

**APPENDIX “F”**

**CONSTRUCTION AGREEMENT  
FOR EXPANSION FACILITIES AND  
CONNECTION ASSETS SUPPLIED BY  
DISTRIBUTOR – RESIDENTIAL SUBDIVISION**

**BETWEEN**

•

**AND**

**NEWMARKET HYDRO LTD.**

**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

**BETWEEN:**

**NEWMARKET HYDRO LTD.**

(Hereinafter referred to as the "Corporation")

OF THE FIRST PART

- and -

•

(Hereinafter called the "Developer")

OF THE SECOND PART

**WHEREAS** the Developer is the registered owner of the lands described in Schedule "A" attached to and forming part of this Agreement (the "Lands");

**AND WHEREAS** the Developer proposes to subdivide and develop the Lands for the purpose of selling, conveying or leasing the Lands in accordance with a plan of subdivision and a subdivision agreement with the Corporation of the Town of Newmarket (the "Subdivision Agreement") and will require electrical distribution system facilities for the Lands;

**AND WHEREAS** a photographically reduced copy of such proposed plan of subdivision, hereinafter called the "Plan", is attached as Schedule "B" hereto and forms part of this Agreement;

**AND WHEREAS** the Developer has agreed with the Corporation to comply with their requirements with respect to the provision of Expansion Facilities and Connection Assets for the Lands proposed to be subdivided and other matters as hereinafter set forth;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that the Parties hereto in consideration of other good and valuable consideration and the sum of ONE DOLLAR (\$1.00) of lawful money of Canada by each to the other paid (the receipt whereof is hereby by each acknowledged), covenant and agree each with the other as follows:

## **ARTICLE 1 - INTERPRETATION**

### **1.01 Definitions**

The following words and expressions wherever used in this Agreement shall have the meaning ascribed hereto:

- (a) “Agreement” means this agreement including all schedules and amendments hereto;
- (b) “Article”, “Section”, “Subsection”, “Paragraph” means the specified Article Section, Subsection or Paragraph in the Agreement;
- (c) “Composite Utility Plan” means the plan attached hereto as Schedule “D” which identifies the location of utility services including, but not limited to, telecommunications, cable T.V., natural gas and municipal services;
- (d) “Developer” means “•”;
- (e) “Developer’s Services” means the services and installations required to be installed or constructed by the Developer pursuant to its Subdivision Agreement;
- (f) “Expansion Facilities” means the electrical distribution system services and facilities required to be installed or constructed by the Corporation as more particularly described in Schedule “C” hereto;
- (g) “Connection Assets” means that portion of the electrical distribution used to connect a customer or streetlight to the distribution system required to be installed or constructed as more particularly described in Schedule “C” hereto;
- (h) “Lot Development Plan” means the plan described in Article 5.01 and attached hereto as Schedule “G”;
- (i) “Plan” means the most recent version of the draft plan of subdivision or the registered plan of subdivision attached hereto as Schedule “B”;

## **ARTICLE 2 - DEVELOPER’S SERVICES, EXPANSION FACILITIES AND CONNECTION ASSETS**

### **2.01 Construction of Developer’s Services, Expansion Facilities and Connection Assets**

The Developer shall install or construct the Developer’s Services, or cause the same to be installed or constructed, in accordance with the Subdivision Agreement with the Town of

Newmarket. The Corporation shall install or construct the Expansion Facilities and Connection Assets, or cause the same to be installed or constructed, in accordance with this Agreement. The Developer agrees to commence construction of the Developer's Services on or before • and to complete them on or before •.

### **ARTICLE 3 - EXPANSION FACILITIES AND CONNECTION ASSETS**

#### **3.01 Preliminary Plan**

Appended hereto as Schedule "C" are the preliminary planning, design, engineering and electrical specifications prepared by the Corporation for the work required to provide Expansion Facilities and Connection Assets to the Lands. These specifications have been made in accordance with the Corporation's standards for design, material and construction.

