



OFFICE OF COMMUNITY DEVELOPMENT

8140 Main Street • Dexter, Michigan 48130-1092 • (734) 426-8303 • Fax (734) 426-5614

STAFF REPORT

To: Downtown Development Authority
Courtney Nicholls, City Manager

From: Michelle Aniol, Community Development Manager

RE: **DTE Sub-station Removal Agreement**

Date: July 19, 2017

Enclosed for your review and discussion is the draft agreement between the City of Dexter and DTE regarding the decommissioning of the Broad Street Sub-Station. The purpose of the agreement is 1) to have DTE de-commission its substation on Broad Street; 2) have DTE convey its land on Broad Street to the City; and 3) have the City convey a portion of its land on Dan Hoey Road to DTE for a new substation.

A redline version is provided to show the remaining issues the City and DTE are working to resolve.

Hardcopies of the Agreement will be distributed at the meeting. Your input is welcome during and after the meeting.

AGREEMENT

This Agreement (Agreement) is made _____, 2017, (Effective Date) by and between the City of Dexter, a Michigan municipal corporation, whose address is 8140 Main Street, Dexter, Michigan 48130, (City), and DTE Electric Company f/k/a The Detroit Edison Company, a Michigan corporation, whose address is _____, Detroit, Michigan 48226 (DTE). (City and DTE together are the Parties.) The addresses given above are effective for all notices required under this Agreement.

Recitals

- A. The Dexter Downtown Development Authority (DDA) owns land located at 3045 Broad Street in the City of Dexter. The City and the DDA desire to work together to improve the City and its central area, and as part of that effort, the City and DDA desire to redevelop 3045 Broad Street.
- B. DTE owns and operates a substation on Broad Street, adjacent to the DDA property at 3045 Broad Street.
- C. City owns land located at 7651 Dan Hoey Road, which is adjacent to the Dexter Business and Research Park.
- D. The goal of the Parties through this Agreement is 1) to have DTE de-commission its substation on Broad Street; 2) have DTE convey its land on Broad Street to the City; and 3) have the City convey a portion of its land on Dan Hoey Road to DTE for a new substation.

IN CONSIDERATION of the foregoing and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

1. **DTE Property.** DTE owns property on Broad Street, Dexter, Michigan, Tax ID No. 08 08 06 280 026, the legal description of which is attached as Exhibit A (the Property). DTE operates an electrical substation on the Property (the Substation).
2. **City Property.** City owns property known as 7651 Dan Hoey Road, Dexter, Michigan, Tax ID No. HD-08-07-100-028, which contains approximately 4 acres, and which is zoned Research and Development, and allows Essential Services, including electrical substations, as a permitted use. Exhibit B depicts the western half of the 4 acres ~~which are~~ the City proposes to sell to DTE for the ~~the~~ substation use pursuant to the terms of this Agreement (City Property). In the event the Parties decide to continue with the land swap as provided herein, the City shall complete all lots splits ~~and revise the zoning of the City Parcel to a zoning category that would permit an electrical substation as a permitted use~~ prior to closing of the transaction.

De-Commission of Substation

3. **De-commissioning of Substation.** DTE shall proceed to de-commission the Substation, which is located on the Property, once the Inspection Period has expired with respect to the Property and the City agrees to purchase the Property as provided in this Agreement. The de-commissioning shall include demolition of and removal of the Substation building and equipment;~~;~~ removal of fencing around the Substation;~~;~~ removal of all related equipment located on the Substation property;~~;~~ removal of a number of utility poles in the vicinity of the Substation, including any unnecessary poles along the Broad Street right of way to improve pole efficiency, as identified by DTE; soil boring and testing of the Property ~~and the land immediately adjacent to the Property, to~~ addressing and remediate environmental issues created by the Substation for substances present at levels above the Michigan Non-Residential Generic Cleanup Criteria promulgated pursuant to Part 201 of the Natural Resources and Environmental Protection Act (“NREPA”), Act 451 of 1997, MCL 324.20101;~~;~~ and leaving the land in a generally level condition (the De-commission). A drawing prepared by DTE showing what structures and equipment will be removed during the De-commission is attached as Exhibit C. DTE shall reasonably cooperate with the City’s environmental consultant in addressing environmental issues ~~such that they are addressed to the City’s satisfaction.~~ DTE shall commence the soil boring and testing efforts within 30 days of the Effective Date~~,~~ and, employing good faith efforts, shall complete the De-commission within 180 days after the conclusion of the Inspection Period (defined below), and regardless, within 360 days after the conclusion of the Inspection Period. DTE will provide City with copies of all environmental sampling and investigation results and reports. The Parties understand that DTE, for the near future, will replace the transmission capacity lost by the De-commission by installing additional pole mounted transformers in the general vicinity of the Substation.

4. **Cost of De-commission.** For the De-commission of the Substation, City shall pay to DTE the lesser of the sum of Three Hundred Sixty Two Thousand Five Hundred and 0/100 Dollars (\$362,500.00) plus interest at the lesser of a rate of three (3) percent or DTE’s actual interest cost, per year, or the actual cost of the De-commission plus interest at the lesser of a rate of three (3) percent or DTE’s actual interest cost, per year. DTE shall use good faith efforts to complete the De-commission at the least cost, and shall provide the City with documentation of the actual costs involved in the De-commission. City shall pay to DTE this sum as follows: A) Ninety Thousand Six Hundred Twenty Five and 0/100 Dollars (\$90,625.00) within three (3) business days after the conclusion of the Inspection Period (the First Payment); and B) the remaining amount with interest in equal annual payments per year, for 5 years, each due on the anniversary of the First Payment. (For instance, if the cost of the De-commission equals (or exceeds) \$362,500.00, the remaining amount due of Two Hundred Seventy One Thousand Eight Hundred Seventy Five and 0/100 (\$271,875.00) shall be paid in equal annual payments of Fifty Four Thousand Three Hundred Seventy Five and 0/100 Dollars (\$54,375.00)(plus interest) per year, for 5 years, each due on the anniversary of the First Payment.) City may pay the outstanding balance more rapidly if it chooses, without penalty.

Purchase of Respective Properties

5. **Sale of DTE Property to City.** Subject to the terms of the Agreement, and the City granting DTE requisite easements on the Property at the closing of this transaction, DTE shall sell and the City shall purchase the Property including all right, title and interest in and to all appurtenances, leases, rights-of-way (existing or abandoned), roadways, minerals and mineral rights, oil, gas and other hydrocarbon substances, air rights, development rights, and all site studies of any type and surveys, if any, owned by or in the possession of DTE. The Property is subject to one of the following security instruments: either a "Trust Mortgage" given by DTE to Bankers Trust Company of New York, or an "Indenture of Mortgage and Deed of Trust" given by DTE to City Bank Farmers Trust Company and Ralph E. Morton and now held by Citibank, N.A. (the Encumbrance). DTE will obtain discharge of the Encumbrance, as the case may be, within one (1) year after closing on the Property; provided however that DTE shall procure title insurance that insures City as fee simple title owner, without an exception for _____ the _____ Encumbrance_____.
6. **Sale of Dan Hoey City Property to DTE.** Subject to the terms of the Agreement, City shall sell and DTE shall purchase the City Property—, including all right, title and interest in and to all appurtenances, leases, rights-of-way (existing or abandoned), roadways, minerals and mineral rights, oil, gas and other hydrocarbon substances, air rights, development rights, and all site studies of any type and surveys, if any, owned by or in the possession of City.
7. **Purchase Prices of the Two Properties.** The Parties agree that the value of the Property and the City Property are approximately equivalent in value, such that the two properties can be exchanged for each other without any additional monetary consideration.
8. **Mutual Inspection of Property and City Property.** Upon the Effective Date, both the City and DTE shall undertake inspections of the property each seeks to acquire, as stated below. This inspection period shall extend for ~~twofour~~ (24) months from the Effective Date, and may be extended for an additional ~~twothree~~ (23) months upon the unilateral request by one of the Parties (the Inspection Period). After the expiration of the ~~twothree~~ (23) additional months, the Agreement may only be extended by mutual agreement of the Parties.
9. **Land Use Restrictions.** At Closing (defined below), DTE shall place a restrictive covenant on the Property to restrict the use of the Property to Non-Residential use as defined by Part 201 of the NREPA, and to restrict the use of groundwater as a drinking water source.

