

**TO:** City of Charlotte ("Customer")  
111 E. Lawrence Avenue  
Charlotte, Michigan 48813

**ATTN:** Amy Gilson

**DATE:** January 9, 2020

**REFERENCE:** Generator Installation

**QUOTATION NO:** 20200106-5122

**The work or services covered hereby are not regulated by the Michigan Public Service Commission**

#### DESCRIPTION

Consumers Energy Company ("Consumers Energy") proposes to design and build a new back-up generator system for the Customer's facility located at 700 E. Shepherd Street, Charlotte, Michigan. The scope of the work is more fully described as follows:

#### Base Scope:

- Design a back-up generator system to tie into the Customer's internal electrical distribution system to allow the Customer to supply the Tirrell Pump Station with power in the event of loss of normal utility phase voltage and/or frequency. Scope of work includes:
  - Pour new Generator pad including rebar and grounding system.
  - Furnish/Install one (1) 40kW, 120/208 volt natural gas generator.
  - Furnish/Install one (1) 200 amp Automatic Transfer Switch (ATS) adjacent to the utility meter.
  - Furnish/Install 1.5" natural gas piping from the gas meter to the engine inlet. System will include ¼ turn isolation valve, mud leg, 1.5" strainer, and stainless steel flexible fuel line.
  - Furnish/Install conduit and wiring from the 125 amp generator output breaker to the new 200 amp ATS.
  - Furnish/Install conduit and wiring from the utility meter enclosure to the new 200 amp ATS.
  - Furnish/Install conduit and wiring from the new 200 amp ATS to the Main Distribution Panel.
  - Furnish/Install conduit and wiring to feed Generator's Battery Charger and Block Heater circuits.
  - Furnish/Install control wiring from the Generator to the new 200 amp ATS.
  - Top dress and reseed all disturbed lawn areas.
- Review design with Customer before equipment procurement and installation.
- Furnish all major pieces of equipment using Consumers Energy's bidding and procurement policies.
- Install the generator and transfer switch at the Customer's facility in accordance with the design documents.
- Furnish electrical/mechanical permit and have the installation inspected.

#### Notes:

1. **It is understood that a temporary physical disconnection of Customer's internal electrical distribution system may be necessary.** This Quotation does not include any charges from Consumers Energy (as Customer's electric service provider) that are associated with that disconnection. Customer is responsible for making the necessary arrangements with Consumers Energy for any such work and for paying the applicable charges therefor to Consumers Energy.
2. The new generator will comply with the latest EPA emission regulations for stationary backup generator-set applications.
3. This Quotation does NOT include any allowance for fuel. Customer is responsible for supplying the quantity of natural gas necessary to support commissioning, initial start-up and any on-going use of the new generator.
4. This Quotation does NOT include pricing for performing underground work when the ground is expected to be frozen (i.e., during a period when winter rates apply). If work is performed during such period, surcharges in accordance with Consumers Energy's (or its subcontractor's) normal policies may apply.
5. Except for the electrical and mechanical permits, Customer is responsible for obtaining all permits and/or variances required for the work hereunder including, without limitation, any MDEQ permits relating to the engine emissions of the new generator and/or in regard to the said new generator's proximity to the property

line.

6. This Quotation does not include any fencing around the generator.
7. Ordering lead time for the various equipment to be supplied pursuant to this Quotation is currently estimated to be approximately nine (9) to eleven (11) weeks after the date this Quotation has been signed by both Customer and Consumers Energy. If Customer accepts this Quotation, then Consumers Energy will order the applicable new equipment and then contact Customer when the equipment has been received in order to schedule a mutually convenient time for performance of the work. Assuming that Consumers Energy (and/or its subcontractors) are provided with all necessary and timely access to Customer's premises, the anticipated time for completion of the entire project is three (3) weeks after the date the final set of materials and equipment have been delivered to the jobsite.
8. Consumers Energy will furnish Customer with a copy of any equipment manuals provided by the vendor(s) for major pieces of equipment to be supplied under this Quotation.
9. All warranties, and periods of warranty, are those of the respective equipment vendors and are subject to their terms, conditions, restrictions and limitations. The extent of Consumers Energy's warranty obligations, if any, is set forth in the attached terms and conditions.
10. All work will be performed during normal business hours (Monday through Friday 8:00-a.m. to 5:00-p.m., excluding nationally recognized holidays).
11. Customer is responsible for locating and staking all its underground equipment and facilities prior to Consumers Energy's performance of the work.

