

A REGULAR MEETING

Of The

TRAVERSE CITY LIGHT AND POWER BOARD

Will Be Held On

TUESDAY, September 28, 2010

At

5:15 p.m.

In The

COMMISSION CHAMBERS
(2nd floor, Governmental Center)
400 Boardman Avenue

Traverse City Light and Power will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon notice to Traverse City Light and Power. Individuals with disabilities requiring auxiliary aids or services should contact the Light and Power Department by writing or calling the following.

Stephanie Tvardek,
Administrative Assistant
1131 Hastings Street
Traverse City, MI 49686
(231) 932-4543

Traverse City Light and Power
1131 Hastings Street
Traverse City, MI 49686
(231) 922-4940

Posting Date: 09-24-10
4:00 p.m.

PLEDGE OF ALLEGIANCE

1. ROLL CALL

2. CONSENT CALENDAR

The purpose of the consent calendar is to expedite business by grouping non-controversial items together to be dealt with by one Board motion without discussion. Any member of the Board, staff or the public may ask that any item on the consent calendar be removed therefrom and placed elsewhere on the agenda for full discussion. Such requests will be automatically respected. If an item is not removed from the consent calendar, the action noted in parentheses on the agenda is approved by a single Board action adopting the consent calendar.

- A. Consideration of approving minutes of the Regular Meeting of September 14, 2010.
- B. Consideration of approving minutes of the Closed Session of September 14, 2010.

3. OLD BUSINESS

- A. Consideration of commencing a lawsuit against Elmwood Township officials to require them to place the amounts due to Light and Power by owners of certain Brewery Creek Condominium units on the winter 2010 tax roll and bills. (Doren)

4. NEW BUSINESS

- A. Consideration of Engineering Services with GRP Engineering, Inc. for 138/69 kV East Side Substation. (Dine)
- B. Consideration of a Natural Gas Contract Professional Services Agreement. (Rice)

5. REPORTS AND COMMUNICATIONS

- A. From Legal Counsel:

None as of September 24, 2010

- B. From Staff:

(1) Verbal update re: Energy Optimization Program. (Cooper/Rice)
(2) Reminder of Light and Power Open House scheduled for Saturday, October 2, 2010. (Wheaton)

- C. From Board:

None as of September 24, 2010

6. PUBLIC COMMENT

/st

**TRAVERSE CITY
LIGHT AND POWER BOARD**

Minutes of Regular Meeting
Held at 5:15 p.m., Commission Chambers, Governmental Center
Tuesday, September 14, 2010

BOARD MEMBERS -

Present: Linda Johnson, John Welch, John Snodgrass, Ralph Soffredine, Jim Carruthers

Absent: Mike Coco, John Taylor

EX OFFICIO MEMBER -

Present: R. Ben Bifoss

OTHERS: Ed Rice, W. Peter Doren, Tim Arends, Stephanie Tvardek, Jim Cooper, Rod Solak, Glen Dine, Jessica Wheaton

In the absence of Chairman Mike Coco, Vice Chair Linda Johnson presided over the meeting.

The meeting was called to order at 5:15 p.m. by Vice Chair Johnson.

2. CONSENT CALENDAR

Moved by Soffredine, seconded by Welch, that the following items, as recommended on the Consent Calendar portion of the agenda, be approved:

- A. Consideration of approving minutes of the Regular Meeting of August 10, 2010.
- B. Consideration of approving minutes of the Special Meeting of September 8, 2010.
- C. Consideration of approving minutes of the Closed Session of September 8, 2010.

CARRIED unanimously. (Coco, Taylor absent)

3. OLD BUSINESS

- A. Moved by Welch, seconded by Soffredine, to consult with General Counsel in Closed Session to discuss trial and settlement strategy in the pending litigation of Brown Bark I, L.P., v Traverse City Light & Power Department, Western District Case No. 1:09-CV-572.

Roll Call:

Yes: Johnson, Welch, Snodgrass, Soffredine, Carruthers

No: None

CARRIED.

The Board went into Closed Session at 5:18 p.m.

The Board returned to Open Session at 5:45 p.m.

4. NEW BUSINESS

- A. Moved by Welch, seconded by Soffredine, that the Board authorize the Chairman and Secretary to execute a Pole Attachment License Agreement with Great Lakes Comnet, Inc. for the placement and installation of Great Lakes Comnet fiber network facilities on Traverse City Light and Power poles, per the requirements, charges and fees of the agreement; subject to approval as to substance by the Executive Director, and approval as to form by General Counsel.