#### **3.02 Economic Evaluation**

(1) Set out in Schedule "C" is the estimate of the costs of the Expansion Facilities and Connection Assets including those costs attributable to engineering design, materials, labour, equipment and administrative activities and the Corporation's economic evaluation with respect to the Expansion Facilities and Connection Assets. The Developer acknowledges that the economic evaluation indicates that there will be a shortfall between the present value of the projected capital costs and ongoing maintenance costs for the Expansion Facilities and Connection Assets and the present value of the projected revenue derived from the Expansion Facilities and Connection Assets, which shortfall shall require a capital contribution from the Developer.

(2) The economic evaluation which the Corporation shall perform under Article 3.02(1) of this Agreement shall identify the capital costs to be assumed by the Corporation in regard to the construction of the Expansion Facilities and Connection Assets. The Developer shall pay to the Corporation the Developer's capital contribution under Article 3.02(1) prior to the commencement of construction.

(3) The Corporation may, in its absolute discretion, adjust the capital contribution payable by the Developer under this Article 3 if the lots comprising the Plan are not connected for service at the rate assumed in the economic evaluation prepared by the Corporation under Article 3.02(1) or if there is a material change in the Plan.

#### **3.03 Construction of Expansion Facilities and Connection Assets**

(1) The Corporation shall not commence installation of the Expansion Facilities and Connection Assets until,

- (a) the Developer has paid the capital contribution under Article 3.02 and delivered all financial securities to the Corporation;
- (b) the Composite Utility Plan drawings have been approved by the Corporation, the Town of Newmarket and any utilities which will be providing services to the Lands; and
- (c) the natural gas distribution system has been installed.

(2) The Corporation shall be entitled to a period of six (6) months, following satisfaction of the conditions under Article 3.03(1), to assemble its equipment and materials and make such purchases thereof as may be necessary in its discretion to facilitate the installation of the Expansion Facilities and Connection Assets.

(3) The Corporation shall make reasonable efforts to have the Expansion Facilities and Connection Assets installed and operating as soon as reasonably possible, but failure to have the Expansion Facilities and Connection Assets operating in time to provide power to any building or structure, or for construction purposes, shall not constitute a breach of this Agreement, and the Developer hereby releases and shall indemnify the Corporation from any and all losses, claims, liability and responsibility with respect to any matter relating to the commissioning and energization of the Expansion Facilities and Connection Assets by the Corporation. In the event that the Developer requires electrical service in advance of the installation of the Expansion Facilities and Connection Assets, the Developer will bear the erection and removal costs of any temporary distribution system and services.

- (4) The Corporation shall provide for service connections twenty (20) working days after,
  - (a) receiving a written request for such service connection; and
  - (b) receipt of an authorization to connect from the Electrical Safety Authority;

provided the meter base installed on the lot or block is in compliance with the Corporation's standards.

(5) The Corporation shall be entitled to be reimbursed by the Developer for its costs for additional design, engineering and installation of Expansion Facilities and Connection Assets that are incurred as a result of, but not limited to, any change in grades, electrical service locations, property or street markers, driveways, curb cuts and walkways subsequent to the initial staking and installation of the Expansion Facilities and Connection Assets. The Corporation shall also be entitled to be reimbursed for the costs of inspection, testing and approval of the additional works undertaken.

(6) The costs of installing the Expansion Facilities and Connection Assets are based upon construction being undertaken during the non-frost period between April 15 and October 31; the Developer shall be responsible for all additional costs incurred by the Corporation as a result of construction occurring under frost conditions.

(7) In the event the cost of installing the Expansion Facilities and Connection Assets increases prior to construction commencing, the Corporation may, in its discretion, revise the economic evaluation performed under Article 3.02(1) and require that the Developer pay any additional amounts owing. The Developer shall pay such additional amounts to the Corporation prior to the installation of the Expansion Facilities and Connection Assets.

