

SERVICE AGREEMENT

Between

HORIZON UTILITIES CORPORATION

- and -

CITY OF HAMILTON

DATED AS OF January 1, 2015

THIS SERVICE AGREEMENT dated as of the 1st of January, 2015 (the "Effective Date").

BETWEEN:

HORIZON UTILITIES CORPORATION, a corporation incorporated pursuant to the laws of the Province of Ontario and having an office at 55 John St. North, Hamilton, Ontario L8R 3M8 ("**Horizon Utilities**")

-and-

CITY OF HAMILTON, a municipal corporation incorporated pursuant to the laws of the Province of Ontario and having an office at 71 Main Street West, Hamilton, Ontario L8P 4Y5 ("**City**")

RECITALS

1. Horizon Utilities is an electric local distribution company serving the cities of Hamilton and St. Catharines;
2. The City is a municipal corporation, incorporated pursuant to the *City of Hamilton Act, 1999*, and is responsible for the operation of the water, wastewater and storm water management facilities throughout the City of Hamilton;
3. Horizon Utilities and the City have agreed to enter into this service agreement (the "**Service Agreement**"), pursuant to which Horizon Utilities will provide the City with Billing Services on and subject to the terms and conditions set forth herein;
4. The City and Horizon Utilities entered into a Water Billing Service Agreement dated as of October 19, 2001 (the "**Original SLA**") which expired on December 31, 2004. The Original SLA was replaced by a Water Billing Service Agreement dated May 16, 2005 (the "**Second SLA**") as amended by an Amending Agreement dated March 22, 2010 (the "**Amending Agreement**"). The Parties wish to acknowledge that, prior to being amalgamated with St. Catharines Hydro Utility Services Inc. to form Horizon Utilities effective March 1, 2005, Horizon Utilities had been providing water billing services to the City since January 1, 2005 up to and including February 28, 2005 (the "**Interim Period**") and that the services provided by Horizon Utilities during the Interim Period were provided upon the same terms and conditions and at the same fees as provided in the Original SLA; and
5. It is the intention of the Parties that this Service Agreement will replace the Original SLA and the Second SLA, as amended, upon similar terms and conditions as provided in the Original SLA and the Second SLA, as amended.

NOW THEREFORE, THIS SERVICE AGREEMENT WITNESSES THAT, in consideration of the covenants and agreements herein contained, the Parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

- 1.1 Definitions. Whenever used in this Service Agreement, unless the context otherwise requires, the capitalized words and terms used herein shall have the following meanings:

"Affiliate" shall have the meaning ascribed thereto by the *Business Corporations Act*, R.S.O. 1990, c. B.16 (Ontario), as amended, supplemented or replaced from time to time;

"Amending Agreement" means the amendment to the Second SLA dated March 22, 2010;

"AMI Amendment" shall have the meaning ascribed thereto in Section 3.3;

"Applicable Laws" means all laws or ordinances and all judgments, decrees, injunctions, writs and orders of any court, arbitrator or Governmental Authority, and all statutes, rules, regulations, orders, interpretations, Codes, Market Rules, policy, guidelines, technical rules, operating procedures, directives, licenses and permits of any governmental body, instrumentality, agency or other regulatory authority applicable to the Billing Services, Horizon Utilities or the City;

"Arbitration Act" means the *Arbitration Act, 1991*, S.O. 1991, c. 17 (Ontario), as amended, supplemented or replaced from time to time;

"Billing Services" means the billing and related customer services package provided by Horizon Utilities to the City for its water and wastewater/storm Customers and which includes metering reading, bill calculation, bill printing, mailing, payment processing, collections, service orders, tax roll transfers, monthly reporting, call centre customer support and Internet access, all of which is specifically described in Schedule "A" hereto;

"Breach" shall have the meaning ascribed thereto in Section 6.1(a);

"Business Day" means a day other than Saturday, Sunday, a corporate holiday or shutdown or a holiday as recognized by either Party;

"City" means the City of Hamilton;

"City AMI Project" refers to the City of Hamilton Advanced Metering Infrastructure project;

"City Remittance Amount" shall have the meaning ascribed thereto in Section 4.6(a);

“**Claims**” shall have the meaning ascribed thereto in Section 2.4(a);

“**Code**” or “**Codes**” means any code of conduct established by the OEB from time to time, which applies to Horizon Utilities;

“**Confidential Information**” shall have the meaning ascribed thereto in Section 5.3;

“**Customer**” means those Persons who are specifically identified to Horizon Utilities by the City as Persons who are to be billed for water and wastewater/storm services by Horizon Utilities on behalf of the City pursuant to this Service Agreement;

“**Disclosing Party**” shall have the meaning ascribed in Section 5.3;

“**Dispute**” shall have the meaning ascribed in Section 8.1;

“**Disputing Parties**” shall have the meaning ascribed in Section 8.1;

“**Electricity Act**” means the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A (Ontario), as amended, supplemented or replaced from time to time;

“**Effective Date**” means the date of this Service Agreement as first stated above;

“**Executive Representative**” shall have the meaning ascribed in Section 8.1;

“**Fees**” shall have the meaning ascribed in Section 4.1;

“**Force Majeure**” means a strike, lockout, riot, insurrection, war, fire, tempest, flood, act of god, lack of materials, supply of service or similar circumstance or event which results notwithstanding the diligent efforts of Horizon Utilities or the City;

“**Governmental Authority**” means any domestic government, whether federal, provincial, territorial, local, regional, municipal, or other political jurisdiction, and any agency, authority, instrumentality, court, tribunal, board, commission, bureau, arbitrator, arbitration tribunal or other tribunal, or any quasi-governmental or other entity, insofar as it exercises a legislative, judicial, regulatory, administrative, expropriation or taxing power or function of or pertaining to government including the OEB;

“**HST**” means all taxes payable under Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (including where applicable both the federal and provincial portion of those taxes) or under any provincial legislation imposing a similar value added or multi-staged tax;

“**Indemnifying Party**” has the meaning ascribed in Section 2.4(a);

“**Indemnified Party**” has the meaning ascribed in Section 2.4(a);

“**Initial Term**” has the meaning ascribed in Section 3.1;

“**Insolvent**” means, with respect to any Person, being insolvent, bankrupt, making a proposal under the *Bankruptcy and Insolvency Act* (Canada) or having a trustee or receiver or manager appointed in respect of its assets;

“**Key Performance Indicators**” or “**KPIs**” shall have the meaning ascribed in Schedule “A”;

“**MFIPPA**” means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 (Ontario), as amended, supplemented or replaced from time to time;

“**OEB**” means the Ontario Energy Board;

“**OEB Act**” means the *Ontario Energy Board Act, 1998*, as amended, supplemented or replaced from time to time;

“**Original SLA**” means the water billing services agreement dated as of October 19, 2001 between Horizon Utilities and the City, as amended;

“**Party**” means Horizon Utilities or the City, and “**Parties**” means both, as applicable;

“**Party Representatives**” shall have the meaning ascribed in Section 8.1;

“**Person**” means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, Governmental Authority or entity however designated or constituted;

“**Personal Information**” shall have the meaning ascribed in Schedule “C”;

“**Privacy Requirements**” shall have the meaning ascribed in Schedule “C”;

“**Premises**” means the real property location where the Customer receives water and wastewater/storm services from the City as well as Billing Services from Horizon Utilities;

“**Project Manager**” shall have the meaning ascribed in Section 8.1;

“**Receiving Party**” shall have the meaning ascribed in Section 5.3;

“**Renewal Term**” shall have the meaning ascribed in Section 3.2;

“**Second SLA**” means the water billing services agreement dated May 16, 2005 between Horizon Utilities and the City, as amended;

“**Service Agreement**” shall have the meaning ascribed to it in the recitals to this Agreement;

"Service Employees" refers to employees of Horizon Utilities engaged in providing Billing Services;

"Service Expenses" means with respect to any period, without duplication, all costs and expenses incurred by Horizon Utilities in connection with the provision of Billing Services to the City, including without limitation the following:

- (a) all direct payroll and payroll related costs with respect to the Service Employees, including salaries, fringe benefits and payroll taxes, unemployment insurance, group insurance, workers' compensation assessments, pension plans, costs, cost of hiring and severance payments incurred and medical and dental insurance premiums;
- (b) all business and operating costs associated with providing the Billing Services including, but not limited to, the cost of the purchase, lease or maintenance of all computer hardware and software (including all licences and agreements relating thereto), all machinery and equipment, intellectual property, licences and permits of any kind; and
- (c) all amounts payable for legal, consulting or accountant fees relating to the provision of Billing Services;

"Supplier User" shall have the meaning ascribed in Schedule "C";

"Taxes" means any and all governmental fees (including license, documentation and registration fees), taxes (including income, gross receipt, sales, HST, rental, use, turnover, value added, property (tangible and intangible), excise and stamp taxes), licenses, levies, imposts, duties, recording charges or fees, charges, assessments, reassessments or withholdings of any nature whatsoever, together with any and all assessments, penalties, fines, additions and interest thereon; and

"Term" means the Initial Term plus any Renewal Term or extension thereof in accordance with this Service Agreement or such earlier date as this Service Agreement may be terminated in accordance with the provisions herein.