CARRIED unanimously.

- B. Moved by Welch, seconded by Soffredine, that the Board authorize the Executive Director to enter into a Construction Agreement with Doug's Underground in the amount of \$34,373.00 for the directional bore of 3700 feet of 15 kV cable; subject to approval as to substance by the Executive Director and approval as to form by General Counsel.

CARRIED unanimously.

5. REPORTS AND COMMUNICATIONS

B. From Staff:

- (1) Ed Rice spoke re: recent MPPA meetings.
- (2) Jessica Wheaton spoke re: the upcoming Light and Power Open House scheduled for Saturday, October 2, 2010.
- (3) Jim Cooper spoke re: the LED Roadway Lighting Grant Project.
- (4) Tim Arends and Ed Rice spoke re: 2009-10 Year-End Budget summary.

6. PUBLIC COMMENT

- Tom Karas, 8801 Section Line Road, Michigan Energy Alternatives Project, Non-Ratepayer
- Eric VanHusen, Maple Street

The meeting adjourned at 6:17 p.m.

/st

Edward E. Rice, Secretary
LIGHT AND POWER BOARD

RONALD W. SONDEE
JOHN P. RACINE, JR.
W. PETER DOREN
ALAN J. COUTURE
JOHN A. MACNEAL
MAURICE A. BORDEN
MICHAEL B. NEWMAN

RAY J. MACNEIL
OF COUNSEL

310 WEST FRONT STREET
SUITE 300
TRAVERSE CITY, MICHIGAN 49684
TEL (231) 947-0400
FAX (231) 947-0748
www.sondeeracine.com

GAYLORD OFFICE
440 W. MAIN STREET, SUITE A
GAYLORD, MICHIGAN 49735
TEL (989) 732-1152
FAX (989) 732-4843

September 20, 2010

Via Email & First Class Mail

*Privileged & Confidential
Attorney-Client Communication*

Michael Coco, Chairman
325 Wellington Street
Traverse City, MI 49686

John Snodgrass
210 E. Ninth Street
Traverse City, MI 49684

John F. Welch
534 Washington Street
Traverse City, MI 49686

Ben Bifoss, City Manager
400 Boardman Avenue
Traverse City, MI 49684

Ralph Soffredine, City Commissioner
220 Huron Street
Traverse City, MI 49686

Jim Carruthers, City Commissioner
218 West Eleventh Street
Traverse City, MI 49684

John Taylor
617 Washington Street
Traverse City, MI 49686

Linda Johnson, Vice Chairperson
6621 Mission Ridge
Traverse City, MI 49686

Dear Board Members:

Re: Brown Bark I v TCL&P

Attached is my September 16, 2010 letter to Elmwood Township officials requesting placement of certain delinquencies on the tax roll and bills for Brewery Creek Condominium units. We asked the Township to confirm in writing that they would be placing these on the tax bills. They have failed to give us such confirmation.

Under the Revenue Bond Act and the recent decision of Federal District Court Judge Paul L. Maloney, Elmwood Township officials have a clear legal duty to place these amounts on the tax bills. When a public official fails to perform a clear legal duty, a lawsuit for a writ of mandamus may be started and the public official ordered to show cause why he is not performing this clear duty.

Board Members
September 20, 2010
Page 2

In order to make sure we are placed on the winter tax bills, we need to start the lawsuit as soon as possible to start the court process for obtaining the writ of mandamus. I ask that you consider the following motion:

MOVED BY _____, SECONDED BY _____
TO AUTHORIZE GENERAL COUNSEL TO COMMENCE A
LAWSUIT SEEKING A WRIT OF MANDAMUS DIRECTING
ELMWOOD TOWNSHIP OFFICIALS TO PLACE BREWERY CREEK
CONDOMINIUM UNIT DELINQUENCIES ON THE 2010 TAX ROLL
AND BILLS.