City Investigation of DTE Property

10. **City Title Insurance Commitment and Policy.** Within thirty (30) calendar days of the Effective Date, DTE will provide, at its cost, a commitment for an owner's fee policy of title insurance, to be issued, in the amount of \$125,000.00, dated on or after the date of this Agreement (the Commitment), from _____ (the Title Company), committing the Title Company to insure City as fee simple owner of the Property, and evidencing marketable title in City free of all liens and encumbrances (except those approved by City), together with a copy of all documents of record affecting the Property. DTE shall have the Commitment updated within 30 days prior to the closing (the Final Commitment), and at closing, DTE shall cause the Title Company to "mark-up" the Final Commitment to reflect the condition of title at the date of closing and show City as both insured and fee simple owner (specifically insuring over the Encumbrance). DTE, at its sole cost, shall cause the Title Company to issue the owner's policy of title insurance and endorsements required under this Agreement as soon as possible after Closing. Any existing mortgages, security interests, or other financial encumbrances upon the Property shall be paid and discharged by DTE at closing, except that DTE shall have up to one (1) year of closing to discharge the Encumbrance, provided the Title Company will still deliver a "marked up" commitment as required above.
11. **Survey.** Within thirty (30) calendar days of the Effective Date, DTE shall, at its cost, cause to be prepared a survey of the Property, including any easements the City shall grant DTE at Closing for its existing equipment on the Property (collectively the City Survey) which shall be in a form that permits the issuance of a title insurance policy. The surveyor shall certify that the City Survey describes the exact same premises as are described on Exhibit A. Within seven (7) calendar days after the Effective Date, DTE shall inform City what easements DTE seeks to retain over the Property (if any), ~~and provided such easements do not interfere with City's anticipated use of the Property, in the City's sole discretion, the City will agree to such easements to benefit DTE.~~
12. **Objections To Title And Survey.** City shall have seven (7) calendar days after receipt of the Title Commitment and Final Commitment to notify DTE of any objections to the Title Commitment or Final Commitment, and City shall have seven (7) calendar days after receipt of the City Survey to notify DTE of any objections to the City Survey. If City objects in writing to the condition of title or the City Survey based on the Commitment, the Final Commitment, or the City Survey, DTE shall have thirty (30) calendar days from receipt of City's written objection to use its good faith efforts to cure the title or survey defect(s) or provide evidence satisfactory to City, in its sole discretion, that the title or survey defect(s) will be cured on or before the closing, as defined in Section 26 below, and to provide City with an updated Commitment (the Updated Commitment) or updated Final Commitment (the Updated Final Commitment), which evidences that City's objection has been cured and will be adequately insured against, as determined by City in its sole discretion. If DTE is unable or unwilling to remedy the defect(s) within the thirty (30) day period, then (i) City, at its option, may waive the defect(s) and the Parties shall continue to perform their obligations, subject to the terms and conditions of this Agreement, in which case City shall accept the title or City Survey subject to such defects waiving any claim against DTE by reason thereof; or (ii) City may decide to not purchase the Property.

13. **Delivery of Materials for Review.** Within fifteen (15) calendar days of the Effective Date, DTE will deliver to City the following materials, if any, which are in DTE's possession or reasonably available to DTE (collectively, the "Documents"): previous deeds and surveys, together with a drawing of the Property with environmental sample results pertaining to the Property, and any other materials related to the surface or subsurface condition of the Property.
14. **Inspection of Property and Documents.** During the Inspection Period, City shall have the right at City's sole cost and expense to inspect or cause to be inspected all elements and aspects of the Property and Documents, including but not limited to investigating and conducting an environmental site assessment or other environmental investigation of the Property (including a "Phase 2" investigation or Baseline Environmental Assessment)(the Environmental Reports) at City's expense; obtaining an appraisal of the Property; and confirming the availability of financing for City's purchase of the Property. Given that DTE is seeking Michigan Department of Environmental Quality approval for closure of the Property, City shall consult with DTE prior to conducting soil borings so as to not undertake activities that could impact the MDEQ closure approval process.

Notwithstanding the above, DTE shall conduct soil borings ~~of the area of and around the Property~~ as part of the De-commission in order to determine whether any substances are present above the Michigan Part 201 Generic Nonresidential Cleanup Criteria. DTE shall deliver the results of the soil boring testing and investigation to City as soon as reasonable after DTE has such results.

If the soil borings disclose that there are substances present at concentrations above the Michigan Part 201 Non-Residential Generic Cleanup Criteria, DTE shall be responsible for addressing such adverse environmental condition pursuant to Section 3 of this Agreement.

City shall use all reasonable efforts to minimize any damage to the Property and, in the event any portion of the Property is disturbed, damaged, or altered by City's investigations, City shall promptly, at its sole cost and expense, restore the Property to substantially the same condition that existed prior to such disturbance or alteration. City shall indemnify and hold DTE harmless from any cost or expense incurred by DTE as a result of such disturbance or alteration (including repairs to the Property) or any actions taken by City at the Property. City shall not allow any liens or encumbrances to attach to the Property as a result of City's inspection of the Property.

If City, in its sole discretion, determines that the condition of the Property is unsatisfactory for any reason, City may, at its option at any time prior to 5:00 p.m., local time, on the last day of the Inspection Period (the City Notification Date), elect in writing to not purchase the Property. (If the City Notification Date falls on a Saturday, Sunday, or legal holiday, the City Notification Date shall be extended to the next business day.) If City does not provide DTE with notice that it will not purchase the Property on or before the City Notification Date, City shall be deemed to have elected to proceed with the purchase of the Property.

15. **Parties' Cooperation.** During the term of this Agreement, DTE agrees to cooperate in City's investigation of the Property, and prior to Closing, DTE agrees to act in good faith towards City.
16. **DTE Representations and Warranties.** As of the Effective Date and the date of closing, DTE makes the following representations to City, which representations shall survive the Closing:
- a. Subject to DTE Board of Director's approval, DTE has full power and authority to execute this Agreement, consummate the transaction and perform its obligations under this Agreement.
 - b. DTE's obligations under this Agreement do not conflict with, violate or constitute a breach of any agreements, judgments, awards, administrative proceedings, or federal, state or local laws affecting DTE or the Property.
 - c. DTE is the owner of fee simple marketable title in and to the Property and is in full and complete possession and control of the Property.
 - d. To DTE's knowledge, the Property is not subject to any unrecorded encumbrances, restrictions, easements, boundary disputes, or agreements or other matters which are not disclosed in the Commitment or in the Survey.
 - e. The Property is not subject to any claim of lien, special assessment, or unpaid roadway or utility charge, either recorded or unrecorded and no improvements to or upon the Property have been made within 120 calendar days prior to the date of this Agreement which could give rise to a claim of lien, special assessment, or other charge.
 - f. There are no actions or proceedings pending or threatened against or involving the Property or DTE as related to the Property.
 - g. To DTE's knowledge, there have been no violations of any federal, state or local law, ordinance, rule or regulation, including without limitation those relating to generation, transportation, storage, treatment, use, disposal and removal of hazardous and toxic substances and wastes and other environmental requirements. DTE has no knowledge of the disposal, storage, or placing upon the Property of any hazardous and/or toxic substances and/or waste in violation of the foregoing described laws. DTE has not received any notices, regulatory orders or claims of any violation of any environmental laws from any governmental agency having jurisdiction thereof or any third party.
 - h. To DTE's knowledge, there are no underground storage tanks presently on the Property, and there have been no underground storage tanks at the Property.
 - i. There are no taxes or assessments which are past due or which have become a lien upon the Property except for current taxes which shall be prorated and adjusted upon Closing.

- j. To DTE's knowledge, DTE has received no notices of violation of any law, rule, regulation or ordinance issued in connection with the Property by any agency or department having jurisdiction thereof, and DTE hereby agrees to provide City with copies of any such notices received after the date of this Agreement.

These representations are made following commercially reasonable inquiry of those persons that would have knowledge of such information. If prior to the Closing, City discovers that any of DTE's representations and warranties are incorrect in any material respect in City's reasonable discretion, then City, notwithstanding the expiration of the Inspection Period, at its option, shall have the right to not purchase the Property with no liability on its part, in addition to all remedies permitted by law. At the Closing, DTE shall execute an affidavit in form and substance acceptable to City, which shall make the foregoing representations and warranties effective as of the Closing and provide that such shall survive the Closing. ~~DTE shall indemnify and hold harmless City for any damages City incurs, including reasonable attorneys' fees, based on a breach of DTE's representations and warranties, which indemnification shall survive the Closing.~~

17. **Environmental Issues.** DTE's obligation to address adverse environmental conditions, contained in Sections 3 and 14 above, shall survive the Closing.

DTE Investigation of City Property

18. **Title Insurance Commitment and Policy.** Within thirty (30) calendar days of the Effective Date, City will provide, at its cost, a commitment for an owner's fee policy of title insurance, to be issued without standard exceptions, in the amount of \$125,000.00, dated on or after the date of this Agreement (the DTE Commitment), from the Title Company, committing the Title Company to insure DTE as fee simple owner of the City Property, and evidencing marketable title in DTE free of all liens and encumbrances (except those approved or not objected to by DTE), together with a copy of all documents of record affecting the Property. City shall have the Commitment updated within thirty (30) days prior to the Closing (the DTE Final Commitment), and at Closing, City shall cause the Title Company to "mark-up" the Final Commitment to reflect the condition of title at the date of Closing and show DTE as both insured and fee simple owner. City, at its sole cost, shall cause the Title Company to issue the owner's policy of title insurance and endorsements required under this Agreement as soon as possible after Closing. Any existing mortgages, security interests, or other financial encumbrances upon the City Property shall be paid and discharged by the City at Closing, provided the Title Company will still deliver a "marked up" commitment as required above.

19. **Survey.** Within thirty (30) calendar days of the Effective Date, the City shall, at its cost, cause to be prepared a survey of the City Property (the DTE Survey). The DTE Survey will be in a form that permits the issuance of a title insurance policy without standard exceptions.

