



CITY of NOVI CITY COUNCIL

**Agenda Item F
October 20, 2014**

SUBJECT: Approval of a Street Light Purchase Agreement with Detroit Edison Company for the installation and ongoing operation costs of street lights at the intersection of Wixom Road and Glenwood Drive in the amount of \$12,768 for installation and \$1,412 annually for operating costs. *W*

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *BTC*

CITY MANAGER APPROVAL: *PA*

EXPENDITURE REQUIRED	\$ 12,768 (Installation) \$ 1,412 (Annual Operating Costs)
AMOUNT BUDGETED	\$ 128,514
LINE ITEM NUMBER	101-442.00-924.000

BACKGROUND INFORMATION:

Construction of a new traffic signal at the intersection of Wixom Road and Glenwood Drive is nearing completion. The project scope also includes the installation of street lights at the intersection to improve safety. Engineering staff worked with Detroit Edison to determine the appropriate locations for street lights and to obtain estimated installation and ongoing operation costs. The Road Commission for Oakland County (RCOC) operates and maintains all traffic signals for the City of Novi. RCOC no longer allows Detroit Edison to co-locate street lighting on traffic signal poles. Therefore, Detroit Edison will install four new 30-foot poles at the intersection with LED fixtures to light the intersection.

In order to facilitate installation of the street lights, Detroit Edison Company is requesting approval and execution of the attached Purchase Agreement. The Detroit Edison agreement requires the City to pay the total installation cost of \$12,768 and an ongoing annual lamp charge of \$1,412 for operation and maintenance of the four street lights.

The proposed agreement has been reviewed and recommended for approval by Engineering staff and the City Attorney (Beth Sacrela's October 10, 2014 letter is attached).

RECOMMENDED ACTION: Approval of a Street Light Purchase Agreement with Detroit Edison Company for the installation and ongoing operation costs of street lights at the intersection of Wixom Road and Glenwood Drive in the amount of \$12,768 for installation and \$1,412 annually for operating costs.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

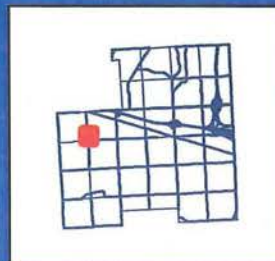
	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				

Wxom Road and Glenwood Drive Signal

Location Map



Map Author: Croy
Date: 8/2/13
Project: Wxom Rd. and Glenwood Dr. Signal
Version #: v2.0



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

Feet
0 50 100 200 300 400

1 inch = 250 feet

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.



JOHNSON ROSATI SCHULTZ JOPPICH PC

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Elizabeth Kudla Saarela
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October 10, 2014

Benjamin Croy, Civil Engineer
City of Novi
Public Services
Field Services Complex
26300 Lee BeGole Drive
Novi, MI 48375

Re: Wixom Road and Glenwood Drive – Master Agreement and Purchase Agreement for Municipal Street Lighting and Purchase Agreement

Dear Mr. Croy:

We have received and reviewed the Master Agreement for Municipal Street Lighting and Purchase Agreement (Work Order 38323770) for the Wixom Road and Glenwood Drive Lighting Installation Project.

The Master Agreement for Municipal Street Lighting ("Master Agreement") and corresponding Purchase Agreement are standard form agreements prepared by The Detroit Edison Company ("DTE") for use in projects for installation and maintenance of new street lighting. The Master Agreement controls the terms of installation and maintenance, generally, such as terms of payment, rates, maintenance responsibilities, term, liability, warranties and general contract provisions, including such things as choice of law and notices.

The Purchase Agreement includes the more specific information relating to each particular project, including total estimated project cost, project location, project specifications, and special order information.

The terms of the Master Agreement have previously been revised to satisfactorily address an issue we raised with the liability provisions in the Agreement. A previous version of the Master Agreement protected DTE from paying any damages if the City was found in any part responsible for the damage or injury caused by the lighting installations. The liability provision now provides that DTE can be held liable for damages up to the CIAC amounts set forth in each Purchase Agreement, regardless of whether the City was found to have some responsibility for

Benjamin Croy, Civil Engineer
October 10, 2014
Page 2

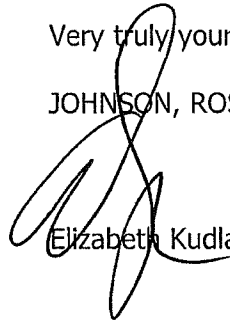
the damage. Though liability for DTE for the contracts is capped at \$12,768.00, the previous version protected DTE from paying *any* damages if the City was found in any part responsible for the damage or injury. The revised Master Agreements provide more protection to the City for damages occurring at the construction site than the initial draft.

