

PART TWO – ELECTRICAL AND STREET LIGHTING SERVICES

2.1 The Owner agrees to design, supply, construct and install, at its own expense, the following:

- a) All Electrical Works required to complete a proper electrical distribution system within the Subdivision Lands and without limiting the foregoing, consisting generally of trenching for primary and secondary cables, primary and secondary conductor, transformer and switching units and foundations for same, splicing vaults, and associated appurtenances; and
- b) All Street Lighting Works required to complete a proper street lighting system within the Subdivision Lands and without limiting the foregoing, Street Lighting Works shall consist generally of trenching, cables, street light conductor, poles, luminaries and associated appurtenances;

both within the Subdivision Lands and outside the said lands as may be necessary to serve the Subdivision Lands and connect same to existing Electrical Works and Plant of Powerlines at such points as determined by Powerlines. The complete Electrical Works and Street Lighting Works within the Subdivision Lands and within surrounding rights-of-way, as may be required, shall hereinafter be referred to as the Electrical and Street Lighting Services.

2.2 Notwithstanding any other provision contained in this Agreement, the following services, materials and installations within or outside the Subdivision Lands shall be performed only by Powerlines or its contractors or assignee, at the sole expense of the Owner:

- a) all splicing;
- b) all connections to transformers;
- c) all inspections of the Electrical and Street Lighting Services;
- d) testing of the Electrical and Street Lighting Services;
- e) all maintenance of the Electrical and Street Lighting Services and correction of any deficiencies, repairs or necessary modifications subsequent to the issuance of a Certificate of Interim Acceptance as late set out and provided by this Agreement.

The Owner agrees to pay Powerlines all of its costs and expenses incurred with respect to such services, materials and installations performed or supplied by it or its contractors.

2.3 Prior to the commencement of any installations or work, the Owner shall submit to Powerlines for final written approval, detailed plans, specifications and drawings, for the proposed Electrical and Street Lighting Services, (hereinafter referred to as “Plans”) prepared by a Consulting Engineer registered by the Association of Professional Engineers of Ontario and such other material and information that he may reasonably require. Without limiting the foregoing or the discretion of Powerlines, it may consider the adequacy and availability of electrical service to the subdivision lands or whether the plans take into account the orderly development of electrical service to any abutting or nearby lands when determining if the plans should be approved. Neither the execution of this Agreement nor any provision of this Agreement shall obligate Powerlines in any way

to upgrade or make available electrical service to the subdivision lands or to any abutting or nearby lands unless expressly provided herein.

- 2.4 All Electrical and Street Lighting Services shall be constructed and installed in accordance with the Plans as approved unless changes are further approved in writing by Powerlines. Further, such installations shall be constructed and installed in a good, substantial and workmanlike manner and in accordance with any general design, installation and specification standards of Powerlines that may be in effect from time to time. The Owner acknowledges that the general design, installation and specification standards for Street Lighting will be as required by Powerlines of the City of Windsor.
- 2.5 Any changes, modifications, or revisions to the Plans required by Powerlines shall be made by the Consulting Engineer of the Owner at the expense of the Owner. After all necessary changes, modifications or revisions have been made, the Owner shall furnish Powerlines with a complete set of Plans as revised. Upon completion of the installation of the Electrical and Street Lighting Services, the Owner shall provide a further complete set of "as built" Plans for the said Electrical and Street Lighting Services as installed.
- 2.6 Powerlines shall have the right to require over sizing or an increase of capacity for any Electrical and Street Lighting Services (including Street Lighting) or portion thereof as it may deem necessary for the better use of its Electrical Works and Plant for the distribution of electricity in the City of Windsor. Powerlines shall pay the cost of such over sizing and increase of any capacities in whole or in part as determined by Powerlines acting reasonably in consultation with the Consulting Engineer of the Owner upon the issuance of the Certificate of Interim Acceptance. No contract shall be awarded by the Owner and no work shall commence for the installation of any such services or portion thereof in respect of which Powerlines is to bear any portion of cost, without approval in writing of Powerlines.
- 2.7 It is understood by the Owner that the installation of Electrical and Street Lighting Services carried out under this Agreement must be inspected and approved by Powerlines Inspectors and the Owner shall give Powerlines seventy-two (72) hours written notice of the commencement of any work. Notwithstanding any reference in this Agreement to the inspection by the Powerlines Inspectors, Powerlines may designate such inspections to be carried out any other person or entities.
- 2.8 Upon completion of the installation of the Electrical and Street Lighting Services, Powerlines may make comprehensive inspection and testing and provided:
- a) all outstanding deficiencies, repairs or modifications identified by such inspection or inspections are satisfactorily made by the Owner;
 - b) the Owner is not otherwise in default of this Agreement;

