

**CONDITIONS OF SERVICE**

**APPENDIX D**

**Capital Cost Recovery Agreement**

## CAPITAL COST RECOVERY AGREEMENT

This Capital Cost Recovery Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“**Effective Date**”), by and between **HORIZON UTILITIES CORPORATION** (“**Distributor**”), and \_\_\_\_\_, (“**Customer**”). This Capital Cost Recovery Agreement, together with any Schedules and any written supplements hereto shall be referred to as the “**Agreement**”.

**WHEREAS** the Customer has requested that the Distributor enhance or expand its distribution system so as to permit the Customer to connect to the Distributor’s distribution system;

**AND WHEREAS** the Customer and Distributor have agreed that the Project will be constructed on the terms and conditions set forth in the Agreement;

**AND WHEREAS**, the Project schedule is subject to the Customer executing and returning the Agreement to the Distributor by no later than six (6) months from the date of issue;

**NOW THEREFORE** in consideration of the mutual covenants, agreements, terms and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the Parties agree as follows:

**Part A: Project - \_\_\_\_\_ ,**

1. In accordance with the terms of this Agreement, the Distributor agrees to construct the Project as described in Schedule A and the Customer agrees to pay the Capital Contribution based on Actual Costs associated with the Project as described herein.
2. The Distributor agrees to commence the Project and undertake the Work upon receipt of this duly executed Agreement, all information required by the Distributor, and upon the Customer providing any Capital Contribution, Expansion Deposit, any security specified or any other payment specified in Schedule B.
3. The Distributor agrees to use reasonable efforts to meet the Requested In-Service Date. Notwithstanding the foregoing, the Customer acknowledges and agrees that the Distributor shall not be under any legal obligation to meet the Requested In-Service Date and that failure to reach such Requested In-Service Date shall not be considered an Event of Default by the Distributor under this Agreement or give rise to any claim for cost or damages of any kind under this Agreement or in law.

## **Part B: Term and Termination**

4. Subject to the termination rights and survival of provisions specified herein, the term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the later of: a) when the customer connections and/or customer forecast load materializes or the end of the five-year Customer Connection horizon where the Distributor constructed the Distribution Facilities; or b) if an alternative bid approach was selected by the Customer, the end of the two-year warranty period commencing upon energization or the 5-year Customer Connection Horizon; unless terminated by either Party upon 30 days prior written notice as provided for in Section 9 or as provided for in Section 6 or Section 7 of this Agreement.
  
5. The occurrence of any of the following shall constitute an event of default ("**Event of Default**"):
  - (a) failure to comply with any covenant or obligation of the Party as set forth in this Agreement, or breach of any representation or warranty, if such failure or breach is not remedied within 30 days after delivery of written notice of such failure by the other Party; or
  
  - (b) failure by the Customer to pay any amount due under the Agreement, if such failure is not remedied within five (5) business days after delivery of written notice of such failure by the Distributor; or
  
  - (c) failure by the Customer to provide, maintain, extend, replace or increase any security required by the Distributor under this Agreement, if such failure is not remedied within five (5) business days after delivery of written notice of such failure by the Distributor; or
  
  - (d) by decree of any governmental authority, the Party is adjudicated bankrupt or insolvent; or the Party files, or consents to the filing of, or has filed against it, a petition for bankruptcy or seeks or consents to an order of protection under any law relating to arrangements with creditors, insolvency or bankruptcy or if a receiver or receiver manager is appointed in respect of the Party or its assets.
  
6. Upon the occurrence of any of the Events of Default specified in Section 5, where the Distributor is the non-defaulting Party or the requesting Party, the Distributor shall have the right, in its discretion, to do any one or more of the following:
  - (a) suspend any or all of the services or obligations of the Distributor or rights of the Customer under this Agreement provided that such suspension shall not relieve the Customer of its obligations to make any payment required hereunder;

(b) exercise any of the rights and remedies of a secured party under this Agreement and under any law then in effect;

(c) exercise its right of set-off against any and all property of the Customer in the possession of the Distributor or its agent;

(d) draw on any outstanding irrevocable letter of credit or expansion deposit issued for its benefit;

(e) liquidate any other security then held by or for the benefit of the Distributor free from any claim of set-off or otherwise or right of any nature of the Customer, including any equity or right of purchase or redemption by the Customer;

(f) terminate this Agreement by giving notice of termination to the Customer whereupon this Agreement shall terminate as at the effective date of termination specified in the notice;

(g) exercise any other rights or remedies the Distributor has at law, including bringing an action at law as may be necessary or advisable in order to recover any damages or costs incurred by the Distributor.

All rights and remedies of the Distributor provided herein are not intended to be exclusive but rather are cumulative and are in addition to any other right or remedy otherwise available to the Distributor at law or in equity.

7. Upon the occurrence of any of the Events of Default specified in Section 5, where the Customer is the non-defaulting Party or requesting Party to terminate this Agreement by giving notice of termination to the defaulting Party whereupon this Agreement shall terminate as at the effective date of termination specified in the notice.
8. Upon termination of this Agreement for any reason the relevant portions of this Agreement shall continue in effect after termination to the extent necessary to provide for any billings, adjustments and payments related to the period prior to termination; and except as provided in the Schedule C, the terminating Party shall have no liability whatsoever to the other Party arising from such termination. For greater certainty, the obligation to pay any amount which was due and payable prior to termination shall survive the termination of this Agreement.

**Part C: Cancellation of the Project**

9. In accordance with the provisions of Section 4, the Customer shall have the right to terminate this Agreement on 30 days prior written notice to the Distributor where the Customer elects not to proceed with the Project. Where the Customer elects to terminate the Agreement in accordance with this provision, the Customer agrees that it shall be responsible for and shall pay all Actual Costs incurred by the Distributor up until written notice is received by the Distributor.
10. Where the Customer provides notice in accordance with Section 9, the Distributor shall within 60 business days of receipt of notice provide to the Customer a list of equipment and materials which have been ordered for the Project by the Distributor which the Distributor agrees that it will purchase. The Distributor agrees that any equipment and materials which it agrees to purchase will be deducted from the Actual Costs.
11. Where in accordance with Section 10 the Distributor elects not to purchase any equipment and materials, the Customer may elect to:
  - (a) have the Distributor purchase the equipment and materials and transfer to the Customer the title to and ownership of such equipment and materials on an “as is, where is basis”; or
  - (b) where the Distributor has purchased and installed the equipment and materials, have the Distributor remove the equipment and materials and provide title to and ownership of such equipment and materials on an “as is, where is basis”.

The Customer acknowledges and agrees that it shall be responsible for any additional costs incurred by the Distributor in purchasing, transferring title and ownership, installation and removal or any other costs associated with the Customer making an election under this section.

12. Where the Customer provides notice in accordance with Section 9, the Customer acknowledges that the Distributor shall be entitled to exercise any of the rights provided to it under Section 6 or elsewhere in this Agreement so as to permit the Distributor to recover any of the Actual Costs incurred by the Distributor under this Agreement.

**Part D: The Work**

13. The Customer shall perform the Customer’s Work.
14. Where the Customer is constructing the Contestable Work pertaining to the Project, the Customer shall provide technical specifications for the Project as required for the Distributor’s review. The

Customer shall not commence construction of the electrical plant until written confirmation of approval is obtained by the Customer from the Distributor for all designs, plans and material specifications and the Customer is in possession of a complete set of the Distributor's approved electrical servicing drawings. Until the Distributor has accepted the technical specifications (including electrical and civil drawings) for the Project and the Customer's Work has been transferred to the Distributor pursuant to Section 16, below, the Distributor shall not be bound to energize the Project.

15. Upon completion of the Distributor's Work, where the Distributor constructs the Project, the Distributor shall own, operate and maintain all equipment referred to in Schedule A. Furthermore, the Customer agrees that:

- (a) ownership and title to the equipment referred to in this Section 15 shall throughout the term of this Agreement and thereafter remain vested in the Distributor and the Customer shall have no right of property therein; and

- (b) any portion of the equipment referred to in this Section 15 that is located on the Customer's Property shall be and remain the property of the Distributor and shall not be or become fixtures and/or part of the Customer's Property.

