



RIVERBEND RESOLUTION NO. 20170510-02

AUTHORIZING THE EXECUTIVE DIRECTOR/CEO, ELIZABETH FAZIO HALE, TO CONTINUE NEGOTIATIONS AND EXECUTE A WATER RATES STUDY AND PLANNING AGREEMENT WITH NEWGEN STRATEGIES; OR ALTERNATIVELY, TO NEGOTIATE AND ENTER INTO THE SAME WITH CAROLLO ENGINEERS UNDER THE SAME TERMS; OR ALTERNATIVELY TO NEGOTIATE AND ENTER INTO THE SAME WITH KSA UNDER THE SAME TERMS; AND TO NEGOTIATE ANY AMENDMENT FOR THE ADDITIONAL SERVICES TO THE ALREADY EXISTING AGREEMENT WITH SUSAN ROTH CONSULTING.

WHEREAS, Riverbend Water Resources District is a conservation and reclamation district created under and essential to accomplish the purposes of Section 59 Article XVI, Texas Constitution, existing pursuant to and having the powers set forth in Chapter 9601 of the Special District Local Laws Code of the State of Texas; and

WHEREAS, Riverbend Water Resources District is currently conducting a Regional Water Master Plan Study under Susan Roth Consulting (**RESO 20160511-01**) to identify population and industrial projections, future water demands, infrastructure needs, and infrastructure financing available necessary to achieve the region's water management and protection goals over the next approximate 50 years; and

WHEREAS, Riverbend Water Resources District has approved an initial list of Regional Water Infrastructure Alternatives (**RESO 20170412-04**) for the development of cost estimates of each alternative for the region; and

WHEREAS, Riverbend Water Resources District expects that a substantial financial investment will need to be made in this arena in connection with any, all or other identified infrastructure projects over the next 50 years in order for the region to prosper and grow with the vigor and vitality necessary to keep up with growing demands; and

WHEREAS, Riverbend Water Resources District desires to plan appropriately for the infrastructure costs associated with current and future water and wastewater demands of the region and to provided the support necessary to its Member Entities for proper planning to occur simultaneously and seamlessly with the overall develop of the Regional Water Master Plan; and

WHEREAS, Riverbend Water Resources District desires to implement the needed infrastructure projects as determine by its Member Entities while keeping the water rates for our region as low as possible and avoiding possible "rate shock" to the region; and



WHEREAS, Riverbend Water Resources District has provided that the Executive Director/CEO may negotiate and executive an amendment for additional services associated with water rates surveying and rate structure implementation and planning to the Susan Roth Consulting agreement (**RESO 20170111-03**); and

WHEREAS, the Executive Director/CEO has completed the formal Request for Proposals (“RFP”) for the water rates study to work in tandem with Susan Roth Consulting; and

WHEREAS, Carollo Engineers, KSA, and NewGen Strategies all provide certain needed water rate study and planning services and are qualified and certified to perform these services, and each has submitted acceptable proposals in response to the formal RFP; and

WHEREAS, the Executive Director/CEO, along with Board Member Kelly Mitchell and Systems Manager Eli Hunt (the RFP Evaluation Committee), met and assigned a raw score to each such entity based upon its review of factors relative to the proposals submitted to include the quality of response, team organization; project experience; project approach; and summary, with said raw scoring resulting in the following order as to preferred provides for the services sought - NewGen Strategies, Carollo Engineers, and KSA; and

WHEREAS, NewGen Strategies, based upon the review by the RFP Evaluation Committee, has submitted a superior proposal, and is fully qualified and certified to perform these services, and the Executive Director/CEO has begun the negotiation process first with NewGen Strategies as to a water rates study agreement acceptable pursuant to the terms set forth herein; and

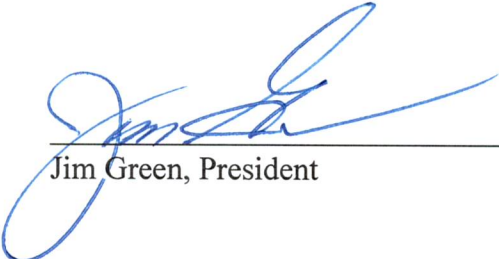
WHEREAS, in the event, at the Executive Director/CEO’s discretion, an acceptable water rates study and planning agreement cannot be negotiated with NewGen Strategies, the Executive Director/CEO may negotiate the same pursuant to the terms set forth herein with Carollo Engineers, and in the event, at the Executive Director’s discretion, an acceptable water rates study and planning agreement cannot be negotiated with Carollo Engineers, the Executive Director/CEO may negotiate the same pursuant to the terms set forth herein with KSA; and

