/agriculture mix upon remediation (where applicable). The Environmental Monitoring Permit Holder must confirm with the City its preference of plants for this particular area. The Environmental Monitoring Permit Holder will be responsible for the maintenance of this area until the plants are established to the satisfaction of the City, acting reasonably, unless otherwise specified by the City.

10.2. Spills or Releases

- 10.2.1. If the spill is released to the environment and could cause damage to human health or the environment the Environmental Monitoring Permit Holder must notify the Spills Action Center as per The Ontario Environmental Protection Act; as amended or any successor legislation ("OEPA") (Section X).
- 10.2.2. The Environmental Monitoring Permit Holder must report any spills or releases from the Environmental Monitoring Permit Holder's operations or Installations to the City immediately and, further, will submit to the City any and all documentation relating to such releases or spills to City property. The Environmental Monitoring Permit Holder will remediate the impacted area on City property in accordance with the applicable regulatory criteria and to the City's satisfaction.

10.3. Changes

The Environmental Monitoring Permit Holder must notify the City immediately of any changes to the nature or extent of the ongoing operations or to the frequency or nature of monitoring during the term of the Environmental Monitoring Permit.

10.4. Changes

The Environmental Monitoring Permit Holder must notify the City immediately of any changes to the nature or extent of the ongoing operations or to the frequency or nature of monitoring during the term of the Environmental Monitoring Permit.

10.5. Right of Access

The City, its officers, employees, agents and contractors or authorized representatives, will have the right to unrestricted access to the subject City Owned Lands and/or Roadways for any purposes whatsoever during the term of this Environmental Monitoring Permit, including access for the purposes of ensuring that the operations and the maintenance of the Installations are conducted in accordance with this Policy.

10.6. Costs

Any costs incurred by the City in enforcing, judicially or otherwise, any terms of this Policy and the Environmental Monitoring Permit against the Environmental Monitoring Permit Holder, including without limitation, litigation costs, lawyers fees and disbursements, and any costs of restoration or replacement necessitated by the violation of the terms of this Policy by the Environmental Monitoring Permit Holder, must be borne by the Environmental Monitoring Permit Holder.

11. **City Encountered Contamination**

If the City is performing repairs to its buried Utilities or Roadways or is landscaping in the area of the City Owned Lands and encounters contaminated soils or fluids related to the Holder's Installations during the term of the or after its expiration, the Holder will assume responsibility for the soils and fluids and dispose of the contaminated material appropriately, in a reasonable timeframe so as not to impede the City's operations unless the Holder demonstrates to the City's satisfaction that such contaminated soils or fluids are not attributable to the Holder. In the event that the Holder establishes to the City's satisfaction that there is another contributing source to the contamination, the Holder will only be responsible for paying for its proportionate share of the additional costs incurred by the City in completing the repair work. The Holder will work with the City crews to develop and implement an effective health and safety plan specific to the contamination, to be used when doing the construction or the Holder will provide their own trained work team to handle the soils and fluids. The City may take any additional steps it considers to be reasonable to provide protection to the repaired area from the surrounding contamination at the time of the work (i.e., clay plugs, hydrocarbon resistant piping) and the additional costs associated with such protective measures shall be paid for by the Permit Holder.

11.1. Special Terms and Conditions

The Environmental Monitoring Permit Holder must comply with the Special Terms and Conditions contained in the Environmental Monitoring Permit as a result of the site specific review of the application.

12. **Public Protection**

12.1. The Environmental Monitoring Permit Holder **must**:

- 12.1.1. take all reasonably necessary actions to protect the public from injury (including death) arising from or in conjunction with the performance of any operations under the Environmental Monitoring Permit;
- 12.1.2. cease any action related to the operations which is causing or may cause or increase danger to the public;
- 12.1.3. close off access by the public to any area or portion of the area in the vicinity of the operations which can not be made sufficiently safe; and/or
- 12.1.4. provide alternate safe access for the public where such access has been restricted by the operations;
- 12.1.5. maintain adequate barriers, warning signs and lights at all times while the operations are in progress and until the operations have been approved by the City to be opened for the use of the public; and
- 12.1.6. ensure that any pipes, casing, covers or caps do not extend above the existing grade.