- c) as built plans for the Electrical and Street Lighting Services as installed have been delivered;
- d) the system is energized; and
- e) all Easements and Rights-of-way as required by this Agreement have been registered and copies provided to Powerlines;

a Certificate of Interim Acceptance will be issued to the Owner.

Subsequent to the date of Certificate of Interim Acceptance, all maintenance of the Electrical and Street Lighting Services and correction of any deficiencies, repairs or necessary modifications identified by Powerlines shall be carried out only by Powerlines at the sole cost and expense of the Owner for a one year maintenance period.

2.9 At the end of the one-year maintenance period, Powerlines may make Final Inspection and provided:

- a) there are no outstanding deficiencies or repairs or modifications required;
- b) the Owner has paid all costs and expenses owing to Powerlines pursuant to this Agreement; and
- c) the Owner is not otherwise in default of this Agreement;

a Certificate of Final Approval will be issued to the Owner accepting the Electrical and Street Lighting Services as installed. Upon the issuance of the Certificate of Final Approval, Powerlines will release all bonds and securities as posted by the Owner.

2.10 Powerlines shall not be obligated to supply any electricity to the owner within the Electrical and Street Lighting Services or otherwise electrify the system until the Certificate of Interim Acceptance has been issued by Powerlines.

2.11 Prior to commencement of any works, the Owner shall provide a Subdivision Bond, Letter of Credit or Provincial or Federal Government Security satisfactory to Powerlines (hereinafter "Acceptable Security") in an amount equal to 100% of the value of the Street Lighting Services as determined by Powerlines for the purpose of ensuring the performance of the contract obligations and completion of the Street Lighting Services by the Owner. The cost of over sizing as required by Powerlines shall be excluded in determining the amount of Acceptable Security required. The Acceptable Security shall be issued directly in the name of and for the benefit of Powerlines and any assignments of bonds or other security originally issued for or on behalf of a contractor or any other person, shall not be acceptable. Powerlines agrees that it will release the Acceptable Security as soon as practical after the issuance of the Certificate of Interim Acceptance subject to any on-going actions or claims with respect to the said security.

2.12 Prior to commencement of any works, the Owner shall also provide a Letter of Credit or cheque from a recognized Institutional Banker satisfactory to Powerlines (hereinafter the "Maintenance Deposit") in an amount equal to the greater of \$2,000.00 or 10% of the value of the Electrical and Street Lighting Services including the estimated values for

purchased services of Powerlines as security for the maintenance, correction of deficiencies, repairs or other necessary modifications to the Electrical and Street Lighting Services until a Certificate of Final Approval has been issued by Powerlines and Powerlines may call upon the Letter of Credit in whole or in part to satisfy costs or expenses incurred by Powerlines during the maintenance period which are not paid in the normal course.

- 2.13 The Owner acknowledges that in the even of default by the Owner in performing its obligations under this Agreement, Powerlines may elect, in addition to any other remedies available at law, to vigorously pursue realization of all security to ensure that the Electrical and Street Lighting Services are completed. The Owner agrees that any persons or other entities, including Powerlines, may make use of all installations and materials belonging to the Owner in or on the Subdivision Lands in completing the Electrical and Street Lighting Services, and ownership to all the Electrical and Street Lighting Services and to the City of Windsor with respect to Street Lighting Services upon installation.
- 2.14 The Owner shall provide the Manager of Technical Services with a schedule of actual costs of designing, supplying, constructing and installing Electrical and Street Lighting Services, including the estimated costs for the purchased services of Powerlines, in such detail as Powerlines may require. This information shall be certified by a Professional Engineer and shall be provided prior to energization of the electrical and streetlight facilities.

