

Professional Energy Services Agreement

Spectrum Energy Solutions LLC

1444 Fulton Street

Fresno, CA 93721

Office (559) 438-2700 / Fax (559) 438-2702



Client: City of Reedley

Date: 12/12/19

Billing Address: c/o Accounts Payable 845 G. Street, Reedley, CA

Phone: (559) 637-4200

Contact: Russ Robertson, Paul Melikian

Job Title: Secure energy cost savings

Professional Energy Services Scope of Work:

Soft Measures:

Spectrum employs a full menu of energy cost saving measures. These (soft) measures are administrative in nature and ***do not require capital investment.*** These are:

Services:

- Historical audit of energy usage
- Optimize electric and gas tariffs
- Identify utility billing errors and secure retroactive refunds
- Assess and apply opportunities to reduce demand charges
- Secure natural gas from third party suppliers
- Process claims against the utility
- Reduce water pumping costs
- Model impacts of operational changes on cost of energy
- Review utility gas and electric new business contracts
- Secure incentive and rebate funding from utilities for energy efficiency projects.

Terms:

Monthly fixed fee: A monthly fixed fee in the amount of \$2,200 per month. In the event that the cumulative fees from the contract start date to the current billing date exceeds 30% of the cumulative energy cost savings for the same period, the City shall have the option to provide a 30-day notice of cancellation.

Retroactive Refunds: In certain unique cases, Spectrum is able to secure a one-time retroactive refund related to energy costs. Due to the complexity of these interactions with the City's utilities and the CPUC, these one-time energy cost reduction measures are invoiced at a rate of 50%.

Consulting on Special Projects: Professional energy services outside the scope of this agreement are available at the hourly rates outlined in Addendum B. An example of this is Spectrum's review of solar contracts to ensure vendor compliance.

Insurance and Indemnification Requirements: See Addendum A

Professional Energy Services Agreement

IN SIGNING, THE CLIENT ACKNOWLEDGES HIS APPROVAL OF EACH PROVISION AND AUTHORIZES SPECTRUM ENERGY SOLUTIONS TO PERFORM THE SCOPE OF WORK AS DESCRIBED HERE.

Client

Signed _____



Print Name Nicole R. Zieba

Title City Manager

Date

12/12/19

Spectrum Energy Solutions LLC

Signed: _____



Print Name Michael W. Jennings

Title President/CEO

Date

12/13/19

Professional Energy Services Agreement

Provisions of Agreement

1. This agreement contains the entire agreement between the parties relating to the scope of work as delineated herein.
2. If any term or condition of this agreement is held void or unenforceable, that judgment shall not invalidate the remaining provisions of this agreement.
3. All work product of any kind produced by consultant is confidential and may not be shared with any person or entity outside of this agreement.
4. Client and consultant agree to cooperate with each other in every way on the full scope of this work for the entire contract term.
5. Consultant is the expert in matters pertaining to the reduction of energy costs and client has retained consultant expressly for the purpose of preparing work product and making decisions regarding energy cost savings. As such, the client's in-house personnel or outside local Utility personnel may not compete with, hinder or usurp the consultant's authority to carry out its purpose.
6. Consultant has a right to complete all services described in this contract.
7. Consultant will invoice client on a regular basis.
8. Responsibility for payment for consultant's services may not be transferred to a third party without the written consent of the consultant.
9. Spectrum has the right to assign the contract.
10. Consultant is not responsible for delay caused by factors beyond consultant's reasonable control, including client's failure to furnish timely information.
11. Consultant makes no warranty as to their findings, recommendations, or professional advice, except that the services or work product were performed pursuant to generally accepted standards of practice in effect at the time of performance.
12. Consulting services performed pursuant to this agreement are based upon conditions existing at the time of preparation of consultant's services.
13. In the event client discovers or becomes aware of changed conditions which necessitate clarification, adjustments, modifications or other changes to the project, client agrees to notify consultant and engage consultant to prepare the necessary clarifications, adjustments, modifications or other changes to consultant's services or work product.
14. Client agrees to limit the liability of consultant, its principals and employees, all contractors and subcontractors to the consultant's fee for this scope of work.
15. If a dispute arises regarding consultant's fees pursuant to this contract, and if the dispute cannot be resolved by the Parties, they shall bring the matter to the American Arbitration Association for mediation.
16. Spectrum Energy Solutions has the first right of refusal to provide third party electricity should the CPUC open Direct Access to this client.

Client Initials ly Consultant Initials MJ

Professional Energy Services Agreement

Addendum A

Indemnification Requirements

Indemnity for Professional Liability: When the law establishes a professional standard of care for Spectrum's Services, to the fullest extent permitted by law, Spectrum shall indemnify, protect, defend, and hold harmless the City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error, or omission of Spectrum, its officers, agents, employees, or subcontractor (or any Agency or individual that Spectrum shall bear the legal liability thereof) in the performance of professional services under this Agreement.

Indemnity for Other Than Professional Liability: Other than in the performance of professional services and to the full extent permitted by law, Spectrum shall indemnify, defend, and hold harmless the City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsels fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the negligent performance of this Agreement by Spectrum or by any individual or Agency for which Spectrum is legally liable, including, but not limited to, officers, agents, employees, or subcontractors of Spectrum.