20. **Objections To Title And Survey.** DTE shall have thirty (30) calendar days after receipt of the Title Commitment and Final Commitment to notify City of any objections to the Title Commitment or Final Commitment, and DTE shall have thirty (30) calendar days after receipt of the DTE Survey to notify City of any objections to the DTE Survey. If DTE

objects in writing to the condition of title or the DTE Survey based on the Commitment, the Final Commitment, or the DTE Survey, City shall have thirty (30) calendar days from receipt of DTE's written objection to use its good faith efforts to cure the title or survey defect(s) or provide evidence satisfactory to DTE, in its sole discretion, that the title or survey defect(s) will be cured on or before the Closing, and to provide DTE with an updated Commitment (the DTE Updated Commitment) or updated Final Commitment (the DTE Updated Final Commitment), which evidences that DTE's objection has been cured and will be adequately insured against, as determined by DTE in its sole discretion. If City is unable or unwilling to remedy the defect(s) within the thirty (30) day period, then (i) DTE, at its option, may waive the defect(s) and the Parties shall continue to perform their obligations, subject to the terms and conditions of this Agreement, in which case DTE shall accept the title or DTE Survey subject to such defects waiving any claim against City by reason thereof; or (ii) DTE may decide to not purchase the City Property.

21. Delivery of Materials for Review. Within fifteen (15) calendar days of the Effective Date, City will deliver to DTE the following materials, if any, which are in City's possession or reasonably available to City (collectively, the "Documents"): Environmental Reports; Building Materials; Utility Plans; Approvals or Certificates of Occupancy; Easements; Leases; and all records and documents in City's possession or reasonably available to City pertaining to the City Property.

22. Inspection Of Property and Documents. During the Inspection Period, DTE shall have the right at DTE's sole cost and expense to inspect or cause to be inspected all elements and aspects of the City Property and Documents, including but not limited to investigating and conducting an environmental site assessment or other environmental investigation of the Property (including a "Phase 2" investigation or Baseline Environmental Assessment)(the DTE Environmental Reports) at DTE's expense. Prior to Closing, the City shall provide documentation to DTE that it has completed the lot split ~~of the City Property~~~~and that the City Property has been rezoned to a zoning category that would permit an electrical substation as a permitted use.~~

If the DTE Environmental Reports disclose that there is an adverse environmental condition which affects the City Property, if the Parties cannot agree on how to remediate such adverse environmental condition, DTE may decide not to purchase the City Property.

DTE shall use all reasonable efforts to minimize any damage to the City Property and, in the event any portion of the City Property is disturbed, damaged, or altered by DTE's investigations, DTE shall promptly, at its sole cost and expense, restore the City Property to substantially the same condition that existed prior to such disturbance or alteration. DTE shall indemnify and hold City harmless from any cost or expense incurred by City as a result of such disturbance or alteration (including repairs to the City Property) or any actions taken by DTE at the City Property (the DTE Inspection Indemnification). DTE shall not allow any liens or encumbrances to attach to the City Property as a result of DTE's inspection of the City Property.

If DTE, in its sole discretion, determines that the condition of the City Property is unsatisfactory for any reason, DTE may, at its option at any time prior to 5:00 p.m., local time, on the last day of the Inspection Period (the DTE Notification Date), elect in writing to not purchase the City Property. (If the DTE Notification Date falls on a Saturday, Sunday, or legal holiday, the DTE Notification Date shall be extended to the next business day.) If DTE does not provide City with notice that it will not purchase the City Property on or before the DTE Notification Date, DTE shall be deemed to have elected to proceed with the purchase of the City Property.

23. Representations and Warranties. As of the Effective Date and the date of Closing, City makes the following representations to DTE, which representations shall survive the Closing, and which representations are made to the best of the knowledge of City personnel, but without actual or specific investigation:

- a. City has full power and authority to execute this Agreement, consummate the transaction, perform its obligations under this Agreement, is a legally constituted municipal corporation, that the persons executing this Agreement have the authority to execute this Agreement on behalf of City, and that City has taken all appropriate actions to enter into this Agreement.
- b. City's obligations under this Agreement do not conflict with, violate or constitute a breach of any agreements, judgments, awards, administrative proceedings, or federal, state or local laws affecting City or the Property.
- c. City is the owner of fee simple marketable title in and to the City Property and is in full and complete possession and control of the City Property.
- d. The City Property is not subject to any unrecorded encumbrances, restrictions, easements, boundary disputes, or agreements or other matters which are not disclosed in the Commitment or in the Survey.
- e. The City Property is not subject to any claim of lien, special assessment, or unpaid roadway or utility charge, either recorded or unrecorded and no improvements to or upon the City Property have been made within 120 calendar days prior to the date of this Agreement which could give rise to a claim of lien, special assessment, or other charge.
- f. There are no actions or proceedings pending or threatened against or involving the City Property or the City as related to the Property.
- g. To City's knowledge, no hazardous or toxic substances or wastes have been discharged, released, generated, treated, stored, disposed of or placed upon the Property in violation of applicable environmental laws, and there have been no violations of any federal, state or local law, ordinance, rule or regulation, including without limitation those relating to generation, transportation, storage, treatment, use, disposal and removal of hazardous and toxic substances and wastes and other environmental requirements. City has no knowledge of the

disposal, storage, or placing upon the City Property of any hazardous and/or toxic substances and/or waste in violation of the foregoing described laws. City has not received any notices, regulatory orders or claims of any violation of any environmental laws from any governmental agency having jurisdiction thereof or any third party.

- h. To City's knowledge, there are no underground storage tanks presently on the City Property, and there have been no underground storage tanks at the City Property.
- i. City has received no notices of violation of any law, rule, regulation or ordinance issued in connection with the City Property by any agency or department having jurisdiction thereof, and City hereby agrees to provide DTE with copies of any such notices received after the date of this Agreement.

These representations are made following commercially reasonable inquiry of those persons that would have knowledge of such information. If prior to the Closing DTE discovers that any of City's representations and warranties are incorrect in any material respect in DTE's reasonable discretion, then DTE, notwithstanding the expiration of the Inspection Period, at its option, shall have the right to not purchase the City Property with no liability on its part, in addition to all other remedies permitted by law. At the Closing, City shall execute an affidavit in form and substance acceptable to DTE, which shall make the foregoing representations and warranties effective as of the Closing and provide that such shall survive the Closing.

24. **Parties' Cooperation.** During the term of this Agreement, City agrees to cooperate in DTE's investigation of the City Property, and prior to Closing, City agrees to act in good faith towards DTE.

General Provisions

25. **Restrictions on Sale, Assignment.** DTE shall not sell, transfer, assign or convey any of its rights under this Agreement without the prior written consent of City. City shall have the right, without the consent of DTE, to assign all or any portion of City's rights under this Agreement to the Dexter Downtown Development Authority prior to the Closing, and the assignee shall be fully substituted for City except that the City shall remain liable for any payments due and owing under this Agreement. City and/or the Dexter Downtown Development Authority shall not sell, transfer, assign or convey any of its rights under this Agreement to any other person or entity without the prior written consent of DTE, provided furthermore that if DTE agrees to any such assignment, the remaining payments provided in Section 4 shall be immediately due and owing to DTE.

26. **Decision on Property Purchases and Closing.** Pursuant to Sections 14 and 22, at the conclusion of the Inspection Period, City shall inform DTE in writing as to its decision on the purchase of the Property, and at the conclusion of the Inspection Period, DTE shall inform City in writing as to its decision on the purchase of the City Property. If both Parties decide to proceed with their respective purchases, the transactions shall then proceed accordingly; however, if either Party decides not to proceed with its respective purchase, then the other Party may not purchase the property subject to this Agreement, the Agreement shall terminate, and the Parties shall not have any further obligation to each other (except as may otherwise be stated in this Agreement). Unless the Parties agree to another date, (or unless previously terminated by either Party), the closing of this transaction (Closing) shall take place on a date that is thirty (30) days after the Substation has been completely De-commissioned. The Closing shall take place at the offices of the Title Company, or such other location as shall be mutually acceptable to the Parties.

27. **Closing Documents.** At the time and place of Closing, the Parties shall deliver the following documents:

- a. Covenant Deeds conveying title to the Property and/or the City Property in the condition required by, and at the purchase prices established by, this Agreement.
- b. Any easements required by DTE and granted by the City (or assignee) for DTE's equipment that remains located on the Property (if any).
- c. A Recertification by both Parties of their respective warranties and representations, subject to any changes, if any, by reason of matters disclosed by the Commitment, the Survey or the Environmental Reports.
- d. Affidavits or other documents reasonably requested by the Title Company for issuance of owner's title policies.
- e. Such other documents, as may be reasonably required to consummate this transaction.

28. **Adjustments and Prorations.** Upon Closing:

- a. Taxes and Assessments. All taxes and benefit charges affecting the Property for which bills have been issued prior to the date of Closing shall be paid by DTE. Current Taxes (defined below) shall be prorated, adjusted and, in the case of DTE credited, as of the date of Closing in accordance with the due date-paid in advance method of the municipality or taxing unit in which the Property is located based on a thirty (30) day month. DTE shall be responsible for payment of future installments of special assessments, existing as of the Closing. Special assessments for public improvements to be made after the Closing shall be paid by City. Current Taxes shall mean the winter and summer tax bills issued for the Property within twelve (12) months immediately preceding the date of Closing. Because the City Property is not taxed, no proration is required for it.