Sincerely,

SONDEE, RACINE & DOREN, PLC



W. Peter Doren

WPD:tls
Enclosure
c w/encls:
Ed Rice
Tim Arends

RONALD W. SONDEE
JOHN P. RACINE JR.
W. PETER DOREN
ALAN J. COUTURE
JOHN A. MACNEAL
MAURICE A. BORDEN
MICHAEL B. NEWMAN

RAY J. MACNEIL
OF COUNSEL

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GAYLORD, MICHIGAN 49735
TEL (989) 732-1152
FAX (989) 732-4843

September 16, 2010

Via Email and First Class Mail

Jack Kelly, Supervisor
Elmwood Township
10090 E. Lincoln Road
Traverse City, MI 49684
supervisor@elmwoodtownship.net

Debbie Street, Treasurer
Elmwood Township
10090 E. Lincoln Road
Traverse City, MI 49684
treasurer@elmwoodtownship.net

Christopher Krellwitz, Assessor
Elmwood Township
10090 E. Lincoln Road
Traverse City, MI 49684
assessor@elmwoodtownship.net

Chelly Rousch, Treasurer
Leelanau County
8527 E. Government Center Dr., Ste. 104
Suttons Bay, MI 49682
croush@co.leelanau.mi.us

Dear Ladies and Gentlemen:

Attached is another copy of the August 13, 2009 letter from Karla Myers-Beman, Deputy Treasurer of the City of Traverse City, previously sent to you. It certified the delinquency of certain Traverse City Light and Power charges for services to Brewery Creek Condominiums.

The purpose of my letter is to notify you that the United States District Court for the Western District of Michigan, Judge Paul L. Maloney, has rendered a decision on September 7, 2010, ruling that delinquent government utility charges are to be treated the same as delinquent property taxes for purposes of lien priority and collection. They are an automatic lien and are a "preferred or first claim against the Brewery Creek property," *Brown Bark I, L.P. v Traverse City Light and Power Department*, p. 32 (Case No. 1:09-cv-572). A full copy of that Opinion and Order is being sent to you electronically with this letter.

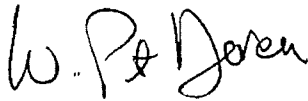
Since in 2009 you elected not to place these delinquencies on the tax roll, the owners of Units 6 and 7 have paid and additional interest has accrued on the unpaid amounts of other Unit owners. Attached is an updated Delinquency Listing showing the amounts due as of December 1, 2010. Please place these delinquent amounts on the winter 2010 tax roll and tax bills for Brewery Creek Condominium Units 1, 2, 3, 4, 5, 8, 9, 10, 11, 12 and 13.

September 16, 2010
Page 2

Under the statutes of the State of Michigan, you have a clear legal duty to place these charges on the tax roll. We ask that by September 23, 2010, you confirm in writing that you will do so. Our only alternative is to file a circuit court mandamus action requiring that this be done.

Sincerely,

SONDEE, RACINE & DOREN, PLC



W. Peter Doren

WPD:tls
Enclosures
c w/encls:

James Young, Township Attorney
Edward Rice, Executive Director, ICL&P
Tim Arends, Controller, TCL&P
William Twietmeyer, City Treasurer

AUG 17 2009

The City of Traverse City

Office of the Treasurer

GOVERNMENTAL CENTER
400 Boardman Avenue
Traverse City, MI 49684
(231) 922-4430
(231) 922-4485 Fax



August 13, 2009

Christopher Krellwitz
Elmwood Township Assessor
10090 E. Lincoln Road
Traverse City, MI 49684

Debbie Street
Elmwood Township Treasurer
10090 E. Lincoln Road
Traverse City, MI 49684

Chelly Rousch
Leelanau County Treasurer
8527 E Government Center Drive, Ste. 104
Suttons Bay, MI 49682

Dear Ladies and Gentleman:

Re: Street lighting service delinquent utility charge

Municipal electric utility services consisting of street lighting were provided by the Traverse City Light and Power Department (TCL&P) to the Brewery Creek Condominiums in Elmwood Township. Charges for those services are now more than six months delinquent.

Pursuant to MCL 141.121(3), charges for services by a public improvement, including "utility systems for supplying light," that are delinquent for 6 months or more shall be collected in the same manner as provided for the collection of taxes assessed upon the roll and the enforcement of the lien for the taxes

This letter serves as a request to place those delinquent charges on the next tax roll and as proper certification of notice to the local taxing authority of the delinquency. Amounts to be placed on the tax roll for each condominium unit are attached.

For your information, the Street Lighting Agreement between TCL&P and the Brewery Creek Condominium Association is enclosed. A pertinent part of it is as follows:

"If Brewery Creek defaults in its payments to TCL&P, and TCL&P accelerates all indebtedness, in addition to all other remedies available at law or otherwise TCL&P may place all or a part of the indebtedness on the tax roles to be assessed against each unit of the condominium project according to the percentages as described in the Brewery Creek

Center Condominium under the Master Deed recorded at Liber 758 pages 333 through 389 as amended by the First Amendment to Master Deed recorded at Liber 770 pages 245 through 249, Leelanau County Register of Deeds. The lien shall be collected in the same manner as all other property taxes.”