WHEREAS, the water rates study and planning services sought by Riverbend Water Resources District as provided herein shall be in an amount not to exceed \$85,000, absent further Resolution of this Board; and



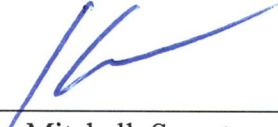
NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Riverbend Water Resources District hereby authorizes the Executive Director/CEO, Elizabeth Fazio Hale, to continue negotiations as set forth above and execute a water rates study and planning agreement with NewGen Strategies; or alternatively, to negotiate and enter into the same with Carollo Engineers under the same terms; or alternatively to negotiate and enter into the same with KSA under the same terms; and to negotiate any amendment for the additional services to the already existing agreement with Susan Roth Consulting. The combination of any agreements or amendments shall not exceed an amount of \$85,000 total for services in association with the water rates study and planning, absent further Resolution of this Board. Any agreement or amendment must be reviewed and approved by general counsel.

PASSED and APPROVED this 10th day of May, 2017



Jim Green, President

ATTEST:



Kelly Mitchell, Secretary

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (“**Agreement**”) is dated May 17th, 2017 by and between **NewGen Strategies and Solutions, LLC**, a Colorado limited liability company (“**Consultant**”), with offices at 1300 E. Lookout Dr., Ste. 100, Richardson, Texas 75082 and Riverbend Water Resources District (“**Client**”), with a mailing office at 228 Texas Avenue, Suite A, New Boston, Texas 75503.

NOW, THEREFORE in consideration of the promises herein and for other good and valuable consideration, the parties agree as follows:

1. **Scope of Services:** Consultant and Client agree that Consultant will perform services as requested by Client from time to time. All services to be provided by Consultant shall be agreed to by the parties and authorized in a Task Authorization in substantially the form attached to this Agreement. Each Task Authorization shall set forth the scope of services, including the intended purpose of the services, schedule, budget, payment provisions and other special provisions, if any, related to the scope of services (the “**Services**”). Task Authorizations shall be incorporated into this Agreement and subject to its general terms and conditions.
2. **Independent Contractor:** Consultant is an independent contractor and is not an employee of Client. Nothing in this Agreement is intended to, or should be construed to, create a partnership, joint venture or employer-employee relationship between Client and Consultant. Consultant shall be solely responsible for filing all tax returns and submitting all payments as required by federal, state or local authority arising from the payment of fees to Consultant by Client under this Agreement. Services performed by Consultant under this Agreement are solely for the benefit of Client. Nothing contained in this Agreement creates any duties on the part of Consultant toward any person not a party to this Agreement.
3. **Standard of Care:** Consultant will perform Services under this Agreement with the degree of skill and diligence normally practiced by professional engineers or consultants performing the same or similar Services. Except as otherwise provided in a specific Task Authorization, Consultant shall have exclusive control over the manner and means of performing the Services, including the choice of place and time and will use its expertise and analytical skills in performing the Services. No other warranty or guarantee, expressed or implied, is made with respect to the services furnished under this Agreement and all implied warranties are disclaimed.
4. **Fee for Services and Payment:** Unless otherwise provided in a Task Authorization (e.g., fixed fee for a project), the fee to Consultant for Services under a Task Authorization will be based on the actual hours of Services furnished multiplied by Consultant’s billing rates as of the date of its monthly invoice plus all expenses incurred by Consultant and related to the Services furnished under a Task Authorization (as described in more detail below). Additionally, Client shall reimburse Consultant on a monthly basis at cost plus ten percent

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(10%) for Services provided by any subconsultant working under Consultant. Client shall pay Consultant in U.S. dollars within thirty (30) days of receipt of invoices less any disputed amounts. If Client disputes any portion of the invoice, the undisputed portion will be paid and Consultant will be notified in writing, within ten (10) days of receipt of the invoice of the amounts in dispute. Consultant and Client will attempt to resolve the payment dispute within sixty (60) days or the matter may be submitted to arbitration as provided below. Additional charges for interest shall become due and payable at a rate of one and one-half percent (1-1/2%) per month (or the maximum percentage allowed by law, whichever is lower) on the unpaid, undisputed invoiced amounts. Any interest charges due from Client on past due invoices are outside any amounts otherwise due under this Agreement. If Client fails to pay undisputed invoiced amounts within sixty (60) days after delivery of invoice, Consultant, at its sole discretion, may suspend Services hereunder or may initiate collections proceedings, including binding arbitration, or both, without incurring any liability or waiving any right established hereunder or by law.

