



CITY of NOVI CITY COUNCIL

Agenda Item H
February 17, 2009

SUBJECT: Approval of Standard Agreement for Municipal Street Lighting with The Detroit Edison Company for the installation of two streetlights at the proposed MDOT Park & Ride lot to be located at the northeast corner of the I-96/Beck Road interchange in Section 16.

SUBMITTING DEPARTMENT: Engineering *RH*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

MDOT will be constructing a Park and Ride commuter lot in its right-of-way at the northeast corner of the I-96/Beck Road interchange. The lot will front Twelve Mile Road, but will roughly be half in Novi and half in the City of Wixom. As part of the site plan review process, the City of Novi requested that MDOT add two streetlights for the safety and security of commuters who use the lot.

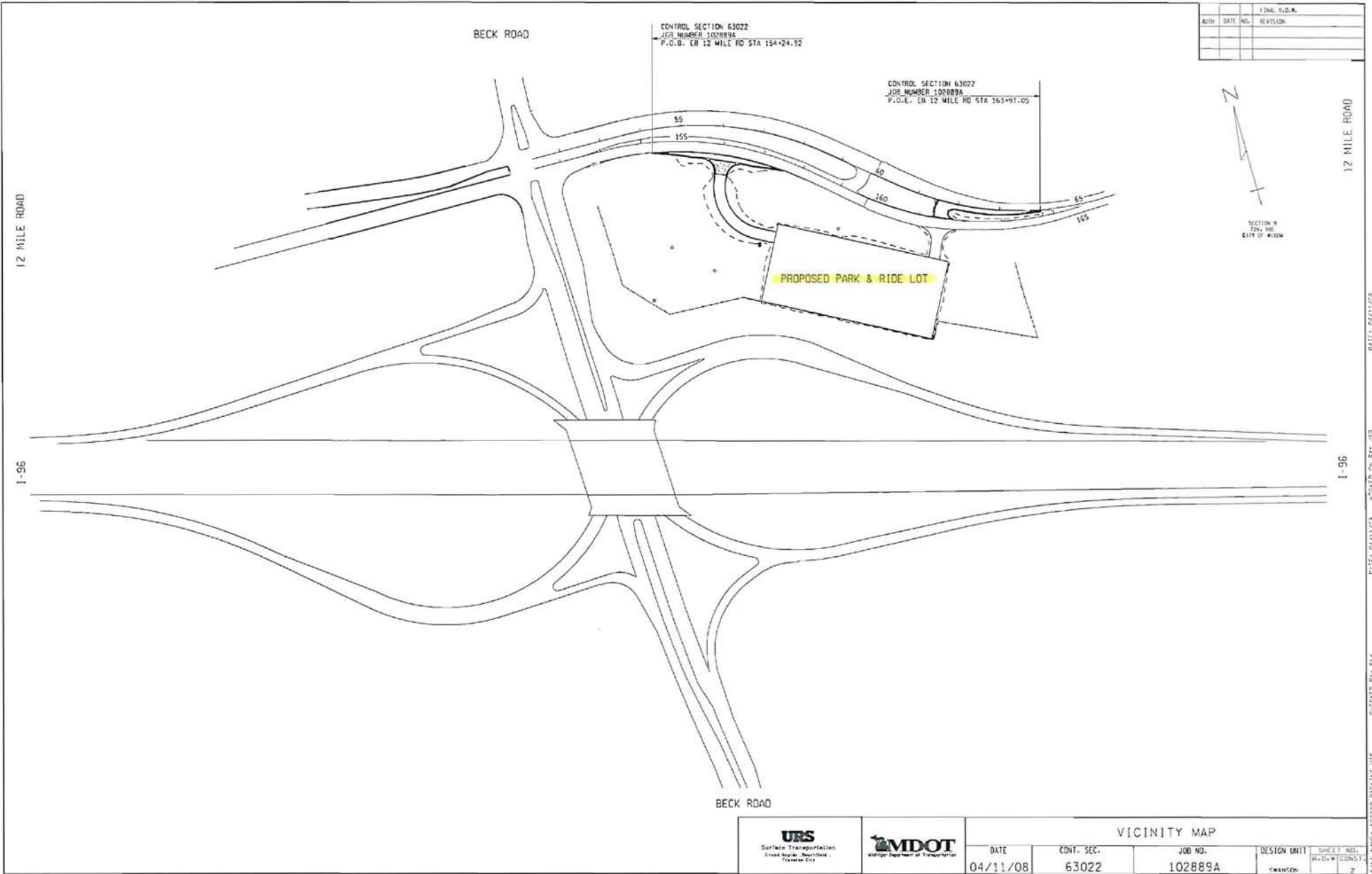
The attached agreement between the City and The Detroit Edison Company (DTE) spells-out the terms and conditions for streetlight installation and maintenance. The cost to install the streetlights will be borne by MDOT, while DTE's annual maintenance costs (estimated to be \$942.68 per year) are to be reimbursed by the City of Novi. The term of this agreement is five years.

