



July 16, 2021

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 **Friday, August 6, 2021 at 2:00 PM** for the following project:

Executive Search Services
(specifications attached)

If the specifications are obtained from TCL&P's new updated website link at: <http://www.tclp.org/Display/Items/RFPs>, it is the sole responsibility of the Bidder to check the website for updates and addenda prior to the bid being submitted. Bidder may also sign up to receive notifications when bids and RFP's are posted by sending an e-mail requesting same to website@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 **“Executive Search Services.”**

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. Alternatively, E-Mailed bids will be accepted. Please indicate in the subject line of your e-mail that you are submitting a “Sealed Bid” together with the project description, “Executive Search Services,” and submit your e-mailed bid to kschroeder@tclp.org.

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.

Please direct ALL questions to: Kelli Schroeder, Manager of HR & Communications, Traverse City Light & Power, at (231) 932-4545 or kschroeder@tclp.org before the bid is submitted.

PLEASE SUBMIT BID TO: Kelli Schroeder, Manager of HR & Communications
Traverse City Light & Power
1131 Hastings Street
Traverse City, MI 49686



SPECIFICATIONS

A. INTENT

TCL&P is seeking to engage an experienced executive search firm to assist the municipal utility in identifying and selecting a successor to the utility's Executive Director position. This position is the top leadership position for the utility and is responsible for the entire utility and its performance. The Executive Director is employed by, and reports to, a 7 member Board appointed by the City of Traverse City Commission. Pursuant to City Charter, the Board has the sole authority to hire and compensate the utility's Executive Director.

At the end of August 2021, the current Executive Director will vacate after 8 years in the position and 31 years total working for the City of Traverse City and TCL&P. TCL&P is seeking competitive proposals from qualified executive search firms to conduct a recruitment process to assure TCL&P finds a qualified candidate to fill the vacated position. The Executive Director Job Description is attached as Attachment A.

B. COMPANY OVERVIEW

TCL&P is a municipally owned electric and telecom utility located in Traverse City, Michigan. The utility prides itself on being a responsive and community-friendly electric utility whose core purpose is electric service, but it has grown to provide telecom services with the new TCLP*fiber* as well as a complimentary downtown Wi-Fi network, dark fiber system, and street lighting. TCL&P's core values are safety, high reliability, low rates, transparency and exceptional customer service and communications. Additionally, in August 2018, the Board approved a strategic plan goal to have the utility power supply become 100% renewable by 2040 with intermediate goals of 15% renewable by 2021 and 40% renewable by 2025.

TCL&P is the exclusive provider of electric service (both residential and commercial) within the City of Traverse City and portions of East Bay, Elmwood, Garfield and Peninsula Townships. TCL&P has approximately 12,500 customers with a peak demand in 2020 of 67.72 MWh. 73% of the utility's customers are residential providing 20% of the utility's revenues; conversely, 27% are commercial customers that provide 80% of the utility's revenues. Currently, TCL&P is a \$34 million operation with net assets of \$76.7 million. TCL&P employs 35 full-time employees including 23 employees who are represented by the Utility Workers Union of America Local 295. The current 3 year union contract began July 1, 2021.

TCLP*fiber* is the utility's newly established service offering that, unlike electric, is in competition with other broadband and cable providers. TCLP*fiber* is currently available to approximately 3,000 customers in designated areas within the City of Traverse City with plans for full deployment ongoing.

TCL&P's service territory is approximately 16 square miles with the electrical infrastructure consisting of 4 transmission substations, approximately 25 miles of transmission lines, 5 distribution substations, 91 miles of overhead distribution lines and 84 miles of underground distribution lines.

As a member of the Michigan Public Power Agency (MPPA), TCL&P participates in various projects throughout the state and locally with a current generation mix consisting of 39.55% coal; 32.42% MISO market; 21.3% renewable; and 6.73% natural gas.