(8) The Corporation may charge the Developer for any additional costs associated with the installation of facilities required to complete the Expansion Facilities and Connection Assets once the Corporation has commenced such installation, including, but not limited to, costs associated with mobilization, demobilization, unforeseen earth conditions, such as large rocks, cement, tree stumps, disposal of excavated contaminated waste, additional road cuts and asphaltting, supply and installation of unshrinkable fill and removal of excavated material.

(9) The Developer shall:

- (a) Deliver the Corporation's easements under Article 7 of this Agreement with final grading within plus or minus six inches as indicated by the markers of the necessary survey prepared by the Developer to the specifications of the Town of Newmarket Engineering Department. All fill required to obtain the final grade levels shall be compacted to the satisfaction of the Corporation;
- (b) Provide and maintain access from the street to such easements for the Corporation's vehicles and equipment during the installation of the Expansion Facilities and Connection Assets where in the opinion of the Corporation it is feasible and desirable to facilitate the installation of an underground distribution system on such easement by the use of said vehicles and equipment on the easement;
- (c) If requested by the Corporation, provide, at no cost to the Corporation, a secure compound on the construction site within the Lands that will be used to store material and equipment required for the installation of the Expansion Facilities and Connection Assets;
- (d) Provide and maintain for the Corporation the finished grade or elevation markings for the lots or blocks on the Plan;
- (e) Make every effort to undertake sodding, final granular fill and paving after the Corporation has installed the Expansion Facilities and Connection Assets, and

shall organize these items in conjunction with the Corporation's construction schedule. Should sodding, final granular fill and paving be undertaken prior to the installation of the Expansion Facilities or Connection Assets, the Developer shall be responsible for any reinstatement required and the costs associated therewith;

- (f) Provide for the Corporation survey markers defining the boundaries and numbers of the lots or blocks on the Plan;
- (g) Provide all base curbs prior to the construction of the Expansion Facilities and Connection Assets;
- (h) Rough grade all roads and boulevards prior to the start of the construction of the Expansion Facilities and Connection Assets where in the opinion of the Corporation such is required;
- (i) Provide and maintain for the Corporation the finished grade or elevation markings for the said roads and boulevards where in the opinion of the Corporation such is required;
- (j) Provide all trenching, ducting and protective sand and backfill to the Corporation's specifications from the service entrance to any building or dwelling to the point of the Corporation's right-of-way or easement;
- (k) Be responsible for all repairs made to transformers, cables and primary cables, meters and associated distribution equipment, necessitated by damage caused by the Developer during construction related to the Plan, until two years after acceptance by the Corporation of the Expansion Facilities and Connection Assets.

### **3.04 Letter of Credit**

(1) The Corporation may, in its discretion, require the Developer to provide an unconditional irrevocable letter of credit, substantially in the form attached hereto as Schedule "F", in the amount of \$●. The amount secured under the letter of credit represents the Corporation's share of the capital costs described under Article 3.02.

(2) The Developer shall deliver the letter of credit to the Corporation within five (5) business days of receiving a written request for same from the Corporation.

(3) The Corporation may draw funds under such letter of credit at any time if the lots comprising the Plan are not connected for service at the rate assumed in the calculation of the economic evaluation under Article 3.02 or if there is a material change in the Plan.

(4) The Corporation may draw funds under the letter of credit at any time, in its absolute discretion, to cover all costs incurred by it in order to complete any or all of the Developer's obligations hereunder.

(5) The Corporation may, in its absolute discretion, authorize a reduction in the letter of credit annually for a period of up to five (5) years from the date of the installation of the Expansion Facilities. In determining whether to authorize such reduction, the Corporation shall have regard to, among other things, the number of lots within the Plan that are connected for service in proportion to the total number of lots within the Plan. Prior to the Corporation authorizing a reduction in the letter of credit, the Developer shall pay all sums then owing to the Corporation under this Agreement.