Based on the inclusion of the revised liability provision, we see no legal impediment to the City entering into the Agreements with DTE.

Please feel free to contact me with any questions or concerns in regard to this matter.

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.



Elizabeth Kudla Saarela

EKS

Enclosures

C: Maryanne Cornelius, Clerk (w/Enclosures)
Rob Hayes, Public Services Director (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)

MASTER AGREEMENT FOR MUNICIPAL STREET LIGHTING

This Master Agreement For Municipal Street Lighting ("Master Agreement") is made between The Detroit Edison Company ("Company") and the City of Novi ("Customer") as of September 16, 2013.

RECITALS

A. Customer may, from time to time, request the Company to furnish, install, operate and/or maintain street lighting equipment for Customer.

B. Company may provide such services, subject to the terms of this Master Agreement.

Therefore, in consideration of the foregoing, Company and Customer hereby agree as follows:

AGREEMENT

1. Master Agreement. This Master Agreement sets forth the basic terms and conditions under which Company may furnish, install, operate and/or maintain street lighting equipment for Customer. Upon the Parties agreement as to the terms of a specific street lighting transaction, the parties shall execute and deliver a Purchase Agreement in the form of the attached Exhibit A (a "Purchase Agreement"). In the event of an inconsistency between this Agreement and any Purchase Agreement, the terms of the Purchase Agreement shall control.

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 Company's Rate Book for Electric Service (the "Tariff"), Rule C 6.1, Extension of Service (or any other successor provision), as approved by the The Michigan Public Service Commission ("MPSC") from time to time.

3. Contribution in Aid of Construction. In connection with each Purchase Agreement and in accordance with the applicable Orders of the MPSC, Customer shall pay to Company a contribution in aid of construction ("CIAC") for the cost of installing Equipment ("as defined in the applicable Purchase Agreement") and 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 will be as set forth on the applicable Purchase Agreement. The CIAC Amount does not include charges for any additional cost or expense for unforeseen underground objects, or unusual conditions encountered in the construction and installation of Equipment. If Company encounters any such unforeseen or unusual conditions, which would increase the CIAC Amount, it will suspend the construction and installation of 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

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 any 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 attorney's fees, arising out of the installation of the Equipment and/or any replacement Equipment, including claims for bodily injury or death and property damage, except to the extent such matter is caused by or arises as a result of the 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 set forth in the Purchase Order to which the claim relates.

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, 8001 Haggerty Rd, Belleville, MI 48111 and to Customer at the address set forth on the applicable Purchase Agreement. 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. Any amendment or modification to this Agreement must be in writing and signed by both parties.

b. Customer may not assign its rights or obligations under this Agreement without the prior written consent of Company. This Agreement shall be binding upon and shall inure to the benefit of the parties' respective successors and permitted assigns. This Agreement is made solely for the benefit of Company, Customer and their respective successors and permitted assigns and no other party shall have any rights to enforce or rely upon this Agreement.

c. A waiver of any provision of this Agreement must be made in writing and signed by the party against whom the waiver is enforced. Failure of any party to strictly enforce the terms of this Agreement shall not be deemed a waiver of such party's rights hereunder.

d. The section headings contained in this Agreement are for convenience only and shall not affect the meaning or interpretation thereof.

e. This Agreement shall be construed in accordance with the laws of the State of Michigan, without regard to any conflicts of law principles. The parties agree that any action with respect to this Agreement shall be brought in the courts of the State of Michigan and each party hereby submits itself to the exclusive jurisdiction of such courts.

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. The invalidity of any provision of this Agreement shall not invalidate the remaining provisions of the Agreement.

Company and Customer have executed this Purchase Agreement as of the date first written above.

Company:

Customer:

The Detroit Edison Company

[City of Novi]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A to Master Agreement

Purchase Agreement

This Purchase Agreement (this "Agreement") is dated as of [October 9, 2014] between The Detroit Edison Company ("Company") and [City of Novi] ("Customer").

This Agreement is a "Purchase Agreement" as referenced in the Master Agreement for Municipal Street Lighting dated [March 4, 2013 (the "Master Agreement") between Company and Customer. All of the terms of the Master Agreement are incorporated herein by reference. In the event of an inconsistency between this Agreement and the Master Agreement, the terms of this Agreement shall control.

