



**CITY OF NOVI CITY COUNCIL
DECEMBER 21, 2020**

SUBJECT: Approval of a DTE Permanent Line Relocation Agreement to relocate a DTE Energy utility pole on 25825 Meadowbrook Road to allow for construction of the Bishop Creek Streambank Stabilization project in the amount of \$30,081.57.

SUBMITTING DEPARTMENT: Department of Public Works, Engineering Division

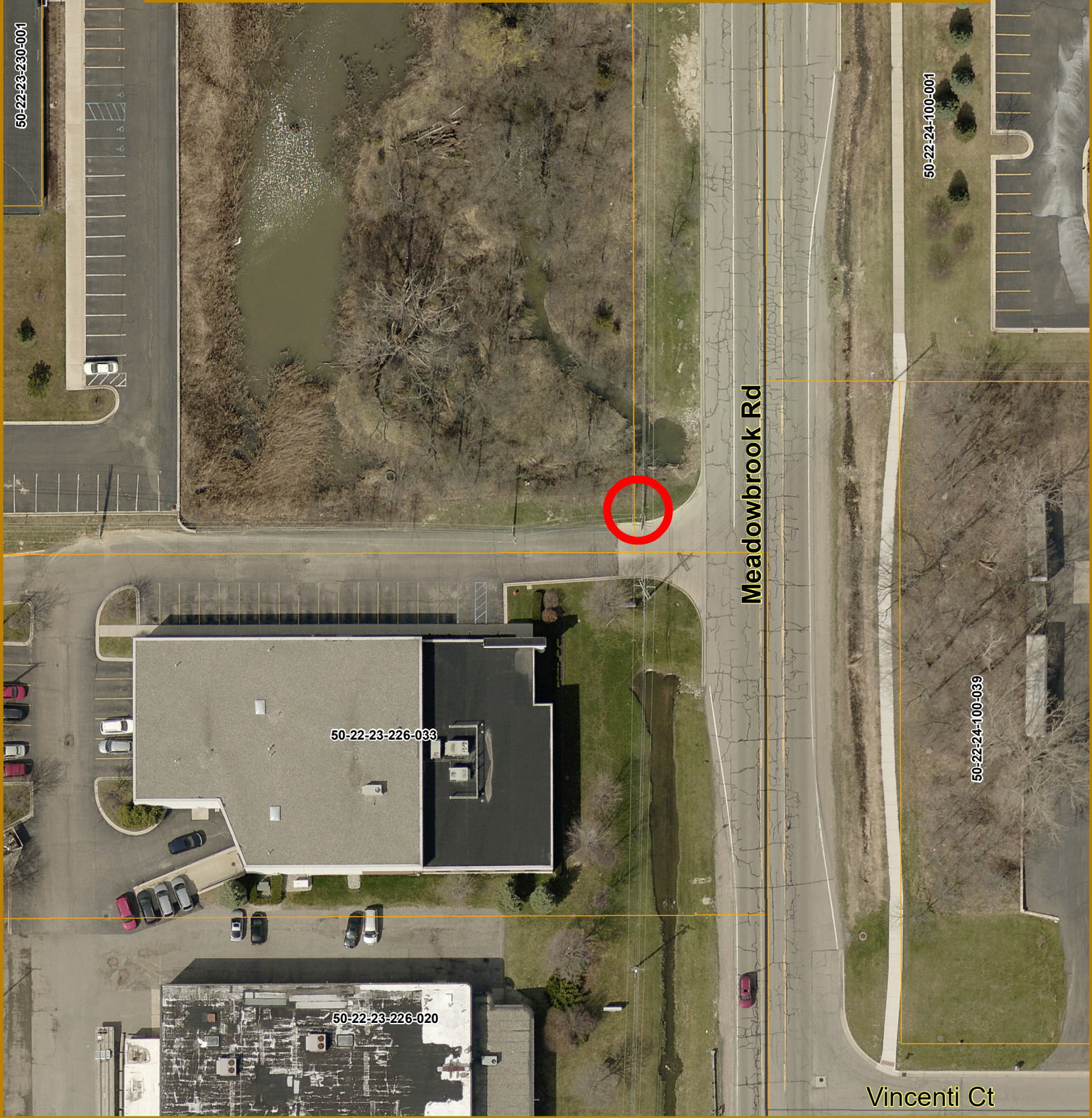
EXPENDITURE REQUIRED	\$ 30,081.57
AMOUNT BUDGETED	\$ 784,533.00
APPROPRIATION REQUIRED	\$ 0
LINE ITEM NUMBER	210-211.00-865.145

