

A REGULAR MEETING

Of The

TRAVERSE CITY LIGHT AND POWER BOARD

Will Be Held On

TUESDAY, April 11, 2017

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.

Jennifer J. St. Amour
Administrative Assistant
1131 Hastings Street
Traverse City, MI 49686
(231) 922-4940 ext. 201

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

Posting Date: April 7, 2017
3:00 p.m.

AGENDA

Pledge of Allegiance

1. Roll Call

Organizational Meeting. (p.4)

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 the minutes of the Regular Meeting of March 14, 2017. (Approval recommended) (p.8)
- b. Consideration of approval of the Electric Utility 2017-18 Operating Budget. (Approval recommended) (Myers-Beman) (p.12)
- c. Consideration of approval of the Fiber 2017-18 Operating Budget. (Approval recommended) (Myers-Beman) (p.20)
- d. Consideration of approving the IBM Operating Agreement. (Approval recommended) (Menhart) (p.22)
- e. Consideration of approval of 60 month Lease Agreement with Third Coast Bakery, LLC. (Approval recommended) (Arends) (p.33)
- f. Consideration of approval to amend Board Rule No.1 – Regular Meetings. (Approval recommended) (Arends) (p.40)
- g. Consideration of approval of a Pole Attachment License Agreement with Michigan Broadband Services. (Approval recommended) (Arends) (p.42)
- h. Consideration of approving the Grand Traverse Substation O&M Agreement. (Approval recommended) (Schimpke) (p.69)
- i. Consideration of tenant request to waive rent escalator. (Approval recommended) (Arends) (p.79)

Items Removed From Consent Calendar

a.

3. Unfinished Business

None.

4. New Business

- a. Consideration of a Project Authorization Request for removal and transfer of Hickory Meadows Distribution Line to Randolph Street. (Arends/Schimpke) (p.81)
- b. Consideration of approving a Purchase Order for wire relating to the Costco Line Improvement Project. (Chartrand/Schimpke) (p.84)
- c. Discussion of TCL&P Collective Bargaining negotiations strategy. (Possible closed session) (4 votes required) (Arends/Schroeder) (p.85)

5. Appointments

None.

6. Reports and Communications

- a. From Legal Counsel.

From Staff.

- 1. Presentation of LaFranier/Barlow Transmission Line Upgrade Project close-out report. (Myers-Beman/Schimpke) (p.86)
- 2. Presentation of MPPA's Report Card on TCL&P. (Myers-Beman) (p.88)
- 3. Energy efficiency staffing plan (Arends/Schroeder/Schimpke) (p.89)
- 4. Fiber To The Home project update – Next steps (Arends/Menhart) (p.90)
- 5. Presentation of options for a 1MW solar installation within TCL&P's service territory. (Arends) (p.92)

From Board.

7. Public Comment

/js



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Tim Arends, Executive Director
Date: March 27, 2017
Subject: L&P Board Organizational Meeting

As required by City Charter Section 177(f), the board meeting of April 11, 2017 will be the annual organizational meeting in which a chairperson and vice-chairperson are elected, and a secretary is appointed by the Board. The Charter language is as follows:

“An election of officers of the Board shall be held annually at the first regular meeting following the appointment of a new Board member after the end of a regular term of office. No member shall serve as chairman for more than two (2) consecutive terms.”

All Board Members, are eligible for nomination as board chairperson. All Board Members are eligible to serve as vice-chairperson. The following procedure would be appropriate for the organizational portion of the meeting.

- Tim Arends, as Secretary to the Board, shall initially preside over the meeting.
 - Call meeting to order – Pledge of Allegiance
 - Roll Call
 - Open the floor to nominations for chairperson (nominations need support), call for any further nominations for chairperson.
 - Close nominations
 - Board discussion (nominations will be voted on in order received)
 - Public comment (specific to nominations for chairperson)
 - Voice Vote – Once four votes are received by any one nominee that nominee becomes the new chairperson.
 - Secretary turns the meeting over to the new chairperson.
- The newly elected chairperson follows the same process described above in electing a vice-chairperson of the Board.
- The Chairperson should then appoint a Secretary to the Board with approval of a Board majority. This has historically been the Executive Director.
- Next, a Human Resources Committee should be formed consisting of two or three board members and one alternate. City Charter Section 177(h) allows for ad hoc subcommittees, however, there can be no standing committees. Therefore, it is appropriate to have this committee’s term expire at the end of 12 months.
- Proceed to the Consent Calendar portion of the Agenda.

The City of Traverse City

Office of the City Clerk

GOVERNMENTAL CENTER
400 Boardman Avenue
Traverse City, MI 49684
(231) 922-4480
tcclerk@traverscitymi.gov



April 4, 2017

Mr. Ross Hammersley
400 Boughey Street
Traverse City, MI 49684

Sent via Email: ross_hammersley@hotmail.com

Dear Mr. Hammersley,

Subject: Appointment – Light and Power Board

Congratulations on your appointment! As you may be aware, the City Commission appointed you to a five-year term ending April 4, 2022, on the Traverse City Light and Power Board, effective immediately.

It is great to see citizens like you who are willing to serve - it is individuals like you who make this community such a wonderful place. I am sure that I can speak accurately on behalf of the citizens of Traverse City when I express appreciation for your generosity, experience and knowledge.

I am enclosing an updated excerpt of the City's Board Book showing the current City representation on the Board. Also, at your earliest convenience, please contact Katy Garavaglia in my office at [231-922-4480](tel:231-922-4480) or kgaravaglia@traverscitymi.gov, to set up a time to take your Oath of Office for your new position.

Again, thank you for your willingness to serve in a capacity that contributes to the betterment of our community.

Sincerely,

Benjamin C. Marentette, CMC
City Clerk

Ross -
Congratulations -
and thank you
for stepping
forward!
B.C.

Enclosure

cc: Tim Arends, Executive Director, Traverse City Light and Power (via e-mail)
Karla Myers-Beman, Controller (via email)
CC Packet 4/3/2017

Traverse City Light & Power Board

	<u>Initial Apt. Date</u>	<u>Termination</u>
Jeff Palisin (City Resident Elector) 975 Pine Ridge Dr, TC, 49686 929-6666 (Res) 499-7655 (Bus) jeffpc@normicind.com	03/18/13 (Eff. 4/2/13)	04/02/18
John Taylor (City Resident Elector) 307 W 12th St, TC, 49684 922-1187 (Res) 617-532-0944 (Bus) 617-899-1769 (Cell) john.a.taylor@gmail.com	05/03/10	04/06/20
Ross Hammersley (City Resident Elector) 420 E. Front St, TC 49686 633-6003 (Cell) 946-0044 (Bus) ross.hammersley@gmail.com	04/03/17	04/04/22
Jan Geht (City Resident Elector) 715 Quail Ridge Dr, TC, 49686 202-255-1516 (Res) 941-8048 (Bus) geht@traverselaw.com	06/17/13	04/01/19
Patrick McGuire (City Resident Elector) 308 N. Elmwood Ave, TC, 49684 883-2087 (Cell) 995-7896 (Bus) paddymcguire@me.com	11/10/11	04/05/21
Commissioner Tim Werner (Ex Officio/Full Voting Authority) 400 Boardman Ave, TC, 49684 313-6903 (Res) twerner@traversecitymi.gov	11/09/15	11/13/17
Commissioner Amy Shamroe (Ex Officio/Full Voting Authority) 511 Depot View #20, TC, 49686 517-930-9999 (Res) ashamroe@traversecitymi.gov	11/09/15	11/13/17

Executive Director and Secretary (Tim Arends – Executive Director) staff

Non Commissioner Board members shall be appointed to serve terms of five (5) years from the first Monday of April. The Commission Board members shall be appointed for a two year term bi annually at the City Commission organizational meeting.

This Board consists of 7 members nominated and appointed by the City Commission. Unexpired term vacancies shall be filled by the Mayor with approval of the City Commission. Not less than one and no more than two of these members shall be City Commissioners selected by the City Commission and shall be ex-officio members with full voting authority.

Members must be resident elector of City, except that one member may be non-resident if he resides within current actual service area of the Department (current actual service area is defined as an address that could receive service from TCL&P; it is not required that the address is currently receiving service from TCL&P).

Non-Commission Board Members cannot hold any other City office nor can they be an employee of the City.

The City Manager or the City Manager's designee shall be an ex-officio member without voting authority and shall not be counted for purposes of establishing a quorum.

Purpose: "shall have exclusive jurisdiction, control and management of the Light and Power Department and all its operations and facilities, except as herein provided. Unless specifically allocated to the City Commission or to a City official, the Board shall have all the powers and duties possessed by the City to construct, acquire, expand and operate the Light and Power system, etc., etc.," (See Charter provisions).

Creation of the Light & Power Board required by City Charter.

Meets 2nd Tuesday of each month at 5:15

**TRAVERSE CITY
LIGHT AND POWER BOARD**

Minutes of Regular Meeting
Held at 5:15 p.m., Commission Chambers, Governmental Center
Tuesday, March 14, 2017

Board Members -

Present: Jan Geht, Pat McGuire, Jeff Palisin, Amy Shamroe,
Bob Spence, John Taylor, Tim Werner

Absent:

Ex Officio Member -

Present: Marty Colburn, City Manager

Others: Tim Arends, Karla Myers-Beman, Kelli Schroeder, Pete Schimpke, Scott Menhart, Tony Chartrand, Jennifer St. Amour

The meeting was called to order at 5:15 p.m. by Chairman Geht.

Item 2 on the Agenda being Consent Calendar

Moved by McGuire, seconded by Shamroe, that the following actions, as recommended on the Consent Calendar portion of the Agenda, be approved:

- a. Minutes of the Regular Meeting of February 14, 2017.
- b. Conceptual approval of 60 month Lease Agreement with Third Coast Bakery, LLC.
- c. Approving an Organizational Chart.

CARRIED unanimously.

Tim Arends requested Fiber to the Premise Next Steps memo be added to Staff Reports. Consensus of the Board to add Fiber to the Premise Next Steps memo to the next meeting Agenda.

Items Removed from the Consent Calendar

None.

Item 3 on the Agenda being Unfinished Business

- a. Consideration of an Amended Six Year Capital Improvements Plan – 2017.

The following individuals addressed the Board:

Pete Schimpke, Manager of Operations & Engineering
Tim Arends, Executive Director

Moved by Werner, seconded by Shamroe, that the Board authorizes an amendment to the Six Year Capital Plan to delay certain Capital Projects in the amount of \$1,515,000 from 2017/18 to

2018/19 and move from 2018/19 to 2017/18 the replacement of both Barlow Substation transformers in the amount of \$1,500,000.

CARRIED unanimously.

b. Consideration of Awarding Bids for BW-31 Rebuild.

1. BW-31 Distribution Rebuild Project: Construction Bids.

The following individuals addressed the Board:

Pete Schimpke, Manager of Operations & Engineering
Michael P. McGeehan, President, GRP Engineering, Inc.
Tim Arends, Executive Director

Moved by Taylor, seconded by Shamroe, that the Board authorizes the Chairman and Secretary to execute a Construction Agreement in the amount of \$1,195,166.50 with C.C. Power, LLC for the BW-31 Distribution Line Rebuild Project; subject to approval as to substance by the Executive Director and as to form by General Counsel; and further authorizes the Executive Director to approve change orders in the best interest of the utility.

CARRIED unanimously.

2. BW-31 Distribution Rebuild Project: Conductor & Material Bids

Moved by Spence, seconded by McGuire, that the Board authorizes the Executive Director to issue a purchase order to Power Line Supply in the amount of \$202,077.95 for conductor and material for the BW-31 Distribution Line Rebuild Project.

CARRIED unanimously.

3. BW-31 Distribution Rebuild Project: Wood Pole Bids.

Moved by Shamroe, seconded by McGuire, that the Board authorizes the Executive Director to issue a purchase order to Thomasson Company in the amount of \$98,586.50 for wood distribution poles for the BW-31 Distribution Line Rebuild Project.

CARRIED unanimously.

Item 4 on the Agenda being New Business

a. Consideration of Amending Board Rule No. 1-Regular Meetings.

The following individuals addressed the Board:

Tim Arends, Executive Director

Moved by Spence, seconded by Shamroe, that the Board authorizes the amendment of Board Rule #1 – Regular Meetings to read, “Regular Meetings of the Light and Power Board shall be held on the second Tuesday of every month with the fourth Tuesday of every month reserved for potential Special Meetings at 5:15 P.M. in the Commission Chambers of the Governmental Center, 400 Boardman Avenue, Traverse City”, effective immediately.

CARRIED unanimously.

Chairman Geht recognized Board Member Bob Spence for his years of service on the Light & Power Board.

Tim Arends recognized Board Member Bob Spence for his service, knowledge, and construction background.

Item 5 on the Agenda being Appointments

None.

Item 6 on the Agenda being Reports and Communications

a. From Legal Counsel.

b. From Staff.

1. Franklin Energy Proposal.

The following individuals addressed the Board:

Tim Arends, Executive Director
Jacob Hardy, Energy Advisor, Franklin Energy
Kevin Salatrik, Program Manager, Franklin Energy

Amy Shamroe left the meeting at 6:34 p.m.

2. Karla Myers-Beman presented the Electric and Fiber Fund Budgets.

The following individuals addressed the Board:

Tim Arends, Executive Director

3. Karla Myers-Beman presented the Rate Study.

The following individuals addressed the Board:

Tim Arends, Executive Director

4. December 31, 2016 Financial Statements.

The following individuals addressed the Board:

Karla Myers-Beman, Controller

c. From Board.

Chairman Geht discussed the process for the Executive Director annual review.

Marty Colburn reported that they are getting close on final cost estimates for the West Front Street Project.

Marty Colburn indicated that Traverse City made the final four in the Strongest Town Contest.

Item 7 on the Agenda being Public Comment

There being no objection, Chairman Geht declared the meeting adjourned at 7:01 p.m.

/js

Tim Arends, Secretary
LIGHT AND POWER BOARD

DRAFT

FOR THE LIGHT & POWER BOARD MEETING OF APRIL 11, 2017



TRAVERSE CITY
LIGHT & POWER

To: Light & Power Board
From: Karla Myers-Beman, Controller
Date: April 5, 2017
Subject: Electric Fund Budget

In accordance with City Charter Chapter XVIII, section 179 (o), the 2017-18 Electric Fund Operating Budget must be submitted to the City Commission by its last meeting in April.

The Electric Fund was reviewed by the Board at the last meeting, March 14, 2017 and no changes have been made since the initial presentation. The budget is attached for your reference.

Included with the adoption of the budget staff understands the Board would like to continue with the ten-year amortization, which is now the nine-year amortization based on the market value of assets option for contributions into the Municipal Employees' Retirement System ("MERS"). This selection does not directly affect the income statement, but rather the Utility's cash flow statement. Additionally, this will be brought to the Board during the budget process on an annual basis going forward.

Staff recommends that the Board approve submittal of the 2017-18 Electric Fund Budget to the City Commission for its consideration.

This item is appearing on the Consent Calendar as it is deemed by staff to be a non-controversial item. Approval of this item on the Consent Calendar means you agree with staff's recommendation.

If any member of the Board or the public wishes to discuss this matter, other than clarifying questions, it should be placed on the "Items Removed from the Consent Calendar" portion of the agenda for full discussion.

If after Board discussion you agree with staff's recommendation the following motion would be appropriate:

MOTION ON NEXT PAGE

**MOVED BY _____, SECONDED BY _____, THAT THE
LIGHT & POWER BOARD APPROVES SUBMITTAL OF THE 2017-18 ELECTRIC
FUND OPERATING BUDGET AS PRESENTED TO THE CITY COMMISSION FOR
ITS CONSIDERATION. IN ADDITION, THE BOARD DIRECTS STAFF TO
CONTRIBUTE INTO THE RETIREMENT SYSTEM BASED ON THE NINE YEAR
AMORTIZATION CALCULATED ON THE MARKET VALUE OF ASSETS OPTION
PROVIDED BY MERS.**

City of Traverse City, Michigan
TRAVERSE CITY LIGHT & POWER DEPARTMENT
 2017-18 Budgeted Revenues and Expenses Summary

	FY 14/15 Actual	FY 15/16 Actual	FY 16/17 Budget	FY 16/17 Projected	FY 17/18 Recommended
Operating Income:	\$ 37,143,589	\$ 35,530,044	\$ 37,091,900	\$ 34,536,200	\$ 36,065,200
Operating Expenses:					
Generation Expenses:					
Capacity	\$ 12,000	\$ 465,421	\$ 745,000	\$ 733,000	\$ 810,000
Purchased Power - MISO	(358,421)	3,766,366	1,401,000	740,000	2,640,000
Purchased Power - Lansing BWL	5,675,258	2,898,085	-	-	-
Stoney Corners - Wind Energy	2,819,687	2,940,041	3,170,000	3,025,000	3,170,000
Combustion Turbine Power Cost	3,364,832	3,338,292	4,272,000	4,375,000	4,500,000
Campbell #3 Power Cost	4,850,934	3,793,717	4,412,000	4,075,000	4,522,500
Belle River #1 Power Cost	5,349,402	3,749,902	4,187,000	4,050,000	3,800,000
Landfill Gas - Granger Project	494,766	567,834	1,118,000	900,000	980,000
M-72 Wind Turbine	8,890	35,056	37,000	47,500	48,000
Bilateral Contracts	292,322	1,100,866	4,286,000	4,350,000	3,300,000
Other Generation Expenses	345,503	414,424	449,650	491,250	329,050
Total Generation Expenses	22,855,173	23,070,004	24,077,650	22,786,750	24,099,550
Distribution Expenses:					
Operations & Maintenance	3,530,929	4,424,951	3,886,250	3,821,100	4,261,500
Transmission Expenses:					
Operations & Maintenance	406,584	421,135	437,000	504,900	525,100
Other Operating Expenses:					
Metering & Customer Accounting	568,692	577,278	559,350	562,000	561,550
Conservation & Public Services	513,302	671,545	486,000	564,500	593,000
Administrative & General	834,938	986,037	1,187,800	1,295,300	1,276,100
Insurance	57,875	62,001	65,500	68,000	70,720
Depreciation Expense	2,157,940	2,254,188	2,525,000	2,525,000	2,605,000
City Fee	1,863,259	1,784,900	1,870,000	1,739,000	1,820,000
Total Other Operating Expenses	5,996,006	6,335,949	6,693,650	6,753,800	6,926,370
Total Operating Expenses	32,788,692	34,252,039	35,094,550	33,866,550	35,812,520
Operating Income	\$ 4,354,897	\$ 1,278,005	\$ 1,997,350	\$ 669,650	\$ 252,680
Non Operating Revenues/(Expenses):					
Non Operating Revenues	544,543	737,684	369,200	613,000	555,800
Non Operating Expenses	(428,620)	(355,965)	-	-	-
Total Non Operating Revenue	115,923	381,719	369,200	613,000	555,800
OTHER FINANCING SOURCES:					
Transfers in	-	175,000	175,000	125,000	125,000
Change in Net Position	\$ 4,470,820	\$ 1,834,724	\$ 2,541,550	\$ 1,407,650	\$ 933,480

City of Traverse City, Michigan
TRAVERSE CITY LIGHT & POWER
 2017-18 Budgeted Revenues and Expenses

	FY 14/15 Actual	FY 15/16 Actual	FY 16/17 Budget	FY 16/17 Projected	FY 17/18 Recommended
OPERATING REVENUES:					
Residential Sales	\$ 6,612,011	\$ 6,090,231	\$ 6,375,000	\$ 6,130,000	\$ 6,400,000
Commercial Sales	16,392,293	15,348,675	16,150,000	14,900,000	15,560,000
Industrial Sales	10,788,926	9,615,567	10,770,000	9,500,000	10,050,000
Public Authority Sales	317,521	309,162	315,000	300,000	300,000
Street Lighting Sales	199,517	203,949	195,000	200,000	225,000
Yard Light Sales	86,531	98,529	82,000	115,000	155,000
<i>Total Utility Sales</i>	<i>34,396,799</i>	<i>31,666,113</i>	<i>33,887,000</i>	<i>31,145,000</i>	<i>32,690,000</i>
Forfeited Discounts	73,522	60,777	70,000	60,000	60,000
Merchandise and Jobbing	115,918	231,826	64,200	81,000	70,000
Recovery of Bad Debts	30	26	200	200	200
Sale of Scrap	30,804	41,792	35,000	40,000	35,000
Miscellaneous Income	42,535	41,663	33,000	39,500	39,500
Refunds and Rebates	2,481	4,795	2,500	500	500
MISO Revenue	2,481,500	3,483,052	3,000,000	3,170,000	3,170,000
TOTAL OPERATING REVENUES	\$ 37,143,589	\$ 35,530,044	\$ 37,091,900	\$ 34,536,200	\$ 36,065,200
OPERATING EXPENSES:					
GENERATION-OPERATING & MAINTENANCE:					
Salaries and Wages	\$ 104,905	\$ 123,124	\$ 152,100	\$ 136,300	\$ 62,000
Fringe Benefits	96,876	192,648	148,800	239,200	142,700
Wind Generation - Traverse	60	-	-	-	-
Trap and Transfer	95	-	250	250	250
Union Street Fish Ladder	-	-	250	250	250
Kalkaska Combustion Turbine	-	-	-	-	-
Operation Supplies	470	-	1,000	-	1,000
Capacity Purchases	12,000	465,421	745,000	733,000	810,000
Purchased Power - MISO	(358,421)	3,766,366	1,401,000	740,000	2,640,000
Purchased Power - LBWL	5,675,258	2,898,085	-	-	-
Stoney Corners - Wind Energy	2,819,687	2,940,041	3,170,000	3,025,000	3,170,000
Combustion Turbine Power Cost	3,364,832	3,338,292	4,272,000	4,375,000	4,500,000
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Belle River #1 Power Cost	5,349,402	3,749,902	4,187,000	4,050,000	3,800,000
Landfill Gas - NANR & Granger Project	494,766	567,834	1,118,000	900,000	980,000
M72 Wind Turbine	8,890	35,056	37,000	47,500	48,000
Bilateral Contracts	292,322	1,100,866	4,286,000	4,350,000	3,300,000
<i>Total Purchased Power</i>	<i>22,509,670</i>	<i>22,655,580</i>	<i>23,628,000</i>	<i>22,295,500</i>	<i>23,770,500</i>
<i>Purchased Power Cost as % of Sales</i>	<i>65.44%</i>	<i>71.65%</i>	<i>69.73%</i>	<i>71.59%</i>	<i>72.71%</i>
Coal Dock	9,367	2,842	-	-	-
Communications	1,084	170	250	250	250
Meal Payments	80	-	200	-	200
Safety	2,201	2,994	3,500	3,500	3,500
Tools	-	-	500	500	500
Professional and Contractual	113,124	85,029	110,000	86,200	96,000
Transportation	9,618	6,316	9,800	7,000	7,000
Professional Development	-	-	2,000	500	500
Uniforms	2,156	3,456	3,500	4,500	3,500
Vehicle Rentals	8,243	(3,308)	17,500	12,800	11,400
Miscellaneous	(2,776)	1,153	-	-	-
Total Generation O & M	22,855,173	23,070,004	24,077,650	22,786,750	24,099,550
DISTRIBUTION OPERATION & MAINTENANCE:					
Salaries and Wages	1,223,372	1,226,717	1,247,000	1,044,000	1,213,000
Fringe Benefits	1,077,958	1,611,956	1,200,650	1,560,600	1,616,000
Office Supplies	2,176	3,160	4,000	5,000	4,000

City of Traverse City, Michigan
TRAVERSE CITY LIGHT & POWER
 2017-18 Budgeted Revenues and Expenses

