



August 2, 2017

Bidder:

Traverse City Light & Power (TCL&P) will receive sealed bids in the office of TCL&P, 1131 Hastings Street, Traverse City, Michigan, 49686, until **Tuesday, August 29, 2017, at 2:00PM** for the following project:

**Financial Forecast, Cost of Service Study and Rate Design**  
(specifications attached)

It is the sole responsibility of the Bidder to check the website for updates and addenda prior to the bid being submitted. Updates can be found using the following link: <http://www.tclp.org/Display/Items/RFPs>. Bidder may also sign up to receive notifications when bids and RFP's are posted by sending an e-mail requesting same to [stvardek@tclp.org](mailto:stvardek@tclp.org).

TCL&P reserves the right to accept or reject any or all bids, waive irregularities, and to accept the bids either on an entire or individual basis that is in the best interest of TCL&P.

TCL&P accepts no responsibility for any expense incurred by the Bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the Bidder.

Only the successful Bidder will be notified. If you desire, you may call for results.

You must indicate on the outside of the sealed envelope that the bid is for the "Financial Forecast, Cost of Service Study and Rate Design."

You must submit **TWO (2) SEALED COPIES** of the bid to TCL&P prior to the above-indicated time and date or the bid will not be accepted. Telefaxed or E-Mail bids will not be accepted.

Please note that if you have previously submitted an informal quote, you will still need to submit a sealed bid prior to the date and time specified above in order to be considered. Please ensure that all requirements listed in the specifications are met.

If you have any questions, please contact Karla Myers-Beman, Controller, at (231) 922-4940 ext. 202 before the bid is submitted.

PLEASE SUBMIT BID TO: Stephanie Tvardek, Scheduling & Operations Coordinator  
Traverse City Light & Power  
1131 Hastings Street  
Traverse City, MI 49686



## ❖ SPECIFICATIONS

### A. Instruction to Bidders

Traverse City Light & Power (TCL&P) is a municipal utility located in Traverse City, Michigan with approximately 12,500 customers. The utility has long term contracts through Michigan Public Power Agency along with purchasing energy from the market to supply the electricity needs for its citizens and customers. A copy of the current rates are located at <http://www.TCL&P.org/Page/ResidentialRates> for residential and <http://www.TCL&P.org/Page/CommercialRates> for Commercial/Industrial. TCL&P is a \$36M operation and a copy of the audited financial statements is located at <http://www.TCL&P.org/Uploads/Financials/2016%20Financials.pdf>. A copy of the last cost of service report presented to the board is located at [http://www.TCL&P.org/Uploads/BoardMeetings/2014/PACKET%20-%20Regular%20Meeting%2003.25.14%20\(Part%201%20of%202\)%20REVISED.PDF](http://www.TCL&P.org/Uploads/BoardMeetings/2014/PACKET%20-%20Regular%20Meeting%2003.25.14%20(Part%201%20of%202)%20REVISED.PDF) for your review.

The purpose of the rate study is to evaluate TCL&P's financial position for the next five fiscal years, perform a cost of service study and prepare a rate design. The intention is this work will be performed by staff for the purpose to have a full understanding of the cost of service/rate design with the Consultant providing direction and assistance along with the tools necessary to complete the scope of services.

More specifically, TCL&P's expectations for the cost of service and rate design include 1) recommend rate changes to meet TCL&P's revenue requirements with migrating the rate components to the actual costs of operations, 2) streamline and simplify TCL&P's Schedule of Rates, 3) establish rates that appropriately assign costs to customer classes based on the cost of serving each class of customer with proposed rate changes for the next five years to eliminate the subsidization between classes, 4) create voluntary green rate required by State of Michigan Public Act 342 of 2016, Section 61, 5) ability for the utility to transition to time of use rates (TCL&P plans to launch AMI during the calendar years 2017, 2018, and 2019), and 6) construct an internal cost of service to be used after completion in analyzing potential new rates, change in rate components and financial effects of changes in rates.

