



CITY of NOVI CITY COUNCIL

Agenda Item F
July 11, 2016

SUBJECT: Approval of an Accounts Receivable Agreement with DTE Energy for the replacement of three utility poles adjacent to the Country Place Pump Station.

SUBMITTING DEPARTMENT: Department of Public Services, Water and Sewer Division 

CITY MANAGER APPROVAL: 

EXPENDITURE REQUIRED	\$ 46,650.45
AMOUNT BUDGETED	\$ 605,600 (FY15/16 budget – to be incl in rollover amendment)
LINE ITEM NUMBER	592-592.00-976.008

BACKGROUND INFORMATION:

The design for improvements to the Country Place Pump Station and the downstream force main are currently under way, including the replacement of the entire force main and some improvements to the pump station facility itself. One of the improvements includes the replacement of three DTE poles to allow the cables on the poles to be raised. The additional height will allow staff to get the City's vector truck up to the pump station for routine maintenance or emergency tasks. Currently, the low cables prevent the vector truck from entering the pump station area, forcing non-standard methods to be used for maintenance activities, putting staff at risk of injury during station cleaning activities. Instead of being able to park the truck adjacent to the pump station and dropping the vacuum arm straight into the pump station, staff is forced to attach non-standard extensions to the vacuum arm and secure them over their shoulders - subjecting them to potential injury due to the violent nature of the high pressure vacuum when in operation. With the cables raised, staff would be able to access this facility and follow standard safety practices as is done at the other facilities throughout the City.

Staff has met with the community manager for the Country Place Condominium, Bob Schwartz, and a couple of residents who live directly adjacent to this area to discuss the proposed improvements.

In order to facilitate installation of the poles, DTE Energy has requested approval and execution of the attached Accounts Receivable Agreement. The fee for this work is \$46,650.45. The agreement has been reviewed and recommended for approval by the Department of Public Works and the City Attorney (Beth Saarela's letter is attached).

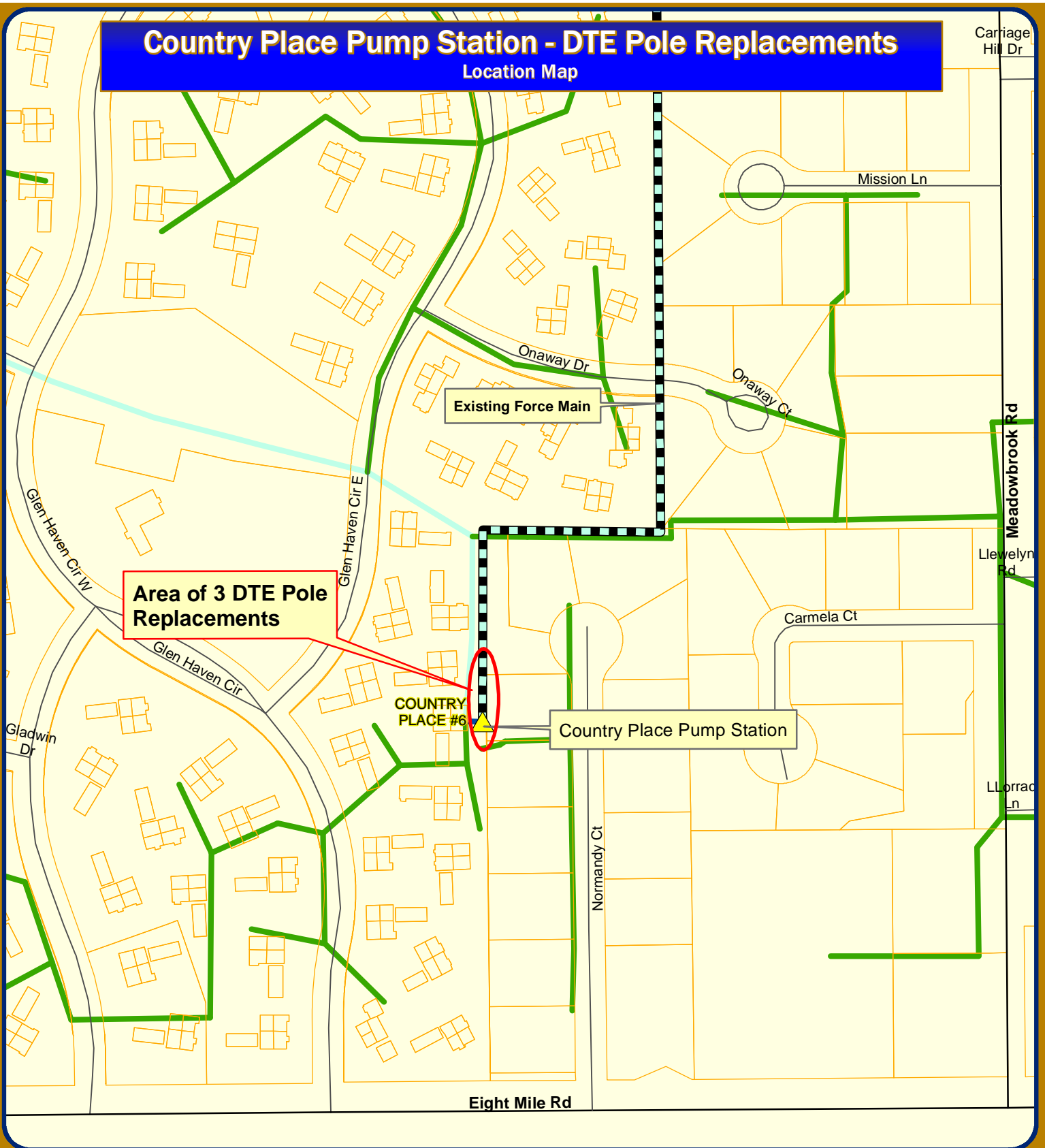
RECOMMENDED ACTION: Approval of an Accounts Receivable Agreement with DTE Energy for the replacement of three utility poles adjacent to the Country Place Pump Station.

