



RIVERBEND RESOLUTION NO. 20191024-02

**AUTHORIZING THE EXECUTIVE DIRECTOR/CEO TO
ENTER INTO AN AGREEMENT WITH NEWGEN STRATEGIES & SOLUTIONS FOR
RATE STUDY SERVICES**

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 has a need to conduct a rate study in order to plan appropriately for the infrastructure costs, water production costs and wastewater treatment costs associated with current and future demands of residential customers, commercial customers, and raw water customers; and

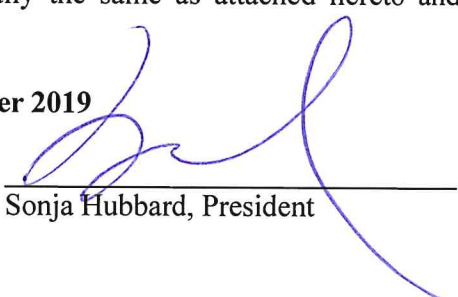
WHEREAS, Riverbend has completed the formal process through publication and notice for Request for Qualifications ("RFQ") for the rates study; and

WHEREAS, Riverbend received proposals from three firms: NewGen Strategies & Solutions, HDR, Inc., and Willdan Financial Services; and

WHEREAS, Kyle Dooley, Executive Director/CEO, along with Fred Milton, board member and Eli Hunt, Operations Manager (the RFQ Evaluation Committee), met and assigned a raw score to each 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 selection of NewGen Strategies & Solutions to provide needed rate study services; and

NOW, THEREFORE, BE IT RESOLVED that the Executive Director/CEO shall be and is hereby authorized to enter into an agreement/contract for services with NewGen Strategies to provide needed rate study services on term substantially the same as attached hereto and further reviewed by general counsel.

PASSED and APPROVED this 24th day of October 2019



Sonja Hubbard, President



ATTEST:

Marshall Wood
Marshall Wood, Secretary

Attached: NewGen Strategies & Solutions Services Contract

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (“**Agreement**”) is dated October 24, 2019 by and between **NewGen Strategies and Solutions, LLC**, a Colorado limited liability company (“**Consultant**”), with offices at 275 W Campbell Rd, Ste 440, Richardson, Texas 75080 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, and (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..
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 confirms and agrees that Consultant may rely on the accuracy of information provided by Client and its representatives.

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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. **Texas Government Code Compliance:** Consultant agrees that it will at all times comply with Section 2271 of the Texas Government Code. Specifically, Consultant does not currently engage in activities which would constitute a boycott of Israel, nor will Consultant engage in such activities during the term of this contract.
16. **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.
17. **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.
18. **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 the appropriate legal authority). 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, then either party retains their right to seek other legal remedies as may be necessary.

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19. 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: Kyle Dooley, Executive Director
Address: 228 Texas Avenue, Suite A
New Boston, Texas 75503

Consultant: NewGen Strategies and Solutions, LLC.
Attention: Chris Ekrut, Chief Financial Officer
Address: 275 W Campbell Rd, Ste. 440
Richardson, Texas 75080

- 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

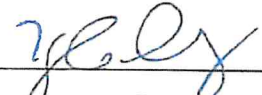
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shall not in any case be initiated later than six (6) years after Consultant completes the Services under this Agreement.

- 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.

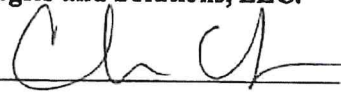
IN WITNESS WHEREOF, the parties have signed this Agreement the date first written above.

Riverbend Water Resources District

Signature	<u></u>	Signature	_____
Name	<u>KYLE DOOLAN</u>	Name	_____
Title	<u>EXECUTIVE DIRECTOR</u>	Title	_____
Date	<u>10/24/19</u>	Date	_____

CONSULTANT:

NewGen Strategies and Solutions, LLC.

Signature	<u></u>
Name	<u>Chris Ekand</u>
Title	<u>CFO</u>
Date	<u>10/25/19</u>

TASK AUTHORIZATION NO. 1

Riverbend Water Resources District

Effective Date: October 23, 2019

Client Name: Riverbend Water Resources District

Task Authorization Description:

Consultant and Client agree that this Task Authorization will be governed by the terms and conditions of the Agreement dated October 23, 2019 as amended, unless specifically modified herein.