The City Attorney's office has reviewed the agreement and finds no legal impediment to executing it (Kristin Kolb's January 29, 2009 letter, attached).

RECOMMENDED ACTION: Approval of Standard Agreement for Municipal Street Lighting with The Detroit Edison Company for the installation of two streetlights at the proposed MDOT Park & Ride lot to be located at the northeast corner of the I-96/Beck Road interchange in Section 16.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Burke				
Council Member Crawford				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				



NO.	DATE	NO.	REVISION



URS
Surface Transportation
Grand Haven, Michigan
Troy, Michigan

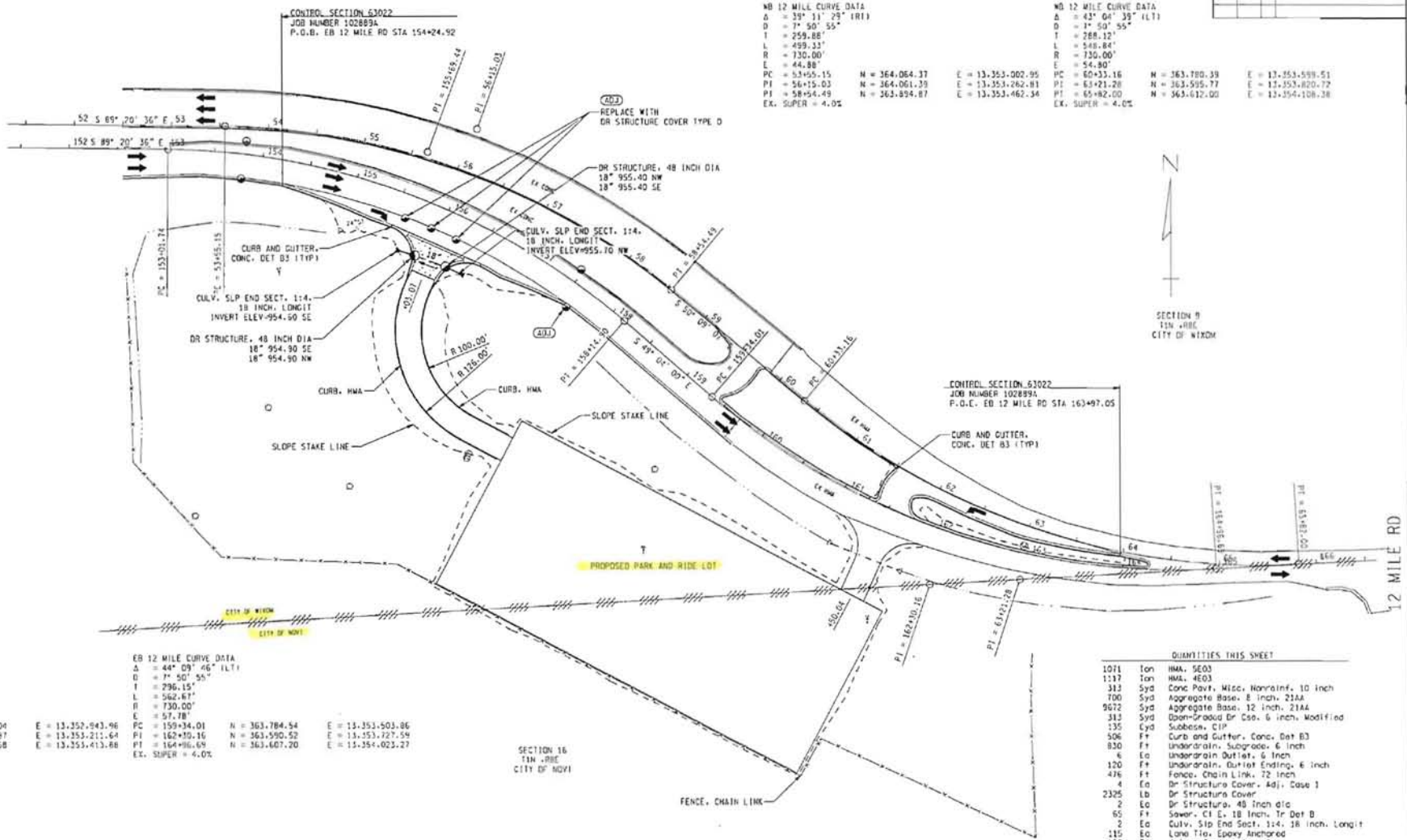
MDOT
Michigan Department of Transportation