1.2 Interpretation. Throughout this Service Agreement:

- (a) any word importing the singular number shall include the plural and vice versa;
- (b) any word importing gender shall include all genders;
- (c) all references to sections and schedules are to sections and schedules to and forming part of this Service Agreement; and
- (d) all dollar amounts are in lawful money of Canada.

- 1.3 Headings. The headings in this Service Agreement are for convenience only and shall not in any way limit or be deemed to construe or interpret the terms and provisions of this Service Agreement.
- 1.4 Schedules. The following Schedules annexed hereto and incorporated by reference are deemed to be an integral part of this Service Agreement as if they had been set forth herein:
- Schedule "A" - Description of Billing Services
 - Schedule "B" - Fees
 - Schedule "C" - Privacy
- 1.5 Applicable Law. This Service Agreement and all documents, instruments and agreements related thereto shall be construed and enforced in accordance with the laws of the Province of Ontario.
- 1.6 Successors and Assigns. This Service Agreement shall enure to the benefit of and shall be binding on Horizon Utilities and the City and their respective successors and assigns.
- 1.7 Severability. Any provision of this Service Agreement, which is prohibited or unenforceable in any jurisdiction, shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In respect of any provision so determined to be unenforceable or invalid, the Parties agree to negotiate in good faith to replace the unenforceable or invalid provision with a new provision that is enforceable and valid in order to give effect to the intent of the original provision to the extent permitted by law and in accordance with the intent of this Service Agreement.
- 1.8 Time of Essence. Time shall be of the essence of this Service Agreement.
- 1.9 No Partnership. It is understood and agreed that nothing contained in this Service Agreement nor any acts of the Parties shall be deemed to constitute Horizon Utilities and the City as partners of each other. Each Party specifically acknowledges that its representatives are not employees or partners of the other Party.

ARTICLE 2

DUTIES OF HORIZON UTILITIES

- 2.1 Appointment of Horizon Utilities. The City hereby appoints Horizon Utilities and Horizon Utilities hereby accepts its responsibility to provide the Billing Services to the City in accordance with the terms of this Service Agreement.
- 2.2 Duties and Responsibilities of Horizon Utilities. Until the end of the Term, Horizon Utilities shall have the duty and responsibility to provide for all aspects of the staffing, administration, operation and maintenance of the Billing Services and shall be responsible for the Service Expenses.

2.3 Insurance. Horizon Utilities shall purchase and maintain throughout the Term of this Service Agreement, at its own expense, including the cost of deductibles, the following insurance:

(a) Commercial General Liability Insurance:

Coverage shall be in an amount of not less than Ten Million Dollars (\$10,000,000) inclusive per occurrence to cover against Claims for personal injury and property damage arising out of the provision of the Billing Services by Horizon Utilities pursuant to this Service Agreement. Coverage shall include, but not be limited to broad form contractual liability, products liability, completed operations liability, premises liability, non-owned automobile liability, contingent employer's liability, and cross-liability and severability of interest provisions. Coverage shall name Horizon Utilities as the insured, and name the City as an additional insured.

(b) Automobile Liability Insurance:

Standard owners form automobile insurance, including third party liability coverage in an amount of not less than Two Million Dollars (\$2,000,000) per occurrence, to cover all licensed vehicles owned and/or leased by Horizon Utilities, used in connection with this Service Agreement.

(c) Employee Crime and Dishonesty Insurance:

Employee Dishonesty Form A coverage protecting against losses committed by Service Employees up to an amount of One Million Dollars (\$1,000,000) and separate Crime Insurance protecting against destruction, disappearance, and dishonesty for insurable losses caused by third parties up to an amount of Ten Thousand Dollars (\$10,000).

(d) Data Processing Insurance:

Broad form coverage in such amounts as to adequately protect against damage or loss with respect to data processing systems & equipment, data processing media, and extra expense.

(e) Cyber liability and network privacy insurance to include the following extensions of coverage:

- (i) Data Privacy Liability and Crisis Management;
- (ii) Network Security Liability;
- (iii) Data Restoration;

(f) Errors and Omissions Insurance:

Coverage shall be in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence.

- (g) Where a portion of the Billing Services, including but not limited to meter reading, is carried out by a sub-contractor, Horizon will put in effect and maintain in full force and effect or cause to be put into effect and maintained for the Term of this Service Agreement the necessary insurance for that portion of Billing Services carried out by the sub-contractor, including, where appropriate and without limitation, Commercial General Liability insurance, which insurance coverage shall identify the City of Hamilton as an additional insured.
- (h) Originally signed Certificates of Insurance, or if required by the City, certified copies of insurance policies, shall be delivered to the City prior to commencement of this Service Agreement, and for all policy renewals thereafter during the Term of this Service Agreement.
- (i) All insurance shall be in terms, form, and amounts, and with insurers acceptable to the City acting reasonably. Insurance coverage shall include a provision that the insurer shall provide not less than thirty (30) days' (except Automobile which shall be fifteen (15) days) prior written notice to the insured's in the event of cancellation, termination, or non-renewal of coverage.

2.4 Apportionment of Risk and Indemnity.

- (a) Subject to the limitation in Subsection 2.4(b) and (c), each Party (the "**Indemnifying Party**") shall indemnify and hold harmless the other Party (the "**Indemnified Party**") its officers, elected officials, directors and employees from and against any and all claims, actions, causes of action, demands or liabilities of whatsoever kind and nature, including, without limitation, all Taxes, HST and related penalties, if any, judgments, interest, reasonable legal fees on a solicitor and client basis, all other related costs, fees, expenses, and charges, but excluding any indirect, consequential, incidental, punitive or exemplary damages or lost profits (collectively, "**Claims**") to the extent that such Claims arise out of or were caused by the negligence or wilful misconduct of the Indemnifying Party or from any Breach, violation or non-performance of the Service Agreement by the Indemnifying Party.
- (b) The City agrees that Horizon Utilities shall have no liability to the City as a result of the partial payment or non-payment by any Customer of any amounts owed to the City for water and wastewater/storm services or to reimburse or make payment to the City in respect of any non-payment by a Customer and there shall be no reduction or abatement of Fees payable by the City to Horizon Utilities hereunder as a result of any non-payment by Customers of such amounts owing to the City.
- (c) Subject to the following sentence, the liability of Horizon Utilities to the City pursuant to this Service Agreement shall be limited to direct damages only

and subject to a maximum aggregate amount of direct damages of \$10,000,000 (TEN MILLION dollars). The City also acknowledges and agrees that the liability of Horizon Utilities is further limited to that amount of direct damages that Horizon Utilities is able to claim and realize upon the insurance coverage required in Section 2.3.

- (d) Where a portion of the Billing Services, including but not limited to meter reading, is carried out by a sub-contractor, Horizon shall ensure that the City is named as an indemnitee in any agreement that Horizon enters into with a sub-contractor relating to the Billing Services.
- (e) Notwithstanding any other provisions within this Agreement, the limitation of liability in this Section 2.4 shall survive the termination or expiration of this Service Agreement.