- b. Utilities. Water and Sanitary sewer utility bills if applicable, shall be prorated in the same manner as Current Taxes but based on date of Closing, unless final readings as of the Closing are obtained and paid by DTE, in which case there shall be no proration.
- c. Transfer Taxes. DTE shall pay any applicable state and local transfer taxes on the sale of the Property at Closing, and City shall pay any applicable state and local transfer taxes on the sale of the City Property at Closing.
- d. Title Insurance Premium. DTE shall pay the title insurance premium for the title insurance insuring City, and City shall pay the title insurance premium for the title insurance insuring DTE.

29. **Possession**. Possession of the respective properties shall be delivered upon Closing.

30. **DTE's Default**. In the event DTE defaults in the performance of the terms and conditions of the Agreement, City may terminate the Agreement, or may specifically enforce the terms of this Agreement, in addition to all other remedies permitted by law.

31. **City's Default**. In the event City defaults in the performance of the terms and conditions of the Agreement, DTE may terminate the Agreement, or may specifically enforce the terms of this Agreement, in addition to all other remedies permitted by law.

32. **Brokerage**. DTE and City represent to each other that neither is represented by a real estate broker. The parties indemnify and hold each other harmless, respectively, from any claims for a brokerage commission to the extent that such claims conflict with the indemnifying Party's representation.

33. **Future DTE Facilities on Dan Hoey Road**. If DTE purchases the City Property, it will likely need to upgrade its transmission facilities on Dan Hoey Road between Baker and Dexter Ann Arbor Roads. DTE contemplates that this would require taller poles, generally along the same alignment on the same side of the street as the existing poles, with multiple sets of wiring. At this time, it is anticipated that such poles would be located within the existing Dan Hoey Road right of way, and that such poles would need to be accessible by truck and clear of obstructions, including vegetation and trees.

~~33,34. **Temporary Use of City Property**. The parties shall work in good faith to allow the City, after Closing, to continue the "community garden" on the City Property until such time as DTE begins activity to use the City Property for DTE's purposes; provided that DTE is adequately protected from any adverse consequences from such use.~~

~~34. **Demolition of Structures at Dan Hoey**. The City is in the process of demolishing several of the structures located on the City Property and shall demolish any structures on the City Property prior to the Closing.~~

Formatted: List Paragraph, No bullets or numbering

35. **Additional Terms.** This Agreement shall be construed under the laws of Michigan. This Agreement may be signed in counterparts, which taken together shall constitute one original document.
36. **Board Approval.** This Agreement is contingent on the approval of DTE's Board of Directors.
37. **Entire Agreement.** This Agreement, including all exhibits attached hereto and documents to be delivered pursuant hereto, shall constitute the entire agreement and understanding of the Parties, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties, or covenants not contained herein.
38. **Amendment.** This Agreement may be amended only by a written instrument subsequently executed by both of the Parties hereto.
39. **Headings.** Headings of Sections are for convenience of reference only, and shall not be construed as part of this Agreement.

	City of Dexter
Dated: _____, 2017 6	By: _____
	Its:
	By: _____
	Its: Secretary
	DTE Electric Company
Dated: _____, 2017 6	By: _____
	Its:
Dated: _____, 2017 6	By: _____
	Its:

Exhibit A

Exhibit B

Exhibit C

AGREEMENT

This Agreement (Agreement) is made _____, 2017, (Effective Date) by and between the City of Dexter, a Michigan municipal corporation, whose address is 8140 Main Street, Dexter, Michigan 48130, (City), and DTE Electric Company f/k/a The Detroit Edison Company, a Michigan corporation, whose address is _____, Detroit, Michigan 48226 (DTE). (City and DTE together are the Parties.) The addresses given above are effective for all notices required under this Agreement.

Recitals

- A. The Dexter Downtown Development Authority (DDA) owns land located at 3045 Broad Street in the City of Dexter. The City and the DDA desire to work together to improve the City and its central area, and as part of that effort, the City and DDA desire to redevelop 3045 Broad Street.
- B. DTE owns and operates a substation on Broad Street, adjacent to the DDA property at 3045 Broad Street.
- C. City owns land located at 7651 Dan Hoey Road, which is adjacent to the Dexter Business and Research Park.
- D. The goal of the Parties through this Agreement is 1) to have DTE de-commission its substation on Broad Street; 2) have DTE convey its land on Broad Street to the City; and 3) have the City convey a portion of its land on Dan Hoey Road to DTE for a new substation.

IN CONSIDERATION of the foregoing and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

1. **DTE Property.** DTE owns property on Broad Street, Dexter, Michigan, Tax ID No. 08 08 06 280 026, the legal description of which is attached as Exhibit A (the Property). DTE operates an electrical substation on the Property (the Substation).
2. **City Property.** City owns property known as 7651 Dan Hoey Road, Dexter, Michigan, Tax ID No. HD-08-07-100-028, which contains approximately 4 acres, and which is zoned Research and Development, and allows Essential Services, including electrical substations, as a permitted use. Exhibit B depicts the western half of the 4 acres which the City proposes to sell to DTE for a substation use pursuant to the terms of this Agreement (City Property). In the event the Parties decide to continue with the land swap as provided herein, the City shall complete all lots splits prior to closing of the transaction.

De-Commission of Substation

3. **De-commissioning of Substation.** DTE shall proceed to de-commission the Substation, which is located on the Property, once the Inspection Period has expired with respect to the Property and the City agrees to purchase the Property as provided in this Agreement. The de-commissioning shall include demolition of and removal of the Substation building and equipment; removal of fencing around the Substation; removal of all related equipment located on the Substation property; removal of a number of utility poles in the vicinity of the Substation, including any unnecessary poles along the Broad Street right of way to improve pole efficiency, as identified by DTE; soil boring and testing of the Property, to address and remediate environmental issues created by the Substation for substances present at levels above the Michigan Non-Residential Generic Cleanup Criteria promulgated pursuant to Part 201 of the Natural Resources and Environmental Protection Act (“NREPA”), Act 451 of 1997, MCL 324.20101; and leaving the land in a generally level condition (the De-commission). A drawing prepared by DTE showing what structures and equipment will be removed during the De-commission is attached as Exhibit C. DTE shall reasonably cooperate with the City’s environmental consultant in addressing environmental issues. DTE shall commence the soil boring and testing efforts within 30 days of the Effective Date, and, employing good faith efforts, shall complete the De-commission within 180 days after the conclusion of the Inspection Period (defined below), and regardless, within 360 days after the conclusion of the Inspection Period. DTE will provide City with copies of all environmental sampling and investigation results and reports. The Parties understand that DTE, for the near future, will replace the transmission capacity lost by the De-commission by installing additional pole mounted transformers in the general vicinity of the Substation.

4. **Cost of De-commission.** For the De-commission of the Substation, City shall pay to DTE the lesser of the sum of Three Hundred Sixty Two Thousand Five Hundred and 0/100 Dollars (\$362,500.00) plus interest at the lesser of three (3) percent or DTE’s actual interest cost, per year, or the actual cost of the De-commission plus interest at the lesser of three (3) percent or DTE’s actual interest cost, per year. DTE shall use good faith efforts to complete the De-commission at the least cost, and shall provide the City with documentation of the actual costs involved in the De-commission. City shall pay to DTE this sum as follows: A) Ninety Thousand Six Hundred Twenty Five and 0/100 Dollars (\$90,625.00) within three (3) business days after the conclusion of the Inspection Period (the First Payment); and B) the remaining amount with interest in equal annual payments per year, for 5 years, each due on the anniversary of the First Payment. (For instance, if the cost of the De-commission equals (or exceeds) \$362,500.00, the remaining amount due of Two Hundred Seventy One Thousand Eight Hundred Seventy Five and 0/100 (\$271,875.00) shall be paid in equal annual payments of Fifty Four Thousand Three Hundred Seventy Five and 0/100 Dollars (\$54,375.00)(plus interest) per year, for 5 years, each due on the anniversary of the First Payment.) City may pay the outstanding balance more rapidly if it chooses, without penalty.

Purchase of Respective Properties

5. **Sale of DTE Property to City.** Subject to the terms of the Agreement, and the City granting DTE requisite easements on the Property at the closing of this transaction, DTE shall sell and the City shall purchase the Property including all right, title and interest in and to all appurtenances, leases, rights-of-way (existing or abandoned), roadways, minerals and mineral rights, oil, gas and other hydrocarbon substances, air rights, development rights, and all site studies of any type and surveys, if any, owned by or in the possession of DTE. The Property is subject to one of the following security instruments: either a "Trust Mortgage" given by DTE to Bankers Trust Company of New York, or an "Indenture of Mortgage and Deed of Trust" given by DTE to City Bank Farmers Trust Company and Ralph E. Morton and now held by Citibank, N.A. (the Encumbrance). DTE will obtain discharge of the Encumbrance, as the case may be, within one (1) year after closing on the Property; provided however that DTE shall procure title insurance that insures City as fee simple title owner, without an exception for _____ the _____ Encumbrance.
6. **Sale of Dan Hoey City Property to DTE.** Subject to the terms of the Agreement, City shall sell and DTE shall purchase the City Property, including all right, title and interest in and to all appurtenances, leases, rights-of-way (existing or abandoned), roadways, minerals and mineral rights, oil, gas and other hydrocarbon substances, air rights, development rights, and all site studies of any type and surveys, if any, owned by or in the possession of City.
7. **Purchase Prices of the Two Properties.** The Parties agree that the value of the Property and the City Property are approximately equivalent in value, such that the two properties can be exchanged for each other without any additional monetary consideration.
8. **Mutual Inspection of Property and City Property.** Upon the Effective Date, both the City and DTE shall undertake inspections of the property each seeks to acquire, as stated below. This inspection period shall extend for two (2) months from the Effective Date, and may be extended for an additional two (2) months upon the unilateral request by one of the Parties (the Inspection Period). After the expiration of the two (2) additional months, the Agreement may only be extended by mutual agreement of the Parties.
9. **Land Use Restrictions.** At Closing (defined below), DTE shall place a restrictive covenant on the Property to restrict the use of the Property to Non-Residential use as defined by Part 201 of the NREPA, and to restrict the use of groundwater as a drinking water source.