5. **Changes/Amendments:** This Agreement (together with any exhibits attached hereto) constitute the entire agreement between the parties and together with its exhibits supersede any prior written or oral agreements. This Agreement may not be changed except by written amendment signed by both parties. The estimate of the level of effort, schedule and payment required to complete the Services, as Consultant understands it, is reflected herein. Services not expressly set forth in this Agreement or its exhibits are excluded. Consultant shall promptly notify Client if changes to the Services affect the schedule, level of effort or payment to Consultant and the schedule and payment shall be equitably adjusted.
6. **Indemnity:** To the extent permitted by law, Consultant agrees to indemnify, defend and hold harmless Client and its directors, officers, shareholders and employees from and against any liability (including without limitation, reasonable costs and attorneys' fees) incurred by Client to the extent caused by Consultant's negligent acts, errors or omissions, including judgments in favor of any third party.
7. **Reperformance of Services:** If Client believes any of the Services provided under this Agreement do not comply with the terms of this Agreement, Client shall promptly notify Consultant to permit Consultant an opportunity to investigate the allegation of noncompliance. If the Services do not meet the applicable standard of care, Consultant will promptly re-perform the Services at no additional cost to Client, including assisting Client in selecting remedial actions. If Client fails to provide Consultant with prompt notice of non-compliance and an opportunity to investigate and re-perform its Services, Consultant's total obligation to Client will be limited to the costs Consultant would have incurred to re-perform the Services.
8. **Insurance:** Consultant shall maintain insurance with the following required coverages and minimum limits and upon request, will provide insurance certificates to Client evidencing the same:

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| Worker's Compensation | Statutory |
| Employer's Liability | U.S. \$1,000,000 |
| Commercial General Liability | U.S. \$1,000,000 per occurrence U.S. \$1,000,000 aggregate |
| Comprehensive General Automobile | U.S. \$1,000,000 combined single limit |
| Professional Liability | U.S. \$1,000,000 per claim and in the aggregate |

9. **Work Product:** Client shall have the unrestricted right to use the documents, analyses and other data prepared by Consultant under this Agreement ("**Work Product**"); provided, however, that Client shall not rely on or use the Work Product for any purpose other than the purposes under this Agreement and the Work Product shall not be changed without the prior written approval of Consultant. If Client releases the Work Product to a third party without Consultant's prior written consent, or changes or uses the Work Products other than as intended hereunder, (a) Client does so at its sole risk and discretion, (b) Consultant shall not be liable for any claims or damages resulting from the change or use or connected with the release or any third party's use of the Work Product and (c) Client shall indemnify, defend and hold Consultant harmless from any and all claims or damages related to the release, change or reuse.
10. **Limitation of Liability:** No employee of Consultant shall have individual liability to Client. To the extent permitted by law, the total liability of Consultant, its officers, managers, members, employees and subconsultants for any and all claims arising out of this Agreement, including attorneys' fees, and whether caused by negligence, errors, omissions, strict liability, breach of contract or contribution, or indemnity claims based on third party claims, shall not exceed the revenue received by Consultant under this Agreement or one hundred fifty thousand dollars (U.S. \$150,000.00), whichever is greater. Said limitation of liability shall not apply to any intentional, willful or grossly negligent acts committed by Consultant which result in liability and/or damages to RWRD.
11. **No Consequential Damages:** In no event and under no circumstances shall Consultant be liable to Client for any principal, interest, loss of anticipated revenues, earnings, profits, increased expense of operation or construction, loss by reason of shutdown or non-operation due to late completion or otherwise or for any other economic, consequential, indirect or special damages. Said limitation of liability shall not apply to any intentional, willful or grossly negligent acts committed by Consultant which result in liability and/or damages to RWRD.
12. **Information Provided by Others:** Client shall provide to Consultant in a timely manner any information Consultant indicates is needed to perform the Services hereunder. Client

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confirms and agrees that Consultant may rely on the accuracy of information provided by Client and its representatives.