Scope of Services sets forth the tasks to be performed by TCL&P staff with direction and review from the Consultant and includes a schedule of project meetings to timely complete this cost of service/rate study assignment. The project tasks identify certain key mutual agreements to be provided by TCL&P and the Consultant at each meeting, and identifies certain information, direction, and tools to be provided by Consultant to meet the rate study/cost of service completion date of February 27, 2018.

### B. Completion Date and Project Schedule

All work on the project must be fully completed by the Consultant no later than February 27, 2018.



## **Project Schedule**

### **TASK 1 – Five Year Financial Forecast and Rate Design Strategy**

Project Initiation and Kick-Off Teleconference	October 3, 2017
Financial Forecast Meeting	October 17, 2017
Final Financial Forecast and Revenue Requirements Meeting	October 24, 2017
Rate Design Goals and Objectives Meeting	October 31, 2017
Consultant to provide Rate Design Goals and Objectives to TCL&P	November 7, 2017
Finalize Rate Design Goals and Objectives	November 14, 2017

### **TASK 2 – Cost of Service Analysis**

Cost of Service Initial Meeting	November 21, 2017
Cost of Service Progress Meeting	December 14, 2017
Cost of Service Second Progress Meeting	January 2, 2018
Cost of Service Final Meeting	January 9, 2018

### **TASK 3 – Rate Design**

Rate Design Initial Meeting	January 16, 2018
Rate Design Progress Meeting	January 23, 2018
Rate Design Final Meeting	February 6, 2018

### **TASK 4 – Report and Presentation**

Draft Report and Presentation Initial Meeting	February 13, 2018
Draft Report and Presentation Final Meeting	February 20, 2018
Issue Final Executive Summary Report and Presentation (electronic)	February 27, 2018

### **TASK 5 – Final Meeting**

TCL&P Board Meeting	March 12, 2018
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## **C. Scope of Services**

### **TASK 1 – FIVE YEAR FINANCIAL FORECAST AND RATE DESIGN STRATEGY**

TCL&P shall provide its Five Year Financial Forecast spreadsheet model in electronic format, and provide it prior to Task 1.1 Project Initiation and Kick-Off meeting scheduled for October 3, 2017

TCL&P staff and Consultant will perform the following work activities:

- 1.1 **Project Initiation and Kick-Off teleconference meeting scheduled for October 3, 2017** to review scope of services and discuss Consultant's list of information required for the cost of service/rate design to be completed (to be provided by Consultant in advance of the project kick-off teleconference meeting). If needed, modify the proposed schedule included within the tasks.
- 1.2 **Financial Forecast Meeting scheduled for October 17, 2017** where Consultant will perform the following work activities:



- a. Review the Base Case Financial Forecast spreadsheet model provided by TCL&P staff including revenue and revenue requirement projections and all model assumptions and provide comments and recommendations.
  - b. Discuss any issues where information cannot be provided by the utility from the list of information provided by the consultant and determine other resources for the information.
- 1.3 **Final Financial Forecast and Revenue Requirements meeting scheduled for October 24, 2017** with TCL&P to discuss the timing and finalize the total revenue needed and overall base rate adjustments.
- The key results from this meeting will be TCL&P's and Consultant's mutual approval of all of the components of the Financial Forecast to be used by TCL&P for the Class Cost of Service model. (TCL&P plans to use Fiscal Year 2017 (July 1, 2016 to June 30, 2017) as the Test Year with pro forma adjustments from the chosen Five Year Financial Forecast for the class cost of service analysis utilizing the same customer classes as used in the last Cost of Service Study and Rate Plan Design.)
- 1.4 **Initial Rate Design Goals and Objectives meeting scheduled for October 31, 2017** where Consultant will develop an initial listing of rate design goals and objectives that will include the following:
- a. Consolidation of rate schedules;
  - b. Movement of rates toward cost of service components (minimum, demand, and energy);
  - c. Plan of progression to eliminate subsidization between rate classes;
  - d. Stand by rates for seasonal customers;
  - e. If needed, revision of the current Power Service Cost Recovery;
  - f. Review creation of other rate classes required by law such as the Voluntary Green Rate and other rate classes such as an Educational and Ski Hill Rate Classes.
  - g. Consultant will provide the list of the above by November 7, 2017.
- 1.5 **Finalize Rate Design Goals and Objectives meeting scheduled for November 14, 2017** with the objective of TCL&P and Consultant mutually agreeing on the rate design goals and objectives, and discuss an implementation strategy for transitioning to a new rate structure that meets those rate design goals and objectives.



