

**TRAVERSE CITY LIGHT AND POWER
CONSTRUCTION AGREEMENT**

THIS AGREEMENT made this ____ day of _____, _____, by and between the TRAVERSE CITY LIGHT AND POWER DEPARTMENT, a Michigan municipal electric utility, of 1131 Hastings Street, Traverse City, Michigan, 49686, ("TCL&P"), and _____, of _____, (the "Contractor");

WITNESSETH:

WHEREAS, TCL&P desires to engage the services of the Contractor to furnish labor, materials and technical services for construction of the project which is described as:

**Critical & Large Customers #4
(the "Work")**

and the Contractor wishes to furnish such labor, materials and technical services to TCL&P and has represented that Contractor has the education, expertise, capability, equipment, and the necessary licenses to perform such Work;

THEREFORE, the parties mutually agree as follows:

1. Scope of Services. The Contractor shall provide labor, materials and services in accordance with and as set forth in Attachment A, "Scope of Work," attached hereto and incorporated herein by reference. In the event of conflict between this Agreement and any document incorporated by reference, this Agreement shall control and supersede the conflicting language in the document incorporated by reference.
2. Compensation and Method of Payment. TCL&P shall pay to the Contractor and the Contractor agrees to accept as full compensation for services under this Agreement the total sum of \$_____ in accordance with Attachment B, "Timetable for Activities and Schedule of Payments," attached hereto and incorporated herein by reference.
3. Period of Performance. The Work to be rendered under this Agreement shall commence May 1, 2019 and be completed July 1, 2019 in accordance with the schedule attached hereto. Time is of the essence for the Work and this Agreement.
4. Independent Contractor. The relationship of the Contractor to TCL&P is that of an independent Contractor and in accordance therewith, Contractor covenants and agrees to conduct itself consistent with such status and that neither it nor its employees, officers or agents will claim to be an officer, employee or agent of TCL&P, or make any claim, demand or application, to or for any rights or privileges applicable to any officer or employee of same, including, but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

5. Contractor Responsibility. The Contractor shall perform the Work in a good and workmanlike manner, take proper safety and health precautions to protect the work, the workers, the public, and the property of others and assumes the risk in performing under this Agreement. Contractor shall be solely responsible and answerable in damages for all improper Work, accidents or injuries to person or property. Any damage from any cause whatsoever shall be repaired by Contractor at its own expense. Contractor shall make a careful examination of the site, plans, specifications and all conditions affecting the Work, and any failure to make such examination will not be a valid excuse for failure to do the Work as a basis for any claim for extra compensation or extension of time.

6. Indemnity and Hold Harmless Provision. Contractor shall defend, indemnify, hold harmless and release TCL&P and the City of Traverse City and their officers and employees, from and against any and all claims, liabilities, losses, damages, actual attorneys' fees and settlement expenses for damages to public or private property, for injuries to persons, or for other claims allegedly or actually resulting from or arising out of the performance or non-performance of the contracted Work, whether during the progress or after completion thereof. The defense, indemnity, hold harmless and release obligations contained herein shall exclude only those matters in which the claim arises out the sole negligence of TCL&P, the City of Traverse City, or any of their respective officers or employees. This defense, indemnity, hold harmless and release provision shall not be limited by reason of any insurance coverage. The obligations herein shall apply to claims which sound in either tort or contract.

7. Bonds. The Contractor shall, at the time of execution hereof by TCL&P, provide a performance bond in an amount of not less than one-hundred percent (100%) of the contract price in favor of TCL&P, conditioned upon the faithful performance of the contract and completion on or before the date specified; and a labor and material bond running to TCL&P in an amount of not less than one-hundred percent (100%) of the contract price for the protection of subcontractors, material suppliers and labor. The bonds shall be in substantially the same form as the current AIA bond forms, or in such other form as is approved by TCL&P's General Counsel. TCL&P may waive the requirement for these bonds if the contract is less than \$50,000 and the signature of the Executive Director appearing at the end of this paragraph shall be deemed to be a waiver of the bond requirements.

