



# CITY of NOVI CITY COUNCIL

**Agenda Item 2**  
**April 15, 2019**

**SUBJECT:** Approval of a DTE Purchase Agreement to remove and relocate seven (7) DTE Energy utility poles to allow for the construction of the Industrial Spur Road off of Crescent Boulevard between Novi Road and Grand River Avenue in the amount of \$215,000.

**SUBMITTING DEPARTMENT:** Department of Public Works, Engineering Division

**CITY MANAGER APPROVAL:** 

<b>EXPENDITURE REQUIRED</b>	<b>\$ 215,000</b>
<b>AMOUNT BUDGETED</b>	<b>\$ 5,785,076</b>
<b>APPROPRIATION REQUIRED</b>	<b>\$ 0</b>
<b>LINE ITEM NUMBER</b>	<b>202-202.00-865.260</b>

## **BACKGROUND INFORMATION:**

Crescent Boulevard (NW Ring Road) features a 1,050-foot-long, four-lane boulevard extension from the intersection of Grand River Avenue to the intersection of future Adell Center Drive. As part of NW Ring Road project, a proposed 650-foot-long industrial spur road will be constructed to service General Filters and Comau. Due to road right-of-way constraints along the Industrial Spur Road, the City is required to relocate seven utility poles and all overhead electrical lines including above and underground transformers. These poles will be removed and new utility poles and overhead electrical wires, transformers will be installed in an existing DTE Easement along the existing greenbelt area located along the west side of General Filters. The attached location map depicts the utility poles that will be removed in "red" and the utility poles that will be installed in "green".

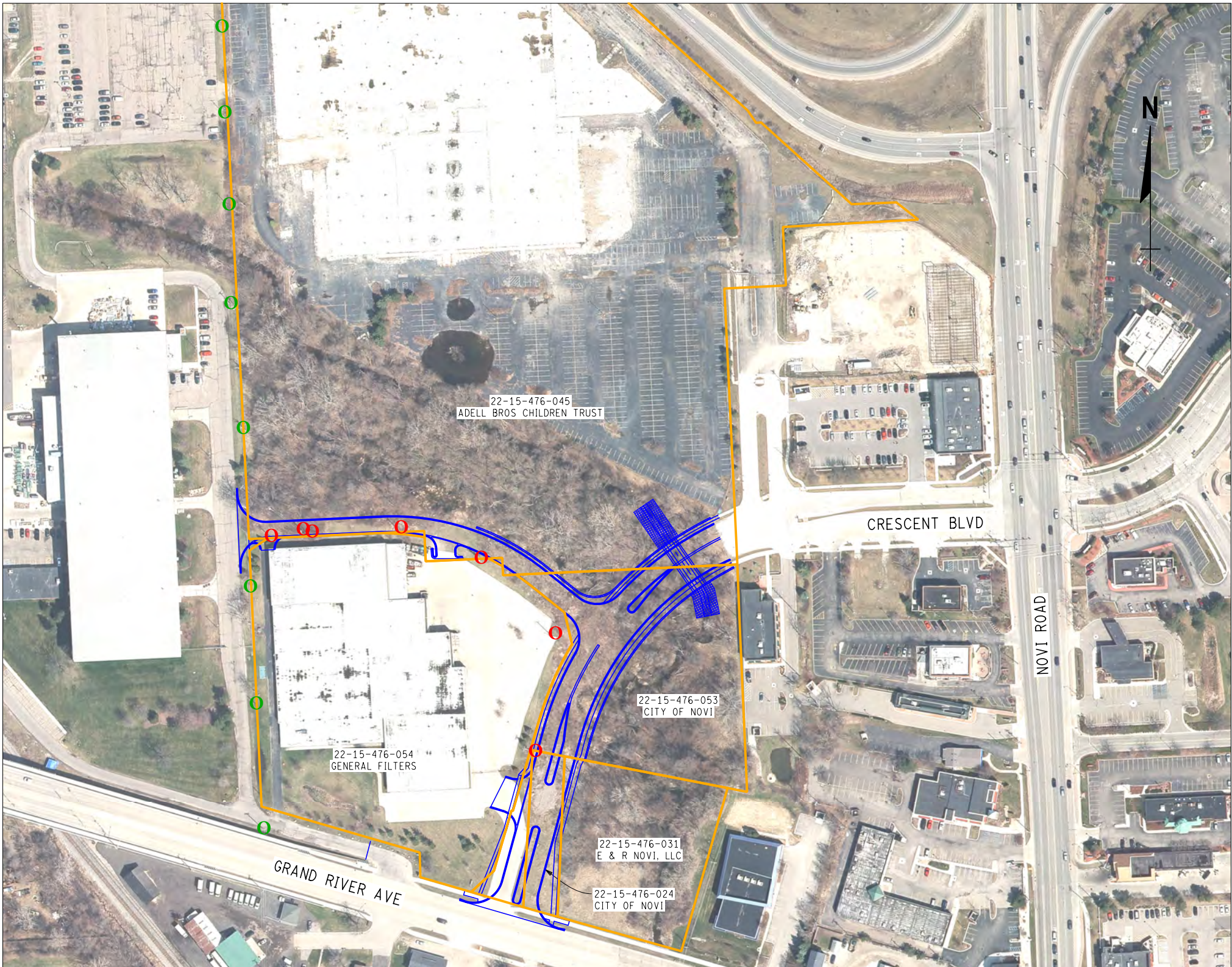
Engineering staff worked with DTE Energy (Detroit Edison Company) to determine the appropriate location for all proposed utility poles, overhead electrical lines, and transformers to properly service the area. DTE Energy is requesting approval and execution of the attached Purchase Agreement. The agreement requires the City to pay \$215,000 for this effort. Attached are two (2) copies of the purchase agreement that need to be executed.