PART THREE – GENERAL

- 3.1 The provisions of the following paragraphs under this Part Three – General shall apply to all aspects of this Agreement relating to Electrical and Street Lighting Services, unless otherwise specifically provided. Electrical and Street Lighting Services and other works or services required or specified under this Agreement shall be collectively referred to as Services in this Part.

Consulting Engineer

- 3.2 The Owner shall employ, at its own expense, a Consulting Engineer registered by the Professional Engineers of Ontario to perform the following with respect to the installation of all Services required under this Agreement:
- a) to design and submit plans, specifications and drawings to Powerlines as required;
 - b) to prepare and administer any contracts or work to be performed by the Owner, contractors or subcontractors of the Owner;
 - c) to obtain all necessary Municipal, Provincial, and Federal approvals as may be necessary for work to be performed by the Owner;

- d) to be responsible for all verification of service and layout work required in construction and to maintain for his client's purposes all records of construction;
- e) to submit to Powerlines all required "as built" details, elevations and drawings of any services installed by the Owner;
- f) to be responsible for coordination and scheduling;
- g) to visit the site of the said works as requested by Powerlines for any reason related to the Services.

Phasing

3.3 The Owner may develop parts of the Subdivision Lands in Phases as may be agreed upon in the Subdivision Agreement for the Subdivision Lands made between the owner and Powerlines of the City of Windsor or between the owner and Powerlines pursuant to this Agreement. In the event of phasing by the Owner, a new Agreement will be required to be executed between the Owner and Powerlines for each phase unless the parties agree in writing that the provisions of this Agreement shall apply to such other specific phase.

Conveyances and Easements

3.4 The Owner will provide Powerlines with all Easements and Rights-of-way as required for the purpose of providing Services to the Subdivision Lands and, without limiting the foregoing, will provide the said Easements and Rights-of-way for all locations of Services not wholly within a dedicated municipal right-of-way. The location and dimensions of the Easements and Rights-of-way required for Services shall be determined by Powerlines. The owner shall also provide Powerlines with necessary Easements outside of the Subdivision Lands as may be necessary for the extension and connection of Services to existing Works or Plant of Powerlines outside of the Subdivision Lands unless Powerlines is satisfied that the installation of such service extensions may be properly made within existing Municipal or commission Rights-of-way.

3.5 The Owner shall be responsible for taking all action and for all costs in connection with the granting of Easements and Rights-of-way including survey costs, registration costs, and legal costs. The said Easements may be prepared by the Solicitor for the Owner, but in the event that Powerlines deems it necessary that its own solicitors be involved in the Easement process for the purpose of preparation or review, such legal expense of Powerlines shall be paid by the Owners.

3.6 The owner acknowledges and agrees that it will not be entitled to the supply of or electricity to or through the Services until such time as the required Easements and Rights-of-Way in favour of Powerlines have been registered or, where appropriate, dedicated to the Municipality. The Owner agrees that it will not transfer title to any lot,

block, or portion of the Subdivision Lands until such Easements or Rights-of-Way have been registered in favour of Powerlines or dedicated to the Municipality.

- 3.7 The Owner shall be responsible for all surveying and location costs in connection with the design, set-up and location Services. Any relocation of any Services required as a result of conflict with any other utilities or other circumstances, shall be at the expense of the Owner notwithstanding Powerlines may have approved plans showing the original location of such Services.

Access

- 3.8 The Owner shall provide unimpeded access at all times for all employees, contractors, subcontractors and agents of Powerlines and for their equipment to all installation and all other areas of the Subdivision Lands as may be necessary to perform works and installation of Services contemplated by this Agreement.