**Total Project Cost - \$52,300.00**

**Payment:**

Customer shall pay the total contract price to Consumers Energy as follows:

Payment of 20% of the total contract price is due 30-days after the date this Quotation has been signed by both parties. An additional 40% of the total contract price is due when all of the major equipment has been delivered to the site. The remaining 40% of the total contract price is due when the generator system has been successfully commissioned.

**THE ATTACHED TERMS AND CONDITIONS ARE INCORPORATED HEREIN AND MADE A PART HEREOF. CONSUMERS ENERGY EXPRESSLY REJECTS ANY OTHER, ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS THAT MAY BE SET FORTH IN ANY PURCHASE ORDER, REQUEST FOR PROPOSALS OR OTHER DOCUMENT ISSUED BY CUSTOMER. UPON BEING ACCEPTED BY CUSTOMER BY SIGNING BELOW, AND CONFIRMED BY CONSUMERS ENERGY BY CONSUMERS ENERGY'S AUTHORIZED REPRESENTATIVE SIGNING BELOW, THIS QUOTATION SHALL BECOME A CONTRACT BETWEEN THE PARTIES. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THE IMMEDIATELY FOLLOWING PARAGRAPH, IT IS UNDERSTOOD THAT THIS QUOTATION WILL NOT BECOME A CONTRACT BETWEEN THE PARTIES, OR OTHERWISE BINDING UPON CONSUMERS ENERGY IN ANY MANNER, UNTIL IT HAS BEEN SO ACCEPTED BY CUSTOMER AND CONFIRMED BY CONSUMERS ENERGY BY EACH SUCH PARTY (OR ITS REPRESENTATIVE) SIGNING BELOW AS AFORESAID.**

**NOTE: BY RECEIVING THIS QUOTATION, AND REGARDLESS OF WHETHER OR NOT THIS QUOTATION IS ACCEPTED AS SET FORTH ABOVE, CUSTOMER ACKNOWLEDGES THAT THIS QUOTATION CONTAINS INFORMATION THAT IS CONFIDENTIAL AND PROPRIETARY TO CONSUMERS ENERGY AND MAY NOT BE DISCLOSED BY CUSTOMER TO ANY THIRD PARTY WITHOUT CONSUMERS ENERGY'S EXPRESS WRITTEN CONSENT. UNAUTHORIZED DISCLOSURE MAY AT CONSUMERS ENERGY'S SOLE OPTION RESULT IN WITHDRAWAL OF THIS QUOTATION AND IMMEDIATE RESTITUTION BY CUSTOMER TO CONSUMERS ENERGY OF ALL OF CONSUMERS ENERGY'S COSTS AND EXPENSES INCURRED IN PREPARING THIS QUOTATION.**

**To accept this Quotation, Customer must sign and return to Consumers Energy within   60   days from the date shown above.**

**Quotation Prepared By:** Mark C. Shaw, PE, CPQ      **Phone #:** 517-788-0130      **Fax#:** 517-788-7122

City of Charlotte (Customer) hereby accepts the above Quotation:

**By (signature):** \_\_\_\_\_

**Printed Name/Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_, 2020

**Confirmed:**

**CONSUMERS ENERGY COMPANY**

**By (signature):** \_\_\_\_\_

**Printed Name/Title:** Tara D'Andrea  
Director of Industrial Products Field Operations

**Date:** \_\_\_\_\_, 2020

**TERMS AND CONDITIONS**

**1. Work:** References in these Terms and Conditions to the "work" shall mean the work or services to be performed by Consumers Energy for Customer as set forth on the face of this Contract.