VICINITY MAP			
DATE	CONT. SEC.	JOB NO.	DESIGN UNIT
04/11/08	63022	102889A	SWANSON
SHEET NO.			SHEET NO.
14 OF 14			2

FILE NAME: 102889_PARKING.MXD CHECKED BY: SVS DATE: 07/11/08 DRAWN ON: JTB

12 MILE RD

FINAL R.O.W.			
AUTH	DATE	NO.	REVISION



NB 12 MILE CURVE DATA

A	= 39° 11' 25" (RT)
D	= 7° 50' 55"
T	= 259.88'
L	= 459.33'
R	= 730.00'
E	= 44.88'
PC	= 53+55.15
PI	= 56+15.03
PT	= 58+54.49
EX. SUPER	= 4.0%

NB 12 MILE CURVE DATA

A	= 42° 04' 38" (LT)
D	= 1° 50' 55"
T	= 288.12'
L	= 548.84'
R	= 120.00'
E	= 54.80'
PC	= 60+33.16
PI	= 63+21.20
PT	= 65+82.00
EX. SUPER	= 4.0%

EB 12 MILE CURVE DATA

A	= 40° 16' 31" (RT)
D	= 7° 50' 55"
T	= 267.70'
L	= 513.16'
R	= 730.00'
E	= 47.54'
PC	= 153+01.74
PI	= 155+59.44
PT	= 158+14.90
EX. SUPER	= 4.0%

EB 12 MILE CURVE DATA

A	= 44° 09' 46" (LT)
D	= 7° 50' 55"
T	= 296.15'
L	= 562.67'
R	= 730.00'
E	= 57.18'
PC	= 159+34.01
PI	= 162+30.16
PT	= 164+06.69
EX. SUPER	= 4.0%

EB 12 MILE CURVE DATA

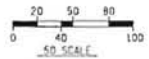
A	= 44° 09' 46" (LT)
D	= 7° 50' 55"
T	= 296.15'
L	= 562.67'
R	= 730.00'
E	= 57.18'
PC	= 159+34.01
PI	= 162+30.16
PT	= 164+06.69
EX. SUPER	= 4.0%

QUANTITIES THIS SHEET

1011	Ion	HMA, 5E03
1312	Ion	HMA, 4E03
312	Syd	Conc Pavt, Misc, Nonrein, 10 inch
700	Syd	Aggregate Base, 8 inch, 21AA
9672	Syd	Aggregate Base, 12 inch, 21AA
313	Syd	Open-Graded Dr Cso, 6 inch, Modified Subbase, CIP
135	Syd	Subbase, CIP
506	Ft	Curb and Gutter, Conc, Det B3
830	Ft	Underdrain, Subgrade, 6 inch
6	Ft	Underdrain Outlet, 6 inch
120	Ft	Underdrain, Outlet Ending, 6 inch
436	Ft	Fence, Chain Link, 72 inch
4	Ea	Dr Structure Cover, Adj, Case 1
2325	Lb	Dr Structure Cover
2	Ea	Dr Structure, 48 inch dia
65	Ft	Sower, CI E, 18 inch, Tr Det B
2	Ea	Culv, Slip End Sect, 1:4, 18 inch, Longit
115	Ea	Lane Tie, Epoxy Anchorrod
180	Ft	Joint, Contraction, Sp

DRIVEWAY APPROACH QUANTITIES - THIS SHEET

STATION	Driveway Opening, Conc, Det M	DRIVE RADIUS		HMA, SE03	HMA, 4E03	Driveway, Nonrein Conc, 8 inch	Aggregate Base, 8 inch	Curb and Gutter, Conc, Det B3	Curb, HMA
		ENTERING	EXITING						
156+03.07 (RT)	100	35	35	80	80	136	864	106	459
161+50.04 (RT)	100	35	35	115	115	136	1129	106	459
TOTAL	100			115	115	136	1129	106	459