## **TASK 2 - COST OF SERVICE ANALYSIS**

TCL&P shall provide electronic billing determinant data by rate component and bill frequency data by rate customer class prior to the Cost of Service meeting scheduled for November 21, 2017. TCL&P shall perform tests with billing determinant data to verify accuracy of application of existing rates. Consultant will provide a customer class cost of service analysis using a working model that will be owned by the utility and in Microsoft Excel. No other major changes or revisions will be made to the cost of service model. The cost of service model will incorporate new rates such as Education Rates, Voluntary Green Pricing, and eventually Time of Use Rates.

**2.1 Initial Cost of Service Model meeting on November 21, 2017** where the Consultant will provide information and direction on the cost of service working model.

a. TCL&P will provide electronic billing data reconciled to the June 30, 2017 financial statements by class.

b. The Consultant will:

i. Provide a copy of the working model and any written instructions before the meeting for TCL&P staff to review

ii. Review their cost of service model template with TCL&P staff.

1. Provide information on the cost allocation process and the three major parts of functionalization of costs, classification of costs and allocation of costs among customer classes.

2. Review the class cost of service methodology - embedded or marginal cost.

c. The Consultant will breakdown the tasks within the cost of service model for TCL&P staff to complete along with a schedule no longer than six weeks to complete the model.

d. Consultant should be made available during this time for any questions during this process.

**2.2 Cost of Service progress meeting with TCL&P scheduled for December 14, 2017** to:

a. Consultant to review the progress to date on the cost of service model prepared by TCL&P staff.

**2.3 Cost of Service second progress meeting with TCL&P scheduled for January 2, 2018** to:

a. Review and discuss:



- i. The rate design models for the purpose of determining whether modifications should be made to any of the models;
    - ii. TCL&P's billing system matters that may impact the development and implementation of new rates and rate structures.
  - b. Review and discuss the cost of service model prepared by TCL&P staff completed to date.
- 2.4 **Cost of Service final meeting with TCL&P scheduled for January 9, 2018 to:**
  - a. Consultant and TCL&P will finalize the cost of service model.

### **TASK 3 – RATE DESIGN**

TCL&P will utilize the rate design goals and rate design models developed in the 2013 Cost of Service and Rate Plan study, without major modification or revision, to develop and evaluate new rates and rate structures with assistance from the Consultant. TCL&P will use the electronic billing determinant data by rate component by rate class approved by TCL&P in Task 2 as described above.

3.1 **Rate Design initial meeting with TCL&P staff on January 16, 2018** with the following tasks:

- a. Revise Power Service Cost Recovery Rate to include the recommended level of power supply costs to be included in the proposed base rates.
- b. Develop rate schedule descriptions if different from existing rate schedule descriptions.
- c. Using the rate design models from the 2013 Cost of Service and Rate Plan study, develop proposed base rates and base rate structure that:
  - i. Move TCL&P's rates and rate structure in the direction of the rate design goals and objectives determined above;

3.2 **Rate Design Progress Meeting with TCL&P scheduled for January 23, 2018** to discuss progress on proposed rates and implementation schedule. The Rate Design Progress Meeting will involve Consultant making changes to the proposed rates and rate structure prepared by TCL&P and providing comments and direction so as to result in final, or near final, rates and rate structures by the end of the working meeting. The purpose of the meeting is to obtain mutual agreement between TCL&P and Consultant on the rate design.



**3.3 Rate Design Final Meeting and scheduled for February 6, 2018:**

- a. TCL&P will adjust and revise proposed rates as necessary based on Consultant comments and direction at the Rate Design Progress Meeting, and provide electronic copies to Consultant by February 6, 2018.

