

## PROFESSIONAL SERVICE AGREEMENT NO. 4090

### Rate Model 2022

THIS **Rate Model 2022** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and NewGen Strategies and Solutions, LLC ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has agreed to provide professional consulting services to develop a new utility rate model to replace the one currently in use by the City of Corpus Christi.

NOW, THEREFORE, City and Contractor agree as follows:

- 1. Scope.** Contractor will provide a comprehensive cost of service analysis for water, wastewater and reuse effluent ("Services") in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
- 2. Term.** This Agreement is for 16 months. The parties may mutually extend the term of this Agreement for up to five additional one-year periods ["Option Period(s)"], provided, the parties do so in writing prior to the expiration of the original term or the then-current Option Period.
- 3. Compensation and Payment.** This Agreement is for an amount not to exceed \$233,770.00, of which a travel expense budget of \$13,000.00 is included, with the total amount being subject to approved extensions and changes. Payment will be made for Services completed and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended during the initial term or any option period may, at the City's discretion, be allocated for use in the next option period.

Invoices must be mailed to the following address with a copy provided to the Contract Administrator:

City of Corpus Christi  
Attn: Accounts Payable  
P. O. Box 9277  
Corpus Christi, Texas 78469-9277

- 4. Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name: Reba George  
Department: Corpus Christi Water  
Phone: 361-826-1648  
Email: RebaG@cctexas.com

**5. Insurance; Bonds; License.**

(A) Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

(B) In the event that a payment bond, a performance bond, or both, are required of the Contractor to be provided to the City under this Agreement before performance can commence, the terms, conditions, and amounts required in the bonds and appropriate surety information are as included in the RFB/RFP or as may be added to Attachment C, and such content is incorporated here in this Agreement by reference as if each bond's terms, conditions, and amounts were fully set out here in its entirety.

(C) Prior to beginning work, Contractor must provide evidence of any valid professional license necessary for the performance of the work under this Agreement.

- 6. Standard of Care.** Contractor warrants that all Services will be performed in accordance with the standard of care used by similarly situated contractors performing similar services under the same professional license.
- 7. Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30<sup>th</sup> annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.

**8. Independent Contractor; Release.**

(A) In performing this Agreement, both the City and Contractor shall act in an individual capacity and not as agents, representatives, employees, employers, partners, joint venturers, or associates of one another. Contractor shall perform all professional services as an independent contractor and shall furnish such Services in his own manner and method, and under no circumstance or condition shall an employee, agent, or representative of either party be considered or construed to be an employee, agent, or representative of the other party.

(B) As an independent contractor, no workers' compensation insurance shall be obtained by City covering the Contractor and employees of the Contractor. The Contractor shall comply with any and all workers' compensation laws pertaining to the Contractor and employees of the Contractor.

**9. Subcontractors.** Contractor may not use subcontractors in connection with the work performed under this Agreement.

**10. Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.

**11. Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.

**12. Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.

**13. Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

**IF TO CITY:**

City of Corpus Christi  
Attn: Reba George, Assistant Director  
2726 Holly Road  
Corpus Christi, TX 78415

**IF TO CONTRACTOR:**

NewGen Strategies and Solutions, LLC  
Attn: Chris D. Ekrut, Chief Financial Officer  
275 W. Campbell Road, Suite 440  
Richardson, Texas 75080

**14. CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS (“INDEMNITEES”) FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS’ FEES AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT BY THE CONTRACTOR OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**

**15. Termination.**

(A) The City Manager may terminate this Agreement for Contractor's failure to perform the work specified in this Agreement or to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City Manager may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

**16. Assignment.** No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to

withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

- 17. Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
- 18. Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:

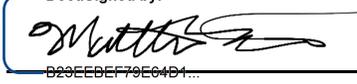
  - A. this Agreement (excluding all attachments and exhibits);
  - B. its attachments; then,
  - C. its exhibits, if any.
- 19. Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.
- 20. Governing Law.** This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
- 21. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties

**(SIGNATURE PAGE FOLLOWS)**

**CONTRACTOR**

DocuSigned by:

Signature: \_\_\_\_\_



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Printed Name: Matthew B. Garrett

Title: Managing Partner

Date: 7/8/2022

**CITY OF CORPUS CHRISTI**

\_\_\_\_\_  
Josh Chronley  
Assistant Director, Finance - Procurement

Date: \_\_\_\_\_

**APPROVED AS TO LEGAL FORM:**

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Date

**Attached and Incorporated by Reference:**

Attachment A: Scope of Work

Attachment B: Insurance and Bond Requirements

## **Attachment A- Scope of Work**

### **1.1. General Requirements**

The primary objectives of this project are:

- Conduct a comprehensive cost of service analysis for water, wastewater, and reuse (effluent).
- Develop a new utility rate model to replace the one currently in use by the City of Corpus Christi.
- Incorporate a financial planning model to allow for 'what-if' scenarios and projecting future costs and rate impacts.