URS
Surface Transportation
Civil & Environmental Engineers
Professional Engineers
City of Nixa

MDOT
Missouri Department of Transportation

CONSTRUCTION SHEET

PARKING LOT PLAN SHEET

DATE	CURT. SEC.	JOB NO.	DESIGN UNIT	SHEET NO.	TOTAL SHEETS
04/11/08	63022	102889A	SWANSON	11	11

DATE: 04/11/08 CHECKED BY: JEB

STANDARD AGREEMENT FOR MUNICIPAL STREET LIGHTING

DTE Internal Work Order/IO Number 29258153

This Standard Agreement For Municipal Street Lighting ("Agreement") is between The Detroit Edison Company ("Company") and City of Novi ("Customer"). Customer requests the Company to furnish, install, operate and maintain street lighting equipment in the municipality set forth on Exhibit A attached hereto at the specific location set forth on Exhibit A (the "Location") and the Company agrees to do so in accordance with the terms set forth in this Agreement.

Therefore, in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Company and Customer each hereby agree as follows:

1. Description of Equipment

Subject to and in accordance with the terms of this Agreement, the Company will undertake activities to install the street lighting equipment set forth on Exhibit A attached hereto (the "Equipment").

2. Rules Governing Installation of Equipment and Electric Service

Installation of street light facilities and the extension of electric service to serve those facilities are subject to the provisions of The Michigan Public Service Commission (MPSC) Rules Governing Services Supplied by Electric Utilities, Rule B-3.3, Extension of Service.

3. Contribution in Aid of Construction

In accordance with the applicable Orders of the MPSC, Customer shall pay to Company a contribution in aid of construction ("CIAC") for the installation of the Equipment and the recovery of costs associated with the removal of existing equipment, if any. The amount of the CIAC (the "CIAC Amount") shall be an amount equal to the total construction cost (including all labor, materials and overhead charges), less an amount equal to three years revenue expected from such new equipment. The CIAC Amount is as set forth on Exhibit A attached hereto. The CIAC Amount does not include charges for any additional cost or expense for unforeseen underground objects not identified by Miss Dig, or unusual conditions encountered in the construction and installation of the Equipment. If Company encounters any such unforeseen or unusual conditions, which would increase the CIAC Amount, it will suspend the construction and installation of the Equipment and give notice of such conditions to the Customer. The Customer will either pay additional costs or modify the work to be performed. If the work is modified, the CIAC Amount will be adjusted to account for such modification. Upon any such suspension and/or subsequent modification of the work, the schedule for completion of the work shall also be appropriately modified.

4. Payment of CIAC Amount

Customer shall pay to Company the CIAC Amount set forth on Exhibit A promptly upon execution of this Agreement. Failure to pay such amount at such time shall relieve Company of its obligations to perform the construction work required herein until such amount is paid.

5. Modifications

Subject to written permission of the respective municipality, after installation of the Equipment, any cost for additional modifications, relocations or removals will be the responsibility of the requesting party.

6. Maintenance and Replacement Equipment

In accordance with the applicable Orders of the MPSC, under the Municipal Street Lighting Rate (as defined below), Company shall provide the necessary maintenance of the Equipment, including such replacement material and equipment as may be necessary.

7. Street Lighting Service Rate

Upon the installation of the Equipment, the Company will provide street lighting service to Customer under Option 1 of the Municipal Street Lighting Rate, as approved by the MPSC.

This street lighting service is also governed by Rules for Electrical Service established by the MPSC (MPSC Case Number U-6400). The Street Lighting Rate is subject to change from time to time by orders issued by the MPSC. The Municipal Street Lighting Rate as of the date of this Agreement is hereby incorporated by reference into this Agreement.

8. Contract Term

The initial term of this Agreement shall begin on the date that billing for the street light service begins, and shall continue for five years thereafter. Upon the expiration of the initial term of this Agreement, the term of this Agreement shall continue on a month-to-month basis thereafter until terminated by mutual written consent or twelve months written notice by either party, which written notice may be given at any time.

9. Design Responsibility for Street Light Installation

The Company installs municipal street lighting installations following Illuminating Engineering Society of North America ("IESNA") recommended practices. If the Customer submits its own street lighting design for the street light installation (as shown on Exhibit A), or if the street lighting installation requested by Customer on Exhibit A does not meet the IESNA recommended practices (as shown on Exhibit A), Customer acknowledges the Company is not responsible for lighting design standards.