13. **Opinions of Cost:** Consultant does not control the cost of labor, materials, equipment or Services furnished by others, nor does it control pricing factors used by others to accommodate inflation, competitive bidding or market conditions. Estimates provided by Consultant for operation expenses or construction costs represent its best judgment as an experienced and qualified professional, but Client acknowledges and agrees that such estimates are not a guarantee of cost. This section does not apply to the cost of Consultant performing the Services.
14. **Dodd-Frank Wall Street Reform and Consumer Protection Act:** Client confirms and agrees that for all purposes under this Agreement and in Consultant's performance of all Services described hereunder and under a Task Authorization, Consultant is and shall be viewed by Client as providing regulatory and management consulting advice. It is Client's understanding, intention and agreement that under no circumstances shall Consultant be deemed a "municipal advisor" subject to regulation under the Dodd-Frank Wall Street Reform and Consumer Protection Act.
15. **Safety and Security:** Consultant has established and maintains programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, Consultant specifically disclaims any authority or responsibility for job site safety and safety of persons other than Consultant's employees. Consultant shall not provide any such Services and disclaims any responsibility under this Agreement related to site security or the assessment, evaluation, review, testing, maintenance, operation or safety practices or procedures related to security.
16. **Termination:** Either party may terminate this Agreement upon thirty (30) days' prior written notice to the other party. Client shall pay Consultant for all Services rendered through the date of termination plus reasonable expenses for winding down the Services. If either party defaults in its obligations hereunder, the non-defaulting party, after giving seven (7) days' written notice of its intention to terminate or suspend performance under this Agreement, may, if cure of the default is not commenced and diligently continued during such seven-day period, terminate this Agreement or suspend performance under this Agreement.
17. **Dispute Resolution:** Consultant and Client shall attempt to resolve conflicts or disputes under this Agreement in a fair and reasonable manner and agree that if resolution cannot be made to attempt to mediate the conflict by a professional mediator (except for payment disputes which may be submitted directly to arbitration). If mediation does not settle any dispute or action that arises under this Agreement or that relates in any way to this Agreement or the subject matter of this Agreement within ninety (90) days after either requests mediation, the dispute or conflict shall be subject to arbitration in English under the rules governing commercial arbitration as promulgated by the American Arbitration Association and arbitrability shall be subject to the Federal Arbitration Act.

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18. Miscellaneous:

- a. This Agreement is binding upon and will inure to the benefit of Client and Consultant and their respective successors and assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party.
- b. Any notice required or permitted by this Agreement to be given shall be deemed to have been duly given if in writing and delivered personally or five (5) days after mailing by first-class, registered, or certified mail, return receipt requested, postage prepaid and addressed as follows:

Client: Riverbend Water Resources District
Attention: Elizabeth "Liz" Fazio Hale, Executive Director
Address: 228 Texas Avenue, Suite A
New Boston, Texas 75503

Consultant: NewGen Strategies and Solutions, LLC.
Attention: Chris Ekrut, Director
Address: 1300 E Lookout Dr., Ste 100
Richardson, Texas 75082

- c. Client expressly agrees that all provisions of the Agreement, including the clause limiting the liability of Consultant, were mutually negotiated and that but for the inclusion of the limitation of liability clause in the Agreement, Consultant's compensation for Services would otherwise be greater and/or Consultant would not have entered into the Agreement.
- d. If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and the provision declared invalid or unenforceable shall continue as to other circumstances.
- e. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas.
- f. Venue for any mediation, arbitration and/or any action to construe or enforce this Agreement shall lie in Bowie County, Texas.
- g. In any action to enforce or interpret this Agreement, the prevailing party shall be entitled to recover, as part of its judgment, reasonable attorneys' fees and costs from the other party.
- h. This Agreement shall not be construed against Consultant on the basis that Consultant drafted the Agreement.
- i. Notwithstanding any statute to the contrary, the Parties agree that any action to enforce or interpret this Agreement shall be initiated within two (2) years from the time the party knew or should have known of the fact giving rise to its action, and

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shall not in any case be initiated later than six (6) years after Consultant completes the Services under this Agreement.

- j. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original instrument, but all of which taken together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have signed this Agreement the date first written above.

Riverbend Water Resources District

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| Signature | <u><i>Elizabeth Fazio Hale</i></u> | Signature | _____ |
| Name | <u><i>Elizabeth Fazio Hale</i></u> | Name | _____ |
| Title | <u><i>Executive Director/CEO</i></u> | Title | _____ |
| Date | <u><i>May 17, 2017</i></u> | Date | _____ |

CONSULTANT:

NewGen Strategies and Solutions, LLC.

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| Signature | <u><i>CDL</i></u> |
| Name | <u><i>Chris Ekert</i></u> |
| Title | <u><i>Director</i></u> |
| Date | <u><i>5/17/2017</i></u> |

Exhibit A – Sample Task Authorization