2.5 Workplace Safety and Insurance Board

- (a) Horizon Utilities shall, prior to commencing Billing Services under this Service Agreement,
 - (i) submit to the City an original Clearance Certificate from the Ontario Workplace Safety and Insurance Board and shall provide additional certificates with respect to such coverage as often as the City deems necessary during the Term of the Service Agreement to ensure continued good standing with the Workplace Safety and Insurance Board; or
 - (ii) furnish proof in a form satisfactory to the City from the Workplace Safety and Insurance Board that Horizon Utilities does not require Workplace Safety and Insurance Board insurance, but in such a case if Horizon Utilities changes its status during the Term of the Service Agreement so that such coverage is required, Horizon Utilities shall immediately provide the City with the certificate required under clause (a).
- (b) Where a substantial portion of the Billing Services under the Service Agreement is to be carried out by a sub-contractor, the City may require Horizon Utilities to furnish the same evidence as provided under subsection 2.5(a).

ARTICLE 3 TERM

- 3.1 Term of Service Agreement. This Service Agreement shall become effective as of the date hereof and shall continue in full force and effect for an initial term of five (5) years (the "**Initial Term**") unless sooner terminated in accordance with the provisions of this Service Agreement.
- 3.2 Renewal Term. Upon expiry of the Initial Term, the Parties may, upon mutual agreement, extend the Service Agreement for one (1) or more additional years up to a

maximum of five (5) additional years (each a "**Renewal Term**"), on the same terms and conditions as the Service Agreement unless otherwise agreed to between the Parties, at least sixty (60) days before the end of the Initial Term or each Renewal Term, as applicable. The Initial Term and any Renewal Term shall collectively comprise the "**Term**" of this Service Agreement.

- 3.3 City AMI Project. On a date that is two (2) years after the Effective Date, or such other date as may be agreed to by the Parties in writing, both Parties agree to enter into good faith negotiations to draft an amendment, if necessary, to Schedule B related to the Billing Services to ensure the Billing Services are aligned with the City AMI Project (the "**AMI Amendment**"). During this time, the Parties agree the Billing Services will continue as provided in this Agreement.

ARTICLE 4 FEES AND PAYMENT

- 4.1 Fees. In consideration of the provision of Billing Services by Horizon Utilities pursuant to this Service Agreement, the City shall pay to Horizon Utilities a monthly fee (the "**Fees**"), at a rate, before Taxes, as specified in Schedule "B".
- 4.2 Adjustment of Fees. The Fees specified in Schedule "B" shall be increased by 1.75% for year one (1), 1.9% for year two (2), 2.0% for year three (3), 2.15% for year four (4), and 2.15% for year five (5) of the Initial Term. The Fees will increase by 2.0% per year during the Renewal Term, subject to mutual agreement between the Parties.
- 4.3 Postal Rate Increase. If, during the Term, there is an increase in postal rates, which increases the cost to Horizon Utilities to distribute invoices to Customers, the City agrees that the Fees shall be increased such that the City will pay for fifty percent (50%) of the postal rate increase.
- 4.4 HST. HST will be added, as applicable.
- 4.5 Payment by City. The City acknowledges and agrees that any amounts owing by the City to Horizon Utilities in respect of Fees hereunder, may be retained by Horizon Utilities from the amounts collected by Horizon Utilities from Customers on behalf of the City. In the event that in any month the amounts collected by Horizon Utilities from Customers on behalf of the City are insufficient to satisfy the Fees payable by the City to Horizon Utilities for such month, then the City shall, at the request of Horizon Utilities, make payment to Horizon Utilities of any remaining Fees as specified by electronic funds transfer to Horizon Utilities.
- 4.6 Remittance by Horizon Utilities to City.
- (a) On the first Business Day of each month, Horizon Utilities shall remit to the City the net amount of all amounts collected from Customers' accounts on behalf of the City, less applicable adjustments as approved by the City for the previous month and after subtracting all Fees owed by the City to Horizon Utilities for the previous month (the "**City Remittance Amount**").

- (b) Payment shall be made through an electronic transfer on monies directly into the bank account of the City specified in Schedule "B".
 - (c) If, for a reason other than Force Majeure, the City Remittance Amount is not remitted to the City on or before the first Business Day of a given month, the City Remittance Amount shall be increased by applying interest thereon at the annual prime rate plus two percent (2%) prorated for the number of days in the year following the first Business Day of such month until the day the resulting City Remittance Amount, including interest computed hereunder, is remitted to the City.
- 4.7 Horizon Utilities shall send a notice by email to the General Manager of Finance and Corporate Services of the City at the email address specified in Schedule "B" or his/her designate advising of the amount of the electronic transfer on the first Business Day of the month. A detailed statement will be provided to the City identifying the amounts of the electronic transfer.

ARTICLE 5 COVENANTS

- 5.1 Covenants of Horizon Utilities. Horizon Utilities covenants and agrees that it shall, throughout the Term of this Service Agreement:
- (a) perform the Billing Services at all times in accordance with standards that are no less than the standards of Horizon Utilities in the provision of services comparable to the Billing Services to Horizon Utilities' own customers, and in compliance, in all material respects, with all Applicable Laws;
 - (b) ensure that the Fees paid by the City in respect of the Billing Services are no greater than the fees charged by Horizon Utilities in the provision of services substantially the same as the Billing Services to Horizon Utilities' own customers; and
 - (c) provide prompt notice to the City of any material facts or information of which it is aware which may materially and adversely affect the provision of the Billing Services by Horizon Utilities.
- 5.2 Covenants of the City. The City covenants and agrees that it shall, throughout the Term of this Service Agreement:
- (a) promptly provide, at its sole expense, such information regarding Customers as may reasonably be requested by Horizon Utilities;
 - (b) with respect to newly installed meters, provide all information required by Horizon Utilities to provide the Billing Services within sixty (60) days of installation;

- (c) with respect to any changes in the water and wastewater/storm service provided by the City to a Customer, provide all information regarding such changes to Horizon Utilities within sixty (60) days of such changes;
- (d) at all times pay all Fees and Taxes to Horizon Utilities when and as the same become due and payable;
- (e) provide prompt notice to Horizon Utilities of any material facts or information of which it is aware which may materially and adversely affect the provision of the Billing Services by Horizon Utilities.
- (f) the City will supply Horizon Utilities with the file from the City's tax system on the fifteenth (15th) of each month.

5.3 Confidentiality.

- (a) **"Confidential Information"** means all proprietary and confidential information about the business, operations or Customers of the other Party or any of their Affiliates, which is designated as confidential or proprietary or that should be considered as such from its nature or from the circumstances surrounding its collection, use or disclosure.
- (b) With respect to any Confidential Information a Party receives (**"Receiving Party"**) from the other Party (**"Disclosing Party"**), the Receiving Party shall:
 - (i) keep such information confidential; (ii) use the same degree of care for the Disclosing Party's Confidential Information that it uses for its own Confidential Information, but in no event with less than reasonable care; (iii) not use the Confidential Information other than in connection with the performance of this Service Agreement; and (iv) not divulge the Confidential Information to Receiving Party's personnel or professional advisors, unless such personnel or professional advisors have a need to know and have agreed in writing to abide by confidentiality obligations consistent with the terms of this Service Agreement. Receiving Party agrees to use all reasonable steps to ensure that the Disclosing Party's Confidential Information is not disclosed by Receiving Party's employees or professional advisors in violation of this Section 5.3.
- (c) Confidential Information shall not include information that: (i) is or becomes generally known or available to the public at large other than as a result of a Breach by the Receiving Party of any obligation to the Disclosing Party; (ii) was known to the Receiving Party free of any obligation of confidence prior to disclosure by the Disclosing Party; (iii) is disclosed to the Receiving Party on a non- confidential basis by a third party who did not owe an obligation of confidence to the Disclosing Party; or (iv) is developed by the Receiving Party independently of and without reference to any part of the Confidential Information. Confidential Information shall not be deemed to be in the public domain or generally known or available to the public merely because

any part of said information is embodied in general disclosures or because individual features, components or combinations thereof are now or become known to the public.

- (d) Both Parties are subject to MFIPPA and may be required to disclose Confidential Information concerning this Service Agreement in accordance with the provisions of MFIPPA.
- (e) A Party shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with any Breach of the obligations in this Section 5.3.