The provisions of this Section 15 shall survive the termination of this Agreement.

16. Upon completion of the construction of the Contestable Work by the Customer where the Customer selected the Alternative Bid Option, and upon receipt of inspection and a certificate prepared and certified by the Customer's Professional Engineer satisfying that all equipment and construction meets the safety standard of Ontario Regulation 22/04, and is in accordance with the designs, plans and specifications approved by the Distributor, the Distributor shall conduct a deficiency inspection and the Customer shall correct all deficiencies to the satisfaction of the Distributor. Following the correction of deficiencies by the Customer, the Customer shall transfer the Contestable Work undertaken by the Customer to the Distributor and the Distributor shall pay the Customer a transfer price as outlined in Section 22 – Where the Customer Selects the Alternative Bid Option. Furthermore, the Customer agrees that:

- (a) once transferred, ownership and title to the equipment transferred to the Distributor pursuant to this Section 14 shall, throughout the term of this Agreement and thereafter remain vested in the Distributor and the Customer shall have no right of property therein; and

(b) any portion of the equipment referred to in this Section 16 that is located on the Customer's Property shall be and remain the property of the Distributor and shall not be or become fixtures and/or part of the Customer's property.

The provisions of this Section 16 shall survive the termination of this Agreement.

17. Other than equipment referred to in the preceding Sections 15 and 16 that will be constructed, operated and maintained by the Distributor, all other equipment that will be located on the Customer's Property without benefit of easement to the Distributor shall be constructed, operated and maintained by the Customer.

**Part E: Where the Customer Selects the Alternative Bid Option**

18. Where the Customer has selected the Alternative Bid Option, the only work that a Customer is permitted to perform is the Contestable Work pertaining to the Project. The Customer shall use only a contractor or contractors on the Distributors approved list of Contractors, qualified to perform the Contestable Work.

19. The following work shall be considered Uncontestable Work and only the Distributor may perform Uncontestable Work:

(a) the preliminary planning, design consultation and engineering specifications of the work required for the distribution system expansion made in accordance with the Distributor's design and technical standards and specifications, and

(b) work involving existing assets of the Distributor.

20. The Customer shall, during the term of this Agreement:

(a.i) maintain a policy or policies of insurance in which Horizon Utilities is named as an additional insured and which policy or policies shall contain a cross liability clause in the amount of FIVE MILLION DOLLARS (\$5,000,000.) or as otherwise may be agreed in writing between the Customer and Horizon Utilities, against liability due to damage to the property of Horizon Utilities or any other person or person including a third party, and against liability due to injury to or death of any person or person including a third party in any one instance; and

(a.ii) maintain Automobile Liability Insurance, covering all licensed motor vehicles owned, non-owned, hired, rented or leased and used in connection with the Developer's work under this

Agreement, covering Bodily Injury, including death, Personal Injury and Property Damage Liability to a combined inclusive minimum limit of TWO MILLION DOLLARS (\$2,000,000.) and mandatory Accident Benefits.

- (b) The Customer shall provide Horizon Utilities with a certificate(s) of insurance confirming that the minimum coverage's required hereunder are in effect and that the coverage's will not be cancelled, non-renewed, or materially changed by endorsement or through issuance of other policy(ies) of insurance which restricts or reduces coverage, without thirty (30) days advance written notice by registered mail, or courier, receipt required, to Horizon Utilities at the address set out for notices in this Agreement.
- (c) Failure of Horizon Utilities to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Horizon Utilities to identify a deficiency from evidence provided will not be construed as a waiver of the Customer's obligation to maintain such insurance.
- (d) The acceptance of delivery by Horizon Utilities of any certificate of insurance evidencing the required coverage's and limits does not constitute approval or agreement by Horizon Utilities that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements.
- (e) If the Customer fails to maintain the insurance as set forth here, Horizon Utilities will have the right, but not the obligation, to purchase said insurance at the Customer's expense. Alternatively, the Customer's failure to maintain the required insurance may result in termination of this Agreement at Horizon Utilities' option.
- (f) All deductibles shall be to the account of the Customer.
- (g) With the exception of clause (a.ii) above (Automobile Liability), all insurance noted above shall specify that it is primary coverage and not contributory with or in excess of any other insurance that may be maintained by Horizon Utilities.
- (h) Coverage provided for Horizon Utilities shall not be invalidated or vitiated by actions or inactions of others.
- (i) The Customer shall provide Horizon Utilities with evidence, satisfactory to Horizon Utilities, of the Customer's compliance and continued compliance with this section in the form of a completed "Liability Insurance" form. The Customer agrees that the insurance described in this section

does not in any way limit the Customer's liability pursuant to the indemnity provisions of the Agreement.

21. Where the Customer has selected the Alternative Bid Option, the Customer agrees to retain the services of a pre-approved contractor for the Contestable Work and the Customer further agrees to:

- (a) complete all of the Contestable Work;
- (b) select and hire the contractor;
- (c) pay the contractor's cost for the Contestable Work;
- (d) assume full responsibility for the construction of the Contestable Work;
- (e) supply and install all material and ensure that the Contestable Work is performed in compliance with the Distributor's design and technical standards and specifications including, without limitation and as applicable, the version of the Distributor's Residential Development Engineering Guide in effect at the time of the Customer's performance of the Contestable Work;
- (f) administer the contract (including the acquisition of all required permits and easements) with the contractor or pay the Distributor to do this activity;
- (g) obtain from its suppliers of materials all warranties and guarantees on purchased materials, and assign all such warranties and guarantees to the Distributor; and
- (h) provide when the assets are transferred to the Distributor a certificate prepared and certified by its Professional Engineer containing the detailed costs to complete the construction of the electrical facilities and a Statutory Declaration confirming that there are no liens or encumbrances against the assets to be transferred to the Distributor. The detailed costs shall be categorized as follows:
  - (i) underground electrical plant (all labour and materials associated with primary and secondary cables, terminations, connectors, grounding, riser pole subsurface switching devices, including feed through units, etc.);
  - (ii) civil work (all labour and materials associated with trenching, conduit, pre-cast bases);

- (iii) overhead electrical plant subcategories
  - 1) all labour and materials associated with poles, towers, and fixtures used for supporting overhead distribution conductors and service wires, and devices;
  - 2) overhead conductors and service wires, and devices used for distribution purposes;
- (iv) transformers (material and labour costs associated with transformer installation);
- (v) street lighting (all labour, material, and trenching costs associated with the street light installation including underground cabling and load centre devices). The Customer acknowledges that these costs are dealt with outside of the scope of the Capital Contribution.

The Customer acknowledges and agrees that the Distributor shall not connect the constructed facilities to the Distribution System until it has inspected and approved all aspects of the Customer's Work as part of a system commissioning activity. The Customer shall request inspection and obtain the Distributor's approval before covering up or burying any portion of the electrical plant. In consideration for the performance of this work, the Customer shall pay to the Distributor an amount equal to the Distributor's actual cost of performing this work.

