

A CONTRACT BETWEEN  
**HOUSTON-GALVESTON AREA COUNCIL**  
Houston, Texas  
AND  
**NEWGEN STRATEGIES AND SOLUTIONS, LLC**  
Austin, Texas

This Contract is made and entered into by the **Houston-Galveston Area Council of Governments**, hereinafter referred to as **H-GAC**, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND, **NewGen Strategies and Solutions, LLC**, hereinafter referred to as the **CONTRACTOR**, having its principal place of business at 3420 Executive Center Drive, Suite 165, Austin, Texas 78731.

**ARTICLE 1: SCOPE OF SERVICES**

The parties have entered into a **All Hazards Preparedness, Planning, Consulting & Recovery Services** Contract to become effective as of June 1, 2016, and to continue through May 31, 2019 (the "Contract"), subject to extension upon mutual agreement of the **CONTRACTOR** and **H-GAC**. **H-GAC** enters into the Contract as Agent for participating governmental agencies, each hereinafter referred to as **END USER**, for the purchase of **All Hazards Preparedness, Planning, Consulting & Recovery Services** offered by the **CONTRACTOR**. The **CONTRACTOR** agrees to sell **All Hazards Preparedness, Planning, Consulting & Recovery Services** through the **H-GAC** Contract to **END USERS**.

**ARTICLE 2: THE COMPLETE AGREEMENT**

The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A
2. General Terms and Conditions
3. Proposal Specifications No: **HP07-16**, including any relevant suffixes
4. **CONTRACTOR's** Response to Proposal No: **HP07-16**, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

**ARTICLE 3: LEGAL AUTHORITY**

**CONTRACTOR** and **H-GAC** warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

**ARTICLE 4: APPLICABLE LAWS**

The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

**ARTICLE 5: INDEPENDENT CONTRACTOR**

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of **H-GAC** or **CONTRACTOR**. No provision of this Contract or act of **H-GAC** in performance of this Contract shall be construed as making **CONTRACTOR** the agent, servant or employee of **H-GAC**, the State of Texas or the United States Government. Employees of **CONTRACTOR** are subject to the exclusive control and supervision of **CONTRACTOR**. **CONTRACTOR** is solely responsible for employee payrolls and claims arising therefrom.

**ARTICLE 6: END USER AGREEMENTS**

**H-GAC** acknowledges that the **END USER** may choose to enter into an End User Agreement with the **CONTRACTOR** through this Contract and that the term of said Agreement may exceed the term of the **H-GAC** Contract. However this acknowledgement is not to be construed as **H-GAC's** endorsement or approval of the End User Agreement terms and conditions. **CONTRACTOR** agrees not to offer, agree to or accept from **END USER** any terms or conditions that conflict with or contravene those in **CONTRACTOR's H-GAC** contract. Further, termination of this Contract for any reason shall not result in the termination of the underlying End User Agreements entered into between **CONTRACTOR** and any **END USER** which shall, in each instance, continue pursuant to their stated terms and duration. The only effect of termination of this Contract is that **CONTRACTOR** will no longer be able to enter into any new End User Agreements with **END USERS** pursuant to this Contract. Applicable **H-GAC** order processing charges will be due and payable to **H-GAC** on any End User Agreements surviving termination of this Contract between **H-GAC** and **CONTRACTOR**.

**ARTICLE 7:****SUBCONTRACTS & ASSIGNMENTS**

**CONTRACTOR** agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to **H-GAC**. **H-GAC** reserves the right to accept or reject any such change. **CONTRACTOR** shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. **H-GAC** shall be liable solely to **CONTRACTOR** and not to any of its Subcontractors or Assignees.

**ARTICLE 8:****EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

**CONTRACTOR** shall maintain during the course of its work, complete and accurate records of items that are chargeable to **END USER** under this Contract. **H-GAC**, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of **CONTRACTOR**. Failure to provide access to records may be cause for termination of this Contract. **CONTRACTOR** shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. **CONTRACTOR** further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that **H-GAC'S** duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

**ARTICLE 9:****REPORTING REQUIREMENTS**

**CONTRACTOR** agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Proposal Specifications. If **CONTRACTOR** fails to submit to **H-GAC** in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

**ARTICLE 10:****MOST FAVORED CUSTOMER CLAUSE**

If **CONTRACTOR**, at any time during this Contract, routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to **H-GAC** on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to **H-GAC**, **CONTRACTOR** shall notify **H-GAC** within ten (10) business days thereafter of that offering and this Contract shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein **CONTRACTOR** shall provide the same prices, warranties, benefits, or terms to **H-GAC** and its **END USER**. **H-GAC** shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If **CONTRACTOR** is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, **CONTRACTOR** shall within ten (10) business days notify **H-GAC** in writing, setting forth the detailed reasons **CONTRACTOR** believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. **H-GAC**, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract between **H-GAC** and **CONTRACTOR** shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to **H-GAC**.