BACKGROUND INFORMATION: The City's engineering consultant, OHM Advisors, determined during design of the Bishop Creek Streambank Stabilization project that a DTE Energy utility pole in the right-of-way at 25825 Meadowbrook Road will need to be moved 20-feet west. This will allow for replacement of a driveway culvert and installation of a pre-cast wingwall as part of the streambank stabilization measures. Tree-trimming, removal/installation of primary and secondary details, and removal/installation of span guys are also required to relocate the pole. DTE Energy will require an easement from 25825 Meadowbrook to relocate the pole.

DTE Energy is requesting execution of two (2) copies of the attached agreement along with payment of \$30,081.57 to begin work on the pole relocation. The proposed agreement has been reviewed and is recommended for approval by Engineering staff and the City Attorney (Beth Saarela, December 7, 2020).

RECOMMENDED ACTION: Approval of a DTE Permanent Line Relocation Agreement to relocate a DTE utility pole on 25825 Meadowbrook Road to allow for construction of the Bishop Creek Streambank Stabilization project in the amount of \$30,081.57.

DTE Pole Relocation - 25825 Meadowbrook Road Location Map



Map Author: Rebecca Runkel
 Date: 12/7/20
 Project: Bishop Creek Streambank and Sidewalk
 Version #: 1.0

MAP INTERPRETATION NOTICE
 Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

Pole Relocation

City of Novi
 Engineering Division
 Department of Public Works
 26300 Lee BeGole Drive
 Novi, MI 48375
cityofnovi.org

1 inch = 62 feet

ELIZABETH KUDLA SAARELA
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27555 Executive Drive, Suite 250
Farmington Hills, Michigan 48331
P 248.489.4100 | F 248.489.1726
rsjalaw.com



ROSATI | SCHULTZ
JOPPICH | AMTSBUECHLER

December 7, 2020

Rebecca Runkel, Staff Engineer
City of Novi
Field Services Complex
26300 Lee BeGole Drive
Novi, MI 48375

**Re: *Bishop Creek Streambank Stabilization Project – DTE Pole Relocation
25825 Meadowbrook Road***

Dear Ms. Runkel:

We have received and reviewed the enclosed Agreement for Temporary or Permanent Line Relocation provided by DTE Energy in response to the City's request for the relocation of utility poles owned by DTE along the frontage of 25825 Meadowbrook Road. The Agreement is generally a standard agreement for the City to pay for pole relocation services provided by DTE.

The Agreement is DTE's standard agreement to relocate its poles within the existing right-of-way for the stated price. The terms of the Agreement, generally, include relocation of the poles only. The City is required to contact other utilities who may be collocated on the poles to relocate other facilities. Pursuant to the Agreement, the City is required to flag certain types of underground improvements and obstructions prior to DTE commencing work. The Agreement contains a provision limiting DTE's liability to the cost of repairing or replacing the utilities in question if damaged, or providing a refund. In all events, a Court is not likely to release DTE from liability with respect to non-parties to this Agreement who incur damages or injury and have not agreed to release DTE from liability. Since the Agreement does not require the City to indemnify DTE, a court may still find DTE responsible for damages to third parties. The City has previously requested modification of the limitation of liability and DTE rejected the request.

It should be noted that the property owner of 25825 is listed as the "Customer," rather than the City. Subject to the modification of the contracting "customer" to the City, and City accepting the limitation of DTE's liability as set forth in the Agreement, we see no legal impediment to entering into the proposed Accounts Receivable Agreement in its current format. If you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC



Elizabeth Kudla Saarela

Enclosure

C: Cortney Hanson, Clerk (w/Enclosure)
Jeffrey Herczeg, Director of Public Works (w/Enclosure)
Ben Croy, City Engineer (w/Enclosure)
Thomas R. Schultz, Esquire (w/Enclosure)

8001 Haggerty Rd
Belleville, MI 48111



Tuesday, December 8, 2020

The City of Novi
ATTN:Rebecca Runkel
26300 Lee BeGole Drive
Novi, MI 48375

Regarding: 25825 Meadowbrook Rd, Novi

Enclosed are two (2) copies of the Temporary or Permanent Line Relocation Agreement for your signature. The payment for this work is \$30,081.57 for a Permanent Relocation based on: Relocate Pole 20 W on the property of 25825 Meadowbrook Rd. Remove Primary Details, Secondary Details, Span guys. Install Primary Details, Secondary Details, Span guys, Tree Trim.

