

RIVENOAK LAW GROUP PC

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April 23, 2021

Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway
Lansing, MI 48917

Re.: Filing of Memorandum of Understanding between the City of Ann Arbor and Detroit Electric Company, MPSC Case No: U-20713 and MPSC Case No. U-20851

Dear Ms. Felice:

Attached for electronic filing in the above referenced matters is the Memorandum of Understanding between the City of Ann Arbor and Detroit Electric Company. This is being filed on behalf of the City of Ann Arbor, contemporaneously in accordance with the Settlement Agreement filed on April 14, 2021 and approved by the City of Ann Arbor on April 19 (See paragraph 9.1.3.2). Also attached is the Proof of Service.

Sincerely,

Rivenoak Law Group, P.C.



Valerie J.M. Brader

Enclosure

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into as of the 20th day of April, 2021 (“Effective Date”), between DTE Electric Company (“DTE”), a Michigan corporation, whose principal address is One Energy Plaza, Detroit, Michigan, 48226 and the City of Ann Arbor, a Michigan municipal corporation whose principal address is 301 E. Huron St., Ann Arbor, MI 48014 (“the City”). Each of DTE and Ann Arbor may be referred to herein individually as a “Party” or collectively as the “Parties”.

R E C I T A L S

WHEREAS, the City owns property located in the City of Ann Arbor and in Pittsfield Township, Michigan, located at 4250 Platt Rd., Ann Arbor, Mi 48108, as more particularly described on the attached Exhibit A (the “Property”);

WHEREAS, the Parties are in the process of negotiating a possible transaction where DTE would develop and construct approximately 24 MW solar photovoltaic energy project on the Property which would be included in DTE Electric’s Voluntary Green Pricing program (“Project”) as more specifically described in the attached Exhibit B and in consummation of which DTE and the City would enter into definitive agreements providing for the development and construction of the Project as provided herein (“Possible Transaction”).

THEREFORE, in consideration of the foregoing recitals, the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Scope of MOU; Finalization of the Possible Transaction.** The purpose of this MOU, which is referenced in the Settlement Agreement entered into by the Parties on April 19, 2021 and filed in Michigan Public Service Commission dockets U-20713 and U-20851 (the “Settlement Agreement”), is to describe the basis on which the Possible Transaction may be evaluated and the definitive agreements implementing the Possible Transaction (“Definitive Agreements”) may be negotiated, prepared and executed by the Parties. The Parties agree that the execution of the Definitive Agreements, as further provided in the attached Exhibit B, will be subject to conditions precedent, including the following, as may be supplemented or amended by agreement of the Parties: (i) negotiation of mutually satisfactory terms and conditions to be included in the Definitive Agreements; (ii) approval of the Definitive Agreements by DTE senior management, and/or relevant personnel and City persons or bodies with authority to bind the City; (iii) DTE obtains all necessary regulatory approvals for the Possible Transaction; and (iii) the City obtains all necessary approvals required for the City to enter into the Definitive Agreements. Notwithstanding anything herein to the contrary, i) no Party shall be under any obligation to execute any Definitive Agreement, and ii) the terms and conditions of any Definitive Agreement must be approved by each Party in its sole discretion.
2. **Duration of MOU; Termination.** Unless otherwise terminated by the Parties in accordance with the following sentence, this MOU shall be effective upon execution by both Parties and shall remain in effect until the earlier of November 30, 2022 or the execution of any final Definitive Agreements as provided herein for each of the Projects. Either Party may terminate this MOU at any time within its sole reasonable discretion as of such date by providing written notice to the other Party at its primary place of business set forth above and shall not have any liability to the other Party for any such termination

provided that upon any such termination DTE shall provide the City with the results of the interconnection study as provided further in Exhibit B. The MOU will automatically terminate upon the execution of any final Definitive Agreements as provided herein for the Project.