Customer requests the Company to furnish, install, operate and maintain street lighting equipment as set forth below:

1. DTE Work Order Number:	[38323770] If this is a conversion or replacement, indicate the Work Order Number for current installed equipment: [##### or N/A]	
2. Location where Equipment will be installed:	[Wixom Rd and Glenwood Drive. As more fully described on the map attached hereto as Attachment 1.	
3. Total number of lights to be installed:	[Four]	
4. Description of Equipment to be installed (the " <u>Equipment</u> "):	[280w black LED fixtures on 30' black Steel Posts]	
5. Estimated Total Annual Lamp Charges	\$1,412.00	
6. Computation of Contribution in aid of Construction (" <u>CIAC Amount</u> ")	Total estimated construction cost, including labor, materials, and overhead:	\$17,004.00
	Credit for 3 years of lamp charges:	\$4,236.00
	CIAC Amount (cost minus revenue)	\$12,768.00
7. Payment of CIAC Amount:	Due promptly upon execution of this Agreement	
8. Term of Agreement	5 years. Upon expiration of the initial term, this Agreement shall continue on a month-to-month basis until terminated by mutual written consent of the parties or by either party with twelve (12) months prior written notice to the other party.	
9. Does the requested Customer lighting design meet IESNA recommended practices?	(Check One) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If "No", Customer must sign below and acknowledge that the lighting design does not meet IESNA recommended practices _____	
10. Customer Address for Notices:	[26300 Lee Begole Drive] [Novi, MI 48375] [Ben Croy]	

11. Special Order Material Terms:

All or a portion of the Equipment consists of special order material: (check one) YES NO

If "Yes" is checked, Customer and Company agree to the following additional terms.

A. Customer acknowledges that all or a portion of the Equipment is special order materials ("SOM") and not Company's standard stock. Customer will purchase and stock replacement SOM and spare parts. When replacement equipment or spare parts are installed from Customer's Inventory, the Company will credit Customer in the amount of the then current material cost of Company standard street lighting equipment.

B. Customer will maintain an initial inventory of at least 0 posts and 0 luminaires and any other materials agreed to by Company and Customer, and will replenish the stock as the same are drawn from inventory. Costs of initial inventory are included in this Agreement. The Customer agrees to work with the Company to adjust inventory levels from time to time to correspond to actual replacement material needs. If Customer fails to maintain the required inventory, Company, after 30 days' notice to Customer, may (but is not required to) order replacement SOM and Customer will reimburse Company for such costs. Customer's acknowledges that failure to maintain required inventory could result in extended outages due to SOM lead times.

C. The inventory will be stored at _____.
Access to the Customers inventory site must be provided between the hours of 9:00 am to 4:00 pm, Monday through Friday with the exceptions of federal Holidays. Customer shall name an authorized representative to contact regarding inventory: levels, access, usage, transactions, and provide the following contact information to the Company:

Name: _____ Title: _____
Phone Number: _____ Email: _____

The Customer will notify the Company of any changes in the Authorized Customer Representative. The Customer must comply with SOM manufacturer's recommended inventory storage guidelines and practices. Damaged SOM will not be installed by the Company.

D. In the event that SOM is damaged by a third party, the Company may (but is not required to) pursue a damage claim against such third party for collection of all labor and stock replacement value associated with the damage claim. Company will promptly notify Customer as to whether Company will pursue such claim.

E. In the event that SOM becomes obsolete or no longer manufactured, the Customer will be allowed to select new alternate SOM that is compatible with the Company's existing infrastructure.

F. Should the Customer experience excessive LED equipment failures, not supported by LED manufacturer warrantees, the Company will replace the LED equipment with other Company supported Solid State or High Intensity Discharge luminaires at the Company's discretion. The full cost to complete these replacements to standard street lighting equipment will be the responsibility of the Customer.

12. Experimental Emerging Lighting Technology ("EELT") Terms:

All or a portion of the Equipment consists of EELT: (check one) YES NO

If "Yes" is checked, Customer and Company agree to the following additional terms.

A. The annual billing lamp charges for the EELT equipment has been calculated by the Company are based upon the estimated energy and maintenance cost expected with the Customer's specific pilot project EELT equipment. .

B. Upon the approval of any future MPSC Option I tariff for EELT street lighting equipment, the approved rate schedules will automatically apply for service continuation to the Customer under Option 1 Municipal Street Lighting Rate, as approved by the MPSC. The terms of this paragraph C replace in its entirety Section 7 of the Master Agreement with respect to any EELT equipment purchased under this Agreement.

Company and Customer have executed this Purchase Agreement as of the date first written above.