22. Where the Customer has selected the Alternative Bid Option, the Customer shall pay to the Distributor, within 30 days of the Distributor's demand for such payment, all costs incurred by the Distributor associated with the Project including, without limitation:
- (a) a fee equal to 15 percent of the first \$50,000.00 of the estimated total project costs and 5 percent of the remainder of the estimated total project costs as detailed in the Offer to Connect. The fee shall cover all costs of the Distributor for the design review, administration, material review, inspection and commissioning into service of the Project by the Distributor and the testing of the installed Contestable Work as incurred by the Distributor. The fee plus applicable taxes (GST) shall be paid by the Customer prior to the commencement of the Customer's Work;
  - (b) initial Project costs for which the Distributor will invoice the Customer, including but not limited to costs related to Uncontestable Work, servicing, metering, final connection and energization;
  - (c) a final Capital Contribution (if any), calculated in accordance with the Code. The Capital Contribution may be set off against the transfer price calculated by the Distributor, at its sole discretion;

- (d) costs incurred by the Distributor for additional design, engineering, or installation of facilities and inspection required to complete the Project;
  - (e) costs for administering the contract between the Customer and the contractor hired by the Customer if the Distributor is asked by the Customer to administer the contract and the Distributor agrees to do so; and
  - (f) costs for the Distributor's additional inspection or approval of the work performed by the Customer's contractor.
23. When the distribution facilities constructed by the Customer have been commissioned into service by the Distributor, the Distributor shall pay the Customer a transfer price ("**Transfer Price**"), plus applicable taxes. The Transfer Price shall be the lower of the cost to the Customer to construct the Project as per Section 20 or the amount set out in the Distributor's initial offer to perform the Contestable Work. The cost to the Customer shall include amounts paid to contractors and to the Distributor to complete the Project. If the Customer does not provide the Distributor with the Customer's cost information within 60 days after energization, then the Distributor may at its sole discretion use the amount for the Contestable Work as set out in its initial offer for the Transfer Price instead of the Customer's cost.
24. Where the Distributor pays a Transfer Price, plus applicable taxes, to the Customer, the Transfer Price shall be considered a cost to the Distributor for the purposes of completing the final Economic Evaluation.
25. Where the Customer constructs the Contestable Work, the Distributor shall retain and use the Expansion Deposit set out in Schedule B to cover the Distributor's costs if the Distributor must complete, repair, or bring up to standard the facilities constructed and/or installed by the Customer. The costs required to complete, repair or bring up to standard the facilities constructed and/or installed by the Customer include, without limitation, costs the Distributor incurs to ensure that the Project is completed to the proper design and technical standards and specifications and that the facilities operate properly when energized. In case of emergency, the Distributor shall have the right to enter onto the Customer's lands and carry out the necessary maintenance and repair without further notice to the Customer and the Distributor shall be entitled to send an invoice to the Customer, and if not paid within 30 days, may at its sole discretion deduct the cost thereof from the Expansion Deposit.

26. There is a 2-year warranty period for the Customer's Work. This warranty period shall begin at such time as the Project is fully energized. The Distributor may, at its sole discretion, retain up to 10 percent of the Expansion Deposit for the warranty period. The portion of the Expansion Deposit retained may be applied by the Distributor to any work required to repair the Project within the warranty period. The Distributor will return any remaining portion of the Expansion Deposit retained at the end of the warranty period. During the warranty period, the Customer shall be responsible for all costs incurred to repair or replace any portion of the Project installed by the Customer resulting from poor workmanship or faulty materials. In the case of emergency, as determined by the Distributor, the Distributor shall have the right to enter on the Customer's property and carry out the necessary maintenance and repair without further notice to the Customer, and the Distributor shall be entitled to send an invoice to the Customer for the recovery of the Distributor's costs of performing this work, and if not paid within 30 days, the Distributor may at its sole discretion deduct the cost thereof from the Expansion Deposit.

**Part F: Where Horizon Utilities Constructs the Project**

27. The Work Estimate, the amount of any initial Capital Contribution (if required) and the payment schedule required from the Customer for the Project is set out in Schedule B (applicable taxes are payable in addition to the amount shown as the Capital Contribution). The Customer acknowledges and agrees that the initial Capital Contribution is based on an initial Economic Evaluation and is subject to true up or true down once actual costs are known.

28. Where the Customer has accepted the Distributor's offer to construct the distribution facilities, and if the Customer requests it, the Distributor shall provide to the Customer, at a cost equal to the Distributor's cost, an itemized list of the costs for the major items of the categories listed in Section 29(c) below.

**Part G: Capital Contribution**

29. Where an initial Capital Contribution is required as shown in Schedule B, the Customer acknowledges that this amount is subject to revision as it is based on estimated Project costs as described in the "Work Estimate".

30. If the Customer is required to pay a Capital Contribution, the Distributor will include the following additional information as part of Schedule B – Cost & Contribution:

(a) the initial Capital Contribution amount (plus GST) that the Customer will have to pay for the Project;

- (b) the calculation used to determine the amount of the Capital Contribution to be paid by the Customer including all assumptions and inputs used to produce the initial Economic Evaluation;
  - (c) a description of and costs of, the Contestable Work and the Uncontestable Work associated with the Project broken down into the following categories:
    - (i) labour (including design, engineering and construction);
    - (ii) materials;
    - (iii) equipment;
    - (iv) overhead (including administration);
  - (d) the amount for any costs that the distributor will incur as determined in Section 21 (a) as a result of the alternative bid being used ;
  - (e) if the offer is for a Residential Customer, the enclosed initial Economic Evaluation calculation inputs including the cost of the basic connection referred to in Section 3.1.4 of the Code, that has been included in the Distributor's OEB-approved revenue requirement and the initial Economic Evaluation;
  - (f) if the offer is for a non-Residential Customer the Distributor has included all connection costs in the initial Economic Evaluation;
  - (g) if requested to do so by the Customer, and the Alternative Bid Option has not been selected, the Distributor will provide to the Customer, for a charge equal to the Distributor's cost, an itemized list of the costs for the major items in each of the categories listed in Section 29(c) above, in respect of all of the work for the Project. If requested to do so by the Customer, and the Alternative Bid Option has been selected, the Distributor will provide to the Customer, for a charge equal to the Distributor's cost, an itemized list of the costs for the major items in each of the categories listed in Section 29(c) above, in respect of all of the Uncontestable Work for the Project.
31. Where the Alternative Bid Option was not selected, once the Actual Costs are known and the Project has been energized, a final Economic Evaluation will be conducted by the Distributor and an adjustment will be made to the calculation of the Capital Contribution. The Customer shall pay to the Distributor within the Distributor's invoicing terms, any shortfall where the final Capital Contribution

was greater than the initial Capital Contribution, and the Distributor shall refund any surplus if the final Capital Contribution was less than the initial Capital Contribution.

32. Where the Alternative Bid Option was selected and the Customer performed the Contestable Work, and the Distributor is required to pay a Transfer Price, the Transfer Price will be considered a cost to the Distributor for the purposes of completing the final Economic Evaluation. Once the Transfer Price has been established and the remainder of the Actual Costs are known and the Project has been energized a final Economic Evaluation will be conducted and an adjustment will be made to the calculation of the Capital Contribution. The Customer shall pay to the Distributor within the Distributor's invoicing terms, the amount of the final Capital Contribution. At the Distributor's sole discretion, the Distributor may set off the Capital Contribution against the Transfer Price.
33. Once the Distributor has calculated the final Capital Contribution amount, the Distributor shall provide to the Customer the calculation used to determine the amount of the final Capital Contribution required from the Customer, including all assumptions and inputs used to produce the final Economic Evaluation, at no charge to the Customer.

**Part H: Expansion Deposit**

34. The Customer shall deliver to the Distributor the Expansion Deposit set out in Schedule B. The Expansion Deposit may be used by the Distributor to cover the forecast risk associated with whether the forecasted revenues for the Project will materialize as projected, and the asset risk associated with ensuring that the Project is constructed, that it is completed to the proper design and technical standards and specifications, and that the facilities operate properly when energized.
35. Where the Customer constructs the Contestable Work, the Distributor shall retain and use the Expansion Deposit to cover its costs if the Distributor must complete, repair, or bring up to standard the facilities constructed and/or installed by the Customer. The costs required to complete, repair or bring up to standard the facilities constructed and/or installed by the Customer include, without limitation, costs the Distributor incurs to ensure that the Project is completed to the proper design and technical standards and specifications and the facilities operate properly when energized.
36. The Expansion Deposit shall be in a form that is Acceptable, which may include an irrevocable letter of credit from a bank as defined in the Bank Act, a surety bond given by an acceptable insurance surety company, cash deposit or any combination thereof:

(a) where the Expansion Deposit is an irrevocable letter of credit, it shall be substantially in the form specified in Schedule F;

(b) where the Expansion Deposit is provided in the form of a cash deposit, and where the Distributor returns any portion of the Expansion Deposit, the Distributor shall return the Expansion Deposit to the Customer together with interest as follows:

- (i) interest shall accrue monthly on the portion of the Expansion Deposit being returned, commencing on the receipt of the total Expansion Deposit required by the Distributor; and
- (ii) the interest rate shall be at the prime business rate set by the Bank of Canada less 2 percent.

