

PRIVATE STREET LIGHTING SYSTEM AGREEMENT

This Agreement is made and entered into on MARCH 2, 2016 between the City of Rochester Hills (the "City"), a Michigan municipal corporation, of 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309, and Somerset Pines Condominium Association (the "Association"), a Michigan non-profit corporation, of 35440 Forton Court, Clinton Township, Michigan 48035.

WHEREAS, the Association desires to install, operate, maintain, repair and pay the cost of a private street lighting system ("lighting system") to be installed within the public road right of way ("ROW") in the Somerset Pines Condominiums (the "Condominiums") which are located in the City of Rochester Hills, County of Oakland and the State of Michigan, as recorded in Liber 46652, Pgs. 596 - 666, Oakland County Records (See Exhibit A), utilizing street light standards of a type and design that DTE Energy Co. does not install, operate or maintain; and

WHEREAS, the City is willing to authorize the installation, operation, maintenance and repair by the Association of the lighting system within the ROW in the Condominiums, subject to, and expressly conditioned upon, the Association's conformance to the terms, provisions and conditions contained in this Agreement; and

WHEREAS, the Association represents it is authorized to enter into this Agreement and to fulfill all of its obligations and responsibilities hereunder.

WHEREAS, this Agreement is intended to create obligations and responsibilities which shall touch upon, and run with, all units in the Condominiums and which shall bind any future and successor condominium associations and unit owners.

THEREFORE, based on and in consideration of the foregoing recitals and representations the City and the Association agree:

1. Lighting System Authorized. The Association may, at its sole cost, install, operate, maintain and repair a lighting system within the ROW in the Condominiums, provided there is and continues to be, total compliance and conformity with the terms, provisions and conditions set forth in this Agreement.
2. City Approval and Permits Required. Prior to installation, the Association shall submit and obtain approval from the City of the proposed design, installation and location plans and specifications for the lighting system, and the Association shall also apply for and obtain from the City Engineer and Building Department any and all necessary permits for work in the ROW and for electrical work.
3. Design, Installation and Location Requirements. The design, installation and location of the lighting system shall meet or exceed the following minimum standards and requirements:
 - a. No electrical cable or wires shall be placed within the ROW or any water main, sanitary sewer, storm sewer, pedestrian-bicycle pathway or other public utility easement, except in the following limited manner: Electrical cable and wires necessary to provide electric current to light standards located in the ROW may be placed within the ROW or public easement provided the electrical cable or wire is placed in a straight line which extends from the light and is perpendicular to the ROW or easement.
 - b. Any electrical cable or wire placed within the ROW or public easement shall be buried at a depth of twenty-four (24) to thirty (30) inches below existing grade.
 - c. Any electrical cable or wire in the ROW or public easement shall be placed in rigid metal conduit or Schedule 80 polyvinyl-chloride plastic or HDPE conduit, in accordance with the City's Electrical Code, being Chapter 5-04 of the Code of Ordinances, as amended. Minimum conduit size shall be three-quarters (3/4) inch diameter.
 - d. Installation and all electrical work shall conform to, and be performed in accordance with, the City's Electric Code.
 - e. Light standard foundations shall not project more than six (6) inches above grade.
 - f. Light standards and foundations shall be located at least five (5) feet from any public or private utilities.
4. Installation According to Approved Plans. After obtaining City approval of the proposed design, installation and location plans and specifications for the lighting system, and after obtaining all