5.4 Return of Confidential Information. Upon written request from the Disclosing Party, the Receiving Party shall promptly redeliver to the Disclosing Party all Confidential Information it received, and at the option of Disclosing Party, destroy or have destroyed any copies or other reproductions of such Confidential Information together with such notes, analyses, reports and all other written material whatsoever prepared by the Receiving Party, or on behalf of the Receiving Party, from such Confidential Information; provided that the Receiving Party shall be entitled to keep, subject always to all the provisions of this Service Agreement, copies of such notes, analyses, reports or other written material prepared by, or on behalf of, the Receiving Party for its records, in accordance with the Receiving Party's normal record keeping practices and policies. The Receiving Party shall provide to the Disclosing Party, upon request, a certificate of one of its senior managers certifying such destruction.

5.5 Privacy. Both parties agree to abide by the privacy obligations defined in Schedule "C" – Privacy.

ARTICLE 6 TERMINATION

6.1 Termination.

- (a) Either Party shall have the right to terminate this Service Agreement if the other Party fails to substantially comply with or defaults on any of its material terms and obligations set forth in this Service Agreement (hereinafter referred to as a "**Breach**"). Should the non-Breaching Party elect to exercise this right to terminate for Breach, it must be done in writing specifically setting forth the claimed Breach. The Breaching Party shall then have thirty (30) days from the date of such notice to remedy the Breach. If such Party corrects the Breach within this period, this Service Agreement shall continue in force. Should such Party fail to correct the Breach within the above time period, the Party claiming Breach shall have the right to terminate this Service Agreement effective at the expiry of the notice period.
- (b) In addition to the rights of the City pursuant to Section 6.1(a), the City shall have the right to terminate this Service Agreement:

- (i) upon written notice and providing Horizon Utilities with;
 - (A) twenty four (24) months upon commencement of year one (1); or
 - (B) eighteen (18) months upon commencement of year three (3); or
 - (C) twelve (12) months upon commencement of year four (4) or subsequent years.
- (ii) effective immediately upon written notice to Horizon Utilities if Horizon Utilities:
 - (A) becomes insolvent;
 - (B) is subject to any proceeding, voluntary or involuntary under the provisions of the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors Arrangement Act* (Canada), or any other law for the benefit of creditors;
 - (C) winds up either voluntarily or under an order of a court of competent jurisdiction;
 - (D) makes a general assignment for the benefit of its creditors; or
 - (E) otherwise takes any corporate action that acknowledges its Insolvency.
- (c) In addition to Horizon Utilities' rights pursuant to Section 6.1(a), Horizon Utilities shall have the right to terminate this Service Agreement effective immediately if:
 - (i) due to the adoption of, or any change in, any Applicable Law after the date of this Service Agreement; or
 - (ii) due to promulgation of, or any change in, the interpretation by any court of law or regulatory authority of any Applicable Law after such date,

it shall become unlawful for Horizon Utilities to perform any material provision of this Service Agreement or material additional costs are imposed on Horizon Utilities.

6.2 Restriction on Termination during Force Majeure. During the occurrence of an event of Force Majeure,

- (a) the obligations of Horizon Utilities, to the extent that such obligations cannot be performed as a result of such event of Force Majeure, shall be suspended, and Horizon Utilities shall not be considered to be in default hereunder and

the City may not terminate this Service Agreement as a result of such non-performance for the period of such occurrence;

- (b) Horizon Utilities shall give the City prompt written notice of the particulars of the event of Force Majeure and its expected duration, and shall continue to furnish regular reports with respect thereto on a timely basis during the continuance of the event of Force Majeure and shall use its best efforts to remedy its inability to perform;
- (c) the suspension of performance is to be of no greater scope and of no longer duration than is required by the Force Majeure condition;
- (d) no obligations of either Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure; and
- (e) while a Force Majeure subsists which prevents Horizon Utilities from performing the Billing Services, the City may engage another party, consultant or supplier to perform those obligations on an interim basis, provided that once the Force Majeure event ceases to occur, Horizon Utilities will resume its performance of the Billing Services under this Services Agreement.

6.3 Post-Termination Arrangements. In the event of termination,

- (a) pursuant to Section 6.1(b)(i) of this Service Agreement, the City shall reimburse Horizon Utilities for any reasonable costs incurred by Horizon Utilities, its affiliates and assignees, associated with the termination of the Billing Services or transition of the Billing Services to a new Billing Services provider, with any such costs to be mutually agreed to by the City and Horizon Utilities acting reasonably; and
- (b) for any other reason, Horizon Utilities and the City shall take all steps as may be reasonably required to complete any final accounting between them.

6.4 Where this Service Agreement is terminated under Section 6.1,

- (a) Horizon Utilities shall deliver to the City copies of all books, records and accounts which it has maintained relating to the provision of Billing Services pursuant to this Service Agreement.

ARTICLE 7 SUCCESSION AND DELEGATION

- 7.1 No Assignment. This Service Agreement may not be assigned by either of the Parties hereto without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed. Notice of any requested consent to an assignment shall be given in writing, and the Party receiving the notice shall respond to the request within sixty (60) days.

- 7.2 Delegation of Obligations. Horizon Utilities may delegate or sub-contract any or all of its obligations under this Service Agreement to a third party. Horizon Utilities will provide written notification to the City of any delegation or sub-contracting sixty (60) days prior to the change taking effect. Consent shall not be required with respect to delegation or sub-contracting to an affiliate of Horizon Utilities, nor shall consent be unreasonably withheld.

ARTICLE 8 DISPUTE RESOLUTION

- 8.1 Dispute Resolution. Any disagreement or dispute ("**Dispute**") between any of the Parties (the "**Disputing Parties**") with respect to the provision of Billing Services under this Service Agreement or the interpretation of any provision of this Service Agreement shall be resolved in accordance with the following procedure:
- (a) The Disputing Parties agree that every effort shall be made to resolve all Disputes at the Project Manager level, represented by each Party's Manager of Customer Service, Billing Department or comparable managerial position that is mutually agreeable to both Parties (the "**Project Manager**").
 - (b) If the Project Managers are unable to resolve any Dispute within three (3) Business Days, then the Project Managers shall refer the Dispute to (i) in the case of the City, Director, Financial Planning & Policy; and, (ii) in the case of Horizon Utilities, the Director, Customer Services (each a "**Party Representative**" and collectively, the "**Party Representatives**"). The Party Representatives shall make all reasonable efforts to resolve the Dispute within five (5) Business Days of referral by the Project Managers.
 - (c) If the Party Representatives are unable to resolve the Dispute within the time period defined in Section 8.1(b), then the Dispute shall be referred to (i) in the case of the City, General Manager, Finance and Corporate Services; and, (ii) in the case of Horizon Utilities, Vice President, Customer Services (each an "**Executive Representative**", and collectively, the "**Executive Representatives**"). The Executive Representatives shall make all reasonable efforts to resolve the Dispute within five (5) Business Days of its referral by the Party Representatives.
- 8.2 Arbitration. If the Executive Representatives are unable to resolve the Dispute within the time period defined in Section 8.1(c), then any one of them can refer the Dispute to be finally resolved pursuant to the Arbitration Act. The place of arbitration shall be at a location of mutual convenience to all Disputing Parties in the province of Ontario. The language of the arbitration shall be English.
- 8.3 Confidentiality of Arbitration. The arbitration shall be kept confidential and the existence of the proceeding and any element of it (including but not limited to any pleadings, briefs or other documents submitted and exchanged, and testimony or other oral submission and any awards) shall not be disclosed beyond the arbitrator, the

Parties, their counsel and any person necessary to the conduct of the proceeding, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

**ARTICLE 9
GENERAL MATTERS**

- 9.1 Notice. Any notices, correspondence or other documents required or permitted to be given under this Service Agreement shall be in writing and shall be delivered by hand or by courier, by pre-paid registered mail, by a national overnight carrier or by facsimile, or by electronic communication and shall be deemed to have been properly given on the first (1st) Business Day after the date sent if delivered by electronic communication, five (5) Business Days after dispatch by pre-paid registered mail, and on the first (1st) Business Day after the date faxed, addressed to the party to whom it was sent at the address, or fax number, or email of such party set forth above or at such other address or fax or email as the receiving party shall subsequently designate to the other party by notice given in accordance with this Section:

Notice to Horizon Utilities:

Attention:

Max Cananzi, President & CEO
Horizon Utilities Corporation
55 John Street North
Hamilton, Ontario
L8R 3M8

Office: 905-317-4702
Fax: 905-522-0119
max.cananzi@horizonutilities.com

With a copy to:

Procurement Manager
Horizon Utilities Corporation
55 John Street North
Hamilton, Ontario
L8R 3M8

Office: 905-317-4759
Fax: 905-522-5091
sherri.giles@horizonutilities.com

With a copy to:

Eileen Campbell, Vice President, Customer
Services
Horizon Utilities Corporation
55 John Street North
Hamilton, Ontario

L8R 3M8

Office: 905-317-4736

Fax: 905-522-6228

eileen.campbell@horizonutilities.com

Notice to the City:

Mike Zegarac,
General Manager Finance and Corporate Services
The Corporation of the City of Hamilton
71 Main Street West
Hamilton, Ontario
L8P 4Y5

Office: 905-546-6150

Fax: 905-546-2584

mike.zegarac@hamilton.ca

Either Party hereto may from time to time change its address for notice by giving Notice to the other Party hereto in accordance with the provisions of this Section.