Please return the signed document to me with a check made payable to DTE Energy. To ensure proper credit, the contract number should be indicated on your remitted check. Keep the "Customer Copy" document for your records. When we receive the signed document and your check, we will proceed to schedule the work.

If you have any questions regarding this job, please feel free to contact me at the phone number or e-mail address indicated below.

Sincerely,

Deon R. Jones
Planner
734-397-4125
deon.jones@dteenergy.com

enclosures:

Two copies of the Temporary or Permanent Line Relocation Agreement



**Agreement for
Temporary or Permanent Line Relocation
No. 59109849**

"DTE Energy" and "Customer" make this agreement for consideration of the promises in the Agreement.

"DTE Energy" is:
The DTE Energy Company
8001 Haggerty Rd
Belleville, MI 48111

"Customer" is:
The City of Novi
ATTN:Rebecca Runkel
26300 Lee BeGole Drive
Novi, MI 48375

Background Statement: Customer agrees to reimburse DTE Energy for permanent relocation of equipment in the vicinity of 25825 Meadowbrook Rd, Novi. To do this, DTE Energy requires that payment be made in the amount indicated below. Under Michigan Public Service Commission rules, DTE Energy is permitted to require payment before performing this work.

**DTE Energy and Customer agree to the following terms:
See details of this contract under the Terms and Conditions section**

Payment for the permanent relocation is \$30,081.57.

The type of work to be performed:
Relocate Pole 20' W on the property of 25825 Meadowbrook Rd. Remove Primary Details, Secondary Details, Span guys. Install Primary Details, Secondary Details, Span guys, Tree Trim.

In return for the above reimbursement payment, The DTE Energy Company agrees to perform the requested work, providing all necessary permits and rights-of-way can be secured. This job will not be scheduled until DTE Energy receives full payment for the above work. The price quoted on this agreement shall be in effect for a period of six (6) months from the date hereof.

Notwithstanding anything herein to the contrary, the installation, ownership, and maintenance of electric services and the rates, fees, and charges to be made shall be subject to and in accordance with the orders and rules and regulations adopted and approved from time to time by the Michigan Public Service Commission. The above charge covers only the removal/relocation of **DTE Energy owned** equipment.

It is the customer's responsibility to contact other companies (usually telephone, cable TV) that have equipment on the pole (or in the trench) to determine whether additional charges may incur from this move. **Payment for these charges is the customer's responsibility and will be made by separate agreement between the customer and the other companies.**

DTE Energy:(sign) Tiffany Davis /s/ Title: Supervisor Date: 12-8-2020
Tiffany S Davis

Customer:(sign) _____ (print) _____ Date: _____
(sign) _____ (print) _____ Date: _____