Each condominium unit owner at the time of that Agreement signed a Consent to Imposition of Tax Lien which were recorded with the Register of Deeds. Copies are attached for your file.

If you have any questions or concerns, please do not hesitate to contact me at 231-922-4437.

Sincerely,



Karla A. Myers-Beman
Deputy Treasurer

Enclosures

- Delinquency listing
- Street Lighting Agreement
- Consents

c: Ed Rice, Executive Director
W. Peter Doren, General Counsel
William Twietmeyer, City Treasurer
Tim Arends, Controller

**Traverse City Light & Power
Delinquency Listing
Brewery Creek Development**


Unit #	Tax ID Number	Owner Information	Delinquent Balance
1	45-004-250-001-00	Brown Bark I, LP	\$ 51,821.72
2	45-004-250-002-00	Brown Bark I, LP	\$ 24,183.12
3	45-004-250-003-00	Brown Bark I, LP	\$ 17,274.78
4	45-004-250-004-00	Kevin & Chenina Gauthier	\$ 5,416.99
5	45-004-250-005-00	Brown Bark I, LP	\$ 5,397.38
8	45-004-250-008-00	Brown Bark I, LP	\$ 8,637.39
9	45-004-250-009-00	Brown Bark I, LP	\$ 12,954.77
10	45-004-250-010-00	Brown Bark I, LP	\$ 26,989.55
11	45-004-250-011-00	Brown Bark I, LP	\$ 17,274.78
12	45-004-250-012-00	Brown Bark I, LP	\$ 38,864.32
13	45-004-250-013-00	Brown Bark I, LP	\$ 36,706.94
Total			<u>\$ 245,521.76</u>

I certify that the above charges have been delinquent for more than six months.

Dated: Sept. 16, 2010 William E. Twietmeyer
 William Twietmeyer, Treasurer
 City of Traverse City



TRAVERSE CITY
LIGHT & POWER

To: Light & Power Board
From: Glen Dine 
Date: September 24, 2010
Subject: 138/69kV East Side Substation-Engineering Services with GRP Engineering

Staff has been in discussion with GRP Engineering, Inc. for professional engineering design services for the East Side Substation project, which is an approved project in TCL&P's capital plan. The location of the planned substation site is depicted in the attached map and would be immediately adjacent to the ITC/METC 138kV line being tapped. This facility will allow TCL&P to connect to the regional 138kV ITC/METC transmission line.