37. Once the Project facilities are energized and subject to Sections 34 and 37, the Distributor shall annually return the percentage of the Expansion Deposit in proportion to the actual connections (for Residential developments) or actual demand (for commercial and industrial developments) that materialized in that year as compared to the Customer forecasted connections (for Residential developments) or Customer forecasted demand (for commercial and industrial developments). The Distributor shall perform this calculation annually for the duration of the Customer Connection Horizon or the end of the Customer Connection Horizon the Customer forecasted connections (for Residential developments) or Customer forecasted demand (for commercial and industrial developments) have not materialized, the Distributor shall retain the remaining portion of the Expansion Deposit.

38. If the Alternative Bid Option was selected and the Customer constructed the Contestable Work, the Distributor may, subject to item 36 above, at its sole discretion, retain 10 percent of the Expansion Deposit for a warranty period of up to 2 years. The Distributor may apply the portion of the Expansion Deposit retained to any work required to repair the electrical facilities within the warranty period. This warranty period shall begin at such time as the Project is fully energized. At the end of the warranty period, the Distributor shall return any remaining portion of the Expansion Deposit.

### **Part I: Information and Changes in Scope**

39. The Customer agrees to provide the Distributor with all information in the Customer's possession or reasonably obtainable by the Customer relating to the Project as may be necessary or helpful to the Distributor in performing its obligations hereunder, promptly upon request by the Distributor.

40. Should the Customer make any changes to the information provided to the Distributor and those changes result in an increase in the Actual Costs to the Distributor, the Distributor may recover any increase from the Customer in the form of an additional Capital Contribution and the Customer agrees to make such additional Capital Contribution as may be required by the Distributor in the time specified by the Distributor. Until such time as payment is received by the Distributor in accordance this Section 38 the Distributor shall be permitted to suspend its performance under the Agreement.

41. The Customer agrees that any request for changes to the Work specified in Schedule A must be made in writing to the Distributor. Upon receiving such request the Distributor shall advise the Customer of any cost and schedule impacts that such changes will have on the Project and if any additional Capital Contribution will be required from the Customer. Where the Customer elects to proceed with such changes it shall provide to the Distributor its written approval to proceed along with any such additional Capital Contribution. Until such time as written approval and such additional Capital Contribution is received by the Distributor in accordance with Section 40, the Distributor shall be permitted to suspend its performance under the Agreement.

**Part J: Notices**

42. Any notice required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given if delivered by hand or by courier, mailed by prepaid registered mail, or transmitted by facsimile or other similar form of telecommunication capable of confirming transmissions, and addressed to the Parties as follows:

**For Subdivisions:**

Horizon Utilities Corporation Inc.  
55 John St. North  
Hamilton, Ontario L8R 3M8  
Attention: Manager, Capital Projects  
Phone No: (905) 521-4904  
Fax No: (905) 523-5764

**For Customer Connections:**

Horizon Utilities Corporation Inc.  
55 John St. North  
Hamilton, Ontario L8R 3M8  
Attention: Manager, Customer Connections  
Phone No: (905) 317-4786  
Fax No: (905) 522-8373

**To Customer:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Phone No: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Fax No: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Any notice delivered by hand or by courier shall be deemed to have been received on the date of delivery. Any notice sent by registered mail shall be deemed to have been received 3 business days after mailing. During a postal strike or other interruption of the mail, notices shall be given by delivery or telecommunication only. Any notice transmitted to the receiving party by telecommunication, with receipt of transmission confirmed, shall be deemed to have been received at 10:00 o'clock in the forenoon (local time of the recipient) on the next Business Day following the day on which it is transmitted. The Parties may at any time hereafter change the person designated and/or their address as specified in this Section 41, by giving notice in the manner provided for herein.

**Part K: Confidentiality**

43. Each Party shall comply with the Confidentiality Terms attached hereto as Schedule "D". These Confidentiality Terms including the definitions shall survive the termination of this Agreement.

**Part L: Access and Easements**

44. The Customer agrees that the Distributor shall have free and uninterrupted rights of access and entry to the Customer's property for the purposes of constructing the Project and undertaking the Work and for any other purposes specified in this Agreement.

45. If an easement is required by the Distributor, the Customer shall grant such easement to the Distributor or cause any third party to grant such easement to the Distributor substantially in accordance with the terms of Appendix E so as to allow the Distributor the use of such land as may be required by the Distributor for the purposes of this Agreement.

46. The Customer acknowledges and agrees that all costs related to the obtaining and registration of any and all easements in respect of the Project shall be the sole responsibility of the Customer, and that the Project will not be energized prior to the registration of the required easement against title.

**Part M: Schedules**

47. The Schedule(s) set out below are attached to and form part of this Agreement:

(a) Schedule A – The Work

(b) Schedule B – Cost & Contribution

(c) Schedule C – Standard Terms and Conditions for Capital Cost Recovery Agreements

(d) Schedule D – Confidentiality Terms

(e) Schedule E – Form of Easement

(f) Schedule F – Form of Irrevocable Letter of Credit

**[WHERE CUSTOMER IS A CORPORATION]**

**In witness whereof**, the Parties hereto, intending to be legally bound, have caused this Agreement to be executed by the signatures of their proper officers duly authorized in their behalf as of the day and year first above written.

\_\_\_\_\_  
Corporation's name

**HORIZON UTILITIES CORPORATION**

\_\_\_\_\_  
Authorizing signature and seal

\_\_\_\_\_  
Authorizing signature and seal

\_\_\_\_\_  
Signatory's name

\_\_\_\_\_  
Robert Lister, Vice President, Utility Operations  
**I have the authority to bind the Corporation**

\_\_\_\_\_  
Signatory's title  
**I have the authority to bind the Corporation**

**[WHERE CUSTOMER IS AN INDIVIDUAL]**

**In witness whereof** the Customer has set his hand and seal, and Horizon Utilities has caused this Agreement to be executed by the signature of its proper officer duly authorized in that behalf as of the day and year first above written.

\_\_\_\_\_  
Customer's name

**HORIZON UTILITIES CORPORATION**

\_\_\_\_\_  
Customer's signature

\_\_\_\_\_  
Authorizing signature and seal

**SIGNED, SEALED AND DELIVERED  
in the presence of:**

\_\_\_\_\_  
Robert Lister, Vice President, Utility Operations  
**I have the authority to bind the Corporation**

\_\_\_\_\_  
Witness' name

\_\_\_\_\_  
Witness' signature

## **Schedule A – The Work**

### **Horizon Constructs - Connection**

#### **PROJECT**

#### **Scope**

The Customer has requested that Horizon Utilities build an expansion of the distribution system for the purposes of connecting the Customer to the distribution system. The Project consists of the following Work:

**[Project Description to be added.]**

**Date of Issue:** \_\_\_\_\_

**Requested In-Service Date:** \_\_\_\_\_

**Security Requirement:** Yes/No

**Special Considerations:** *(e.g. ordering long lead material, concurrent processes)*

#### **HORIZON UTILITIES' WORK**

1. The work to be performed by Horizon Utilities shall include the Uncontestable Work and the engineering, procurement of equipment, installation of equipment, inspection, commissioning and all other such work required to construct the Project, excluding the Customer's Work.
2. Horizon Utilities shall, at the Customer's expense, provide:
  - a) temporary construction services to the Customer provided that the Customer has entered into a separate agreement with Horizon Utilities covering Horizon Utilities' Actual Costs; and
  - b) the design for the system showing the location of primary cables, service cables, transformers, duct system, foundations, road crossings and connection points with Horizon Utilities Corporation's distribution system; and
  - c) an inspector on site when requested by the Customer; and
  - d) the design for any line extension or other expansion where Horizon Utilities indicates in writing that such design is required.