10. New Subdivisions

Company agrees to install street lights in new subdivisions when subdivision occupancy reaches a minimum of 80%. If Customer wishes to have installation occur prior to 80% occupancy, then Customer acknowledges it will be financially responsible for all damages (knockdowns, etc.) and requests for modifications (movements due to modified curb cuts from original design, etc.).

11. Force Majeure

The obligation of Company to perform this Agreement shall be suspended or excused to the extent such performance is prevented or delayed because of acts beyond Company's reasonable control, including without limitation acts of God, fires, adverse weather conditions (including severe storms and blizzards), malicious mischief, strikes and other labor disturbances, compliance with any directives of any government authority, including but not limited to obtaining permits, and force majeure events affecting suppliers or subcontractors.

12. Subcontractors

Company may sub-contract in whole or in part its obligations under this Agreement to install the Equipment and Replacement Equipment.

13. Waiver; Limitation of Liability

To the maximum extent allowed by law, Customer hereby waives, releases and fully discharges Company from and against any and all claims, causes of action, rights, liabilities or damages whatsoever, including attorneys fees, arising out of the installation of the Equipment and/or any Replacement Equipment, including claims for bodily injury or death and property damage, unless such matter is caused by or arises as a result of the sole negligence of Company and/or its subcontractors. Company shall not be liable under this Agreement for any special, incidental or consequential damages, including loss of business or profits, whether based upon breach of warranty, breach of contract, negligence, strict liability, tort or any other legal theory, and whether or not Company has been advised of the possibility of such damages. In no event will Company's liability to Customer for any and all claims related to or arising out of this Agreement exceed the CIAC Amount.

14. Notices

All notices required by the Agreement shall be in writing. Such notices shall be sent to Company at The Detroit Edison Company, Community Lighting Group, 2000 Second Ave., Room 440 SB, Detroit, MI 48226 and to Customer at the address set forth on Exhibit A attached hereto. Notice shall be deemed given hereunder upon personal delivery to the addresses set forth above or, if properly addressed, on the date sent by certified mail, return receipt requested, or the date such notice is placed in the custody of a nationally recognized overnight delivery service. A party may change its address for notices by giving notice of such change of address in the manner set forth herein.

15. Representations and Warranties

Company and Customer each represent and warrant that: (a) it has full corporate or public, as applicable, power and authority to execute and deliver this Agreement and to carry out the actions required of it by this Agreement; (b) the execution and delivery of this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary corporate or public, as applicable, action required on the part of such party; and (c) this Agreement constitutes a legal, valid, and binding agreement of such party.

16. Miscellaneous

(a) This Agreement is the entire agreement of the parties concerning the subject matter hereof and supersedes all prior agreements and understandings.

(b) No party other than Company and Customer, and their respective successors and assigns, shall have any rights to enforce or rely upon this Agreement, which is binding upon and made solely for the benefit of Company and Customer, and their respective successors, and assigns, and not for the benefit of any other party.

(c) Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by such party of any of its rights hereunder. No waiver by any party at any time, expressed or implied, of any breach of any provision of this Agreement shall be deemed a waiver or a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision.

(d) The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience, and do not define, limit, construe or describe the scope or intent of such sections or articles of this Agreement nor in any way affect this Agreement.

(e) This Agreement, and the rights, obligations and liabilities of the parties hereto shall be construed in accordance with the law of the State of Michigan, without regard to its conflict of law principals. The parties agree that any action with respect to this Agreement shall be brought in a court of competent subject matter jurisdiction located in the State of Michigan and the parties hereby submit themselves to the exclusive jurisdiction and venue of such court for the purpose of such action.

(f) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

(g) If any term or provision of this Agreement is held to be invalid or unenforceable in any situation in any jurisdiction, it shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

THE DETROIT EDISON COMPANY

CITY OF NOVI

By _____

By _____

Printed Name: _____

Printed Name: _____

Its _____

Its _____

Date _____

Date _____

EXHIBIT A

Note: The usage of the notation "N/A" in any of the boxes below means that such matter is not applicable to the transactions contemplated by this Agreement and all sections of this Agreement relating to such matter shall be deemed to have no force and effect (but all other sections of this Agreement, shall otherwise remain in full force and effect).