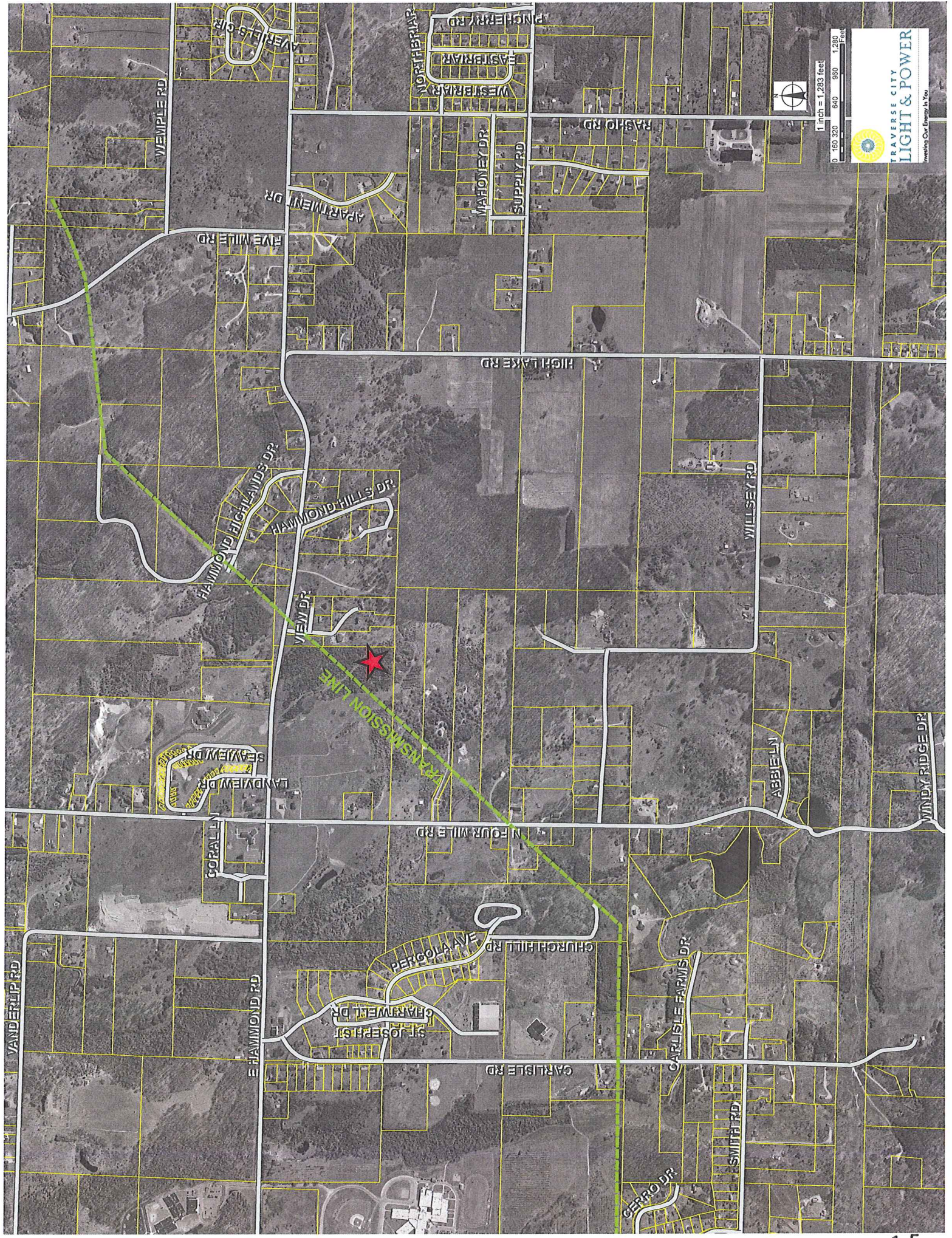
The new 138/69kV interconnection will provide essential electrical infrastructure necessary in meeting transmission reliability standards established by the North American Electric Reliability Corporation. This transmission tie will "keep the lights on" and primarily support TCL&P customers located in East Bay Township, those TCL&P customers immediately adjacent to the Township, the regional Traverse City airport, all other TCL&P customers, and overall support the local area transmission grid through the use of TCL&P's transmission system.

Design services will be in two phases, with Design Phase I focusing on site plan approval from East Bay Township. Upon approval of the site plan, Design Phase II will include finalizing design, preparation of a construction bid package and award, and assist with material procurement. Then at a later date staff would request further Board approval of engineering services for construction management and start-up services and a construction contract for the construction of the substation.

Staff recommends entering into an agreement with GRP Engineering, Inc. for professional design services in the total amount of \$158,500, consisting of Design Phase I (\$97,500) and Design Phase II (\$61,000).

If the Board concurs, the following motion is appropriate:

MOVED BY _____, SECONDED BY _____, THAT THE LIGHT AND POWER BOARD AUTHORIZE THE CHAIRMAN AND SECRETARY TO EXECUTE AN AGREEMENT FOR PROFESSIONAL SERVICES WITH GRP ENGINEERING, INC., FOR A TOTAL LUMP SUM FEE AMOUNT OF \$ 158,500 INCLUDING EXPENSES, FOR DESIGN SERVICES FOR THE TRAVERSE CITY EAST SIDE SUBSTATION PROJECT, SUBJECT TO APPROVAL AS TO SUBSTANCE BY THE EXECUTIVE DIRECTOR AND APPROVAL AS TO FORM BY COUNSEL; AND AUTHORIZE THE EXECUTIVE DIRECTOR TO EXECUTE DESIGN PHASE I – LUMP SUM WORK ORDER NO.1 AND DESIGN PHASE II – LUMP SUM WORK ORDER NO. 2; AND AUTHORIZE THE EXECUTIVE DIRECTOR TO ADMINISTER AMENDMENTS AND CHANGE ORDERS THAT ARE IN THE BEST INTERESTS OF THE LIGHT AND POWER DEPARTMENT.



1 inch = 1,283 feet



TRAVERSE CITY
LIGHT & POWER
 Investing Our Energy In You



TRAVERSE CITY
LIGHT & POWER

To: Light and Power Board
From: Ed Rice, Executive Director *ERR*
Date: September 24, 2010
Subject: Natural Gas Contract Professional Services Agreement

Attached for your consideration is a recommended contract between TCL&P and Energy Resources, LLC to provide consulting services related to negotiating favorable natural gas contracts for the utility related to the Kalkaska Combustion Turbine and any other future projects.