**Fully Recoverable Work**  
**[Description to be added.]**

**CUSTOMER'S WORK**

The work to be performed by the Customer shall include:

**[Description to be added.]**

1. The Customer shall provide by no later than six (6) calendar months before the requested In-Service Date and in such form and substance as may be reasonably satisfactory to Horizon Utilities the following:
  - a) single line diagram indicating all electrical components and ratings;
  - b) written load estimate of the average monthly peak demand (kW) for the first five (5) years of service for each metered service;
  - c) site servicing plan showing proposed grades and elevations and locations of sewers, water mains, roadways and driveway locations.
  - d) if requested by Horizon Utilities , a coordination protection study
2. Where the transformer will be owned by:
  - a) Horizon Utilities, Horizon Utilities shall purchase, supply, install and maintain a three-piece pre-cast concrete foundation for a three-phase pad mounted transformer complete with grounding, concrete encased primary cable duct structure, secondary cables and terminations, provision for metering including but not limited to a meter enclosure and a dedicated phone line, where required, in accordance with Horizon Utilities' standards;
  - b) the Customer, the Customer shall purchase, supply, install and maintain transformation, acceptable to Horizon Utilities for components affecting Horizon Utilities' distribution system, complete with grounding, concrete encased primary cable duct structure, secondary cables and terminations, provision for metering including but not limited to a meter enclosure and a dedicated phone line per Horizon Utilities' standards.
3. Where the Customer's service entrance equipment will be comprised of a switchgear assembly, the Customer shall by no later than six (6) calendar months before the requested In-Service Date provide Horizon Utilities with:
  - a) detailed drawings, in such form and substance as may be reasonably satisfactory to Horizon Utilities showing the three-line electrical diagram and physical accommodation for revenue metering equipment;
  - b) the Manufacturer's address to which Horizon Utilities will arrange the shipment of revenue metering instrument transformers for installation in the switchgear.

- c) The customer shall submit all securities and cash amounts as described in Schedule B to Horizon Utilities at time of agreement execution.

**Easement**

- a) Required (from Customer): Yes/No
- b) Name of Third Party for Easement: \_\_\_\_\_
- c) Easement Lands (description): \_\_\_\_\_  
\_\_\_\_\_
- d) Date on which Easement is required: \_\_\_\_\_

**Customer Notice Information:**

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_\_  
Phone No: (\_\_\_\_) \_\_\_\_\_  
Customer Signature: \_\_\_\_\_

## **Schedule A – The Work**

### **Horizon Constructs - Subdivision**

#### **THE PROJECT**

##### **Scope**

The Customer has requested that Horizon Utilities build an expansion of the distribution system for the purposes of connecting the Customer's subdivision to the distribution system. The Project consists of the following Work:

**[Project Description to be added. Add reference to Approved for Construction drawing XXXX dated XXXXX.]**

**Date of Issue:** \_\_\_\_\_

**Security Requirement:**      Yes/No

**Project Prepayments:**

**Special Considerations:** *(e.g. ordering long lead material, concurrent processes)*

#### **HORIZON UTILITIES' WORK**

1. The work to be performed by Horizon Utilities shall include the Uncontestable Work and all construction for the approved electrical distribution system including the supply and installation of all required material and equipment to construct the Project, excluding the Customer's Work.

##### **Fully Recoverable Work**

**[Description to be added.]**

**CUSTOMER’S WORK**

The work to be performed and the Customer’s responsibilities shall include:

- a) providing a clear unobstructed site for Horizon Utilities to complete the construction of the distribution system. Grades must be within 300mm of final grade and property bars clearly visible; and
- b) any extra costs such as rock, frost or delays caused by site conditions, missing property bars, grade confirmation or construction coordination delays. All such extra costs will be identified by Horizon Utilities at the time and the estimate revised prior to commencement; and
- c) The customer shall submit all securities and cash amounts as described in Schedule B to Horizon Utilities at time of agreement execution.

**Easement**

- a) Required (from Customer): Yes/No
- b) Name of Third Party for Easement: \_\_\_\_\_
- c) Easement Lands (description): \_\_\_\_\_  
\_\_\_\_\_
- d) Date on which Easement is required: \_\_\_\_\_

**Customer Notice Information:**

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_\_  
Phone No: (\_\_\_\_) \_\_\_\_\_  
Customer Signature: \_\_\_\_\_

# Schedule A – The Work

## Alternative Bid Subdivision

**THE PROJECT**

**Scope**

The Customer has selected the Alternative Bid Option for the Contestable Work necessary to expand the distribution system for the purposes of connecting the subdivision to the distribution system. Horizon Utilities shall be responsible for the Uncontestable Work.

**[Project Description to be added. Add reference to Approved Drawing Number.]**

**Date of Issue:** \_\_\_\_\_

**Requested In-Service Date:** \_\_\_\_\_

**Security Requirement:** Yes/No

**Project Prepayments:**

**Special Considerations:** (e.g. ordering long lead material, concurrent processes)

**HORIZON UTILITIES' WORK**

1. The work to be performed by Horizon Utilities shall include the Uncontestable Work and the work associated with monitoring, inspecting and approving all aspects of the Customer's Work.
2. Horizon Utilities shall, at the Customer's expense, provide:
  - a) the design for the system including transformers, duct system, foundations, road crossings and connection points with Horizon Utilities Corporation's distribution system; and
  - b) an inspector on site when requested by the Customer; and
  - c) the design for any line extension or other expansion where Horizon Utilities indicates, in writing, that one is required.

**Fully Recoverable Work**

[Description to be added.]

**CUSTOMER'S WORK**

The work to be performed by the Customer shall include the entire electrical distribution system defined as Contestable Work as specified in the Offer to Connect.

The customer shall submit all securities and cash amounts as described in Schedule B to Horizon Utilities at time of agreement execution.

[Description to be added if required.]

**Easement**

- e) Required (from customer): Yes/No
- f) Name of Third Party for Easement: \_\_\_\_\_
- g) Easement Lands (description): \_\_\_\_\_  
\_\_\_\_\_
- h) Date on which Easement is required: \_\_\_\_\_

**Customer Notice Information:**

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_\_  
Phone No: (\_\_\_\_) \_\_\_\_\_  
Customer Signature: \_\_\_\_\_

## Capital Cost Recovery Agreement – Horizon Constructed Subdivision

### Schedule B - Cost and Revenue

**COST**

**Horizon Utilities Corporation's Work Estimate**

Horizon Utilities Corporation Work Estimate of total costs:

		Contestable	Uncontestable	Total
<i>i.</i>	Material	-	-	-
<i>ii.</i>	Labour	-	-	-
<i>iii.</i>	Equipment	-	-	-
<i>iv.</i>	Engineering & Administration	-	-	-
		-	-	-
	Upstream Electrical Distribution System Costs	-		-
	Total Project Costs			-
				\$ -

**Number of Residential Customers To Be Connected**

---

**Developer has chosen to have Horizon Utilities construct the project**

**Initial Capital Contribution**

**NPV Components**

**Present Value**

Capital Expenditures - Project costs & upstream costs	-\$0.00
Incremental Operating, Maintenance & Administration Costs	0.00
Distribution Revenue	0.00
Net Present Value	-\$0.00
GST @ 5 percent	-0.00
Total Initial Capital Contribution	-\$0.00

**Expansion Deposit**

---

-\$0.00

**Fully Recoverable Work**

Description of Fully Recoverable work and deposit required

Streetlighting Deposit	\$0.00
	0
	0
	0
	\$0.00

The following amounts are payable to Horizon Utilities at the time of the Customer's execution of the Agreement to Horizon Utilities:

Initial Capital Contribution	\$0.00
Expansion Deposit *	0.00
Fully Recoverable Work	\$0.00

\* A Letter of Credit is acceptable as payment of the Expansion Deposit. Please refer to Schedule C - Form Letter of Credit

**Customer Signature:** \_\_\_\_\_

## Capital Cost Recovery Agreement – Alternative Bid Subdivision

### Schedule B - Cost and Revenue

**COST**

**Horizon Utilities Corporation's Work Estimate**

Horizon Utilities Corporation Work Estimate of total costs:

		Contestable	Uncontestable	Total
<i>i.</i>	Material	-	-	-
<i>ii.</i>	Labour	-	-	-
<i>iii.</i>	Equipment	-	-	-
<i>iv.</i>	Engineering & Administration	-	-	-
		-	-	-
	Upstream Electrical Distribution System Costs	-		-
	Total Project Costs		\$	-

**Number of Residential Customers To Be Connected**

**Developer has chosen to have Horizon Utilities construct the project**

Note: No Capital Contribution required at this time. Amounts will be determined once Transfer Price is known.