**TASK 4 – REPORT AND PRESENTATION**

Consultant will complete the following work activities:

- 4.1 Prepare draft Executive Summary report that provides the results of the analysis performed above, the decisions and conclusions reached, and recommendations for this rate study (electronic version).
- 4.2 **Draft Report and Presentation Initial Meeting with TCL&P scheduled for February 13, 2018** to discuss the draft Executive Summary report and the presentations to be made to the TCL&P Board.
- 4.3 **Draft Report and Presentation Final Meeting scheduled for February 20, 2018**  
Consultant will:
  - a. Update the Executive Summary report based on the discussion and the direction provided by TCL&P at the Draft Report and Presentation meeting, and issue final **Executive Summary report and Presentation (electronic version) by February 27, 2018.**

**TASK 5 – FINAL MEETING**

- 5.1 **Consultant will attend the following presentation meeting in Traverse City, Michigan to TCL&P Board on March 12, 2018.**

**TASK 6 – TIME OF USE RATES**

Consultant will work with TCL&P on designing time of use rates subsequent to one year of usage data is obtained from the advanced metering infrastructure system is implemented. Scheduling is yet to be determined.



**D. Bid Pricing**

The cost of the scope of services should be broken down into one lump sum amount for Tasks 1 – 5 with a separate lump sum amount for Task 6.

<u>Task</u>	<u>Lump Sum Bid Price</u>
Task 1 – Task 5	\$ _____
Task 6	\$ _____
<b>Total Lump Sum Bid Price</b>	<b>\$ _____</b>

**❖ INSURANCE REQUIREMENTS**

The following insurance requirements must be met throughout the project:

- A. The Contractor shall file with Traverse City Light & Power (TCL&P) satisfactory certificates of insurance prior to commencement of engagement. The form, content and limits of such insurance, together with the insurer thereof in each case, shall be acceptable to TCL&P (Best rating of A or better.) Advance written notice will be given to TCL&P before any material modification, cancellation, or expiration of any policy covered thereby. Notice of policy material modification, cancellation, or expiration shall be made by certified mail to TCL&P.
- B. Should any of the insurance requirements stated herein be terminated by the Insurer, the Insurer will mail thirty days written notice to TCL&P. Failure to mail by the Insurer will not waive the obligation or liability of any kind upon the insurer affording coverage. These requirements must be stated on all certificates of insurance. Modifications of the standard cancellation clause is acceptable.
- C. All certificates shall list any exclusions which are nonstandard within the industry as they appear on the policy.
- D. Each insurance policy shall have an Additional Insured endorsement naming TCL&P, its officers, agents, directors, and employees. The issuing company for comprehensive general liability and excess liability shall waive subrogation of all claims against parties named as additional insureds.
- E. The worker’s compensation, automobile liability, and general liability insurance specified shall apply to all consultants on site.
- F. Insurance types and coverages:
  - 1. 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 TCL&P upon execution of this Contract.





2. Comprehensive General Liability Insurance Coverage: With limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit with TCL&P listed as an additional insured. Professional liability insurance coverage in the amount of \$1,000,000 minimum.



❖ IRAN ECONOMIC SANCTIONS ACT

**Sworn and Notarized Affidavit of Compliance  
Iran Economic Sanctions Act  
Michigan Public Act No. 517 of 2012**

All bidders must submit the following certification statement in compliance with Public Act No. 517 of 2012 (the “Iran Economic Sanctions Act”) and attach this form to the bid. **Traverse City Light & Power shall not accept any bid that does not include this sworn and notarized certification of statement.**

The undersigned, the owner or authorized officer of \_\_\_\_\_ (the Bidder), hereby certifies, represents and warrants that the Bidder (including its officers, directors and employees) is not an “Iran linked business” within the meaning of the Iran Economic Sanctions Act, and that in the event the Bidder is awarded a contract for the Financial Forecast, Cost of Service Study and Rate Design, the Bidder will not become an “Iran linked business” at any time during the course of performing the work or any services under the contract.