The Parties accept the following definition of routine: A prescribed, detailed course of action to be followed regularly; a standard procedure.

**EXCEPTION:** *This clause shall not be applicable to prices and price adjustments offered by a bidder, proposer or contractor, which are not within bidder's/ proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.*

**ARTICLE 11:****SEVERABILITY**

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

**ARTICLE 12:****DISPUTES**

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the Executive Director of **H-GAC** or his designee, who shall reduce his decision to writing and provide notice thereof to **CONTRACTOR**. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, **CONTRACTOR** requests a rehearing from the Executive Director of **H-GAC**. In connection with any rehearing under this Article, **CONTRACTOR** shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. **CONTRACTOR** may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, **CONTRACTOR** shall proceed diligently with the performance of this Contract and in accordance with **H-GAC'S** final decision.

**ARTICLE 13: LIMITATION OF CONTRACTOR'S LIABILITY**

Except as specified in any separate writing between the **CONTRACTOR** and an **END USER**, **CONTRACTOR**'s total liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify **H-GAC** described in Article 14, is limited to the price of the particular products/services sold hereunder, and **CONTRACTOR** agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will **CONTRACTOR** be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. **CONTRACTOR** understands and agrees that it shall be liable to repay and shall repay upon demand to **END USER** any amounts determined by **H-GAC**, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

**ARTICLE 14: LIMIT OF H-GAC'S LIABILITY AND INDEMNIFICATION OF H-GAC**

**H-GAC**'s liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will **H-GAC** be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless **H-GAC**, its board members, officers, agents, officials, employees, and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of **CONTRACTOR**'s negligent act or omission under this Contract. **CONTRACTOR** shall notify **H-GAC** of the threat of lawsuit or of any actual suit filed against **CONTRACTOR** relating to this Contract.

**ARTICLE 15: TERMINATION FOR CAUSE**

**H-GAC** may terminate this Contract for cause based upon the failure of **CONTRACTOR** to comply with the terms and/or conditions of the Contract; provided that **H-GAC** shall give **CONTRACTOR** written notice specifying **CONTRACTOR**'S failure. If within thirty (30) days after receipt of such notice, **CONTRACTOR** shall not have either corrected such failure, or thereafter proceeded diligently to complete such correction, then **H-GAC** may, at its option, place **CONTRACTOR** in default and the Contract shall terminate on the date specified in such notice. **CONTRACTOR** shall pay to **H-GAC** any order processing charges due from **CONTRACTOR** on that portion of the Contract actually performed by **CONTRACTOR** and for which compensation was received by **CONTRACTOR**.

**ARTICLE 16: TERMINATION FOR CONVENIENCE**

Either **H-GAC** or **CONTRACTOR** may cancel or terminate this Contract at any time by giving thirty (30) days written notice to the other. **CONTRACTOR** may be entitled to payment from **END USER** for services actually performed; to the extent said services are satisfactory to **END USER**. **CONTRACTOR** shall pay to **H-GAC** any order processing charges due from **CONTRACTOR** on that portion of the Contract actually performed by **CONTRACTOR** and for which compensation is received by **CONTRACTOR**.

**ARTICLE 17: CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS**

**CONTRACTOR** agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by **H-GAC**, the State of Texas and the acts and regulations of any funding entity. **CONTRACTOR** agrees to notify **H-GAC** of any suspected fraud, abuse or other criminal activity related to this Contract through filing of a written report promptly after it becomes aware of such activity.

**ARTICLE 18: GOVERNING LAW & VENUE**

This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas. Disputes between **END USER** and **CONTRACTOR** are to be resolved in accord with the law and venue rules of the state of purchase. **CONTRACTOR** shall immediately notify **H-GAC** of such disputes.