The City is currently working with DTE Energy and road contractor Toebe Construction, Inc. to coordinate their efforts in order to minimize any conflicts or delays associated with each of their respective work scopes.

The proposed agreement has been reviewed and is recommended for approval by Engineering staff and the City Attorney (Beth Saarela, April 2, 2019).

**RECOMMENDED ACTION:** Approval of a DTE Purchase Agreement to remove and relocate seven (7) DTE Energy utility poles to allow for the construction of the Industrial Spur Road off of Crescent Boulevard between Novi Road and Grand River Avenue in the amount of \$215,000.





22-15-476-045  
ADELL BROS CHILDREN TRUST

CRESCENT BLVD

NOVI ROAD

22-15-476-054  
GENERAL FILTERS

22-15-476-053  
CITY OF NOVI

GRAND RIVER AVE

22-15-476-031  
E & R NOVI, LLC

22-15-476-024  
CITY OF NOVI



ELIZABETH KUDLA SAARELA  
esaarela@rsjalaw.com

2755 Executive Drive, Suite 250  
Farmington Hills, Michigan 48331  
P 248.489.4100 | F 248.489.1726  
rsjalaw.com



ROSATI | SCHULTZ  
JOPPICH | AMTSBUECHLER

April 2, 2019

George Melistas, Senior Engineering Manager  
City of Novi  
Department of Public Works  
Field Services Complex  
26300 Lee BeGole Drive  
Novi, MI 48375

**Re: Crescent Boulevard NW Ring Road DTE Pole Relocations**

Dear Mr. Melistas:

We have received and reviewed the enclosed Accounts Receivable Agreement provided by DTE Energy in response to the City's request for the relocation of utility poles owned by DTE Crescent Boulevard NW Ring Road. The Agreement is generally a standard agreement for the City to pay for pole relocation services provided by DTE.