5. necessary permits for work in the ROW and electrical work, the Association may, at its sole cost, install, or cause to be installed, the lighting system in accordance with the approved plans and specifications. No revisions or modifications shall be made without prior approval from the City.
6. Inspection of Installation. Prior to installation of the lighting system, the Association shall notify the City, and the City shall have the right to inspect the installation. The Association shall be responsible for paying all fees or charges for such inspections by the City.
7. Miss Dig. The Association shall be responsible for all costs, associated with administering the Miss Dig program relative to the lighting system including, but not limited to, any fees or charges of the City for marking or identification services performed by the City, and the City may require the Association to deposit in escrow an amount determined necessary by the City to cover the City's anticipated cost of performing such services.
8. Association's Responsibilities Upon Installation. During and after installation, the Association shall be solely and fully responsible for the operation, maintenance and repair of the lighting system, and all costs associated therewith. The Association shall maintain the lighting system in a safe, fully-functional, operation condition, and the Association shall perform, or cause to be performed, any necessary maintenance, repair or replacement in a timely and lawful manner, regardless of the cause of the need for such maintenance, repair or replacement.
9. Failure to Maintain, Repair or Replace. If the Association neglects or fails to satisfactorily maintain, repair or replace the lighting system, and the City determines such neglect or failure creates, becomes or results in a nuisance or a potentially unsafe or dangerous condition, the City may notify the Association, in writing, of the deficiency. If, after being provided such written notice, the Association does not satisfactorily perform the necessary maintenance, repair or replacement within a reasonable time, the City may undertake the necessary corrective action and charge the cost thereof, plus a fifteen percent (20%) city administrative fee, to the Association. Upon the Association's failure to pay any such charge within thirty (30) days, the City shall have the right to assess and collect the charge from the Association's members by adding it to the City tax rolls, assessing a proportionate share against each member's unit (s), and collecting the same in accordance with the General Property Tax Act.
10. Emergency Maintenance or Repair by City. In the event of an emergency requiring immediate corrective action, the City may dispense with notice, undertake the necessary corrective action and charge and assess the cost thereof to the Association and Association members in the manner set forth in paragraph 8 above.
11. City Not Responsible for Maintenance, Repair or Replacement. Notwithstanding the foregoing paragraphs 8 and 9, it is expressly understood and agreed the City shall not be responsible for the proper operation, maintenance, repair or replacement of the lighting system, and any corrective action undertaken by the City pursuant to paragraphs 8 and 9, above, shall not be deemed or construed as a waiver of this provision nor an assumption of responsibility for operation, maintenance, repair or replacement by the City. Furthermore, repeated neglect or failure by the Association to satisfactorily maintain or repair the lighting system shall constitute cause for termination of this agreement by the City pursuant to paragraph 13, below.
12. Indemnification and Hold Harmless. To the fullest extent permitted by law, the Association agrees to defend, indemnify and hold harmless the City and its elected and appointed officials, employees and agents against any claims, demands, suits or losses, including any costs and attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City and its elected and appointed officials, employees or agents, by reason of personal injury, death or property damage arising from, or connected or associated with, the installation, operation, maintenance, repair or replacement of the lighting system.
13. Insurance. In addition, the Association shall procure and maintain until installation of the lighting system is complete, general liability insurance coverage (occurrence basis only) with limits of liability not less than \$3,000,000 per occurrence and/or aggregate combined single limit, for personal injury, bodily injury and property damage. Following installation, the Association shall maintain such insurance, with limits of liability not less than \$1,000,000 for the life of the lighting system. Additionally, the Association shall procure and maintain in effect for the life of the lighting system casualty and property loss insurance in an amount sufficient to cover the cost of repairing or replacing the lighting system in the event of damage thereto. The City, its officials, employees, agents and volunteers shall be named "additional insured" on such insurance policies, which insurance shall be primary to the additional insured, and not contributing with any other insurance or similar protection available to the additional insured, whether said other available coverage be primary, contributing or excess. Such insurance policies shall include an endorsement requiring sixty (60) days advance written notice to the City of cancellation, non-renewal, reduction and/or material change in coverage.
14. Term of Agreement. This Agreement shall become effective upon its execution and shall thereafter remain in effect for the operational life of the lighting system, provided there is complete and continuing conformance to, and compliance with, all terms, provisions and conditions of this agreement by the Association. Upon the Association's voluntary cessation of operation of the lighting system, or upon the Association's neglect or failure, regardless of reason or cause, to conform to and comply with all terms, provisions and conditions of the Agreement, the City may require removal of the lighting system from the ROW, and restoration of the ROW to its previous condition, in termination of this Agreement. In that event, if the Association neglects or fails to

remove the lighting system or restore the ROW to its pervious condition within a reasonable time, the City may undertake the removal and restoration, and may charge and collect the cost thereof in the manner set forth in paragraph 8, above.

- 15. Subrogation. In addition to any other remedy or recourse set forth in this Agreement or otherwise provided or authorized by law relative to the Association's neglect or failure to perform or satisfy any obligation or responsibility of the Association under this Agreement, the City, by way of subrogation, shall have the right to exercise and enforce any right or authority of the Association under the recorded Master Deed and any amendments thereto to assess, and collect from, the individual unit owners the City's cost of performing, under the provisions of paragraphs 8-10 and 13, above, any necessary corrective restoration of the ROW.
- 16. Applicable Law. This Agreement shall be construed under Michigan law, and if any part, term or provision of this Agreement is adjudged to be illegal or in conflict with any state or federal law, the validity of the remaining parts, terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as though the Agreement did not contain the particular part, term or provision held invalid, unless otherwise ordered by the Court.
- 17. Successors. This Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors, assigns and representative.
- 18. Voidability of Agreement If System Not Timely Installed. In the event installation of the lighting system is not commenced within 180 days from the date of this Agreement, the City shall have the right to void this Agreement by notifying the Association in writing.
- 19. Recording. This Agreement shall be recorded at the Oakland County Registrar of Deeds.
- 20. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreement or understanding that may have existed between them.

SOMERSET PINES CONDOMINIUM ASSOCIATION

By: [Signature]

Print or type name: MICHAEL A. CHIRCO

Title: PRESIDENT

STATE OF MICHIGAN)
)
COUNTY OF MACOMB)

This agreement was acknowledged before me on MARCH 2, 2016, by MICHAEL A. CHIRCO, who is the PRESIDENT of the Somerset Pines Condominium Association, a Michigan non-profit corporation, on behalf of the Association.

BARBARA A. KLONKE
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Jun 23, 2019
ACTING IN COUNTY OF MACOMB

[Signature: Barbara A. Klonke]
_____, notary public

My commission expires: _____

CITY OF ROCHESTER HILLS

By: _____
Bryan K. Barnett, Mayor

By: _____
Tina Barton, City Clerk

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

This agreement was acknowledged before me on _____, 2016 by Bryan K. Barnett, Mayor,
and Tina Barton, Clerk, of the City of Rochester Hills, on behalf of the City.

_____, notary public
_____, County, Michigan
My commission expires:

Drafted By:
Barbara J. Smith
City of Rochester Hills
DPS/Engineering Department
Transportation Division

When Recorded Return to:
Clerks Department
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309