



CITY OF WASHINGTON, ILLINOIS
City Council Agenda Communication

Meeting Date: October 17, 2022

Prepared By: Joanie Baxter, CPA – Finance Director *JB*

Agenda Item: Amendment to Professional Services Agreement – Good Energy

Explanation: The City approved a Professional Services Agreement in 2011 with Good Energy. This agreement provides for energy consulting services which includes the Municipal Aggregation Program as well as the contracts for the City buildings.

Good Energy has had a consultant fee equal to \$.00075 per kilowatt hour since 2011. They are proposing an increase to \$.001 per kilowatt hour. This fee is included in the eventual rate as set based on the aggregation bid and thus is not a fee that the City is paying, but rather is passed along to the customers in the final rate. A Resolution is included on the Agenda for October 17th for approval of the Amendment to the Professional Service Agreement as attached.

Fiscal Impact: No fiscal impact for this particular provision.

Recommendation/Committee Discussion Summary: Staff recommends approval of the Professional Services Agreement with Good Energy. All other consortium members will be or have already approved this amendment.

Action Requested: Approval of the Resolution

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING AN AMENDMENT TO A SERVICES AGREEMENT
BETWEEN THE CITY OF WASHINGTON, TAZEWELL COUNTY, ILLINOIS, AND GOOD
ENERGY, L.P. CONCERNING PROFESSIONAL ENERGY CONSULTING SERVICES**

WHEREAS, the City of Washington, Tazewell County, Illinois, a home rule unit of local government, desires to continue its engagement with Good Energy, L.P., to perform electricity consultant services; and

WHEREAS, it is in the best interest of the City and its residents to renew and extend the Services Agreement dated October 11, 2011.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WASHINGTON, TAZEWELL COUNTY, ILLINOIS, as follows:

1. The City Council finds that the recitals set forth above are true and correct and includes the recitals in the ordinance.
2. That the Services Agreement, a copy of which is attached hereto, marked "Exhibit A", and by reference expressly made a part hereof, be and the same are hereby approved.
3. That the Mayor and City Clerk of the City of Washington be, and hereby are, authorized, empowered, and directed to enter into and execute said Services Agreement on behalf of the City of Washington in substantially the form of the document marked "Exhibit A," and to make, execute, and deliver any and all documents necessary for the effectiveness thereof.
4. That this Resolution shall be in full force and effect immediately upon its passage by the City Council of the City of Washington, Tazewell County, Illinois, and approval by the Mayor thereof.

PASSED AND APPROVED by the City Council of the City of Washington, Tazewell County, Illinois at a regular meeting this 17th day of October, upon roll call vote as follows:

AYES: _____

NAYS: _____

Mayor

ATTEST:

_____, City Clerk



AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

Energy Consulting Services

This amendment to the Services Agreement ("Agreement") dated September 19, 2011 by and between the City of Washington, Illinois ("Washington") an Illinois Municipal Corporation, with offices located at 301 Walnut Street, Washington, Illinois 61571 and **Good Energy, L.P.** ("Service Provider"), with principal offices at 232 Madison Avenue, Third Floor, New York, NY 10016 (collectively, the "Parties") is made and entered into and effective on this 9th day of August, 2022 ("Effective Date").

Recitals

WHEREAS, the City of Washington desires Service Provider to perform energy consultancy services and procurement for residential and commercial electric accounts.

WHEREAS, Service Provider desires to perform the Services and desires to be so engaged under the amended fee structure outlined herein.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements herein contained, the parties, intending to be legally bound, agree as follows:

1. The fee for the Services performed by Service Provider associated with Municipal Electric Aggregation contracts shall be amended to \$.001 per kilowatt-hour.
2. This amendment does not apply to Service Provider's fees associated with consulting services for municipally-owned accounts, which are governed by their respective agreements.
3. This Amendment binds the Parties and their successors or assigns.
4. This document, along with the attached original Agreement dated September 19, 2011 and an Amendment dated August 9, 2022 constitute the entire agreement between the Parties, superseding any prior understandings, arrangements, or agreements whether written or oral.
5. All other terms, conditions and provisions of the Agreement not in conflict with this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto execute this agreement on the dates set forth below and by authorized signatories of each respective Party. This amendment shall be effective on the date first set forth above.

[signatures appear on following page]



IN WITNESS WHEREOF, the parties have executed this Agreement as of the _____ day of _____, 2022.

