

TAB 13



# City of Palmetto Agenda Item

**Meeting Date**

4/19/10

**Presenter:** Jim Freeman

**Department:** City Hall

**Title:**

**Review/Audit of Electricity Bills by MARN Enterprise LLC dba Utility Review Services (URC).**

URC intends to provide professional review services to recover any overpayments related to anomalies in metering or usage of utilities provided to the City. URC will review all City electricity billing records as applicable for savings recovery opportunities. URC will request any applicable cost recovery, refunds, credits and or any other amounts from utility providers.

There is no cost to the City unless a recovery or refund is obtained from the utility provider. The City agrees to pay 50% of all utility refunds received including any credits against future utility payments. Until the audit is complete, there is no way to estimate the potential credit or refund. It is also possible that no refund or credit will be identified. However, we will also not incur any costs unless a refund is identified.

I copy of the agreement is attached for your review.

**Budgeted Amount:** \$0.00    **Budget Page No(s):**    **Available Amount:** \$0.00    **Expenditure Amount:** \$0.00

**Additional Budgetary Information:**

**Funding Source(s):** NA    **Sufficient Funds Available:**  Yes  No    **Budget Amendment Required:**  Yes  No    **Source:**

**City Attorney Reviewed:**  Yes  No  N/A    **Advisory Board Recommendation:**  For  Against  N/A    **Consistent With:**  Yes  No  N/A

**Potential Motion/ Direction Requested:** Motion to approve and authorize the Mayor to sign the Agreement between the City of Palmetto and MARN Enterprises LLC dba URC for a review of City electricity accounts for potential credits or refunds.

**Staff Contact:** Jim Freeman

**Attachments:** Agreement between City of Palmetto and MARN Enterprise LLC



## AGREEMENT

MARN Enterprise LLC dba URC ("URC") and the undersigned \_\_\_\_\_ ("Client"), hereby agree as of \_\_\_\_\_, 20\_\_ as follows:

1. **Purpose:** URC intends to provide professional review services to recover any overpayments related to anomalies in metering or usage of utilities provided to Client. URC will review the following utility billing records, as applicable, for savings or recovery opportunities: Electric, Gas, Propane, Water, Sewer, Telephone, Cellular Telephone, Auto Fuel, and any other billing as deemed applicable by URC (collectively, the "Utility Review Services"). URC will request any applicable cost recovery, refunds, credits and or any other amounts from utility providers or other applicable parties due to Client (the "Utility Refunds").

2. **Compensation:** In consideration for the Utility Review Services provided by URC, Client agrees to pay to URC fifty percent (50%) of all Utility Refunds received by the Client, including any Utility Refunds received in the form of a credit against utility payments owed to such utility by the Client.

3. **Payment:** Upon the Client's receipt of notice that it is going to receive, or has received, a Utility Refund, the Client shall notify URC. URC will then deliver to the Client an invoice for 50% of the Utility Refund to be paid to URC and such amount shall be payable by the Client to URC within 15 days of the Client's actual receipt of the Utility Refund. All checks should be made payable to URC and mailed to the address listed below. All payments greater than \$10, 000 shall be made by wire transfer to URC. A late fee of Ten Percent (10%) of the outstanding invoice and or the maximum interest allowable (as applicable by State Law) may be applied to any invoice greater than 45 days past due, unless otherwise agreed to in writing by URC and Client.

In exchange for products and/or services detailed in § 1 Client elects to have paper check payments issued by Client to URC converted to an electronic draft via Automated Clearing House (ACH) system the amounts indicated on the paper check. This authority will continue until withdrawn in writing by the Client. The Undersigned hereby certifies that they are duly authorized to execute this form on behalf of the Client.

4. **Term/Termination:** Subject to the right of either party to terminate this agreement as provided below, this agreement shall remain in effect for a period of one year from the date set forth above, and, except as provided below and in §5, neither party shall have any further rights or obligations under this agreement. Either party may terminate this agreement at any time effective upon delivery of written notice to the other party. After any such termination, URC shall retain all rights to receive the compensation detailed in § 2 above in the event that the Client receives any Utility Refund within 24 months of the effective date of the termination of this agreement, if the receipt of such Utility Refund is a result of the Utility Review Services provided by URC prior to the termination of this agreement, and/or the information provided by URC to the Client as a result of performing such Utility Review Services. If URC requests, the Client shall provide URC with all utility statements, contracts, and other documents evidencing any Utility Refund that the Client has received after the termination of this agreement.