12.2. Failure to Take Precautions

In conducting the Operations, any failure by the Environmental Monitoring Permit Holder or its agents or contractors to take precautions for public safety is the sole responsibility of the Environmental Monitoring Permit Holder, and the Environmental Monitoring Permit Holder agrees to absolve and hold harmless the City of all liability arising there from, regardless of whether the City has instructed the Environmental Monitoring Permit Holder or any contractor of the Environmental Monitoring Permit Holder to take action in accordance with this clause, provided however that the Environmental Monitoring Permit Holder shall not be responsible if the threat to public safety arises because the Environmental Monitoring Permit Holder is acting on the City's instructions, except to the extent that same is caused by the Environmental Permit Holders' negligence or willful misconduct.

13. Policy Violation

13.1. Environmental Monitoring Permit Default

13.1.1. Corrective Action Notice

In the event that the City is or becomes aware of any default by the Environmental Monitoring Permit Holder of the obligations set out in this Policy, the City will give the Environmental Monitoring Permit Holder notice describing the default and demanding that immediate corrective action be taken to cease and remedy the default (the "Corrective Action Notice").

13.1.2. Failure to Comply with Corrective Action Notice

If the Environmental Monitoring Permit Holder fails to commence to remedy such default or to make arrangements satisfactory to the City to remedy the default within fifteen (15) days after receipt of such notice and diligently complete such remedy there after, the City, in addition to its other rights in law and equity, may take such steps as are appropriate to remedy such default and the Environmental Monitoring Permit Holder shall be liable for all reasonable costs and expenses incurred by the City in remedying the default.

13.1.2. Immediate Action Required

Notwithstanding subsections (13.1.1) and (13.1.2) above, if, in the sole opinion of the City, circumstances require immediate action to prevent or mitigate damage to the City Owned Lands and/or Roadways arising due to a default on the part of the Environmental Monitoring Permit Holder or if there is an emergency or potential emergency created or contributed by reason of a

default on the part of the Environmental Monitoring Permit Holder, the Environmental Monitoring Permit Holder shall, immediately upon the City giving verbal notice thereof, commence to remedy such default and diligently complete such remedy, failing which the City shall be entitled to remedy the default and the Environmental Monitoring Permit Holder shall be liable for all reasonable costs and expenses incurred by the City in carrying out such remedy.

14. Reporting

All records generated in the permitting, operating, and termination of the intrusive environmental testing Environmental Monitoring Permit shall be maintained by the Design Section at least until the Policy Permit is terminated to the satisfaction of the City.

The Environmental Monitoring Permit Holder must provide to the City copies of all written results, reports, tests, data, analysis and information generated by the authorized operations as soon as reasonably practicable without cost to the City. In addition, reports documenting the condition of the Installations and the environmental condition of the City Owned Lands and/or Roadways will be submitted to the City a minimum of once per six months during the term of the Environmental Monitoring Permit as a condition of maintaining the Environmental Monitoring Permit. The City will ensure the information is managed and disclosed as per the Contaminated Sites Management Program for Municipal Works, Information Management and Information Disclosure Procedure.

14.1. Existing Reports

Prior to the commencement of the Operations, the Environmental Monitoring Permit Holder will provide the City with copies of all written results, reports, tests, data, analysis and information in its possession pertaining to the environmental condition of the City Owned Lands and/or Roadways.

14.2. "As Built" Report

The Environmental Monitoring Permit Holder must forward to the City and to the Utilities an "As Built" Report of the Operations at sufficient scale to indicate the location of the Installations and with offsets shown to existing property lines within six (6) months of Installation.

14.3. Intrusive Test Findings Peer Review

Should the testing indicate a need for a peer review of the information submitted or further investigations to delineate the extent of the findings, than these services will be retained by the City at the expense of the Environmental Monitoring Environmental Monitoring Permit Holder.

14.4. Completion Report

At the end of this Environmental Monitoring Environmental Monitoring Permit, a Completion Report must be submitted to the City which confirms that the Installations have been decommissioned in accordance with the terms herein and proof that the records of abandonment were adequately filed with the MOE. In addition, if the Environmental Monitoring Permit Holder has received permission from the regulating authority to cease remediation activities, a copy of the regulatory authorization must be forwarded to the City.