Timothy J. Arends, Executive Director

8. Insurance. The Contractor shall acquire and maintain the following forms of insurance coverage until completion of the Work:

- A. Commercial General Liability insurance coverage, including Contractor's Protective Liability, Completed Operations, Contractual Liability, Explosion, Collapse and Underground Coverage, on an occurrence basis with a

Combined Single Limit applicable to the Work only of One Million and 00/100 (\$1,000,000.00) Dollars each occurrence for bodily injury and property damage. The policy shall name The City of Traverse City and TCL&P as additional insureds for ongoing operations and completed operations.

- B. Owners and Contractors Protective Liability insurance coverage with a Combined Single Limit applicable to the Work only of One Million and 00/100 (\$1,000,000.00) Dollars each occurrence for bodily injury and property damage. The policy shall name The City of Traverse City and TCL&P as additional insureds for ongoing operations and completed operations.

All insurance policies referred to above shall provide insurance coverage to The City of Traverse City and TCL&P on a primary basis and contain a provision that the insurer will not cancel, materially change or fail to renew the coverage provided by such policy without first giving The City of Traverse City and TCL&P thirty (30) days' prior written notice. All deductibles required by such policies shall be the obligation of Contractor. The insurance referred to above shall not reduce or limit Contractor's obligation to indemnify and defend The City of Traverse City and TCL&P as provided in this Agreement.

The Contractor agrees not to change such insurance and agrees to maintain such insurance throughout the period of performance of this Agreement. Contractor will upon execution of this Agreement provide to the TCL&P Controller certificates of insurance which Contractor is required to purchase acquire and maintain. If any of the required insurance is not renewed or canceled, the Contractor and all subcontractors shall cease operations and shall not resume until new insurance is obtained.

9. Workers' Compensation. The parties shall maintain suitable workers' compensation insurance pursuant to Michigan law and Contractor shall provide a certificate of insurance or copy of state approval for self-insurance to the TCL&P Controller upon execution of this Agreement.

10. Security. If the work requires the Contractor to have access to TCL&P secured facilities, such as substations, Contractor shall:

- (a) perform background checks on employees who will access the facilities;
- (b) only allow those employees to have access who have no record of crime or misconduct causing damage or injury;
- (c) only allow employees access to substation who are trained to perform work within a substation;

- (d) identify the secured facility and the names of all employees who will be accessing secured facility;
- (e) inform TCL&P operators at (231) 932-4589 at the time of entry and at the time of exit of the employees; and
- (f) promptly return to TCL&P all keys and keycards to secured facilities when the work is completed.

11. Compliance with Regulations. The Contractor shall familiarize itself with and comply with all applicable statutes, rules and regulations of all Federal, State and local governments and agencies having jurisdiction, and bears the risk of any such authorities or changes thereto.

12. Standard of Conduct. Contractor shall tender all services under this Agreement according to generally accepted professional practices for the intended use of the Work.

13. TCL&P's Obligation. TCL&P shall provide Contractor with all information currently available to it upon request of the Contractor. TCL&P's Executive Director or such other person as the Executive Director shall designate shall be TCL&P's representative for purposes of this Agreement.

14. Third-Party Beneficiaries. If the Contractor is doing all or a part of the Work in public rights of way, the City of Traverse City and Grand Traverse County, including their Departments and Commissions, are third-party beneficiaries of the Contractor's obligations under this Agreement and they shall be added as named Additional Insureds in all required insurance policies. Except for those entities, there are no other third-party beneficiaries intended by the parties.

15. Non-Discrimination. The Contractor 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 contract. The Contractor agrees to require similar provisions from any sub-contractor.