Contractors Specifications and Materials

- 3.9 All work relative to this Agreement with respect to the installation of Services by the Owner or its contractors shall be carried out by a contractor competent in the type of construction involved. Prior to commencement of any work, the Owner will provide a list of proposed contractors who are to take part in the work and use of such contractors shall be subject to the approval of Powerlines. Contractors installing Services must be members of the Electrical Utility Safety Association (E.U.S.A). It shall be the responsibility of the Owner to make any contractor aware of this approval process prior to requiring any bids or entering into any contracts with respect to any Services.
- 3.10 In the event that the Owner shall call for tenders for any of the work required herein, such tenders shall be called on the basis of the plans and specifications prescribed under this Agreement and the Owner shall provide Powerlines with a copy of the tender and an executed copy of the contract sent to each successful tenderer for any such work.
- 3.11 All work or detail required for the completion of construction or installations under this Agreement that is not shown on the engineering drawings or plans, shall adhere to the latest Powerlines specifications and standards and it shall be the responsibility of the Owner to make itself aware and inform itself of same.
- 3.12 All materials to be incorporated into the works by the Owner or its contractors or sub-contractors required herein shall be tested from time to time, at the Owner's expense, as may be required by Powerlines.

Inspection of Work

3.13 It is understood by the Owner that all work carried out under this Agreement, other than work performed by Powerlines or its contractors, must be inspected and approved but not supervised by the Inspectors of Powerlines. The Owners acknowledge and agree that they are required to give Powerlines notice as may be required by either of them prior to the commencement of any Work or the installation of Services. The Owner shall make reasonable effort to proceed expeditiously to complete all work undertaken without delay or interruptions; shall submit to Powerlines a work schedule to be followed in construction of the Services required herein; shall provide timely notice of any inspections required; shall cooperate fully with the Inspectors aforesaid by making all parts of the work accessible to them and shall organize the work operation in such a manner as to permit inspections to be carried out in the most efficient manner during regular working hours as far as possible. Powerlines, likewise upon receipt of notices as may be required by Powerlines, will cooperate with the Owner in arranging to have Inspectors available to carry out, without delay, such inspections as may be necessary. All works as installed by the Owner shall be left exposed and not covered until such time as the works have been properly inspected by Powerlines. In the event that any work is covered prior to inspection, the Owner or its contractors or sub-contractors shall, at the expense of the Owner uncover the said work for inspection as required by Powerlines. All inspection costs of Powerlines or its designated contractors or employees shall be at the expense of the Owner.

Acceptance of Work

3.14 The performance by the Owner of its obligations under this Agreement to the satisfaction of Powerlines shall be a condition precedent to the acceptance by Powerlines of the Services required to be constructed and installed by the Owner.

3.15 All Services constructed or installed by the Owner, its contractors or subcontractors, shall become the property of Powerlines in accordance with the following. In cases where a Certificate of Interim Acceptance shall issue, the Services shall become the property of Powerlines upon the issuance of the said Certificate and in all other cases where Services are constructed or installed by the Owner, its contractors or sub-contractors, the said Services or works shall become the property of Powerlines at such time as electricity is provided through the Services. Upon acceptance of the Services, Powerlines shall thereupon permit such Services to be incorporated into the existing Works and Plant of Powerlines. In any case where Powerlines or its contractors install any part of the Services, the property of such Services shall be and always remain that of Powerlines. Notwithstanding the foregoing, upon use of any portion of the Services to provide electric energy to the public, that portion of the Services so used shall immediately become the property of Powerlines. The Owner shall nevertheless be responsible for the costs and

expenses of Powerlines for the maintenance and the correction of all deficiencies, repairs and necessary modifications as otherwise provided by this Agreement, notwithstanding the transfer of ownership of Services to Powerlines. It is understood that the transfer of ownership of the Street Lighting Services is to the City of Windsor and the foregoing should be read and construed accordingly.