**2. Starting and Completion Dates:** Any starting dates, completion dates and/or other schedule-related dates set forth in this Contract are estimated and/or approximate only and are not guaranteed by Consumers Energy. Without limiting the generality of the foregoing: (i) whenever the scope of the work includes equipment or materials that Consumers Energy will be ordering from manufacturers or suppliers, then any indicated delivery dates therefor are strictly estimates based entirely on Consumers Energy's current information from the applicable manufacturers or suppliers, which may be subject to change, and any associated starting, completion or other schedule dates are accordingly also estimates only and subject to change; and (ii) any starting, completion or other schedule dates are also contingent in any case upon Customer timely making its premises and facilities and/or any necessary information available to Consumers Energy.

Notwithstanding any other provisions hereof, if no specific dates for performance of the work are set forth in this Contract, and if Consumers Energy determines, in its sole good faith judgment, that Customer has in whole or in part not cooperated with Consumers Energy in scheduling the work for performance within a reasonable time after the date this Contract is entered into (or, if materials or equipment are to be ordered by Consumers Energy before the work can begin, then within a reasonable time after the date the applicable materials or equipment have been received by Consumers Energy), then, regardless of the cause of the delay (and even if otherwise legally excusable), Consumers Energy may, at its option (and in addition to any other rights or remedies that it may have), terminate this Contract in whole or in part by written notice to Customer. In the event of such termination by Consumers Energy, Consumers Energy shall be entitled to receive payment from Customer for: (i) any work performed and/or materials and equipment installed (or acquired by Consumers Energy for the work even if not yet installed) up to the termination date; (ii) any costs, expenses or charges incurred by Consumers Energy as a result of non-cancelable contracts or purchase orders entered into by Consumers Energy in connection with the work, and/or in the nature of restocking charges or the like; and (iii) any other reasonable cancellation costs, expenses and charges; all as reasonably determined by Consumers Energy.

**3. Title and Risk of Loss:** Title, and all risk of loss or damage, to any materials and equipment that are to be furnished and installed hereunder (or, if applicable, any such items that are to be furnished to Customer without installation, for example, spare parts, if any, that are to be supplied to Customer hereunder) shall pass to Customer at the time the specific materials or equipment in question are delivered to and unloaded at the work site.

**4. Invoicing and Payments:** Consumers Energy will invoice Customer for the work hereunder at the time(s) specified on the face of this Contract, or, if no time(s) are so specified, then Consumers Energy will invoice Customer in full upon completion of the work. Due date(s) for payment by Customer shall be as set forth on the face of this Contract, or, if no due date(s) are so specified, then Customer shall pay Consumers Energy in full the amount set forth on each invoice within 30 days after the date of such invoice. Any payment not made on or before the due date shall be assessed a late payment charge computed at the higher of the rate of 2% per month or \$15 per each 30 day period or portion thereof, whichever is higher (but in no event higher than the maximum rate that may be permitted by law), for the period such payment remains late, beginning on the date the payment becomes past due and ending on the date when the past due amount is paid in full. CONSUMERS ENERGY RESERVES A PURCHASE MONEY SECURITY INTEREST IN ANY EQUIPMENT OR MATERIALS FURNISHED AND/OR INSTALLED IN THE WORK HEREUNDER, AND IN ALL PROCEEDS THEREOF, AS SECURITY FOR CUSTOMER'S PAYMENT OF ALL SUMS DUE OR THAT MAY BECOME DUE UNDER THIS CONTRACT, UNTIL SUCH TIME AS ALL SUCH SUMS HAVE BEEN PAID BY CUSTOMER TO CONSUMERS ENERGY IN FULL; it being understood that the foregoing does not limit Consumers Energy's rights to claim any other liens (such as but not necessarily limited to a construction lien) to which it may be entitled by law by reason of any nonpayment by Customer.

**5. Warranty/Disclaimer:** Consumers Energy warrants that the work performed under this Contract will be performed in accordance with accepted industry standards. The sole liability of Consumers Energy and the exclusive remedy of Customer for defective work, under the foregoing warranty or otherwise, shall be re-performance of such work on the same conditions as the original work; subject to the further condition that Customer must notify Consumers Energy in writing of any breach of warranty with respect to the work within thirty days after completion of the work.