C. SCOPE OF WORK

The selected firm will conduct a search for a successor Executive Director to be in place as soon as possible. The recruitment will include a group of applicants that demonstrates the characteristics, experience, and competencies that would qualify them for the position. A national search is envisioned, with the ideal candidate being experienced in a leadership position and well-recognized within the industry for his or her experience. TCL&P is not interested in looking for someone to train but rather is committed to finding the best person who can continue its path of excellence. The firm will provide applicable services which will include, but not be limited to the following:

1. Work with the TCL&P Board and/or Executive Search Ad Hoc Committee to refine the job description, develop characteristics and attributes of the successful candidate, develop appropriate and necessary selection criteria, selection process and timeline.
2. Develop a strategy for carrying out the recruitment, including outreach to encourage applicants from diverse backgrounds to apply.
3. Conduct a broad and thorough recruitment including, but not limited to, professional publications, advertisements, internet, targeted recruitment and professional contacts to ensure a pool of qualified candidates.
4. Advise potential candidates that if they wish their application to be confidential, they must request confidentiality in writing but that all interviews by the TCL&P Board will be public. MCL 15.268(f).
5. Acknowledge receipt of candidates' application materials.
6. Review resumes and conduct initial screening of all candidates' applications.
7. Review resumes for background and qualifications and conduct telephone interviews to clarify each applicant's experience. Prepare a written summary to the TCL&P Board detailing background, achievements, and strengths of each candidate, including the resume of up to 20 candidates with the most promising qualifications.
8. The TCL&P Board will review the written summary and resumes, and select up to 10 candidates on which the firm shall conduct background checks. The background check will include, but not be limited to, verification of education and employment history, and a detailed financial, criminal and civil litigation investigation. In the event a politically sensitive or potentially embarrassing issue arises in the candidate's background, conduct in-depth interviews with principal parties to clarify the event and clearly describe the event to the TCL&P Board.
9. After receipt of the background checks, the TCL&P Board will select approximately 5 candidates to interview.
10. Coordinate all on-site portions of the selection process including scheduling interviews and other activities, and making travel and lodging arrangements as directed by TCL&P.
11. Assist the TCL&P Board in the interview and selection process.
12. After selection by the TCL&P Board, facilitate the salary, employment, and contract negotiations with the successful candidate.
13. Provide notification to all candidates not selected for the position.



D. REQUESTED PROPOSAL INFORMATION

1. A general overview of your organization and its qualifications.
2. Examples of recent executive searches performed for similar organizations; including top executives in state or local governmental settings and public power utilities, (i.e. recruitment efforts subject to open meetings act requirements and freedom of information act requirements).
3. Identification of specific staff member(s) dedicated to this process and who will lead.
4. Confirmation of staff availability to manage the process in a fashion likely to result in filling the vacancy by December 2021.
5. A general process description with an achievable timeline including required meetings.
6. A list of additional TCL&P obligations in support of this process (for example, TCL&P-placed advertising).
7. A cost proposal, including the timing of requested payments. If your travel expenses are additional, please indicate the estimated cost per trip and the number of trips expected.
8. Process guarantees (if any).
9. References from relevant clients (ideally within the utility industry) who have retained your organization to conduct top executive, or senior executive, searches within the past 2 years. (3 to 5 references are preferred, including telephone or e-mail contact information.)



E. 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 Executive Search Services, 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



F. BID SUMMARY

Bidder – Please complete and return

TITLE: Executive Search Services

DUE DATE: Friday, August 6, 2021 at 2:00 PM

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 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 Contract (Attachment B) 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/Successful Bidder's ability, qualifications, experience, price and overall capability meeting the needs of TCL&P. TCL&P is sales tax exempt – Government.

Bidder shall pay all sales, consumer, use and other similar taxes required to be paid by Bidder in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the work.

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 TCL&P 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 as soon as possible after invoicing.

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: Kelli Schroeder, Manager of HR & Communications, Traverse City Light & Power, at (231) 932-4545 or kschroeder@tclp.org.



G. SUBMISSION FORM

By submitting a response to this RFP you acknowledge that TCL&P may be required from time to time to release records in its possession under the Michigan Freedom of Information Act. By submitting a response, you hereby give permission to TCL&P to release any records or materials submitted by you as TCL&P may be requested to do so as permitted by the Freedom of Information Act, MCL 15.231 et seq.