**ARTICLE 19: PAYMENT OF H-GAC ORDER PROCESSING CHARGE**

**CONTRACTOR** agrees to sell its products to **END USERS** based on the pricing and other terms of this Contract, including, but not limited to, the payment of the applicable **H-GAC** order processing charge. On notification from an **END USER** that an order has been placed with **CONTRACTOR**, **H-GAC** will invoice **CONTRACTOR** for the applicable order processing charge. Upon delivery of any product/service by **CONTRACTOR** and acceptance by **END USER**, **CONTRACTOR** shall, within thirty (30) calendar days or ten (10) business days after receipt of payment, whichever is less, pay **H-GAC** the full amount of the applicable order processing charge, whether or not **CONTRACTOR** has received an invoice from **H-GAC**. For sales made by **CONTRACTOR** based on this contract, including sales to entities without Interlocal Contracts, **CONTRACTOR** shall pay the applicable order processing charges to **H-GAC**. Further, **CONTRACTOR** agrees to encourage entities who are not members of **H-GAC**'s Cooperative Purchasing Program to execute an **H-GAC** Interlocal Contract. **H-GAC** reserves the right to take appropriate actions including, but not limited to, contract termination if **CONTRACTOR** fails to promptly remit **H-GAC**'s order processing charge. In no event shall **H-GAC** have any liability to **CONTRACTOR** for any goods or services an **END USER** procures from **CONTRACTOR**.

**ARTICLE 20:****LIQUIDATED DAMAGES**

Any liquidated damages terms will be determined between **CONTRACTOR** and **END USER** at the time **END USER's** purchase order is placed.

**ARTICLE 21:****PERFORMANCE AND PAYMENT BOND FOR INDIVIDUAL ORDERS**

**H-GAC's** contractual requirements DO NOT include a Performance & Payment Bond (PPB), and offered pricing should reflect this cost saving. However, **CONTRACTOR** must be prepared to offer a PPB to cover any specific order if so requested by **END USER**. **CONTRACTOR** shall quote a price to **END USER** for provision of any requested PPB, and agrees to furnish the PPB within ten business (10) days of receipt of **END USER's** purchase order.

**ARTICLE 22:****CHANGE OF CONTRACTOR STATUS**

**CONTRACTOR** shall immediately notify **H-GAC**, in writing, of **ANY** change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name, and shall also advise whether or not this Contract shall be affected in any way by such change. **H-GAC** shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Contract.

**ARTICLE 23:****LICENSING REQUIRED BY TEXAS MOTOR VEHICLE BOARD [IF APPLICABLE]**


**CONTRACTOR** will, for the duration of this Contract, maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Contract period, any **CONTRACTOR'S** license is not renewed, or is denied or revoked, **CONTRACTOR** shall be deemed to be in default of this Contract unless the Motor Vehicle Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to **H-GAC** upon request.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

Signed for **Houston-Galveston**  
**Area Council**, Houston, Texas:

  
\_\_\_\_\_  
Jack Steele, Executive Director

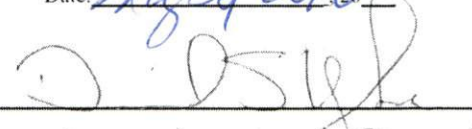
Attest for **Houston-Galveston**  
**Area Council**, Houston, Texas:

  
\_\_\_\_\_  
Deidre Viek, Director of Public Services

Date: May 24, 2016

Signed for **NewGen Strategies and Solutions, LLC**  
Austin, Texas:

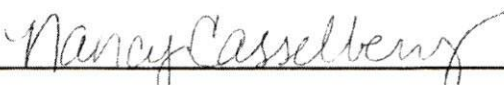
Printed Name & Title:

  
David S. Yanke, President - Environmental Practice

Date: May 17, 2016

Attest for **NewGen Strategies and Solutions, LLC**  
Austin, Texas:

Printed Name & Title:

  
Nancy Casselberry - Marketing Admin

Date: May 17, 2016

**Attachment A**  
**NewGen Strategies and Solutions, LLC**  
**Contract No.: HP07-16**

The All Hazards Preparedness, Planning Consulting and Recovery Services (for security, disaster preparedness, and emergency response and recovery) provided under this contract, and the allowable charges for those services, shall be per contractor's proposal submitted March 10, 2016, in response to H-GAC Request For Proposals HP07-16.