- 9.2 Further Assurances. Each of Horizon Utilities and the City shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other Party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Service Agreement.
- 9.3 Whole Agreement. This Service Agreement together with the Schedules attached hereto constitutes the whole and entire agreement between the Parties with respect to the subject matter hereof. It is the intention of the Parties that this Service Agreement replaces the Original SLA and the Second SLA as amended upon similar terms and conditions as provided in the Original SLA and the Second SLA as amended.
- 9.4 Amendments and Waivers. No modification of or amendment to this Service Agreement shall be valid or binding unless set forth in writing and duly executed by both of the Parties hereto and no waiver of any Breach of any term or provision of this Service Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, shall be limited to the specific Breach waived.

IN WITNESS WHEREOF this Service Agreement has been executed by the Parties hereto as of the date first written above.

HORIZON UTILITIES CORPORATION

Per:

Max A. Cananzi
President and CEO

Date

Per:

John G. Basilio
Senior Vice President and Chief Financial
Officer

Date

CITY OF HAMILTON

Per:

Mike Zegarac
General Manager, Finance and Corporate
Services

Date

SCHEDULE "A"

DESCRIPTION OF BILLING SERVICES

OVERVIEW

On behalf of the City, Horizon Utilities will provide a billing service for the metered and non-metered water and wastewater Customers of the City. The billing services package will include: meter reading; bill calculation; bill printing, mailing, collection, and payment processing; service orders; tax roll transfers; monthly reporting; call centre for customer support; and Internet access; to be provided in the manner set forth herein (collectively known as the "**Billing Services**").

The City will provide Customer categories for water and wastewater. The City will provide Customer addresses and records concerning prior account history to Horizon Utilities.

Meter Reading

1. Meter reading of the City's metered water/wastewater Customers is to be performed by Horizon Utilities or as contracted by Horizon Utilities' sub-contractor or third-party.
2. Meter reading schedules are harmonized with the meter reading schedule for Horizon Utilities' electricity customers.
3. Horizon Utilities will have no obligation to install meters for Customers or to repair or maintain any meters whether owned by the City or Customers.
4. Horizon Utilities or its designates shall conduct readings of water meters owned by the City within the municipal boundaries of the City, as well as water meters owned outside of the City boundaries on a requested basis by the City, on behalf of the City from the remote reading device, or in the case of non-remote locations, from the water meter inside the Premises. If the meter is non-remote and installed in a chamber, the City will remain responsible for obtaining the read from the meter. If the meter is deemed to be unsafe to access in the opinion of Horizon Utilities, the City will be responsible to provide the reading.
5. Horizon Utilities shall review all accounts where estimates have been used for three (3) consecutive billings or longer, and provide reason for the estimate and contact information for these accounts to the City.
6. Horizon Utilities shall attempt to obtain a visual reading from the water meters or remotes of Customers based on a monthly or bimonthly reading schedule, or such other periodic basis mutually agreed to between the Parties. Horizon Utilities retains the right to re-align the routes to maintain or improve upon efficiencies and will provide the City with notification if changes will cause issue for reconciliations.

7. Non-Remote locations

Notwithstanding Sections 4 and 5 of this Schedule "A", in the event the Customer does not have a remote, the meter reader shall make a reasonable effort to enter the Premises to take a Direct Reading from the water meter. If there is no response from the Customer, the meter reader shall leave a "self-read card" for the Customer in a place where the Customer would be reasonably expected to see it.

8. Capacity for the Customer to Self-Read

Horizon Utilities will provide for an efficient system that is convenient for the Customer to communicate their meter reading to Horizon Utilities in the event the meter reader has left a self-read card.

9. Final Reads

If a Customer moves from their registered service location, Horizon Utilities shall ensure that a final reading is obtained for the service location either from the meter or from the remote, as specified in Horizon Utilities' current final reading procedures and approved time frame. If access is not available, the final read will be estimated.

10. Re-reads

- (a) Upon request by the City or a Customer, Horizon Utilities will re-read the meter when a concern over reading accuracy has been raised.
- (b) Prior to scheduling the re-read, Horizon Utilities will request the Customer to verify the reading on the Customer's internal meter.

11. Horizon Utilities shall be responsible for training its staff and subcontractors to take accurate reads from all the City's water meters and remote reading devices. Horizon Utilities shall also be responsible for notifying its meter reading staff and/or subcontractors of any particular known dangers that may be present at a specific Customer location (e.g. dog in backyard).

12. Each meter reader shall be uniformed and carry identification.

13. AMI Reading

The City will continue to install AMI smart water meters under the pilot for hard to reach meters. Horizon Utilities will continue to electronically read the meters with the existing Horizon Utilities infrastructure.

Billing

1. The employees of Horizon Utilities will perform billing by using the Daffron AS400 CIS/Billing system licensed by Horizon Utilities or such other system as Horizon Utilities may from time to time employ.
2. Except for temporary water stations, which shall be billed by the City, Horizon Utilities will perform all bill calculations for the Customer accounts.
3. Horizon Utilities will prepare and print bills for the Customers. Water and wastewater billing will be combined with electricity billing, where possible, so that the Customer will receive one itemized bill for each billing cycle separately, indicating amounts owing for the relevant billing period for water, wastewater and electricity.
4. Upon request, during this Service Agreement, bill print layout changes may be required. The City will provide Horizon Utilities with a written request and layout, which provides for a sixty (60) day implementation period at cost to the City, if any.
5. Horizon Utilities will be responsible for the mailing of Customer bills, including insertion of bills in Horizon Utilities' pre-printed envelopes and affixing appropriate postage.
6. Horizon Utilities shall update Customer addresses as necessary, and shall deal with invalid Customer addresses in accordance with the procedures used for Horizon Utilities' own customers. This shall include making an effort to try to confirm the address against the City's tax roll.
7. Horizon Utilities shall have the discretion to determine or change the billing cycle, for any Customer, with the intention that the Customer's billing cycle for water will be the same as that of Customer's billing cycle for electricity. Significant changes that could affect annual comparison reports will be reported to the City's Water Finance and Administration Section.
8. In the event there is an error in the meter reading which results in an incorrect Customer bill, the Customer's original bill will be cancelled and the Customer's account will be revised to reflect the accurate meter reading and a consumption adjustment will be made and recorded. A new bill will be prepared and provided to the Customer at no cost to the City or to the Customer. In the case of a billing adjustment pursuant to number 11 of this Billing section, the City will be notified via email of all adjustments in excess of Five Thousand Dollars (\$5,000) within three (3) Business Days of the billing adjustment, a record of the adjustment with supporting notes and documents will be included in the email to the City.
9. In the event the meter reading is proven to be correct, the party requesting the re-read may be charged a fee equivalent to Horizon Utilities' re-read rate for electricity meters, and the Customer's bill will be due and payable as rendered.