**Prepayment Required:**

Estimated Final Connection Costs		\$0.00
Inspection & Engineering Administration		
First \$50,000.00 @15 percent	\$0.00	
Balance @ 5 percent	0.00	0.00
Service & Metering Costs @ \$460.00 per Residential Customer		0.00
		0.00
	GST @ 5 percent	0.00
		\$0.00

**Expansion Deposit**

**-\$0.00**

**Fully Recoverable Work**

Description of Fully Recoverable work and deposit required		
Streetlighting Deposit		\$0.00
		0
		0
		0
		\$0.00

The following amounts are payable to Horizon Utilities at the time of the Customer's execution of the Agreement to Horizon Utilities:

Initial Capital Contribution		\$0.00
Expansion Deposit *		0.00
Fully Recoverable Work		\$0.00

\* A Letter of Credit is acceptable as payment of the Expansion Deposit. Please refer to Schedule C - Form Letter of Credit

**Customer Signature:** \_\_\_\_\_ 144

## **SCHEDULE "C":**

### **STANDARD TERMS FOR CAPITAL COST RECOVERY AGREEMENTS**

#### **1. Definitions**

In this Agreement, the following words shall have the following meanings:

**"Acceptable"** means acceptable to the Distributor.

**"Actual Cost"** means the Distributor's charge for equipment, labour and materials at the Distributor's standard rates and overheads, interest thereon plus any costs payable by the Distributor to any other third Party for the purposes of constructing the Project, undertaking the Work and connecting the Project to the Distributor's distribution system. For greater certainty the Actual Costs may include but are not limited to all preliminary design costs, storage costs, warehouse costs, facility removal expenses, any costs of environmental remediation.

**"Agreement"** means the Capital Cost Recovery Agreement and all schedules attached thereto.

**"Applicable Laws"** means any and all applicable laws, including environmental laws, statutes, codes, licensing requirements, treaties, directives, rules, regulations, protocols, policies, by-laws, orders, injunctions, rulings, awards, judgments or decrees or any requirement or decision or agreement with or by any governmental or governmental department, commission board, court authority or agency.

**"Business Day"** means any day, excluding Saturday, Sunday, and any other day that is either a legal holiday or a day on which banking institutions are authorized or required by law or other governmental action to be closed, or a day designated by Horizon Utilities.

**"Capital Contribution"** means a charge to a Customer by the Distributor to construct an enhancement or expansion.

**"Code"** means the Distribution System Code revised on June 27, 2007 and as amended and approved by the OEB from time to time.

**"Confidential Information"** means all information whether transmitted orally, electronically or in written form, relating to the Project which a Party or its Representatives may receive or have received in the course of the Work and which contain or otherwise disclose information which the other Party reasonably claims as confidential or proprietary, including, but not limited to, the Distributor's distribution system or transmission system design and system specifications. For further clarity, all requests for information made by a Party to the other Party are Confidential Information.

**"Contestable Work"** means work that under the Code either the Distributor or the Customer is permitted to perform as specified herein.

**"Customer Connection Horizon"** means the 5-year period as defined in Appendix B of the Code.

**"Customer's Property"** means any lands owned by the Customer in fee simple or where the Customer has leasehold and/or easement rights.

**"Customer's Work"** means the work to be performed by the Customer, at its sole expense, which is described in Schedule A.

**"Distribution Facilities"** means the Distributor's plant or distribution assets.

**"Distribution System"** means Horizon Utilities' system for distributing electricity, and includes any structures, equipment or other things used for that purpose.

**“Distributors’ Work”** means the work to be performed by the Distributor, which is described in Schedule A.

**“Economic Evaluation”** means the discounted cash flow analysis as specified in Appendix B of the Code.

**“Forecasted Revenues”** means the distribution revenues that the Distributor expects to receive from the Customer connections or demand as forecasted by the Customer.

**“Good Utility Practice”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to optimum practice, method or act to the exclusion of all others, but rather to include all practices, methods or acts generally accepted in the industry.

**“In-Service Date”** means the date that the Distributor approves the final energization of the Project.

**“Material”** relates to the essence of the contract, more than a mere annoyance to a right, but an actual obstacle preventing the performance or exercise of a right.

**“OEB”** means the Ontario Energy Board and any successor thereto.

**“Party”** means each of the Distributor and the Customer, and the Distributor and Customer are collectively referred to as the “Parties”.

**“Project”** means the expansion or enhancement of the Distributor’s distribution system as described in Schedule A for the purpose of connecting the Customer to the Distributor’s distribution system.

**“Person”** shall include individuals, trusts, partnerships, firms and corporation or any other legal entity.

**“Residential”** means an account taking electricity at 750 volts or less where the electricity is used exclusively in a separate metered living accommodation. Customers shall be residing in single-dwelling units that consist of a detached house or one unit of a semi-detached, duplex, triplex or quadruplex house, with a residential zoning. Separately metered dwellings within a townhouse complex or apartment building also qualify as residential customers. All customers are single-phase.

**“Representative”** means

- (i) a person controlling or controlled by or under common control of a Party and each of the respective directors, officers, employees and independent contractors of a Party and such Party’s Representative,
- (ii) any consultants, agents or legal, financial or professional advisors of a Party or such Party’s Representative and
- (iii) in the case of the Customer, any institution providing or considering providing financing for the Project, including such institutions directors, officers, employees and independent contractors or its consultants, agents or legal, financial or professional advisors.

**“Requested In-Service Date”** means the date specified in Schedule A by which final energization of the Project is requested.

**“Taxes”** means any and all taxes imposed by a governmental authority including but not limited to GST, ad valorem, (including any provincial sales, excise or similar taxes), property, municipal, utility, sales, use, consumption, excise, transaction and other taxes, or increases therein.

**“Transfer Price”** means the price that the Distributor expects to pay for distribution facilities constructed by the Customer.

**“Uncontestable Work”** means the preliminary planning, design and engineering specifications of the work required for the distribution system and expansion and connection (specifications shall be made in accordance with the distributor’s design and technical standards and specifications); and work involving existing distributor assets.

**“Variable Connection Fees”** means additional costs required to connect an expansion to the distribution system, and shall be considered project specific.

**“Work”** means all of the work to be conducted in accordance with The Work attached hereto as Schedule “A” and in accordance with the terms and conditions of this Agreement.

## STANDARD CONDITIONS FOR CAPITAL COST RECOVERY AGREEMENTS

### 2. Representations and Warranties

Each Party represents and warrants to the other that:

- a) it is duly constituted, validly existing and in good standing under the laws of its governing jurisdiction;
- b) it has the necessary power, authority and capacity and good and sufficient right to enter into this Agreement on the terms and conditions herein set forth, and the execution and performance of this Agreement will not conflict with, or constitute a breach under, any agreement to which it is a Party or any judgment, order, statute or regulation which is applicable to it;
- c) this Agreement constitutes a valid and binding obligation of it, enforceable against it in accordance with its terms and conditions;
- d) any individual executing the Agreement or any document hereunder has been duly authorized by the Party to sign the Agreement and any document hereunder;
- e) it is registered for the purposes of Part IX of the *Excise Tax Act* (Canada);
- f) it is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada), as amended;
- g) no proceedings have been instituted by or against it with respect to bankruptcy, insolvency or liquidation.