**Services Included:**

**TITLE: SOLID WASTE SERVICES**

Cost of Service and Rate Design Studies	NewGen develops rate models that allow utilities to establish cost of service based rates, which promote waste reduction and recycling.
Procurement Services	NewGen is a provider of procurement services that assist communities in conducting fair, competitive processes to select waste management service providers.
Negotiation of Contracts and Franchise Agreements	NewGen assists communities in analyzing collection, processing, and disposal options that include the negotiation of contractual terms with another party (either public or private entity.)
Operational Reviews and Efficiency Studies	NewGen conducts operational reviews tailored to meet each client's specific need. Thus ensuring the financial health and future stability of an organization.
Training, Curriculum Development, and Conduct of Workshops	NewGen works with various stakeholders and community advisors (state agencies, councils of government, city staff, etc.) to develop and conduct a variety of training programs and workshops.
Comprehensive Solid Waste Management Plans	NewGen develops solid waste management plans to help local and regional governmental entities evaluate alternatives to short- and long-term solid waste management challenges. These studies may include solid waste generation and waste characterization, system evaluations, development of goals, objectives, and implementation plans.
Valuation Services	Accurate assessments regarding the fair market value of solid waste facilities helps communities achieve the highest return on their investment and make prudent decisions regarding the sale, purchase, or financing of capital assets. NewGen has experience in the appraisal of transfer stations as well as landfills.

**TITLE: WATER, WASTEWATER, AND STORMWATER SERVICES**

Cost of Service and Rate Design Studies	NewGen conducts wholesale and retail cost of service and rate design studies focusing on establishing rates which recover the utility's full cost of service in a manner consistent with industry and regulatory standards, as well as the goals and objectives of the utility's decision-makers.
Rate and Econometric Models	NewGen provides custom-built rate and econometric multiyear planning models that allow clients to perform "what-if" scenarios based on userdefined variables.
Management Audits and Benchmarking	NewGen provides management audits which can help utilities identify key areas for improvement, as well as to identify and assess how well management is meeting the goals and objectives defined by the utility's policy makers.
Financing Plans	NewGen assists clients in developing and evaluating financing plan alternatives and the implications of those alternatives. We also specialize in assessing the potential impact to customers of the utility's financing methods.

Valuation Services	NewGen provides valuation services which utilize methodologies recognized and accepted by the financial and regulatory communities, providing decision-makers with essential information needed to make these important and critical business decisions.
Impact Fee Studies	NewGen assists clients with the calculation and adoption of impact fees, with specific emphasis on ensuring that the fees and adoption process abide by regulatory procedures.
Contract Negotiations	NewGen provides assistance in the development and negotiation of wholesale water and wastewater contracts recognizing the unique contractual relationship of the parties. We work closely with legal advisors, working to develop contracts which protect our clients' interests while recognizing regulatory precedent.

#### **TITLE: ENERGY SERVICES**

Cost of Service and Rate Design	NewGen's nationally recognized experts in electric and gas utility cost of service and rate making have the rate expertise and rate design experience to develop and implement alternative rates such as TOU, Critical Peak Pricing, net metering and feed-in tariffs to meet emerging customer demands and market trends.
Financial Planning	NewGen provides financial planning, modeling and advisory services and tools to reduce risks, evaluate alternatives, ensure stable financial performance and optimize available financial mechanisms.
Appraisal and Valuation of Utility Assets	The NewGen team consists of appraisal professionals certified by the American Society of Appraisers. We regularly value electric utility property in support of buy/sell transactions, financial transactions, insurance assessments and property tax valuations.
Stakeholder Engagement	NewGen assists in stakeholder engagement which is essential to driving overall customer satisfaction, building understanding and acceptance of new technologies, supporting customer behavior change, and ensuring successful capital project implementation.
Market/Customer Research & Benchmarking	Using a variety of methodologies – such as online surveys, focus groups, secondary research, peer group benchmarking – NewGen brings the data and analysis that drives insight and high performance.
Sustainability	NewGen's sustainability services provide an integrated strategy and plan to optimize our client's infrastructure and business decision making by integrating natural resources, energy, water and waste expertise with robust tools and analytics.
Power Supply and Integrated Resource Planning	Effective resource planning requires a comprehensive and strategic view of the future with careful consideration of today's viable technologies, regulatory environment, economic conditions and social norms. Our team recognizes that the path forward consists of multiple strategies focusing on supply and demand side options, distributed generation, fuel diversity and technology.

<b>NewGen Strategies &amp; Solutions 2016 Billing Rates</b>	
<b>Job Title/Classification</b>	<b>Billing Rate</b>
GM	\$295
President	\$265 - \$295
Director/Executive Consultants	\$210 - \$295
Senior Consultants	\$160 - \$210
Staff Consultants	\$140 - \$160
Analyst	\$120 - \$140
Administrative Assistant	\$85

Note: Billing rates are subject to change based on annual reviews and salary increases.