City Investigation of DTE Property

10. **City Title Insurance Commitment and Policy.** Within thirty (30) calendar days of the Effective Date, DTE will provide, at its cost, a commitment for an owner's fee policy of title insurance, to be issued, in the amount of \$125,000.00 dated on or after the date of this Agreement (the Commitment), from _____ (the Title Company),

committing the Title Company to insure City as fee simple owner of the Property, and evidencing marketable title in City free of all liens and encumbrances (except those approved by City), together with a copy of all documents of record affecting the Property. DTE shall have the Commitment updated within 30 days prior to the closing (the Final Commitment), and at closing, DTE shall cause the Title Company to “mark-up” the Final Commitment to reflect the condition of title at the date of closing and show City as both insured and fee simple owner (specifically insuring over the Encumbrance). DTE, at its sole cost, shall cause the Title Company to issue the owner’s policy of title insurance and endorsements required under this Agreement as soon as possible after Closing. Any existing mortgages, security interests, or other financial encumbrances upon the Property shall be paid and discharged by DTE at closing, except that DTE shall have up to one (1) year of closing to discharge the Encumbrance, provided the Title Company will still deliver a “marked up” commitment as required above.

11. **Survey.** Within thirty (30) calendar days of the Effective Date, DTE shall, at its cost, cause to be prepared a survey of the Property, including any easements the City shall grant DTE at Closing for its existing equipment on the Property (collectively the City Survey) which shall be in a form that permits the issuance of a title insurance policy. The surveyor shall certify that the City Survey describes the exact same premises as are described on Exhibit A. Within seven (7) calendar days after the Effective Date, DTE shall inform City what easements DTE seeks to retain over the Property (if any).
12. **Objections To Title And Survey.** City shall have seven (7) calendar days after receipt of the Title Commitment and Final Commitment to notify DTE of any objections to the Title Commitment or Final Commitment, and City shall have seven (7) calendar days after receipt of the City Survey to notify DTE of any objections to the City Survey. If City objects in writing to the condition of title or the City Survey based on the Commitment, the Final Commitment, or the City Survey, DTE shall have thirty (30) calendar days from receipt of City’s written objection to use its good faith efforts to cure the title or survey defect(s) or provide evidence satisfactory to City, in its sole discretion, that the title or survey defect(s) will be cured on or before the closing, as defined in Section 26 below, and to provide City with an updated Commitment (the Updated Commitment) or updated Final Commitment (the Updated Final Commitment), which evidences that City’s objection has been cured and will be adequately insured against, as determined by City in its sole discretion. If DTE is unable or unwilling to remedy the defect(s) within the thirty (30) day period, then (i) City, at its option, may waive the defect(s) and the Parties shall continue to perform their obligations, subject to the terms and conditions of this Agreement, in which case City shall accept the title or City Survey subject to such defects waiving any claim against DTE by reason thereof; or (ii) City may decide to not purchase the Property.
13. **Delivery of Materials for Review.** Within fifteen (15) calendar days of the Effective Date, DTE will deliver to City the following materials, if any, which are in DTE’s possession or reasonably available to DTE (collectively, the “Documents”): previous deeds and surveys, together with a drawing of the Property with environmental sample results pertaining to the Property, and any other materials related to the surface or subsurface condition of the Property.

14. **Inspection of Property and Documents.** During the Inspection Period, City shall have the right at City's sole cost and expense to inspect or cause to be inspected all elements and aspects of the Property and Documents, including but not limited to investigating and conducting an environmental site assessment or other environmental investigation of the Property (including a "Phase 2" investigation or Baseline Environmental Assessment)(the Environmental Reports) at City's expense; obtaining an appraisal of the Property; and confirming the availability of financing for City's purchase of the Property. Given that DTE is seeking Michigan Department of Environmental Quality approval for closure of the Property, City shall consult with DTE prior to conducting soil borings so as to not undertake activities that could impact the MDEQ closure approval process.

Notwithstanding the above, DTE shall conduct soil borings as part of the De-commission in order to determine whether any substances are present above the Michigan Part 201 Generic Nonresidential Cleanup Criteria. DTE shall deliver the results of the soil boring testing and investigation to City as soon as reasonable after DTE has such results.

If the soil borings disclose that there are substances present at concentrations above the Michigan Part 201 Non-Residential Generic Cleanup Criteria, DTE shall be responsible for addressing such adverse environmental condition pursuant to Section 3 of this Agreement.

City shall use all reasonable efforts to minimize any damage to the Property and, in the event any portion of the Property is disturbed, damaged, or altered by City's investigations, City shall promptly, at its sole cost and expense, restore the Property to substantially the same condition that existed prior to such disturbance or alteration. City shall indemnify and hold DTE harmless from any cost or expense incurred by DTE as a result of such disturbance or alteration (including repairs to the Property) or any actions taken by City at the Property. City shall not allow any liens or encumbrances to attach to the Property as a result of City's inspection of the Property.

If City, in its sole discretion, determines that the condition of the Property is unsatisfactory for any reason, City may, at its option at any time prior to 5:00 p.m., local time, on the last day of the Inspection Period (the City Notification Date), elect in writing to not purchase the Property. (If the City Notification Date falls on a Saturday, Sunday, or legal holiday, the City Notification Date shall be extended to the next business day.) If City does not provide DTE with notice that it will not purchase the Property on or before the City Notification Date, City shall be deemed to have elected to proceed with the purchase of the Property.

15. **Parties' Cooperation.** During the term of this Agreement, DTE agrees to cooperate in City's investigation of the Property, and prior to Closing, DTE agrees to act in good faith towards City.
16. **DTE Representations and Warranties.** As of the Effective Date and the date of closing, DTE makes the following representations to City, which representations shall survive the Closing:

- a. Subject to DTE Board of Director's approval, DTE has full power and authority to execute this Agreement, consummate the transaction and perform its obligations under this Agreement.
- b. DTE's obligations under this Agreement do not conflict with, violate or constitute a breach of any agreements, judgments, awards, administrative proceedings, or federal, state or local laws affecting DTE or the Property.
- c. DTE is the owner of fee simple marketable title in and to the Property and is in full and complete possession and control of the Property.
- d. To DTE's knowledge, the Property is not subject to any unrecorded encumbrances, restrictions, easements, boundary disputes, or agreements or other matters which are not disclosed in the Commitment or in the Survey.
- e. The Property is not subject to any claim of lien, special assessment, or unpaid roadway or utility charge, either recorded or unrecorded and no improvements to or upon the Property have been made within 120 calendar days prior to the date of this Agreement which could give rise to a claim of lien, special assessment, or other charge.
- f. There are no actions or proceedings pending or threatened against or involving the Property or DTE as related to the Property.
- g. To DTE's knowledge, there have been no violations of any federal, state or local law, ordinance, rule or regulation, including without limitation those relating to generation, transportation, storage, treatment, use, disposal and removal of hazardous and toxic substances and wastes and other environmental requirements. DTE has no knowledge of the disposal, storage, or placing upon the Property of any hazardous and/or toxic substances and/or waste in violation of the foregoing described laws. DTE has not received any notices, regulatory orders or claims of any violation of any environmental laws from any governmental agency having jurisdiction thereof or any third party.
- h. To DTE's knowledge, there are no underground storage tanks presently on the Property, and there have been no underground storage tanks at the Property.
- i. There are no taxes or assessments which are past due or which have become a lien upon the Property except for current taxes which shall be prorated and adjusted upon Closing.
- j. To DTE's knowledge, DTE has received no notices of violation of any law, rule, regulation or ordinance issued in connection with the Property by any agency or department having jurisdiction thereof, and DTE hereby agrees to provide City with copies of any such notices received after the date of this Agreement.

These representations are made following commercially reasonable inquiry of those persons that would have knowledge of such information. If prior to the Closing, City

discovers that any of DTE's representations and warranties are incorrect in any material respect in City's reasonable discretion, then City, notwithstanding the expiration of the Inspection Period, at its option, shall have the right to not purchase the Property with no liability on its part, in addition to all remedies permitted by law. At the Closing, DTE shall execute an affidavit in form and substance acceptable to City, which shall make the foregoing representations and warranties effective as of the Closing and provide that such shall survive the Closing.

17. **Environmental Issues.** DTE's obligation to address adverse environmental conditions, contained in Sections 3 and 14 above, shall survive the Closing.

