

CONSTRUCTION AGREEMENT

CONSTRUCTION AGREEMENT

THIS AGREEMENT made in duplicate this _____ day of

_____ two thousand and eight.

BETWEEN:

_____ of the _____ of _____

in the County of _____ and the Province of Ontario

(hereinafter called the CONTRACTOR)

PARTY OF THE FIRST PART

- AND -

ENWIN UTILITIES LTD. of the County of Essex and

the Province of Ontario

(hereinafter called *ENWIN Utilities Ltd.*)

PARTY OF THE SECOND PART

WITNESSETH that the Contractor and *ENWIN Utilities Ltd.* is considered of the fulfilment of their respective promises and obligations herein set forth covenant and agree with each other as follows:

- ARTICLE 1** (a) In this contract, the word "work" or "works" shall, unless the Contract otherwise requires, means the whole of the work and materials, matters and things required to be done, furnished and performed by the Contractor in or under this Contract.
- (b) "Vice-President" shall mean the Vice-President of *ENWIN Utilities Ltd.* Or such employee as may from time to time be duly authorized, and the Vice-President shall be deemed to act for the purposes of this Contract as agent of *ENWIN Utilities Ltd.*.
- (c) A copy of the plans, specifications, general conditions and Tender identified by the signature of the said Contractor are hereto annexed and are made part of this Contract as full to all intents and purposes as though recited in full herein.

ARTICLE 2 (a) A general description of the work is the approved installation of

(b) The Contractor shall, at his own expense, provide all and every kind of labour, machinery, plant, structures, roads, ways, materials, appliances, articles locates, permits, appraisals and things necessary for the due execution and completion of all work set out or referred to in the Tender and in the Specifications hereunto annexed and in such special Specification as may be issued to govern any alterations to any part or parts of the work, or set out and referred to in the plans prepared and to be prepared for the purpose of the work and shall forthwith commence the works, and diligently execute the respective portions thereof.

(c) In the event of the President so directing, the Contractor shall proceed with the work in such order as the Vice-President shall specify and the Contractor shall, at his own expense, commence by such date and complete within such period of time as the Vice-President may specify with respect thereto, such special portion or portions of the works as the Vice-President may from time to time direct.

ARTICLE 3 *ENWIN* Utilities Ltd. covenants with the Contractor, that the Contractor having in all respects complied with the provisions of this Contract, will be paid for and in respect of the works, the sum of \$ _____, subject to such additions and deductions as may be properly made under the terms hereof. Subject to the rights of *ENWIN* Utilities Ltd. as otherwise provided herein, *ENWIN* Utilities Ltd. shall make payment to the Contractor in the following manner:

(a) A progress payment shall become due and be payable by *ENWIN* Utilities Ltd. to the Contractor on or before the 10th of each month. The amount of this monthly payment will be the percent of the value calculated in proportion to the total Contract price, as estimated by the President, of all labour and materials incorporated in the said works and all materials suitably stored at the site thereof, including extras and less deductions up to and including the last day of the preceding month, less the aggregate of previous payments.

(b) The balance due hereunder shall become due and be payable by *ENWIN* Utilities Ltd. to the Contractor 45 days after the substantial completion of the work and after the Vice-President has issued the "Possession Certificate".

ARTICLE 4 Before making payment upon any progress or final estimate, *ENWIN* Utilities Ltd. may require the Contractor to satisfy the Vice-President or other authorized representative of *ENWIN* Utilities Ltd., that all claims against the Contractor or any sub-Contractor for labour, equipment, plants, materials or things employed, hired or supplied upon for the works have been paid or satisfied. The Contractor's payrolls, time books, and other books of account and vouchers, invoices and statements shall be open for inspection and extract by the authorized representative of *ENWIN* Utilities Ltd., who shall be assisted in every possible way by the Contractor to enable such representative to ascertain, as far as possible, the exact sums remaining unpaid. The Contractor shall be stopped from denying the accuracy or correctness of any payments made by *ENWIN* Utilities Ltd. under this Contract.

ARTICLE 5 Before making any payment on any progress or final estimate *ENWIN* Utilities Ltd. may require the Contractor to satisfy the Vice-President or other authorized representative of *ENWIN* Utilities Ltd. that all work performed and materials supplied and all structures built, for which payment is being made, are free and clear from all liens, under any statute or law, for work, labour, materials or otherwise. The Contractor shall indemnify and hold harmless *ENWIN* Utilities Ltd. from and against any and all such liens arising in or about the works.

ARTICLE 6 It is intended that every allowance to which the Contractor is fairly entitled will be embraced in the Vice-President's monthly certificates; but should the Contractor at any time have claims of any description which he considers are not included in the progress certificates, such claims must be made in writing to the Vice-President within thirty (30) days after the date of the delivery to him of the certificate from which he considers the items of such claims to have been omitted; but in no case beyond the period of sixty (60) days from the date of the practical completion of the portion of the work to which such claims apply. And in default of the presentation of such claims within the time or times so limited, such claims shall be absolutely barred.

ARTICLE 7 The Contractor, together with a guarantee company (approved by the Solicitor and Treasurer of *ENWIN* Utilities Ltd.), resident in Canada or authorized by law to carry on business in Canada, will be required to enter into a Bond for the sum hereinafter named and in a form approved by *ENWIN* Utilities Ltd.'s Solicitor, or in lieu of such bond the Contractor may deposit with the said Treasurer a sum in cash for the like amount, for the due and proper performance of the Contract.

The amount of the bond required for the proper performance of this Contract is:

_____ Dollars (\$_____)

being fifty percent (50%) of the amount of the Tender.

ARTICLE 8 In addition to the Performance Bond and any other security, the Contractor shall deposit a sum equal to 10% of the contract price with *ENWIN* Utilities Ltd. to pay for any additional costs or expenses incurred by *ENWIN* Utilities Ltd. as a result of failure by the Contractor to perform any contractual obligation in a timely manner. This remedy shall be in addition to and without prejudice to any other rights under the Contract.

The amount of Deposit required for the proper performance of this Contract is:

_____ Dollars (\$_____)

being ten percent (10%) of the amount of the Tender.

ARTICLE 9 The covenants herein contained shall apply to and be binding on the parties hereto and their respective successors, administrators, executors and each of them.

IN WITNESSETH WHEREOF the Parties hereto have hereunto set their hands and seal at:

the day and year first above written (or caused their Corporate seals to be affixed and attested by the signature of their proper officers, or as the case may be.)

SIGNED, SEALED AND DELIVERED

In the presence of:

**WITNESS AS TO SIGNATURE OF
CONTRACTOR**

CONTRACTOR

ADDRESS

ENWIN UTILITIES LTD.

OCCUPATION

VICE PRESIDENT