10. From the receipt of meter reads from the meter readers and directly from Customers in instances where a self-read card was left, Horizon Utilities shall calculate the water and wastewater charges based on consumption drawn from the reads and in accordance with the latest City billing rates and policies, and Horizon Utilities shall produce the Customer invoice and distribute the invoice to the Customer.
11. Horizon Utilities shall have a system recovery plan in place to ensure that the billing process is not interrupted due to equipment and/or software failure.
12. The event that the billings have been issued incorrectly, due to non-conformance issues, excluding estimates, Horizon Utilities will contact the Customer to advise of the billing error and make the necessary efforts to collect any outstanding balances. Where Horizon Utilities is aware of billing errors that extend beyond three (3) consecutive bills, Horizon Utilities will provide the City with all relevant information.

Estimates

1. In the event the meter or remote appears to have malfunctioned, Horizon Utilities shall estimate the amount of consumption for the period based on the location's past actual consumption history and apply current year's rates and billing practices.
2. Horizon Utilities will provide reasonable assistance to the City to facilitate the installation of water meters prior to account activation. In cases where the Customer is serviced with water but no meter, Horizon Utilities shall bill as per the City's Waterworks By-law R84-026, as amended and any other charges as directed by the City within the time periods described within the City's By-law.
3. Upon the completion of a meter work order that indicates there is "catch-up" consumption, Horizon Utilities shall apply the City's appropriate year's rates and billing policies to the "catch-up" amount.

Customer Invoice Content:

On the joint part of the bill;

- (a) Customer name, address and account number;
- (b) Service address;
- (c) Date meter read;
- (d) Penalties and adjustments posted to the account;
- (e) Special arrangements; deferred payment arrangements;
- (f) Payments received during the billing period;
- (g) Prior balance;

- (h) Total amount due;
- (i) Where applicable, Equal payment plan amount due (payments, balance; YTD if available);
- (j) Due date;
- (k) A consumption profile for a minimum twelve (12) month period; and
- (l) A comparison of consumption per day for current billing period vs. average consumption per day for same billing period from previous year.

On the City only part of the bill:

- (a) Date of previous meter reading;
- (b) Number of days consumption that the billing period covers;
- (c) Reading for previous period;
- (d) Reading for current period and indication if it is estimated;
- (e) Consumption for the equivalent period or average per day for the equivalent period of the previous year consumption charge for water;
- (f) Consumption for the current period and indication if it is an estimate;
- (g) Wastewater charges;
- (h) Service charge for water;
- (i) Applicable wastewater flow discounts;
- (j) Special charges and fees;
- (k) Deferred payment amount; and
- (l) Prior balance – includes adjustments.

Customer Communication

1. The Customer's invoice shall have a one hundred and seventy-five (175) text character free format Customer communication area to relay water and wastewater messages as a separate section within the bill for water/wastewater only Customers. Upon five (5) days' notice from the City, Horizon Utilities shall implement this communication as requested by the City. Changes shall occur no greater than at billing cycle frequency. The City is responsible for the wording and accuracy of all City inserts and messaging.

2. In addition to the Customer communications area of the invoice for water/wastewater only Customers, the City shall have the right to include two (2) separate inserts per year free of charge, one of which will be the rate notification card. Horizon Utilities will provide the City the ability to communicate a rate change through an insert each year, which will be disseminated in correspondence with the first cycle of a rate change. The City will provide the inserts at their own expense to Horizon Utilities in accordance with the specifications provided by Horizon Utilities. If more than two (2) inserts are requested or required by the City in a current year, subject to availability determined solely by Horizon Utilities, they may be inserted free of charge but will be dependent upon Horizon Utilities' own insert requirements. If the inserts provided by the City result in increased mailing expenditures due to Canada Post mailage weighting categories, this will be communicated to the City and the increased expense will be the responsibility of the City. The additional inserts are subject to space availability and the City insert must comply with OEB affiliate relationship requirements.

Leak Adjustment Program

1. Horizon Utilities administers the Leak Adjustment Program in accordance with the latest City Water Leak Adjustment Policy. Horizon Utilities shall produce the Customer invoice and distribute the invoice to the Customer.
2. Horizon Utilities will seek approval from the City's Finance Department for credit adjustments exceeding Five Hundred Dollars (\$500). Information will be provided from Daffron CIS history files.
3. Horizon Utilities shall calculate the adjustment and for those adjustments exceeding Five Hundred Dollars \$500, provide the City with the calculation and all pertinent original backups related to each application and any subsequent write-off.
4. Horizon Utilities shall process any required adjustments to the Customer's account on the Customer's next invoice following a written request has been received from the designated account representative from the City. Adjustments under Five Hundred Dollars \$500 are subject to periodic audits from the City's Finance Department.

Collections

1. Horizon Utilities will collect all bill payments from Customers on behalf of the City.
2. Customers will be given multiple payment options, which shall include:
 - (a) Cheque;
 - (b) Pre-authorized debit;
 - (c) Credit card electronic payment; and
 - (d) Pre-authorized payment plans providing budgeting assistance to Customers.

3. Horizon Utilities shall provide local convenient destination points for water and wastewater Customer payments as currently provided or upon mutual agreement.
4. Horizon Utilities' Customer Information System and cash collection processes shall have the capability to facilitate the following:
 - (a) NSF cheques;
 - (b) Post-dated cheques;
 - (c) Damaged and unprocessable cheques;
 - (d) Audit trails and internal controls over accuracy and completeness;
 - (e) Duplicate payments;
 - (f) Partial payments;
 - (g) Overpayments;
 - (h) Stale dated cheques; and
 - (i) Deferred payments.
5. Horizon Utilities will follow the same collection policies for the City as is used Horizon Utilities' own customers.
6. In accordance with the City's Deferred Payment Policy, Horizon Utilities will upon a Customer's request defer water/wastewater amounts up to Five Thousand Dollars (\$5,000) and up to a two (2) year period. Amounts greater than Five Thousand Dollars (\$5,000) require notification to the Senior Policy Advisor at the City. Payment arrangements exceeding 2 years in length and/or for amounts of Fifty Thousand Dollars (\$50,000) to One Hundred Thousand Dollars (\$100,000) require approval from the City. Amounts greater than One Hundred Thousand Dollars (\$100,000) require approval from City Council obtained by City Finance staff.
7. Horizon Utilities is only responsible for remitting to the City amounts actually collected from Customers and has no liability or obligation to the City for any uncollected Customer accounts.
8. The City is responsible for ensuring that all Month End reports and corresponding documentation is reviewed and signed-off as complete and acceptable within seven (7) business days of receipt. The sign-off is to be sent via email to a Horizon Utilities representative.
9. Horizon Utilities shall send Customers Horizon Utilities' standard notices regarding delinquent accounts and shall attempt to collect delinquent accounts, which are

unpaid for up to ninety (90) days in accordance with Horizon Utilities' standard collection procedures.

10. Horizon Utilities will charge Customers with delinquent accounts the usual collection charges in accordance with Horizon Utilities' standard collection procedures, which charges shall be for the account of Horizon Utilities when collected.
11. Horizon Utilities shall notify the City of any unpaid Customer accounts, which remain unpaid for more than ninety (90) days at which time the City shall receive an electronic file transfer listing uncollectible accounts. The outstanding balances for these accounts will be removed from Horizon Utilities' accounts receivable (A/R) upon completion of the file transfer and the City will be responsible for any further collection activity in respect of such delinquent accounts.
12. The City will confirm via email that the transfer has been completed and they accept the files as sent within two (2) Business Days of the transfer.
13. The City will remain responsible for all delinquent accounts, including the initiation of any legal action to collect unpaid Customer accounts.
14. In the event that a Customer makes a partial payment of the amount owing on a bill, Horizon Utilities shall be entitled to first deduct from such amount up to one hundred percent (100%) of arrears owing by that Customer for electricity services. The balance of any partial payment, after deducting the amount owing in respect of electricity services, will be credited to the Customer's account for water and wastewater services and remitted to the City. All payments must first be applied to arrears for all services before being applied to current charges.