#### **ARTICLE 4 - DEFAULT**

##### **4.01 Default**

If the Developer fails:

- (a) to commence or complete the installation or construction of any of the Developer's Services within the times specified in Article 2.01;
- (b) after commencing the installation or construction of any Developer's Services, to proceed expeditiously with the installation or construction of the same, or
- (c) to obtain all necessary approvals from, and agreements with, the Corporation of the Town of Newmarket; or
- (d) to maintain in good standing the Subdivision Agreement; or
- (e) to comply with its obligations under this Agreement,

and any such default continues for ten (10) days after notice thereof from the Corporation has been sent by registered letter addressed to the Developer as provided in Article 13, then the Corporation, in addition to any other remedy the Corporation may have, may take such steps as it deems necessary to remedy the said default. The Corporation may draw funds under the letter of credit to recover the costs associated with remedying such default.



## **ARTICLE 5 - PLANS**

### **5.01 Lot Development Plans**

(1) The Developer will submit to the Corporation a Lot Development Plan, prepared and certified by a member in good standing of the Professional Engineers of Ontario or by an Ontario Land Surveyor, for each lot and block within the Plan. The Lot Development Plan shall be submitted prior to the Corporation providing an estimated cost for Expansion Facilities. The Lot Development Plan shall be in an electronic format as an AutoCAD – “.dwg” file. Each such development plan shall show details of the proposed lot elevations and grades, drainage and storm water management components. Such development plan shall also show details of the location of all water mains, sanitary and storm sewer systems, all existing and proposed easements, all proposed buildings and structures, site services, driveways, lot and block numbers, municipal addresses, street names, existing and proposed trees and any other significant site features. Each Lot Development Plan shall be approved by the qualified professional consultant who prepared and certified the subdivision grading plan.

(2) Following the registration of the Plan, the Developer shall file with the Corporation, an electronic copy, as an AutoCAD – “.dwg” file, of the Registered Plan of Subdivision and as built lot servicing plans.

(3) Following the completion of the construction of all buildings and structures, site services, driveways and any other significant site features and completion of the fine grading, seeding or sodding, the Developer may be requested in writing to file with the Corporation a certificate signed by the Developer’s Consulting Engineer certifying that the lot has been developed in accordance with the Lot Development Plan and Composite Utility Plan.

(4) The Developer agrees that it will require the purchaser of any lot or block within the Plan, as a condition of purchase and sale, to fulfil the requirements of Article 5.01.

## **ARTICLE 6 - REPAIR DAMAGE TO EXPANSION FACILITIES AND CONNECTION ASSETS**

### **6.01 Damage to Services Prior to Energization**

Prior to energization of the Expansion Facilities or Connection Assets, the Developer shall repair, at its expense, in a good and workmanlike manner, to the satisfaction of the Corporation and within such time as the Corporation may prescribe, any damage to any of the Expansion Facilities or other electrical distribution system facilities, or any other works required to be provided by the terms of this Agreement, or any other municipal or utility service resulting from the installation or construction of any Expansion Facilities and Connection Assets to the Lands within the Plan or from the construction of any building or structure on lands within the

Plan or from the performance of any other works on the Lands, or from the performance of any works within the public highways abutting thereto.

## **6.02 Damage to Services After Energization**

If the damage described in Article 6.01 occurs subsequent to the energization of the Expansion Facilities or Connection Assets, Article 6.01 shall apply except that the Corporation shall undertake such repairs at the Developer's expense.

## **ARTICLE 7 - CONVEYANCES**

### **7.01 Conveyances-Easements**

(1) At the time of the registration of the Plan the Developer shall provide the Corporation with such registered easements as it may require for the Expansion Facilities and Connection Assets.