	FY 14/15 Actual	FY 15/16 Actual	FY 16/17 Budget	FY 16/17 Projected	FY 17/18 Recommended
Operation Supplies	38,101	51,121	40,000	40,000	40,000
Utilities	54,372	44,244	63,000	50,400	51,000
Meals and Payments	3,609	3,231	6,000	3,500	5,000
Communications	27,217	33,987	64,000	22,200	61,500
Software and Hardware	66,827	74,618	158,000	146,500	191,400
Substation	219,685	70,618	119,900	72,300	120,000
Overhead Lines	160,495	170,363	181,000	202,000	205,000
Load and Dispatching	-	25,000	30,600	31,500	31,500
Storm Damage Contingency	-	448,383	100,000	-	50,000
Underground Lines	33,519	97,922	40,000	30,000	30,000
Electric Meters	7,509	2,624	8,000	4,000	6,000
Street Lighting	250,383	217,587	204,000	210,000	230,000
Traffic Signal Oper. & Maint.	4,120	1,767	10,000	5,000	5,000
Radio Equipment	10,390	3,244	5,000	5,000	5,000
Plant & Structures	68,965	94,302	96,700	81,000	82,000
Safety	34,205	27,538	38,000	38,000	38,000
Tools	13,599	14,969	20,000	16,000	31,000
Uniforms	18,318	22,218	23,000	25,000	25,000
Professional and Contractual	122,274	139,050	93,500	90,000	94,000
Rent Expense	1,688	1,757	2,000	2,000	2,000
Professional Development	35,788	28,861	60,000	52,000	65,000
Printing and Publishing	2,601	4,110	3,500	4,000	4,000
Transportation	29,496	23,796	29,000	25,000	28,000
Vehicle Rentals	11,036	(23,539)	28,900	4,600	16,600
Miscellaneous	539	1,673	500	1,500	1,500
Inventory Adjustments	12,687	3,674	10,000	50,000	10,000
Total Distribution O & M	3,530,929	4,424,951	3,886,250	3,821,100	4,261,500
<u>TRANSMISSION OPERATIONS & MAINTENANCE:</u>					
Salaries and Wages	287,792	232,813	279,000	287,000	294,100
Fringe Benefits	952	409	4,000	3,500	3,500
Substation	13,725	14,496	16,000	47,500	50,000
Overhead Lines	10,364	76,567	21,000	23,000	23,000
Load and Dispatching	-	-	-	13,500	13,500
MISO Transmission	24,481	32,494	36,000	35,000	36,000
Tools	-	-	3,000	1,000	9,000
Professional and Contractual	-	-	15,000	15,000	15,000
Vehicle Rentals	-	223	1,000	3,000	3,000
Miscellaneous-MPPA Transmission Project	69,270	64,133	62,000	76,400	78,000
Total Transmission O & M	406,584	421,135	437,000	504,900	525,100
<u>METERING & CUSTOMER ACCOUNTING:</u>					
Salaries and Wages	279,959	273,710	268,200	274,200	263,700
Fringe Benefits	162,424	190,106	134,700	169,450	164,600
Office Supplies	2,110	3,610	4,150	4,200	4,200
Communications	173	110	400	250	250
Hardware/Software	-	22	-	500	8,000
Meal Payments	20	-	200	200	200
Safety	2,979	4,990	3,500	3,500	3,500
Uniforms	1,638	1,826	3,000	3,000	3,000
Professional and Contractual	17,764	23,893	14,000	12,000	13,000
Postage	27,799	28,185	33,000	30,000	33,000
Uncollectable Accounts	37,912	1,739	38,000	10,000	10,000
Collection Costs	2,595	4,118	6,000	5,000	5,000
Data Processing	16,509	20,197	25,000	25,000	25,000
Transportation	3,055	2,344	8,500	4,500	4,500
Professional Development	320	1,124	2,500	3,500	5,000

City of Traverse City, Michigan
TRAVERSE CITY LIGHT & POWER
 2017-18 Budgeted Revenues and Expenses

	FY 14/15 Actual	FY 15/16 Actual	FY 16/17 Budget	FY 16/17 Projected	FY 17/18 Recommended
Printing and Publishing	482	684	4,000	3,500	4,000
Vehicle Rentals	11,455	19,666	12,600	12,600	14,000
Miscellaneous	1,498	954	1,600	600	600
Total Customer Accounting	568,692	577,278	559,350	562,000	561,550
<u>CONSERVATION & PUBLIC SERVICES:</u>					
Salaries and Wages	39,575	22,481	15,100	13,300	13,300
Fringe Benefits	28,427	34,637	11,100	9,700	9,700
Professional and Contractual	25,000	4,011	6,500	22,000	1,500
Contract Labor - Energy Optimization	(65,443)	30,948	-	-	-
Public Service & Communications	12,439	32,653	30,800	21,000	22,000
Community Services	1,866	32,240	34,000	33,000	35,000
Professional Development	102	-	3,000	-	-
Printing and Publishing	892	-	-	-	-
Vehicle Rentals	7,419	3,943	5,000	6,500	6,500
PA295 Energy Optimization Compliance	463,025	510,632	380,500	459,000	505,000
Total Conservation & Public Services	513,302	671,545	486,000	564,500	593,000
<u>ADMINISTRATIVE AND GENERAL:</u>					
Salaries and Wages	362,235	386,497	521,000	500,300	515,700
Fringe Benefits	195,384	322,167	361,300	513,800	474,100
Office Supplies	5,207	5,973	5,200	6,000	6,000
Communications	5,030	3,909	3,500	4,400	4,400
Software and Hardware	16,350	18,579	22,500	12,200	15,000
Fees and Per Diem	57,668	67,613	66,300	68,000	70,000
Board Related Expenses	3,308	3,872	15,000	15,000	15,000
Professional & Contractual	101,647	82,759	83,300	77,100	67,400
Legal Services	49,631	57,950	63,200	58,000	65,000
Employee Appreciation	11,813	7,073	9,000	7,000	7,000
City Fee	1,863,259	1,784,900	1,870,000	1,739,000	1,820,000
Transportation	1,267	619	1,500	1,500	1,500
Professional Development	21,303	15,985	25,000	22,000	25,000
Printing & Publishing	3,436	4,682	6,000	5,000	5,000
Insurance and Bonds	57,875	62,001	65,500	68,000	70,720
Miscellaneous	659	8,359	5,000	5,000	5,000
Depreciation Expense	2,157,940	2,254,188	2,525,000	2,525,000	2,605,000
Total Administrative and General	4,914,012	5,087,126	5,648,300	5,627,300	5,771,820
Total Operating Expenses	32,788,692	34,252,039	35,094,550	33,866,550	35,812,520
Operating Income	\$ 4,354,897	\$ 1,278,005	\$ 1,997,350	\$ 669,650	\$ 252,680
<u>NON OPERATING REVENUES/(EXPENSES):</u>					
Rents and Royalties	\$ 49,046	\$ 44,387	\$ 40,700	\$ 40,000	\$ 46,500
Pole Rentals	42,180	48,860	36,500	68,000	68,000
Reimbursements	143,048	296,244	72,000	147,000	91,300
Interest & Dividend Earnings	310,269	348,193	170,000	350,000	350,000
Gain/(Loss) on Sale of Fixed Assets	(428,620)	(355,965)	50,000	8,000	-
Total Non Operating Revenue/(Expenses)	115,923	381,719	369,200	613,000	555,800
Change in Net Position before Transfers	\$ 4,470,820	\$ 1,659,724	\$ 2,366,550	\$ 1,282,650	\$ 808,480

City of Traverse City, Michigan
TRAVERSE CITY LIGHT & POWER
 2017-18 Budgeted Revenues and Expenses

	FY 14/15 Actual	FY 15/16 Actual	FY 16/17 Budget	FY 16/17 Projected	FY 17/18 Recommended
<u>OTHER FINANCING SOURCES:</u>					
Operating Transfers In	-	175,000	175,000	125,000	125,000
Change in Net Position	\$ 4,470,820	\$ 1,834,724	\$ 2,541,550	\$ 1,407,650	\$ 933,480

Traverse City Light & Power - Electric Fund

Cash Flow Forecast

Fiscal Year:	Actual 2015/16	Estimate 2016/17	Estimate 2017/18	Estimate 2018/19	Estimate 2019/20	Estimate 2020/21	Estimate 2021/22	Estimate 2022/23
Receipts								
Charges for Services	31,666,113	31,145,000	32,690,000	34,324,500	35,010,990	36,761,540	37,496,770	39,371,609
Other Operating Revenues	3,863,931	3,391,200	3,375,200	3,442,704	3,511,558	3,581,789	3,653,425	3,726,494
Non Operating Revenues	630,842	613,000	555,800	566,916	578,254	589,819	601,616	613,648
Transfers In	175,000	125,000	125,000	125,000	100,000	100,000	100,000	100,000
Total Receipts	36,335,886	35,274,200	36,746,000	38,459,120	39,200,802	41,033,148	41,851,811	43,811,750
Payments								
Generation Expense	23,069,158	22,786,750	24,099,550	24,581,541	25,073,172	25,574,635	26,086,128	26,607,851
Distribution Expense	4,387,363	3,821,100	4,261,500	4,346,730	4,433,665	4,522,338	4,612,785	4,705,040
Transmission Expense	451,739	504,900	525,100	535,602	546,314	557,240	568,385	579,753
Metering & Customer Accounting	560,770	562,000	561,550	472,781	482,237	491,881	501,719	511,753
Conservation & Public Service	671,545	564,500	593,000	604,860	616,957	629,296	641,882	654,720
Administrative & General	985,174	1,295,300	1,276,100	1,301,622	1,327,654	1,354,208	1,381,292	1,408,918
Insurance	62,001	68,000	70,720	72,134	73,577	75,049	76,550	78,081
City Fee	1,784,900	1,739,000	1,820,000	1,856,400	1,893,528	1,931,399	1,970,027	2,009,427
GASB 68 Adjustment	(1,096,888)	(181,426)	161,522	164,752	168,047	171,408	174,837	178,333
Capital Investments	8,407,374	5,695,500	6,733,196	5,640,591	5,766,591	6,221,591	5,193,591	4,811,591
Total Payments	39,283,136	36,855,624	40,102,238	39,577,014	40,381,742	41,529,045	41,207,194	41,545,466
Cashflow Surplus/Deficit (-)	(2,947,250)	(1,581,424)	(3,356,238)	(1,117,894)	(1,180,940)	(495,897)	644,617	2,266,284
Opening Cash & Investments Balance	22,318,405	19,371,155	17,789,731	14,433,493	13,315,599	12,134,659	11,638,762	12,283,379
Closing Cash & Investments Balance	19,371,155	17,789,731	14,433,493	13,315,599	12,134,659	11,638,762	12,283,379	14,549,663
Reserved Cash & Investment Balance	9,350,000	9,405,000	9,700,000	9,800,000	9,900,000	10,000,000	10,400,000	10,550,000
Unreserved & Undesignated Cash & Investment	10,021,155	8,384,731	4,733,493	3,515,599	2,234,659	1,638,762	1,883,379	3,999,663

Notes and Assumptions

- 1) Includes MERS 9 year amortization funding schedule
- 2) 3% rate increase in 2018/19, 2020/21, and 2022/23



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Karla Myers-Beman, Controller
Date: April 5, 2017
Subject: Fiber Fund Budget

In accordance with City Charter Chapter XVIII, section 179 (o), the 2017-18 Fiber Fund Operating Budget must be submitted to the City Commission by its last meeting in April.

The Fiber Fund was reviewed by the Board at the March 14, 2017 board meeting and there has been no changes made since the presentation. The budget is attached for your reference.

This item is appearing on the Consent Calendar as it is deemed by staff to be a non-controversial item. Approval of this item on the Consent Calendar means you agree with staff's recommendation.

If any member of the Board or the public wishes to discuss this matter, other than clarifying questions, it should be placed on the "Items Removed from the Consent Calendar" portion of the agenda for full discussion.

If after Board discussion you agree with staff's recommendation the following motion would be appropriate:

**MOVED BY _____, SECONDED BY _____, THAT THE
LIGHT & POWER BOARD APPROVES SUBMITTAL OF THE 2017-18 FIBER FUND
OPERATING BUDGET AS PRESENTED TO THE CITY COMMISSION FOR ITS
CONSIDERATION.**

Traverse City Light & Power
Fiber Optics Fund
2017-18 Budgeted Revenues and Expenses

	FY 14/15 Actual	FY 15/16 Actual	FY 16/17 Budgeted	FY 16/17 Projected	FY 17/18 Recommended
<u>Operating revenues:</u>					
Charges for services	\$ 255,752	\$ 278,376	\$ 326,316	\$ 279,000	\$ 319,000
Other	-	129	-	-	-
Total Operating Revenues	255,752	278,505	326,316	279,000	319,000
<u>Operating expenses:</u>					
Salaries and wages	49,165	44,601	72,072	78,500	81,500
Fringe benefits	35,167	35,081	57,632	91,660	99,210
Office & operation supplies	331	1,829	1,000	1,500	1,000
WIFI operations and maintenance	23,225	28,678	32,000	32,000	29,800
Hardware and software	-	-	4,000	5,400	5,400
Professional services	-	1,727	54,200	24,500	-
Legal services	-	2,475	2,700	2,000	1,500
City fee	12,788	13,932	16,400	13,975	15,975
Professional development	-	-	2,500	-	2,500
Insurance	1,161	-	1,400	1,000	1,000
Repair and maintenance	-	11,171	5,000	9,000	20,000
Vehicle rental	12,461	8,974	13,000	13,000	13,000
Miscellaneous	-	-	-	-	-
Depreciation expense	116,606	143,383	145,000	145,000	145,000
Total operating expenses	250,904	291,851	406,904	417,535	415,885
Operating income (loss)	4,848	(13,346)	(80,588)	(138,535)	(96,885)
<u>Non-operating revenues:</u>					
Reimbursements	296,122	54,127	38,400	42,400	53,400
Interest revenue	4	125	500	500	500
Total non operating revenues	296,126	54,252	38,900	42,900	53,900
<u>Other financing transfers:</u>					
Transfer out	-	(175,000)	(175,000)	(125,000)	(125,000)
Change in net position	\$ 300,974	\$ (134,094)	\$ (216,688)	\$ (220,635)	\$ (167,985)



**TRAVERSE CITY
LIGHT & POWER**

To: Light and Power Board
From: Scott Menhart, Manager of Telecom & Technology
Date: April 4, 2017
Subject: IBM Maintenance Agreement

TCL&P has recently procured an IBM Server for hosting of the utility's billing system. Due to the criticality of the uptime this server needs, it was purchased with a maintenance agreement for support should something go wrong with the hardware or software. There is no cost for this first three-year agreement as it was included with the price of the hardware. Current Board Policy indicates that any agreement over one year must be brought to the Board for review and this agreement is a three-year agreement. General Counsel has reviewed the agreement and provided guidance and recommendations.

Staff recommends the Board approve the Maintenance Agreement with IBM. This item is appearing on the Consent Calendar as it is deemed a non-controversial item by staff. Approval of this item on the Consent Calendar means you agree with staff's recommendation.

If any member of the Board or the public wishes to discuss this matter, other than clarifying questions, it should be placed on the "items removed from the consent calendar" portion of the agenda for full discussion. If after the Board discussion you agree with staff's recommendation the following motion would be appropriate:

**MOVED BY _____, SECONDED BY _____,
THAT THE BOARD AUTHORIZES THE CHAIRMAN AND SECRETARY TO EXECUTE
A THREE YEAR AGREEMENT WITH IBM FOR MAINTENANCE AND SUPPORT,
SUBJECT TO APPROVAL AS TO SUBSTANCE BY THE EXECUTIVE DIRECTOR,
AND APPROVAL AS TO FORM BY GENERAL COUNSEL.**



Client Relationship Agreement

Using this agreement, Client may order Programs, Cloud and other Services, Machines and Appliances (collectively IBM Products) and third party products and services (Non-IBM Products) available from IBM. Details regarding products, offerings or orders are provided in Attachments and Transaction Documents (TDs). This agreement and applicable Attachments and TDs are the complete agreement (Agreement) regarding transactions under this Agreement.

Programs

A Program is an IBM-branded computer program and related material available for license from IBM subject to the payment of charges. Program details are described in an Attachment called License Information (LI). Programs do not include Machine Code or Project Materials. Programs are copyrighted and licensed (not sold). When IBM accepts an order for a Program, IBM grants Client a nonexclusive license to: a) use the Program only up to its authorizations and subject to its LI; b) make and install copies to support such authorized use; and c) make a backup copy. Programs may be used by Client, its authorized employees and contractors only within Client's Enterprise, and not to provide hosting or timesharing services to any third party. Client may not sublicense, assign, or transfer the license for any Program. Additional rights may be available from IBM for additional fees or under different terms. IBM does not grant unrestricted rights to use the Program nor has Client paid for all of the economic value of the Program. Certain Programs may contain third party code licensed under separate agreements identified in the LI.

The license granted for a Program is subject to Client:

- a. reproducing copyright notices and other markings;
- b. ensuring anyone who uses the Program does so only for Client's authorized use and complies with the license;
- c. not reverse assembling, reverse compiling, translating, or reverse engineering the Program; and
- d. not using any of the elements of the Program or related licensed material separately from the Program.

The metric applicable to a Program license is specified in an Attachment or TD. All licenses on a server or capacity based metric must be licensed to the full capacity of the server on which the Program is installed, unless sub-capacity usage is available from IBM and Client complies with the applicable sub-capacity requirements.

Services - Cloud Services

A Cloud Service is an IBM branded offering hosted or managed by IBM and made available via a network. Each Cloud Service is described in an Attachment or TD called a Service Description. Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance. Technical support and service level commitments, if applicable, are specified in an Attachment or TD.

When IBM accepts Client's order, IBM provides Client the authorizations specified in the TD. The term, including any renewal term, for a Cloud Service is described in an Attachment or TD.

IBM will provide the facilities, personnel, equipment, software, and other resources necessary to provide the Cloud Services and generally available user guides and documentation to support Client's use of the Cloud Service. Client will provide hardware, software and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates.

An Attachment or TD may have additional Client responsibilities.

Client may access a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any user who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly. Unless expressly provided in a TD, Client is not authorized to use a Cloud Service to provide hosting or timesharing services to any third party.

Data Protection for Cloud Services

Each Cloud Service is designed to protect content that Client inputs into the Cloud Service. Except for account data, Client is the sole controller for any personal data included in the content, and appoints IBM as a processor to process such personal data (as those terms are defined in EU Directive 95/46/EC). Except as otherwise specified in an Attachment or TD, IBM will treat content as confidential by not disclosing content other than to IBM employees and contractors for use only to the extent needed to deliver the Cloud Service. IBM will return or destroy it upon the expiration or cancellation of the Cloud Service, or earlier upon Client's request. IBM may charge for certain activities performed at Client's request (such as delivering content in a specific format). Content is not subject to any separate confidentiality agreement between the parties.

The Attachment or TD for each Cloud Service describes the security functions and features of the Cloud Service. By using the Cloud Service Client acknowledges that it meets Client's requirements and processing instructions. IBM will provide Client notice of any unauthorized third party access to Client's content of which IBM becomes aware and will use reasonable efforts to remediate identified security vulnerabilities. If Client's content is lost or damaged, IBM will assist Client in restoring it to the Cloud Service from Client's last available backup copy in compatible format.

IBM may use processors and subprocessors (including personnel and resources) in locations worldwide to deliver the Cloud Services. IBM may transfer Client's personal data across country borders including outside the European Economic Area (EEA). A list of countries where content may be processed for a Cloud Service is available at www.ibm.com/cloud/datacenters or as described in the Attachment or TD. A list of subprocessors is available upon request.

Upon request by either party, IBM, Client or their affiliates will enter into additional agreements required by law for the protection of personal data included in content such as the standard unmodified EU Model Clauses agreement pursuant to EC Decision 2010/87/EU with optional clauses

removed. The parties agree (and will procure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

IBM, its affiliates, and their third party suppliers may process, store, and use account data wherever they do business to enable product features, administer use, personalize experience, and otherwise support or improve use of the Cloud Service. Account data is all information (which may be further described in an Attachment or TD) about Client or its users provided to or collected by IBM (including through tracking and other technologies, such as cookies) which is processed in accordance with the IBM Online Privacy Statement available at www.ibm.com/privacy/details/us/en/.

Changes to Cloud Services

IBM may modify a Cloud Service, without degrading its functionality or security features. Any change that affects the commercial terms (e.g. charges) of the Cloud Service will not be effective until the next agreed renewal or extension.

IBM may withdraw a Cloud Service on 12 months' notice, unless otherwise stated in an Attachment or TD. IBM will either continue to provide the Cloud Service for the remainder of Client's unexpired term or work with Client to migrate to another IBM Service.

Suspension of Cloud Services

IBM may suspend, revoke or limit Client's use of a Cloud Service if IBM determines there is a material breach of Client's obligations, a security breach, or violation of law. Charges will continue to accrue for the Cloud Service during any suspension. If the cause of the suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the Cloud Service. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Service.

Services – Other Services

IBM provides consulting, installation, customization and configuration, maintenance, and other services as detailed in an Attachment or TD. Client will own the copyright in works of authorship that IBM develops for Client under a Statement of Work (SOW) (Project Materials). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). Some Existing Works are subject to a separate license agreement (Existing Licensed Works). A Program is an example of an Existing Licensed Work and is subject to the Program terms. IBM grants Client an irrevocable (subject to Client's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works that are not Existing Licensed Works. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

Either party may terminate a Service if a material breach concerning the Service is not remedied within a reasonable time. IBM will provide at least 90 days' notice prior to withdrawal of Service. Client will pay charges for Services provided through the effective date of termination. If Client terminates without cause or IBM terminates for breach, Client will meet all minimum commitments and pay

termination or adjustment charges specified in the SOW or TD and any additional costs IBM reasonably incurs because of early termination, such as costs relating to subcontracts or relocation. IBM will take reasonable steps to mitigate any such additional costs.

Machines and Appliances

A **Machine** is an IBM-branded device including its features, upgrades, and accessories. An **Appliance** is a Program and Machine combination designed for a particular function. Unless otherwise provided, terms that apply to a Program apply to the Program component of an Appliance and terms that apply to a Machine apply to the Machine component of an Appliance. Client may not use or transfer an Appliance's Program component independently of the Appliance.

When IBM accepts Client's order, IBM transfers title to Machines and non-IBM machines to Client or Client's lessor upon payment of all amounts due, except in the United States where title transfers upon shipment. IBM bears risk of loss until delivery to the carrier for shipment. IBM pays for insurance on Client's behalf until delivery to Client's location. Client must report any loss in writing to IBM within 10 business days of delivery and follow the claim procedure. Additional charges may apply for IBM installation more than six months after shipment. Client must follow instructions provided to install Client set up Machines.

Machines and parts removed or exchanged for upgrade, warranty service, or maintenance are IBM property and must be returned to IBM promptly. A replacement assumes the warranty or maintenance status of the replaced part. A Machine may include parts that are not new and in some instances Machines may have been previously installed. Regardless, IBM's warranty terms apply. Client will promptly install or allow IBM to install mandatory engineering changes. Client may only acquire Machines for use within Client's Enterprise in the country where acquired and not for resale, lease, or transfer. Lease-back financing is permitted.

Machine Code and Built in Capacity

Machines may include **Machine Code (MC)** and **Built in Capacity (BIC)**. MC is computer instructions, fixes, replacements and related materials, such as data and passwords relied on, provided, used with or generated by MC, that permit the operation of the machine's processors, storage or other functionality. MC is copyrighted and licensed (not sold). IBM only provides copies, fixes or replacements for MC for Machines under warranty or IBM maintenance, or under a separate written agreement which may be subject to additional charges. Client agrees that all copies, fixes or replacements for MC will be obtained solely as authorized by IBM. IBM grants Client a nonexclusive license to use MC only (i) on the Machine for which IBM provided it, and (ii) to access and use BIC only to the extent paid for by Client, activated by IBM and subject to the Attachment called IBM Authorized Use Table for Machines (AUT) available from IBM and at http://www.ibm.com/systems/support/machine_warranties/machine_code/aut.html. BIC is computing resource (e.g., processors, storage and other functionality) that IBM provides for a Machine. Use of BIC may be restricted by contract, technological or other measures. Client agrees to IBM's implementation of technological and other measures that restrict, monitor and report on use of BIC or MC, and to install any changes IBM provides. Client may not alter, reverse assemble, reverse compile, translate or reverse

engineer the MC, or circumvent or interfere, by any means, with IBM's contractual, technological or other measures that restrict, monitor or report on use of BIC or MC. While Client's license to MC is in effect, Client may transfer possession of the entire MC along with all of Client's rights and obligations only with corresponding transfer of the Machine and a hardcopy of this MC license, and only if the transferee agrees to the terms of this MC license. Client's MC license terminates immediately upon transfer. This Agreement governs MC and BIC on Machines acquired from another party. Use of BIC in excess of authorizations from IBM is subject to additional charges.

Warranties and Post Warranty Support

IBM warrants that Programs used in their specified operating environment conform to their official published specifications. The warranty period for a Program (not the Program component of an Appliance) is one year, or the initial license term if less than one year, unless another warranty period is specified in an Attachment or TD. During the Program warranty period, IBM provides Software Subscription and Support (S&S), entitling Client to defect correction information, restrictions, bypasses, and new releases and versions IBM makes generally available. Unless Client elects to discontinue S&S, annual S&S automatically renews at then-current charges until S&S for a version or release is withdrawn. If Client elects to continue S&S for a Program at a designated Client site, Client must maintain S&S for all uses and installations of the Program at that site.