Construction Liens

3.16 The Owner shall take all necessary steps to prevent the registration of any Construction Liens against any Easements or Rights-of-way or other lands to be conveyed or dedicated to Powerlines or the Municipality. In the event that any Construction Liens are registered on Easements or Rights-of-way conveyed or to be conveyed to Powerlines or the Municipality, Powerlines shall have the right to use any of the security posted pursuant to this Agreement to cause the liens to be removed. Any costs or legal expenses incurred by Powerlines in dealing with Construction Liens affecting Easements or Rights-of-way or other lands conveyed or dedicated or to be conveyed or dedicated to Powerlines or the Municipality, shall be at the expense of the Owner. The Owner shall post all security with Powerlines of the City of Windsor as required by the Subdivision Agreement between the said Corporation of the City of Windsor and Owner with respect to any installation of services on municipal road allowances and other municipal lands.

Connections to Existing Works or Plant

3.17 All connections of Services to existing Works or Plant of Powerlines shall be performed by Powerlines or its contractors at the expense of the Owner.

Format of Plans and Specifications

3.18 The Owner agrees that in addition to the supply of any Plans on paper it will, at the request of Powerlines, provide such further copies of the said Plans on computer disks, diskettes, or such other computer format as Powerlines may require.

Costs and Expense of Powerlines

3.19 Whenever this Agreement shall refer to the payment of costs or expenses of Powerlines, it is agreed and understood that such costs and expenses shall include all direct and indirect costs of Powerlines including administrative charges, markup charges and burden calculated in accordance with the policies and directives of Powerlines in effect at the time such costs and expenses were incurred. Powerlines may invoice, including interim invoicing, from time to time for all services, materials, or costs and expenses incurred by it pursuant to this Agreement and such invoices shall be due as provided therein.

Indemnity and Insurance

- 3.20 The Owner further agrees to indemnify and save harmless Powerlines from and against all loss or damage, expense, claims, suits and liability on account of any and all damage to or loss or destruction of any property (including without limitation, the work hereby covered and all property of the Owner and Powerlines), or injury to or death of any person (including without limitation, employees of the Owner and Powerlines) arising directly or indirectly out of or in connection with any wilful or negligent act or unlawful or non-performance of any obligation of the Owner, its contractors, employees and invitees under this Agreement or on any lands of the owner or on any lands, easements or rights-of-way conveyed or to be conveyed to Powerlines.
- 3.21 During the construction of any Services or during any other construction or attendance on lands, easements or rights-of-way to be conveyed to Powerlines, pursuant to this Agreement, the Owner shall maintain a policy of public liability insurance in the amount of not less than \$2,000,000.00 and containing endorsements showing Powerlines as an additional named Insured and having a cross-liability clause and in a form satisfactory to Powerlines or the Solicitors for Powerlines. Before commencing construction or installation of any of the Services as contemplated by this Agreement or entering upon any lands, easements or rights-of-way to be conveyed to Powerlines, the owner shall provide Powerlines with a certified copy of such policy.

Repair of Damage

- 3.22 The Owner shall repair forthwith, at its own expense, any damage done by its servants, agents, contractors or sub-contractors, to any land or Services of Powerlines during the course of, or arising in any way out of the construction or installation of the Services required under this Agreement.
- 3.23 In addition to the foregoing paragraph, the Owner shall be responsible for all damages to any of the Services (whether installed by the Owner or Powerlines) resulting from the construction activities of any person within the Subdivision Lands, including, without limiting the foregoing, other utility providers, the Owner and its contractors and sub-contractors. In order to avoid such damage, it shall be the responsibility of the Owner to supervise any other construction activity within the Subdivision Lands in any area where damage may occur to the Services. In addition to any other available remedy, Powerlines may realize upon any security held by it upon default of the Owner to repair or pay for any damage as described above or in the foregoing section. The obligation expressed in this section shall remain ongoing and outstanding throughout the construction and installation of such Services until the date of Final Certificate of Approval is issued with respect to the Services.