CITY OF WASHINGTON, ILLINOIS

BY: _____
Gary W. Manier, Mayor

GOOD ENERGY, L.P.; By: Good Offices Technology Partners, LLC, its General Partner

BY: _____
Maximilian Hoover, Manager

EXHIBIT A

SERVICES AGREEMENT

Professional Energy Consulting Services

This Services Agreement ("Agreement") is made and entered into and effective on this 10th day of October, 2011 ("Effective Date") by and between the City of Washington, Illinois ("Washington"), an Illinois Municipal Corporation, with offices located at 301 Walnut Street, Washington, Illinois 61571 and Good Energy, L.P ("Service Provider"), with an office and principal place of business located at 232 Madison Avenue, Suite 405, New York, NY 10016.

Recitals

WHEREAS, Washington desires to engage Service Provider to perform electricity consultancy services and procurement for City of Washington residential and small commercial electric accounts.

WHEREAS, Service Provider desires to perform the Services and desires to be so engaged.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements herein contained, the parties, intending to be legally bound, agree as follows:

Provisions

I. Performance of the Services. Provider shall:

A. Provide the following services:

1. Electricity Residential opt-out consulting services
2. Marketing services for opt-out electricity aggregation program and associated costs to perform awareness campaign
3. Coordinating efforts with the Illinois Commerce Commission
4. Attending public hearings with the City and other municipal partners
5. Bid creation and execution with multiple electricity suppliers with final selection of an electric supplier being decided by Washington
6. Negotiating fees for the City with winning suppliers in an amount equal to or greater than the rate negotiated for Good Energy, L.P.
7. After purchase program delivery and on-going daily monitoring.

B. Give prompt notice to Washington should the Service Provider observe or otherwise become aware of any fault or deficit in the project or any nonconformance with the electricity sale & purchase agreement.

C. Remit to Washington after the termination of this Agreement, all files and documents pertaining to the project that have been obtained or produced including, but not limited to, permits, licenses, applications, codes, drawings, site plans, photographs and similar materials.

II. Obligations of Washington. Washington shall:

- A. Assist the Service Provider by placing at its disposal all available public information pertinent to the Services for the project.
- B. Use its best efforts to secure release of other data applicable to the project held by others.
- C. Make all necessary provisions to enter upon public and private property as required to perform the Services.
- D. Give prompt notice to the Service Provider should Washington observe or otherwise become aware of any fault or deficit in the project or any nonconformance with the Agreement.
- E. Pass a resolution to put the opt-out referendum on the ballot at the next election.

III. Term and Termination. The Agreement shall commence on the 10th day of October, 2011 and shall terminate on the 31st day of August, 2014, or as otherwise mutually agreed to by Washington and the Service Provider. Washington may terminate this Agreement at any time by giving Service Provider thirty (30) days advance written notice. In the event this Agreement is terminated by Washington prior to its natural expiration, Service Provider shall be paid the term of electricity purchased through the residential and small commercial opt-out contract by the current alternative supplier.

IV. Payment.

Washington agrees that Good Energy fees will be paid by the selected electricity supplier per kWh (volumetrically) for electricity purchased for the duration of the municipal contract. Said fees shall be as mutually agreed upon by Washington and Good Energy.

V. Relationship of the Parties. The parties acknowledge and agree that Service Provider is an independent contractor and is not an agent or employee of Washington. Nothing in this Agreement shall be construed to create a relationship between Service Provider and Washington of a partnership, association, or joint venture.

VI. Indemnification.

- A. **Professional Liability.** Relative to any and all claims, losses, damages, liability and cost, the Service Provider agrees to indemnify and save Washington, its officers, officials, and employees harmless from and against any and all suits, actions or claims for property losses, damages or personal injury claimed to arise from a negligent act, error or omission by the Service Provider or its employees.
- B. **Non-Professional Liability (General Liability).** To the fullest extent permitted by law, the Service Provider shall indemnify, defend and hold harmless Washington, its officers, officials, employees or any combination thereof, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of the acts or omissions of the Service Provider, provided that such claim, damage, loss or expenses is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the work itself)

including loss of use resulting therefrom, but only to the extent caused to in whole or in part by the acts or omissions of the Service Provider, any subconsultant(s) of the Service Provider, it's agents, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim damage, loss or expense is caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