5. **Indemnification:** Without waiving sovereign immunity and limited to the extent provided pursuant to Sec.768.28 of Florida Statute, the Client will indemnify, and hold URC harmless, from and against any and all damages, liabilities, costs and expenses arising out of or relating to the Utility Review Services provided by URC or its affiliates or Agents pursuant to this agreement, except to the extent that such loss results from URC's gross negligence or willful misconduct.

6. **Other Provisions:**

(a) **Integration:** This agreement, together with any affixed schedules and exhibits, constitutes the entire understanding between the parties with respect to the subject matter of this agreement and supersedes any prior discussion, negotiations, agreements and or understandings.

(b) **Law:** This agreement shall be governed and controlled in all respects by the Laws of the State of Florida, including interpretation, enforceability, validity, and construction. The parties submit to the jurisdiction to the State of Florida.

(c) **Notice:** All notices and other communications required or permitted under this agreement shall be in writing and shall be deemed given when delivered personally, by e-mail, or by registered or certified mail, return receipt requested, addressed to the parties addresses within this agreement unless otherwise agreed to in writing by either party.

(d) **Waiver:** URC failure to exercise a right or remedy or URC acceptance of a partial or delinquent payment shall not operate as a waiver of any URC rights or Client's obligations under this agreement and shall not constitute a waiver of URC right to declare an immediate or subsequent default.



- (e) **Amendments:** The terms of this agreement may not be varied or modified in any manner, except in a subsequent writing executed by an authorized representative of both parties.
- (f) **Remedies Cumulative:** The remedies provided in this agreement shall be cumulative, and the assertion by a party of any right or remedy shall not preclude the assertion by such party of any other rights of the seeking of any other remedies.
- (g) **Relationship of Parties:** In its relationship with Client, URC and its Agents are independent contractors. Nothing in this agreement shall be construed such that URC shall be considered an employee, agent, or partner of Client.

7. **Non-Circumvention:** The Client agrees that for the term of this Agreement, neither the undersigned nor any of his or its employees, representatives, officers, directors, managers, members, partners, or other owners or affiliates, nor any spouse or family member of the undersigned, will, directly or indirectly, solicit, initiate, or enter into discussions, negotiations, agreements or understandings of any kind with anyone (other than URC and its approved Agents) relating to a Utility Refund or that otherwise involves a utility refund program or any similar type program.

8. **Authorization and Release:** The Client authorizes URC to use Client name, logo, brief biographical information, and any Testimonial (if applicable) to be used in connection with publicizing and promoting URC. Client hereby irrevocably authorizes URC to copy, exhibit, publish or distribute material for purposes of publicizing URC's programs or for any other lawful purpose. Such material may be used in printed publications, multimedia presentations, on websites or in any other distribution media. Client agrees that no monetary or other claims against URC for the use of the material will be issued by URC. Client waives any right to inspect or approve the finished product, including written copy, wherein Client likeness or testimonial appears.

9. **Miscellaneous:**

- (a) The parties acknowledge and agree that injunctive relief is appropriate for any breach or threatened breach of this Agreement or the obligations hereunder.
- (b) In the event of any litigation or other proceedings before an adjudicative authority regarding the construction hereof or any breach hereof, the non-prevailing party shall pay the reasonable attorneys fees and expenses of the prevailing party incurred therein.
- (c) A counterpart of this Agreement that is executed and transmitted by fax or scanned document via email, by either party to the intended recipient shall constitute and be accepted as an executed and delivered original of this Agreement.

MARN ENTERPRISE LLC DBA URC

By: \_\_\_\_\_

Its: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

MARN ENTERPRISE LLC DBA URC  
 8321 TRICIA PRICE DRIVE, SUITE 100  
 POWELL, OHIO 43065  
 614.352.2867 TELEPHONE  
 480.287.8156 FAX

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

Located at: \_\_\_\_\_

\_\_\_\_\_

E-MAIL: \_\_\_\_\_

PHONE : \_\_\_\_\_

FEDERAL EIN#: \_\_\_\_\_

STATE TAX ID #: \_\_\_\_\_