It is further expressly understood that the above warranty does not extend in any manner to any equipment or materials furnished in or as part of the work hereunder. If and to the extent that any such equipment or materials carry a warranty from a third party manufacturer or supplier, then, to the extent that such manufacturer's or supplier's warranties may extend to Customer as the end-user, Customer shall have the benefit of such warranties, but Consumers Energy shall in no event itself be deemed liable under any such manufacturers' or suppliers' warranties. It is expressly understood that as between Customer and Consumers Energy, all equipment and materials furnished in or as part of the work hereunder are provided strictly on an **AS-IS** basis, and the sole warranty thereon shall be the manufacturers' or suppliers' warranty to the extent that there is any such warranty and that the benefit of same accrues to Customer as the end-user.

**EXCEPT AS EXPRESSLY STATED ABOVE IN THIS SECTION 5, CONSUMERS ENERGY MAKES NO WARRANTIES (EXPRESS, IMPLIED OR STATUTORY), INCLUDING WITHOUT LIMITATION THAT CONSUMERS ENERGY MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

Without limiting the generality or applicability of any other limitations or disclaimers of liability or remedies set forth above in this Section 5 or elsewhere in this Contract, it is expressly understood that: (i) in no event shall Consumers Energy be responsible for any repairs, replacements, calibrations or other corrections of any kind made by others with respect to the work hereunder; (ii) in no event shall Consumers Energy be liable for any loss or damage whatsoever by reason of its failure to discover, report or modify any latent defects or defects inherent in any facilities, systems or equipment of Customer that are the subject matter of the work; and (iii) if the work under this Contract include the installation of, and/or the performance of any service upon, any type of equipment, in no event shall Consumers Energy have any obligations for breach of warranty or otherwise if Customer fails to transport, store, use, operate or maintain such equipment in accordance with generally accepted industry practices and the provisions of any transportation, storage, use, operating or maintenance instructions provided by the manufacturer or by Consumers Energy.

**6. Third Party Indemnity:** Customer shall indemnify and hold Consumers Energy, its agents, employees, vendors and subcontractors harmless from and against, and shall at Consumers Energy's option undertake the defense of, any and all claims, losses, liabilities and damages (including but not limited to environmental harm), and any and all associated costs (including but not limited to reasonable attorneys' fees), which may be asserted by any third party against Consumers Energy, or which Consumers Energy may sustain or incur, as a result of the work performed under this Contract, whether based on warranty, contract, tort (including but not limited to negligence), strict liability or otherwise, except liability for bodily injury to persons or damage to property caused solely by the negligence of Consumers Energy, its agents or employees.

**7. Limitation of Liability:** Without limiting the generality or applicability of any other limitations or disclaimers of liability or remedies set forth herein, it is expressly understood that in no event shall the total liability of Consumers Energy, its agents, employees, vendors and subcontractors, with respect to any and all claims under or arising out of this Contract, or the performance of breach thereof, whether based on contract, warranty, tort (including negligence), strict liability or otherwise, exceed in aggregate the price paid by Customer to Consumers Energy for the work under this Contract, and such liability of Consumers Energy shall in no event include special, indirect, punitive, incidental or consequential damages of any nature (including but not limited to loss of revenue or its use; loss by reason of plant or equipment shutdown or inability to operate at rated capacity; increased expense of operation of plant or equipment; increased cost of purchasing or providing equipment, materials, supplies or services outside Consumers Energy's scope of work hereunder; costs of replacement power or capital; claims of Customer's customers; or inventory or use charges) even if Consumers Energy has been advised of the possibility of such damages. This Limitation of Liability section shall prevail over any conflicting or inconsistent provisions contained herein or in any other applicable document and shall be in effect even if the remedy or remedies set forth elsewhere herein fail in their essential purpose.