Carl Croskey is an expert in dealing with gas transmission and distribution companies and will provide the utility with recommendations and detailed strategies as we approach negotiating new gas contracts that are set to expire in 2012. Attached is a summary of Mr. Croskey's current and recent consulting assignments the detail his areas of expertise.

I believe it is vital to the utility that we have an expert in this area as we begin to negotiate the multi-million dollar contracts.

If the Board agrees with staff's recommendation the following motion would be appropriate:

MOVED BY _____, SECONDED BY _____,

THAT THE LIGHT AND POWER BOARD AUTHORIZE THE EXECUTIVE DIRECTOR TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH ENERGY RESOURCES, LLC IN AN AMOUNT NOT TO EXCEED \$75,000 TO ASSIST LIGHT & POWER IN NEGOTIATING NATURAL GAS CONTRACTS IN THE BEST INTEREST OF LIGHT & POWER RATEPAYERS, SUBJECT TO APPROVAL AS TO FORM BY COUNSEL.

Energy Resources LLC
Summary of recent consulting assignments

Client	Work Performed
Barlow Projects Inc.	Evaluate inverted fluidized bed boiler technology and secure project development funding from three major energy companies. Explore feasibility of land fill gas acquisition.
Portland Natural Gas Transmission System (PNGTS)	Evaluate competitive alternatives to PNGTS expansion for incremental gas deliveries to the Northeast United States. Prepare testimony and exhibits for comparative hearing under FERC.
Compressed Air Energy System (CAES)	Evaluate feasibility of installing major CAES system in the midwest US. Review operational matters and advance project to several major integrated midwest utilities.
Commonwealth Edison	Assist and support in Delivery Services Rate Case. Support and justify funding of rebuilding/upgrading electric transmission and distribution grid (\$3-5 billion expenditures).
TransCanada Pipelines	Evaluate the economic feasibility of locating Liquefied Natural Gas (LNG) regasification facilities in the Northeast United States.
Omnichem	Assisted in mitigating energy costs (both gas and electric).
Sidley Austin	Personal matters related to prior position at ComEd.
Madison Dearborn	Evaluate the feasibility (from primarily an operational and regulatory perspective) of acquiring an integrated electric company for a private equity company.

Energy Resources LLC

Summary of recent consulting assignments

Client	Work Performed
NiSource	Work with the CEO, senior officers and BOD to develop a strategic plan for the NiSource enterprise. Identify expansion opportunities and related economic opportunities. Assist with the investor related presentations.
Promet Energy	Work with CEO and staff to prepare a business plan for this minority start-up energy firm. Provide advise on customers and gas supplies to secure. Review and advise on business opportunities, margins and budgets.
NextEnergy	Member on Technical Advisory Panel reporting to the CEO. Evaluation of Alternative Energy Technology (AET) solutions.
Millennium Pipeline Company	Lead developer for the Millennium Partnership. Partnership was funded by NiSource, DTE Energy and Keyspan Energy. Secured anchor customers, managed \$800 million capital budget, recruited senior management team and assisted in getting FERC approval to construct this major new pipeline in New York.
Energy Fundamentals Group	Evaluate from an operational, regulatory and environmental perspective, the feasibility of acquiring several gas and electric local distribution Companies (LDC's). Assist and advise on securing financing for a several land fill gas operations.
Sempra Energy	Evaluate from primarily an operational, marketing, commercial, regulatory and environmental perspective, the feasibility of acquiring a major interstate pipeline company.
The AES Corporation	Evaluate the from primarily an operational, regulatory, staffing/ management, environmental and integration perspective, the feasibility of acquiring an integrated gas & electric company.

Energy Resources LLC
Summary of recent consulting assignments

Client	Work Performed
MHT Housing Inc.	Assisted in mitigating energy costs (both gas and electric). Set up customer on gas transportation services for Michigan Consolidated Gas Company, Consumers Power and Michigan Gas Utilities. Review current energy usage and advised on alternative energy systems and renewable alternatives.
Atlas Gas & Oil	Assisted in the mitigation of gas transportation costs. Determined utilization of alternative utility assets to preform more economical pipeline routes. Worked with the local utility to fine a compromise that benefited all stakeholders in the rate case process.

CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement") is entered into as of the 28th day of September 2010, by and between Traverse City Power & Light Department, (the "Company"), and Energy Resources, LLC (the "Consultant"). The Company and the Consultant are sometimes referred to herein each as a "Party" and, collectively, as the "Parties."