16. Prohibition Against Assignment. This Agreement is intended to secure the service of Contractor because of its ability and reputation and none of the Contractor's duties under the Agreement shall be assigned, subcontracted, or transferred without the prior written consent of the TCL&P Executive Director. Any assignment, subcontract or transfer of Contractor's duties under this Agreement must be in writing.

17. Third-Party Participation. The Contractor agrees that despite any subcontract entered into by the Contractor for execution of activities or provision of services related to the completion of this project, the Contractor shall be solely responsible for carrying out the project pursuant to this Agreement. The Contractor shall specify in any such subcontract that the subcontractor shall be bound by this Agreement and any other requirements applicable to the Contractor in the conduct of the project, unless TCL&P and the Contractor agree to modification in a particular case. The Contractor shall not subcontract unless agreed upon in writing by TCL&P's Executive Director.

18. Interest of Contractor. The Contractor represents that its officers and employees have no interest and covenant that they will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Contractor's services and duties hereunder. The Contractor further covenants that in the performance of the Agreement, no person having any such interest shall be employed, Contractor further covenants that neither it nor any of its principals are in default to the City of Traverse City.

19. Covenant Against Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach of violation of this warranty, TCL&P shall have the right to annul this Agreement with liability, or in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

20. Qualifications of the Contractor. The Contractor specifically represents and agrees that its officers, employees, agents and consultants have and shall possess the experience, knowledge, and competence necessary to qualify them individually for the particular duties they perform hereunder.

21. Electronic Transactions. The parties agree to conduct this transaction by electronic means. This Agreement may be executed by providing an electronic signature under the terms of the Uniform Electronic Transactions Act. This Agreement may not be denied legal effect or admissibility as evidence solely because it is in electronic form, permits the completion of the business transaction referenced herein electronically instead of in person, or has been stored electronically. As an alternative to physical delivery, any document, including any signed document or written notice, may be delivered in electronic form only by the following indicated methods: Facsimile Email No Electronic Delivery. Documents with original signatures shall be provided upon request of any party.

22. Notice. Notices pursuant to this Agreement shall be given to TCL&P as follows:
 Tony Chartrand
 1131 Hastings St, Traverse City, MI 49686
 231-932-4562
 tchartrand@tclp.org

Notices pursuant to this Agreement shall be given to Contractor as follows:

[Name]

[Address]

[Telephone number]

[Email]

23. Amendments. This Agreement may be modified from time to time, but such modifications shall be in writing and signed by both parties.

24. Termination for Fault. If TCL&P determines that the Contractor has failed to perform or will fail to perform all or any part of the services, obligations, or duties required by this Agreement, TCL&P may terminate or suspend this Agreement in whole or in part upon written notice to the Contractor specifying the portions of the Agreement and in the case of suspension shall specify a reasonable period not more than thirty (30) days nor less than fifteen (15) days from receipt of the notice, during which time the Contractor shall correct the violations referred to in the notice. If the Contractor does not correct the violations during the period provided for in the notice, this Agreement shall be terminated upon expiration of such time. Upon termination, any payment due the Contractor at time of termination may be adjusted to cover TCL&P's additional costs occasioned by reason of the termination. This provision for termination shall not limit or modify any other right of TCL&P to proceed against the Contractor at law or under the terms of this Agreement.

25. Force Majeure. If because of Force Majeure, either party is unable to carry out any of its obligations under this agreement (other than obligations of such party to pay or expend money for or in connection with the performance of this Agreement), and if such party promptly gives to the other party concerned written notice of such force majeure, then the obligations of the party giving such notice will be suspended to the extent made necessary by such force majeure and during its continuance, provided the effect of such force majeure is eliminated insofar as possible with all reasonable dispatch. "Force Majeure" means unforeseeable events beyond a party's reasonable control and without such party's fault or negligence, including, but not limited to, acts of God, acts of public enemy, acts of the federal government, acts of another party to this Agreement, fire, flood, inclement weather, epidemic, quarantine restrictions, strikes and embargoes, labor disturbances, the unavailability of raw materials, legislation, charter amendments or referendum, orders or acts of civil or military authority, injunctions, or other causes of a similar nature which wholly or substantially prevent performance. Upon termination by TCL&P due to Force Majeure, the Contractor shall be entitled to and TCL&P shall pay the costs actually incurred in compliance with this Agreement until the date of such termination.