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				
Bid Total: \$ _____				

The Successful bidder's name shall appear as follows on any Contract or Purchase/Service Order documents:

Company Name

Contract or Purchase/Service Order documents shall be mailed to:

Attention

Street Address

City, State, Zip

Email Address



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

DRAFT

ATTACHMENT A

TRAVERSE CITY LIGHT AND POWER JOB DESCRIPTION

TITLE: EXECUTIVE DIRECTOR

The City Charter mandates basic duties of the Executive Director. Many of these are contained in Charter Sections 178 and 179.

General Summary:

Provide leadership for Traverse City Light & Power (TCL&P) that assures: the highest level of satisfaction and competitive rates for customers, a safe productive and motivated workforce, implementation of the short and long-term strategic direction, as approved by the board, a positive and cooperative relationship with all stakeholders, and sound management of both human and fiscal resources.

Typical Duties:

1. Create an organizational climate that enables TCL&P employees to be productive, motivated, and to work safely and cooperatively.
2. Assist the board in carrying out its duties to establish policies that lead to excellence in: customer service, operational efficiency, and employee relations. After those policies are established to make sure they are implemented fairly and consistently at TCL&P.
3. Develop, implement and maintain TCL&P goals, objectives, policies and priorities; ensure that established goals and priorities are acted upon.
4. Prepare and present issues for board consideration and action, including assistance with agenda preparation and keeping accurate records of board proceedings.
5. Assure that TCL&P's generation, transmission and distribution systems are operationally efficient, reliable and safe. Further, TCL&P's purchased power must be reliable, competitively priced, and adequate to meet the future needs of all customers.
6. Assure that TCLP's fiber-to-the-premise enterprise is operationally efficient, reliable, marketed effectively, priced competitively and has a take rate that ensures generation of revenue sufficient to cover the investment.
7. Demonstrate sound fiscal management including: budgeting, accounting, and real estate and personal property assets.
8. Represent TCL&P with all external agencies and regulatory bodies (i.e. Michigan Public Power Agency, Michigan Municipal Electric Association, American Public Power Association, Michigan Public Service Commission, OSHA, Environmental Protection Agency, EGLE, USDA, and telecommunication/smart grid associations, etc.)

9. Complete, with assistance from TCL&P Human Resources, the hiring, training, promotion and termination of TCL&P employees. Be directly responsible for the performance management and professional development of all directly reporting employees. The Executive Director may appoint or remove a Controller only with a concurring vote of five members of the board.
10. Contract with, supervise, and coordinate the activities of all external service providers to TCL&P (i.e. legal, construction, professional services, etc.).
11. Work cooperatively within the city government framework, especially where other City Departments provide service to TCL&P and where TCL&P provides services to the City.
12. Regularly and frequently collaborate with and exchange information with the City Manager. This collaboration shall include, but not be limited to, the following:
 - a. The City Manager should be given an opportunity to participate in labor negotiations.
 - b. The City Manager (or designee) should be encouraged to attend all TCL&P staff meetings and the Director (or designee) is encouraged to attend all City staff meetings.
 - c. The City Manager may be considered the acting TCL&P Director in the event the Director is absent for extended periods as determined by the TCL&P Board.
13. Assure that the activities provided on a contractual basis to other agencies are carried out effectively and efficiently.
14. Act as the chief spokesperson for TCL&P with media, customers, city government and other stakeholders.
15. Plan for and implement a personal plan for professional development, in conjunction with Board feedback, to assure preparedness for leading TCL&P into the future with innovation and creativity.
16. Create and change, as needed, the organizational structure, reporting relationships, and job roles to achieve both employee job satisfaction and organizational effectiveness and efficiency.
17. Perform other duties as may be assigned by the TCL&P Board.

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

THIS AGREEMENT made this ____ day of _____, 2021, 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:

(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 **[insert flat fee, estimate with attached rates, or not-to exceed figure with attached rates]** 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.

ATTACHMENT B

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 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

ATTACHMENT B

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 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

ATTACHMENT B

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. 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) 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.

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

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authority and are duly authorized to execute this Agreement on behalf of the party to the Agreement. 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:

SAMPLE

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 X.

SCHEDULE OF PAYMENTS

Payments shall be made to the Consultant as follows: