

RESOLUTION 2022-031

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN AGREEMENT WITH NEWGEN STRATEGIES AND SOLUTIONS LLC IN AN AMOUNT NOT TO EXCEED OF FORTY-NINE THOUSAND SIX HUNDRED EIGHTY DOLLARS AND ZERO CENTS (\$49,680.00) FOR DRAFTING OF THE SOLID WASTE REQUEST FOR PROPOSAL SPECIFICATIONS INCLUDING RECYCLING, COLLECTION, PROCESSING AND DISPOSAL SERVICES; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town's existing contract for Solid Waste, Recycling and Bulk Waste Collection ends September 2022; and

WHEREAS, the Town desires to enter into an agreement with a professional consultant to draft a new Request for Proposals and Agreement for recycling, collection, processing and disposal services; and

WHEREAS, on November 15, 2021, the Town advertised RLI 22-005 for drafting of the solid waste request for proposal specifications including recycling, collection, processing and disposal services; and

WHEREAS, on January 6, 2022, the Town received two (2) responses; and

WHEREAS, after reviewing the letters of Interest, the Selection Committee determined New Gen Strategies and Solutions LLC submitted the lowest, most responsive and responsible response in accordance with the terms of this RLI and the Town's Procurement Code; and

WHEREAS, New Gen Strategies and Solutions' proposal totals Forty-Nine Thousand Six Hundred Eighty Dollars and Zero Cents (\$49,680.00); and

WHEREAS, following the Town's past practices, the Town will attempt to include consultant's fee as a component of the forthcoming RFP for Recycling, collection, processing, and disposal services in the Town; and

WHEREAS, the Town Council believes that entering into an agreement with New Gen Strategies and Solutions for these services is in the best interest of the health, safety, and welfare of its residents.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:

Section 1. The foregoing recitals are true and correct and are incorporated herein by reference.

Section 2. The Town Council hereby approves an agreement with New Gen Strategies and Solutions LLC in the amount not to exceed Forty-Nine Thousand Six Hundred Eighty Dollars and Zero Cents (\$49,680.00) for the scope of work substantially contained in Exhibit "A", attached hereto and incorporated herein by reference.

Section 3. The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into an agreement and to sign any and all documents which are necessary and proper to effectuate the intent of this Resolution.


Section 4. This Resolution shall be effective immediately upon its adoption.

[Signatures on Following Page]

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 22 day of January 2022 on a motion by

V/M Jablonski and seconded by Chm Kuczenski.

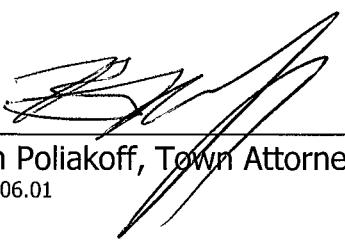
Breitkreuz	<u>Yes</u>	Ayes	<u>5</u>
Jablonski	<u>Yes</u>	Nays	<u>0</u>
Allbritton	<u>Yes</u>	Absent	<u>0</u>
Hartmann	<u>Yes</u>	Abstaining	<u>0</u>
Kuczenski	<u>Yes</u>		


Steve Breitkreuz, Mayor

Attest:


Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:


Keith Poliakoff, Town Attorney
1001.906.01



AGREEMENT BETWEEN THE TOWN OF SOUTHWEST RANCHES
AND
NEWGEN STRATEGIES & SOLUTIONS LLC . TO PROVIDE PROFESSIONAL
CONSULTANT SERVICES FOR THE PREPARATION AND DRAFTING OF SOLID
WASTE CONTRACT SPECIFICATIONS INCLUDING RECYCLING, COLLECTION,
PROCESSING & DISAPOSAL SERVICES (RLI 22-005)

THIS AGREEMENT, made and entered into by and between the TOWN OF SOUTHWEST RANCHES, a municipal corporation of the State of Florida, hereinafter referred to as "TOWN" and NEWGEN STRATEGIES & SOLUTIONS LLC., a Colorado corporation, doing business in the State of Florida, hereinafter referred to as "CONSULTANT".

WITNESSETH:

WHEREAS, the TOWN has issued a Request for Letters of Interest ("RLI") No. 22-005, for drafting of contract specifications and solicitation specifications for the Solid Waste Contract; and

WHEREAS, CONSULTANT submitted a proposal in response to the RLI, and was ranked first by the Town's Selection Committee; and

WHEREAS, the TOWN desires to obtain a consultant to provide the services contemplated by the RLI; and

WHEREAS, the CONSULTANT represents that it is willing and able to provide the required services, and to assist the TOWN in preparation of the contract and solicitation specifications.

NOW, THEREFORE, in consideration of the mutual promises and representations set forth herein, the parties mutually agrees as follows:

Section 1: **Scope of Services**

Upon execution of this Agreement, CONSULTANT shall immediately commence its work necessary to prepare contract and solicitation specifications for the TOWN'S use in procuring a new contract for Solid Waste Services. CONSULTANT shall perform its work in accordance with the scope of services and requirements of the RLI, the proposal submitted by CONSULTANT, and applicable Florida Statutes, and case law relative to the municipal provision of such solid waste services. The services to be performed hereunder by CONSULTANT shall be undertaken and completed in such

sequence as to assure the expeditious completion and to carry out the purposes of this Agreement. Consultant understands and agrees that time is of the essence. All services required hereunder shall be completed in a timely manner and in order that the TOWN may have sufficient time to solicit bids or proposals prior to the expiration of its current solid waste contract, and in any event, the contract and solicitation documents must be in final, ready to advertise form, no later than 120 days from the execution of this Agreement. CONSULTANT shall attend such meetings as may be required by the TOWN, including meetings with the Town Council, and public meetings in order to develop the contract and solicitation specifications. CONSULTANT'S completion of work as specified herein is contingent upon the TOWN promptly providing information and documents within its custody and control and making timely decisions as may be reasonably requested and required by CONSULTANT to perform its work in accordance with this Agreement. In the event that the TOWN should fail to cooperate with CONSULTANT as set forth above, CONSULTANT shall be afforded such additional time (computed in days) to complete its work necessitated by such delays caused by the TOWN. CONSULTANT shall also provide such additional and ancillary services, including for example, assistance with the evaluation of any bids or proposals received and contract negotiation subsequent to the advertisement of a new solicitation. A copy of the RLI is attached hereto as Exhibit "A", and is incorporated herein by reference. A copy of the CONSULTANT'S proposal is attached hereto as Exhibit "B" and incorporated herein by reference. In the event of any conflict between this Agreement, the RLI, and the CONSULTANT'S proposal, the more stringent requirement shall control.

Section 2: **Compensation:**

The TOWN agrees to pay the CONSULTANT a flat amount not to exceed the total sum of \$49,680 for all tasks set forth in CONSULTANT'S Price Proposal. In the unlikely event that the TOWN desires CONSULTANT to perform additional work, that is not contained in the Price Proposal, such work shall only be performed subject to a written work order that will contain the services to be performed and the cost for same. CONSULTANT shall not undertake any work, and shall not be compensated for any work that is not specified within the Price Proposal, or within an approved written work order given to CONSULTANT from the TOWN. CONSULTANT may be reimbursed for its actual out of pocket costs, provided that the TOWN approves any such costs in writing in advance of such cost being incurred.

CONSULTANT shall also be reimbursed for its actual out of pocket costs, provided that the TOWN must approve any such costs in writing in advance of such cost being incurred. Additional services related to procurement of a new solid waste contractor, which the TOWN may require, but are not contemplated herein, shall be provided on an hourly basis at the rates set forth in CONSULTANT's Price Proposal attached hereto as Exhibit "B", and incorporated herein by reference. Such additional services, shall only be provided upon the written request of the TOWN.

Section 3: Termination:

Notwithstanding any other provision of this Agreement, this Agreement is terminable at will by the TOWN. Notice of Termination shall be provided in accordance with the "NOTICES" section of this Agreement. The TOWN may terminate this Agreement upon thirty (30) days written notice. In the event that this Agreement is terminated, CONSULTANT shall solely be paid for any Work performed up to the date of termination and CONSULTANT shall not be entitled to any additional compensation, of any kind or in any amount, from TOWN as a result of being terminated. CONSULTANT specifically waives any and all rights to seek any additional sums or damages from TOWN due to being terminated other than CONSULTANT's sole right to be paid for any Work performed up to the date this Agreement is terminated. Upon termination, CONSULTANT shall immediately refrain from performing further Work for the TOWN or incurring additional expenses. Upon receipt of the notice of termination, CONSULTANT shall provide to the TOWN all data and other materials resulting from the work performed up to the date of termination.