Overdue Account

1. An interest charge as prescribed by Horizon Utilities shall be implemented on all water and wastewater accounts not paid in full by the due date specified on the Customer invoice. Any revenue from interest charges shall be retained by Horizon Utilities.
2. Horizon Utilities shall be responsible for making every reasonable effort to collect past due accounts as per the City's Water and Wastewater/Storm Arrears Policy, as amended, supplemented or replaced from time to time (the "Water and Wastewater/Storm Arrears Policy") including but not limited to the imposition of interest and notification to the Customer of past due amounts through email, personal, written and/or telephone contact. Horizon Utilities will provide written notice as per the City's Water and Wastewater/Storm Arrears Policy that if payments are not remitted, arrears will be added to the tax roll.
3. Horizon Utilities shall transfer to the City tax roll any water and wastewater Customer accounts at the request of the City and all accounts that are greater than ninety (90) days past due, dependent on holidays and mutual hours of business. These amounts will include all interest charges as applied by Horizon Utilities.

4. Where Horizon Utilities receives a payment, including post-dated cheques, from the Customer after the account has been transferred to the City tax roll; Horizon Utilities shall apply the amount to the Customer's account and request and negative Tax Transfer to the City.

Collection Agencies

1. Horizon Utilities shall not transfer any water and wastewater/storm arrears of accounts to an independent collection agency.
2. Horizon Utilities will work with the City to try to identify/implement mutual collection efficiency opportunities.

Metered Water Write-off

1. After Horizon Utilities has made every reasonable effort to collect outstanding balances for final billed accounts, Horizon Utilities will write-off any balance equal to or less than Thirty Dollars (\$30) of combined water and wastewater/storm charges.
2. For any outstanding final billed account balances in excess of Thirty Dollars (\$30, combined water and wastewater/storm) and after Horizon Utilities has made every reasonable effort to collect the outstanding balance, Horizon Utilities will provide supporting documentation, as specified by the City, for the circumstances and time period resulting in the outstanding balance.

Administrative Charges

1. Horizon Utilities will invoice Customers for any standard administrative charges in accordance with Horizon Utilities' procedures for its own customers, including without limitation, set-up charges, interest charges and returned cheque fees, all of which administrative charges shall be for the account of Horizon Utilities.

Call Centre

1. Horizon Utilities will be responsible for maintaining a Customer call centre. Customers will be able to make enquiries regarding water, wastewater and electricity billing through the call centre during the regular business hours of Horizon Utilities, as Horizon Utilities shall determine from time to time.
2. Horizon Utilities and call centre staff will not be responsible for Customer enquiries regarding the operation, maintenance or repair of the water/wastewater facilities. All enquiries regarding the operation, maintenance and repair will be referred to a contact person at the City for such purpose throughout the Term.
3. Horizon Utilities shall provide personal (live) contact during the hours of 8:30 a.m. to 4:30 p.m. Monday through Friday other than statutory holidays or holidays observed by either Party. Horizon Utilities may, at its sole discretion, extend these hours to meet business needs. Voice and email capabilities shall be provided at all times

- twenty-four (24) hours a day, seven (7) days a week. Horizon Utilities will respond to all email/voice mail communication from Customers within two (2) Business Days.
4. Horizon Utilities shall provide customer services (in the same fashion as its electricity services) via telephone, mail and email to the City's water and wastewater/storm Customers providing the appropriate response for the following situations:
 - (a) Explaining charges on a Customer's account;
 - (b) Informing the Customer of the City's rates, and billing and collection practices;
 - (c) Logging a service request for broken meters and remotes and forwarding it to the City;
 - (d) Customer account updates (move-ins, move-outs, change of banking information etc.); and
 - (e) Explanation to the Customer detailing the billing periods and amounts of all water and wastewater arrears that have been added to the Customer's property tax roll.
 5. Horizon Utilities shall not offer any opinion to the Customer for the fairness or suitability of the City's water and wastewater policies.
 6. Horizon Utilities' system shall have the capability to log categorize and archive Customer inquiries.

Key Performance Indicators

1. During the first year of the Term, the City will identify and develop measurements to assess Horizon Utilities' performance in performing Billing Services using the following Key Performance Indicators ("**KPIs**"):
 - (a) Meter reading accuracy;
 - (b) Percentage of estimated accounts;
 - (c) Percentage of service orders issued to the City resulting in no follow-up action required;
 - (d) Days to complete a service/work order; and
 - (e) Call Centre service levels based on current system capabilities.
2. During the second year of the Term, the City will establish standards and targets for the above KPIs.

3. During the third year of the Term, and annually thereafter, the City will measure and monitor Horizon Utilities' performance based on the above KPIs or any other KPIs established by mutual agreement by the Parties.

Website Services

1. Customers shall be provided with the option of accessing their water and wastewater/storm account information via the Horizon Utilities corporate website including: invoices, billing history, rate information, read schedules. Horizon Utilities will extend its electric customer self-serve options to City Customers as appropriate. Account information does not include a Customer's hourly usage or usage statistics. Any additional development of current functionality shall be at the cost to the City. Website access will be available twenty-four (24) hours per day subject to access constraints due to regular maintenance, access issues, security work and down time.

Customer Deposits

1. Horizon Utilities shall not be responsible for the collection or administration of Customer deposits in respect of water and wastewater/storm services unless specifically agreed to by Horizon Utilities and the City including an appropriate fee for such additional service.

Reporting

1. Horizon Utilities shall notify the City of all Premises where the meter or remote has stopped or appears to be malfunctioning based on the previous readings, subject to City's direction.
2. Horizon Utilities shall notify the City of any Premises where it appears the water service has been illegally by-passed.
3. Horizon Utilities shall notify the City of any Premises where the remote or meter is damaged or been tampered with.
4. Horizon Utilities will provide on the third working day of each month a monthly access report containing the following information if it is available from the Customer's file (to be implemented thirty (30) days after this Service Agreement is signed):
 - (a) Customer telephone number;
 - (b) Water meter ID;
 - (c) Reading date;
 - (d) Actual reading from meter;
 - (e) Type of reading (e-estimated);

- (f) Actual billed consumption in m3;
 - (g) Hydro location code;
 - (h) Street name;
 - (i) Street address;
 - (j) City;
 - (k) Tax roll number – from COH tax info;
 - (l) Water meter size;
 - (m) Satellite or master;
 - (n) Satellite or master group;
 - (o) Meter multiplier;
 - (p) Sewer surcharge (y/n);
 - (q) Wastewater abatement amount (\$);
 - (r) Wastewater abatement consumption credit (m3); and
 - (s) Customer name.
5. Horizon Utilities shall by the third Business Day of each month, forward a report to the City with the total amount billed to the Customers from the previous month, less any accounts transferred to the City during that month.
6. Each monthly submission, by the third Business Day of each month to the City's Finance Department shall include the following reports and information requests:
- (a) Rate & Revenue Report (which reconciles to the Billing Statistics Report);
 - (b) Billing Statistics Report – Billings Only;
 - (c) Billing Statistics Report – Adjustments Only;
 - (d) Billing Statistics Report – Billing & Adjustments;
 - (e) Monthly Leak Adjustment Report;
 - (f) Water "Adjustments by G/L";
 - (g) Sewer "Adjustments by G/L";

- (h) Water Monthly A/R Control Register;
 - (i) Sewer Monthly A/R Control Register;
 - (j) Detailed Accounts Receivable Register "Water" (supplied yearly);
 - (k) Detailed Accounts Receivable Register "Sewer" (supplied yearly);
 - (l) Report to Identify the Number of Water Services by Rate Category;
 - (m) Report to Identify the Number of Sewer Services by Rate Category; and
 - (n) Amount billed.
7. In the event that the Billing Statistics reports do not reconcile to the Accounts Receivable Summary, the City will be advised the nature of the variance and intended adjustment to resolve the variance. In the event Horizon Utilities cannot identify and resolve the outstanding amount, Horizon Utilities shall compensate the City for the variance. A monthly reporting of all revenue adjustments shall be provided.
 8. On an annual basis, a Service Activity report will be created for presentation to City Council.
 9. Other "ad hoc" reports will be provided, subject to agreement between the City and Horizon Utilities with the cost for such reports based on an hourly programming rate of One Hundred and Sixty-Five Dollars (\$165).
 10. Horizon Utilities will work to the best of its ability to assist the City in realizing efficiencies surrounding billings and consumption profiles for City owned or occupied properties e.g. interface of Daffron with PeopleSoft.
 11. Horizon Utilities and the City agree to a third party audit of water and wastewater revenues and charges, on a per request basis, to be paid for by the party requesting the audit.