Although the terms of the Agreement, generally, include the requirement for the City to pay for services and for the City to flag certain types of underground improvements and obstructions prior to DTE commencing work, it is worth noting, as indicated with respect to previous pole relocation projects, that DTE includes a provision limiting its liability for damages to the cost of repairing or replacing the utilities in question. In accordance with the limitation, DTE arguably would not be responsible for any damages to property or injuries to persons occurring during the contracted work other than to the utility poles themselves. In that regard, the City may have to rely on its own insurance coverage with respect to any damage to City property and possibly injuries to City employees and/or agents. With respect to damages or injuries third parties, a Court may not be willing to apply the terms of this agreement to non-parties who have not agreed to waive liability against DTE. Since the Agreement does not require the City to indemnify DTE, a court may still find DTE responsible for damages to third parties. DTE denied the City's request to remove Paragraph 7 from the Agreement.

Subject to the 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)  
Thomas R. Schultz, Esquire (w/Enclosure)

8001 Haggerty Rd  
Belleville, MI 48111



Monday, April 1, 2019

City of Novi  
George Melistas  
45175 W Ten Mile Rd  
Novi, MI 48375

**Regarding: Crescent Blvd, Novi**

Enclosed are two (2) copies of the Accounts Receivable Agreement for your signature. The payment for this work is \$215,000.00 based on:

This work will require conversion of the north portion of NOVI 2 to 13.2kV. There are 3 Primary Service customers, two with dual Voltage transformer and one with single 4.8kV transformer. Therefore 1 ISO down transformer will be needed. There are 5 Under Ground transformers, 2 of these are dual voltage. The rest will be replaced. Capacitor, secondary wire and 1 Overhead transformer will be replaced as well. We will have to install new ~600â Overhead conductors which should require 4-5 poles. 2 cable poles and another buck pole will need to be replaced. Lastly, work on Primary Service meters, fuse links, taps, Current Transformers and Primary Transformers will be needed. The removal work will include RM ~7 poles, 1,100â Overhead wire, 1 transformer and 1 V regulator.

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

A handwritten signature in black ink that reads "Deon R. Jones". The signature is written in a cursive style with a long horizontal stroke at the end.

Deon R. Jones  
Planner

734-397-4125

deon.jones@dteenergy.com

enclosures:

Two copies of the Accounts Receivable Agreement



Accounts Receivable Agreement

No. 53484838

"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:

City of Novi
George Melistas
45175 W Ten Mile Rd
Novi, MI 48375

Background Statement: Customer requests DTE Energy to perform the work indicated below in the vicinity of Crescent Blvd, 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 requested work is \$215,000.00.

The type of work to be performed:

This work will require conversion of the north portion of NOVI 2 to 13.2kV. There are 3 Primary Service customers, two with dual Voltage transformer and one with single 4.8kV transformer. Therefore 1 ISO down transformer will be needed. There are 5 Under Ground transformers, 2 of these are dual voltage. The rest will be replaced. Capacitor, secondary wire and 1 Overhead transformer will be replaced as well. We will have to install new ~600' Overhead conductors which should require 4-5 poles. 2 cable poles and another buck pole will need to be replaced. Lastly, work on Primary Service meters, fuse links, taps, Current Transformers and Primary Transformers will be needed. The removal work will include RM ~7 poles, 1,100' Overhead wire, 1 transformer and 1 V regulator.

In return for the above 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 payment for the above work.

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.

DTE Energy:(sign) [Signature] Title: Supervisor Date: 4-1-2019
Tiffany S Davis

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

**Terms and Conditions**  
**Accounts Receivable Agreement**

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 or remove the underground or overhead conductors and any associated overhead or underground equipment required for the request, (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 reserves the right to retain portions of the Refundable Construction Advance to offset such damages.

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](http://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.





Accounts Receivable Agreement  
No. 53484838

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

**"DTE Energy" is:**  
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George Melistas  
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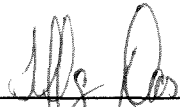
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DTE Energy:(sign)  Title: Supervisor Date: 4-1-2019  
Tiffany S Davis

Customer:(sign) \_\_\_\_\_ (print) \_\_\_\_\_ Date: \_\_\_\_\_  
(sign) \_\_\_\_\_ (print) \_\_\_\_\_ Date: \_\_\_\_\_

CUSTOMER COPY

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    - 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.
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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.
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CUSTOMER COPY

**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.

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CUSTOMER COPY