VII. Insurance.

- A. The Service Provider shall secure and maintain, at his/her/its own expense, errors and omissions insurance in an amount not less than One Million Dollars (\$1,000,000.00) per claim/annual aggregate to protect himself from any claim arising out of the performance of professional services and caused by negligent acts, omissions or negligent acts for which the Service Provider may be legally negligent. The Service Provider shall maintain said coverage for the entire contract period and for a minimum of one year after completion of the work under the contract.
- B. In addition to errors and omissions insurance, the Service Provider shall also secure and maintain, at his/her own expense, insurance for protection from claims under Worker's Compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and any other insurance prescribed by laws, rules, regulations, ordinances, codes or orders.
- C. The Service Provider shall secure and maintain, at his/her own expense, General Liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.
- D. The Service Provider shall secure and maintain, at his/her/its own expense, Property insurance for protection from claims or damages because of damage to or destruction of property including loss of use resulting therefrom in an amount not less than Five Hundred Thousand Dollars (\$500,000.00). Washington shall be held harmless for any damage to the Service Provider's property and/or equipment during the course of performance under the Contract.
- E. The above referenced insurance shall be maintained in full force and effect during the life of this Contract and for one year beyond, where specified. Certificates showing that the Service Provider is carrying the above referenced insurance in at least the above specified minimum amounts shall be furnished to, and approved by, Washington prior to the start of work on the project and before Washington is obligated to make any payments to the Service Provider for the work performed under the provision of this contract. All such Certificates, with the exception of those for Worker's Compensation and Errors & Omissions coverage, shall clearly reflect that the City of Washington is an "Additional Insured".

VIII. Right to Audit

- A. Service Provider guarantees that the individuals employed by the Service Provider in any capacity, including but not limited to, employees, subcontractors and independent contractors, are authorized to work in the United States. The Service Provider represents that it has completed the I-9 verification process for all individuals the Service Provider has performing services for Washington. Washington maintains the right to audit the Form I-9s for all individuals the Service Provider has performing services for Washington every six (6) months. Washington will provide the Service Provider with five (5) days advanced written notice of its intent to perform a Form I-9 audit. In response to Washington's audit request, the Service Provider shall provide copies of all Form I-9s and any supporting documentation for all individuals who the Service Provider had performing services for Washington at any time subsequent to the date upon which Washington gave notice of the preceding Form I-9 audit.
- B. The Service Provider agrees to indemnify Washington in accordance with Section VI of the Agreement for any issue arising out of the Service Provider's hiring or retention of any individual who is not authorized to work in the United States.

IX. Taxes.

- A. Service Provider has the following identification number for income tax purposes: 43-2003973.
 - B. Service Provider is subject to and responsible for all applicable federal, state, and local taxes.
 - C. Washington represents that it is a tax-exempt entity and evidence of this tax-exempt status shall be provided to Service Provider upon written request. Service Provider hereby further agrees to withhold all municipal income taxes due or payable under the provisions of the Codified Ordinances of Washington, Illinois, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such municipal income taxes due under such chapter for Services performed under this Agreement.
- X. **Assignment.** Neither party may assign this Agreement without obtaining express, written consent from the other party prior to assignment.
- XI. **Entire Agreement / Amendment.** This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the parties. It is understood and agreed that this Agreement may not be changed, modified, or altered except by an instrument, in writing, signed by both parties in accordance with the laws of the State of Illinois.
- XII. **Discrimination.**

- A. No discrimination for reason of race, religion, sex, age or country of national origin shall be permitted or authorized by Washington and/or Service Provider in connection with the Services.
 - B. Nothing in this Agreement shall require the commission of any act contrary to any law or any rules or regulations of any union, guild, or similar body having jurisdiction over the Services of Service Provider.
- XIII. **Governing Law/Venue.** Any controversy or claim, whether based upon contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whether between the parties, or of any of the parties' employees, agents or affiliated businesses, will be resolved under the laws of the State of Illinois, in any court of competent jurisdiction in Tazewell County, Illinois.
- XIV. **Severability.** If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and shall be replaced by a valid, mutually agreeable and enforceable provision which so far as possible achieves the same objectives as the severed provision was intended to achieve, and the remaining provisions of this Agreement shall continue in full force and effect.
- XV. **Paragraph Headings.** Paragraph headings are inserted in this Agreement for convenience only and are not to be used in interpreting this Agreement.

[signatures appear on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 10th day of October, 2011.

CITY OF WASHINGTON, ILLINOIS

BY:

Gary W. Manjer
Gary W. Manjer, Mayor

GOOD ENERGY, L.P. by Good Office Technology Partners, LLC, general partner

BY:

Charles G. de Casteja
Charles G. de Casteja, Managing Partner
Maximilian Hearn, Manager