3. **Costs.** Each Party shall bear its own costs and expenses of negotiating and finalizing the Possible Transaction.
4. **Not a Binding Agreement.** This MOU does not obligate either Party to engage in any transaction or transactions regarding the Possible Transaction and, except for Section 6 below with respect to confidentiality which is intended to be binding on the Parties, is not intended to, and does not, create any legally binding obligations or liabilities on the part of the Parties, or any of their respective affiliates. Except as expressly provided in any Definitive Agreement that the Parties may enter into in the future and excluding any terms included in the Settlement Agreement in MPSC Case No. U-20713 and U-20851, entered into April 19, 2021, no past or future action, course of conduct, or failure to act relating to the Possible Transaction, or relating to the negotiation of the terms of the Possible Transaction or any of the Definitive Agreements (including, without limitation, oral statements or understandings, handshakes, reliance and changes of position), shall give rise to or serve as a basis for any obligation or other liability, on the part of the Parties, or any of their respective affiliates with respect to the Possible Transaction. No Party makes any representations or warranties until the execution of (and as set forth in) the Definitive Agreements. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY MANNER RELATED TO THIS MOU, IRRESPECTIVE OF THE CAUSE OR NEGLIGENCE OF EITHER PARTY HERETO.
5. **Relationship of the Parties.** The Parties shall not be deemed partners or joint venturers by virtue of this MOU, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement. Rather, the Parties are independent actors and no Party has any power to bind another Party for any purpose.
6. **Confidentiality.** The parties will make reasonable efforts to notify each other of any public announcement concerning this MOU, or the Possible Transaction, in advance of making such an announcement. The Parties acknowledge the legal requirement that this MOU and any Definitive Agreements presented for approval will be made public as part of the approval process required by Michigan law (including but not limited to the Open Meetings Act), and thus will be discussed in open session of the City Council of Ann Arbor and made available to the public prior to approval by the City of Ann Arbor.

The City acknowledges that any information received by the City as a result of participation in DTE's RFP process or similar competitive bidding process related to the Project is trade secret, commercial or financial information voluntarily provided to Ann Arbor for use in developing governmental policy (see MCL 15.243(f)). Such information shall be treated by Ann Arbor as confidential.

In the event Ann Arbor receives a Freedom of Information Act ("FOIA") request for information related to the Project, it agrees to give DTE notice within 3 days of receipt of any such request, in order to allow DTE the opportunity to notify the City of any legal

prohibition against the requested disclosure and take actions necessary to protect information DTE believes to be confidential and not subject to such disclosure. DTE shall respond to Ann Arbor within 5 days regarding whether it believes any of the information requested to be confidential and Ann Arbor will not disclose the requested material during the 5-day period.

7. **General Provisions.**

(a) **Authorization.** The execution of this MOU has been duly authorized by the appropriate body or official of both Parties, both Parties have complied with all requirements of law in entering into this MOU, and both Parties and their undersigned representatives have full power and authority to execute and make this MOU.

(b) **Interpretation.** All provisions of this MOU shall be interpreted to harmonize with the Settlement Agreement if reasonably possible. In the event such interpretation is not reasonably possible and there is a conflict between the language of the Settlement Agreement and this MOU, the language of the Settlement Agreement shall control.

(c) THIS MOU DOES NOT CONTAIN ALL MATTERS UPON WHICH AGREEMENT MUST BE REACHED IN ORDER FOR THE PROJECT TO BE COMPLETED. THIS MOU (a) IS MERELY INTENDED TO EXPRESS THE DESIRE OF THE PARTIES TO NEGOTIATE A TRANSACTION THAT MAY BE FINALIZED IN A WRITTEN AGREEMENT AT A FUTURE TIME; AND (b) DOES NOT CREATE AND IS NOT INTENDED TO CREATE A BINDING AND ENFORCEABLE CONTRACT BETWEEN THE PARTIES WITH RESPECT TO THE POSSIBLE TRANSACTION. A BINDING COMMITMENT WITH RESPECT TO THE PROJECT CAN ONLY RESULT FROM THE EXECUTION AND DELIVERY OF A DEFINITIVE AGREEMENTS FOR SUCH PROJECT. THE PARTIES AGREE THAT NO ACTIONS ON THE PART OF EITHER PARTY SHALL BE DEEMED TO RENDER THIS MOU A BINDING OBLIGATION WITH RESPECT TO THE POSSIBLE TRANSACTION.

(c) **Counterparts.** This MOU may be executed in any number of counterparts, and each counterpart shall be regarded for all purposes as an original, and such counterparts shall constitute, but one and the same instrument, it being understood that both Parties need not sign the same counterpart. The signature page of any counterpart, and facsimiles or electronically transmitted and copies, may be appended to any other counterpart and when so appended shall constitute an original. In the event that any signature is delivered by facsimile or electronic transmission or by facsimile or electronic signature, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) the MOU with the same force and effect as if such facsimile signature page were an original thereof.

(d) This MOU shall be governed by the laws of the State of Michigan without application of its choice of law rules. Any disputes regarding this MOU shall be heard exclusively in the state courts located in Washtenaw County, Michigan or the federal Eastern District of Michigan located in Detroit, Michigan and the Parties consent to the jurisdiction of such courts.

(e) This MOU constitutes an integrated agreement and as such sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes and replaces all prior agreements, arrangements, understandings and


representations relating to the subject matter hereof, whether oral, written, or electronic.

(f) This MOU may be amended or modified only by a written instrument executed by all the Parties. No Party shall assign any of its rights or obligations under this MOU to any third party without the prior written consent of the other Parties.


(g) Nothing in this MOU is intended or shall be construed to confer any rights or remedies on any person or other entity, other than the Parties, their respective permitted successors and assigns.

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Understanding to be signed by their duly authorized representatives on the date(s) shown below.

DTE Electric Company

Signature 
Printed Name Charles L. Conlen
Title Vice President
Date 4/21/2021

City of Ann Arbor

Signature  04/22/2021
Name: TOM CRAWFORD, CITY ADMINISTRATOR
Title: City Administrator
Date _____

Approved as to form and content:

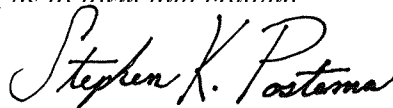
Signature  04/22/2021
Name: STEPHEN POSTEMA, CITY ATTORNEY
Title: City Attorney
Date _____

EXHIBIT A

Property

Legal Description

**NE 1/4 SEC 15 T3S R6E EXC LAND S OF R R RT-OF-WAY ALSO EXC NLY 33FT
AND ELY 33 FT FOR RDS ALSO PRT OF NW 1/4 SEC 15 T3S R6E BEG N 1/4 COR
SEC 15 TH S 89 DEG 55 MIN W 809.66 FT TH S 1 DEG 14 MIN E 152.85 FT TH S 87
DEG 37 MIN W 29.59 FT TH S 1 DEG 43 MIN E 1643.88 FT TH N 88 DEG 12 MIN 30
SEC E 807.89 FT TH NLY TO POB EXC NLY 33 FT FOR RD**

Exhibit B
Possible Transaction Terms

- 1) Interconnection
 - a) Interconnection study
 - i) The City has paid \$70,000 to DTE towards the Engineering Study and the Distribution Study phases of the Interconnection Study
 - ii) Additional study costs attributable to the project will be paid for by The City as an up-front payment and not included in project costs to be recovered by DTE.
- 2) If DTE has not issued a request for proposals for the Project within 120 days following the issuance of the order of the MPSC approving the settlement in docket numbers U-20713 and U-20851, DTE will turn over the study to Ann Arbor.
- 3) The City and DTE will use commercially reasonable efforts to work together to design and issue the RFP and obtain any environmental studies needed to support an RFP issuance within 120 days following the issuance of the order of the MPSC approving the settlement in docket numbers U-20713 and U-20851.
 - i) Ann Arbor will be responsible for obtaining all environmental studies needed to support an RFP, solely funded by the City outside of Project costs, and will use its contractor, Tetra Tech.
 - ii) DTE may specify which studies are required to support the RFP.
 - iii) DTE will receive full rights to the deliverables for use during the life of the Project.
- 4) The City and DTE will use commercially reasonable efforts to negotiate and finalize at least two agreements (collectively the “Definitive Agreements”) following the RFP to support a start of construction date that will maximize tax credits.:
 - i) Development and Construction Agreement (“D&C Agreement”)
 - ii) MIGreenPower Agreement
- 5) Development and Construction Agreement
 - a) The D&C Agreement, in addition to standard and customer contract provisions, shall include the following key clauses:
 - i) DTE will draft the RFP for construction of the Project and The City will have the opportunity to review the RFP. The intent of the parties is that the RFP meet all DTE’s requirements (including DTE’s standard procurement criteria) as well as requirements the City of Ann Arbor would normally require any contractor for the City to meet. The Parties agree that the Project will not go forward if Ann Arbor rejects the Contractor at the conclusion of the DTE RFP process, which it must do within a reasonable time period following notice of selection.
 - ii) The City will identify a single point of contact who will serve as the City’s liaison, with the opportunity to review the RFP process and represent the City’s views during contract negotiations and selection; provided that the City shall not retain copies of any such documents including any responses to the RFP. The identification of a single point of contact shall not prohibit the City from involving more than one employee in aspects of the Project.
 - iii) Upon approval from DTE, the City may select specific Project activities with a specific scope of work that are solely funded by the City outside of Project costs with DTE receiving full rights to the deliverables for use during the life of the Project (e.g., environmental studies the City conducts that will include any DTE

requirements), provided any such actions by the City shall not compromise project/construction quality, schedule, etc.