Municipality where Equipment will be installed		City Of Novi
Specific Location where Equipment will be installed	The installation of 2 lights for the Beck Road & I-96 Interchange MDOT Park & Ride Lot, City of Novi, Oakland County	
Description of Equipment to be installed	The installation of two 400-watt high pressure sodium vapor underground ornamental streetlight. The style is the standard Cut off Cobra Head fixture and is mounted on a 30-foot fiberglass post, which will be installed on the north side and south side of the MDOT Park & Ride Parking Lot north side of 12 Mile Road	
Computation of Street Lighting Contribution In Aid of Construction CIAC Amount, Payment to be paid by The State of Michigan Department of Transportation	Total Estimated Construction Cost, including labor, materials, and overhead \$ Lamp Charges for 3 yrs \$ Contribution (Cost minus 3 yrs revenue) \$ Total Annual Lamp Charges \$ 942.68	
Box 1 Is this a Company designed installation? (check "Yes" or "No")	YES <input checked="" type="checkbox"/> (if checked please complete Box: 2 3 4) NO <input type="checkbox"/> (if checked please complete Box: 5 6)	
Box 2 If Box 1 is checked please select the appropriate Roadway Classification	<input type="checkbox"/> Expressway <input type="checkbox"/> Major <input type="checkbox"/> Collector <input checked="" type="checkbox"/> Local	
Box 3 If Box 1 is checked please select the appropriate Pedestrian Conflict Classification	<input type="checkbox"/> High <input type="checkbox"/> Medium <input checked="" type="checkbox"/> Low	
Box 4 If Box 1 is checked please select the appropriate Pavement Classification	<input checked="" type="checkbox"/> R1 <input type="checkbox"/> R2 & R3 <input type="checkbox"/> R4	
Box 5 Does the Customer lighting design requested meet IESNA recommended practices? (check "Yes" or "No")	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> (if checked please complete Box: 6)	
Box 6 If the Customer lighting design does not meet IESNA recommended practices, the Customer must sign the block to the right.	_____ (Customer signature indicating acknowledgement the lighting design does not meet IESNA recommended practices)	
Box 7 New Residential Subdivision?	YES <input type="checkbox"/> (if checked please complete Box: 8) NO <input type="checkbox"/>	
Box 8 If Box 7 is checked Yes, and customer authorizes installation prior to 80% occupancy, Customer signature required	_____ (Customer acknowledgement that lighting is being installed prior to 80% occupancy)	
Customer Address for Notices		

January 29, 2009

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secrestwardle.com

Clay J. Pearson, Manager
City of Novi
45175 West 10 Mile Road
Novi, Michigan 48375

KRISTIN BRICKER KOLB
Direct: 248-539-2837
kkolb@secrestwardle.com

*Re: Review of Standard Agreement for Municipal Street Lighting
with DTE*

Dear Mr. Pearson:

Pursuant to your request, we have reviewed the above-referenced agreement. In general, we find the provisions of the boilerplate agreement to be unobjectionable, and we see no reason for the City not to proceed and execute the Agreement.

I would like to bring to your attention the following provisions:

Paragraph 1 – The installation is described in detail in Exhibit A. We will assume that the proposed two lights are consistent with your understanding of what DTE is to install.

Paragraph 3 – This paragraph suggests that the cost to the City of Novi is equivalent to the cost of construction, less three years revenue expected from such equipment. Exhibit A, however, shows only that the City will be responsible for the “Total Annual Lamp Charges” in the amount of \$942.68. Exhibit A indicates that MDOT will be responsible for the cost of the installation of the lighting fixtures. We will assume this is consistent with your discussions with DTE.

Paragraph 8 – The initial term of the Agreement is five years, with a month-to month extension thereafter until terminated by either party following 12 months advance notice (if not mutual).

Other points to note: There is no time given for payment by the City of the Annual Lamp Charges (i.e., monthly billings, in full, in advance, etc.). Additionally, an address for purposes of serving notice on the City needs to be added at the bottom of Exhibit A in the appropriate spot.

As stated above, subject to the comments immediately above, we see no legal impediment to the City executing this Agreement.

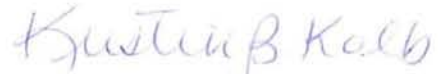
Clay J. Pearson, Manager

January 29, 2009

Page 2

If you need anything further from us on this issue, please feel free to contact me. I am returning the two original copies of the Agreement provided to me for review, both of which need to be signed and returned to DTE for full execution.

Very truly yours,



Kristin Bricker Kolb

KBK:jw

Enc.

cc (w/out enc.):

Maryanne Cornelius, City Clerk

Thomas R. Schultz, Esq.

1185001_1