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

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

Country Place Pump Station - DTE Pole Replacements

Location Map



Map Author: Croy
 Date: 6/27/16
 Project: Country Place Pump Station
 Version #: v1.0

MAP INTERPRETATION NOTICE

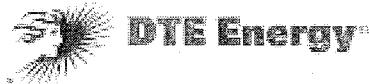
Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate 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.



1 inch = 250 feet



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



**Accounts Receivable Agreement
No. 45045066**

"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
Ben Croy
26300 Lee BeGole Drive
Novi, MI 48375

Background Statement: Customer requests DTE Energy to perform the work indicated below in the vicinity of 20926 E Glen Haven Circle. 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 \$46,650.45.

The type of work to be performed:

Replace existing poles with taller poles, so that City of Novi can get trucks under the joint use companies cables. Remove 3 Poles, Remove Primary Details, Remove Secondary Details, Remove Span Guy, Remove Recloser, Remove Transformers, Install 3 Poles, Install Primary Details, Install Secondary Details, Install Span Guy, Install Recloser, Install Transformers.

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)  Title: Supervisor Date: 6-7-2016
Darrell W Duncan

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

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.



JOHNSON ROSATI SCHULTZ JOPPICH PC

27555 Executive Drive Suite 250 ~ Farmington Hills, Michigan 48331
Phone: 248.489.4100 | Fax: 248.489.1726

Elizabeth Kudla Saarela
esaarela@jrsjlaw.com

www.jrsjlaw.com

June 28, 2016

Benjamin Croy, Water & Sewer Senior Manager
CITY OF NOVI
Department of Public Services
Field Services Complex
26300 Lee BeGole Drive
Novi, MI 48375

RE: DTE Accounts Receivable Agreement – Pole Relocation

Dear Mr. Croy:

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 three utility poles owned by DTE near 20926 E. Glen Haven Circle. 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 are, generally, basic and consist 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 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.

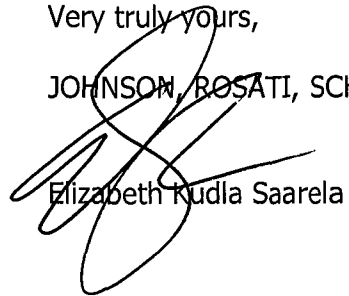
Subject to the City accepting the limitation of DTE's liability as set forth in the Agreement, we see no legal impediment to entering into the proposed Accounts Receivable Agreement in its current format.

Benjamin Croy, Water and Sewer Senior Manager
June 28, 2016
Page 2

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.

A handwritten signature in black ink, appearing to read 'Elizabeth Kudla Saarela', is written over the typed name.

Elizabeth Kudla Saarela

EKS

C: Cortney Hanson, Clerk
Rob Hayes, Public Services Director
Thomas R. Schultz, Esquire

Accounts Receivable Agreement
No. 45045066



"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
Ben Croy
26300 Lee BeGole Drive
Novi, MI 48375

Background Statement: Customer requests DTE Energy to perform the work indicated below in the vicinity of 20926 E Glen Haven Circle. 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 \$46,650.45.

The type of work to be performed:

Replace existing poles with taller poles, so that City of Novi can get trucks under the joint use companies cables. Remove 3 Poles, Remove Primary Details, Remove Secondary Details, Remove Span Guy, Remove Recloser, Remove Transformers, Install 3 Poles, Install Primary Details, Install Secondary Details, Install Span Guy, Install Recloser, Install Transformers.

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)  Title: Supervisor Date: 6-7-2016
Darrell W Duncan

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

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.