Company:

The Detroit Edison Company

By: _____

Name: _____

Title: _____

Customer:

[City of Novi]

By: _____

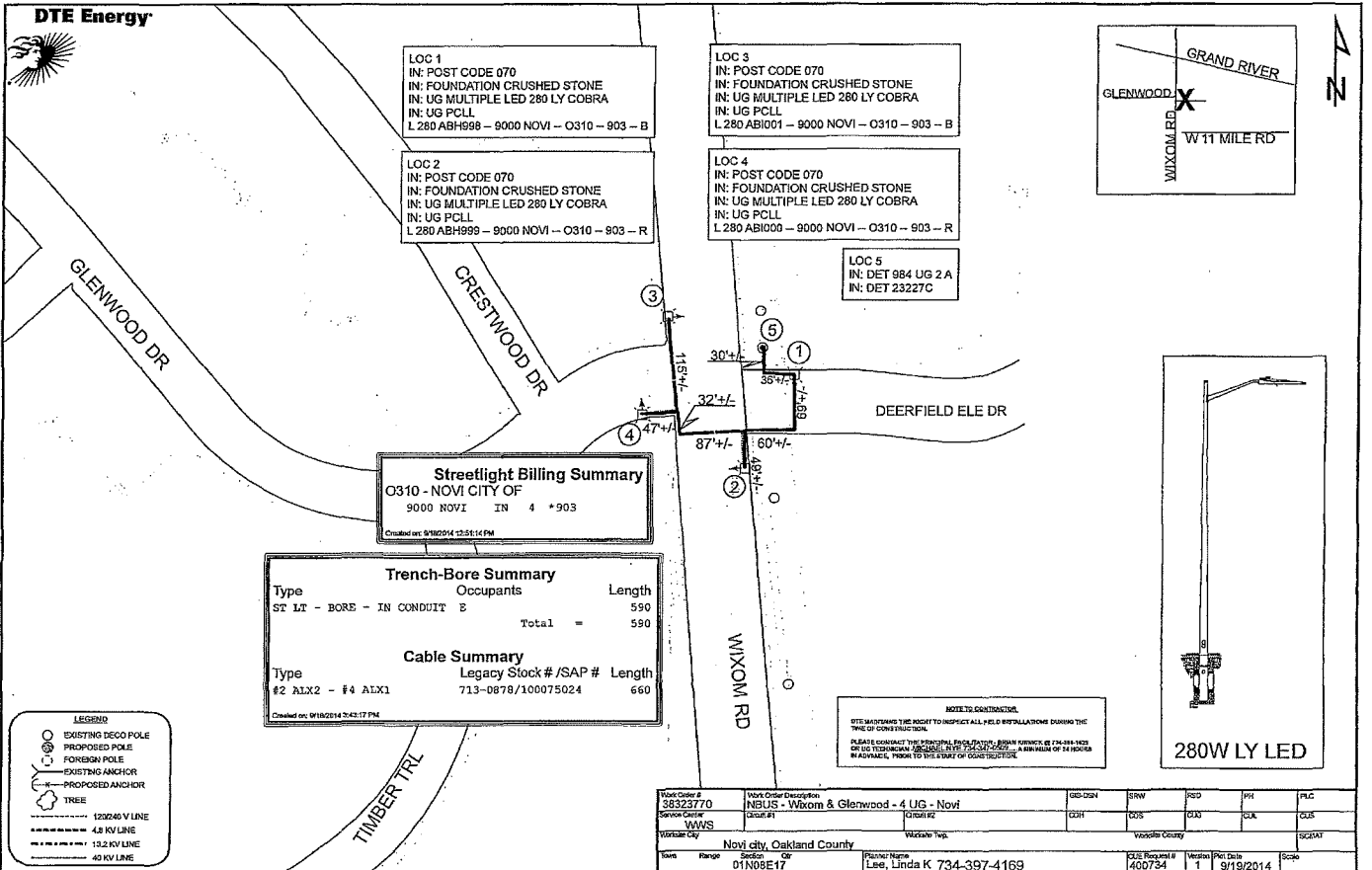
Name: _____

Title: _____

Attachment 1 to Purchase Agreement

Map of Location

[To be attached]



Work Order # 38323770	Work Order Description NBSUS - Wixom & Glenwood - 4 UG - Novi	GIS-DEM	SRW	RSD	PH	PLC
Source Center WWS	City/State	CSH	CCS	CUK	CUK	CUK
Worksite City Novi city, Oakland County	Worksite Twp.	Washtenaw County		SICAMT		
Town Range 01N08E17	Section 07	Plan/Name Lee, Linda K 734-397-4169	CS2 Record # 400734	Version 1	Plot Date 9/19/2014	Scale