DTE Investigation of City Property

18. **Title Insurance Commitment and Policy.** Within thirty (30) calendar days of the Effective Date, City will provide, at its cost, a commitment for an owner's fee policy of title insurance, to be issued without standard exceptions, in the amount of \$125,000.00, dated on or after the date of this Agreement (the DTE Commitment), from the Title Company, committing the Title Company to insure DTE as fee simple owner of the City Property, and evidencing marketable title in DTE free of all liens and encumbrances (except those approved or not objected to by DTE), together with a copy of all documents of record affecting the Property. City shall have the Commitment updated within thirty (30) days prior to the Closing (the DTE Final Commitment), and at Closing, City shall cause the Title Company to "mark-up" the Final Commitment to reflect the condition of title at the date of Closing and show DTE as both insured and fee simple owner. City, at its sole cost, shall cause the Title Company to issue the owner's policy of title insurance and endorsements required under this Agreement as soon as possible after Closing. Any existing mortgages, security interests, or other financial encumbrances upon the City Property shall be paid and discharged by the City at Closing, provided the Title Company will still deliver a "marked up" commitment as required above.

19. **Survey.** Within thirty (30) calendar days of the Effective Date, the City shall, at its cost, cause to be prepared a survey of the City Property (the DTE Survey). The DTE Survey will be in a form that permits the issuance of a title insurance policy without standard exceptions.

20. **Objections To Title And Survey.** DTE shall have thirty (30) calendar days after receipt of the Title Commitment and Final Commitment to notify City of any objections to the Title Commitment or Final Commitment, and DTE shall have thirty (30) calendar days after receipt of the DTE Survey to notify City of any objections to the DTE Survey. If DTE objects in writing to the condition of title or the DTE Survey based on the Commitment, the Final Commitment, or the DTE Survey, City shall have thirty (30) calendar days from receipt of DTE's written objection to use its good faith efforts to cure the title or survey defect(s) or provide evidence satisfactory to DTE, in its sole discretion, that the title or survey defect(s) will be cured on or before the Closing, and to provide DTE with an updated Commitment (the DTE Updated Commitment) or updated Final Commitment (the DTE Updated Final Commitment), which evidences that DTE's objection has been cured and will be adequately insured against, as determined by DTE in its sole discretion. If City is unable or unwilling to remedy the defect(s) within the thirty (30) day period, then (i) DTE, at its option, may waive

the defect(s) and the Parties shall continue to perform their obligations, subject to the terms and conditions of this Agreement, in which case DTE shall accept the title or DTE Survey subject to such defects waiving any claim against City by reason thereof; or (ii) DTE may decide to not purchase the City Property.

21. Delivery of Materials for Review. Within fifteen (15) calendar days of the Effective Date, City will deliver to DTE the following materials, if any, which are in City's possession or reasonably available to City (collectively, the "Documents"): Environmental Reports; Building Materials; Utility Plans; Approvals or Certificates of Occupancy; Easements; Leases; and all records and documents in City's possession or reasonably available to City pertaining to the City Property.

22. Inspection Of Property and Documents. During the Inspection Period, DTE shall have the right at DTE's sole cost and expense to inspect or cause to be inspected all elements and aspects of the City Property and Documents, including but not limited to investigating and conducting an environmental site assessment or other environmental investigation of the Property (including a "Phase 2" investigation or Baseline Environmental Assessment)(the DTE Environmental Reports) at DTE's expense. Prior to Closing, the City shall provide documentation to DTE that it has completed the lot split of the City Property.

If the DTE Environmental Reports disclose that there is an adverse environmental condition which affects the City Property, if the Parties cannot agree on how to remediate such adverse environmental condition, DTE may decide not to purchase the City Property.

DTE shall use all reasonable efforts to minimize any damage to the City Property and, in the event any portion of the City Property is disturbed, damaged, or altered by DTE's investigations, DTE shall promptly, at its sole cost and expense, restore the City Property to substantially the same condition that existed prior to such disturbance or alteration. DTE shall indemnify and hold City harmless from any cost or expense incurred by City as a result of such disturbance or alteration (including repairs to the City Property) or any actions taken by DTE at the City Property (the DTE Inspection Indemnification). DTE shall not allow any liens or encumbrances to attach to the City Property as a result of DTE's inspection of the City Property.

If DTE, in its sole discretion, determines that the condition of the City Property is unsatisfactory for any reason, DTE may, at its option at any time prior to 5:00 p.m., local time, on the last day of the Inspection Period (the DTE Notification Date), elect in writing to not purchase the City Property. (If the DTE Notification Date falls on a Saturday, Sunday, or legal holiday, the DTE Notification Date shall be extended to the next business day.) If DTE does not provide City with notice that it will not purchase the City Property on or before the DTE Notification Date, DTE shall be deemed to have elected to proceed with the purchase of the City Property.

23. Representations and Warranties. As of the Effective Date and the date of Closing, City makes the following representations to DTE, which representations shall survive the Closing,

and which representations are made to the best of the knowledge of City personnel, but without actual or specific investigation:

- a. City has full power and authority to execute this Agreement, consummate the transaction, perform its obligations under this Agreement, is a legally constituted municipal corporation, that the persons executing this Agreement have the authority to execute this Agreement on behalf of City, and that City has taken all appropriate actions to enter into this Agreement.
- b. City's obligations under this Agreement do not conflict with, violate or constitute a breach of any agreements, judgments, awards, administrative proceedings, or federal, state or local laws affecting City or the Property.
- c. City is the owner of fee simple marketable title in and to the City Property and is in full and complete possession and control of the City Property.
- d. The City Property is not subject to any unrecorded encumbrances, restrictions, easements, boundary disputes, or agreements or other matters which are not disclosed in the Commitment or in the Survey.
- e. The City Property is not subject to any claim of lien, special assessment, or unpaid roadway or utility charge, either recorded or unrecorded and no improvements to or upon the City Property have been made within 120 calendar days prior to the date of this Agreement which could give rise to a claim of lien, special assessment, or other charge.
- f. There are no actions or proceedings pending or threatened against or involving the City Property or the City as related to the Property.
- g. To City's knowledge, no hazardous or toxic substances or wastes have been discharged, released, generated, treated, stored, disposed of or placed upon the Property in violation of applicable environmental laws, and there have been no violations of any federal, state or local law, ordinance, rule or regulation, including without limitation those relating to generation, transportation, storage, treatment, use, disposal and removal of hazardous and toxic substances and wastes and other environmental requirements. City has no knowledge of the disposal, storage, or placing upon the City Property of any hazardous and/or toxic substances and/or waste in violation of the foregoing described laws. City has not received any notices, regulatory orders or claims of any violation of any environmental laws from any governmental agency having jurisdiction thereof or any third party.
- h. To City's knowledge, there are no underground storage tanks presently on the City Property, and there have been no underground storage tanks at the City Property.
- i. City has received no notices of violation of any law, rule, regulation or ordinance issued in connection with the City Property by any agency or department having

jurisdiction thereof, and City hereby agrees to provide DTE with copies of any such notices received after the date of this Agreement.

These representations are made following commercially reasonable inquiry of those persons that would have knowledge of such information. If prior to the Closing DTE discovers that any of City's representations and warranties are incorrect in any material respect in DTE's reasonable discretion, then DTE, notwithstanding the expiration of the Inspection Period, at its option, shall have the right to not purchase the City Property with no liability on its part, in addition to all other remedies permitted by law. At the Closing, City shall execute an affidavit in form and substance acceptable to DTE, which shall make the foregoing representations and warranties effective as of the Closing and provide that such shall survive the Closing.

24. **Parties' Cooperation.** During the term of this Agreement, City agrees to cooperate in DTE's investigation of the City Property, and prior to Closing, City agrees to act in good faith towards DTE.

General Provisions

25. **Restrictions on Sale, Assignment.** DTE shall not sell, transfer, assign or convey any of its rights under this Agreement without the prior written consent of City. City shall have the right, without the consent of DTE, to assign all or any portion of City's rights under this Agreement to the Dexter Downtown Development Authority prior to the Closing, and the assignee shall be fully substituted for City except that the City shall remain liable for any payments due and owing under this Agreement. City and/or the Dexter Downtown Development Authority shall not sell, transfer, assign or convey any of its rights under this Agreement to any other person or entity without the prior written consent of DTE, provided furthermore that if DTE agrees to any such assignment, the remaining payments provided in Section 4 shall be immediately due and owing to DTE.
26. **Decision on Property Purchases and Closing.** Pursuant to Sections 14 and 22, at the conclusion of the Inspection Period, City shall inform DTE in writing as to its decision on the purchase of the Property, and at the conclusion of the Inspection Period, DTE shall inform City in writing as to its decision on the purchase of the City Property. If both Parties decide to proceed with their respective purchases, the transactions shall then proceed accordingly; however, if either Party decides not to proceed with its respective purchase, then the other Party may not purchase the property subject to this Agreement, the Agreement shall terminate, and the Parties shall not have any further obligation to each other (except as may otherwise be stated in this Agreement). Unless the Parties agree to another date, (or unless previously terminated by either Party), the closing of this transaction (Closing) shall take place on a date that is thirty (30) days after the Substation

has been completely De-commissioned. The Closing shall take place at the offices of the Title Company, or such other location as shall be mutually acceptable to the Parties.

27. Closing Documents. At the time and place of Closing, the Parties shall deliver the following documents:

- a. Covenant Deeds conveying title to the Property and/or the City Property in the condition required by, and at the purchase prices established by, this Agreement.
- b. Any easements required by DTE and granted by the City (or assignee) for DTE's equipment that remains located on the Property (if any).
- c. A Recertification by both Parties of their respective warranties and representations, subject to any changes, if any, by reason of matters disclosed by the Commitment, the Survey or the Environmental Reports.
- d. Affidavits or other documents reasonably requested by the Title Company for issuance of owner's title policies.
- e. Such other documents, as may be reasonably required to consummate this transaction.