RECITALS

WHEREAS, the Company desires to engage the Consultant to provide, from time to time and in accordance with the terms and conditions set forth in this Agreement, consulting services to the Company; and

WHEREAS, the Consultant desires to provide such consulting services to the Company;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

1. Services. During the Term (as defined below), the Company may, from time to time, request that the Consultant provide various services to the Company, including research, consultation, discussion, third-party introduction and general advisement services (the "Services"). The Parties agree that the Services are intended to be primarily related to the Consultant's expertise in the energy production, distribution and transmission field, but that the Services may relate to other areas or to the business of the Company generally, as the Company and the Consultant may mutually agree. If the Consultant desires to perform the Services as requested by the Company, the Company and the Consultant will negotiate the timing and scope of such Services. The Consultant reserves the right to reject any request to perform Services or the proposed timing and scope thereof.

2. Term. This Agreement will be effective for a term (the "Term") commencing as of September 28, 2010 and ending on September 27, 2012. The Term of this Agreement will be automatically extended for an additional one-year period at September 28, 2012, and at the end of each one-year renewal period thereafter, unless either Party gives the other Party 30 days advanced written notice of its intent to terminate this Agreement effective at the end of the then-current period. The Parties agree to negotiate in good faith a revised hourly rate for Fees (as defined below) at the beginning of each renewal period, taking into consideration inflation, increases in market rates, and any increase in the value of the Services to the Company. Notwithstanding anything to the contrary contained herein, the Term is subject to termination at any time pursuant to Section 5 below.

3. Fees and Expenses.

3.1 Fees. During the Term, the Company will pay the Consultant \$350 per hour of Services rendered (the "Fees"). Within 15 days after the end of each month during which

Services were rendered, the Consultant will provide the Company an invoice setting forth the total number of hours of Services provided by the Consultant during such month, a summary of the nature of those Services, and the total amount of Fees with respect thereto. The Company will pay the Fees to the Consultant within 30 days of receipt of such invoice. Any Fees not paid by the Company within such 30-day period will accrue interest at a rate of 8 percent per annum until paid. **Total fees charged under this Agreement shall not exceed \$75,000 for the initial two year term.**

3.2 Expenses. The Company will reimburse the Consultant for the actual cost for all reasonable out-of-pocket expenses incurred by the Consultant in the performance of the Services hereunder ("Expenses"). All Expenses will be detailed on the invoice provided by the Consultant to the Company described in Section 3.1 above.

4. Relationship. The Consultant's relationship to the Company during the Consulting Period will be that of an independent contractor and not an employee or agent. During the Consulting Period, the Consultant will not represent or hold itself out, nor shall any owner, employee or other agent of the Consultant represent or hold himself or herself out, as having any relationship with the Company other than that of an independent contractor.

5. Termination. At any time during the Term, either Party may terminate this Agreement by providing written notice to the other Party. Such termination shall not be effective until received by such Party in accordance with Section 7.4 below. Upon termination of this Agreement, whether pursuant to the foregoing provision or pursuant to the delivery of a non-renewal notice described in Section 2 above, the following shall apply:

(a) The Consultant will cease performance of the Services;

(b) The Consultant will prepare an invoice to the Company for all Fees and Expenses through the date of termination; such amount will be due in full within 30 days of the Company's receipt of such invoice; and

(c) Subject to (a) and (b) above, and excluding the obligation of the Consultant set forth in Section 6 below (which shall survive the termination of this Agreement), the Company and the Consultant will have no other rights, duties, obligations or liabilities under this Agreement.

6. Confidentiality.

6.1 Confidentiality Agreement. During the Term and for a period of three years after the end of the Term, the Consultant shall keep secret and retain in strictest confidence, and shall not, without the prior written consent of the Company, furnish, make available or disclose to any third party, any Confidential Information. As used in this Agreement, "Confidential Information" means any information relating to the business or affairs of the Company, the Company's affiliates, including, but not limited to, information relating to financial statements, customer identities, potential customers, consultants, suppliers, servicing methods, equipment, program, strategies and information, databases and information systems, analyses, profit margins

or other proprietary information used by the Company or the Company's affiliates. However, Confidential Information does not mean any information which (a) was already known by the Consultant prior to being furnished with such information by the Company, (b) is in the public domain or becomes known in the industry through no wrongful act on the part of the Consultant, (c) was provided to the Consultant by a source other than the Company so long as such source was not subject to any prohibition against transmitting the information to the Consultant. The Consultant acknowledges that the Confidential Information is vital, sensitive, confidential and proprietary to the Company and the Company's affiliates.