### 3. Customer Acknowledgements

The Customer acknowledges and agrees that:

- a) it will enter into such connection agreements or such other agreements as may be required by the *Ontario Energy Board Act, 1998* or the codes made by the Ontario Energy Board thereunder, or as may be required by the *Electricity Act, 1998* with the Distributor at least 14 days prior to the In-Service Date;
- b) it will ensure that all work performed by the Customer required for successful installation, testing and commissioning of the project and protective equipment (as required) is completed as required so as to permit the Distributor to witness and test to confirm the satisfactory performance of such systems;
- c) the Project will not be energized until
  - (i) the Distributor accepts the technical specifications (including electrical and civil drawings) for the Project and has accepted the Customer's verification of those portions of the Customer's Work which affects the Distributor's distribution system;
  - (ii) the Customer provides a detailed list of all materials used during construction;
  - (iii) a Professional Engineer or the Electrical Safety Authority certifies that all materials used during construction are in compliance with Ontario Regulation 22/04 and complies with Horizon Utilities approved specifications and the Project construction meets the intent of Ontario Regulation 22/04;

- d) all right, title and interest, including copyright ownership, to all information and material of any kind whatsoever (including, but not limited to the work product developed as part of the Work) that may be developed, conceived and/or produced by the Distributor during the performance of this Agreement is the property of the Distributor and the Customer shall not do any act that may compromise or diminish the Distributor's interest as aforesaid;
- e) it will be responsible to rectify at its cost, any negative impacts that the connection of the Project and operation of the Project following connection may have on the Distributor's distribution system in accordance with Good Utility Practice and to the satisfaction of the Distributor. The Customer further acknowledges that the negative impacts on the Distributor's distribution system may include but are not limited to impacts on safety, reliability, efficiency, power factor and power quality, voltage disturbances, voltage flicker, or objectionable harmonics on the distribution system or on other customers;
- f) it is responsible for installing such equipment and facilities at the Project for the purpose of protecting its property, facility and equipment.

#### **4. General Covenants**

The Parties acknowledge and agree that each Party shall:

- a) shall perform their respective obligations outlined in this Agreement in a manner consistent with Good Utility Practice and the Code and in compliance with all Applicable Laws including the Electrical Safety Code.
- b) be responsible for obtaining and maintaining any and all permits, certificates, reviews and approvals required under Applicable Law with respect to the work that Party is undertaking in respect of the Project.

Except as provided herein, the Distributor makes no representation or warranty, express, implied, statutory or otherwise, including, but not limited to, any representation or warranty as to the merchantability or fitness of the Work or any part thereof for a particular purpose.

#### **5. Equipment**

- a) The title to and ownership of all equipment placed on the Customer's property or on any easement by the Distributor or transferred by the Customer to the Distributor shall remain the property of the Distributor with full rights of removal. This provision shall survive the termination of this Agreement.

#### **6. Liability**

The Parties acknowledge and agree that:

- a) each Party shall only be liable to the other Party for damages that arise directly out of the negligence or the willful misconduct of that Party.
- b) that notwithstanding Section 6(a), the Parties shall not be liable under any circumstances whatsoever for any loss of profits or revenues, business interruption losses, loss of contract or loss of goodwill, or for any indirect, consequential, incidental or special damages, including but not limited to punitive or exemplary damages, whether any of the said liability, loss or damages arise in contract, tort or otherwise.
- c) The Customer does hereby fully indemnify and save harmless the Distributor, its successors and assigns, its employees, agents and representatives of, from and against all damage, loss or injury to persons or property which may be suffered or which may hereafter be sustained or incurred by reason of, or in any way relating to, arising from, or based upon the performance of or purported

performance of or non-performance of the Customer of any of its obligations or covenants in this Agreement, including without limitation those related to the Customer undertaking construction of the Contestable Work contemplated by this Agreement and all manner of actions, suits, causes of action, proceedings, charges, expenses, risks, liabilities, debts, obligations, duties, claims and demands in connection therewith, save and except for any claim made as a result of any negligence or willful misconduct on the part of the Distributor. This Section 6 shall survive the termination of this Agreement.

## **7. Force Majeure**

- a) Neither Party shall be considered to be in default in the performance of its obligations under this Agreement, except obligations to make payments herein, to the extent that performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of, and not a result of the fault or negligence of, the affected Party ("**Force Majeure**") and includes, but is not limited to, strikes, lockouts and any other labour disturbances.
- b) If a Party is prevented or delayed in the performance of any such obligation by Force Majeure, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party so affected by the Force Majeure shall endeavour to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable, except that there shall be no obligation on the Party so affected by the Force Majeure where the event of Force Majeure is a strike, lockout or other labour disturbance.

## **8. General**

- a) Each Party agrees that no portion of this Agreement shall be interpreted less favourably to either Party because that Party or its counsel was primarily responsible for the drafting of that portion.
- b) No amendment, modification or supplement to this Agreement shall be valid or binding unless set out in writing and executed by the Parties with the same degree of formality as the execution of this Agreement.
- c) This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of the Province of Ontario and the laws of Canada applicable therein, and the courts of Ontario shall have exclusive jurisdiction to determine all disputes arising out of this Agreement.
- d) Each Party shall at the other Party's request and expense execute and do all such further acts and things as may be necessary to carry out the full intent and meaning of this Agreement and the transactions contemplated thereby.
- e) No waiver of any term of this Agreement is binding unless it is in writing and signed by the Party entitled to grant the waiver. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any term of this Agreement will be deemed to be a waiver of any subsequent breach of that term.
- f) Unless otherwise specified herein, and in addition to any other remedy provided in this Agreement, all overdue amounts that are outstanding for longer than 30 days shall bear interest at 18 percent per annum.
- g) If any provision of this Agreement is declared invalid or unenforceable by any competent authority such provision shall be deemed severed and shall not affect the validity or enforceability of the remaining provisions of this Agreement, unless such invalidity or unenforceability renders the operation of this Agreement impossible.

- h) This Agreement represents the entire agreement between the Parties hereto respecting the subject matter hereto and supersedes all prior agreements, understandings, discussions, negotiations, representations and correspondence made by or between them respecting the subject matter hereto.
- i) The Customer may not assign this Agreement without the prior written consent of the Distributor which consent may not be unreasonably withheld by the Distributor.
- j) This Agreement may be executed in counterparts, including facsimile counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same agreement.

## **SCHEDULE “D”:**

### **CONFIDENTIALITY TERMS**

#### **1. Disclosure of Confidential Information**

Pursuant to the terms and conditions contained herein, a Party may disclose Confidential Information to the other Party solely for the purpose of the Project or the Work. Notwithstanding such disclosure the Confidential Information shall remain the sole and exclusive property of the disclosing Party and as such shall be maintained in confidence by the receiving Party using the same care and discretion to avoid disclosure as the receiving Party uses with its own similar information that it does not wish to disclose. The receiving Party may disclose Confidential Information to its Representatives pursuant to Section 3 below but may not use or disclose it to others without the disclosing Party's prior written consent. Notwithstanding the generality of the foregoing, all intellectual property rights which may subsist in the Confidential Information shall remain with the disclosing Party. The receiving Party shall not use the confidential information for any purposes other than the Project or the Work without the disclosing Party's prior written consent.

#### **2. Information that is not Confidential**

Confidential Information shall not include information which:

- a) is previously known to or lawfully in the possession of the receiving Party prior to the date of disclosure as evidenced by the receiving Party's written record.
- b) is independently known to or discovered by the receiving Party, without any reference to the Confidential Information.
- c) is obtained by the receiving Party from an arm's length third Party having a bona fide right to disclose same and who was not otherwise under an obligation of confidence or fiduciary duty to the disclosing Party or its Representatives.
- d) is or becomes publicly available through no fault or omission of, or breach of this Schedule “D” by, the receiving Party or its Representatives.
- e) is disclosed by the disclosing Party to another entity without obligation of confidentiality.
- f) is required to be disclosed on a non-confidential basis pursuant to a judicial or governmental order or other legal process as described in Section 5 or as set forth in Section 4.