**8. Force Majeure:** Consumers Energy shall in no event be in breach of contract as a result of any delay in performing, or failure to perform, its obligations if such delay or failure is due to strikes or other labor troubles; any inability to obtain, upon reasonable terms, equipment, materials, parts, components, supplies or transportation for any reason, including default of suppliers or subcontractors; acts of God; fire; flood; storm; earthquake or other natural calamities; war; insurrections; riot; embargoes; curtailment; order, regulations or restrictions imposed by governmental authorities; or any other cause which is beyond Consumers Energy's reasonable control, whether of a similar or dissimilar nature to any of the foregoing and whether or not existing or foreseeable at the time this Contract is entered into. Consumers Energy shall have no obligation to settle any strike or other labor difficulty in a manner not completely satisfactory to it. Should any such delay occur, the time for the performance of Consumers Energy's obligations shall be extended by a time equal to the length of the delay plus such additional time as is reasonable necessary to enable Consumers Energy to resume performance of its obligations.

**9. Taxes:** If Consumers Energy is at any time required by applicable law or regulation to pay or collect any federal, state or local sales, use, gross receipts, excise or similar taxes with respect to the work, equipment or materials supplied or consumed therein, or the prices, rates or charges therefor under this Contract, then such taxes shall, upon demand, be paid by the Customer to Consumers Energy in addition to the prices, rates and/or charges set forth in this Agreement.

**10. Independent Contractor Relationship:** In the performance of the work hereunder, Consumers Energy shall be deemed to be an independent contractor.

**11. Avoiding Interference; Worksite Conditions:** Customer shall provide Consumers Energy and its subcontractors with full, unimpeded and timely access to the worksite for the performance of the work, and shall do all necessary or appropriate coordination with other contractors, vendors, Customer's own personnel and/or others as may be needed to avoid delaying Consumers Energy or its subcontractors in, or other interference with, the performance of the work. Customer shall provide a safe and proper worksite, compliant with all applicable laws, orders, rules and regulations of any governmental authority, for Consumers Energy's personnel, agents and/or subcontractors.

**12. Assignment and Subcontracting:** Any assignment or other transfer of this Contract or any part thereof by Customer without the previous written consent of Consumers Energy shall be void. Consumers Energy may subcontract any services hereunder.

**13. Default:** If Customer defaults in the timely performance of any of its obligations hereunder, then Consumers Energy may, at its option, and in addition to any and all other rights or remedies it may have hereunder or at law or equity, terminate this Contract by written notice to Customer.

**14. Governing Law; Actions; Etc.:** This Contract shall be deemed a Michigan contract and shall be governed by and interpreted in accordance with the laws of the State of Michigan; excluding any conflicts of laws principles that would result in this Contract being interpreted in accordance with any different law. Venue for any lawsuit arising out of or in connection with this Contract shall be exclusively in the courts of the State of Michigan or a Federal court sitting in the State of Michigan. Any legal action against Consumers Energy relating to this Contract or the breach thereof shall be commenced within one year from the date on which the claimed breach, default or other cause of action arose (and, without limiting the foregoing, in all events not later than one year after the date of completion or other cessation of performance of the work hereunder). This Contract is intended for the benefit of the parties herein only and does not grant any rights to any third parties unless otherwise specifically stated herein. The section headings in this Contract are included for reference only; they shall not limit or restrict the interpretation and construction of any of the provisions of this Contract.

**15. Entire Agreement; Changes:** With respect to the subject matter hereof, this Contract supersedes all previous representations, understandings and negotiations, either written or oral, between the parties hereto or their representatives and constitutes the entire agreement between the parties. No part of any purchase order, request for proposals or other documents issued by Customer shall be binding upon Consumers Energy or affect its rights or obligations hereunder. The terms of this Contract shall not be changed, superseded or supplemented, except in writing signed by authorized representatives of Consumers Energy and Customer.

**16. Electronic Documents:** After the Contract has been duly signed, delivered and received, by either party to the other party by means of telecopy (fax) transmission or attached to an e-mail (or similar electronic transmission) in an unalterable image format, the Contract shall be considered as validly delivered as the physical delivery of the signed Contract in paper form. In addition, it is further understood that this Contract may at Consumers Energy's option be imaged and stored electronically by Consumers Energy and introduced as evidence in any proceeding as if an original business record; and Customer will not object to the admissibility of such an image as evidence in any proceeding on account of having been stored electronically.