Section 4: Professional Assurances:

CONSULTANT shall perform all services under this Agreement in accordance with the standard of care used by similar professionals in Broward County, Florida, under similar circumstances and shall exercise a reasonable degree of skill and care, as determined by the degree of skill and care ordinarily employed by others of the same profession.

Section 5: Insurance & Indemnification:

Prior to commencing work, CONSULTANT shall provide the TOWN with certified copies of all insurance policies providing coverage as required.

CONSULTANT shall secure and maintain, at its own expense, and keep in effect during the full period of the contract and at least one (1) year beyond, a Certificate a policy or policies of insurance, which must include the following coverages and minimum limits of liability:

- (a) Professional Liability Insurance in an amount not less than \$1,000,000 per claim, and \$2,000,000 annual aggregate.
- (b) Worker's Compensation and Employer's Liability Insurance for all employees engaged in work under the Contract in accordance with the laws of the State of Florida. CONSULTANT shall agree to be responsible for the employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

- (c) Comprehensive General Liability Insurance with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily
Injury and Property Damage
Liability per occurrence, and \$2,000,000
general aggregate

Coverage shall specifically include the following minimum limits not less than those required for Bodily Injury Liability and Property Damage:

\$1,000,000.00 Combined Single Limit, Bodily
Injury and Property Damage
Liability per occurrence

- (1) Premises and Operations;
- (2) Independent Contractors;
- (3) Products and Completed Operations;
- (4) Broad Form Property Damage;
- (5) Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract;
- (6) Personal Injury Coverage with employment and contractual exclusions removed and deleted; and
- (7) Explosion, collapse, underground coverage (X-C-U)

- (d) Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by CONSULTANT in the performance of the work with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily
Injury and Property Damage
Liability per occurrence

ALL LIABILITY INSURANCE POLICIES REQUIRED BY SECTIONS VI 2.(c) AND 2.(d) SHALL SPECIFICALLY PROVIDE THAT THE TOWN OF SOUTHWEST RANCHES IS AN ADDITIONAL NAMED INSURED OR ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND THE OPERATIONS OF THE CONTRACTOR UNDER THE CONTRACT. ALL INSURANCE Companies selected must be acceptable to TOWN. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled until at least thirty (30) calendar days written notice has been given to TOWN by first class mail, ten (10) days notice if cancellation is due to nonpayment of premium.

The required insurance coverage shall be issued by an insurance company duly authorized and licensed to do business in the State of Florida with the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide:

Financial Stability B+ to A++

These insurance requirements shall not relieve or limit the liability of the CONSULTANT. The TOWN does not in any way represent the type and amount of insurance required is sufficient or adequate to protect CONSULTANT'S interests or liabilities but is merely a requirement established by the TOWN. The Town reserves the right to require any other insurance coverages that Town deems necessary depending upon the risk of loss and exposure to liability.

GENERAL INDEMNIFICATION: To the fullest extent permitted by law, CONSULTANT shall indemnify, defend, and hold harmless the TOWN, its officers, agents and employees, from and against any and all claims, damages, losses, liability and expenses, direct, indirect or consequential including, but not limited to reasonable costs and attorney's fees, at all tribunal levels, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of CONSULTANT and persons employed or utilized by CONSULTANT in performance of the contract. In the event that the TOWN is a party to any claim, threatened claim, action, legal proceeding or lawsuit, borne as a result of this Agreement or as a result of CONSULTANT'S work pursuant to this Agreement, CONSULTANT agrees to indemnify, defend, and protect the TOWN, its officers, agents, and employees harmless from and against any and all costs, losses, liabilities and expenses where the Town would be required to reply and/or defend. Town and Consultant agree that 1% of the compensation due to Consultant from Town pursuant to this Agreement is offered and accepted as sufficient separate consideration for Consultant's agreement to indemnify Town and Town's officers, agents, and employees as provided for in this paragraph.

PATENT AND COPYRIGHT INDEMNIFICATION: CONSULTANT further agrees to indemnify, defend, save and hold harmless the TOWN, its officers, agents and employees, from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other work in connection with the performance of the Contract.