#### **3. Disclosure to Representatives**

Confidential Information shall only be disclosed to Representatives who need to know the Confidential Information for the purposes of the Project or the Work. Except in the case of officers, directors or employees, Confidential Information may only be disclosed to Representatives where the receiving Party has an agreement in place with those Representatives sufficient to obligate them to treat the Confidential Information in accordance with the terms hereof. The receiving Party hereby specifically acknowledges that it shall be solely responsible to ensure that its Representatives comply with the terms of this Schedule “D” and that the receiving Party shall defend, indemnify and hold harmless the disclosing Party from and against all suits, actions, damages, claims and costs arising out of any breach of this Schedule “D” by the receiving Party or any of its Representatives.

#### **4. Compelled Disclosure**

In the event that a receiving Party, or anyone to whom a receiving Party transmits Confidential Information pursuant to this Schedule "D" or otherwise, becomes legally compelled to disclose any Confidential Information, the receiving Party will provide the disclosing Party with prompt notice so that the disclosing Party may seek injunctive relief or other appropriate remedies. In the event that both Parties are unable to prevent the further transmission of the Confidential Information, the receiving Party will, or will use reasonable efforts to cause such person to whom the receiving Party transmitted the Confidential Information to furnish only that portion of the Confidential Information, which the receiving Party is advised by written opinion of counsel is legally required to be furnished by the receiving Party, to such person and exercise reasonable efforts to obtain assurances that confidential treatment will be afforded to that portion of the Confidential Information so furnished.

#### **5. Records with respect to Confidential Information**

The receiving Party shall keep all written or electronic confidential information furnished to or created by it. All such Confidential Information, including that portion of the Confidential Information which consists of analyses, compilations, studies or other documents prepared by the receiving Party or by its Representatives, is the disclosing Party's property and will be returned immediately to the disclosing Party or destroyed upon its request and the receiving Party agrees not to retain any copies, extracts or other reproductions in whole or in part. If a receiving Party does not receive a request to return Confidential Information to the disclosing Party within 6 months of the last communication between the Parties concerning the Project or the Work then the receiving Party shall destroy any Confidential Information it holds.

Notwithstanding the foregoing, the Distributor shall have the right to retain such electrical information concerning the Project that it has received from the Customer or its Representatives for the purpose of the Distributor making the required calculations and decisions related to the design, operation, and maintenance of the Distributor's facilities and those for any other person that may connect or is considering connecting to the distribution system that could be impacted by the Project.

#### **6. Remedies**

The receiving Party agrees that the disclosing Party would be irreparably injured by a breach of this Schedule "D" and that the disclosing Party shall be entitled to equitable relief, including a restraining order, injunctive relief, specific performance and/or other relief as may be granted by a court to prevent breaches of this Schedule "D" and to enforce specifically the terms and provision hereof in any action instituted in any court having subject matter jurisdiction, in addition to any other remedy to which the disclosing Party may be entitled at law or in equity in the event of any breach of the provisions hereof. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Schedule "D" but shall be in addition to all other remedies available at law or equity.

## SCHEDULE E: FORM OF EASEMENT

### Terms and Conditions of Easement

This is an easement in gross.

The Transferor grants an easement in gross and in perpetuity to the Transferee in accordance with the following terms and conditions:

1. The Transferor is the owner in fee simple and possession, free from encumbrances, with good and marketable title of the lands described as:

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Hereinafter "Easement Lands",

2. Pursuant to the *Energy Competition Act, 1998* and amendments thereto, the Transferee has constructed, or is about to construct, an expansion or connection to its distribution system (hereinafter referred to as the Works) over, on and under the Easement Lands for the distribution of electrical energy.
3. The Transferor grants, transfers and conveys to the Transferee in registerable form and in consideration of the sum of two dollars (\$2.00), the free, uninterrupted and unobstructed rights and easement in perpetuity:
  - i. to construct, operate, maintain, re-locate, replace and remove said Works including without limitation all necessary poles, aerial and buried wires and cables, conduits, manholes, markers, transformers, fixtures and equipment and all appurtenances or accessories thereto as the Transferee may, from time to time, deem requisite;
  - ii. to cut and remove all trees and brush on the Easement Lands;
  - iii. for the Transferee's servants, agents, contractors, and workers, at all times to pass and re-pass with any vehicles, supplies and equipment along the Easement Lands for all purposes necessary for or incidental to the exercise and enjoyment of the rights herein granted and conveyed subject to payment by the Transferee of compensation for any damage caused thereby other than damage caused at the time of the original construction of said Works; and
  - iv. to use the Easement Lands for the purpose of providing telecommunications service and electrical energy service and distribution.
4. The Transferor covenants and agrees not to erect over, on and under the Easement Lands any buildings, structures, or other obstructions of any nature whatever except property line fences not exceeding six (6) feet in height; and further covenants and agrees not to change the grade of the Easement Lands if in the opinion of the Transferee such acts would interfere with the Works.
5. The Transferor covenants with the Transferee that it has the right to convey the Easement on the Easement Lands to The Transferee and that the Transferee will quietly possess and enjoy the Easement Lands, and that it will execute such further assurances of the Easement as may be requisite.

6. The burden and benefit of the Transfer of Easement shall run with the land and shall extend to, be binding on and enure to the benefit of the Parties hereto and their respective successors and assigns.
7. Nothing herein contained shall in any way limit, restrict or interfere with or detract from the rights and powers given, granted and conferred upon the Transferee under the provisions of the *Energy Competition Act, 1998* or any amendment thereto or any other statute or regulation.
8. The mortgagee shall join in the instrument of transfer to subordinate and postpone its interest as mortgagee in favour of the rights and easement herein granted to The Transferee to the intent that for all purposes said rights and easement shall have priority over its mortgage.

**SCHEDULE “F”:**

**FORM OF IRREVOCABLE LETTER OF CREDIT**

**Irrevocable Standby Letter of Credit in favour of Horizon Utilities Corporation**

Irrevocable/Standby Letter of Credit No: \_\_\_\_\_

Beneficiary:                    Horizon Utilities Corporation  
   P.O. Box 2249 Station LCD 1  
   55 John Street N.  
   Hamilton, Ontario, L8N 3E4

Applicant:

Amount:

Expiry Date:

We, [**Financial Institution Name**],[**Financial Institution Address**], hereby issue in favour of Horizon Utilities Corporation (the “Beneficiary”) this irrevocable standby letter of credit.

This standby letter of credit is available for payment against presentation to [**Financial Institution Name**] at its above noted address of the following documents:

1. Beneficiary’s signed written demand addressed to [**Financial Institution**], stating: “We, the undersigned Horizon Utilities Corporation, hereby demand payment of the sum of CAD..... (..... Canadian Dollars) under [**Financial Institution Name**] Standby Letter of Credit No:\_\_\_\_\_ and certify that the amount demanded herein is owing by \_\_\_\_\_ [**Applicant**] who is in default of its obligations under the agreement between Horizon Utilities Corporation and [**Applicant**] in accordance with the provisions of the Distribution System Code; and
2. Copy(ies) of the Beneficiary’s invoice(s) to [**Applicant**] clearly stating the due date for payment.

Partial drawings are permitted.

This standby letter of credit shall be reduced automatically, by the amount of each drawing paid hereunder and/or by amendment, by the amount of reduction that may be authorized by the Beneficiary from time to time by their written request, signed by the Beneficiary and given to [**Financial Institution Name**]. Such amendment(s) shall become effective on the seventh (7th) calendar day from the date of issuance of the amendment.

[**Financial Institution Name**] hereby agrees that it will honour the Beneficiary’s demand for payment, presented in compliance with the terms of this standby letter of credit, without enquiring whether the Beneficiary has a right as between itself and the Applicant to make such demand, and without recognizing any claim of the said Applicant.

It is a condition of this standby letter of credit that it shall be deemed to be automatically extended without amendment for one year from the present or any future expiration date hereof, unless at least sixty (60) days prior to any such expiration date, we notify the Beneficiary in writing by registered mail or courier that we elect not to consider this standby letter of credit renewed for such further period.

The originals of all amendments, correspondence, payments and notices hereunder, if any, shall be sent by courier to the Beneficiary at its above noted address, Attention: Director, Treasury & Risk.

Except as otherwise expressly stated this standby letter of credit is subject to the 'Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce, Publication No. 500'.

We engage to honour presentations submitted within the terms and conditions above.