3.24 In all cases where the Owner is obligated to repair, modify or correct any deficiencies, Powerlines will attempt to notify the Owner to take appropriate action. However, in cases where repairs to Services are the responsibility of the Owner and in the opinion of Powerlines the repairs must be carried out on an emergency basis by its own forces or its contractors, the repairs may be undertaken by Powerlines and the cost of all such repairs and corrective action shall be at the expense of the Owner and shall be payable to Powerlines.

Notices

3.25 Any notices required to be given to Powerlines Pursuant to this Agreement shall be delivered as follows:

With respect to Electrical and Street Lighting Services generally:

To: The President
ENWIN Powerlines Ltd.
Mailing Address: P.O. Box 1625, Stn. A
Physical Address: 4545 Rhodes Drive
Windsor, Ontario
N9A 5T7
Facsimile: (519) 251-7306

Copy to:
Manager of Technical Services
ENWIN Utilities Ltd.
Mailing Address: P.O. Box 1625, Stn. A
Physical Address: 4545 Rhodes Drive
Windsor, Ontario
N9A 5T7
Facsimile: (519) 251-7309

3.26 Any notices required to be given to the Owner pursuant to this Agreement may be delivered to the address or by way of the fax number as follows:

Address of Owner:

Fax Number of Owner:

All written communications shall be considered delivered to the Owner at the time each is either directed through the aforesaid facsimile number, mailed in the usual course, or hand delivered. In the event that the whereabouts of the Owner becomes unknown to

Powerlines, any notice or communication relating to this Agreement may be effectively given if mailed or delivered to the Consulting Engineer for the project, originally employed by the Owner.

Delays or Interruptions

3.27 Powerlines shall not be liable for any damages, losses, costs, or expenses whatsoever suffered by the Owner, or anyone claiming through the Owner, for any reason, arising from causes or other matters beyond its control and without limiting the foregoing, including adverse weather, strikes, lockouts or other labour disputes.

Purchase of Materials

3.28 The Owner shall give to Powerlines adequate notice to enable Powerlines to purchase, in accordance with its usual procedures, any necessary materials required for installations or work to be provided by it pursuant to this Agreement and if in the meantime, the Owner shall require temporary electrical service installations, the Owner will pay Powerlines such charges as Powerlines may reasonably impose for such required temporary installations.

Assignment

3.29 This Agreement shall ensure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns as the case may be. The owner shall not assign any part of this Agreement to any party without the express written consent of Powerlines. The Owner acknowledges and agrees that, at any time after the execution of this Agreement and from time to time thereafter, Powerlines may assign this Agreement, in whole or in part, to *ENWIN* Utilities Ltd. or any other third party, (hereinafter referred to as the "Assignee"), without the consent of and without notice to the Owner. The Assignee may enforce any of the obligations of the Owner herein, so assigned, against the Owner, in its own capacity or on behalf of Powerlines. The Owner shall accept any performance of any of the obligations of Powerlines herein, so assigned, by the assignee as being performance of the assigned obligations by Powerlines. The Owner acknowledges and agrees that the Assignee has no duties, obligations or liabilities to the Owner whatsoever under this Agreement or otherwise as a result of such Assignment.

Law Statutes and Permits

3.30 The design, supply, installation and construction of Services and all operations related thereto, are subject to the approval, inspection, bylaws, and regulations of all Municipal, Provincial, Federal, and other authorities having jurisdiction with respect to such

Services. All fees payable in respect to permits and approvals required by such Governmental Authorities are Agencies shall be at the expense of the Owner.

Registration

3.31 This Agreement may be registered against the Subdivision Lands described herein.

Gender

3.32 In constructing these presents, the words it or its used herein shall be read and mean he or his where required.

SIGNED BY THE AUTHORIZED OFFICERS AND DELIVERED at the City of Windsor, in the County of Essex and Province of Ontario on the date as first above written.

Owner:

Per: _____

Per: _____

We have authority to bind the Corporation.

Address of Owner: _____

Fax No. of Owner: _____

ENWIN POWERLINES LTD.

Per: _____

Per: _____

We have authority to bind the Corporation.