iv) Environmental:

- (1) The City will be responsible for any costs of the Project that may arise due to the existence of hazardous substances at the property prior to construction on which the Project is to be performed, and waives and releases DTE from any violation or alleged violation of environmental laws with respect to the existence of hazardous substances at the property on which the Project will be completed, subject to (2) below.
- (2) DTE will be responsible for any and all additional costs or liabilities that arise from any action or negligence by DTE or its contractors or agents that causes or exacerbates an existing condition related to any hazardous substances at the Property such that additional response activities, etc. are required. Any such additional costs shall not be deemed to be recoverable from MiGP subscribers. DTE waives and releases the City of Ann Arbor from any violation or alleged violation of environmental laws with respect to the exacerbation of any existing environmental condition at the Property as described in this paragraph.
- (3) City shall indemnify, defend, and hold DTE harmless from and against, all loss, cost, liability, obligations, damage and expense that DTE may suffer or incur as a result of or in connection in any way with any violation of any environmental law by the City.
- (4) DTE shall indemnify, defend, and hold harmless the City of Ann Arbor from and against all loss, cost, liability, obligations, damage and expense that the City may suffer or incur as a result of or in connection in any way with the violation of environmental law by DTE, its contractors, or agents.

v) Tax Incentives.

- (1) The Definitive Agreement and all work and obligations thereunder shall be undertaken consistent with the intent of maximizing tax incentives, and the Parties agree to work together to achieve that goal.

vi) Real Estate Rights

- (1) The City shall be responsible for obtaining the necessary land rights and site plan approvals necessary for the Project (including the substation site) and such form agreements shall be included as exhibit to the Agreement.
- (2) DTE will need to obtain a title commitment and survey for the Project site (as defined in the D&C Agreement) and, prior to commencement of construction of the Project, a pro forma owner's policy of title insurance issued by the title company in accordance with the title commitment with the coverage and endorsements required by DTE and without exceptions, including any ALTA form Schedule B Section exceptions, other than permitted encumbrances; Any curative actions required for the final title commitment and pro forma title policy, may include but not be limited to the following agreements either from The City or with their assistance from the responsible entity. DTE and the City shall use commercially reasonable efforts to negotiate the necessary curative form of agreement, each of which shall be included as an exhibit to the D&C Agreement.

STATE OF MICHIGAN
PUBLIC SERVICE COMMISSION

In the matter of the application of DTE ELECTRIC)	
COMPANY for authority to increase its rates for the)	Case No. U-20713
generation and distribution of electricity and for other)	Case No. U-20851
relief;)	
)	ALJ Martin Snider
and)	
)	
In the matter, on the Commission's own motion, regarding)	
the regulatory reviews, revisions, determinations, and/or)	
approvals necessary for DTE ELECTRIC COMPANY)	
to fully comply with Public Act 295 of 2008.)	
)	

PROOF OF SERVICE

On April 23, 2021, an electronic copy of **vj g'Memorandum of Understanding between DTE and the City of Ann Arbor** filed on behalf'qh'vj g'Ekw'qh'Cp'p'Ctdqt was served on the following:

Name/Party	E-mail Address
Administrative Law Judge Mark Snider, ALJ	sniderM@michigan.gov
Counsel for Association of Business Advocating, Tariff Equity (ABATE) Bryan A. Brandenburg Michael J. Pattwell Stephen A. Campbell	bbrandenburg@clarkhill.com mpattwell@clarkhill.com scampbell@clarkhill.com
Consultants for ABATE James R. Dauphinais Amanda Alderson	jdauphinais@consultbai.com aalderson@consultbai.com
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Consultant for Energy Michigan, Inc. Alex Zakem	AJZ-Consulting@comcast.net
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Counsel for Environmental Law & Policy Center; Vote Solar; The Ecology Center; Solar Energy Industries Association Margrethe Kearney	MPSCDocket@elpc.org mkearney@elpc.org rlazer@elpc.org
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The statements above are true to the best of my knowledge, information and belief.

April 23, 2021

RIVENOAK LAW GROUP P.C.
Counsel for City of Ann Arbor

By: 

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