14.5. Municipal Freedom of Information and Protection of Privacy Act

14.5.1. All documents submitted to The City are subject to the protection and disclosure provisions of the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"); as amended and as it exists from time to time. While this Act allows persons a right of access to records in The City's custody or control, it also prohibits The City from disclosing personal or business information where disclosure would be harmful to

business interests or would be an unreasonable invasion of person privacy as defined in Section 16 and 17 of the *MFIPPA*. As the information will be made available to all City staff, the dissemination of this information outside of the City will conform to the requirements for Information Disclosure as prescribed in the City's Contaminated Sites Management Program for Municipal Works.

14.5.2. The Environmental Monitoring Permit Holder must identify appropriate parts of any report submitted in accordance with this Policy as confidential in order to clearly establish its expectations toward the document, both to The City as a public body and to the Information and Privacy Commissioner in any review of or refusal of access. The City, however, may not be able to meet these expectations in every instance. If The City is legally required to disclose the documents as a result of judicial or other government action, The City will provide the Environmental Monitoring Permit Holder with reasonable notice of same.

14.5.3. Any reports and/or notices required under this Policy shall be sufficiently given if given by: personal delivery; or registered letter, postage prepaid, and mailed in a Canadian post office; or fax; to the City representative identified in the Environmental Monitoring Permit.

15. **No Joint Venture, Indemnification, WSIB and Occupational Health and Safety**

15.1. No Partnership

The City and the Environmental Monitoring Permit Holder are in no way partners, joint venturers, agents or entities engaged in any other similar relationship (including, but not limited to, master and servant or employer and employee). Nothing contained in this Policy shall be construed as creating any partnership, agency, joint venture or any other similar relationship between the Environmental Monitoring Permit Holder and the City.

15.2. Indemnification

Environmental Monitoring Permit Holder shall defend, indemnify and save harmless the City, its respective officers, directors, representatives, agents, officials, employees, volunteers, affiliates, contractors and consultants (collectively referred to as the "Indemnified Parties") from and against the following:

15.2.1. any and all actions, causes of action, claims, costs, charges, fines, penalties, fees, expenses, damages (including indirect, special, consequential or remote damages) or other losses, proprietary or personal (including personal injury or death), that the Indemnified Parties may incur as a consequence of the contamination, which exceeds the criteria or guidelines under the applicable environmental legislation, that is shown to have directly or indirectly resulted from the use or occupation by the Environmental Monitoring Permit Holder, or any of its predecessor companies or entities, of any property adjacent to City property or any other private or public property, which has migrated off the Environmental Monitoring Permit Holder's property and onto any City Owned Lands and/or Roadways and/or adjacent properties (the contamination referred to herein as the "Contamination"), except to the extent that same was caused by the negligence or misconduct of the Indemnified Parties relating to the Contamination; and

15.2.2. any and all actions, causes of action, claims, costs, charges, fines, penalties, fees, expenses, damages (including indirect, special, consequential or remote damages) or other losses, proprietary or personal (including personal injury or death), that the Indemnified Parties may incur, which flow directly or indirectly from the following:

15.2.2.1. the entry of the Environmental Monitoring Permit Holder its employees, agents, contractors, consultants, directors or officers or representatives onto City-owned Owned Lands and/or Roadways in order to conduct environmental monitoring and/or sampling and/or other work contemplated by the Environmental Monitoring Permit;

15.2.2.2. the performance or nonperformance (including, without limitation, the failure to adhere to any Environmental Monitoring Permit and/or Policy requirements) of any activity by Environmental Monitoring Permit Holder its employees, agents, contractors, consultants directors, officers or representatives on City Owned Lands and/or Roadways with respect to environmental monitoring and/or sampling, including but not limited to, the installation of monitoring wells, the conducting of borehole sampling and any site restorative or other remedial efforts; and

15.2.2.3. any and all third party claims relating to any work to be conducted by Environmental Monitoring Permit Holder pursuant to the Environmental Monitoring Permit,

whether or not the occurrence was prior to the issuance of the Environmental Monitoring Permit, except to the extent that same are caused by the negligence or willful misconduct of the Indemnified Parties.

