

## MAINTENANCE AGREEMENT

This agreement (this “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the City of Detroit, a Michigan municipal corporation, acting by and through its Department of Public Works (the “City”), and \_\_\_\_\_, a \_\_\_\_\_ whose address is \_\_\_\_\_.

NOW THEREFORE, for valuable consideration, including the covenants and undertaking herein contained, it is mutually agreed as follows:

1. **Purpose of Agreement:** Utility provider proposes to install equipment adjacent to a certain parcel described in Exhibit A attached hereto (the “Parcel”). City owns certain property adjacent to the Parcel. The utility provider has agreed to improve and maintain a portion of City-owned property in the location (the “Maintenance Area”) and manner detailed in the plan attached as Exhibit B for the Term, as defined herein.
2. **Financial Responsibility:** It is understood that during the Term, all physical improvements and repairs to the Maintenance Area, as set forth herein, shall be at the sole cost and expense of the utility provider, subject to any express limitations set forth in this Agreement.
3. **Indemnification and Hold Harmless:** Utility provider hereby agrees to indemnify, defend and hold the City harmless from all loss, costs, expense, actions, claims of action, damages and liability (including attorneys’ fees and costs) for injury to or death of any person or persons and for the damage to or destruction of property caused by the utility provider’s actions or omissions in the course of or resulting from the maintenance activities contemplated by this Agreement.
4. **Insurance:** Utility provider covenants and agrees, at its sole cost and expense, to maintain or cause to be maintained for the mutual benefit of it and the City comprehensive general liability insurance on an occurrence form against claims for bodily injuries (including, but not limited to, death) or property damage (including, but not limited to, destruction) at any time occurring in the course of or resulting from work carried out by the utility provider upon, in or about the Maintenance Area, at combined single limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. Such insurance coverage shall name the City of Detroit as an additional insured and shall provide that the same may not be cancelled or materially modified without prior written notice by certified mail to the City to the attention of City of Detroit, Finance Department, Coleman A. Young Municipal Center, Detroit, MI 48226; Attention: Risk Management Division. Said coverage may

be evidenced by a certificate of insurance issued upon so-called “blanket” coverage, or by either a certificate or the original of an insurance policy effecting such coverage. The insurance shall be primary and any such insurance or self-insurance maintained by the City shall be secondary and non-contributory and excess. Utility provider shall be responsible for payment of all deductibles relating to such insurance. The provisions requiring the utility provider to carry or cause to be carried such insurance shall not be construed as waiving or restricting the liability of utility provider under this Agreement.

5. **Term:** The term of this Agreement (the “Term”) shall commence on the date of this Agreement and continue for five (5) years thereafter unless terminated or extended pursuant to the following:
  - a. The City may terminate this Agreement prior to the end of the Term in the event the City has designed and has committed to implement a uniform scheme for the improvement of an area of City-owned property that encompasses the Maintenance Area and other adjacent City-owned property. The aforesaid may include widening of streets or sidewalks and relocation of water or sewer facilities.
  - b. Utility provider may terminate this Agreement prior to the end of the Term if installed assets are removed from the City owned property.
  - c. In the event a party elects to terminate this Agreement pursuant to Sections 5(a) or 5(b) above, such party shall deliver to the other party written notice of such election at least thirty (30) days prior to the date on which termination shall be effective.
  - d. Following the five-year expiration (but not the early termination) of this Agreement, this Agreement shall automatically continue on month to month basis subject to final termination by either party upon delivery of at least thirty (30) days’ written notice to the other party.
6. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
7. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties. Any prior agreements, negotiations or representations not expressly set forth in this Agreement are of no force or effect. Any amendment to or modification of this Agreement shall be of no force or effect unless it is in writing and signed by an authorized signatory for each of the parties.
8. **Successors and Assigns:** This Agreement is for the exclusive benefit of the parties stated herein and shall not be deemed to give any legal or equitable right, remedy or claim whatsoever to any other person.

9. **Improvement Changes:** Any changes to the Maintenance Area, except as contemplated by this Agreement, are subject to the prior approval of the City. The utility provider shall not install or construct in the Maintenance Area any structure, fixture, furniture, or equipment (including but not limited to signs, lighting, fixtures, shades, canopies, or awnings) as may obstruct or in any way encroach upon the Maintenance Area except as set forth in Exhibit B or otherwise properly permitted by the City.
  
10. **Rights of City:** The parties understand that this Agreement in no way limits the property rights of the City with regard to the Maintenance Area.
  
11. **Certain Maintenance Obligations of Owner:** During the Term, the utility provider shall be responsible for the improvement and maintenance activities set forth on Exhibit B.

IN WITNESS WHEREOF, the City and the utility provider, by and through their authorized officers and representatives, have executed this Agreement as follows:

\_\_\_\_\_  
 a \_\_\_\_\_

BY: \_\_\_\_\_  
 (Signature)

PRINT NAME: \_\_\_\_\_

ITS: \_\_\_\_\_  
 (Duly Authorized Representative)

CITY OF DETROIT, through its Department of Public Works - City Engineering Division

BY: \_\_\_\_\_  
 (Signature)

PRINT NAME: \_\_\_\_\_

ITS: \_\_\_\_\_

**Exhibit A**

PARCEL DESCRIPTION

[TO BE COMPLETED AND REPLACED]

**Exhibit B**

Maintenance Area and Plan for Improvements; Any Related Maintenance Responsibilities.

[TO BE COMPLETED AND REPLACED AS APPLICABLE TO EACH PROJECT]