IBM warrants that it provides Cloud and other Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD, including any completion criteria, and that Project Materials will comply with the Attachment or TD at the time of delivery. The warranty for a Service ends when the Service ends.

IBM warrants that Machines used in their specified operating environment conform to their official published specifications. For a Machine or Appliance, the warranty period is specified in the Attachment or TD. During its warranty period, IBM will repair or exchange the Machine without charge, as specified in the Attachment. Warranty does not apply to Machines that Client did not allow IBM to install as required by the TD. Client may purchase warranty service upgrades and post warranty support where available. For Appliances, post warranty support includes maintenance and S&S.

If a Machine or Program does not function as warranted during its warranty period and IBM is unable to repair or replace it with a functional equivalent, Client may return it to IBM for a refund of the amount Client paid (for recurring charges, up to twelve months' charges) and Client's license or right to use it terminates.

IBM does not warrant uninterrupted or error-free operation of an IBM Product or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access to an IBM Product. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated in an Attachment or TD. Non-IBM Products are sold under the Agreement as-is,

without warranties of any kind. Third parties may provide their own warranties to Client.

Charges, Taxes, Payment and Verification

Client agrees to pay all applicable charges specified by IBM, charges for use in excess of authorizations, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under the Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents. Where taxes are based upon the location(s) receiving the benefit of the Cloud Service, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable Attachment or TD.

IBM may change recurring charges, labor rates and minimum commitments on three months' notice. A change applies on the invoice date or the first day of the charging period on or after the effective date IBM specifies in the notice. IBM may change one-time charges without notice. However, a change to a one-time charge does not apply to an order if i) IBM receives the order before the announcement date of the increase and ii) within three months after IBM's receipt of the order, the product is shipped or made available to Client.

Client will i) maintain, and provide upon request, records, system tools output, and access to Client's premises, as reasonably necessary for IBM and its independent auditor to verify Client's compliance with the Agreement, including MC and Program licenses and metrics, such as sub-capacity usage, and ii) promptly order and pay for required entitlements (including associated S&S or maintenance) at IBM's then current rates and for other charges and liabilities determined as a result of such verification, as IBM specifies in an invoice. These compliance verification obligations remain in effect during the term of any TD and for two years thereafter.

Liability and Indemnity

IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the product or service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and

tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Product acquired under the Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on Non-IBM Products, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, specifications, or use of a non-current version or release of an IBM Product when an infringement claim could have been avoided by using a current version or release.

Termination

Either party may terminate this agreement i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees. Termination of this agreement does not terminate TDs, and provisions of this agreement and Attachments as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms. IBM may terminate Client's license to use a Program or MC if Client fails to comply with the Agreement. Client will promptly destroy all copies of the Program or MC after either party has terminated the license.

Governing Laws and Geographic Scope

Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Client is responsible for its use of IBM and Non-IBM Products.

Both parties agree to the application of the laws of the country where the transaction is performed (or for Cloud Services, the laws of the state of New York, United States, to the Agreement, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use, except all licenses are valid as specifically granted. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

General

Parties will not disclose confidential information without a separate, signed confidentiality agreement. If confidential information is exchanged in connection with the Agreement,

the applicable confidentiality agreement is incorporated into, and subject to, this agreement.

Client accepts an Attachment or TD by ordering, enrolling, using, or making a payment for, the product, offering or service. Since this agreement may apply to many future orders, IBM may modify this agreement by providing Client at least three months' written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing services that do not expire, and renewals. For transactions with a defined renewable contract period, Client may request that IBM defer the change effective date until the end of the current contract period. Client accepts changes by placing new orders or continuing use after the change effective date or allowing transactions to renew after receipt of the change notice. Except as provided above, all changes to the agreement must be in writing accepted by both parties. If there is a conflict, an Attachment or TD prevails over the terms of this agreement.

IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation.

IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse, anti-bribery & corruption; and fraud. IBM and its personnel comply with such policies and require contractors to have similar policies.

IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

Client is responsible for obtaining all necessary permissions to use, provide, store and process content in Cloud, other Services, maintenance, or Program support, and grants IBM permission to do the same. Client is responsible for adequate content back-up. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures.

IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business. IBM may use personnel and resources in locations worldwide and third party suppliers to support the delivery of products and services.

Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes a product or service is not restricted.

The Agreement applies to IBM and Client (the signatories below) and their respective Enterprise companies who avail themselves of the Agreement. The signatories shall coordinate the activities of Enterprise companies under the Agreement. Enterprise companies include (i) companies within the same country that Client or IBM control (by owning greater than 50% of the voting shares), and (ii) any other entity that controls, is controlled by or is under

common control as Client or IBM and has signed a participation Attachment.

All notices under the Agreement must be in writing and sent to the address below, unless a party designates in writing a different address. The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any course of dealing, discussions or representations between the parties.

No right or cause of action for any third party is created by the Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.

Agreed to:
Client Company Name:

By _____
Authorized signature
Title: _____
Name (type or print): _____
Date: _____
Client number: _____
Enterprise number: _____
Client address: _____

Agreed to:
International Business Machines Corporation

By _____
Authorized signature
Title: _____
Name (type or print): _____
Date: _____
Agreement number: _____
IBM address: _____



Master Services Attachment for ServiceElite

1. Services

IBM will provide Services, as described in this Attachment and Statements of Work (SOW), Schedules, and Change Authorizations (collectively Transaction Documents or TDs), to support Client's Eligible Machines and Eligible Programs (collectively Eligible Products).

IBM will identify Eligible Products, Specified Locations (entire information processing environment, or a portion thereof, at multiple sites or a single building), applicable Services, and the contract period, in TDs.

Eligible Machines must meet IBM's safety and serviceability requirements. IBM reserves the right to inspect a Machine within one month from the start of Service. If the Machine is not in acceptable condition for Service, IBM will restore it for a charge or Client may withdraw its request for maintenance Service.

Machine Maintenance is Service to keep Machines in, or restore them to, conformance with their official published specifications, and does not cover:

- a. improperly maintained or damaged Machines, Machines with altered identification labels, alterations, accessories;
- b. supply items, consumables (such as batteries and printer cartridges), structural parts (such as frames and covers), or failures caused by a product for which IBM is not responsible;
- c. Machine installation, engineering change activity, or preventive maintenance; or
- d. service of features, parts, or devices not supplied by the Machine's manufacturer, or IBM during the performance of Service.

IBM does not warrant uninterrupted or error-free operation or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access.

For acquisitions through an IBM Business Partner (BP) authorized to resell IBM Services, the BP establishes the price and general business terms at which they market IBM Services and communicates the terms for each BP transaction directly to Client. However, IBM establishes the terms of each Service IBM provides and will provide the Services as described in this Attachment and applicable TD. Whenever a party is required to provide notification to the other, each agrees to notify the applicable BP.

If a BP that Client has contracted through is no longer able to offer IBM Services, IBM will notify Client in writing. Client may continue to receive the Services by instructing IBM in writing to transfer administration of the Services to 1) another BP of Client's choice approved to offer IBM Services, or 2) IBM under a standard direct relationship where IBM invoices Client.

1.1 Warranty Service Upgrade (WSU)

During the warranty period for certain Eligible Machines, Client may select an upgrade to the standard warranty. WSU may not be terminated or transferred during the warranty period. When the warranty period ends, the Machine is added to maintenance at the Type of Service selected for WSU.

1.2 Maintenance of IBM Machines

IBM will provide maintenance of Eligible IBM Machines specified in the Schedule.

IBM may provide an exchange replacement for installation by Client. Replacements may be i) a part of a Machine (called a Client Replaceable Unit (CRU), e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine. When a return is required, Client is charged for the replacement if IBM does not receive the replaced part within 15 calendar days of Client's receipt of the replacement. Client may request that IBM install the replacement as a billable installation.

1.3 Maintenance of Non-IBM Machines

IBM will provide repair Service for the manufacturer's base configuration for each covered model of Eligible non-IBM Machines specified in the Schedule.

Repair of non-IBM Machines is subject to the availability of parts and technical support required of the manufacturer. Repair parts will be functionally equivalent to those replaced, may be new or used, and may have been manufactured by other than the original manufacturer. Upon written notice, IBM may terminate coverage for an Eligible non-IBM Machine due to lack of available repair parts or manufacturer technical support.

1.3.1 Multiple Vendor Service

IBM provides maintenance support and repair coordination of maintenance activities for Machines in a multi-vendor environment (Multiple Vendor Service or MVS). For repair coordination, Client must notify service providers that IBM will be placing the requests for service. IBM then places warranty or maintenance calls with service providers on Client's behalf, and remains responsible for coordinating maintenance activities and problem resolution until resolved.

Notwithstanding other terms of this Attachment:

- a. Charges are based on MVS Inventory. IBM will adjust the monthly charges when the inventory changes;
- b. MVS Services do not automatically renew. Additions or renewals are documented in a new MVS Inventory List with the new inventory period, and applicable charges; and
- c. Client commits to continue MVS for the specified transaction contract period. Neither party may terminate MVS during the first 12 months (the Minimum Period). Thereafter, a party may terminate upon three months' written notice.

1.4 IBM Software Maintenance

IBM provides software maintenance for Eligible Programs for which Client is licensed. IBM makes available the most current commercially available version, release, or update to all of the Eligible Programs for which Client acquires support in the specified operating environment, as

made available. Information to order versions, releases or updates is found at <http://www-05.ibm.com/servers/eserver/ess/OpenServlet.wss> then select the Entitled Software Update (ESU) screen tab.

Eligible Programs are listed at www.ibm.com/services/supline/products/ or may be obtained from Client's IBM representative. The listing of Eligible Programs contains the last date of service for each respective release. IBM supports only current releases of Eligible Programs. It is Client's responsibility to ensure that its Eligible Programs are current when requesting Service.

IBM provides assistance for Client's a) routine, short-duration installation and usage (how-to) questions and b) code defect-related questions.

IBM provides assistance via telephone and, if available, electronic access, only to Client's Information Systems (IS) technical support personnel. This assistance is not available to Client's end users. IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Guide at <http://www14.software.ibm.com/webapp/set2/sas/ff/handbook/home.html> for details. A 24x7 (every day of the year) all-severity option may be available for an extra charge.*

Service is provided solely for Eligible Programs located within the United States (USA) and all support will be provided in the English language. Software "traps" or other tools that may be necessary to diagnose problems will be sent only to the USA Eligible Programs location, and the diagnosis and repair of data encryption will be discussed only with personnel at the USA Eligible Programs location.

1.4.1 Software Maintenance After License Fee

Software Maintenance After License Fee (ALF) is a one-time charge to resume Software Maintenance if coverage lapsed due to non-renewal or termination. The new support period begins on the date that IBM accepts Client's order.

1.5 Support via USA Citizens Option

As available for selected Eligible Products and Services, Client may purchase IBM Support via USA Citizens for software or hardware in addition to maintenance. This feature provides standard IBM remote hardware and software support delivered and managed exclusively by USA Citizens located in the continental USA. IBM Support via USA Citizens is available via voice support, during prime shift only, for software. Hardware support is 24x7. Each time Client calls IBM, this process is engaged only after Client identifies itself as a Support via USA Citizens Client and IBM verifies Client's entitlement. Client's hardware error data for analysis and call data will be managed by USA Citizens only.

1.6 Machine Control Program Remote Support

Remote Support Service is provided only for Machine Control Programs (MCP), meaning code delivered with an IBM Machine that executes below the external user interface (e.g., implemented in a part of storage that is not addressable by user programs). IBM will provide remote assistance (via telephone from IBM's support center or via electronic access) in response to Client's routine installation, configuration, and usage (how-to) questions pertaining to MCPs on covered IBM Machines, during normal business hours (8:00 a.m. to 5:00 p.m. in the local time zone where Client receives Service, Monday through Friday, excluding national holidays). For an additional charge*, Client may upgrade hours of coverage to 24x7.

2. Client Responsibilities

Client agrees:

- a. to provide IBM with the inventory of Eligible Products to be covered at each Specified Location and to notify IBM of changes;
- b. that all Client notices must be in writing and received by IBM 60 days prior to the effective date of a change, unless otherwise specified;
- c. to limit use of any access codes to electronic diagnostic tools, information databases, or other Service delivery facilities to those authorized to use them under Client's control and only in support of Eligible Products and Services identified in TDs;
- d. to provide IBM with necessary information requested, and keep such information current;
- e. to allow remote access to Client's system to assist in isolating the problem cause. Client remains responsible for adequately protecting its system and all data contained therein whenever IBM remotely accesses it. If Client denies remote access to its system by IBM, IBM may be limited in its ability to resolve the problem. If IBM is unable to resolve the problem without access, IBM will notify Client and close the service call;
- f. that some Services may require the installation and use of remote connectivity tools and equipment for direct problem reporting, remote problem determination and resolution. Any third party communications or connectivity charges are Client's responsibility;
- g. to use the information obtained under these Services only for the support of the information processing requirements within Client's Enterprise;
- h. to securely erase all non-IBM programs and all data (including confidential, proprietary and personal data regarding any individual or entity) from any Machine or part of a Machine returned to IBM for any reason and ensure that it is free of any legal restrictions that would prevent its return;
- i. that, to perform its responsibilities, IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world;
- j. that Client is responsible for obtaining all necessary permissions to use, provide, store and process content in connection with Services, and grants IBM permission to do the same. Client is responsible for adequate content back-up. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures;
- k. that Services may be performed on-site at Client's Specified Locations and off-site at IBM locations, and that IBM uses global resources (non-permanent residents used locally and personnel in locations worldwide) for delivery of Services;
- l. that the terms of the Machine Code License (provided at: http://www-947.ibm.com/systems/support/machine_warranties/support_by_product.html) apply to Eligible IBM Machines and all Machine Code and Machine Code updates on such Eligible IBM Machines;
- m. to follow the service request procedures that IBM provides, to include installing entitled Machine Code and other software updates (downloaded from an IBM web site or copied from other electronic media), and to follow IBM's (or manufacturer's) guidelines pertaining to operator responsibilities, maintenance procedures, and supplies, prior to placing a Service request;
- n. that, with respect to Services under this Attachment, the parties agree to look to their own risk management (including insurance) to cover damage, destruction, loss, theft, or government taking (collectively, Loss) of their respective tangible property (whether owned or leased), and neither party shall be liable to the other for such Loss except liability for negligence under applicable law; and
- o. that Client cannot resell Services or transfer Services to another Machine.

3. Automatic Inventory Increase for Machine and Software Maintenance Services

If Client selects the Automatic Inventory Increase Option, IBM will automatically increase the inventory count and associated Services at Specified Locations. The following terms apply. Upon request, each party will provide reasonable cooperation to the other in updating the last formal inventory.

OPTION #1 - MACHINE MAINTENANCE SERVICES

If the Machine is under warranty when added, Services will commence at warranty exit. If the Machine is not under warranty when added, Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the transaction contract period. IBM Machines specifically excluded from coverage at transaction contract period start remain outside the scope of this section unless Client requests IBM add them during the transaction contract period. Services are the same as for all other Machines of the same type at the Specified Location.

Newly installed IBM Machines of the same type as WSU are added at date of actual installation and covered at the same WSU support level.

OPTION #2 - SOFTWARE SERVICES

IBM will increase the inventory count and associated Services when an Eligible Program licensed for use on an Eligible IBM Machine is added to the inventory. Applicable Services are the same as for other copies of the Program licensed for use on Eligible IBM Machines of the same type at the Specified Location.

Services will commence immediately upon addition of the Eligible Program to the inventory (After License Fees may apply), except if the Program is covered under the Agreement for Acquisition of Software Maintenance when added to the inventory, then Services via ServiceElite will commence at the end of that support period.

4. Charges

For each transaction, Total services charges are adjusted when:

- a. a review of the inventory count indicates a change from the last accounting; or
- b. a Specified Location is affected by a change that results in additional charges (e.g., a change in tax rates), Eligible Machine type, or Service is added, deleted, or changed.

For Sales through IBM, charges are based on Service selections, price protection option, payment option, and any prepay period. Renewal charges are calculated at the start of each renewal period.

For Sales through an IBM BP, the IBM BP sets the charges and charges terms. The IBM BP may impose an additional charge for some actions (e.g., termination), or for IBM's provision of some additional services (e.g., Service upgrades) as identified in this Attachment and its associated TD's with an asterisk (*). Check with the IBM BP regarding asterisked terms to determine if you will incur an additional charge or may be entitled to a credit or refund. Payment is made directly to the IBM BP.

4.1 Price Protection

For each transaction package, Client selects one of the following Price Protection Options. Client's selection is specified in the Schedule for that transaction.

OPTION #1 ANNUAL - PRICE PROTECTION DURING EACH TRANSACTION CONTRACT YEAR ONLY

IBM may revise charges, however any rate increase will not take effect until the next yearly anniversary of the start of the transaction contract period. At the start of each transaction contract year, Client is invoiced at the charge rates that are then in effect and that invoice will serve as Client's notice of changes. Newly added Eligible Products and Services and changes to configurations and Services assume the charge rate that applied at the previous yearly anniversary of the transaction contract period. Eligible Products and Services that become generally available during the transaction contract period are added at the charge rate that applied on their initial availability date.

OPTION #2 FULL - PRICE PROTECTION FOR ENTIRE TRANSACTION CONTRACT PERIOD, INCLUDES PROTECTION FOR NEWLY ADDED MACHINE TYPES

For the transaction contract period, charges for included Eligible Product configurations and Services do not increase. Newly added Eligible Products and Services and changes to existing Eligible Product configurations and Services assume the charge rate that applied at the transaction contract period start. Eligible Products and Services that become generally available during the transaction contract period are added at the charge rate that applied on their initial availability date. Client receives the benefit of a decrease in applicable charges for amounts that become due on or after the effective date of the decrease.

OPTION #3 PREPAY - PRICE PROTECTION FOR TRANSACTION CONTRACT PERIOD PREPAY

Prepaid Services are not subject to increases in charges (during the prepaid period) for included Eligible Product configurations and Services. Newly added Eligible Products and Services and changes to existing Eligible Product configurations and Services assume the charge rate that applied for these at transaction contract period start, with adjustment for the reduced prepay period. Eligible Products and Services that become generally available during the transaction contract period assume the charge rate that applied at transaction contract period start, with adjustment for the reduced prepay period. If Client elects to have these charge terms apply for charges during any renewal transaction contract period (as recalculated at the start of each renewal period), Client must provide IBM written notification (at least one month prior to the start of the renewal period), and prepayment for the entire renewal period. Otherwise, charges for the renewal period will revert to a quarterly billing cycle under the terms set out for Option #1 above.

4.2 Re-establishment Fee

If Client's warranty or maintenance Service coverage for a Machine lapses by 90 days or more, and Client subsequently requests to restart Services, a re-establishment fee applies based on the number of days of lapsed coverage, up to 365 days of the applicable Service fees for the Machines.

5. Renewal

Services automatically renew unless a party elects not to renew. The Renewal Contract Period specifies the number of years (0 means no renewal elected) for which Services will renew, unless IBM receives nonrenewal notice 30 days prior to the end of contract period. Services will then terminate at the end of the current transaction contract period.

To avoid termination at contract period end date, if Client requires a Purchase Order (PO), IBM must receive the PO at least 30 days prior to the contract period end date.

6. Termination

One of the following termination provisions will apply based on the length of the transaction contract period specified in the Schedule.

PROVISION #1 - ONE YEAR TRANSACTION CONTRACT PERIOD

Client may terminate Services for an Eligible Product on notice to IBM, if Client permanently removes the Eligible Machine from productive use within Client's Enterprise. Otherwise, Services must be under contract for at least one year. If Client selects automatic renewals, Client may terminate Services after the first full year of Service by providing IBM notice prior to the end of Client's first year of Service. Client will receive a credit for any remaining prepaid period associated with Services terminated in accordance with this provision.* Client may also terminate Services by providing IBM notice, after the Services have been under contract for at least one year. Client will receive a credit for any remaining prepaid period associated with Services terminated in accordance with this provision.*

PROVISION #2 - MULTI-YEAR TRANSACTION CONTRACT PERIOD

Client has committed to continue Services for the entire transaction contract period. However, Client may terminate Services for an Eligible Product, on notice to IBM, if Client permanently removes the Eligible Machine from productive use within Client's Enterprise. Otherwise, if Client chooses to terminate Services not being replaced by equivalent Services after the first year, Client may do so by providing IBM notice and paying an adjustment fee equal to one month's charges for each year in the Transaction Contract Period.* After allowing for applicable adjustments, Client will receive a credit for any remaining prepaid period associated with Services Client terminates in accordance with this provision.*

This 1) Attachment, 2) applicable Transaction Documents, and 3) the agreement identified below comprise the complete agreement regarding the Services and replace any prior oral or written communications between Client and IBM. Each party accepts the terms of this Attachment by signing this Attachment (or another document that incorporates it by reference) by hand or, where recognized by law, electronically.

As used in this Attachment and its applicable Transaction Documents, "Client", "Customer", "you" and "your" refer to the contracting entity identified below.

Agreed to:
TRAVERSE CITY LIGHT (Client)

Agreed to:
International Business Machines Corporation (IBM)

By _____
Authorized signature

By _____
Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Enterprise number: 09065584

Reference Agreement number:

Client address:

Attachment number:

AND POWER
1131 HASTINGS ST
TRAVERSE CITY MI 49686-4318

IBM address:
IBM CORPORATION
6303 BARFIELD RD NE
ATLANTA, GA 30328-4233

JOHN P. RACINE JR.
W. PETER DOREN
JOHN A. MACNEAL
MAURICE A. BORDEN
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RONALD W. SONDEE OF COUNSEL

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SUITE 300
TRAVERSE CITY MICHIGAN 49684
TEL (231) 947-0400
FAX (231) 947-0748
www.sondeeracine.com

March 14, 2017

Via Email Only

Mr. Scott Menhart
Manager of Telecom & Technology
Traverse City Light & Power
1131 Hastings Street
Traverse City, MI 49686
scott.menhart@tclp.org

Re: IBM Client Relationship Agreement

Dear Scott:

I have looked at the IBM Client Relationship Agreement. It appears to be IBM's standard agreement. I have the following comments:

1. Relationship Agreement, page 3 of 5, Liability and Indemnity. I think it is important to note that IBM's liability is capped at the amounts paid, up to 12 months of charges.
2. Termination depends on the Transaction Contract Period which that you choose pursuant to Paragraph 6 of the Master Services Agreement which is attached to the Client Relationship Agreement. I understand you chose a Multi-Year Transaction Contract Period of three years. You can terminate the agreement with 30 days notice, if you permanently remove the machine from your productive use.
3. I am not sure whether you chose to have an automatic renewal, but if you did, you need to be aware that the contract will renew automatically unless you give IBM notice more than 30 days prior to the renewal.

I see no other issues of note with the Agreement and I approve it as to form.

Sincerely,

SONDEE, RACINE & DOREN, PLC



Jeffrey L. Jocks

JLJ:jah
cc (via email): Timothy Arends



To: Light and Power Board
From: Tim Arends, Executive Director
Date: April 5, 2017
Subject: Hall Street Tenant Lease Agreement

Staff is requesting final approval of a lease agreement between Traverse City Light & Power and Third Coast Bakery, LLC for the tenant space at 130 Hall Street.

At the last board meeting, staff requested conceptual approval of the lease agreement because terms were still being worked on for additional requested parking spaces. Since that time, staff and Third Coast Bakery, LLC have agreed upon an annual \$750 added to the lease amount to be paid monthly subject to the annual escalation rate of 1.75% for three additional parking spaces located on the south side of the building.

The lease commences at the beginning of May 2017. No other changes have been made to the lease terms of a 60 month lease at \$15.50 per square foot per month. Incorporating the new terms for the parking spaces, Third Coast Bakery, LLC first year monthly lease increased from \$1,937.50 to \$2,000.00 or first year annual amount \$23,250 increased to \$24,000 with an annual escalation rate of 1.75%. The total lease revenue over the next five years will be \$124,274.15. The brokerage fee for placing this tenant is \$6,213.71, or 5% of the total lease revenue. The lease's monthly rental rate reflects current market rate in the area and allows for inflationary increases on an annual basis.

This item is on the Consent Calendar as it is deemed non-controversial. Approval of this item on the Consent Calendar means you agree with staff's recommendations.

If any member of the Board or the public wishes to discuss this matter, other than clarifying questions, it should be placed on the "Items Removed from the Consent Calendar" portion of the agenda for full discussion. If after Board discussion you agree 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 LEASE AGREEMENT WITH THIRD COAST BAKERY, LLC. AT THE TENANT SPACE AT 130 HALL STREET FOR A PERIOD OF 60 MONTHS, SUBJECT TO APPROVAL AS TO FORM BY COUNSEL.