15.3. Occupational Health and Safety

Environmental Monitoring Permit Holder unequivocally acknowledges that it is the Constructor within the meaning of the *Occupational Health and Safety Act*; as amended and as it exists from time to time, and undertakes to carry out the duties and responsibilities of the Constructor with respect to the work as required by the said Act.

15.4. WSIB

15.4.1. Prior to receiving a Environmental Monitoring Permit, or in any event prior to performing any work pursuant to the Environmental Monitoring Permit, the Environmental Monitoring Permit Holder:

15.4.1.1. shall submit to the City an original Clearance Certificate from the Ontario Workplace Safety and Insurance Board and shall provide additional certificates with respect to such coverage as often as the City deems necessary during the term of the Environmental Monitoring Permit to ensure continued good standing with the Workplace Safety and Insurance Board; or

15.4.1.2. furnish proof in a form satisfactory to the City from the Workplace Safety and Insurance Board that the Environmental Monitoring Permit Holder does not require Workplace Safety and Insurance Board insurance, but in such a case if the Environmental Monitoring Permit Holder changes its status during the term of its contract with the City, so that such coverage is required, the Environmental Monitoring Permit Holder shall immediately provide the City with the certificate required under subsection (15.4.1.1).

15.4.2. Where a substantial portion of the work to be done under the Environmental Monitoring Permit is to be carried out by a subcontractor, the City may require the Environmental Monitoring Permit Holder to furnish the same evidence as provided under subsection (15.4.1).

16. Insurance Requirements

Throughout the term of the Environmental Monitoring Permit (including any renewal thereof), the Environmental Monitoring Permit Holder shall obtain, maintain at its own expense, (including the cost of any applicable deductible), and provide a certificate of insurance, as requested, to show proof of the following policies of insurance;

16.1.1. Commercial General Liability Insurance, (including death) written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, property damage, products liability, completed operations liability (subject to no pollution exclusion for products & completed operations), owners & contractors protective liability, blanket contractual liability, premises liability, and contingent employer's liability coverage, having an inclusive limit of not less than \$2,000,000 per occurrence and in the aggregate. "City of Hamilton" shall be named as an additional insured. City reserves the right to request additional insureds be added as required.

16.1.2. Alternatively coverage shall be provided for the Environmental Monitoring Permit Holders consultant's Pollution Liability by way of Contractor's Pollution Liability Insurance. Coverage shall be provided for claims caused by pollution events arising out of covered operations or completed operations of the covered operations performed by or on behalf of the insured in an amount of not less than \$2,000,000 per claim or per occurrence, and in the aggregate. Coverage shall be maintained in force for twelve (12) months following the termination of the Environmental Monitoring Permit. The City of Hamilton shall be named as an additional insured. City reserves the right to request additional insureds be added as required.

16.1.3. Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than \$1,000,000 per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Environmental Monitoring Permit Holder for the purpose of works conducted pursuant to Environmental Monitoring Permit.

16.1.4. Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than \$1,000,000 per occurrence or such greater amount as the City may from time to time request, in respect of vehicles not owned by the Environmental Monitoring Permit Holder, that are used or operated on its behalf with respect to the Environmental Monitoring Permit.

16.1.5. Environmental Consultants Professional Errors & Omissions Liability Insurance having a limit of not less than \$1,000,000 per claim; or alternatively, the Environmental Monitoring Permit Holder shall purchase and maintain in force for the duration of the Environmental Monitoring Permit, single project Environmental Consultants Professional Errors & Omissions Liability Insurance with limits dedicated to the project and having an inclusive limit of not less than \$1,000,000 per claim.

16.2. Property Insurance

the Environmental Monitoring Permit Holder shall maintain Property Insurance, as may be applicable, with respect to loss or damage (including fire, theft, burglary, etc.) of its own property and property in its care, custody and control, including its equipment, tools, stock, used in connection with the environmental monitoring and activities contemplated by the Environmental Monitoring Permit.