Scope of Services

Task 1 - Project Framework Meeting

At the outset of the engagement, the Project Team will conduct an in-person meeting with representatives of the District. The purpose of this meeting will be for the Project Team to discuss the current requirements associated with the billing of the District's retail water and wastewater customers. By conducting this meeting at the outset of the Study, the specific circumstances surrounding Riverbend's agreements with its retail customers can be better understood and modeled properly into the rate analysis.

Task 2 – Supplemental Data Request

Following the completion of the meeting in Task 1, the Project Team will issue a supplemental data request to outline any additional needed information to properly conduct the retail water and wastewater rate study. This supplemental data request will be issued within five (5) days of the completion of the Task 1 Project Framework Meeting.

Task 3 – Retail Rate Study and Model Development

Based on the goals and objectives and the framework outlined in Task 1, the Project Team will conduct a retail rate study specific to the District's retail water and wastewater operations. This will include the development of revenue requirements for the Projected Fiscal Year 2020 Test Year, and a projection of revenue requirements for the following 5, 10, and 15-year time spans. Per the RFQ, in developing Revenue Requirements, the Project Team will employ the utility approach and isolate operating expenses, depreciation expense, and return on rate base. Revenue Requirements will be functionalized specific to water and wastewater service, and further sub-functionalized as needed based on specific customer service characteristics. Finally, costs will be classified and allocated to customers reflective of the classes' specific level of service or based on the rate framework developed in Task 1. Based on the full allocation of costs to the designated customer classes, rates will be developed reflective of the District's overall legal requirements, goals, and objectives.

Task 4 – Review of Draft Retail Rate Study Results

Upon completion of Task 3, the Project Team will hold a web conference with District staff to review the results of the retail rate study and to demonstrate the initial functionality of the retail rate model. The Project Team will seek input and comment from District staff during this meeting

TASK AUTHORIZATION NO. 1
Riverbend Water Resources District

to allow for proper revision of the draft work product.

Task 5 – Finalization of Retail Rate Study and Model / Presentation to Riverbend Board

After incorporating staff comments and edits to the draft work product, the Project Team will finalize the retail rate study and model deliverables. These will be delivered to the District within two (2) weeks after the completion of the web conference in Task 4. Once draft deliverables have been provided, the Project Team will present the results to the District’s Board of Directors in a to-be-scheduled workshop or regularly scheduled meeting.

Schedule

As outlined within the RFQ, the Project Team will commence activity as soon as contractual agreements are approved, which is anticipated on or around November 1st, 2019. Based on receiving notice to proceed at this time, the Project Team will work towards a goal of having initial results to discuss with the District in mid-January 2020, dependent on the availability and quality of data needed to conduct the study.

Fee for Services

Based on the scope of services outlined above, NewGen commits to a not-to-exceed fee of \$35,000, inclusive of out of pocket expenses, to provide the requested services.

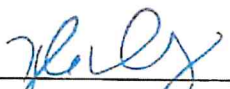
Additional Services


Customer Engagement Program

The NewGen Project Team is keenly aware that any type of a rate change can be challenging for retail customers. Education and communication with customers are critical to ensuring a smooth implementation of the new rates and to minimize customer concern. If requested, NewGen can assist District staff via a customer engagement program to roll-out the newly developed retail rates and assist District staff in engaging with customers. This could include, but would not be limited to, development of sample bill calculations, development of printed or web-based materials, or meeting with customers to explain the increase. Given that these services are optional, and the extent of assistance needed by District staff is unknown at this time, these services are not currently included in the price proposal included herein. However, the Team looks forward to discussing these potential services with the District and developing a scope which meets the District’s needs under separate Task Order.

Riverbend Water Resources District

NewGen Strategies and Solutions, LLC

Signature 
Name KYLE DOOLAN
Title EXECUTIVE DIRECTOR
Date 10/24/19

Signature 
Name Chris Ebert
Title CEO
Date 10/25/19