The Bidder further acknowledges that any person who is found to have submitted a false certification is responsible for a civil penalty of not more than \$250,000.00 or 2 times the amount of the contract or proposed contract for which the false certification is made, whichever is greater, the cost of Traverse City Light & Power’s investigation, and reasonable attorney fees, in addition to the fine. Moreover, any person who submitted a false certification shall be ineligible to bid on a Request for Proposal for 3 years from the date it is determined that the person has submitted the false certification.

BIDDER

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by

\_\_\_\_\_ .

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Acting in the County of: \_\_\_\_\_



❖ **BID SUMMARY**

**Bidder – Please complete and return**

**TITLE:** Financial Forecast, Cost of Service Study and Rate Design

**DUE DATE:** Tuesday, August 29, 2017, at 2:00PM

Having carefully examined the specifications and any other applicable information, the bidder proposes to furnish all items necessary for and reasonably incidental to the proper completion of this bid. Bidder submits this bid and agrees that the bid may not be withdrawn for a period of thirty (30) days from the actual date of the opening of the bid.

Bidder understands and agrees, if selected as the successful bidder, to accept a Consultant Agreement (Attachment A) from TCL&P and to provide proof of any required insurance.

Bidder submits this bid and agrees to meet or exceed all TCL&P's requirements and specifications unless otherwise indicated in writing and attached hereto.

Bid forms are to be completed, including bid sheet, and submitted. Additional sheets may be used and submitted with bid.

Bidder understands that TCL&P reserves the right to accept any or all bids in whole or in part and to waive irregularities in any bid in the best interest of TCL&P. The bids will be evaluated and awarded on the basis of the best value to TCL&P. Criteria used will include, but not be limited to, bidder's ability, qualifications, experience, bid price and overall capability meeting the needs of TCL&P.

The Bidder certifies that it is in compliance with the City of Traverse City's Nondiscrimination Policy as set forth in Administrative Order No. 47 and Chapter 605 of the City's Codified Ordinances.

The Bidder certifies that none of the following circumstances have occurred with respect to the Bidder, an officer of the Bidder, or an owner of a 25% or more share in the Bidder's business, within 3 years prior to the bid:

- a) conviction of a criminal offense incident to the application for or performance of a contract;
- b) conviction of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense which currently, seriously and directly reflects on the Bidder's business integrity;
- c) conviction under state or federal antitrust statutes;
- d) attempting to influence a public employee to breach ethical conduct standards; or



- e) conviction of a criminal offense or other violation of other state, local, or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which in the opinion of the City indicates that the bidder is unable to perform responsibility or which reflects a lack of integrity that could negatively impact or reflect upon TCL&P, including but not limited to, any of the following offenses or violations of:
- i. The Natural Resources and Environmental Protection Act.
  - ii. A persistent and knowing violation of the Michigan Consumer Protection Act.
  - iii. Willful or persistent violations of the Michigan Occupational Health and Safety Act.
  - iv. A violation of federal, local, or state civil rights, equal rights, or non-discrimination laws, rules or regulations.
  - v. Repeated or flagrant violations of laws related to the payment of wages and fringe benefits.
- f) the loss of a license or the right to do business or practice a profession, the loss or suspension of which indicates dishonesty, a lack of integrity, or a failure or refusal to perform in accordance with the ethical standards of the business or profession in question.

Terms: Payment will be made monthly based on progress to date on the engagement.

Bidder certifies that as of the date of this bid, Bidder's company or Bidder is not in arrears to TCL&P or the City of Traverse City for debt or contract and is in no way a defaulter as provided in Section 152, Chapter XVI of the Charter of the City of Traverse City.

Bidder agrees that the bid may not be withdrawn for a period of thirty (30) days from the actual date of the opening of the bid.

Please direct ALL questions to: Karla Myers-Beman, Controller, Traverse City Light & Power, at (231) 922-4940 ext. 202.