16.3. Other Requirements

All policies of insurance required herein shall,

16.3.1. be recorded as being a primary Policy and shall be in a form and issued by an insurance company satisfactory to the City that is licensed to carry on business in Ontario;

16.3.2. be maintained continuously during the Term of the Environmental Monitoring Permit and any extension thereto;

16.3.3. provide for a deductible amount of no greater than \$10,000;

16.3.4. (except in the case of automobile liability insurance, non-owned automobile liability insurance, professional errors & omissions liability insurance, and medical malpractice liability insurance) include the City named as an additional insured;

16.3.5. contain cross liability and severability of interest provisions, as may be applicable;

16.3.6. preclude subrogation claims against the City and any other person insured under the Policy; and

16.3.7. provide that at least thirty (30) days prior written notice (fifteen (15) days, in the case of automobile liability insurance, and ten (10) days in the event of non-payment of premiums) shall be given to the City by the insurer before the insurer or the Environmental Monitoring Permit Holder takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof.

16.4. Additional Coverage

The City reserves the right to request that the Environmental Monitoring Permit Holder purchase such additional insurance coverage as the City's Risk Management Office may reasonably require. The City reserves the right to request such higher limits of insurance or otherwise alter the types of coverage requirements as the City may reasonably require from time to time.

16.5. Any insurance coverage acquired as a requirement for the Environmental Monitoring Permit shall in no manner discharge, restrict or limit the liabilities assumed by the Environmental Monitoring Permit Holder under this Policy.

16.6. Proof of Insurance

The Environmental Monitoring Permit Holder shall deposit with the City such evidence of its insurance as provided in or required under this Policy at the time of issuance of the Environmental Monitoring Permit and thereafter during the Term of the Environmental Monitoring Permit, no later than twenty (20) Business Days prior to the renewal date of each applicable Policy, the Environmental Monitoring Permit Holder shall deposit with the City an original certificate of insurance originally signed by an authorized insurance representative, confirming thereon relevant coverage information including but not limited to name/description of the Policy, name of insurer, name of broker, name of insured, name of additional insureds as may be applicable, commencement and expiry dates of coverage, dollar limits of coverage, deductible levels as may be applicable, cancellation/termination provisions. Certificate Holder will be addressed as the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5. All certificates, cancellation, nonrenewal or adverse change notices should be mailed to this address with the words "Attention: Risk Management Section".

16.7. The Environmental Monitoring Permit Holder shall take all reasonable steps to not do or omit to do anything that would impair or invalidate the insurance policies.

16.8. Delivery to and examination or approval by the City of any certificates of insurance or other evidence of insurance shall not relieve the Environmental Monitoring Permit Holder of any of its indemnification or insurance obligations under this Policy and the Environmental Monitoring Permit. The City shall be under no duty either to ascertain the existence of or to examine such certificates of insurance or to advise the Environmental Monitoring Permit Holder in the event such insurance coverage is not in compliance with the requirements set out in this Policy.

17. Change of Corporate Status

Environmental Monitoring Permit Holder shall inform City of any reorganization, receivership, pending dissolution and/or change of ownership of the Environmental Monitoring Permit Holder within five (5) Business Days of said change. The City may, at its sole discretion and without penalty of any kind, (a) issue an amendment to the Environmental Monitoring Permit naming the New Environmental Monitoring Permit Holder; or (b) terminate the Environmental Monitoring Permit immediately and send notice to the Environmental Monitoring Permit Holder to that effect. Environmental Monitoring Permit Holder will have thirty (30) days from the date of notice to safely, legally and properly remove all then existing Installations or other materials, etc. from the site of the work and to restore the premises to its original condition at the sole cost and expense of the Environmental Monitoring Permit Holder. The City's remedy under this section is in addition to any other remedy of the City in law and/or in equity.

18. CITY REMEDIES

Without limiting anything else contained in this Policy, in the event that any external entity engages in any unauthorized intrusive environmental testing and/or remediation efforts of any kind on any City Owned Lands and/or Roadways, including, but not limited to, monitoring and/or remediation conducted without an Environmental Monitoring Permit or Remediation Agreement and default under the Policy or any Environmental Monitoring Permit, the City reserves the right to utilize and pursue any and all remedies and rights available to it under all applicable legislation, bylaws and City policies in addition to any rights and/or remedies identified in this Policy. Any unauthorized intrusive environmental testing, including, without limitation, environmental monitoring that is conducted outside of the parameters of a valid Environmental