Section 6: **Notices:**

All written correspondences shall be addressed as follows, unless a party otherwise gives notice to the other party of such other address:

If to Town:

Town of Southwest Ranches
Andy Berns, Town Administrator
13400 Griffin Road
Southwest Ranches, FL 33331

With a copy to:

Keith M. Poliakoff, Esq.
Government Law Group, PLLC
200 South Andrews Avenue
Suite 601
Fort Lauderdale, Florida 33301

If to Consultant:

NEWGEN Strategies & Solutions LLC.
Allison Trulock, Managing Partner - Solid Waste
2875 S Orange Ave, Suite 500-1905
Orlando, FL 32806

Section 7: **Relationship:**

7.1 CONSULTANT shall perform all of the services enumerated in this Agreement solely as an independent contractor, and not as an employee of the TOWN. The CONSULTANT, as directed in writing by the Town Administrator, shall be responsible for directing its efforts as to the manner and means of accomplishing the work to be performed hereunder by CONSULTANT, pursuant to good and workmanlike practices. The priority, order, performance of services or safety practices shall not effect CONSULTANT's status as an independent contractor and shall not relieve CONSULTANT of the obligations assumed under this Agreement.

7.2 Neither CONSULTANT nor TOWN intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

Section 8: **Audit Right and Retention of Records:**

TOWN shall have the right to audit the books, records, computer records, electronic stored data, and accounts of CONSULTANT that are related to this Agreement. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. CONSULTANT shall preserve and make available, at reasonable times for examination

and audit by TOWN, all financial records, supporting documents, statistical records and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes) if applicable, or, if the Florida Public Records Act is not applicable, of a minimum period of five (5) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period of five (5) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by TOWN to be applicable to CONSULTANT's records, CONSULTANT shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirements of either federal or state law shall be violated by CONSULTANT. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for TOWN's disallowance and recovery of any payment upon such entry.

Section 9: Subcontracting:

All substantive work to be performed pursuant to the terms of this Agreement shall be performed by CONSULTANT, and no work shall be subcontracted to other parties or firms by CONSULTANT without the prior written consent of the TOWN, which consent may be withheld in the sole discretion of the TOWN. Further, the key personnel identified by CONSULTANT in its proposal, including Allison Trulock, Dave Yanke, Stephanie Crain, Savanna Page and Jenn Stowe shall be the persons with primary responsibility to the TOWN for the work subject of this Agreement, unless otherwise approved by the TOWN, in writing. CONSULTANT shall ensure that all subcontractors or sub-consultants performing any Work under this Agreement are bound in writing to all of the terms and conditions of this Agreement.

Section 10: Ownership Rights:

CONSULTANT agrees that this Agreement shall constitute a "work made for hire" and that all documents, programs, work product and documentation (hereinafter referred to as "Documentation") prepared by CONSULTANT pursuant to this Agreement shall be the property of TOWN, and CONSULTANT hereby assigns all of that Documentation to Town. CONSULTANT shall not release any information relative to the Documentation to anyone other than the TOWN without the prior approval from the TOWN.

Section 11: Nondiscrimination:

11.1 CONSULTANT shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. CONSULTANT shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services, including Titles I and II of the ADA (regarding nondiscrimination on the basis

of disability), and all applicable regulations, guidelines, and standards. In addition, CONSULTANT shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

11.2 CONSULTANT's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin.

Section 12: **Entire Agreement:**

This Agreement incorporates and includes all prior negotiations and understandings applicable to the matters contained herein. The parties agree that this Agreement constitutes the entire understanding and Agreement between the parties and supersedes previous agreements and representations whether written or oral.

Section 13: **Construction:**

This Agreement has been a joint effort of the parties, and the resulting documents shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The headings used in this Agreement are for convenience only and shall not be considered as part of this Agreement in any respect nor shall they in any way affect the substance of any provisions contained in this Agreement.

Section 14: **Further Assurances:**

TOWN and CONSULTANT agree to execute, acknowledge, and deliver, and cause to be done, executed, acknowledged, and delivered, all such further documents and perform such acts as shall be requested of it to carry out this Agreement and give effect hereto solely consistent with applicable Federal, State and local laws, rules or regulations. Accordingly, without, in any manner, limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

Section 15: **Counterparts:**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute the same Agreement.

Section 16: **No Amendment or Waiver:**

This Agreement may not be changed, altered, or modified except by an instrument in writing signed by all parties from whom enforcement of such change would be sought.

Section 17: **Severability**

In the event any term or provision of this Agreement shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed to be in full force and effect.

Section 18: **Resolution of Disputes:**

18.1 To prevent litigation, it is agreed by the parties hereto that Town Administrator shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Agreement and fulfillment of this Agreement as to the character, quality, amount and value of any work done and materials furnished, or proposed, to be done or furnished under or, by reason of, the Agreement. The Town Administrator's decision shall be reduced to writing and a copy furnished to CONSULTANT within a reasonable time following submission to the Town of the question, claim, difficulty or dispute as referenced above. The Town Administrator's decision shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by competent evidence.

18.2 To further prevent litigation, the parties shall endeavor to resolve any and all claims arising from this Contract by mediation. A request for mediation shall be filed, in writing, with the other party to the Contract. To the extent litigation is permitted under this Contract, the request shall be made prior to the filing of a legal or equitable proceeding, which shall not be filed prior to the outcome of mediation which will be completed within sixty (60) consecutive calendar days from the date a request for mediation is submitted to the other party unless the parties agree to an extension. The statute of limitations of any claim shall be tolled from the date mediation is requested until completed. To the extent the parties cannot mutually select a mediator, within fifteen (15) consecutive calendar days, from the date a request for mediation has been submitted, either party can request the American Arbitration Association to appoint a mediator with experience to serve as mediator. The mediator selected to serve shall be certified by the Florida Supreme Court. The mediation shall be conducted in Broward County, Florida.

Section 19: **Applicable Law & Venue; Waiver of Jury Trial:**

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation

of any rights hereunder shall be submitted to the exclusive jurisdiction and venue of an appropriate Court of competent jurisdiction in the Seventeenth Judicial Circuit of Broward County, Florida.

BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND TOWN HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

Section 20: Enforcement; Costs; Attorney Fees:

The TOWN and CONSULTANT are the beneficiaries of this Agreement and as such, may enforce this Agreement by action at law or in equity. In the event of any litigation between the TOWN and CONSULTANT resulting from and/or arising out of this Agreement, it is hereby acknowledged and agreed that the prevailing party shall be entitled to recover any and all reasonable attorney's fees and costs from the non-prevailing party in any such litigation, including attorneys fees and costs incurred at the trial level and on appeal.

Section 21: Representation of Authority:

The individuals executing this Agreement on behalf of any entity do hereby represent and warrant that they are, on the date of this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of their principal.

Section 22: Non Exclusivity of Services:

CONSULTANT may perform for other clients similar or identical to those services contemplated under this Agreement, subject to applicable confidentiality and ethical obligations of CONSULTANT. In the event TOWN desires an level of exclusivity or other limitations on CONSULTANT's services to its other clients, TOWN and CONSULTANT shall confer regarding the scope of requested exclusivity or other limitations and the additional compensation to be paid to CONSULTANT for the requested exclusivity or other limitations on providing similar or identical services shall be confirmed in writing signed by both parties and shall expressly state such provision shall supersede this Section 20. No fiduciary or agency obligations shall be created as a result of any exclusivity obligations or other limitations on CONSULTANT's services to other clients.

Section 23: Reperformance of Services; Liquidated Damages:

If TOWN believes any of the services provided under this Agreement do not comply with the terms of this Agreement, TOWN shall promptly notify CONSULTANT to permit CONSULTANT an opportunity to investigate. If the services do not meet the applicable standard of care, it will promptly reperform the services at no additional cost to TOWN, including assisting TOWN in selecting remedial actions.

In the event CONSULTANT does not achieve completion of the Work as defined in Section 1, above, in whole or in part due to its own fault, the parties hereto acknowledge that any delay beyond the scheduled completion deadline may cause grave injury and damage to the Town by virtue of the delay in advertising for a new solid waste contractor. Accordingly, the calculation of the actual damages to the Town would be uncertain and difficult if not impossible to determine. Consequently, if the CONSULTANT has not completed the preparation of the contract and solicitation specifications within **the time set forth in Section 1** and has not obtained written authorization for such delay, time being of the essence, then the parties hereto agree that as liquidated delay damages and not as a penalty, the CONSULTANT shall pay to the Town an amount equal to **One Hundred (\$100) Dollars** for each day or portion thereof, that the date of completion is later than the time set forth hereinabove. CONSULTANT shall be entitled to an extension of time and relief from liquidated damages to the extent that additional out of scope work is authorized by the Town in writing, by addendum to this Agreement. All such liquidated damage amounts, if any, shall be paid by CONSULTANT to Town weekly, immediately upon each such failure of CONSULTANT to comply with the scheduled completion deadline, as set forth above. In the event that the CONSULTANT fails to make any one or more of the payments to Town as required under this Section, the Town shall have the right to deduct any and all such amounts from any amounts due to CONSULTANT.

Section 24. **Survivability:**

Section 5 of this Agreement entitled "INSURANCE & INDEMNIFICATION"; Section 8 of this Agreement entitled "AUDIT RIGHT AND RETENTION OF RECORDS"; Section 10 of this Agreement entitled "OWNERSHIP RIGHTS"; Section 14 of this Agreement entitled "FURTHER ASSURANCES"; Section 18 of this Agreement entitled "RESOLUTION OF DISPUTES"; Section 19 of this Agreement entitled "APPLICABLE LAW & VENUE; WAIVER OF JURY TRIAL"; and Section 20 of this Agreement entitled "ENFORCEMENT; ATTORNEY'S FEES" shall survive the termination, cancellation, or expiration of this Agreement for any reason whatsoever.

Section 25. **Compliance With Laws:**

CONSULTANT shall comply with all federal, state, and local laws, codes, ordinances, rules and regulations in performing its duties, responsibilities, obligations, and provision of contract and solicitation specifications pursuant to this Agreement.

Section 26. **Miscellaneous:**

26.1 Performance: CONSULTANT represents that all persons performing the services required under this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and

competently perform the duties, obligations, and services set forth herein in a skillful and respectable manner.

26.2 Materiality and Waiver of Breach: CONSULTANT and TOWN agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

Either party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

26.3 Conflicts: Neither party nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with that party's loyal and conscientious exercise of judgment related to its performance under this Agreement.

The parties agree that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against the other in any legal or administrative proceeding related to performance under this Agreement in which he or she is not a party, unless compelled by court process. Further, the parties agree that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of the other party or in connection with any such pending or threatened legal or administrative proceeding related to the performance under this Agreement. The limitations of this section shall not preclude either party or any other persons from representing themselves in any action or in any administrative or legal proceeding related to the performance under this Agreement.

In the event CONSULTANT is permitted to utilize subcontractors to perform any services required by this Agreement, CONSULTANT agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

26.4 CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, TOWN shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

26.5 Severance. In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless TOWN elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

26.6 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement.

26.7 Prior Agreements. This Agreement and its attachments constitute the entire Agreement between CONSULTANT and TOWN, and this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

26.8 Drug-Free Workplace. CONSULTANT shall maintain a drug-free workplace.

26.9 Multiple Originals. This Agreement may be fully executed in three (3) copies by all parties each of which, bearing original signatures, shall have the force and effect of an original document.

26.10 Headings. Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

26.11 Truth-in-Negotiation Certificate. Signature of this Agreement by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature NewGen Strategies & Solutions, LLC, Allison Trulock, Managing Partner, authorized to execute same, and TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action on the 27 day of January, 2022.

IN WITNESS WHEREOF, this Agreement is accepted and executed on the 27 day of January, 2022.

WITNESSES:

CONSULTANT:

NEWGEN STRATEGIES & SOLUTIONS LLC

By: Allison Trulock
Allison Trulock
Managing Partner (title)
19th day of January 2022

TOWN OF SOUTHWEST RANCHES

By: Steve Breitkreuz
Steve Breitkreuz, Mayor

27 day of January 2022

By: Andrew D. Berns
Andrew D. Berns, Town Administrator

27 day of January 2022

ATTEST:

Russell Muñiz
Russell Muñiz, Assistant Town Administrator/Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Keith M. Poliakoff
Keith M. Poliakoff, Town Attorney