Submitted by:

_____ Signature		_____ Company Name		
_____ Name and Title (Print)		_____ Company Address		
_____ Phone	_____ Fax	_____ City,	_____ State,	_____ Zip
_____ Sole proprietorship/partnership/corporation				
_____ If corporation, state of corporation				

REFERENCES: (include name of organization, contact person, and daytime phone number).

1.

_____ Name of Organization	
_____ Contact Person	_____ Phone Number

2.

_____ Name of Organization	
_____ Contact Person	_____ Phone Number

3.

_____ Name of Organization	
_____ Contact Person	_____ Phone Number

**TRAVERSE CITY LIGHT AND POWER DEPARTMENT  
CONSULTANT AGREEMENT**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the TRAVERSE CITY LIGHT AND POWER DEPARTMENT, a Michigan municipal electric utility, whose address is 1131 Hastings St., Traverse City, Michigan, 49686, ("TCL&P"), and \_\_\_\_\_, Michigan (the "CONSULTANT");

WITNESSETH:

WHEREAS, TCL&P desires to engage the services of the Consultant to furnish technical and professional assistance concerning the project which is described as:

**Financial Forecast, Cost of Service Study and Rate Design  
(The "Work")**

and the Consultant wishes to furnish such technical and professional service to TCL&P and has represented that Consultant has the education, expertise, capability and the necessary licenses to perform such services;

THEREFORE, the parties mutually agree as follows:

1. Scope of Services. The Consultant shall provide services in accordance with and as set forth in Schedule "A", Scope of Services, attached hereto and incorporated herein by reference.
2. Compensation and Method of Payment. TCL&P shall pay to the Consultant and the Consultant agrees to accept as full compensation for services under this Agreement not-to exceed figure \$X in accordance with Schedule "B", "Timetable for Activities and Schedule of Payments", attached hereto and incorporated herein by reference.
3. Period of Performance. The services to be rendered under this Agreement shall commence within five (5) working days of execution hereof. Performance shall be in accordance with the schedules attached hereto.
4. Independent Contractor. The relationship of the Consultant to TCL&P is that of an independent contractor and in accordance therewith, Consultant 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. The parties do not intend the services provided by Consultant to be a joint endeavor.

5. Consultant Responsibility. The Consultant shall perform the work in a good and workmanlike manner and assumes the risk in performing under this Agreement. Consultant shall be solely responsible and answerable in damages for all improper work, accidents or injuries to person or property.

6. Indemnity. Consultant shall defend, indemnify and save harmless TCL&P, its officers and employees, from and against any and all claims, liabilities, losses, damages, actual attorney's fees and settlement expenses for injury or death of any person and damage or loss of any property allegedly or actually resulting or arising out of any act, omission, or negligence of Consultant or its employees, agents or subcontractors, in connection with performing this Agreement, or the joint negligence of TCL&P and that of Consultant, Consultant's employees, agents or subcontractors. This indemnification agreement shall not be limited by reason of any insurance coverage.

7. Insurance. The Consultant shall acquire and maintain commercial general liability insurance coverage, comprehensive automobile liability insurance coverage, and professional liability coverage. The limits and deductible applicable to them shall be as follows:

- A. Commercial general liability insurance coverage with a \$1,000,000 minimum.
- B. Comprehensive Automobile Liability insurance coverage with a \$1,000,000 minimum.
- C. Professional liability insurance coverage with a \$1,000,000 minimum.

The Consultant agrees not to change and agrees to maintain such insurance throughout the period of performance of this Agreement. Consultant will upon execution of this Agreement provide a certificate of insurance to TCL&P. Such certificate shall name TCL&P as an additional insured.

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

9. Compliance with Regulations. The Consultant shall 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.

10. Standard of Conduct. Consultant shall render all services under this Agreement according to generally accepted professional practices for the intended use of the work or project.