28. Adjustments and Prorations. Upon Closing:

- a. Taxes and Assessments. All taxes and benefit charges affecting the Property for which bills have been issued prior to the date of Closing shall be paid by DTE. Current Taxes (defined below) shall be prorated, adjusted and, in the case of DTE credited, as of the date of Closing in accordance with the due date-paid in advance method of the municipality or taxing unit in which the Property is located based on a thirty (30) day month. DTE shall be responsible for payment of future installments of special assessments, existing as of the Closing. Special assessments for public improvements to be made after the Closing shall be paid by City. Current Taxes shall mean the winter and summer tax bills issued for the Property within twelve (12) months immediately preceding the date of Closing. Because the City Property is not taxed, no proration is required for it.
- b. Utilities. Water and Sanitary sewer utility bills if applicable, shall be prorated in the same manner as Current Taxes but based on date of Closing, unless final readings as of the Closing are obtained and paid by DTE, in which case there shall be no proration.
- c. Transfer Taxes. DTE shall pay any applicable state and local transfer taxes on the sale of the Property at Closing, and City shall pay any applicable state and local transfer taxes on the sale of the City Property at Closing.

- d. Title Insurance Premium. DTE shall pay the title insurance premium for the title insurance insuring City, and City shall pay the title insurance premium for the title insurance insuring DTE.
29. **Possession.** Possession of the respective properties shall be delivered upon Closing.
 30. **DTE's Default.** In the event DTE defaults in the performance of the terms and conditions of the Agreement, City may terminate the Agreement, or may specifically enforce the terms of this Agreement, in addition to all other remedies permitted by law.
 31. **City's Default.** In the event City defaults in the performance of the terms and conditions of the Agreement, DTE may terminate the Agreement, or may specifically enforce the terms of this Agreement, in addition to all other remedies permitted by law.
 32. **Brokerage.** DTE and City represent to each other that neither is represented by a real estate broker. The parties indemnify and hold each other harmless, respectively, from any claims for a brokerage commission to the extent that such claims conflict with the indemnifying Party's representation.
 33. **Future DTE Facilities on Dan Hoey Road.** If DTE purchases the City Property, it will likely need to upgrade its transmission facilities on Dan Hoey Road between Baker and Dexter Ann Arbor Roads. DTE contemplates that this would require taller poles, generally along the same alignment on the same side of the street as the existing poles, with multiple sets of wiring. At this time, it is anticipated that such poles would be located within the existing Dan Hoey Road right of way, and that such poles would need to be accessible by truck and clear of obstructions, including vegetation and trees.
 34. **Temporary Use of City Property.** The parties shall work in good faith to allow the City, after Closing, to continue the "community garden" on the City Property until such time as DTE begins activity to use the City Property for DTE's purposes; provided that DTE is adequately protected from any adverse consequences from such use.
 35. **Additional Terms.** This Agreement shall be construed under the laws of Michigan. This Agreement may be signed in counterparts, which taken together shall constitute one original document.
 36. **Board Approval.** This Agreement is contingent on the approval of DTE's Board of Directors.
 37. **Entire Agreement.** This Agreement, including all exhibits attached hereto and documents to be delivered pursuant hereto, shall constitute the entire agreement and understanding of the Parties, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties, or covenants not contained herein.

38. **Amendment.** This Agreement may be amended only by a written instrument subsequently executed by both of the Parties hereto.

39. **Headings.** Headings of Sections are for convenience of reference only, and shall not be construed as part of this Agreement.

Dated: _____, 2017

City of Dexter

By: _____

Its:

By: _____

Its: Secretary

Dated: _____, 2017

DTE Electric Company

By: _____

Its:

By: _____

Its:

Dated: _____, 2017

Exhibit A

Exhibit B

Exhibit C



OFFICE OF COMMUNITY DEVELOPMENT

8140 Main Street • Dexter, Michigan 48130-1092 • (734) 426-8303 • Fax (734) 426-5614

STAFF REPORT

To: Downtown Development Authority
Courtney Nicholls, City Manager

From: Michelle Aniol, Community Development Manager

Date: July 19, 2017

Hudson Mills Master Plan

Staff attended the July 5, 2017 and July 19, 2017 public input meetings regarding the Hudson Mill Golf Course. There were more 100 people in attendance at each meeting. HCMA Deputy Director, David Kirbach told the crowd that there has been no decision to close the golf course. HCMA Planning Manager, Nina Kelly gave brief presentation about the golf course and its history. She also provided a comparison of revenue/expenses of Hudson Mill Golf Course with the other HCMA courses. According to Ms. Kelly, on average, the expenses for Hudson Mills Golf Course have exceeded the revenue it brings in, to the tune of approximately \$70,000/year, over the last 3-5 years.

Following her presentation the audience was asked for input on 3 questions:

- How is the Hudson Mill Golf Course unique or special?
- What complimentary activities might take place at the golf course, if it were to be kept open?
- What are some lower cost options for increasing revenue or reducing expenses at the golf course?

Food Truck and Indoor Seating at 3238 Broad Street

Staff received a request from A. R. Brouwer regarding the possibility of a Food Truck business renting space at 3238 Broad Street. The proposal calls for the food truck to park on property adjacent to 3238 Broad Street, which is owned by Matt Schuster, but use the space at 3238 Broad Street for its indoor eating, which is owned by AR Brouwer (see attached aerial photo map). Currently, our ordinance does not permit food trucks or indoor eating establishments without kitchen service. However, the Planning Commission could consider the proposed use pursuant to Section 3.07, Uses Not Otherwise Included within a District.

As a reminder, Section 3.07 is a two-step process that allows the Planning Commission to determine the compatibility of a use and then identify the conditions by which the use may be permitted. The process allows the Commission to consider specific characteristics of the use by comparing those characteristics with those of uses permitted in the district. Such characteristics include, but are not limited to traffic generation, types of service(s) offered, types of goods produced, methods of operation, and building characteristics. If the Commission determines the proposed use is compatible, then it would determine if the use should be permitted as a principal use, as a special land use or as a permitted accessory use. The Commission is also authorized to establish additional standards and conditions under which the use may be permitted in the district.

Staff received input from City Council and then followed up with AR Brouwer. Based on the discussion with City Council, and in preparation for a Section 3.07 review with the Planning Commission, staff asked for a written request, to be executed by both property owners and which provided an explanation as to why the proposed uses are compatible in the CBD, and if the uses should be permitted or require special land use approval. Staff outlined the fees involved to process the request and asked that the written narrative include the following basic information:

- Hours of operation?
- How will trash be addressed?
- What interior improvements would be made to 3238 Broad St?

- How deliveries to 8060 & 8066 Main Street would be handled?
- When the food truck isn't open, would it remain on-site?
- Would the food truck be a seasonal use?
- Number of employees?
- Who will clean up the indoor seating area?
- What does the food truck look like?
- What are the dimensions of food truck?

Staff contacted Mr. Schuster, who verified that he had been contacted about the food truck and was receptive to the idea, but he said he was waiting for some of the same information staff requested above. His primary concern focused on the potential impact on the loading and unloading area behind his building since the area is actively and regularly used by 3bird.

Staff received an email from AR Brouwer indicating the "potential business owner" (i.e. food truck business) "was not interested in managing an ordinance change". In the email, AR Brouwer encouraged the city to be proactive in considering "up and coming uses/businesses", rather than "requiring a business owner to navigate a process that can be challenging when they don't know how to do it".

Even though neither the food truck business nor AR Brouwer has any interest in moving forward, the Planning Commission could revisit food truck use on private property during its update of the Master Plan.

Meeting with Doors and Drawers

Staff is scheduled to meet with Rose Manitz, of Doors and Drawers on Tuesday, July 25th, to discuss the steps and process for applying for a tax exemption certificate.

Economic Development Strategy and Master Plan Update

Staff met with CWA and HWA/Bonner to review the scope of work and scheduled for the Master Plan Update and Economic Development Strategy. The tentative date selected for the joint kick-off meeting with the Planning Commission and City Council is Tuesday, September 5th, at 5:30 pm (before the Planning Commission meeting). We recognize this is the day after Labor Day, so as a backup, we could schedule the joint kick-off before the City Council meeting, on Monday, September 11th.

Update: 8180 Main Street (f/k/a Mill Creek Outdoor Adventure Center)

Staff received written correspondence (attached) from Nate Pound on Monday, July 17th, withdrawing the Mill Creek project. Staff forwarded the letter to the City Engineer, Katie Lee at Washtenaw County Soil Erosion and Luke Golden at MDEQ, to determine what steps must take place stabilize the bank and close out those permits. Staff is also working with the City Attorney to determine what the applicant needs to do to close out the zoning compliance permit.

Update: NULL Taphouse Expansion

Staff spoke with Tony Grant, at Northern United Brewing Company this past week. According to Mr. Grant, "the company is reevaluating the NULL Taphouse Expansion plans".

Update: 3045 Broad Street Redevelopment

Written responses to post-interview questions were received on July 12th. A meeting of the 3045 Broad Street Redevelopment Committee has been scheduled for Wed, August 2nd, at 3:00 pm. The purpose of the meeting is to review and discuss the responses, and determine if a second interview is needed, or if a recommendation to the DDA can be made.

