

# Master Services Agreement Kentucky Municipal Energy Agency

---

This **PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is dated November 16, 2015 by and between **NewGen Strategies and Solutions, LLC** ("Consultant"), with offices at 112 Westwood Place, Suite 165, Brentwood, Tennessee 37027 and the Kentucky Municipal Energy Agency ("Client"), with a mailing office at 450 South Third Street, Louisville, Kentucky 40202.

**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 Consultant will perform services as requested by Client from time to time. The services to be provided by Consultant shall be agreed to by the parties and authorized in a Task Authorization to this Agreement which sets 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. Task Authorizations shall be incorporated into this Agreement and subject to its terms and shall be generally in the form shown in Exhibit A to this Agreement.
2. **Independent Contractor:** Consultant is an independent contractor and is not an employee of Client. 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. 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. **Changes/Amendments:** This Agreement and its exhibits 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 Scope of 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 Scope of Services affect the schedule, level of effort or payment to Consultant and the schedule and payment shall be equitably adjusted. If Consultant is delayed in performing its services due to an event beyond its control, including but not limited to fire, flood, earthquake, explosion, strike, transportation or equipment delays, act of war, or act of God, then the schedule or payment under the Agreement shall be equitably adjusted, if necessary, to compensate Consultant for any additional costs due to the delay.

## Master Services Agreement Kentucky Municipal Energy Agency

---

5. **Fee for Services:** The fee 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 reasonable expenses directly related to the services furnished under a Task Authorization, or as otherwise set forth in a Task Authorization.
6. **Payment:** Client shall pay Consultant for services furnished under this Agreement upon submission of monthly invoices in an amount equal to actual hours of services furnished multiplied by the current billing rate of the respective consultant. Additionally, Client shall reimburse Consultant monthly for reasonable expenses at cost and at cost plus 10% for the services of any Subconsultant. 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 exceptions taken. 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 mandatory binding arbitration, without incurring any liability or waiving any right established hereunder or by law.
7. **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.

To the extent permitted by the Kentucky Constitution and Kentucky law, Client agrees to indemnify, defend and hold harmless Consultant and its directors, officers, shareholders, employees and subconsultants from and against any liability (including, without limitation, reasonable costs and attorney's fees) incurred by Consultant to the extent caused by Client's negligent acts, errors or omissions, including judgments in favor of any third party.

8. **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. If the services do not meet the applicable standard of care, it will promptly reperform 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 reperform its services, Consultant's total obligation to Client will be limited to the costs Consultant would have incurred to reperform the services.

## Master Services Agreement Kentucky Municipal Energy Agency

---

9. **Insurance:** Consultant shall maintain insurance with the following required coverages and minimum limits and upon request, will provide insurance certificates to Client:

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

10. **Work Product:** Client shall have the unrestricted right to use the documents, analyses and other data prepared by Consultant under this Agreement ('Work Products'); provided, however Client shall not rely on or use the Work Products for any purpose other than the purposes under this Agreement and the Work Products shall not be changed without the prior written approval of Consultant. If Client releases the Work Products to a third party without Consultant's prior written consent, or changes or uses the Work Products other than as intended hereunder, (a) Client does so at its sole risk and discretion, (b) Consultant shall not be liable for any claims or damages resulting from the change or use or connected with the release or any third party's use of the Work Products and (c) Client shall indemnify, defend and hold Consultant harmless from any and all claims or damages related to the release, change or reuse.
11. **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, directors, shareholders, 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 million dollars \$1,000,000. whichever is greater
12. **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.
13. **Information Provided by Others:** Client shall provide to Consultant in a timely manner any information Consultant indicates is needed to perform the services hereunder. Consultant may rely on the accuracy of information provided by Client and its representatives.
14. **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. Consultant estimates of operation expenses or construction costs represent its best judgment as an experienced and qualified professional and are not a guarantee of cost. This section does not apply to

## Master Services Agreement Kentucky Municipal Energy Agency

---

the cost of Consultant performing the Scope of Services.