6.2 Remedies. The Consultant acknowledges that the agreement set forth in Section 6.1 is unique and substantial, but the damages caused by a breach of such agreement may be impractical or difficult to assess in monetary terms. Accordingly, in the event of an actual or threatened violation of Section 6.1, the Consultant expressly consents to the enforcement of Section 6.1 by injunctive relief or specific performance, in addition to the other remedies available to the Company.

6.3 Return of Company Materials Upon Termination. The Consultant acknowledges that all price lists, sales manuals, catalogs, binders, customer lists and other customer information, supplier lists, financial information, and other records or documents containing Confidential Information coming into the Consultant's possession by virtue of the Consultant's consulting arrangement, and any documents created by the Consultant while under this agreement with the Company is and will remain the property of the Company and that upon termination of this Agreement, the Consultant will immediately return to the Company all such items in its possession, together with all copies thereof.

7. Miscellaneous.

7.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior understandings or agreements between the Parties, written or oral, to the extent they related in any way to the subject matter hereof.

7.2 No Assignment; Assumption. This Agreement is not be assignable by either Party without the prior written consent of the other Party. This Agreement will inure to the benefit of and be binding upon any successor or permitted assign of the Parties.

7.3 Headings. The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

7.4 Notices. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder will be deemed duly given on the day it is personally delivered, on the next business day after it is sent by recognized overnight courier, two business days after it is sent by registered or certified mail return receipt requested, or upon actual receipt if sent by e-mail or facsimile and addressed to the intended recipient as set forth below:

If to the Company: Edward E. Rice, Executive Director
Traverse City Light & Power
1131 Hastings St
Traverse City, MI 49686
Email: erice@tclp.org

If to the Consultant: Energy Resources L.L.C.
180 Country Club Drive
Grosse Point Farms, Michigan 48236
Attn: Carl. J. Croskey
Email: carlcroskey@comcast.net

Either party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

7.5 Governing Law. This Agreement will be governed by and construed in accordance with the domestic laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule.

7.6 Amendments. No amendment of any provision of this Agreement will be valid unless the same will be in writing and signed by both the Company and the Consultant.

7.7 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

7.8 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

7.9 Non-Discrimination. The parties agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. Breach of this covenant may be regarded as a material breach of this Agreement.

7.10 No Joint Venture or Partnership. This Agreement does not and is not intended to create a joint venture or partnership between the parties. The rights and obligations of the parties are entirely contained within this Agreement.

7.11 No Third-Party Beneficiaries. This Agreement confers no rights or remedies on any third-party, other than the parties to this Agreement, and their respective successors and permitted assigns.

7.12 Electronic Documents. After the Contract has been duly signed, delivered and received, by either party to the other party by means of telecopy (fax) transmission or attached to an email (or similar electronic transmission) in an unalterable image format, the Contract shall be considered as validly delivered as the physical delivery of the signed Contract in paper form. In addition, it is further understood that this Contract may be imaged and stored electronically and introduced as evidence in any proceeding as if an original business record; and neither party will object to the admissibility of such an image as evidence in any proceeding on account of having been stored electronically.

7.13 Dispute Resolution. If any party has a dispute with another regarding the meaning, operation, or enforcement of any provision of this Agreement, the disputing parties agree to meet and confer to negotiate a resolution of the dispute. They further agree as follows:

- (a) Mediation. If they are unable to resolve the dispute themselves, and before formally instituting any other dispute mechanism, they shall utilize the services of a mutually acceptable neutral mediator, who meets the qualifications of MCR 2.411, to bring them together in at least one mediation session.
- (b) Venue. All meetings, hearings and actions to resolve the dispute shall be in Grand Traverse County.
- (c) Notice. Written notice of a dispute shall be given to the other parties not later than 90 days after the occurrence giving rise to the dispute becomes known or should have become known. Negotiations and mediation shall occur within 60 days after such notice.

IN WITNESS WHEREOF, the parties hereto have executed this Consulting Agreement as of the date first above written.

WITNESSES:

TRAVERSE CITY LIGHT & POWER
DEPARTMENT

By: _____
Edward E. Rice, Executive Director

CONSULTANT:

By: _____
Carl Croskey, Member
ENERGY RESOURCES, L.L.C.

APPROVED AS TO SUBSTANCE:

Edward E. Rice, Executive Director

APPROVED AS TO FORM:

W. Peter Doren, General Counsel