Changes to the Service

Contract Administrative Meetings

1. The City representative(s) and Horizon Utilities may meet as required to review the performance of the Billing Services and each other's obligations and to review any potential changes to the Billing Services.
2. Horizon Utilities will notify the City at least thirty (30) days prior to any major changes to:
 - (a) The means of Horizon Utilities' execution of the Billing Services including but not limited to Horizon Utilities' meter reading practices, billing and

collection practices, information and communication systems used and any and all capital acquisitions related thereto.

- (b) The equipment and practices that could affect Horizon Utilities' means of providing the Billing Services or the cost of providing the Billing Services within this Service Agreement. Computer hardware and software upgrades and replacement selection and evaluation where such upgrades and replacements have a direct or indirect impact on the Billing Services of this Service Agreement.
- 3. The nature and extent of the notification shall be sufficient and appropriate to ensure both the City and Horizon Utilities understand the implications and risks associated with such changes, and agree the changes and any related contingency plans adequately minimize risks that could impair Billing Service delivery under this Service Agreement.

Water Turn Offs

- 1. In the event the City chooses to turn off the water service of a Customer, Horizon Utilities will create and provide all relevant service orders to the City's Water and Wastewater Division upon receiving notification from the City identifying the Customer and service address to be disconnected.

SCHEDULE "B"**FEES**

1. City bank account for remittance by Horizon Utilities:

Bank ID 003 Transit 01822 Account# 000 002 6

2. Email address of General Manager of Finance and Corporate Services for the City as required by Section 4.7:

Mike Zegarac: mike.zegarac@hamilton.ca.

The Parties agree that the bank accounts and email addresses in this Schedule "B" may be amended by the applicable Party upon ten (10) Business Days' prior written notice to the other Party.

Water Billing Rates

	Per Service Level Agreement				
Year	Jan. 2015	Jan. 2016	Jan. 2017	Jan. 2018	Jan. 2019
Approved Percent Increase	1.75%	1.90%	2.00%	2.15%	2.15%
Bill Type					
Monthly Metered	2.4879	2.5352	2.5859	2.6415	2.6982
Bi-Monthly Metered	4.9103	5.0035	5.1036	5.2133	5.3254
Monthly Unmetered – Water only	1.8574	1.8927	1.9306	1.9721	2.0145
Bi-Monthly – Water only	4.2800	4.3613	4.4486	4.5442	4.6419
Monthly Unmetered – With Hydro	1.1161	1.1373	1.1600	1.1850	1.2105
Bi-Monthly Unmetered – With Hydro	2.1669	2.2080	2.2522	2.3006	2.3501

** All future increases are subject to correction per the postage increase clause (Article 4 - Fees and Payments 4.3), and the approved percent increase as laid out in Schedule "B".

SCHEDULE "C"

PRIVACY

1. For the purposes of this Service Agreement:
 - (a) "Personal Information" means information to which specific requirements apply under the Privacy Requirements; and
 - (b) "Privacy Requirements" means the requirements (both positive and negative, and including limitations and prohibitions) of any privacy legislation as it applies to this Service Agreement and the services thereunder, including, but not limited to, Ontario's Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, Ontario's Freedom of Information and Protection of Privacy Act, R.S.O. 1990, C.F-31, the Federal Personal Information Protection and Electronic Documents Act, S.C. 2000, c.5 and their respective regulations.
2. For greater certainty, Horizon Utilities acknowledges that information which is Confidential Information as defined in the Service Agreement may also be (but is not necessarily) Personal Information, and vice versa, and that where information is both Personal Information and Confidential Information, the requirements applicable to each category shall apply to it so as to subject it in each case to the more rigorous requirement.
3. Horizon Utilities acknowledges and agrees that:
 - (a) in the course of providing Billing Services it will collect, use, store and transfer Personal Information on behalf of the City's purposes and not on its own behalf or for its own purposes; and
 - (b) Horizon Utilities is subject to the Privacy Requirements, and Horizon Utilities shall at all times comply strictly with this Service Agreement in such manner as to ensure that its acts or omissions do not result in either Horizon Utilities or the City being in violation of any applicable Privacy Requirements.
4. Horizon Utilities shall not, without the prior written consent of the City, (a) disclose any of the Personal Information to any affiliated or unaffiliated third party, or (b) transmit or provide access to the Personal Information to any of Horizon Utilities' personnel, or to any facility, outside Ontario.
5. If the Parties determine that a practice or procedure would result in violation of the Privacy Requirements, the Parties may mutually agree to amend this Service Agreement to vary or eliminate such practice or procedure. Horizon Utilities shall immediately advise the City if it believes that any practice or procedure in which they are engaging contravenes the Privacy Requirements, or if it receives or learns of any complaint or allegation to that effect.

6. Horizon Utilities shall:
 - (a) ensure that only such of its employees and permitted subcontractors as have a need to know Personal Information for the performance of the Billing Services under this Service Agreement have access to the Personal Information;
 - (b) ensure that each person who has such access (a "Supplier User") is familiar with the Privacy Requirements and the provisions of this Schedule "C";
 - (c) take reasonable steps, through training, confidentiality agreements and the application of appropriate employment sanctions, to ensure compliance by all Supplier Users with this Schedule "C"; and
 - (d) ensure that upon termination of employment by Horizon Utilities or affiliation with the City through this Service Agreement, each Supplier User's ability to access Personal Information is terminated, any and all Personal Information in the possession of any such Supplier User is returned, and such Supplier User is reminded of the continuing obligation of confidentiality with respect to all Personal Information.
7. All Personal Information in Horizon Utilities' possession, if any, shall be stored in a secure physical and electronic environment meeting or exceeding then-current industry standards given the sensitive nature of the Personal Information. Promptly upon notice from the City, Horizon Utilities will undertake, at its sole cost and expense, to remedy any security deficiency or improvement identified or requested by the City.
8. The City shall have the right at any time and from time to time upon reasonable notice to Horizon Utilities to visit and inspect any location where Horizon Utilities collects, uses, or stores any Personal Information, to examine all equipment used, and all records maintained, in connection therewith (and to make copies of such records), to question Horizon Utilities' personnel (including any subcontractors and suppliers), and otherwise to audit and verify, both physically and electronically, compliance by Horizon Utilities with this Schedule "C". The City shall have no duty to make any such visit, inspection, examination, audit or verification and shall not incur any liability or obligation by reason of doing or not doing so.
9. If Horizon Utilities receives any requests from individuals for access to their Personal Information, Horizon Utilities shall forthwith advise such individuals, in such form and terms as the City may from time to time specify, that all such Personal Information is held only on behalf of the City and that such request should be directed to the City.
10. If Horizon Utilities receives any inquiry or complaint relating to Personal Information which has been collected, used or disclosed under this Service

Agreement, Horizon Utilities shall immediately notify the City thereof in such form and manner, and with such particulars, as the City may from time to time specify, and if the City notifies Horizon Utilities that it requires assistance in investigating or responding to the inquiry or complaint, Horizon Utilities shall fully cooperate by furnishing it or them, as applicable, with complete information concerning its collection, use and disclosure of Personal Information, including responding, if requested to do so, to any inquiry by a regulatory authority under the Privacy Requirements and/or to any complaint. If any inquiry or complaint (whether or not first received by Horizon Utilities) gives rise to regulatory or court proceedings, Horizon Utilities shall co-operate in the conduct of such proceedings and shall attend hearings and assist in securing and giving evidence and obtaining the attendance of witnesses. The City shall pay Horizon Utilities' actual out-of-pocket expenses related to co-operation and attendance at such hearings unless such hearing relates to a failure by Horizon Utilities to conform to its obligations in respect of this Service Agreement, including in respect of Personal Information.

11. Horizon Utilities shall immediately notify the City in writing in the event of the theft, loss, destruction, or unauthorized access, disclosure, copying, use or modification of any of the Personal Information.
12. In the event of any termination of this Service Agreement, Horizon Utilities shall forthwith return to the City, or destroy, as directed by the City, all the Personal Information held by Horizon Utilities pursuant to this Service Agreement, and shall keep no copies. Upon request, an officer's certificate attesting that such actions have been completed and that there are no tangible and/or electronic versions of the Personal Information in their possession or control, shall be provided to the City by Horizon Utilities.