The rights and easements granted above shall be for nominal consideration (i.e. \$1.00), in a form satisfactory to the Corporation and title to land over which the rights and easements are granted shall be good and free from liens and encumbrance and, if required by the Corporation, the consent of the Committee of Adjustment to such rights and easements shall be obtained by the Developer. The Developer agrees to obtain postponements or discharges of any prior mortgage or mortgages on the easement given to the Corporation.

(2) The Developer agrees that forthwith after registration of any grant of rights and easements, it shall provide to the Corporation a Certificate of Opinion of Title of the Lands in respect of which such transfer and rights and easements are granted, in a form satisfactory to the Corporation, such Certificate of Opinion to be given by a solicitor authorized to practise law in the Province of Ontario.

(3) The Developer agrees to provide the Corporation within two (2) months of the registration of the Plan with an electronic copy of the reference or survey plans designating the Lands in respect of which such transfers and grants of rights and easements are given to the Corporation.

(4) The lands to be transferred and the lands over which rights and easements are to be given shall, on the registration of the Plan, be in a clean and tidy condition, graded as required and, if necessary, stabilized against erosion in accordance with the requirements of the Corporation. After such lands or such rights and easements are so transferred, the Developer shall not use or permit the use of such lands for the storing of topsoil or any excavated material or equipment except with the written consent of the Corporation. In the event of default, the Corporation, after giving the Developer such notice as the Corporation considers reasonable in

the circumstances, may remove such soil, material or equipment and the cost thereof shall be paid by the Developer to the Corporation.

(5) The Developer warrants, and agrees to indemnify and save harmless, the Corporation, that within any lands transferred by the Developer pursuant to this Agreement, including any lands over which any easement is granted, there is no substance or material that is prohibited, controlled or regulated by any governmental authority whether federal, provincial, municipal or local including, without limitation, pollutants, contaminants, dangerous goods or substances, toxic or hazardous substance or materials, wastes including without limitation, solid non-hazardous waste, PCBs, asbestos, petroleum, its derivatives, by products or other hydro carbons, all as defined in or pursuant to any laws, regulations, by-laws, guidelines, policies, approvals, certificates of approval, permits or orders rendered by any governmental authority.

## **ARTICLE 8 - INTEREST**

### **8.01 Payments – Interest**

(1) Where by this Agreement any cost, fee, or amount is payable by the Developer to the Corporation, such cost, fee, or amount shall be paid at the time or times stated, or if a time is not stated, it shall be paid within thirty days of the mailing of a statement by prepaid first class mail addressed to the Developer as provided in this Agreement. If any such cost, fee, or amount is not paid within the time provided by this Agreement, interest shall be payable at the rate of eighteen (18%) per cent per annum from the due date or the date of mailing, as the case may be, until payment. The Corporation may draw on any letter of credit provided by the Developer for the faithful performance of its obligations and any amount paid on such draw shall be applied in payment of the cost, fee, or amount owing and any interest in respect thereto.

(2) If any cost, fee, or amount is at any time unpaid, and the Corporation does not draw upon the letter of credit, or any draw made is insufficient to pay the cost, fee, or amount owing, or the balance thereof together with interest which may be payable, it may be recovered as a debt in an action in any court of competent jurisdiction together with all costs incurred therewith.

## **ARTICLE 9 - STREET LIGHTING**

### **9.01 Street Lighting**

The Developer shall design, supply and install the street lighting within the Plan in accordance with plans and specifications approved by The Corporation of the Town of Newmarket. The Developer agrees to co-ordinate the construction of the street lighting with the construction of the Expansion Facilities and Connection Assets in order that both are done in the

most cost effective and efficient manner. The security requirements for the design, supply and installation of the street lighting shall be as prescribed by the Subdivision Agreement.

## **ARTICLE 10 - INDEMNIFICATION AND INSURANCE**

### **10.01 Indemnification**

The Developer shall indemnify and save harmless the Corporation, its employees, agents, and contractors, from all actions, causes of action, suits, claims, costs or demands whatsoever that may arise directly or indirectly as a result of the Corporation entering into this Agreement or from any act or omission by the Developer, its employees, agents, or contractors in the performance of any matter or thing under this Agreement.

### **10.02 Insurance**

The Developer shall file with the Corporation a certificate of insurance evidencing the issuance to the Developer of a comprehensive policy of public liability and property damage insurance providing for coverage limits in respect of any one accident of at least \$5,000,000.00 exclusive of interest and costs for this purpose. Such policy shall name the Corporation as an additional insured thereunder, be in a form and content satisfactory to the Corporation and be kept in good standing until all of the Expansion Facilities are commissioned. The issuance of such a policy of insurance shall not be construed as relieving the Developer from responsibility from other or larger claims, if any, for which the Developer may be held responsible.

## **ARTICLE 11 - REGULATORY COMPLIANCE**

### **11.01 Regulatory Compliance**

The Corporation and the Developer acknowledge that the Corporation is a distributor within the meaning of Section 2(1) of the *Electricity Act*, S.O. 1998, c.15, Schedule "A", (the "Act") and is therefore subject to the applicable provisions contained in the Act including the regulatory authority of the Ontario Energy Board ("O.E.B.") pursuant to the provisions of the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15, Schedule B. It is agreed by the parties that any charges made to the Developer by the Corporation in accordance with this Agreement are subject to the applicable provisions of the Act and to any requirements lawfully imposed by the O.E.B., including, but not limited to, any applicable Distribution System Code lawfully approved by the O.E.B. and imposed as a condition of the Corporation's Electricity Distribution Licence (the "Regulations"). If, in accordance with the Regulations, it is determined that any charge made pursuant to the terms of this Agreement should have been for a different dollar amount than was actually charged (the "Permitted Lawful Charge"), all necessary adjustments shall be made forthwith to reflect the Permitted Lawful Charge. The adjustment amount, without interest,

shall be paid to the party entitled, within thirty (30) days of final determination of the Permitted Lawful Charge.

## **ARTICLE 12 - FORCE MAJEURE**

### **12.01 Force Majeure**

Notwithstanding anything in this Agreement to the contrary, if the Corporation or the Developer is bona fide delayed in or prevented from performing any obligation arising under this Agreement by reason of strikes or other labour disturbances, civil disturbance, restrictive government laws, regulations or directives, acts of public enemy, war, riots, sabotage, crime, lightning, earthquake, fire, hurricane, tornado, flood, explosion, or other act of God, then the party delayed shall and is entitled, without being in breach of this Agreement, to carry out such obligation within the appropriate time period after the cessation of such cause.

## **ARTICLE 13 - NOTIFICATION**

### **13.01 Notices**

If any notice is required to be given to the Developer by the Corporation, or to the Corporation by the Developer with respect to any matter relating to this Agreement, such notice, if sent by prepaid registered mail or delivered, it shall be addressed or delivered to the addressee below or may be faxed to:

Newmarket Hydro Ltd.  
590 Steven Court  
Newmarket, Ontario  
L3Y 6Z2

Attention: •

Telephone No. (905) 895-2309

Fax No.: (905) 895-8931

and

• (Developer)

Attention: •

Telephone No. (905) •

Fax No.: (905) •

and any such notice mailed, delivered or faxed as provided above shall be deemed good and sufficient notice under the terms of this Agreement.

#### **ARTICLE 14 - DELEGATION OF RESPONSIBILITIES**

##### **14.01 Delegation of Responsibilities**

Where in this Agreement provision is made for anything to be done by the Corporation, it may also be done with or by a person or persons or corporation designated by the Corporation.

#### **ARTICLE 15 - ASSIGNMENT OF OBLIGATIONS**

##### **15.01 Assignment of Obligations**

No right or obligation under this Agreement shall be assigned by the Developer in whole or in part without the written consent of the Corporation, but such consent shall not be unreasonably withheld.

#### **ARTICLE 16 - ARBITRATION**

##### **16.01 Arbitration**

If the parties are unable to resolve any controversy, question, claim or other dispute arising out of or relating to this Agreement, the matter shall be conclusively settled in accordance with the dispute resolution procedure attached hereto as Schedule "H".

#### **ARTICLE 17 - PLANS AND SCHEDULES**

##### **17.01 Plans and Schedules**

The parties agree that the plans and schedules attached hereto and marked as Schedules "A" to "H" form part of this Agreement.

The parties further agree that in the event any part or parts of the plans or schedules are illegible or conflict with the plan (the “original plan”) from which it was made, the original plan shall prevail.

## **ARTICLE 18 - SEVERABILITY**

### **18.01 Severability**

If any provision of this Agreement or the application thereof to any circumstances shall be held to be invalid, illegal or unenforceable, then such invalidity, illegality or unenforceability shall attach only to such provision and shall not affect any or all other provisions of the Agreement. The remaining provisions of this Agreement or the application thereof to other circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

## **ARTICLE 19 - REGISTRATION**

### **19.01 Registration of an Agreement**

This Agreement may be registered against the Lands described in Schedule "A" attached to and forming part of this Agreement.

## **ARTICLE 20 - SUCCESSOR OBLIGATIONS**

### **20.01 Successor Obligations**

The Developer agrees that the Corporation may enforce the provisions of this Agreement against the Developer and, subject to the Land Titles Act, against any and all subsequent owners or permitted assigns. The Developer shall deliver to the Corporation an acknowledgement by a purchaser of all or any portion of the Lands that the purchaser has received actual notice of this Agreement and agrees to be bound by all of the terms and conditions hereof, failing which, any such transfer or conveyance shall be void.

## **ARTICLE 21 - TIME IS OF THE ESSENCE**

### **21.01 Time is of the Essence**

Time shall be of the essence in this Agreement.

## **ARTICLE 22 - TERMINATION**

### **22.01 Termination of Agreement and Obligations**

This Agreement and the respective obligations of the Developer and the Corporation shall terminate in the event that the Plan is not registered within • months of the date of this Agreement.

## **ARTICLE 23 - HEADINGS**

### **23.01 Headings**

The headings to the sections of this Agreement are for convenience only and are not to be considered a part of this Agreement and do not in any way limit or amplify the terms and conditions of this Agreement.

## **ARTICLE 24 - ESTOPPEL**

### **24.01 Estoppel**

No party to this Agreement shall call into question, directly or indirectly, in any proceedings whatsoever, in law or in equity, or before any administrative tribunal, the right of the Corporation to enter into this Agreement or to enforce each and every covenant and condition contained herein and this Agreement may be pleaded as an estoppel against any other party in such proceedings.

## **ARTICLE 25 - ENTIRETY**

### **25.01 Entirety**

This Agreement and all attached schedules constitute the entire agreement between the parties to this Agreement pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter of this Agreement save and except as specifically set forth herein.

**IT IS DECLARED AND AGREED** that this Agreement and the covenants, provisos, conditions and schedules herein contained shall enure to the benefit of and be binding upon the respective successors or assigns of each of the Parties hereto.



**IN WITNESS WHEREOF** the Parties hereto have executed this document

•

Per: \_\_\_\_\_  
Name-  
Position-

Per: \_\_\_\_\_  
Name-  
Position-

We have authority to bind the Corporation

**NEWMARKET HYDRO LTD.**

Per: \_\_\_\_\_  
Name-  
Position-

Per: \_\_\_\_\_  
Name-  
Position-

We have authority to bind the Corporation

**SCHEDULE "A"**

**LEGAL DESCRIPTION OF LANDS**

Parcel Plan -1, Section 11M- , being Lots 1 to **XX** both inclusive and Blocks **XX** to **XX** both inclusive, Plan , Town of Newmarket, Regional Municipality of York.