LEASE

THIS LEASE, made this ____ day of _____, 2017 by and between the TRAVERSE CITY LIGHT & POWER DEPARTMENT, a Michigan municipal electric utility, of 1131 Hastings Street, Traverse City, Michigan 49684 ("Landlord") and, THIRD COAST BAKERY, LLC, a Michigan Limited Liability Company, and Heather Burson, jointly and severally, of 9900 E. Rocky Road, Suttons Bay, Michigan 49682, ("Tenant").

WITNESSETH:

ARTICLE 1: Premises.

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the term and on the conditions hereinafter provided, the space consisting of (i) approximately one thousand five hundred (1,500) square feet of ground floor area, and (ii) nine (9) parking spaces, all as depicted on the plan attached hereto and by this reference made a part hereof as Exhibit A, and all appurtenances thereto, located in the building owned by Landlord situated in the City of Traverse City, State of Michigan, and generally known as 130 Hall Street. Tenant acknowledges that access to and use of the parking spaces may not be available during emergency or maintenance situations occurring at Landlord's property. Landlord shall, when possible, provide Tenant advance notice of such situations.

The space described above and leased to Tenant is hereinafter called the "premises" and the structure on such premises enclosing the ground floor area is hereinafter called the "building."

ARTICLE 2: Use.

The building is hereby leased for retail, office, and wholesale food manufacturing purposes. The parking spaces are hereby leased only for parking.

Notwithstanding anything contained herein to the contrary, it is expressly understood that Landlord shall not be construed or held to be a joint venturer, partner, or associate of Tenant in the conduct of its business, the relationship between the parties hereto being at all times that of landlord and tenant, and it is also agreed that Tenant shall be under no obligation or duty to continuously operate its business at the premises.

ARTICLE 3: Term.

The premises are hereby leased to Tenant to have and to hold for a term commencing on the "Commencement Date" (as herein defined) and continuing for a partial month, if any, and five (5) years, unless said term shall be terminated earlier or extended, as provided in this lease.

Provided that Tenant is not in default under this Lease during the original term and Tenant gives proper notice, Tenant shall have the option to extend this lease agreement for one additional term of five (5) years by providing Landlord written notice of its exercise of this option to renew not less than 120 days before the end of the original term. The additional term shall be on the same terms and conditions as this lease agreement, except for the provisions regarding rent and additional rent which shall be mutually

- (e) FEES/INTEREST - If any rent or additional rent is not paid within 5 days of the due date, Tenant shall pay a late payment charge of One Hundred dollars (\$100.00) for each such late payment, together with six percent (6%) per annum interest on all payments more than 30 days delinquent. In addition, Lessee shall pay a twenty-five dollar \$25.00 returned check fee.

ARTICLE 7: Repairs.

- (a) Landlord agrees, at Landlord's own cost and expense, to maintain the exterior of the building in good and first-class order, condition and state of repair, and to make the following repairs relating to the premises:
 - i. all structural repairs;
 - ii. all repairs to and replacements of the roof and under flooring;
 - iii. all repairs to the exterior of the premises and the building, including sidewalks adjoining same;
 - iv. remove snow from the parking spaces leased herein;
 - v. all repairs and replacements to utilities systems and sewer lines;
 - vi. all repairs to any fire sprinkling main and system servicing the premises;
 - vii. all repairs to the interior of the premises if the need therefore arose as a result of Landlord's act or failure to act;
- (b) The Landlord shall not be responsible or liable to the tenant for any loss or damage resulting to the Tenant's property or to the Tenant from bursting, stoppage or leaking of water, gas, sewer, and sprinkler or steam pipes. Nor shall the Landlord be responsible for any repairs necessary by the acts of the Tenant, its employees or invitees.
- (c) Except as herein above provided, Tenant shall take good care of the premises, shall replace broken glass and shall do the work required to maintain the premises, the storefront and the fixtures and equipment therein, including the plumbing and electrical systems located in and serving the premises, in good working order, except in cases of damage and injury arising under the provisions of Articles 16 and 17 hereof. Tenant agrees to repair all damages caused by Tenant or its invitees. Tenant further agrees to remove snow from the sidewalk in front of the building along Hall Street between driveways.
- (d) If Landlord fails to make any of the repairs or to timely perform any of the other obligations required of Landlord under this lease within thirty (30) days after written notice from Tenant of the necessity therefore, Tenant, in addition to any other rights or remedies

premises during Tenant's business hours for the purpose of examining the same or making such repairs therein as may be necessary for the safety and preservation thereof.

Landlord shall have the right, following 24 hour notice to Tenant, during Tenant's business hours, to show the premises to persons wishing to purchase the building, and shall also have the right, following reasonable notice to Tenant, during the three (3) months preceding the expiration of the term hereby granted and during Tenant's business hours, to show the premises to persons wishing to rent the premises. Reasonable notice shall include telephone call, voicemail, email, facsimile or standard mail.

Landlord agrees that any entry by it into the building shall be done in such a manner so as not to unreasonably interfere with the conduct of normal business operations therein. Landlord shall exert its best efforts to perform any and all work expeditiously and agrees to keep all interruptions to Tenant's business to a minimum. If as a result of any entry by Landlord into the building it is necessary to Tenant to suspend business operations therein, then rent shall abate for the period of time normal business operations are suspended.

ARTICLE 11: Alterations and Signs.

- (a) Tenant shall provide Landlord with a proposal for any and all alterations to the Premises. Landlord shall approve, disapprove or conditionally approve such proposals within 45 days, but if such proposals are for non-structural changes then Landlord shall approve, disapprove or conditionally approve such proposals within 15 days. Landlord reserves the right to contract for the performance of such alteration and to pay contractors in the first instance. In those situations where Landlord contracts for the alterations Tenant agrees to reimburse Landlord within 20 days of presentation of an invoice.

In all instances Tenant is responsible for obtaining bids for desired alteration work and selecting the desired contractor(s). Landlord reserves the right to approve the use of all vendors selected by Tenant to perform alterations.

- (b) All alterations, additions and improvements made by Tenant upon the premises shall remain upon the premises at the termination of this lease, except that any trade fixtures, furniture, equipment, signs and other personal property installed by Tenant in the premises during the term hereof shall be removed by Tenant from the premises at Tenant's cost and expense.
- (c) Tenant may from time to time, at its own expense, install and maintain, replace and relocate on the premises and building its standard identifying signs, parking and/or tow away zone signs, and lighting effects as are or may be, from time to time, used or adopted by Tenant. Tenant may place Tenant's standard professionally made signs in its windows in accordance with Tenant's regular advertising and promotional programs. However, all signs must be approved in advance by Landlord, which approval will not unreasonably be withheld.

ARTICLE 15: Waiver of Subrogation.

Each of the parties hereto hereby waives any and all rights of action for negligence against the other party hereto which may hereafter arise during the term hereof for damage to the building or to the property therein resulting from any fire or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or may hereafter be carried by the parties hereto, or either of them.

ARTICLE 16: Fire & Casualty Damage.

- (a) Except as provided in paragraph (c) hereof, if during the term hereof the premises or the building shall be damaged in whole or in part by fire or other casualty, Landlord shall, proceeding with all reasonable diligence and at its expense, repair the damage and restore the premises and the building to the same condition as existed immediately prior to such damage.
- (b) Tenant shall be entitled to an abatement of all rent and charges to the extent and for the period during which the premises are untenable or incapable of Tenant's normal use, such abatement to continue until the first to occur of (i) the date Tenant reopens in the premises for its normal business, or (ii) one hundred twenty (120) days following the date on which Landlord completes its repair and restoration pursuant to paragraph (a) above. It is further agreed that the term of this lease shall, at Tenant's option, be extended by the same number of days as normal business shall not have been conducted in the premises due to the damage or destruction.
- (c) Notwithstanding the foregoing, if the premises or the building shall be damaged or destroyed by fire or other casualty and the damage is of such a nature that it cannot be reasonably restored with the exercise of due diligence within ninety (90) days following the date of damage, then either Landlord or Tenant may terminate this lease by notice given to the other within forty five (45) days after the date of the damage.
- (d) If this lease shall be terminated as aforesaid, then this lease shall terminate and come to an end as of the date of the damage giving rise to such termination with the same force and effect in all respects as if such termination was the expiration date set forth herein, and rent and other charges payable hereunder shall be apportioned and paid up to the date of said damage and any prepaid unearned rent and other charges payable hereunder shall forthwith be repaid by Landlord to Tenant.

ARTICLE 17: Condemnation.

- (a) In the event that during the term of this lease the building or any part thereof, or the use, possession or access thereof, is taken in condemnation proceedings, by any right of eminent domain or for any public or quasi-public use, this lease and the term hereby granted shall terminate and expire on the date when possession shall be taken by the condemning authorities, and rent and all other charges payable hereunder shall be apportioned and paid in full up to that date and all prepaid unearned rent and all other

default shall thereafter continue beyond such period as is reasonably necessary to correct such default and Tenant is not diligently occupied in correcting the same, or (iii) the estate hereby created shall be taken on execution or by other process of law, or (iv) Tenant shall petition for bankruptcy or become insolvent according to law, or (v) any assignment shall be made of the property of Tenant for the benefit of creditors, and if a receiver, guardian, conservator, trustee in bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of Tenant's property by a court of competent jurisdiction, Landlord lawfully may, immediately or at any time thereafter, upon prior written notice, enter into and upon the premises or any part thereof in the name of the whole, and repossess the same as of its former estate, and expel Tenant, and those claiming through or under it, and remove its or their effects without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant. Upon entry as aforesaid this lease shall terminate. Tenant covenants and agrees, notwithstanding any entry or re-entry by Landlord, whether by summary proceedings, termination or otherwise, to pay and be liable for on the days originally fixed herein for the payment thereof, amounts equal to the rent, additional rent, and other charges under the terms of this lease, when those become due as if this lease had not been terminated, or as if Landlord had not entered or re-entered, and whether the premises be relet or remain vacant, in whole or in part, for the remainder of the term or for a period less than the remainder of the term. If the premises are relet by Landlord, Tenant shall be entitled to a credit in the net amount of rent received by Landlord in reletting the premises, after deduction of all reasonable expenses (including, without limitation, reasonable brokerage fees, and the like), and in collecting the rent in connection therewith. In the event of termination by Landlord as aforesaid, Landlord agrees to use reasonable efforts to relet the premises so as to minimize the damages suffered by Landlord and payable by Tenant.

- (b) If Landlord shall fail to perform any of its obligations under this lease and as a result thereof Tenant closes its business operations on the premises, then, in such event, all rent and other payments required to be made by Tenant under this lease shall abate until such time as Tenant shall be able to reopen the premises for business.

ARTICLE 21: Miscellaneous Provisions.

- (a) Notices. Whenever by the terms of this lease any notice, request, demand or other communication shall or may be given, either to Landlord or to Tenant, the same must be in writing, and shall be sent by registered or certified mail (return receipt requested), postage prepaid, or shall be delivered by private overnight carrier or by messenger service as follows:

If to Landlord: addressed to Traverse City Light & Power Dept. c/o Schmidt-Rogers Management, LLC at 996 Garfield Woods Dr., Suite D, Traverse City, MI 49686 (or to such address or addresses as may from time to time hereafter be designated by Landlord by like notice);

- (h) Recording. This lease shall not be recorded. However, upon request of either Landlord or Tenant, the parties agree to enter into a short form notice of lease (in form proper for recording), which instrument may be recorded by, and at the expense of, the party so requesting.
- (i) Law To Govern. This lease shall be governed by and construed pursuant to the laws of the state of Michigan, as such laws may exist from time to time during the term hereof.
- (j) Transmittal of Lease. Notwithstanding any actions to the contrary, the transmittal of this lease and any discussion thereof by the parties is not a binding legal agreement, and this lease shall be effective only upon actual execution and delivery thereof by both of the parties hereto.
- (k) Entire Agreement/Invalidity. This lease contains and embraces the entire agreement between the parties hereto and may not be changed or terminated orally or by any agreement unless such agreement shall be in writing and signed by the party against whom enforcement of such change or termination is sought. If any term, clause or provision of this lease shall be judged to be invalid, the validity of any other term, clause or provision hereof shall not be affected thereby.
- (l) Headings. It is agreed that the headings of the various paragraphs herein are for reference only and are not to be construed as part of this agreement.
- (m) Electronic Documents. After this lease 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, this lease shall be considered as validly delivered as the physical delivery of the signed lease in paper form. In addition, it is further understood that this lease 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.
- (n) Grease Pits. At no time shall tenant have a grease pit within the building or on the premises.

IN WITNESS WHEREOF, each of the parties has caused this instrument to be executed on the day and year first above written.

LANDLORD:
TRAVERSE CITY LIGHT & POWER DEPARTMENT

Tim Arends, Executive Director



To: Light and Power Board
From: Tim Arends, Executive Director
Date: April 5, 2017
Subject: Board Rules Amendment

General Counsel notified staff when amending board rules you first have to introduce the change and then at the following meeting approve it. Therefore, staff is considering this a housekeeping matter and requesting the Board reapprove the Board Rule No. 1 amendment.

The Board Rule No. 1 states, "Regular meetings of the Light and Power Board shall be held on the second and fourth Tuesdays of every month at 5:15 P.M. in the Commission Chambers of the Governmental Center, 400 Boardman Avenue, Traverse City."

Staff is requesting approval for the Board Rule No. 1 to state, "Regular meetings of the Light and Power Board shall be held on the second Tuesday of every month with the fourth Tuesday of every month reserved for potential Special Meetings at 5:15 P.M. in the Commission Chambers of the Governmental Center, 400 Boardman Avenue, Traverse City. An announcement will be made by the Board Chairman at the regular meeting of the month should a special meeting be needed on the fourth Tuesday."

This item is on the Consent Calendar as it is deemed non-controversial. Approval of this item on the Consent Calendar means you agree with staff's recommendations.

If any member of the Board or the public wishes to discuss this matter, other than clarifying questions, it should be placed on the "Items Removed from the Consent Calendar" portion of the agenda for full discussion. If after Board discussion you agree with staff's recommendation the following motion would be appropriate:

MOTION ON NEXT PAGE

FOR THE LIGHT & POWER BOARD MEETING OF APRIL 11, 2017

MOVED BY _____, SECONDED BY _____,

THAT THE BOARD AUTHORIZES THE AMENDMENT OF BOARD RULE #1 – REGULAR MEETINGS TO READ, “REGULAR MEETINGS OF THE LIGHT AND POWER BOARD SHALL BE HELD ON THE SECOND TUESDAY OF EVERY MONTH WITH THE FOURTH TUESDAY OF EVERY MONTH RESERVED FOR POTENTIAL SPECIAL MEETINGS AT 5:15 PM IN THE COMMISSION CHAMBERS OF THE GOVERNMENTAL CENTER, 400 BOARDMAN AVENUE, TRAVERSE CITY. AN ANNOUNCEMENT WILL BE MADE BY THE BOARD CHAIRMAN AT THE REGULAR MEETING OF THE MONTH SHOULD A SPECIAL MEETING BE NEEDED ON THE FOURTH TUESDAY.”



TRAVERSE CITY
LIGHT & POWER

To: Light & Power Board
From: Tim Arends, Executive Director
Date: March 29, 2017
Subject: Michigan Broadband Services Pole Attachment Agreement

Michigan Broadband Services, a telecommunication company, has submitted a METRO act permit application with the City of Traverse City for access to and use of the public right-of-way within the City for installation of a fiber network for the purpose to offer high speed broadband and other telecommunication services in Traverse City.

Attached is a proposed Agreement for the Board's consideration that will allow Michigan Broadband Services to install the above proposed pole attachments. The Agreement models APPA's recommended agreement and the template has been reviewed and approved by general counsel. The Agreement will have a term of five years with an automatic year-to-year renewal option, the annual pole attachment fee of \$12.75 was calculated using APPA's share cost pole attachment fee formula, and built-in annual inflationary increases based on CPI – All Urban Consumers.

The Agreement also requires the entity to underground its services if TCL&P undergounds its services with the intention of removing the pole line. Additionally, the agreement specifically reserves space for the possible expansion of the utility's fiber to the premise project.

Staff recommends the Board's approval of the Agreement between TCL&P and Michigan Broadband Services to allow Michigan Broadband Services to attach fiber to poles in the service area.

This item is on the Consent Calendar as it is deemed non-controversial. Approval of this item on the Consent Calendar means you agree with staff's recommendations.

If any member of the Board or the public wishes to discuss this matter other than clarifying questions, it should be placed on the "Items Removed from the Consent Calendar" portion of the agenda for full discussion. If after Board discussion you agree with staff's recommendation the following motion would be appropriate:

MOTION ON NEXT PAGE

FOR THE LIGHT & POWER BOARD MEETING OF APRIL 11, 2017

MOVED BY _____, SECONDED BY _____,

THAT THE BOARD AUTHORIZES THE SECRETARY AND CHAIRMAN TO EXECUTE A POLE ATTACHMENT AGREEMENT WITH MICHIGAN BROADBAND SERVICES FOR THE INSTALLATION OF FIBER ON TRAVERSE CITY LIGHT AND POWER POLES PER THE REQUIREMENTS OF THE AGREEMENT AS PRESENTED, SUBJECT TO APPROVAL AS TO SUBSTANCE BY THE EXECUTIVE DIRECTOR AND AS TO FORM BY GENERAL COUNSEL.

POLE ATTACHMENT LICENSE AGREEMENT FOR COMMUNICATION FACILITIES

This Pole Attachment Licensing Agreement (the "Agreement") dated this ____ day of _____, 20__ is made by and between the TRAVERSE CITY LIGHT AND POWER DEPARTMENT (hereinafter referred to as "Utility"), a Michigan municipal electric utility, 1131 Hastings Street, Traverse City, MI 49686 and _____, a _____ of the State of _____, _____ (hereinafter referred to as "Licensee").

Recitals

- A. Licensee proposes to install and maintain Communication Facilities and associated equipment, Licensee's Attachments, on Utility's Poles to provide Communication Services; and
- B. Utility is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee's Attachments on Utility's Poles, provided that Utility may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, generally applicable engineering purposes, and/or any other Applicable Standard.

The parties agree as follows:

Article 1—Definitions

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific Article or Paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future and past tense, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1 **Affiliate:** when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.

- 1.2 **Applicable Standards:** means all applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of all work in or around electric Utility Facilities and includes the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), and the regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of Utility or other federal, state or local authority with jurisdiction over Utility Facilities.
- 1.3 **Attaching Entity:** means any public or private entity, including Licensee, that pursuant to a license agreement with Utility, places an Attachment on Utility’s Pole to provide Communication Services.
- 1.4 **Attachment(s):** means Licensee’s Communication Facilities that are placed directly on Utility’s Poles, and/or are Overlashed onto an existing Attachment , but does not include either a Riser or a service drop attached to a single Pole where Licensee has an existing Attachment on such Pole.
- 1.5 **Capacity:** means the ability of a Pole segment to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.
- 1.6 **Climbing Space:** means that portion of a Pole’s surface and surrounding space that is free from encumbrances to enable Utility employees and contractors to safely climb, access, and work on Utility Facilities and equipment.
- 1.7 **Communications Facilities:** means wireline, including but not limited to fiber optic, copper and/or coaxial cables, utilized to provide Communication Service. This excludes any wireless mechanisms.
- 1.8 **Communications Service:** means the transmission or receipt of voice, video, data, broadband Internet or other forms of digital or analog signals over Communications Facilities.
- 1.9 **Licensee:** means _____, its authorized successors and assignees.

- 1.10 **Make-Ready Work:** means all work that Utility reasonably determines to be required to accommodate Licensee's Communications Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement and/or transfer of Utility Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), pole replacement and construction, but does not include Licensee's routine maintenance.
- 1.11 **Occupancy:** means the use or reservation of space for Attachments on a Utility Pole.
- 1.12 **Overlash:** means to place an additional wire or cable Communications Facility onto an existing attached Communication Facility.
- 1.13 **Pedestals/Vaults/Enclosures:** means above- or below-ground housings that are not attached to Utility Poles but are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices and/or to provide a service connection point (see Appendix D Specifications).
- 1.14 **Permit:** means written or electronic authorization (see Appendix C) by Utility for Licensee to make or maintain Attachments to specific Utility Poles pursuant to the requirements of this Agreement. Licensee's attachments made prior to the Effective Date and authorized by Utility (Existing Attachments) shall be deemed Permitted Attachments hereunder.
- 1.15 **Pole:** means a pole owned or controlled by Utility that is used for the distribution of electricity, wood poles used for street lighting, and/or Communications Service and is capable of supporting Attachments for Communication Facilities.
- 1.16 **Post-Construction Inspection:** means the inspection by Utility or Licensee or some combination of both to verify that the Attachments have been made in accordance with Applicable Standards and the Permit.
- 1.17 **Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or Utility to determine the Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole. Such work includes, but is not limited to, field inspection and administrative processing.

- 1.18 **Reserved Capacity:** means capacity or space on a Pole that Utility has identified and reserved for its own future utility requirements at the time of the Permit grant, including the installation of communications circuits for operation of Utility's electric system.
- 1.19 **Riser:** means metallic or plastic encasement materials placed vertically on the Pole to guide and protect wires and cables.
- 1.20 **Tag:** means to place distinct markers on wires and cables, coded by color or other means specified by Utility and/or applicable federal, state or local regulations, that will readily identify the type of Attachment (e.g., cable TV, telephone, high-speed broadband data, public safety) and its owner.
- 1.21 **Utility Facilities:** means all personal property and real property owned or controlled by Utility, including Poles and related facilities.

Article 2—Scope of Agreement

- 2.1 **Grant of License.** Subject to the provisions of this Agreement, Utility grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Attachments to Utility's Poles.
- 2.2 **Parties Bound by Agreement.** Licensee and Utility agree to be bound by all provisions of this Agreement.
- 2.3 **Permit Issuance Conditions.** Utility will issue one or more Permit(s) to Licensee only when Utility determines, in its sole judgment, exercised reasonably, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards.
- 2.4 **Reserved Capacity.** Access to space on Utility Poles may be denied or may be made available to Licensee with the understanding that certain Poles may be subject to Reserve Capacity for future electric or communication service use. If made available at the time of Permit issuance, Utility shall notify Licensee if capacity on particular poles is being reserved for reasonably foreseeable future electric or communication use. For Attachments made with notice of such a Reservation of Capacity, on giving Licensee at least sixty (60) calendar days prior notice, Utility may reclaim such Reserved Capacity at any time following the installation of Licensee's Attachment if required for Utility's future utility service. If reclaimed for Utility's use, Utility may at

such time also install associated facilities, including the attachment of communications lines. Utility shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or if possible to expand capacity to pay for the cost of any Make-Ready Work needed to expand Capacity for utility service requirements, so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article 9. Licensee shall not be required to bear any of the costs of rearranging or replacing its Attachment(s), if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity, but not including the Utility.

- 2.5 **No Interest in Property.** No use, however lengthy, of any Utility Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of Utility's rights to Utility Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a Licensee only.
- 2.6 **Licensee's Right to Attach.** Nothing in this Agreement, other than a Permit issued pursuant to Article 6, shall be construed as granting Licensee any right to attach Licensee's Communications Facilities to any specific Pole.
- 2.7 **Utility's Rights over Poles.** The parties agree that this Agreement does not in any way limit Utility's right to locate, operate, maintain or remove its Poles in the manner that will best enable it to fulfill its service requirements or to comply with any federal, state or local legal requirement.
- 2.8 **Expansion of Capacity.** Utility will take reasonable steps at Licensee's expense to expand Pole Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require Utility to install, retain, extend or maintain any Pole for use when such Pole is not needed for Utility's own service requirements.
- 2.9 **Other Agreements.** Except as expressly provided in this Agreement, nothing in this Agreement shall limit, restrict, or prohibit Utility from fulfilling any

agreement or arrangement regarding its Poles into which Utility has previously entered, or may enter in the future, with others not party to this Agreement.

2.10 Permitted Uses. This Agreement is limited to the uses specifically stated in the recitals set forth above and no other use shall be allowed without Utility's express written consent to such use. Nothing in this Agreement shall be construed to require Utility to allow Licensee to use Utility's Poles after the termination of this Agreement.

2.11 Overlapping. The following provisions apply to Overlapping:

2.11.1 Licensee shall obtain a Permit for each Overlapping, in accordance with the requirements of Article 6. Absent such authorization, Overlapping constitutes an unauthorized Attachment and is subject to removal or, at Utility's discretion, imposition of an Unauthorized Attachment fee, as specified in Appendix A, Item 3.