Insurance Requirements

Commercial General Liability

- a. Spectrum shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Spectrum's general liability policies shall be primary and shall not seek contribution from the City's coverage, and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction projects, an endorsement providing completed operations coverage for the additional insured, ISO form CG 20 37 (or equivalent), is also required.
- b. Any failure to comply with reporting provisions of the policies by Spectrum shall not affect coverage provided the City.
- c. Coverage shall state that Spectrum's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. Coverage shall contain a waiver of subrogation in favor of the City.

Professional Energy Services Agreement

Addendum A

Continued

Business Automobile Liability

Spectrum shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01 (or equivalent) with a limit of no less than two million dollars (\$2,000,000) per accident.

Workers' Compensation and Employers' Liability

Spectrum shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Spectrum shall submit to City, along with the certificate of insurance, a waiver of subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

All Coverages

- Each insurance policy required by the agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.
- All self-insurance, self-insured retentions, and deductibles must be declared and approved by the City.
- Evidence of Insurance - Prior to commencement of work, the Spectrum shall furnish the City with certificates, additional insured endorsements, and waivers of subrogation evidencing compliance with the insurance requirements above. The Spectrum must agree to provide complete, certified copies of all required insurance policies if requested by the City.
- Acceptability of Insurers - Insurance shall be placed with insurers admitted in the State of California and with an AM Best rating of A- VII or higher.

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Addendum B Spectrum Energy Solutions Fee Structure Effective 1/1/2019

	Hourly Fee
Expert Witness	\$300
Principal	\$210
Energy CPA	\$195
Project Manager	\$155
Engineer	\$145
Analyst	\$110
Data Specialist	\$60
Admin	\$50




REEDLEY CITY COUNCIL

- ☒ **Consent**
- ☐ **Regular Item**
- ☐ **Workshop**
- ☐ **Closed Session**
- ☐ **Public Hearing**

ITEM NO: 7

DATE: December 10, 2019

TITLE: APPROVE AND AUTHORIZE CITY MANAGER TO EXECUTE A SERVICES AGREEMENT WITH SPECTRUM ENERGY SOLUTIONS, LLC FOR ONGOING UTILITY ENERGY USE AUDIT SERVICES AND IMPLEMENTATION & MONITORING OF COST SAVING MEASURES

SUBMITTED: Paul A. Melikian, Assistant City Manager 

APPROVED: Nicole R. Zieba, City Manager

RECOMMENDATION

Request Council approval of the attached professional services agreement with Spectrum Energy Solutions, LLC in an amount not to exceed \$2,200 per month, or \$26,400 annually, for ongoing energy use audit services, and implementation and monitoring of cost saving measures.

EXECUTIVE SUMMARY

The City spent \$1,135,151 on electricity alone last fiscal year, with the majority of costs incurred by the Water and Wastewater enterprises (\$771,781). Tariffs from PG&E are changing constantly, along with the rules within each available rate structure. Although the City has had its energy rate structures reviewed in the past, it was for a specific point in time only, and there was not ongoing monitoring and follow-up by an energy expert to ensure that the savings would continue into the future. With the rate of changes and complexity in the utility industry, doing nothing will result in the City paying more over time, and at worst, selecting the incorrect tariff (rate structure) could even cost the City more.

Spectrum Energy Solutions, LLC (Spectrum) is a proven energy use consultant that utilizes specific industry know-how and proprietary analytic software to produce significant energy cost savings for clients in the public and private sectors. Spectrum has conducted a cursory review of the City's current energy use and rate structure and indicates that a minimum 13% savings can be realized. Their services to the City under the attached agreement include:

- Historical audit of energy usage
- Optimize electric & gas tariffs
- Identify utility billing errors and secure retroactive refunds
- Assess and apply opportunities to reduce demand charges
- Secure natural gas from third party suppliers
- Process claims against the utility
- Reduce water pumping costs
- Model impacts of operational changes on cost of energy
- Review utility gas and electric new business contracts
- Secure incentive and rebate funding from utilities for energy efficiency projects.

Spectrum staff demonstrated detailed knowledge of the rate structures, and ability analyze and monitor City energy use for every single meter on a monthly basis to make recommendations to staff to change rate structures. Spectrum's assurances of significant savings are built into the contract by allowing the City to terminate the agreement at any point should fees paid to them exceed 30% of the energy cost

savings. However, the City's energy expenses are of a magnitude that, should this project result in only 5.0% savings, the annual amount (saved) would still be more than double the amount that would be paid to Spectrum.

BACKGROUND

Spectrum Energy Solutions is a professional energy brokering and consulting firm, featuring three main disciplines: energy engineering, energy accounting, and energy brokering. Spectrum provides assurance to the City that it will be paying the least amount possible for our gas and electricity, specifically by providing a range of energy cost reduction no-investment options, and by simplifying complex utility issues. Spectrum will also intercede and advocate for the City on utility issues in the 'grey areas' that are open to interpretation.

FISCAL IMPACT

Spectrum will be paid a monthly fixed fee in the amount of \$2,200 per month. In the event that the cumulative fees from the contract start date to the current billing date exceeds 30% of the cumulative energy cost savings for the same period, the City will have the option to provide a 30-day notice of cancellation. In certain unique cases, Spectrum may also be able to secure a one-time retroactive refund related to past energy costs. Due to the complexity of these interactions with the City's utilities and the California Public Utilities Commission, these one-time energy cost reduction measures are invoiced at a rate of 50%.

The monthly fee will be paid from various City funds, proportionate to the energy savings experienced. For example, if 50% of the savings are realized by the Water Division due to favorable changes to the tariffs, then that Division will pay 50% of the cost.

ATTACHMENT

Professional Services Agreement