Monitoring Permit or other formal agreement with the City, shall be considered a trespass on any affected City Owned Lands and/or Roadways

19. **DOCUMENT CONTROL**

19.1. Version Control

Version 1- February 28, 2007

19.2. Author

Mike Bingham, Strategic and Environmental Planning

19.3. Approval / Authority

Scott Stewart, General Manager of Public Works

Date

Intrusive Environmental Investigations on City Owned Property Policy
PW-P-101-00

Applicants Permit Checklist

Step 1 - Application Review

Documentation Required:

- Previous reports demonstrating contamination migration onto City owned lands
- Letter outlining previous test findings and substantiating evidence of migration onto City owned lands (See Policy Sec 6.1)
- Type of permit required (see Policy Sec 4)
- Work Program Outline (see Policy Sec 6.2)
- Proposed testing methods
- Timelines
- Site Plan
- Health and Safety plan
- Letter outlining rationale for lack of alternative locations, including responses from alternate location landowners, if applicable (see Sec 6.1)
- Letter outlining under what Regulatory Authority the testing is being proposed (Directors Orders, TSSA Fuel Station regulations, etc.)
- Legal letter describing entity requiring permit, indicating entity is in a good/stable financial condition and indicating corporate signing authority

Fees Required:

- Application Review Fee of \$400 plus GST, made payable to the City of Hamilton (See Policy Sec 5.1)

Step 2- Additional Information

Documentation:

- The City may require additional information before making a decision to proceed, Information may be required to substantiate further any of the above required documentation.

NOTE: At the end of Step 1 and/or Step 2 the City will decide whether or not to proceed with the Permitting process. Evaluation criteria is based on the Policy (sec 6)

Step 3 - Permit Processing

Documentation Required:

- Notification letters(Policy Sec. 8.2)
- Traffic Permits(Policy Sec. 7.2)
- Conservation Authority approvals (if applicable) (Policy Sec. 7.2)
- Work schedule (Policy Sec. 8.3)
- Public Protection measures proposed (Policy Sec. 12)
- Insurance Requirements (Policy Sec. 16)
- List of proposed personnel and contractors and corresponding responsibilities (Policy Sec.8.4.12)
- WSIB Clearance Certificate (Policy Sec.15.4)

Fees Required:

- Permit Processing and Issuance fee, \$200 as per Policy (Sec 5.2)
- Letter of Credit, \$15,000 as per Policy (Sec 5.4)

THE INTRUSIVE ENVIRONMENTAL TESTING ON CITY OWNED PROPERTY PERMIT

Name of Permit Holder: _____ _____	Address of Permit Holder: _____ _____
Source Property Owner: _____ _____	Source Property Location: _____ _____
Permitted Testing Location: <input type="checkbox"/> Site Plan Attached <input type="checkbox"/> Work Program Attached	Permit Type (Choose One): <input type="checkbox"/> Permanent Installations on Roadway <input type="checkbox"/> Short Term Testing on Roadway <input type="checkbox"/> Permanent Installations on lands other than Roadway <input type="checkbox"/> Short Term Testing on lands other than Roadway
Permit Issuance Date: _____ _____	Permit Expiry Date: _____ _____

***Permit Fee Paid** \$200 + GST

Statement of Obligations

- The Permit Holder is authorized to access the permitted testing location for the purpose of undertaking the work proposed in the attached work program.
- The work will be completed in accordance with;
 - i.) the attached site plan,
 - ii.) the Public Works Intrusive Environmental Testing on City Owned Property Policy, and
 - iii.) any additional conditions as stated below.

I _____, the Permit Holder, agree to carry out the proposed work in accordance with this Permit and the Obligations stated herein.

City Representative Information	Issuing Representative
Title: _____ _____	Title: _____ _____
Phone Number: _____ _____	Address: _____ _____ _____
After Hours Phone Number: _____ _____	_____ _____ _____
Fax Number: _____ _____	_____ _____ _____
E-mail Address: _____ _____	_____ _____ _____

Additional Conditions (if any, each condition should be initialed by the applicant and the City Representative):

Permit Holder Signature: _____ _____	Date: _____ _____
City Representative Signature: _____ _____	Date: _____ _____