2.11.2 Authorized Overlapping to accommodate Attachments of Licensee or its Affiliate(s) shall not increase the Annual Attachment Fee paid by Licensee pursuant to Appendix A, Item 1. Licensee or Licensee's Affiliate shall, however, be responsible for all Make Ready Work and other charges associated with the Overlapping. Licensee shall not pay a separate Annual Attachment Fee for such Overlapped Attachment.

2.11.3 At Licensee's request, Utility may allow Overlapping to accommodate facilities of a third party, not affiliated with Licensee. In such circumstances, the third party must enter into a License Agreement with Utility, obtain Permit(s) and pay a separate Attachment Fee (Appendix A, Item 1) as well as the costs of all necessary Make-Ready Work required to accommodate the Overlapping. Utility shall not grant such Permit(s) to third parties allowing Overlapping of Licensee's Communications Facilities without Licensee's consent. Authorized Overlapping shall not increase the fees and charges paid by Licensee pursuant to Appendix A, Item 1. Nothing in this Agreement shall prevent Licensee from seeking a contribution from an Overlapping third party to defray fees and charges paid by Licensee.

2.11.4 Make-Ready Work procedures set forth in Article 7 shall apply, as necessary, to all Overlapping.

- 2.12 **Enclosures.** Licensee shall not place Pedestals, Vaults and/or other Enclosures on or within four (4) feet of any Pole or other Utility Facilities without Utility's prior written permission. If permission is granted, all such installations shall be per the Specifications and Drawings in Appendix D of this Agreement and charges as provided in Appendix A. Such permission shall not be unreasonably withheld. Further, Licensee agrees to move any such above-ground enclosures in order to provide sufficient space for Utility to set a replacement Pole.
- 2.13 **Non-Discrimination.** The Licensee agrees 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 their actual or perceived race, color, religion, national origin, age, sex, height, weight marital status, physical or mental disability, family status, sexual orientation, or gender identity. Breach of this covenant may be regarded as a material breach of this Agreement.
- 2.14 **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.
- 2.15 **Governmental Immunity.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by Utility of any governmental immunity.
- 2.16 **Third Party Beneficiaries.** There are no intended third party beneficiaries of this Agreement.
- 2.17 **Costs and Fees.** If Utility incurs costs, including actual attorney and engineering fees, resulting from Licensee's breach of or failure to follow this Agreement or that arise from an action in a court to enforce or interpret this Agreement, Licensee shall pay Utility's costs including actual attorney and engineering fees.

Article 3—Fees and Charges

- 3.1 **Payment of Fees and Charges.** Licensee shall pay to Utility the fees and charges specified in Appendix A and shall comply with the terms and conditions specified in this Agreement.

- 3.2 **Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from Utility pursuant to this Agreement within thirty (30) calendar days after Utility issues the invoice.
- 3.3 **Billing of Attachment Fee.** Utility shall invoice Licensee for the per-pole Attachment Fee annually. Utility will submit to Licensee an invoice for the annual rental period not later than July 31 of each year for the previous rental period. The initial annual rental period shall commence upon the execution of this Agreement and conclude on June 30 of the next year, and each subsequent annual rental period shall commence on the following July 1 and conclude on June 30 of the subsequent year. The invoice shall set forth the total number of Utility's Poles on/in which Licensee was issued and/or holds a Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits.
- 3.4 **Refunds.** No fees and charges specified in Appendix A shall be refunded on account of any surrender of a Permit granted under this Agreement. Nor shall any refund be owed if a Pole is not used or abandoned by Utility.
- 3.5 **Late Charge.** If Utility does not receive payment for any fee or other amount owed within thirty (30) calendar days after it becomes due, Licensee, shall pay interest to Utility, at the rate of one percent (1%) per month compounded.
- 3.6 **Payment for Work.** Licensee will be responsible for payment to Utility for all work that Utility or Utility's contractors perform pursuant to this Agreement to accommodate Licensee's Communication Facilities.
- 3.7 **Advance Payment.** At its sole discretion, Utility may require that Licensee pay in advance all reasonable costs, including but not limited to administrative, construction, inspections and Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's Communication Facilities pursuant to the procedures set forth in Articles 6 and 7 below.
- 3.8 **True Up.** Whenever Utility, in its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of activity exceeds the advance payment of estimated expenses, Licensee agrees to pay Utility for the difference in cost, provided that Utility documents such costs with sufficient detail to enable Licensee to verify the charges. To the extent that Utility's actual cost of the activity is less than the estimated cost, Utility shall refund to Licensee the difference in cost.

- 3.9 Determination of Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by Utility, the charge for such work shall include all reasonable material, labor, engineering, administrative, and applicable overhead costs. Utility shall bill its services based upon actual costs, and such costs will be determined in accordance with Utility's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and cost of materials used. Labor costs shall be the greater of the fully loaded costs of municipal labor or the current "union scale" for comparable work in the region. If Licensee was required to perform work and fails to perform such work, necessitating completion of the work by Utility, Utility may either charge an additional ten percent (10%) of its costs or assess the penalty specified in Appendix A.
- 3.10 Work Performed by Utility.** Wherever this Agreement requires Utility to perform any work, Utility, at its sole discretion, may utilize its employees, or contractors, or any combination of the two, to perform such work.
- 3.11 Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond sixty (60) days shall constitute a material default of this Agreement.
- 3.12 Payment of Taxes and Fees.** Licensee shall pay promptly all taxes, assessments and permit fees lawfully levied on its property and services authorized by this Agreement.

Article 4—Specifications

- 4.1 Installation/Maintenance of Communications Facilities.** When a Permit is issued pursuant to this Agreement, Licensee's Communication Facilities shall be installed and maintained in accordance with the requirements and specifications of Appendix D. All of Licensee's Communication Facilities must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. Licensee shall, at its own expense, make and maintain its Attachment(s) in safe condition and good repair, in accordance with all Applicable Standards. Notwithstanding anything in this Agreement to the contrary, Licensee shall not be required to update or upgrade its Attachments if they met Applicable Standards at the time they were made, unless such updates or upgrades are required by any revised Applicable Standards.

- 4.2 **Tagging.** Licensee shall Tag all of its Communication Facilities as specified in Appendix D and/or applicable federal, state and local regulations upon installation of such Facilities. Within one year of the execution of this Agreement, Licensee shall also tag any untagged Communications Facilities that were on Utility Poles on the Effective Date of this Agreement. Failure to provide proper tagging will be considered a violation of the Applicable Standards.
- 4.3 **Interference.** Licensee shall not allow its Communication Facilities to impair the ability of Utility or any third party to use Utility's Poles, nor shall Licensee allow its Communication Facilities to interfere with the operation of any Utility Facilities or third-party facilities.
- 4.4 **Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities. Licensee shall, at its own expense, install protective devices designed to handle the electric voltage and current carried by Utility's facilities in the event of a contact with such facilities. Except as provided in Paragraph 16.1, Utility shall not be liable for any actual or consequential damages to Licensee's Communication Facilities, Licensee's customers' facilities, or to any of Licensee's employees, contractors, customers, or other persons.
- 4.5 **Violation of Specifications.** If Licensee's Communication Facilities, or any part of them, are installed, used or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within thirty (30) calendar days from receipt of written notice of the violation(s) from Utility, Utility at its option, may correct such conditions. Utility will attempt to notify Licensee in writing prior to performing such work whenever practicable. When Utility believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of Utility's service obligations, or present an immediate threat to the physical integrity of Utility Facilities, Utility may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable afterward, Utility will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual and reasonable costs incurred by Utility in taking action pursuant to this Paragraph, and Licensee shall indemnify Utility against any liability, costs and expenses, including reasonable attorney's and expert fees, arising out of or relating to any such work.
- 4.6 **Restoration of Utility Service.** Utility's service restoration requirements shall take precedence over any and all work and/or operations of Licensee on Utility's Poles.

- 4.7 Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within ninety (90) calendar days of the effective date of the Permit(s) and any extension to such Permit(s), Utility may void the Permit(s) and may, but shall have no obligation to, use the space scheduled for Licensee's Attachment(s) for its own needs or make the space available to other Attaching Entities. If Utility uses the space for its own needs or makes it available to other parties, then from the date that Utility or a third party begins to use such space, Licensee may obtain a refund on the portion of any Attachment Fees that it has paid in advance for that space. For purposes of this paragraph, Licensee's access rights shall not be deemed effective until any necessary Make-Ready work has been performed.
- 4.8 Removal of Nonfunctional Attachments.** At its sole expense, Licensee shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for service ("Nonfunctional Attachment") as provided in this Paragraph 4.8. A Nonfunctional Attachment that Licensee has failed to remove as required in this paragraph shall constitute an unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A, Item 3. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming nonfunctional, unless Licensee receives written notice from Utility that removal is necessary to accommodate Utility's or another Attaching Entity's use of the affected Pole(s), in which case Licensee shall remove the Nonfunctional Attachment within sixty (60) days of receiving the notice. Where Licensee has received a Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment may remain in place until Utility notifies Licensee that removal is necessary to accommodate Utility's or another Attaching Entity's use of the affected Pole(s). Licensee shall give Utility notice of any Nonfunctional Attachments as provided in Article 15.

Article 5—Private and Regulatory Compliance

- 5.1 Necessary Authorizations.** Before Licensee occupies any of Utility's Poles, Licensee shall obtain from the appropriate public and/or private authority or from any property owner or other appropriate person, any required authorization to construct, operate or maintain its Communication Facilities on public or private property. Utility retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Licensee. Licensee's obligations under this Article 5 include, but are not limited to, its obligation to obtain and pay for all necessary approvals to occupy public/private

rights-of-way and easements and all necessary licenses and authorizations to provide the services that it provides over its Communication Facilities. Licensee shall defend, indemnify and reimburse Utility for all losses, costs and expenses, including reasonable attorney's fees, that Utility may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Communication Facilities on Utility's Poles or to provide particular services.

- 5.2 **Lawful Purpose and Use.** Licensee's Communication Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state and local laws.
- 5.3 **Forfeiture of Utility's Rights.** No Permit granted under this Agreement shall extend, or be deemed to extend, to any of Utility's Poles, to the extent that Licensee's Attachment would result in a forfeiture of Utility's rights. Any Permit that would result in forfeiture of Utility's rights shall be deemed invalid as of the date that Utility granted it. Further, if any of Licensee's existing Communication Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Facilities upon receipt of written notice from Utility. If Licensee does not remove its Communication Facilities in question within thirty (30) days of receiving written notice from Utility, Utility may at its option perform such removal at Licensee's expense. Notwithstanding the forgoing, Licensee shall have their right to contest any such forfeiture before any of its rights are terminated, provided that Licensee shall indemnify Utility for liability, costs and expenses, including reasonable attorney's fees, that may accrue during Licensee's challenge.
- 5.4 **Effect of Consent to Construction/Maintenance.** Consent by Utility to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization, or acknowledgment that Licensee has obtained all required Authorizations with respect to such Attachment.

Article 6—Permit Application Procedures

- 6.1 **Permit Required.** Licensee shall not make any Attachments to any of Utility's Poles without first applying for and obtaining a Permit pursuant to the applicable requirements of Appendix B. Unless updates or upgrades are required by Applicable Standards, or unless Utility notifies Licensee to the contrary, Licensee shall not be required to obtain Permits for Attachment(s) existing as of the Effective Date of this Agreement. Such grandfathered Attachments shall, however, be subject to the

Attachment Fees specified in Appendix A. Licensee shall provide Utility a list of all such pre-existing Attachments within six (6) months of the Effective Date of this Agreement.

6.2 Permits for Overlashing. As set out in Paragraph 2.11, Permits are required for any Overlashing allowed under this Agreement and Licensee, Licensee's Affiliate or other third party, as applicable, shall pay any necessary Make-Ready Work costs to accommodate such Overlashing.

6.3 Professional Certification. Unless otherwise waived in writing by Utility, as part of the Permit application process and at Licensee's sole expense, a qualified and experienced professional engineer, or an employee or contractor of Licensee who has been approved by Utility, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Licensee's Communications Facilities can be and were installed on the identified Poles in compliance with the standards in Paragraph 4.1 and in accordance with the Permit. The professional engineer's qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems. The Utility may require the Licensee's professional engineer to conduct a post-construction inspection that the Utility will verify by means that it deems to be reasonable.

Utility, at its discretion, may waive the requirements of this Paragraph 6.3, with respect to service drops.

6.4 Utility Review of Permit Application. Upon receipt of a properly executed Application for Permit (Appendix C), which shall include the Pre-Construction Survey, certified per Paragraph 6.3 above, and detailed plans for the proposed Attachments in the form specified in Appendix D, Utility will review the Permit Application and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. Utility acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis. Unless otherwise agreed, the Permit application process shall be consistent with the following timeline:

- 6.4.1 **Review Period.** Utility shall review and respond to properly executed and complete Permit Applications for routine installations as promptly as is reasonable with a goal of providing a response during normal circumstances of within forty-five (45) days of receipt. For Permit Applications seeking Attachments to 50 or more Poles, the Utility may require additional time to review. The Utility's response will either provide a written explanation as to why the Application is being denied, in whole or in part, or provide an estimate of the costs of all necessary Make-Ready Work.
- 6.4.2 Upon receipt of Utility's Make-Ready estimate, Licensee shall have fourteen (14) days to approve the estimate and provide payment in accordance with this Agreement and the specifications of the estimate.
- 6.4.3 Utility will complete routine Make-Ready Work within ninety (90) days of receipt of payment. If there are extenuating circumstances that make the necessary Make-Ready more complicated or time-consuming, including, but not limited to, the number of Poles and seasonal weather conditions, the Utility shall identify those factors in the Make-Ready estimate and the parties shall agree upon a reasonable timeframe for completion.
- 6.4.4 Utility may extend the time period for completion of Make-Ready Work by written notice in order to respond to severe storms, natural disasters, or other emergency situations.
- 6.5 **Permit as Authorization to Attach.** Upon completion of any necessary Make-Ready Work and receipt of payment for such work, Utility will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s).

Article 7—Make-Ready Work/Installation

- 7.1 **Estimate for Make-Ready Work.** If Utility determines that it can accommodate Licensee's request for Attachment(s), including Overlapping of an existing Attachment, it will, upon request, advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment.
- 7.2 **Payment of Make-Ready Work.** Upon completion of the Make-Ready Work, Utility shall invoice Licensee for Utility's actual cost of such Make-Ready Work. Alternatively, Utility, at its discretion, may require payment in advance for Make-

Ready Work based upon the estimated cost of such work. In such case, upon completion, Licensee shall pay Utility's actual cost of Make-Ready Work. The costs of the work shall be itemized as per Paragraph 3.9 and trued up in accordance with Paragraph 3.8.

- 7.3 **Who May Perform Make-Ready Work.** Make-Ready Work shall be performed only by Utility and/or a contractor authorized by Utility to perform such work. If Utility cannot perform the Make-Ready Work to accommodate Licensee's Communications Facilities within ninety (90) calendar days of Licensee's agreement to Make-Ready Work estimate, Licensee may request the ability to use a qualified contractor to perform such work and shall specify when such work would be performed. In all instances, qualified contractors, if allowed, must be pre-approved by Utility for such work on an annual basis.
- 7.4 **Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate Licensee's Communication Facilities, Utility will endeavor to include such work in its normal work schedule. If Licensee requests that the Make-Ready Work be performed on a priority basis or outside of Utility's normal work hours, Licensee will pay any resulting increased costs. Nothing in this Agreement shall be construed to require Utility to perform Licensee's work before other scheduled work or Utility service restoration.
- 7.5 **Notification of Make-Ready Work.** Before starting Make-Ready Work, Utility shall notify all Attaching Entities of the date and location of the scheduled work and shall afford all such entities an opportunity to make any modifications to their existing Attachments in connection with the Make-Ready Work.
- 7.6 **Written Approval of Installation Plans Required.** Before making any Attachments to Utility's Poles, including Overlashing of existing Attachments, Licensee must obtain Utility's written approval of detailed plans for the Attachments. Such detailed plans shall accompany a Permit application as required under Paragraph 6.4.
- 7.7 **Licensee's Installation/Removal/Maintenance Work.**
- 7.7.1 All of Licensee's installation, removal and maintenance work, by either Licensee's employees or authorized contractors, shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of Utility's Poles or other

Facilities or other Attaching Entity's facilities or equipment. All such work is subject to the insurance requirements of Article 18.

- 7.7.2 All of Licensee's installation, removal and maintenance work, either by its employees or authorized contractors, shall comply with all applicable regulations specified in Paragraph 4.1. Licensee shall assure that any person installing, maintaining, or removing its Communication Facilities is fully qualified and familiar with all Applicable Standards, the provisions of Article 17, and the Minimum Design Specifications contained in Appendix D.

Article 8—Transfers

If Utility reasonably determines that a transfer of Licensee's Communication Facilities is necessary, Utility will, at its option, either require Licensee to perform such transfer at its own expense within thirty (30) calendar days after receiving notice from Utility, or perform the transfer itself, Utility shall have the right to transfer Licensee's Facilities using its personnel and/or contractors. If Licensee fails to transfer its Facilities within thirty (30) days after receiving such notice from Utility, Utility shall have the right to transfer Licensee's Facilities using its personnel and/or contractors. The costs of such transfers shall be apportioned as specified under Article 9. Utility shall not be liable for damage to Licensee's Facilities except to the extent provided in Paragraph 16.1. The written advance notification requirement of this Paragraph shall not apply to emergency situations. In emergency situations, Utility shall provide such advance notice as is practical, given the urgency of the particular situation. Utility shall then provide written notice of any such actions taken within ten (10) days following the occurrence. Irrespective of who owns Facilities that are overlashed on to Licensee's Attachments, Licensee is responsible for the transfer of such Facilities and the costs of doing so.

Article 9—Modifications And/or Replacements

- 9.1 **Licensee's Action Requiring Modification/Replacement.** If any Pole to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional facilities in accordance with all Applicable Standards, Utility will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Pole, including but not limited to, replacement of the Pole and/or rearrangement or transfer of Utility's Facilities, as well as the facilities of other Attaching Entities. Licensee shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities existing Attachments. If Licensee

elects to go forward with the necessary changes, Licensee shall pay to Utility the actual cost of the Make-Ready Work, performed by Utility, in accordance with Paragraph 3.9. Utility, in its discretion, may require advance payment. Licensee shall also be responsible for obtaining, and furnishing to Utility before the commencement of any Make-Ready Work, agreements between Licensee and the other Attaching Entities (including Overlashers) concerning the relocation or rearrangement of their Attachments and the costs involved.

- 9.2 **Treatment of Multiple Requests for Same Pole.** If Utility receives Permit Applications for the same Pole from two or more prospective licensees within sixty (60) calendar days of the initial request, and accommodating their respective requests would require modification of the Pole or replacement of the Pole, Utility will allocate among such licensees the applicable costs associated with such modification or replacement.
- 9.3 **Guying.** The use of guying to accommodate Licensee's Attachments shall be provided by and at the expense of, Licensee and to the satisfaction of Utility as specified in Appendix D. Licensee shall not attach its guy wires to Utility's anchors without prior written permission of Utility. If permission is granted, charges may apply.
- 9.4 **Allocation of Costs.** The costs for any rearrangement or transfer of Licensee's Communication Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of Utility's cables or wires) shall be allocated to Utility and/or Licensee and/or other Attaching Entities on the following basis:
- 9.4.1 If Utility intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. Licensee shall not be responsible for costs associated with the rearrangement or transfer of Licensee's Communication Facilities, unless and to the extent the rearrangement or transfer is necessary in connection with Utility's reclaiming of Reserved Capacity from Licensee. Prior to making any such modification or replacement, Utility shall provide Licensee written notification of its intent in order to provide Licensee a reasonable opportunity to modify or add to its existing Attachment. Should Licensee decide to do so, it must seek Utility's written permission in accordance with this Agreement. If Licensee elects to add to or modify its Communication Facilities, Licensee

shall pay its fair share of the costs incurred by Utility in making the space on the Poles accessible to Licensee.

9.4.2 If the modification or the replacement of a Pole is necessitated by the requirements of Licensee, Licensee shall be responsible for all costs caused by the modification or replacement of the Pole as well as the costs associated with the transfer or rearrangement of any other Attaching Entity's Communication Facilities. At the time Licensee submits a Permit Application to Utility, Licensee shall submit evidence, in writing, that it has made arrangements to reimburse all affected Attaching Entities for their costs caused by the transfer or rearrangement of their Facilities. Utility shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's Facilities pursuant to this Paragraph 9.4.2.

9.4.3 If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than Utility or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or replacement, as well as the costs for rearranging or transferring Licensee's Communication Facilities. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's facilities.

9.4.4 If the Pole must be modified or replaced for reasons unrelated to the use of the Pole by Attaching Entities (e.g., storm, accident, deterioration), Utility shall pay the costs of such modification or replacement and Licensee shall pay the costs of rearranging or transferring its Communication Facilities.

9.5 **Utility Not Required to Relocate.** Nothing in this Agreement shall be construed to require Utility to relocate its Attachments or to modify or replace its Poles for the benefit of Licensee.

Article 10—Abandonment, Removal or Relocation of Utility Facilities

10.1 **Notice of Abandonment or Removal of Utility Facilities.** If Utility desires at any time to abandon, remove or underground any Utility Facilities to which Licensee's Communication Facilities are attached, it shall give Licensee notice

in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such Utility's Facilities. Notice may be limited to thirty (30) calendar days if Utility is required to remove or abandon its Utility Facilities as the result of the action of a third party and the lengthier notice period is not practical. Such notice shall indicate whether Utility is offering Licensee an option to purchase the Pole(s). If, following the expiration of the 30-day period, Licensee has not yet removed and/or transferred all of its Communication Facilities and has not entered into an agreement to purchase Utility's Facilities pursuant to Paragraph 10.2, Utility shall have the right, but not the obligation, to remove or transfer Licensee's Communications Facilities at Licensee's expense. Utility shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities.

- 10.2 Option to Purchase Abandoned Poles.** Should Utility desire to abandon any Pole for reasons other than underground relocation, Utility may, in its sole discretion, grant Licensee the option of purchasing such Pole at a price to be negotiated with Utility. Licensee must notify Utility in writing within thirty (30) calendar days of the date of Utility's notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should Utility and Licensee fail to enter into an agreement for Licensee to purchase the Pole within forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph 10.1. Nothing in this agreement shall be construed as requiring Utility to sell Licensee Poles that Utility intends to remove or abandon.
- 10.3 Underground Relocation** If Utility moves any portion of its aerial system underground, Licensee shall remove its Communication Facilities from any affected Poles and either (a) work in concert with the Utility in completing the underground relocation of the affected Communications Facilities, or (b) find other means to accommodate its Facilities within sixty (60) calendar days of receipt of notice from Utility. Licensee shall coordinate its relocation with the Utility to prevent unnecessary infrastructure replacement or repair and allow for concurrent conversion of services. If Licensee does not so remove its Attachment, Utility shall have the right to remove or transfer Licensee's Communications Facilities at Licensee's expense. Licensee's failure to remove its Facilities as required under this section shall subject Licensee to the penalty provisions of Appendix A.

10.4 Governmental Requirement to Remove or Shorten. In the event that the use of any Pole is or becomes lawfully forbidden by federal, state, county or municipal authorities or by owners of private property, Utility shall provide sixty (60) days notice to Licensee that the Authorization covering the use of such pole will be terminated, and that the Attachment(s) of Licensee must be removed from the affected pole at Licensee's expense. Notwithstanding the foregoing, if the federal, state, county or municipal authority, or private landowner requires discontinuance of the Pole in less than sixty (60) days, the notice provided by Utility shall be reduced accordingly. If a governmental authority requires Utility to reduce the height of a Pole such that the continued presence of Licensee's Attachments would not comply with the requirements of this Agreement, then the Authorization covering Licensee's Attachments to the Pole shall immediately terminate upon notice from Utility and Licensee shall remove its Attachments from the affected Pole at its own expense by the date specified by Utility.

Article 11—Removal of Licensee's Facilities

At the expiration or other termination of this License Agreement or individual Permit(s), or in the case of a Nonfunctional Attachment, Licensee shall remove its Communication Facilities from the affected Poles at its own expense. If Licensee fails to remove such facilities within sixty (60) calendar days of expiration or termination or some greater period as allowed by Utility or this Agreement, Utility shall have the right (a) to have such facilities removed at Licensee's expense and the Utility shall be the owner of such facilities and may dispose of them in its discretion; or (b) to leave the facilities in place and take ownership of them.

Article 12—Termination of Permit

- 12.1 Automatic Termination of Permit.** Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Communication Facilities on public or private property at the location of the particular Pole(s) covered by the Permit.
- 12.2 Surrender of Permit.** Licensee may at any time surrender any Permit for Attachment(s) and remove its Communication Facilities from the affected Pole(s), provided, however, that before commencing any such removal, Licensee must obtain Utility's written approval of Licensee's plans for removal, including the name of the person or entity performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 18. No refund of any fees or costs will be

made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from Utility's Facilities within thirty (30) calendar days, Utility shall have the right, but not the obligation, to remove or transfer Licensee's Attachments at Licensee's expense.

Article 13—Inspection of Licensee's Facilities

- 13.1 Inspections.** Utility may conduct an inventory and inspection of Attachments at any time. Within thirty (30) calendar days of receiving written notice from Utility, Licensee shall correct all Attachments that Utility identifies as being out of compliance with Applicable Standards. If Utility finds that five percent (5%) or more of Licensee's Attachments are either in non-compliance or not permitted, Licensee shall pay its pro-rata share of the costs of the inspection.
- 13.2 Notice.** Utility will give Licensee reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay.
- 13.3 No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon Utility any liability of any kind whatsoever or to relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.
- 13.4 Attachment Records.** Notwithstanding the above inspection provisions, Licensee shall furnish to Utility annually an up-to-date electronic map depicting the locations of its Attachments, in a format specified by Utility.

Article 14—Unauthorized Occupancy or Access

- 14.1 Penalty Fee.** If any of Licensee's Attachments are found occupying any Pole for which no Permit has been issued, Utility, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Access Penalty Fee as specified in Appendix A, Item 3. If Licensee fails to pay such Fee within thirty (30) calendar days of receiving notification of it, Utility shall have the right, but not the obligation, to remove such Communication Facilities at Licensee's expense.
- 14.2 No Ratification of Unlicensed Use.** No act or failure to act by Utility with regard to any unauthorized use shall be deemed as ratification of the unauthorized use. Unless the parties agree otherwise, a Permit for a previously unauthorized

Attachment shall not operate retroactively or constitute a waiver by Utility of any of its rights or privileges under this Agreement or otherwise, and Licensee shall remain subject to all obligations and liabilities arising out of or relating to its unauthorized use.

Article 15—Reporting Requirements

At the time that Licensee pays its annual Attachment Fee, Licensee shall also provide the following information to Utility, using the reporting form contained in Appendix E:

- 15.1 The Poles on which Licensee has installed, during the relevant reporting period, Risers and service drops, where no Permit was required.
- 15.2 All Attachments that have become nonfunctional during the relevant reporting period. The report shall identify the Pole on which the Nonfunctional Attachment is located, describe the nonfunctional equipment, and indicate the approximate date the Attachment became nonfunctional.
- 15.3 Any equipment Licensee has removed from Poles during the relevant reporting period. The report shall identify the Pole from which the equipment was removed, describe the removed equipment, and indicate the approximate date of removal. This requirement does not apply where Licensee is surrendering a Permit pursuant to Paragraph 12.2.

Article 16—Liability and Indemnification

- 16.1 **Liability.** Utility reserves to itself the right to maintain and operate its Poles in the manner that will best enable it to fulfill its service requirements. Licensee agrees to use Utility's Poles at Licensee's sole risk. Notwithstanding the foregoing, Utility shall exercise reasonable precaution to avoid damaging Licensee's Communication Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. Subject to Paragraph 16.5, Utility agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of such facilities damaged by the gross negligence or willful misconduct of Utility, provided, however, that the aggregate liability of Utility to Licensee, in any fiscal year, for any fines, penalties, claims, damages or costs arising out of or relating in any way to Licensee's service or interference with the operation of Licensee's Communication Facilities (including special, indirect, punitive or consequential damages) shall not exceed the amount of the total Annual Attachment Fees paid

by Licensee to Utility for that year as calculated based on the number of Attachments under Permit at the time of the occurrence, as set forth in Appendix A, Item 1.

16.2 Indemnification. Licensee, and any agent, contractor, or subcontractor to Licensee shall defend, indemnify, and hold harmless Utility and its officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by Utility under any Workers Compensation Laws or under any plan for employees disability and death benefits) and expenses (including reasonable attorney's fees of Utility and all other costs and expense of litigation) (Covered Claims) arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents or contractors, of Licensee's Communication Facilities, except to the extent of Utility's negligence or willful misconduct solely giving rise to such Covered Claims. This promise of indemnification is not limited by insurance. Such Covered Claims include, but are not limited to, the following:

- 16.2.1** Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;
- 16.2.2** Cost of work performed by Utility that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents or contractors, to install, maintain, use, transfer, or remove Licensee's Communication Facilities in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes Utility to perform on Licensee's behalf;
- 16.2.3** Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents, or contractors, pursuant to this Agreement;
- 16.2.4** Liabilities incurred as a result of Licensee's violation, or a violation of Licensee's officers, directors, employees, agents, or contractors, of any

law, rule or regulation of the United States, any state, or any other governmental entity or administrative agency.

16.2.5 Claims by Licensee's customers made as a result of Utility exercising its rights under this Agreement.

16.3 Procedures for Indemnification.

16.3.1 Utility shall give prompt written notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit, or proceeding filed by a third party against Utility, Utility shall give the notice to Licensee no later than fifteen (15) calendar days after Utility receives written notice of the action, suit, or proceeding.

16.3.2 Utility's failure to give the required notice will not relieve Licensee from its obligation to indemnify Utility unless, and only to the extent, that Licensee is materially prejudiced by such failure.

16.3.3 Licensee will have the right at any time, by notice to Utility, to participate in or assume control of, the defense of the claim with counsel of its choice, which counsel must be reasonably acceptable to Utility. Utility agrees to cooperate fully with Licensee. If Licensee assumes control of the defense of any third-party claim, Utility shall have the right to participate in the defense at its own expense. If Licensee does not assume control or otherwise participate in the defense of any third-party claim, Licensee shall be bound by the results obtained by Utility with respect to the claim.

16.3.4 If Licensee assumes the defense of a third party claim as described above, then in no event will Utility admit any liability with respect to, or settle, compromise or discharge, any third-party claim without Licensee's prior written consent.

16.4 **Environmental Hazards.** Licensee represents and warrants that its use of Utility's Poles will not generate any Hazardous Substances, that it will not store or dispose on or about Utility's Poles or transport to Utility's Poles any hazardous substances and that Licensee's Communication Facilities will not constitute or contain and will not generate any hazardous substance in violation of federal, state or local law now or hereafter in effect, including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material,

hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect, including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration or other disaster, its Communication Facilities would not release any Hazardous Substances. Licensee and its agents, contractors, and subcontractors shall defend, indemnify and hold harmless Utility and its respective officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, or expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage or discovery of any Hazardous Substances on, under or adjacent to Utility's Poles attributable to Licensee's use of Utility's Poles.

Should Utility's Poles be declared to contain Hazardous Substances, Utility, Licensee and all Attaching Entities shall share proportionately in the cost of disposal of the affected Poles based on each entity's individual percentage use of same. For Attaching Entities, such percentage shall be derived from the sum of space occupied by each Attaching Entity plus its share of the common space, including the NESC safety space. For Utility, such percentage shall be equal to the space above the NESC safety space plus its share of the common space. If the source or presence of the Hazardous Substance is solely attributable to particular parties, such costs shall be borne solely by those parties.

Article 17—Duties, Responsibilities, And Exculpation

- 17.1 Duty to Inspect.** Licensee acknowledges and agrees that Utility does not warrant the condition or safety of Utility's Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect Utility's Poles and/or premises surrounding the Poles, prior to commencing any work on Utility's Poles or entering the premises surrounding such Poles.
- 17.2 Knowledge of Work Conditions.** By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.

- 17.3 **DISCLAIMER.** UTILITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO UTILITY'S POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND UTILITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. UTILITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 17.4 **Duty of Competent Supervision and Performance.** The parties further understand and agree that in the performance of work under this Agreement, Licensee and its agents, employees, contractors and subcontractors will work near electrically energized lines, transformers or other Utility Facilities. The parties understand and intend that energy generated, stored, or transported by Utility Facilities will not be interrupted during the continuance of this Agreement, except in emergencies endangering life, or threatening grave personal injury or property. Licensee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, agents, contractors and subcontractors; employees, agents contractors and subcontractors of Utility and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of Utility's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.
- 17.5 **Requests to De-energize.** If Utility de-energizes any equipment or line at Licensee's request and for its benefit and convenience in performing a particular segment of any work, Licensee shall reimburse Utility in accordance with Paragraph 3.9, for all costs and expenses that Utility incurs in complying with Licensee's request. Before Utility de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Licensee's request.
- 17.6 **Interruption of Service.** If Licensee causes an interruption of service by damaging or interfering with any equipment of Utility or a permitted attaching entity, Licensee shall, at its own expense, immediately do all things reasonable to

avoid injury or damages, direct and incidental, resulting therefrom and shall notify Utility immediately.

- 17.7 **Other Attachments.** Licensee shall not change or tamper with the attachments of any other licensee.
- 17.8 **Duty to Inform.** Licensee further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on Utility's Poles by Licensee's employees, agents, contractors or subcontractors, and Licensee accepts the duty and sole responsibility to notify and inform Licensee's employees, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.

Article 18—Insurance

- 18.1 **Policies Required.** At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:
- 18.1.1 **Workers' Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Michigan law at the time of the application of this provision for each accident. This policy shall be endorsed to include a waiver of subrogation in favor of Utility. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
- 18.1.2 **Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, and \$2,000,000 each occurrence.
- 18.1.3 **Automobile Liability Insurance.** Business automobile policy covering all owned, hired and nonowned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.

18.1.4 Umbrella Liability Insurance. Coverage is to be in excess of the sum employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than \$4,000,000 each occurrence, \$4,000,000 aggregate.

18.1.5 Property Insurance. Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and utility structures, fencing or support systems that may be placed on, within or around Utility Facilities to protect fully against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as extended coverage insurance or self-insure such exposures.

18.2 Qualification; Priority; Contractors' Coverage. The insurer must be authorized to do business under the laws of the State of Michigan and have an "A" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, workers' compensation and employers' liability, comprehensive general liability, and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article 18 with the same limits.

18.3 Certificate of Insurance; Other Requirements. Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish Utility with a certificate of insurance ("Certificate") and, upon request, certified copies of the required insurance policies. The Certificate shall reference this Agreement and workers' compensation and property insurance waivers of subrogation required by this Agreement. Utility shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. Utility, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be named as Additional Insureds using the broad form endorsement under all of the policies, except workers' compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed \$100,000, or such greater amount as expressly allowed in writing by Utility. Licensee shall defend, indemnify and hold harmless Utility and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this

Article. Licensee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to Utility upon request.

- 18.4 Limits.** The limits of liability set out in this Article 18 may be increased or decreased by mutual consent of the Parties, which consent will not be unreasonably withheld by either Party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Licensee's exposure to risk.
- 18.5 Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions that (1) exclude coverage of liability assumed by this Agreement with Utility except as to infringement of patents or copyrights or for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage for injuries to Utility's employees or agents, or (4) exclude coverage of liability for injuries or damages caused by Licensee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.
- 18.6 Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

Article 19—Authorization Not Exclusive

Utility shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use Utility Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Agreement.

Article 20—Assignment

- 20.1 Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of Utility, which consent shall not be unreasonably withheld.
- 20.2 Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising

under this Agreement. Licensee shall furnish Utility with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants or conditions of this Agreement without the express written consent to the release of Licensee by Utility.

- 20.3 **Sub-licensing.** Without Utility's prior written consent, Licensee shall not sub-license or lease to any third party, including but not limited to, allowing third parties to place Attachments on Utility's Facilities, including Overlashing, or to place Attachments for the benefit of such third parties on Utility's Poles. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Communication Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or Overlashing is not subject to this Paragraph 20.3.

Article 21—Failure to Enforce

Failure of Utility or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

Article 22—Dispute Resolution Process

22.1 **Initial Meeting.** At either party's written request, each party will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration and conclusion of these discussions. The parties will conduct any meeting in-person or via conference call, as reasonably appropriate.

22.2 **Dispute Resolution.** If after the initial meeting the dispute regarding the meaning, operation, or enforcement of any provision of this Agreement has not been resolved, the parties 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.

22.3 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.

22.4 Business as Usual. During any dispute resolution procedure or lawsuit, the Utilities will continue providing services to each other and performing their obligations under this Agreement.

Article 23—Termination of Agreement

23.1 Utility shall have the right, pursuant to the procedures set out in this Article 23, to terminate this entire Agreement, or any Permit issued under it, whenever Licensee is in default of any material term or condition of this Agreement, including but not limited to the following circumstances:

23.1.1 Construction, operation or maintenance of Licensee's Communication Facilities in violation of law, or in aid of any unlawful act or undertaking; or

23.1.2 Construction, operation or maintenance of Licensee's Communication Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental authority or any private holder of easements or other rights, or violation of any other agreement with Utility; or

23.1.3 Construction, operation or maintenance of Licensee's Communication Facilities without the insurance coverage required under Article 18.

23.2 Utility will notify Licensee in writing of any defaults by Licensee under this Agreement. Licensee shall take immediate corrective action to eliminate any such defaults within fifteen (15) calendar days, or such longer period as the Parties may agree, and shall confirm in writing to Utility that the cited condition or conditions have ceased or been corrected, or are in the process of being corrected.

23.3 If Licensee contests the existence of the default, it may invoke the dispute resolution procedures of Article 22.

23.4 If the parties are unable to resolve the dispute and Licensee fails to discontinue or correct a default in a timely manner or fails to give the required confirmation, Utility may immediately terminate this Agreement or any Permit(s) granted under it. In the event of termination of this Agreement or any of Licensee's rights, privileges, or authorizations, Utility may seek removal of Licensee's Communications Facilities pursuant to the terms of Article 11, from any or all of Utility's Poles. In such instance, Licensee shall remain liable to Utility for all fees and charges accrued pursuant to the terms of this Agreement.

Article 24—Term of Agreement

24.1 This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of five (5) years and, unless terminated by either party, shall automatically be renewed year to year. Either party may terminate this Agreement at the end of the initial term or a successor term by giving written notice of intent to terminate the Agreement before the end of the then-current term. Such a notice must be given least ninety (90) calendar days prior to the end of the then-current term.

24.2 Even after the termination of this Agreement, Licensee's removal, insurance and indemnity obligations shall continue with respect to any claims or demands related to Licensee's Communication Facilities as provided for in this Agreement.

Article 25—Amending Agreement

This Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.

Article 26—Notices

26.1 Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail, return receipt requested, with postage prepaid and, except where specifically provided for elsewhere, properly addressed as follows:

If to Utility, at: Traverse City Light and Power, 1131 Hastings St., Traverse City, MI 49686, Attn: Executive Director;

If to Licensee, at: _____, _____,
_____, Attn:
_____;

or to such other address as either party, from time to time, may give the other party in writing.

26.2 The above notwithstanding the parties may agree to utilize electronic communications such as email for notifications related to the Permits application and approval process and necessary transfer or pole modifications.

26.3 Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where Utility can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to Utility's concerns and requests. Failure to maintain an emergency contact shall subject Licensee to a penalty of \$100 per incident, and shall eliminate Utility's liability to Licensee for any actions that Utility deems reasonably necessary given the specific circumstances.

Article 27—Entire Agreement

This Agreement and its appendices constitute the entire agreement between the parties concerning attachments of, Licensee's Communication Facilities on Utility's Poles within the geographical service area covered by this Agreement. Unless otherwise expressly stated in this Agreement, all previous agreements, whether written or oral, between Utility and Licensee are superseded and of no further effect.

Article 28—Severability

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement. Rather, the parties intend that the remaining provisions shall be administered as of the Agreement did not include the invalid provision.

Article 29—Governing Law

All matters relating to this Agreement shall be governed by the laws (without reference to choice of law) of the State of Michigan.

Article 30—Incorporation of Recitals and Appendices

The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.

Article 31—Force Majeure

31.1 If either Utility or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, court orders, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected party shall endeavor to remove or overcome such inability as soon as reasonably possible.

31.2 Utility shall not impose any charges on Licensee stemming solely from Licensee's inability to perform required acts during a period of unavoidable delay as described in Paragraph 31.1, provided that Licensee present Utility with a written description of such force majeure within a reasonable time after occurrence of the event or cause relied on, and further provided that this provision shall not operate to excuse Licensee from the timely payment of any fees or charges due Utility under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first written above.

(UTILITY)

(LICENSEE)

BY: _____

BY: _____

(Print Name) _____

(Print Name) _____

Title: _____

Title: _____

APPENDIX A—FEES AND CHARGES

Pole Attachment Fees and Charges

Effective Date ___/___/___

1. Annual Pole Attachment Fee:.....\$12.75 per attachment/per year

The Annual Attachment Fees shall be adjusted annually by any change in the Index no known as "United States Bureau of Labor Statistics, Consumer Price Index—All Urban Consumers, base period 1982–84 = 100, (CPI-U)," hereinafter referred to as the "Index." The parties agree that the 2014 Index is 234.812.

2. Non-Recurring Fees:

One-time License Agreement Fee.....\$_____

Permit Application Fee\$_____ per Permit Application
(\$50.00 per pole)

Make Ready Work ChargesSee Article 3 of Agreement

Miscellaneous ChargesSee Article 3 of Agreement [or
Attach Fee Schedule for Work
Performed for the Licensee]

Inspection Fees.....See Article 3 of Agreement

3. Unauthorized Attachment Penalty Fee:

5 x annual attachment fee, per occurrence.

4. Failure to Timely Transfer, Abandon or Remove Facilities or Improperly Assign

Penalty:

\$500 per day

Conduit Fees and Charges

Utility conduit not available for use

APPENDIX B—POLE ATTACHMENT PERMIT APPLICATION PROCESS

The following procedure is to be followed by each Licensee seeking to make new Attachments on Utility's Poles, or overlash to existing pole tenant facilities on Utility's Poles. Note that no entity may make any Attachments to Utility's Poles or overlash to existing pole tenant facilities on Utility's Poles without having first entered into a binding Pole Attachment Licensing Agreement with Utility. Third parties seeking to overlash to an existing pole tenant facility must also have a written overlash agreement with the pole tenant to be overlash. The overlash agreement must be provided to the Utility at the time of application

1. Licensee shall submit a written request to perform a Pre-Construction Inspection. The request must include a preliminary route description. Licensee shall have a professional engineer, or utility approved employee or contractor, participate in a Pre-Construction Inspection, which will include a review of the proposed Attachment(s) to determine the feasibility of the request and identify any potential Make-Ready Work. Appendix F to this Agreement contains the minimum design review information that an applicant must provide and a worksheet for determining the minimum specifications that the proposed Attachment must meet.
2. Following the Pre-Construction Inspection, Licensee shall submit payment of all required fees, a completed Permit Application (Appendix C) that includes: route map, information required in Appendix F, installation plans and recommendations on Make-Ready Work, and a pole-loading analysis stamped by a professional engineer. Licensee shall prepare the Permit Application in adherence with the Applicable Standards (Section 1.2 of Agreement) and specifications (Appendix D).
3. At the attacher's expense, the Utility will review the recommendations from the inspection and the pole-loading analysis, and discuss any issues with the Licensee.
4. Upon receipt of written authorization, Utility will proceed with Make-Ready Work according to the specific agreed-upon installation plans and the terms of the Agreement, including payment for the Make-Ready Work charges as set out by Utility and agreed to by the Licensee.
5. Upon completion of the Make-Ready Work, the Utility will sign and return the Application for Permit authorizing the Licensee to make its Attachment(s) in accordance with agreed-upon installation plans.
6. Unless waived in writing by the Utility, the Licensee's professional engineer, utility-approved employee, or contractor shall submit written certification that he/she has completed the Post-Construction Inspection and that the installation was done in accordance with the provisions of the Permit. The Post-Construction Inspection shall be submitted within ninety (90) calendar

days after installation is complete. The Utility will verify the inspection by means that it deems to be reasonable.

APPENDIX C—APPLICATION FOR PERMIT

Application Date: ___/___/___

To: **Traverse City Light and Power, 1131 Hastings Street, Traverse City, MI 49686, Attn: Engineering Department**

Desire to: _____ Attach to Utility Pole(s) _____ Remove Attachment from Utility Pole(s)

_____ Overlash to existing facility attached to Utility Pole(s)

Permit No. _____ Superseded Permit No. _____

Number of Poles this permit _____ Sheet 1 of _____

Licensee Name: _____

Address: _____

Contact Person: _____ Phone _____

Title: _____

Utility Contact Person: _____ Phone _____

Title: _____

Narrative Description of proposed activity: _____

In accordance with the terms and conditions of the Pole Attachment Licensing Agreement dated _____, application is hereby made for a Permit to attach to and/or vacate Pole(s) in the locations detailed on the attached Route Map(s). Also, attached is documentation as required by Appendix F of the Agreement. If applicable, the engineer's name, State's registration number and phone number are:

Name: _____ Phone _____

Registration # _____

SUBMITTED:

Licensee _____

By _____

Title _____

Date _____

Permit

Permission is hereby granted to Licensee to attach and/or vacate poles listed on the attached Field Data Summary Sheets, subject to payment of the necessary Make-Ready Work charges as set out by Utility and agreed to by the Licensee.

APPROVED:

Utility _____

By _____

Title _____

Effective Date _____

APPENDIX D—SPECIFICATIONS FOR LICENSEE'S ATTACHMENTS TO UTILITY POLES

Licensee, when making Attachments to Utility Poles, will adhere to the following engineering and construction practices.

A. All Attachments shall be made in accordance with the Applicable Standards as defined in Paragraph 1.2 of this Agreement.

B. Clearances

1. **Attachments and Cable Clearances:** Licensee's Attachments on Utility Poles, including metal attachment clamps and bolts, metal cross-arm supports, bolts and other equipment, must be attached so as to maintain the minimum separations specified in the National Electrical Safety Code ("NESC") and in drawings and specifications Utility may from time to time furnish Licensee. (See Drawings A-01 to A-11.)
2. **Service Drop Clearance:** From the pole to the home/building the parallel minimum separation between Utility's service drops and communications service drops shall be twelve (12) inches, per NESC 235C1B (exception 3). (See drawing A-5)
3. All other drops clearances at the midspan must conform to NESC table 235-6.

Sag and Mid-Span Clearances: Licensee will be particularly careful to leave proper sag in its lines and cables and shall observe the established sag of power line conductors and other cables so that minimum clearances are: (a) achieved at poles located on both ends of the span; and (b) retained throughout the span. At mid-span, a minimum of twelve (12) inches of separation must be maintained between all telecommunication cables that meet NESC rule 230E1 (includes common phone, CATV and fiber optic cables lashed to an effectively grounded messenger strand, or self-supporting cables).

NESC table 235-6 requires:

- 12" from neutral (by exception #16)
 - 30" from supply lines carrying 0 to 8.7 kV (secondary)
 - 30" plus 0.4" per KV in excess of 8.7 (primary)
4. **Vertical Risers:** All Risers, including those providing 120/240 volt power for Licensee's equipment enclosure, shall be placed on the quarter faces of the Pole and must be installed in conduit with weatherhead (if possible), attached to the Pole with stand-off brackets. A

two- (2) inch clearance in any direction from cable, bolts, clamps, metal supports and other equipment shall be maintained. (See Drawings A-02 and A-04.).

5. **Climbing Space:** A clear Climbing Space must be maintained at all times on the face of the Pole. All Attachments must be placed so as to allow and maintain a clear and proper Climbing Space on the face of the Utility Pole. Licensee's cable/wire Attachments shall be placed on the same side of the Pole as those of other Attaching Entities. In general, all other Attachments and Risers should be placed on Pole quarter faces. (See Drawing A-09.)
6. **Pedestals and Enclosures:** Every effort should be made to install Pedestals, vaults and/or Enclosures at a minimum of four (4) feet from Poles or other Utility Facilities, or the distance specified by the utility, whichever is greater

C. Down Guys and Anchors

1. Licensee shall be responsible for procuring and installing all anchors and guy wires to support the additional stress placed on the Utility's Poles by Licensee's Attachments. Anchors must be guyed adequately.
2. Anchors and guy wires must be installed on each Utility Pole where an angle or a dead-end occurs. Licensee shall make guy attachments to Poles at or below its cable Attachment. No proposed anchor can be within four (4) feet of an existing anchor without written consent of Utility.
3. Licensee may not attach guy wires to the anchors of Utility or third-party user without the anchor owner's specific prior written consent.
4. No Attachment may be installed on a Utility Pole until all required guys and anchors are installed. No Attachment may be modified, added to or relocated in such a way as will materially increase the stress or loading on Utility Poles until all required guys and anchors are installed.
5. Licensee's down guys, if needed, shall be bonded to vertical ground wires of Utility's Pole, in accordance to NESC rule 92C. If there is no vertical ground present at the pole, the connections to the system neutral are to be made by the utility as an item of Make-Ready Work. Utility will determine if guys should be grounded or insulated.

D. Certification of Licensee's Design

1. Licensee's Attachment Permit application must be signed and sealed by a professional engineer, register in the State of Michigan, certifying that Licensee's aerial cable design fully complies with the NESC and Utility's Construction Standards and any other applicable federal, state or local codes and /or requirements.

2. This certification shall include the confirmation that the design is in accordance with pole strength requirements of the NESC, taking into account the effects of Utility's Facilities and other Attaching Entities' facilities that exist on the Poles without regard to the condition of the existing facilities.

E. Miscellaneous Requirements

1. **Cable Bonding:** Licensee's messenger cable shall be bonded according to NESC rule 92C1 as a minimum, or at every pole with a vertical ground, as determined by the utility. If no ground exists on a pole to be bonded, Licensee shall install a Pole ground in accordance with the attached detail drawing (See Drawings A-03 to A-04.).
2. **Customer Premises:** Licensee's service drop into customer premises shall be protected as required by the most current edition of the NEC.
3. **Communication Cables:** All Communications cables/wires not owned by Utility shall be attached within the Communications space that is located 40 inches below the lowest Utility conductors.. (See Drawings A-01 through A-11)
4. **Riser Installations:** All Licensee Riser installations shall be in utility-approved conduit materials and placed on stand-off brackets. Ground wires may be attached directly to Pole. (See Drawings A-02 to A-04.)
5. **Tagging:** All Licensee's cables shall be identified with a band-type communications cable tag or other identification acceptable to Utility at each Attachment within twelve (12) inches of the Pole. The communications tag shall be consistent with communication industry standards and shall include at least the following: Licensee name, emergency contact number, and cable type. At the discretion of Utility, Tags shall be color-coded to permit identification of Attaching Entity by observation from the ground.

APPENDIX E—DISTRIBUTION LINE MINIMUM DESIGN REVIEW INFORMATION AND SUGGESTED WORKSHEET

The following guidelines are provided, and corresponding information must be submitted with each Permit application for Pole Attachments on Utility's system. Utility may direct that certain Attachments do not require the submittal of Design Review Information. These Attachments are noted at the end of this section.

Each Permit application must include a report from a professional engineer registered to practice in the State of Michigan, and experienced in electric utility system design, or a utility-approved employee or contractor of Licensee. This report must clearly identify the proposed construction and must verify that the Attachments proposed will maintain Utility's compliance with NESC Class B construction for the loading district as outlined in the NESC Section 25.

Utility may or may not require that all of the following information be submitted at the time of the Permit application. The applicant shall have performed all required calculations and be ready to provide the detailed information below within fifteen (15) calendar days of notice. Applicant shall keep copies of the engineering data available for a period of twenty (20) years.

In determining compliance, the following minimum conditions shall be used in the calculations for pole strength:

1. All single-phase lines shall be assumed to have been reconductored to 2 ACSR conductor for both phase and neutral.
2. All three-phase lines shall be assumed to have been to 336 ACSR conductor for three (3) phase and neutral.
3. All pole lines shall assume a secondary/service conductor, installed from pole to pole, of #4/0 AWG triplex cable, with an ACSR messenger.
4. For pole strength calculations, all poles shall be as they actually exist, or be considered Class 4 for calculations.
5. All line angles or dead ends shall be guyed and anchored. Transverse pole strength shall not be assigned to attaching pole users for line angles, *i.e.*, pole should be viewed as being void of other cables, conductors, wires or guys and considering only the applicant's wires/cables for guying calculations.
6. Points of attachment shall be as they actually exist on the poles.

7. For a Utility-approved joint use of anchors, the Licensee shall utilize guy insulators in it guys.
8. Lessee shall comply with any NESC and/or Utility safety factors, whichever are more conservative, in their designs. The engineer for the Permit applicant shall provide for each application the following confirmations:

ζ . Required permits that have been obtained (insert n/a if not applicable):

- _____ (y/n) U.S. Corp of Engineers.
- _____ (y/n) Highway—state, county, city.
- _____ (y/n) Railroad.
- _____ (y/n) Local zoning boards, town boards, etc.
- _____ (y/n) Joint use permits, if required.
- _____ (y/n) Notified other pole users of contacts or crossings.

ζ Confirm that you have:

- _____ (y/n) Obtained appropriate franchise(s).
- _____ (y/n) Obtained pole/anchor easements from land owners.
- _____ (y/n) Obtained crossing and overhang permits.
- _____ (y/n) Obtained permit to survey R/W.
- _____ (y/n) Completed State of Michigan Department of Transportation (MDOT) requirements.
- _____ (y/n) Placed permit number on plans.
- _____ (y/n) Complied with Miss Dig Underground Facility Location requirements.
- _____ (y/n) Included sag/tension data on proposed cable.

Calculations are based upon the latest edition of the NESC and the latest editions of the requirements of the state of Michigan.

It is Licensee's responsibility to obtain all necessary permits and provide the Utility with a copy of each.

The engineer for the Permit applicant shall provide for each Pole(s) the following information:

- ζ Project ID _____
- ζ Pole number _____ [if pole tag missing, contact Utility]

- ζ Pole class _____ [existing—*i.e.*, 4, 3, 2...]
- ζ Pole size _____ [existing—*i.e.*, 35, 40...]
- ζ Pole type _____ [Southern Yellow Pine, Douglas Fir...]
- ζ Pole fore span _____ [feet]
- ζ Pole fore span direction _____ [degrees from Magnetic North]
- ζ Pole back span _____ [feet]
- ζ Pole back span direction _____ [degrees from Magnetic North]
- ζ Calculated bending moment at ground level _____ [ft-lbs]

Existing:

- ζ Power phase condition _____ qty of _____ AWG/MCM
_____ CU/AA/ACSR @ _____ ft above ground line
- ζ Power neutral condition _____ qty of _____ AWG/MCM
_____ CU/AA/ACSR @ _____ ft above ground line
- ζ Power secondary condition _____ qty of _____ AWG/MCM
_____ CU/AA/ACSR @ _____ ft above ground line
- ζ Power service #1 _____ qty of _____ size @ _____ ft above ground line
@ _____ ° _____ ' _____ "
- ζ Power service #2 _____ qty of _____ size @ _____ ft above ground line
@ _____ ° _____ ' _____ "
- ζ Power service #3 _____ qty of _____ size @ _____ ft above ground line
@ _____ ° _____ ' _____ "

- ζ Telco #1 cables _____ qty of _____ dia @ _____ ft above ground line
- ζ Telco service #1 _____ qty of _____ size @ _____ ft above ground line
@ _____ ° _____ ' _____ "
- ζ Telco service #2 _____ qty of _____ size @ _____ ft above ground line
@ _____ ° _____ ' _____ "

ζ CATV #2 cables _____ qty of _____ dia @ _____ ft above ground line.

ζ CATV service #1 _____ qty of _____ size @ _____ ft above ground line

ζ @ _____ ° ' _____ "

ζ CATV service #2 _____ qty of _____ size @ _____ ft above ground line

ζ @ _____ ° ' _____ "

ζ User #3 cables _____ qty of _____ dia @ _____ ft above ground line

ζ User #4 cables _____ qty of _____ dia @ _____ ft above ground line

ζ User #5 cables _____ qty of _____ dia @ _____ ft above ground line

ζ User #6 cables _____ qty of _____ dia @ _____ ft above ground line

ζ Equipment #1 type _____ qty of _____ size @ _____ ft above ground line

ζ Equipment #1 type _____ qty of _____ size @ _____ ft above ground line

ζ Equipment #1 type _____ qty of _____ size @ _____ ft above ground line

ζ Equipment #1 type _____ qty of _____ size @ _____ ft above ground line

Proposed:

ζ Proposed cables _____ qty of _____ dia @ _____ ft above ground line

ζ fore and back span direction _____ ° ' _____ ", _____ ° ' _____ "

ζ Proposed cables _____ qty of _____ dia @ _____ ft above ground line

ζ fore and back span direction _____ ° ' _____ ", _____ ° ' _____ "

ζ Equipment #1 type _____ qty of _____ size @ _____ ft above ground line

ζ Equipment #1 type _____ qty of _____ size @ _____ ft above ground line

AGL = Above Ground Level

The minimum vertical clearance under all loading conditions measured from the proposed cable to ground level on each conductor span shall be stated above. Variations in topography resulting

in ground elevation changes shall be considered when stating the minimum vertical clearance within a given span.

Calculated pole bending moment at ground level: _____ [ft-lbs]

Pole breaking bending moment at ground level: _____ [ft-lbs]

Calculated transverse safety factor: _____ [ratio should be greater than 1.00]

Proposed loading data [provide similar data for each cable proposed]:

A. Weight data (cable and messenger)—

1. Vertical weight, bare = _____ [#ft]

B. Tension data (final tensions on messenger)—

1. NESC maximum load for area of construction: _____ [lbs]

2. 60° F, NO wind: _____ [lbs]

Permit applicant's engineer shall provide for each transverse guy, or dead end to which guys and/or anchors are attached, the following information:

ζ Pole number _____

ζ Calculated cable messenger tension under NESC maximum loading conditions _____ [lbs]

If connection is:

ζ A dead end, is it a single or double? _____ [S, D]

ζ A change in tension, what is change? _____ [lbs]

ζ A line angle, what is angle change? _____ [degrees]

ζ What is tension change at angle? _____ [lbs]

For each dead end:

ζ Point of attachment for guy hook _____ [feet AGL]

ζ Anchor distance from pole _____ [feet]

ζ Calculated guy tension _____ [lbs]

ζ Rated guy working strength _____ [lbs]

For each change in tension:

ζ Point of attachment for guy hook _____ [feet AGL]

- ζ Anchor distance from pole _____ [feet]
- ζ Calculated guy tension _____ [lbs]
- ζ Rated guy working strength _____ [lbs]

For each line angle:

- ζ Point of attachment for guy hook _____ [feet AGL]
- ζ Anchor distance from pole _____ [feet]
- ζ Calculated guy tension _____ [lbs]
- ζ Rated guy working strength _____ [lbs]

For each anchor:

- ζ Anchor distance to nearest anchor _____ [feet]
- ζ Calculated anchor tension _____ [lbs]
- ζ Rated anchor strength _____ [lbs]
- ζ Soil composition _____ [sandy, loam, clay, rock]

APPENDIX F—FIELD DATA SUMMARY SHEET INSTRUCTIONS

<u>Column</u>	<u>Instructions</u>
Utility Pole Number	If a Pole stencil is not in place, it may be left for Utility if the accompanying sketch is adequate to determine the location.
Communication Company's	
Plan Sheet Pole Number.....	This must correspond with the, plan sheet or Pole Sketch pole identification number.
Pole Height and Class	List the present pole height and class and list the proposed Pole height and class if it is necessary for Utility to replace the Pole for clearance, etc.
Guy Attachments.....	All unbalanced loading on Poles must be guyed. Attachments to Utility's anchors will not be allowed.
Attachment Height.....	Communication Company attachment height above ground level. List guy lead in feet..
Inches Below Utility	The number of inches Communications Company is to be attached below Utility while maintaining clearance as required in Item #4.
Span Length.....	List the back span length for each attachment.
Inches Sag	List the messenger sag for the design listed on the cover sheet at 60 degrees Fahrenheit.
Ground Clearance.....	List the ground clearance at the low point of the back span. Must not be less than the National Electric Safety Code (latest edition).



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Pete Schimpke, Manager of Operations & Engineering
Date: March 29, 2017
Subject: Grand Traverse Substation Operations & Maintenance (O&M) Agreement

Several weeks ago Wolverine Power Cooperative (Wolverine) invoiced TCLP for O&M work at the Grand Traverse Substation that TCLP shares with Wolverine. At that time Staff noticed there was no O&M Agreement in place to authorize payment to Wolverine. As a result, Staff and Legal Counsel worked with Wolverine to develop an agreement based on the existing Gray Road Substation O&M Agreement.

This item is appearing on the Consent Calendar as it is deemed non-controversial. Staff recommends the signing of the Grand Traverse Substation O&M Agreement. Approval of this item on the Consent Calendar means you agree with staff's recommendation.

If any member of the Board or the public wishes to discuss this matter, other than clarifying questions, it should be placed on the "Items Removed from the Consent Calendar" portion of the agenda for full discussion. If after Board discussion you agree with staff's recommendation the following motion would be appropriate:

MOVED BY _____, SECONDED BY _____,

THAT THE BOARD AUTHORIZE THE CHAIRMAN AND SECRETARY TO ENTER INTO THE GRAND TRAVERSE SUBSTATION O&M AGREEMENT WITH WOLVERINE POWER COOPERATIVE, SUBJECT TO APPROVAL AS TO FORM BY GENERAL COUNSEL AND APPROVAL AS TO SUBSTANCE BY THE EXECUTIVE DIRECTOR.

**JOINT OPERATION/MAINTENANCE AGREEMENT
GRAND TRAVERSE 138-69kV SUBSTATION**

THIS JOINT OPERATION/MAINTENANCE AGREEMENT – GRAND TRAVERSE 138-69kV SUBSTATION (“**Agreement**”) is made and entered into on the ____ day of _____, 2017 (“**Effective Date**”), by and between the TRAVERSE CITY LIGHT & POWER DEPARTMENT, a Michigan municipal electric utility (“**TCL&P**”), whose address is 1131 Hastings Street, Traverse City, Michigan 49686, and WOLVERINE POWER SUPPLY COOPERATIVE, INC., a Michigan non-profit corporation (“**Wolverine**”), whose address is 10125 West Watergate Road, Cadillac, Michigan 49601. TCL&P and Wolverine are sometimes referred to individually as “**Party**” and collectively as “**Parties**”, where appropriate.

WHEREAS, the Parties have entered into an Amended and Restated Grand Traverse Interconnection Agreement, along with the Michigan Electric Transmission Company (“**METC**”), dated November 8, 2013 (“**Interconnection Agreement**”); and

WHEREAS, the Interconnection Agreement set forth, among other things, Wolverine’s and TCL&P’s assumption of certain ownership, operation and maintenance (“**O&M**”) obligations performed by METC on Wolverine’s and TCL&P’s facilities; and

WHEREAS, the Parties herein wish to further clarify the respective duties and obligations concerning O&M of the double circuit 69kV transmission line and 138kV interconnection for their mutual benefit; and

WHEREAS, Wolverine wishes to undertake these O&M obligations on behalf of itself and TCL&P.

NOW THEREFORE, the Parties agree as follows:

Section 1. Substation and Facilities. The Grand Traverse Substation, the two (2) 90 MVA 138kV/69kV transformers, the two (2) 138kV lines up to the interconnection point with METC and the related facilities are collectively referred to as the “**Substation and Facilities**”. TCL&P shall be the sole owner of the Grand Traverse Substation site (“**Site**”), with Wolverine being entitled to a lease and easement on the Site as set forth in the Renewal and Lease Agreement, dated October 31, 2012, and recorded in the Grand Traverse Register of Deed, Document No. 2012R-21479.

Section 2. Maintenance by Wolverine. Wolverine shall maintain the Substation and Facilities for the mutual benefit of itself and TCL&P. The Parties shall meet to discuss O&M activities on an as needed basis, but shall meet at least six (6) months ahead of time when known major maintenance will take place that is anticipated to have a billable amount to TCL&P exceeding **Five Thousand Dollars (\$5,000.00)**. Scheduled maintenance shall be performed following Wolverine’s current maintenance schedule and procedures. Wolverine’s maintenance schedule and all maintenance reports shall be provided to TCL&P upon request.

Section 3. Maintenance by TCL&P. If Wolverine fails to maintain the Substation and Facilities as required by this Agreement or in emergency situations if Wolverine cannot meet the needs of TCL&P for maintenance of the Substation and Facilities, TCL&P may perform the maintenance after notifying Wolverine of its intent to do so and Wolverine shall reimburse TCL&P according to the same procedures and provisions as provided in Section 6, except that the Parties are reversed.

Section 4. Operation. Wolverine and TCL&P shall jointly develop and follow operating procedures (“**Joint Procedure**”). This will include switching procedures when required. In the case the Joint Procedure does not exist, each Party shall coordinate with the other Party during activities on jointly owned facilities. Wolverine shall operate the Substation and Facilities.

Section 5. Prudent Utility Practice. All O&M of the Substation and Facilities shall be conducted according to Prudent Utility Practice.

“**Prudent Utility Practice**” shall mean, at a particular time, any of the practices, methods and acts which in the exercise of reasonable judgment in the light of the facts known at the time the decision was made (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto), could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expediency. In applying the standard of Prudent Utility Practice to any matter under this Agreement, equitable consideration shall be given to the circumstances, requirements and obligations of each of the Parties and there shall be taken into account the fact that TCL&P is part of a municipal corporation of the State of Michigan with prescribed City Charter and statutory powers, duties and responsibilities and subject to certain state and federal regulatory authorities, and that Wolverine is a nonprofit corporation and is a public utility subject to both state and federal regulatory authorities. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at a reasonable cost consistent with reliability, safety and expediency. Prudent Utility Practice includes due regard for manufacturers’ warranties, environmental consideration, and the requirements of governmental agencies which have jurisdiction.

Section 6. Costs of Operating and Maintenance. For the avoidance of doubt, the following terms as used in this Agreement shall have the meaning set forth below:

- (a) “**Direct Costs**” shall mean expenses that can be linked directly to the material or service performed (e.g., labor, materials, etc.).
- (b) “**Indirect Costs**” shall mean expenses that cannot be linked directly to the material or service performed (e.g., equipment cost, lease expense, taxes, etc.).
- (c) “**Maintenance**” shall include inspection, repair and replacement.
- (d) “**Overhead**” shall mean additional costs (e.g., processing of payments,

scheduling of resources, fringe benefits, etc.)

TCL&P shall reimburse Wolverine for all direct and indirect costs and expenses, including overhead incurred by Wolverine in operating and maintaining the Substation and Facilities as described in this Agreement. Overhead charges will be **fifteen percent (15%)** of the non-labor expenses, and overhead on labor expenses shall be at Wolverine's calculated fringe benefits percentage, which will be calculated to be equal to Wolverine's previous calendar year fringe benefits expenses divided by Wolverine's previous calendar year total wages. Such costs and expenses shall be determined by Wolverine in accordance with the standard practices and policies followed by Wolverine for the performance of work, for others at the time such maintenance is performed. Such operating and maintenance costs and expenses chargeable to TCL&P shall be equal to **one half (1/2)** of the total costs and expenses incurred by Wolverine during such months of the operation of the Substation and Interconnection Facility, plus **one half (1/2)** of the total costs and expenses incurred by Wolverine in the maintenance and operation of jointly owned 69kV transmission line facilities operated by Wolverine in connection with the Grand Traverse Substation. Charges to TCL&P for such operating and maintenance costs and expenses during each month shall be waived unless they are greater than **One Hundred and 00/100 (US \$100.00)**.

Section 7. Telephone and Other Communication Circuits and Equipment.

TCL&P shall reimburse Wolverine for **one half (1/2)** of the costs associated with all jointly required telephone circuits and related equipment provided to access Intelligent Electronic Devices, remote terminal units, other equipment, and billing meters in connection with the Substation and Facilities. Remote access shall be made available to both Parties or their designee. Each Party shall incur **one hundred percent (100%)** of the cost for communication circuits and equipment required for their sole use.

Section 8. Metering and Losses. The metering points shall be located so that the transformer losses can be determined and be properly allocated between TCL&P and Wolverine. Losses shall be prorated between Wolverine and TCL&P (and third parties when reverse power flow conditions occur). Losses shall be prorated based on the loss methodology established by the parties in the Grand Traverse Loss Methodology, dated July 11, 2013, as may be amended in writing from time to time by the Parties. A copy of which is attached as **Exhibit A** hereto and incorporated herein by reference.

Section 9. Planning. Wolverine and TCL&P shall jointly plan for future Substation and Facility improvements and modifications. The Parties shall meet annually to review load flows, normal operations, operating contingencies, and overall functionality of the Substation and Facilities. When required, the Parties shall provide load forecasts for incorporation into planning studies. Each Party shall be responsible for their own costs for such studies unless otherwise agreed to.

Section 10. Access. TCL&P, its authorized employees, agents and contractors, shall have full rights and authority at all reasonable times to access the Substation and Facilities and to

access, examine, and copy all records, including, but not limited to, financial records of operation and maintenance of the Substation and Facilities.

Section 11. Payment. As soon as practical at the end of each month in which operation and maintenance costs and expenses were incurred by Wolverine pursuant to this Agreement, Wolverine shall furnish TCL&P a statement showing the amount of the payment to be made therefore by TCL&P. The statement shall show the total cost and the method by which TCL&P's portion was ascertained. TCL&P shall make payment to Wolverine within **thirty days (30) days** following receipt of the statement ("**Due Date**"). Payment shall be made to Wolverine at the above address or such other address as is given to TCL&P in writing. Any payment not made on or before the Due Date shall bear interest from the Due Date until the date of which payment is made at an annual percentage rate of **twelve percent (12%)**.

Section 12. Obligations of TCL&P. TCL&P shall have no obligation to inspect the Substation and Facility nor have any responsibility with respect to the installation, repair, maintenance, replacement, relocation or removal of the Substation and Facilities. This obligation is being assumed solely by Wolverine.

Section 13. Insurance.

(a) Wolverine shall maintain and keep in full force and effect from the date hereof through the later of the date of expiration or termination hereof, the following minimum insurance coverage for the mutual benefit of the Parties:

(i) Workers' compensation insurance for statutory obligations imposed by applicable state law; and

(ii) All-risk property coverages in the full amount of the total insured value of the two (2) 90 MVA 138KV/69KV transformers ("**Transformers**"), on a replacement cost basis, including sublimits for earthquake and flood; and

(iii) The Parties shall share equally in any premiums, deductibles, or uninsured loss applicable to the above insurance; and

(iv) Wolverine, in its sole discretion, shall determine the deductible amount and replacement cost basis for the Transformers as is necessary, and shall notify TCL&P within a reasonable time period of any changes.

(b) It is the understanding of the Parties that all other equipment and facilities in the Station besides the Transformers ("**Non-Transformer Facilities**") shall not be insured. In the event of loss of Non-Transformer Facilities the Parties shall equally pay (i.e., 50/50) the amount of the cost of repair or replacement.

(c) All insurance policies required to be obtained hereunder shall provide insurance for occurrences from the date hereof through the later of the expiration or termination hereof. All insurance coverage required by this Agreement shall be issued by an insurer with an A.M. Best's rating of not less than "A-" or such other insurer as is reasonably acceptable to both Parties.

(d) Wolverine shall require its insurer(s) to notify TCL&P of any non-renewal, non-payment of premium or cancellation of, the insurance required by this Section 13 at least thirty (30) Days prior to the effective date of such non-renewal, non-payment of premium or cancellation. Within fifteen (15) days after the date hereof, Wolverine shall provide to TCL&P and thereafter maintain with the other Party a current certificate of insurance or evidence of self-insurance verifying the existence of the insurance coverage required by this Agreement.

(e) In addition, certificates for the foregoing insurance shall (i) name TCL&P as additional insured (except workers' compensation insurance); (ii) provide a waiver of any rights of subrogation against TCL&P and its officers and employees, and (iii) evidence that the insurance policy has been endorsed as described above.

(f) TCL&P shall be sent an invoice no later than January 31 each year for its allocation of the annual insurance costs under this Agreement for the calendar year, which shall include the insurance costs and expenses for the physical assets plus the liability risk. TCL&P shall pay Wolverine within thirty (30) days from the date of the invoice.

(g) If any deductible is required under this Section 13, TCL&P shall be equally responsible (i.e., 50/50) for the payment of said deductible, and shall pay Wolverine or the insurance company within thirty (30) days from the date of notice.

(h) If insurance proceeds are insufficient to cover any property damage, bodily injury, or other damage, claim, judgment, or action pertaining to this Agreement, the Parties shall equally pay (i.e., 50/50) the amount of the damages, claim or judgment.

Section 14. Taxes. The Parties will cooperate to divide the assessment of property taxes to reflect that TCL&P is exempt from property taxes and Wolverine is not. Taxes assessed on the land (as opposed to the improvements) and on Wolverine's share of the improvements, shall be the responsibility of Wolverine. TCL&P's share of the improvements is believed to be exempt from such taxes (MCL 211.7m), but if it is determined otherwise by a taxing authority, TCL&P shall have responsibility for such taxes on its share.

Section 15. Entire Agreement. This Agreement together with the Interconnection Agreement between the Parties and all attachments to both Agreements constitutes the Entire Agreement of the Parties.

Section 16. 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.

Section 17. Cooperation. Throughout the term of this Agreement the Parties agree to cooperate and share information as requested or needed, and to execute all other documents that may be necessary or desirable to accomplish the promises contained in this Agreement.

Section 18. Prohibition Against Assignment. This Agreement is intended to be between the original Parties and no Parties rights or obligations shall be assigned or transferred without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. However, either Party may assign its rights and obligations under this Agreement to a successor utility in connection with the sale or assignment of substantially all of its assets. Furthermore, this prohibition on assignment shall not prohibit dedication of this facility to the Midwest ISO or its successors and assigns.

Section 19. Notice. Whenever this Agreement requires that notice be given to the other Party, the same shall be given to the other Party, the same shall be given or directed to the respective Party at its address as specified in this Agreement, or at such other address as either Party may, from time to time, designate by written notice to the other.

Section 20. Amendments. This Agreement may be modified from time to time, but modification shall be inviting and signed by both Parties in order for it to be enforceable and binding.

Section 21. Interpretation. This Agreement shall be governed by the laws of the State of Michigan, both as to interpretation and performance. This Agreement was drafted at the joint direction of the Parties. The pronouns and relative words used herein are written in the neuter and singular.

Section 22. 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.

Section 23. Authority to Execute. The Parties agree that the signatories appearing

below have the authority and are duly authorized to execute this Agreement on behalf of the Party to the Agreement.

Section 24. **Term.** The term of this Agreement shall commence upon the Effective Date set forth in the first paragraph of this Agreement and shall terminate upon abandonment or retirement by both Parties, unless earlier terminated by mutual written agreement of the Parties.

Section 25. **Retirement.** The Substation and Facilities shall be retired in whole or in part upon written agreement of the Parties. All costs and expenses of work performed to retire all or part of the Substation and Facilities including but not limited to, dismantling, demolishing, removal of equipment, facilities and structures, maintenance, and disposal of debris, shall be borne by the Parties equally.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed and this Agreement is effective as of the Effective Date first above written.

TRAVERSE CITY LIGHT
& POWER DEPARTMENT

WOLVERINE POWER SUPPLY
COOPERATIVE, INC.

By _____
Jan Geht, Chairman

By _____
Eric D. Baker, President & CEO

By _____
Timothy J. Arends, Secretary

Approved as to form:

Approved as to form:

W. Peter Doren, Esq.
General Counsel, TCL&P

Brian E. Valice, Esq.
Staff Counsel, Wolverine

Exhibit A - the Grand Traverse Loss Methodology



**TRAVERSE CITY
LIGHT & POWER**

To: Light and Power Board
From: Tim Arends, Executive Director
Date: April 5, 2017
Subject: Tenant Request to Waive Rent Escalator

Staff has been requested by the previous tenants, Potters Fine Pastries, Inc., to waive the Lease's Holdover section (rent escalator requirement). The Lease states under Article 22, Section (c) Holdover, "In the event Tenant holds over after said date except under a renewal of this lease as hereinafter provided, then and in such event Tenant shall be deemed a month to month Tenant and at one and a half times the current monthly fixed rental and otherwise on the same terms as herein provided." The lease end date was February 28, 2017, and the space was vacated on March 31, 2017.

Following this memo is a letter addressed to the Executive Director from Mike and Kathy Potter explaining the various reasons why the rent escalator requirement lease amount should be waived. In summary, they were working with the new tenant on transfer of ownership of various pieces of equipment located within the lease space, improvements have been made to the lease space without compensation, different interpretation of the Holdover section, and instances of not meeting thresholds within the Lease relating to repair and maintenance of heating and cooling systems.

Staff concurs with the request to waive the rent escalator requirement for the Potters Fine Pastries, Inc. Lease.

This item is on the Consent Calendar as it is deemed non-controversial. Approval of this item on the Consent Calendar means you agree with staff's recommendations.

If any member of the Board or the public wishes to discuss this matter, other than clarifying questions, it should be placed on the "Items Removed from the Consent Calendar" portion of the agenda for full discussion. If after Board discussion you agree 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 WAIVE THE HOLDOVER SECTION IN THE POTTERS FINE PASTRIES, INC. LEASE DATED JUNE 26, 2012.

Hi Tim,

My husband Michael Potter, and myself are asking the T.C. Light and Power Board to waive the extra \$887.50 rent fee from Potter's Fine Pastries, for our last months rent at 130 Hall St. We did pay the regular months rent and did not realize there was an additional charge of \$887.50 for going one month beyond the rental agreement.

-We were working with the soon to be, new tenant Third Coast bakery, in regards to what equipment was being left there for the new tenant to use.

-We understood Article 22 paragraph (C) to mean, if we did not let Schmidt Rogers Real Estate know we would be leaving the equipment for the next tenant in advanced, we would incur an extra \$887.50 charge. Schmidt Rogers did know in advance, that we were leaving equipment in the building.

-We could of been moved out, but couldn't understand why we would have to move everything out, including what Third Coast wanted to buy, and then move it all back in. We paid the regular months rent and then found out yesterday, that we were charged an additional fee.

- We left the place in better shape than what we received it in.

- We added many useful cabinets, shelving, a dishwasher, additional hand wash sink, base board, and fresh paint, that we did not ask payment for.

-We put up with many problems that weren't fixed within the timely 30 days set forth in the lease. The air conditioner did not work through the second summer for 4 months after contacting Schmidt Rogers. It broke down twice after that. The heat was not working through the whole month of December, and finally we had to close down a week in January, as customers were not coming in and employees could not wear their gloves while servicing customers. We were given one space heater for the whole building while the furnace problem was being fixed. We had to pay our employees during the week that we were closed, not to mention the lost revenue. One of the front doors was not opening properly for over eight months and numerous calls to Schmidt Rogers. Each time a customer came to the front door, our employee would have to stop waiting on their customer to open the door for the other customer to get in. One of the main ceiling light has not been working for the past 3 months. Someone came to fix it, but it still does not work. These are only some of the problems we faced with this space. The parking, the meters being switched without our knowledge, the road being closed numerous times without us knowing ahead of time, all of the construction to Garland Street.

Please, consider waiving the extra \$887.50 rental fee. We are landlords too, and I couldn't imagine asking a tenant for the extra rent.

Sincerely,

Mike and Kathy Potter
Potter's Fine Pastries



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Pete Schimpke, Engineering and Operations Manager
Date: April 11, 2017
Subject: Removal and Transfer of Hickory Meadows Distribution Line to Randolph St.

Attached is a project authorization for the Removal and Transfer of Hickory Meadows Distribution Line to Randolph St. The purpose of the project authorization is to proceed with development, design and construction to rehabilitate a portion of Hall Street Circuit HL-21 that is located along Randolph St. West of Fulton St. to improve safety and reliability.

Details for this project are in your packet including the agreement authorization (item A under New Business), approving the attached project authorization document which provides details on the proposed rehabilitation.

Staff recommends Board approval of the Removal and Transfer of Hickory Meadows Distribution Line to Randolph St.

If after Board discussion you agree with staff's recommendation the following motion would be appropriate:

**MOVED BY _____, SECONDED BY _____, THAT THE
BOARD AUTHORIZES THE STAFF TO PROCEED WITH THE REMOVAL AND TRANSFER
OF HICKORY MEADOWS DISTRIBUTION LINE TO RANDOLPH ST. AND SEEK THE
NECESSARY BOARD APPROVAL FOR EXPENDITURES.**

**2017 Distribution Circuit Rehabilitation
Circuit HL-21
PROJECT AUTHORIZATION REQUEST
PAR# 2017-1**



Date of Board Presentation/Consideration: April 11, 2017

Budgeted in Capital Plan: Yes **CIP:** **Removal & Transfer of Hickory Meadows
Distribution Line to Randolph Street**

Objective: Target Completion date of June 30th, 2017

Project Description:

Rehabilitate part of the distribution facilities on the Hall Street Circuit HL-21 to improve reliability. This project includes removing approximately 9 deteriorated poles, about 1,900 feet of old overhead copper primary from a public park and an inaccessible wetlands area, moving primary service to the street by boring in new primary underground, converting one customer's overhead service to underground, and replacing two existing underground services. The project location involves the areas starting at the corner of Fulton Street Alleyway and Randolph Street then runs West along Randolph Street approximately 1,800 feet. This project affects 9 Traverse City Light & Power (TCL&P) customers.

Selection Method:

The Hall Street circuit HL-21 was chosen from areas of TCLP's 27 distribution circuits based on numbers from the project priority matrix.

Project Purpose and Necessity:

Many years of being exposed to ice, wind, rain, and snow have left this portion of the HL-21 circuit in need of repair. The geographic location of the existing pole line is nearly inaccessible as it traverses through a wooded and wetlands area. While poles, wires, and other pieces of equipment continue to deteriorate. In addition, more interruptions of service to our customers will occur with longer durations.

Project Benefits:

The 2017 distribution circuit rehabilitation of part of the Hall Street Circuit HL-21 will:

- Improve customer service by reducing outages as well as duration of outages.
- Reduce energy needs by reducing losses in older and smaller conductors.
- Reduce maintenance costs associated with emergency repairs.

**2017 Distribution Circuit Rehabilitation
Circuit HL-21
PROJECT AUTHORIZATION REQUEST
PAR# 2017-1**



Other Alternatives:

Do nothing. Customer satisfaction will decline as the number of outages along with the duration of outages will climb. Maintenance costs will increase as more money will be spent on emergency repairs. There will be no conservation of energy since the smaller and older conductors will continue to cause higher line losses as compared to installing new larger conductors.

Timing of Project:

TCL&P assessed this entire area while planning the West Transmission Line Upgrade Project and identified this line from Wayne St. to Randolph St. as being inaccessible. The line extension serves nine homes from the back lot lines and runs through a now public park. The customers could be better served with distribution in the road right of way along the street they actually live on. It will also benefit utility crews with power emergencies and restoration of services with the facilities being accessible.

Cost Estimate:

Materials	\$ 45,895.50
Labor (3-man crew with bucket & digger)	\$ 26,401.78
Eng. & Administration & Construction Inspections	\$ 7,229.73
Contingency (15%)	\$ 10,844.59
Total	\$ 90,371.60

Financing Method:

Cash from TCL&P fund balance and as planned for in the six-year Capital Plan. Bonding will not be required.

Impact on O&M Expenses:

A reduction in annual maintenance costs associated with normal maintenance and emergency repairs will occur.

Staff Recommendation:

Staff recommends the TCL&P Board approval of the 2017 partial Distribution Circuit Rehabilitation of Hall Circuit HL-21 and all necessary expenditures in order to maintain safe and reliable distribution service to its customers.



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Pete Schimpke, Manager of Operations & Engineering
Date: March 28, 2017
Subject: Costco Project

On Tuesday, March 7, 2017, three bids were received for wire for the Costco Project. The bid prices are:

<u>Vendor</u>	
Power Line Supply	\$78,965.25
WESCO	\$80,086.65
Anixter	\$83,771.25

Note that electrical wire is a commodity and the actual price is determined at the time of shipping but in most cases the actual price is close to the bid price. All three bidders can ship the wire within a couple weeks. Based on the bids received, Staff recommends the Board authorize the issuance of a purchase order to Power Line Supply for the purchase of wire for the Costco Project.

If after Board discussion you agree with staff's recommendation then the following motion would be appropriate.

MOVED BY _____, SECONDED BY _____,

THAT THE BOARD AUTHORIZES THE EXECUTIVE DIRECTOR TO ISSUE A PURCHASE ORDER TO POWER LINE SUPPLY IN THE AMOUNT OF \$78,965.25, MORE OR LESS, FOR WIRE FOR THE COSTCO PROJECT.



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Tim Arends, Executive Director
Date: April 5, 2017
Subject: Possible Closed Session - Collective Bargaining

As allowed by the Open Meetings Act, I recommend the TCL&P Board enter into a closed session following public comment and to adjourn immediately after the closed session. No board action will be taken either during or after the closed session. The closed session will be to discuss negotiations strategy and board expectations (if any) for a new collective bargaining agreement to replace the existing agreement, which expires June 30, 2017. TCL&P's special legal counsel will be present in the closed session.

A roll call vote is required with four affirmative votes authorizing the closed session.

If you concur with staff's recommendation, the following motion would be appropriate:

MOVED BY _____, SECONDED BY _____,

THAT THE BOARD ENTER INTO CLOSED SESSION FOLLOWING PUBLIC COMMENT TO CONSIDER THE STRATEGY AND NEGOTIATION OF THE COLLECTIVE BARGAINING AGREEMENT BETWEEN TCL&P BOARD AND THE UTILITY WORKERS UNION OF AMERICA, AFL-CIO, LOCAL NO. 295, AND TO ADJOURN IMMEDIATELY THEREAFTER.

FOR THE LIGHT & POWER BOARD MEETING OF APRIL 11, 2017



TRAVERSE CITY
LIGHT & POWER

To: Light & Power Board
From: Karla Myers-Beman, Controller
Date: April 5, 2017
Subject: LaFranier Road Second Phase Transmission Line Reconstruction

The LaFranier Road Second Phase Transmission Line Reconstruction Project has been completed and enclosed for your review are the financial results, which include the capital plan amount, budget, contracts and cash outlay.

Overall the project came in under budget by \$150,929.10 and exceeded contractual amounts by \$68,945.47.

The Construction Contract came in over budget caused by actual bids received and a change order on the scope of the project. During construction the contractor found the overhead design work proposed would be difficult and the BW-22 circuit would be out of service for many months due to the timing between foundation and pole installations. A new design was created undergrounding the circuit to provide quicker return of service for the circuit and improvements at this location, causing the scope change and increase costs to the contract.

T&D Material – Inventory, which is the remaining budget of the materials, came in under budget caused by pole costs coming in less than expected.

Traverse City Light and Power
 Construction in Progress - LaFranier Road Second Phase Transmission Line Reconstruction
 Final Close Out - April 2017

Project Name		LaFranier Road Second Phase Tline				
Sum of Amount Row Labels	Column Labels Capital Plan	Budget	Contract	Cash outlay	Over (Under) Budget	Over (Under) Contract
Capital Plan Amount	1,836,500.00					
Engineering/Design/Const Management		212,000.00	187,800.00	189,181.53	(22,818.47)	1,381.53
Construction Contract		779,973.00	809,494.00	877,085.76	97,112.76	67,591.76
Internal Labor/Equipment				28,693.30	28,693.30	
T&D Material		470,700.00	470,683.41	470,655.59	(44.41)	(27.82)
T&D Material - Internal Inventory		161,760.00		108,874.72	(52,885.28)	
Miscellaneous				11,113.00	11,113.00	
Contingency		212,000.00			(212,000.00)	
Grand Total	1,836,500.00	1,836,433.00	1,467,977.41	1,685,603.90	(150,829.10)	68,945.47



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Karla Myers-Beman, Controller
Date: April 5, 2017
Subject: MPPA Annual Credit Report Card

Last year, the Michigan Public Power Agency (“MPPA”) started a program of performing credit reports for all of their members to prevent any negative impact on their overall credit rating, since the rating agencies look at all members as a whole when assessing MPPA’s credit rating.

MPPA’s Chief Financial Officer researched the steps in performing a credit rating by agencies such as Fitch Group, Moody’s and Standard & Poor’s and created an annual program designed to provide information to the utility on financial or compliance areas they can improve on while providing an idea of what the utility would expect to receive for a credit rating.

Again this year, TCL&P received an excellent performance rating, which would most likely result in the best credit rating provided by the rating agencies. The utility had few areas needing improvement, 1) Debt service as a percentage of total revenue when taking into consideration MPPA’s commitments, 2) Competitiveness Ratio for our Commercial and Industrial Rates and 3) Total O&M Expense per kWh sold. The utility is addressing the competitiveness ratio through removing subsidizations between rate classes and the total O&M expense per kWh sold came in higher than the APPA median rates provided in the latest APPA benchmark survey. Staff is researching this further and will provide feedback as to how to improve this benchmark.



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Tim Arends, Executive Director
CC: Pete Schimpke, Manager of Operations & Engineering
Kelli Schroeder, Manager of HR & Communications
Date: April 5, 2017
Subject: Energy Efficiency Staffing Plan

At the March 14, 2017 regular meeting, the Board directed staff to look into a more cost effective long-term solution for TCL&P's Energy Efficiency Program. Since that time, staff has looked into alternatives, including meeting with representatives from Cherryland Electric Cooperative to determine if sharing of resources would be appropriate.

After careful review, staff recommends bringing the entire program in-house for both residential and commercial/industrial by hiring a full-time Energy Technician who would be responsible for all aspects of program implementation including energy audits, reporting, rate analysis, agency collaboration, education and marketing. This full-time position would replace the current Field Supervisor position at a Grade 3, and therefore, not result in an increase in staff levels.

Although our recruitment efforts were not successful a year ago, we feel that the increased salary range and level of duties should help in attracting qualified candidates. The pros of this new position are as follows:

- Utility control over the entire program.
- Responsible for Key Accounts relationship management/services.
- Ability to work with and leverage, when needed, local organizations/businesses to ensure success of the program.
- Position would be available to assist with other engineering related projects beyond the scope of Energy Efficiency.
- Less expensive option as it compares with Franklin Energy's recent proposal. The approximate cost of this new position, inclusive of wage and benefits, is \$125,000.
- Because of different customer demographics and demand, Cherryland was not an option; however, there may be the possibility to collaborate and create some efficiencies for both utilities.

At this time, staff is looking for Board feedback regarding this recommendation. If you concur, staff will update the Organization Chart and bring back for Board approval at the May 9 meeting under the consent calendar.



**TRAVERSE CITY
LIGHT & POWER**

To: Light and Power Board
From: Scott Menhart, Manager of Telecom & Technology
Date: April 4, 2017
Subject: Fiber to the Premise (FTTP) Next Steps

Staff wanted to give the Board an update of the next steps being taken regarding TCL&P's Fiber to the Premise (FTTP) project. Below is a plan of action being formulated by TCL&P Staff to give the Board appropriate information to determine if FTTP shall be included in the Capital Improvement Program.

During the last presentation of FTTP to the Board, it was determined that there are four high level options that TCL&P can do. These options are listed as follows:

1. **Do Nothing**: TCL&P can do nothing and continually monitor the outcome of other initiatives that have currently arose.
2. **TCL&P Full Deployment**: TCL&P can fully deploy and operate all aspects of FTTP (TCL&P investment would be roughly 16.2 million according to Conexon Study)
3. **TCL&P Wire Infrastructure with Sole Provider**: TCL&P will build, own, and maintain the cable infrastructure and go out for bid on a sole organization to provide the actual services. (TCL&P investment would be roughly 10 Million according to Conexon Study)
4. **TCL&P Wire Infrastructure with Multiple Providers**: TCL&P will build, own, and maintain the cable infrastructure and go out for bid on a multiple provider delivery infrastructure. (TCL&P investment would be roughly 10 million according to Conexon Study)

Throughout the presentation, it was evident that the Board would like to see more information on options 3 & 4 and determine if there would be any current providers that would be willing to provide these services. Therefore, Staff has been discussing and looking into the validity of these options at great length.

Working through Conexon, as well as independent research, Staff is currently not able to find a successful business model in the United States for Option 4, given the size of the deployment community. As TCL&P is looking to launch in its service territory, this is limiting to roughly 15,000 customers. As a result, the first company to launch will get the majority of the take rate, leaving little room for a second or third company to successfully attract customers to switch again. This model was also tried for a period of time a number of years ago and is known as Competitive Access Providers (CAPs). It ultimately led to the current monopoly models that are in place today

FOR THE LIGHT & POWER BOARD MEETING OF APRIL 11, 2017

as competition between providers continually drove prices down until others were priced out of the business.

As a result, Staff would like to focus on Option 3 and/or a variation of the option. After several internal discussions and meetings, it was determined that the best route to acquire interested parties that would be willing to provide services over TCL&P's network was to reach out and start direct dialogue with identified parties. The option of an RFI/RFP/RFQ was discussed, but ultimately this was deemed not a valid solution as this omits much of the actual low-level detail that needs to be had for a project of this magnitude. Therefore, Staff has begun compiling a list of potential Michigan based candidates to enter into non-disclosure agreements with to start the comprehensive discussions of providing services within TCL&P.

A follow-up list of candidates and any willingness to provide the services will be given to the Board over the next few months. If Staff does not receive any promising candidates or information for this option, this will bring the options down to Option 1 (Do Nothing) or Option 2 (TCL&P Full Deployment).

There is a variation of Option 3 that Staff is also looking into. This is looking to partner with other local interested organizations looking at deploying FTTP (Cherryland Electric, etc.) to determine if it is feasible to form a new provider with resources from each party; this method is similar to how TCL&P is part of the Kalkaska Combustion Turbine. This variation would require commitments from other organizations prior to beginning and would be subject to potential long-term analysis by interested organizations and could potentially result in long delays outside of Staff control.

This update is meant to not only serve as an update to the Board of the next steps, but Staff is also looking for feedback and/or comments to ensure the next steps are in alignment with Board expectations and vision.

FOR THE LIGHT & POWER BOARD MEETING OF APRIL 11, 2017



TRAVERSE CITY
LIGHT & POWER

To: Light & Power Board
From: Tim Arends, Executive Director
Date: April 5, 2017
Subject: Solar Purchase Power Agreement

The utility has been provided a bid for solar power for a 1MW array located near the M-72 Wind Turbine to purchase the power at \$.1175 per kWh with no escalation in price for a term of 20 years.

Following this memo is an analysis that provides two different scenarios. The first is based on the National Renewable Energy Laboratory (NREL) data providing a 12.4% capacity factor for this area. The total contract cost taking into consideration a half percent for degradation of generation each year is \$2.4M with an average annual cost of \$121,748.70. Comparing this to the short run avoided cost of solar the cost of the contract is an additional \$531,788 over the life of the contract, \$26,589 average annual cost or \$.0257 per kWh.

The short run avoided cost of solar reflects the cost of power if the utility had to purchase the energy off the market, capacity credit, transmission cost and renewable energy credits. It is referred to as a short run because it is difficult to predict the market beyond 5 to 10 years as industry changes through regulations, technology, along with the effects of supply and demand factors such as the amount and type of generators within the region. However, for this purpose it was projected out until the fiscal year 2024-25 with the assumption it would continue to increase based on conservative inflationary factor of the first seven years where data projections were provided.

The second is based on the proposed production at 14.5% capacity. The total contract cost taking into consideration a half percent for degradation of generation each year is \$2.8M with an average annual cost of \$142,367.43. Comparing this to the short run avoided cost of solar the cost of the contract is an additional \$748,821.39 over the life of the contract, \$37,441 average annual cost of \$.0309 per kWh.

At this time staff would like to obtain input from the Board on the proposed bid to TCL&P for solar power.

Traverse City Light and Power
Heritage Solar Power

12.4% NREL CAPACITY

CONTRACT COST			
Total Contract Production in kWh's	Total Cost of Contract	Average Annual Cost	Price per kWh
20,723,182	\$ 2,434,973.93	\$ 121,748.70	\$ 0.1175

SHORT RUN			
Total Cost of Contract Based on the Short Run Avoided Cost of Solar	Price per kWh	Contract Premium	Average Annual Premium
\$ 1,903,186.01	\$ 0.0918	\$ 531,787.91	\$ 26,589.40
			\$ 0.0257

14.5% CAPACITY

CONTRACT COST			
Total Contract Production in kWh's	Total Cost of Contract	Average Annual Cost	Price per kWh
24,232,754	\$ 2,847,348.55	\$ 142,367.43	\$ 0.1175

SHORT RUN			
Total Cost of Contract Based on the Short Run Avoided Cost of Solar	Price per kWh	Contract Premium	Average Annual Premium
\$ 2,098,527.16	\$ 0.0866	\$ 748,821.39	\$ 37,441.07
			\$ 0.0309



BID TO TCLP FOR SOLAR POWER

April 5, 2017

- 1 MW Nameplate Capacity Solar Project
- 11.75 cents per kWh fixed for 20 years – no escalations
- 1,268,000 kWh estimated annual production
- Includes all electricity generation with ALL REC's included
- Heritage agrees to negotiate with TCLP to utilize adjacent lands for additional solar generation on mutually agreed upon terms (25 acres, +/- 5 additional MW)
- TCLP to get capacity credits