### **1.2. Scope of Work**

The scope of work shall include, but will not be limited to:

#### **Task 1: Project Initiation and Management**

Coordinate a project kickoff meeting with city staff to review/identify project tasks, approach and methods, communication channels, deliverables, and data needs to complete the project. Develop an approved project timeline. Identify pricing and rate setting objectives.

#### **Task 2: Consumption and Revenue Analysis**

Study historical consumption by all customer types and develop usage and growth factors for each type. Examine all current customer classifications. Analyze current revenues at current rates.

#### **Task 3: Financial Planning and Rate Model Development**

Review financial policies. Determine revenue requirement for water, wastewater, and reuse for multi-year period. Determine impacts that each customer class puts on assets of the water, wastewater and reuse system.

Develop financial planning and rate model with the following attributes/functionalities:

- User friendly and flexible
- Ability to model multiple rate structures at the same time
- Ability to change one or more factors of usage, debt service, O&M, etc. and observe rate impacts
- Incorporate financial planning over multiple years with the ability to change certain standard assumptions by year
- Flag results such as failure to meet debt coverage reserves falling below target levels
- Provide graphics and easy to understand summary tables

**Task 4: Water, Wastewater, and Reuse Cost of Service**

The consulting team will follow the accepted process for conducting a water utility cost of service study as detailed in the American Water Works Association (AWWA) Manual of Water Supply Practices M1, Principles of Water Rates, Fees, and Charges (AWWA Manual M1). The wastewater utility and reuse cost of service study standard to be used is detailed in the Water Environment Federation (WEF) Manual of Practice No. 27, Financing and Charges for Wastewater Systems published by the WEF.

**Task 5: Rate Design and Comparison**

Evaluate current rate structure providing alternatives. Evaluation will include affordability and equity. Complete a benchmarking analysis to compare the proposed rate structure and rates with the seven (7) largest Texas cities and other communities of comparable size and service characteristics.

**Task 6: Reports and Presentations**

A draft and final report will be completed documenting the process, recommended changes, and results of the cost of service and rate study. An electronic copy of the final financial planning and rate model will be provided. A presentation will be developed to summarize process, findings, and recommendations to the Executive Leadership Team and/or City Council.

**Task 7: Training and Support**

Training on the model will be provided to City staff. A comprehensive Training Manual on the model will be developed. Assist City staff with responses to questions arising during the rate review/budget adoption process.

**1.3. Contractor/Consultant Quality Control**

The Contractor/Consultant shall establish and maintain a complete Quality Assurance/Control Program that is acceptable to the City to assure that the requirements of the project are provided as specified.

## Attachment C-Insurance Requirements

### LIABILITY INSURANCE

1. Contractor must not commence work under this agreement until all insurance required herein has been obtained and approved by the City. Contractor must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been so obtained.
2. Contractor must furnish to the City's Risk Manager and Contract Administrator, one (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. Project name and/or number must be listed in Description Box of Certificate of Insurance.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
PROFESSIONAL LIABILITY (Errors and Omissions)	\$1,000,000 Per Claim (Defense costs not included in face value of the policy) If claims made policy, retro date must be at or prior to inception of agreement, have extended reporting period provisions and identify any limitations regarding who is insured.

3. In the event of accidents of any kind related to this project, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

### Additional Requirements -

1. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.
2. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense,

insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.

3. Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

City of Corpus Christi  
Attn: Risk Management  
P.O. Box 9277  
Corpus Christi, TX 78469-9277

4. **Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**

- List the City and its officers, officials, employees, and volunteers, as additional insureds by endorsement with regard to operations, completed operations and activities of or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation policy.
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
- Provide 30 calendar days advance written notice directly to City of any cancellation, non-renewal, material change or termination in coverage and not less than ten calendar days advance written notice for nonpayment of premium.

5. Within five calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
6. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent

and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

7. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this contract.
8. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
9. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

2021 Insurance Requirements

Ins. Req. Exhibit **3-H**

Professional Services – Other Professional Services

05/10/2021 Risk Management – Legal Dept.