26. Delay. If the Contractor is delayed in the completion of the Work due to acts of TCL&P or due to Force Majeure, the time for completion shall be extended for a period determined by the TCL&P to be equivalent to the time of such delay. The Contractor shall not be entitled to recover damages or costs sustained by reason of such delays.

27. Interpretation. This Agreement shall be governed by the laws of the State of Michigan, both as to interpretation and performance. The pronouns and relative words used

herein are written in the neuter and singular. However, if more than one person or entity joins in this Agreement on behalf of Contractor, or if a person of masculine or feminine gender joins in this Agreement on behalf of Contractor, such words shall be interpreted to be in the plural, masculine or feminine as the sense requires.

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

- (a) Mediation. If they are unable to resolve the dispute themselves, and before formally instituting any other dispute mechanism, they shall utilize the services of a mutually acceptable neutral mediator, who meets the qualifications of MCR 2.411, to bring them together in at least one mediation session.
- (b) Venue. All meetings, hearings and actions to resolve the dispute shall be in Grand Traverse County.
- (c) Initiation. A party may initiate mediation by written request and proposing a mediator. The other party shall promptly respond in writing and cooperate in the scheduling. Violation of this provision is a material breach of this contract and a party in such breach is responsible for all the other party's actual attorney fees and costs in filing a lawsuit through conclusion of mediation.

29. Venue. Any and all suits for any and every breach of this Agreement may only be instituted and maintained in any state court of competent jurisdiction in the County of Grand Traverse, State of Michigan.

30. Michigan Freedom of Information Act. The Contractor acknowledges that Traverse City Light & Power may be required from time to time to release records in its possession under the Michigan Freedom of Information Act. The Contractor hereby gives permission to Traverse City Light & Power to release any records or materials received by Traverse City Light & Power as it may be requested to do so as permitted by the Freedom of Information Act, MCL 15.231 et seq.

31. Entire Agreement. This Agreement, together with all items incorporated herein by reference, constitutes the entire agreement of the parties and there are no valid promises, conditions or understandings which are not contained herein. It is understood that should Contractor recommend further work concerning the project, TCL&P is under no obligation to engage Contractor in such work.

32. 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.

33. Counterparts. This Agreement may be signed in one or more counterparts, and each counterpart will be considered an original Agreement. All of the counterparts will be considered one document and become a binding agreement when one or more counterparts have been signed by each of the parties and delivered to the other.

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

APPROVED AS TO SUBSTANCE:

TRAVERSE CITY LIGHT AND POWER
DEPARTMENT

Timothy J. Arends
Executive Director

APPROVED AS TO FORM:

CONTRACTOR

W. Peter Doren
General Counsel

ATTACHMENT A

SCOPE OF WORK

The parties agree that the Work for TCL&P shall consist of the following:

Installation of new underground facilities including all conduit, wire, and equipment as outlined in construction drawings and staking sheets. Removal of all overhead poles, wires, and equipment as outlined in construction drawings and staking sheets.

[The Request for Proposals/Bids and the Contractor's Proposal or Bid should be identified here] which are incorporated here by reference.

ATTACHMENT B

TIMETABLE for ACTIVITIES and
SCHEDULE of PAYMENTS

Work shall commence once ordered switchgear arrives (anticipated May 2) or before. All work must be completed prior to July 1st, 2019.

Payments shall be made to the Contractor as follows:

- 10% Upon mobilization
- 50% Upon half of work completed
- 40% Upon substantial amount of work complete
- 10% Upon completion of final punch list

Final payment shall be made upon completion of all Contractor's services. Total payment including expenses shall not exceed \$_____.