

**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:

**TCL&P Facilities HVAC Improvements
(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 bid documentation, attached hereto and incorporated herein by reference. In the event of conflict between this Agreement and a Schedule or any document incorporated by reference, this Agreement shall control and supercede the conflicting language in the Schedule or 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 TCL&P Facilities HVAC Improvements RFP. Blueprints dated March 24, 2018 and MPE Specifications dated March 24, 2018 attached hereto and incorporated herein by reference.
3. Period of Performance. The Work to be rendered under this Agreement shall commence _____ and be completed no later than June 1, 2018 for Hall Street and August 1, 2018 for Hastings Street in accordance with the RFP documentation.
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 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. 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. Contractor shall defend, indemnify and save harmless TCL&P, its officers and employees, from and against any and all claims, liabilities, losses, damages, actual attorneys' fees and settlement expenses for injury or death, or, any person and damage, or loss of any property allegedly or actually resulting or arising out of any act, omission, or negligence of Contractor or its employees, agents or subcontractors in connection with performing this Agreement, or resulting from or arising out of the joint negligence of TCL&P and that of Contractor or any other person or entity. TCL&P shall not be indemnified against liability for damages arising out of bodily injury or damage to property where the entire amount of such damage, whether recoverable or not, is caused by or resulted from the sole negligence of TCL&P, its officers or employees. This indemnification agreement shall not be limited by reason of any insurance coverage.

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. The 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 comprehensive general liability insurance coverage [and Owners and Contractors Protective Liability insurance coverage.] The limits and deductible shall be as follows:

- A. Comprehensive General Liability insurance coverage. \$_____ deductible and \$_____ minimum coverage.

- [B. Owners and Contractors Protective Liability insurance coverage
\$_____ deductible and \$_____ minimum coverage.]

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 a certificate of insurance to the TCL&P Controller. Such certificate shall name TCL&P as an additional insured with the broad form endorsement for ongoing operations and completed operations on the insurance policies for general liability, excess liability, and contractor liability. Contractor shall also provide Additional Insured Endorsement CG 20330413 or its equivalent. 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. Contractor shall obtain Third Party Notice Endorsement IL 79901010 for each required policy requiring the insurer to give Owner 30 days' notice of non-renewal or cancellation.

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:

The Following Are For Electrically Qualified Contractors Only

- (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.

For Non-Electrically Qualified Contractors

- (g) Any work within the substation must be accompanied by a TCLP employee at all times

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. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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. Documents with original signatures shall be provided upon request of any party.

21. Notice. Notices pursuant to this Agreement shall be given to TCL&P as follows:
Jacob Hardy, Energy Technician
1131 Hastings Street
Traverse City, MI 49686
(231) 932-4563
jhardy@tclp.org

Notices pursuant to this Agreement shall be given to Contractor as follows:
[Name]
[Address]
[Telephone number]
[Email]

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

23. 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.

24. 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.

25. 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 owner 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.

26. 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.

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

28. 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.

29. 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.

30. 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.

TRAVERSE CITY LIGHT AND POWER
DEPARTMENT

CONTRACTOR

APPROVED AS TO SUBSTANCE:

Timothy J. Arends
Executive Director

APPROVED AS TO FORM:

W. Peter Doren
General Counsel
Version 11/20/2017

SCHEDULE A
SCOPE OF WORK

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

All labor, permits, equipment and material necessary for the installation of the new HVAC systems as shown on blueprints dated March 24, 2018. This includes work as shown for both 131 Hall Street and 1131 Hastings Street in Traverse City, Michigan.

- Attachment A - Blueprint and schedule for Hall Street
- Attachment B - Blueprint and schedule for Hasting Street
- Attachment C - MPE Specifications

The successful bidder will be required to submit a Certificate of Insurance meeting the requirements stated herein prior to commencing the work.

Bids must be submitted on a unit price basis on the attached forms along with a **100% bid bond**. All sales, consumer, use and other similar taxed required by law to be paid by the bidder shall be included in the bid price.

1. 131 Hall Street Site Work

All work performed at Hall Street is required to be coordinated with TCL&P. Any admittance into the Hall St substation requires a qualified TCL&P employee to be present at all times. Hard hat and safety glasses are required at all times when in the substation.

2. Gas Pipe

- A. Gas service does not exist at 131 Hall Street. There service is located just outside of the building. New service must be coordinated with DTE. TCL&P will assist the contractor as needed to arrange new service.
- B. There is a small portion of gas piping that will cross areas where concrete exists. Any concrete cutting and patching is the responsibility of the Contractor. Areas must be returned to a similar state as pre-construction upon completion.

3. Site Restoration

- A. Contractor will have the opportunity to repair any damage to tenant or TCL&P property at the contractors cost. If damage is not repaired to original state within a reasonable time, TCL&P will make repairs and charge the contractor responsible.

- B. Upon completion of work, the Contractor will clean and restore affected areas of these projects to original state. Project will not be considered 100% complete until areas are restored.

4. Change Orders

- A. Any work outside the scope of this bid requiring additional charges must be approved prior to work commencing.
- B. If additional work has started without written approval from TCL&P, all costs will be covered by the contractor performing the work.
- C. All change orders must also show the affect (if any) to the completion date of project(s).

SCHEDULE B

TIMETABLE FOR ACTIVITIES

Contractor shall commence the Work within ten (10) working days after execution of this Agreement. All work on the project(s) must be 100% complete by:

- A. Hall Street – June 1, 2018
- B. Hastings Street – August 1, 2018

SCHEDULE OF PAYMENTS

Payments shall be made to the Contractor as follows:

Contractor invoicing will be submitted upon completion of work. All invoicing will be on a unit basis and will show the total bid unit quantity, completed units to date, amount billed to date, and current billing amount

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