**SCHEDULE "B"**

**PLAN OF SUBDIVISION**

**SCHEDULE "C"**

**EXPANSION FACILITIES**

The Corporation is responsible for the planning, design, engineering specifications and installation of the Expansion Facilities.

All Expansion Facilities shall be constructed in accordance with the Corporation's "Electrical Distribution Design and Construction Standards" and all applicable municipal, provincial and federal bylaws and legislation.

Expansion Facilities will include three basic elements of infrastructure to be installed or constructed. The three elements are, infrastructure required within the Plan of Subdivision, infrastructure required specific to the area and the associated upstream infrastructure required plus any other associated costs as determined by the Corporation

Specifications for Infrastructure Within Plan of Subdivision

Primary Distribution Voltage	_____
Secondary Servicing Voltage	_____
Number of Switchgear Units	_____
Number of Pad-mounted Junctions	_____

Area Specific Infrastructure

Charges per lot/service have been previously established in the "**(Enter Study)** Servicing Study" and adjusted for inflation. The charge per lot/service is **(Enter Amount)**.

Upstream Infrastructure

Charges per lot/service have been established using historical costs associated with upstream costs and are calculated on a \$ per kW basis. The charge per lot/service is **(Enter Amount)**.

Connection Assets

Number of Transformers	_____
Secondary Services to be connected	_____
Streetlight Services to be connected	_____

**SCHEDULE "D"**

**COMPOSITE UTILITY PLAN**

**SCHEDULE "E"**

**FEE FOR SERVICES OF THE "CORPORATION"**

**SCHEDULE “F”**

**IRREVOCABLE STANDBY LETTER OF CREDIT**

Letter of Credit

[Name and Address of Issuing Bank]

APPLICANT:           **[Name of Developer]**

BENEFICIARY:       Newmarket Hydro Ltd.

We hereby authorize you to draw on the [ISSUING BANK] for the account of **[Name of Developer]**, up to an aggregate amount of Cdn. \$● available on demand as follows:

Pursuant to the request of our Customer, **[Name of Developer]**, we [NAME AND ADDRESS OF THE ISSUING BANK], hereby establish and give to you an irrevocable Letter of Credit in your favour in the total amount of Cdn. \$● which may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you, which demand we shall honour without enquiring whether you have a right as between yourself and our said Customer to make such demand and without recognizing any claim of our said Customer.

Provided, however, that you are to deliver to [NAME AND ADDRESS OF THE ISSUING BANK] at such time as written demand for payment is made upon us, a certificate signed by you agreeing and/or confirming that monies drawn pursuant to this letter of credit will be retained and used by you to meet our Customer’s obligations incurred or to be incurred in connection with an Agreement dated ●, between **[Name of Developer]** and Newmarket Hydro Ltd. (the “Agreement”).

The amount of this letter of credit shall be reduced from time to time as advised by notice in writing given to us from time to time by you.

This letter of credit will expire at our counters on ●, subject to the following condition. It is a condition of this Letter of Credit that it shall be deemed to be automatically extended without amendment for one year from the present or any future expiry date thereof unless at least thirty (30) days prior to such expiry date, we notify you in writing by registered mail that we elect not to consider this Letter of Credit to be renewable for an additional period. Upon receipt by you of such notice, you may draw the full amount secured under this Letter of Credit by means of your demand accompanied by your written certificate confirming that the amount drawn will be retained and used by you to meet obligations incurred or to be incurred in connection with the Agreement.

Partial drawings are permitted.

We hereby agree that drawings under this Letter of Credit will be duly honoured upon presentation, and shall state that they are drawn under [NAME AND ADDRESS OF THE ISSUING BANK] Letter of Credit No. • and dated •.



**SCHEDULE "G"**

**LOT DEVELOPMENT PLAN**

**SCHEDULE "H"**

**DISPUTE RESOLUTION PROCEDURE**