Terms and Conditions
Agreement for Temporary or Permanent Line Relocation

- 1. MPSC Rules** - This Agreement is subject to the Michigan Public Services Commission ("MPSC") Rules, including but not limited to, Rule C6.1, "Extension of Service"; Rule C6.2, "Overhead Extension Policy"; Rule C6.3, "Underground Distribution Systems"; and Rule C6.5 "Miscellaneous Customer Requests", which are incorporated herein by reference.
- 2. Description of Work** - DTE Energy or one of its contractors shall install the underground or overhead conductors and any associated overhead or underground equipment required for the line relocation, (collectively, the "Work"). DTE Energy will only install electric service and is not responsible for any other utility service including, but not limited to, cable television, or other communication services. Customer shall contact those companies responsible for the installation of services other than electrical service.
- 3. Customer Staking Requirements**
 - a. Prior to commencement of the Work, Customer shall visually identify, by either exposing or clearly staking through the use of flags or other appropriate identification device, all private underground property, including but not limited to:
 - a. private electrical lines
 - b. sprinkler systems
 - c. invisible fences
 - d. swimming pool hardware
 - e. septic tanks and fields
 - f. fiber optic lines
 - g. security systems
 - h. heated sidewalk and driveway equipment
 - i. burial sites of pets
 - j. geothermal systems
 - k. private water mains and lines
 - l. solar power equipment
 - m. privately owned gas
 - n. propane and petroleum lines
 - o. any other underground equipment not previously listed.
 - b. If Customer refuses the route suggested by DTE Energy for the Work and requests an alternative route, which is mutually agreed to by Customer and DTE Energy, Customer shall stake the alternative route as provided in paragraph 3(a) above.
 - c. If Customer fails to clearly stake all private underground property, then Customer releases DTE Energy from any and all liability for property damage related to the installation, operation or maintenance of the Work, including, but not limited to, loss of trees, shrubs or other landscape.
- 4. Total Payment** - By executing this Agreement, Customer agrees to pay DTE Energy the "Total Payment" calculated on page 1 of this Agreement.
- 5. Termination prior to Commencement of Work** - If Customer fails to complete any obligations under this Agreement within six (6) months from the date DTE Energy receives full payment or the Total payment, then, upon written notice, DTE Energy may cancel this Agreement and a refund may be issued to Customer, less all reasonable costs incurred by DTE Energy.
- 6. Failure to Execute Agreement; Changes to Agreement** - If the Customer fails to execute this Agreement and pay the Total payment due to DTE Energy within six (6) months of the date of this Agreement, then this Agreement shall become null and void. Further, Customer shall not make any changes to this Agreement, including but not limited to handwritten changes or striking any language. In the event Customer makes any changes to this Agreement without the specific written consent of DTE Energy, then this Agreement shall become null and void.
- 7. Damages and Limitation on Liability** - If Customer, its contractors, agents, and/or employees cause damage to the Work, then Customer shall reimburse DTE Energy for all costs related to that damage.

DTE Energy's sole liability to Customer, its employees, agents, subcontractors and to all other persons arising out of or related to the performance of the Work, whether in contract, under any claims warranty, in tort, or otherwise shall be limited to either DTE Energy repairing or replacing the Work at its own expense or, at DTE Energy's option, refund the money paid for the Work. The foregoing shall be Customer's sole remedy. In no event will DTE Energy or its contractors be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement, whether based on contract, warranty, tort (including negligence), strict liability, indemnity or otherwise, for any incidental or consequential damages including but not limited to loss of use, interest charges, inability to operate full capacity, lost profits or other similar claims of Customer.
- 8. Set Off** - DTE Energy shall be entitled at any time to set off any sums owing by Customer or any of Customer's affiliated companies with common ownership, to DTE Energy or any of DTE Energy's affiliated companies, against sums payable by DTE Energy.
- 9. Assignment and Notices** - Customer shall not assign this Agreement without DTE Energy's prior written consent. All notices required by this Agreement must be in writing and sent by U.S. mail or delivered in person to the addresses listed on page 1 of this Agreement.
- 10. Saving Clause** - Each term and condition of this Agreement is deemed to have an independent effect and the invalidity of any partial or whole paragraph or section shall not invalidate the remaining paragraphs or sections. The obligation to perform all of the terms and conditions shall remain in effect regardless of the performance of any invalid term by the other party.
- 11. Governing Law and Jurisdiction** - This Agreement shall be construed in accordance with the law of the State of Michigan, without regard to conflict of law principals. The parties agree that any action with respect to this Agreement shall be brought in a court of competent

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.

12. Entire Agreement - This Agreement together with the DTE Energy Rate Book on file with the MPSC, the Electrical Service Installation Guide, which is available at:

www.dteenergy.com/businessCustomers/buildersContractors/electricService/standards.html

and, if applicable, the Certificate of Grade (referred to herein collectively, as the "Contract Documents") constitutes the entire Agreement between the parties regarding this transaction. Any agreements, negotiations or understanding of the parties prior to or contemporaneous to the date of the Agreement, whether written or oral, are superseded hereby. In the event of a conflict between the Contract Documents, then the Contract Document shall control in the order stated above.



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DTE Energy:(sign) Tiffany Davis /s/ Title: Supervisor Date: 12-8-2020
Tiffany S Davis

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(sign) _____ (print) _____ Date: _____

CUSTOMER COPY

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CUSTOMER COPY