Update: Rainbow Child Care

Rainbow Child Care submitted revised plans on Monday, July 10th. The case will be considered by the Planning Commission at its August 7th meeting.

Update: Text Amendment to the Zoning Ordinance

The Planning Commission is scheduled to conduct a public hearing on August 7th, to consider amendments to the Zoning Ordinance. You may recall the Planning Commission conducted a public hearing on May 1st to consider amendments to the Zoning Ordinance, but postponed action to allow extra time to review the amendments. At the June 5th meeting, staff asked the Planning Commission to postpone consideration of the proposed text amendments, in order to allow staff and CWA to address a few clean-up issues. Staff and CWA have completed this work. The following is a summary of the text amendments from the May 1, 2017 meeting, along with the additional changes staff and CWA completed (additional changes are **bolded**):

1. Article I, Enacting Clause – Changes include minor clean up and formatting. **No changes.**
2. Article VI, Non-Conformities – Changes include moving the definitions to Article II, modification of the intent of the Article and other minor corrections and clarifications request by the Planning Commission at its June 6, 2016 worksession. *Staff noted the definitions needed to be added back because an amendment to Article II, Definitions had not been completed.*
 - **Section 4.02 Definitions have been added, along with Figure 4.02 Permissible and Non-Permissible Additions to an Existing Non-Conforming Structure. Article has also been renumbered, accordingly.**
3. Article VIII, Special Land Uses – The following modifications are proposed:
 - Application (form) requirements have been removed.
 - Notification process will reference a Section 22.08 Notices.
 - Planning Commission and City Council review and approval process has been update to streamline and further explain the approval process
 - Conditions of approval have been updated to outline City Council's authority/discretion in determining conditions of approval. Further, the intent of any conditions imposed it defined.
 - Validity of Permit heading has been changed to Effectiveness. All provisions related to special land use permits effectiveness have been reorganized into this section and updated accordingly.
 - A new section has been added to accommodate all provisions related to an amendment, expansion, or change in use to an approved special land use.
 - **Section 8.02:**
 - **Sub-section A, change 30 days to 45 days**
 - **Sub-section D.1, add "approved with conditions"**
 - **Add sub-section E, Zoning Compliance requirement**
 - **Section 8.03:**
 - **Re-lettered/numbered**
 - **Sub-section A.7, added "Safety and" between "Public" and "Welfare"**
 - **Sub-section B, clarified additional findings and removed redundancy**
4. Article XIX, PUD Planning and Development Regulations for Planned Unit Development Districts – Modifications are proposed only to the sections related to application and processing procedures, PUD conditions, phasing and commencement of construction, modification to approved plans and violations. In addition, a couple of minor "section swaps" have been proposed to aid in the flow of the proposed process section. This keeps the design standards together, and the application/process information together with the proposed chapter.
 - **Minor Formatting and Re-lettering/numbering**

- **Section 19.05 Common Areas and Facilities has been eliminated. Requirements for Development Agreement and Master Deed are addressed in Sections 19.05, sub-section H.3 and sub-section K.1, respectively.**
- **Section 19.06:**
 - **Sub-section A, Effects deleted and replaced with standards and procedure for optional Pre-Application Meeting**
 - **Sub-section B, Concept Review Meeting deleted and replaced with Conceptual Review description**
 - **Sub-sections B.1.a-p and B.2 deleted and replaced with Sub-section B.1 Conceptual Review Procedure and Sub-section B.2.a-e, Information Required for Conceptual Review**
 - **Sub-section E, provision added for Zoning Administrator to extend PUD application submittal for six months.**
 - **Sub-section H.3 replaced with regulations and standards for a development agreement**
 - **Sub-section K.1 replaced with regulations and standards for submittal of Condominium Documents in accordance with State Law.**
 - **Flow chart updated and redesigned**
- 5. **Article XXI, Site Plan Review – This article has been reorganized for ease of use and includes the following modifications:**
 - **Revision of Intent.**
 - **Outlining buildings, structures, and uses that require site plan review (eliminating items that do not require site plan review).**
 - **Data required for preliminary and final site plan review has been formatted into a table.**
 - **Site plan review criteria specific to underground storage tanks and secondary containment, etc. (9 provisions in all) have been eliminated. These items generally will not apply and are covered under new provision J.**
 - **Section 21.02, sentence following sub-section 1.D regarding administrative review and approval, removed and replaced with Section 21.03 Administrative Review.**
 - **Article XXI re-lettered/numbered, accordingly.**
 - **Section 21.04 Pre-application meeting revised to clarify the process and procedures for meeting with Zoning Administrator and/or Site Plan Review Committee, and other applicable departments prior to submittal of an application for site plan review.**
 - **Section 21.05, Preliminary Site Plan Review:**
 - **Sub-section C revised to clarify who, in addition to the Zoning Administrator shall review preliminary site plans. This sub-section all requires revisions to preliminary plans to be bubbled and revised plans be accompanied by written narrative summarizing such revisions.**
 - **Sub-section E Council approval of preliminary site plan tightened up.**
 - **Sub-section F and G are deleted**
 - **Sub-section H becomes F, and sub-section I becomes G.**
 - **Section 21.06, Final Site Plan Review**
 - **Sub-section C revised to clarify who, in addition to the Zoning Administrator shall review preliminary site plans. This sub-section does not requires revisions to preliminary plans to be bubbled and revised plans be accompanied by written narrative summarizing such revisions, but should.**

- **Sub-section E, minor revision regarding notification requirements and responsibilities.**
 - **Section 21.07 Administrative Review moved and renumbered as 21.03.**
 - **Section 21.09, sub-section A 1-10 replaced with specific 21 specific site plan review criteria.**
 - **Section 21.11 added specific standards for considering and processing an amendment to an approved site plan.**
 - **Section 21.12 added a statement that deviations from site plan during construction, except as permitted in Section 21.11, is a violation of the ordinance.**
 - **Flow chart added**
6. Article XXII, Administration and Enforcement – The following modifications are proposed:
- Purpose has been added.
 - Zoning Compliance standards have been reorganized and updated.
 - A section noting public notice procedures has been added.
 - The performance guarantee section has been moved to this section (previously provided in Site Plan Review Article).
 - New Section provide to Development Agreements
 - Other minor corrections have been identified.
 - **Section 22.04**
 - **Sub-section C to correctly assign responsibility for issuing certificates of occupancy**
 - **Sub-section D to add City Attorney and other applicable agencies regarding inspections.**
 - **Section 22.04, Zoning Compliance Permit**
 - **Sub-section A; revised and reformatted to clarify when a zoning compliance permit is required.**
 - **Sub-section B.3 to require property owner signature on applications**
 - **Section 22.06**
 - **Sub-section E replace “Zoning Administrator” with “Washtenaw County”**
 - **Sub-section G revised to correctly show the county issues temporary certificates of occupancy upon the recommendation of the zoning administrator.**
 - **Minor formatting and re-lettering/numbering.**
7. Article XXIII, Amendment Procedure – The majority of modifications are reflected in the Conditional Rezoning Section. Specifically, review procedures and expiration of approval were added, in addition to the reorganization of the section. Approval timeframe for conditional rezoning was added.
- **Reordered Section 23.03, sub-sections D and E.**
 - **Minor formatting and re-lettering/numbering.**
8. Article XXIV, Zoning Board of Appeals – Modifications to this Article are based on the Michigan Zoning Enabling Act, as well as reorganization of the chapter. Specific changes include:
- Changing “Board of Zoning Appeals” to “Zoning Board of Appeals.”
 - Adding a new section devoted to Jurisdiction to include all actions under the ZBA’s authority.
 - Removal of the notification section and reference to new notification section is Section 22.08.

- **Section 24.04** moved the second sentence in the first paragraph to the end of the paragraph.
- **Section 24.08** added the correct section reference.

The amendments have been forwarded to the City Attorney for review.

Miscellaneous Updates

- **Aubree's Pizzeria:** Aubree's has submitted a letter requesting an amendment to its outdoor seating area special land use approval. The request calls for the outdoor seating area to be directly adjacent to the building, instead of being setback 7 feet from the building, as was originally approved. The reason for the request, according to restaurant manager, Will Stark is one involving safety. According to Mr. Stark, his staff and customers have been run over or nearly run over by folks on bicycles and skateboards, causing a safety issue. An amendment to an approved special land use requires a public hearing with the Planning Commission and approval of City Council. Staff anticipates this case will be on the August 7th Planning Commission agenda.
- **Façade Repairs:** The contractor is finishing work on the façade at the Edward Jones office, located at 8070 Main St, which was permitted and started back in 2014, but not completed. The business would like to add an awning over the office entrance door. The awning is a new improvement and requires review by the Site Plan Review Committee. A copy of the propose awning is enclosed with this report.
- **Enforcement Activities:** Staff sent out enforcement letters to the following properties:
 - 7676 Grand Street – Public nuisance; overgrown lawn
 - 3523 Lexington – Public nuisance; overgrown lawn and property maintenance
 - 7850 Forest - Public nuisance; overgrown lawn
 - 7564 Third – Temporary Structure without a permit
 - 8114 Main Street – Non-compliance with outdoor seating area special land use approval
 - Undeveloped lots in Westridge – phone call to Trowbridge construction supervisor regarding overgrown lawn and weeds.