11. Confidentiality. Consultant agrees that it, its employees, agents, and subcontractors, will not at any time, either directly or indirectly, communicate to any person, firm, corporation or public entity, in any manner whatever, any information concerning any matters affecting or relating to the

## ATTACHMENT A

business, records or other business data of TCL&P without the express written consent of the executive director of TCL&P. This promise of confidentiality is made without regard to whether any or all of the information would be deemed confidential, material or important. The parties stipulate that as between them, all information arising from Consultant's services are important, confidential, material and affect the successful conduct of the business of TCL&P and its goodwill. The parties are not bound by this clause where disclosure is required by law or court order.

12. TCL&P's Obligation. TCL&P shall provide Consultant with all information currently available to TCL&P upon request of the Consultant. The Executive Director shall designate a TCL&P employee to be TCL&P's representative for purposes of this Agreement.

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

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

15. Third Party Participation. The Consultant agrees that despite any subcontract entered into by the Consultant for execution of activities or provision of services related to the completion of this project, the Consultant shall be solely responsible for carrying out the project pursuant to this Agreement. The Consultant shall specify in any such subcontract that the subcontractor shall be bound by this Agreement and any other requirements applicable to the Consultant in the conduct of the project unless TCL&P and the Consultant agree to modification in a particular case. The Consultant shall not subcontract unless agreed upon in writing by TCL&P. It is hereby agreed to that \_\_\_\_\_ may act as a subcontractor to the Consultant.

16. Interest of Consultant. The Consultant 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 Consultant's services and duties hereunder. The Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed. Consultant further covenants that neither it nor any of its principals are in default to TCL&P.

17. Covenant Against Contingent Fees. The Consultant warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon any agreement or



## ATTACHMENT A

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 without 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.

18. Qualifications of the Consultant. The Consultant 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.

19. Notice. Whenever it is provided in this Agreement that a notice or other communication is to be given or directed to either party, the same shall be given or directed to the respective party at its address as specified in the Agreement, or at such other address as either party may, from time to time, designate by written notice to the other.

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

21. Termination.

A. For Fault. If TCL&P determines that the Consultant 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 Consultant 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 Consultant shall correct the violations referred to in the notice. If the Consultant 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 Consultant at time of termination may be adjusted to cover any additional costs occasioned TCL&P by reason of the termination. This provision for termination shall not limit or modify any other right to TCL&P to proceed against the Consultant at law or under the terms of this Agreement.

B. Not for Fault. Whenever TCL&P determines that termination of this Agreement in whole or in part is in the best interest of TCL&P or in the event that termination is required by any State or Federal agency, TCL&P may terminate this Agreement by written notice to the Consultant specifying the services terminated and the effective date of such termination. Upon termination, the Consultant shall be entitled to and TCL&P shall pay the costs actually incurred in compliance with this Agreement until the date of such termination plus any costs the Consultant incurs directly resulting from such termination.

22. 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.

## ATTACHMENT A

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

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

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

24. 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 Consultant recommend further work concerning the project, TCL&P is under no obligation to engage Consultant in such work.

25. Third Party Beneficiaries. The parties do not intend for there to be any third party beneficiaries to this agreement.

26. 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.

**ATTACHMENT A**

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

WITNESS:

TRAVERSE CITY LIGHT AND POWER  
DEPARTMENT

\_\_\_\_\_

By: \_\_\_\_\_  
Tim Arends, Executive Director

CONSULTANT

\_\_\_\_\_

By: \_\_\_\_\_

The form of this agreement has been pre-approved by:

W. Peter Doren, Esq.  
Sondee, Racine & Doren, PLC  
Traverse City Light & Power General Counsel

**SCHEDULE A**

**SCOPE OF SERVICES**

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

[Bid Document to be incorporated by reference]

**SCHEDULE B**

**TIMETABLE FOR ACTIVITIES**

Contractor shall commence the Work within five (5) working days after execution of this Agreement. The schedule of activities shall follow the "Work Plan Schedule" attached as part of Schedule B, incorporated herein by reference.

Services shall be completed not later than February 27, 2018.

**SCHEDULE OF PAYMENTS**

Payments shall be made to the Consultant monthly based on progress to date on the engagement.