15. **Safety and Security:** Consultant has established and maintains programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, Consultant specifically disclaims any authority or responsibility for job site safety and safety of persons other than Consultant's employees. Consultant shall not provide any such services and disclaims any responsibility under this Agreement related to site security or the assessment, evaluation, review, testing, maintenance, operation or safety practices or procedures related to security.
16. **Termination:** Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party. Client shall pay Consultant for all services rendered to 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, terminate this Agreement or suspend performance under this Agreement.
17. **Dispute Resolution:** Consultant and Client shall attempt to resolve conflicts or disputes under this Agreement in a fair and reasonable manner and agree that if resolution cannot be made to attempt to mediate the conflict by a professional mediator (except for payment disputes, which may be submitted directly to arbitration). If mediation does not settle any dispute or action which arises under this Agreement or which relates in any way to this Agreement or the subject matter of this Agreement within ninety (90) days after either requests mediation, the dispute or conflict may be subject to arbitration in English under the rules governing commercial arbitration as promulgated by the American Arbitration Association and arbitrability shall be subject to the Federal Arbitration Act. Nothing in this Agreement shall waive the right to a jury trial.
18. **Miscellaneous:**
  - a. This Agreement is binding upon and will inure to the benefit of Client and Consultant and their respective successors and assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party.
  - b. Any notice required or permitted by this Agreement to be given shall be deemed to have been duly given if in writing and delivered personally or five (5) days after mailing by first-class, registered, or certified mail, return receipt requested, postage prepaid and addressed as follows:

Client:	Kentucky Municipal Energy Agency
Attention:	Mr. Ron Herd, Chairman c/o Rubin & Hayes
Address:	450 South Third Street
	Louisville, Kentucky 40202

## Master Services Agreement Kentucky Municipal Energy Agency

---

Consultant: NewGen Strategies and Solutions, LLC  
Attention: Mr. Brown Thornton  
Address: 112 Westwood Place, Suite 165  
Brentwood, TN 37027

- 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 Commonwealth of Kentucky. In any action brought under this Agreement, Consultant and Client agree that jurisdiction and venue are proper in the state or federal court in Frankfort, Franklin County, Kentucky.
- f. 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.
- g. This Agreement shall not be construed against Consultant only on the basis that Consultant drafted the Agreement.
- h. 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 shall not in any case be initiated later than six (6) years after Consultant completes its Scope of Services under this Agreement.
- i. 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.

**Master Services Agreement  
Kentucky Municipal Energy Agency**

---

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

**Kentucky Municipal Energy Agency**


Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**NewGen Strategies and Solutions, LLC.**

Signature 

Name Brown Thornton

Title Director

Date 11/16/2015

**Effective Date:****Client Name:****Task Authorization Description:**

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

**Scope of Services**

[INSERT]

**Schedule**

[INSERT]

**Fee for Services**

[INSERT]

**Additional Services**

[INSERT]

**[Client]****NewGen Strategies and Solutions, LLC**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

# **TASK AUTHORIZATION NO. 1**

## **Kentucky Municipal Energy Agency**

---

**Effective Date:** November 16, 2015

**Client Name:** Kentucky Municipal Energy Agency

**Task Authorization Description:** Power Supply Planning and Implementation

Kentucky Municipal Energy Agency (Client) and NewGen Strategies and Solutions, LLC (Consultant) agree that this Task Authorization will be governed by the terms and conditions of the Agreement effective November 16, 2015 as amended, unless specifically modified herein.

### **Scope of Services**

Consultant will provide general consulting services to Client on an as-requested basis. Services requested by Client include support related to exploring wholesale power supply alternatives, power supply contractual arrangements, and transmission service arrangements including but not limited to:

- Facilitate discussions related to forming and implementing a clear power supply strategy and position. Includes consideration of aggregated power supply needs, generation resource options, transmission service, long-term contractual arrangements, and potential creation of a municipal power supply entity and/or governance structure.
- Support discussions and examination of alternative approaches to supplying power for municipal electric systems. Includes participation, along with other consultants and legal counsel, to identify and evaluate potential opportunities for development or acquisition of non-KU power supply resources.
- Review and provide recommendations related to power supply portfolio and purchase power agreements as proposed by potential power suppliers. Includes examining supplier interest and potential terms, exploring indicative pricing (near-term and long-term), and reviewing other key issues including resource diversification, risk profile, relationship, and potential benefits/services.
- Assist with establishing transmission service arrangements as needed to support selected power supply strategy.
- Provide support for project financing arrangements, as needed.
- Joint development and implementation of a fully-endorsed implementation plan.

### **Schedule**

After receipt of authorization to proceed, the Client and Consultant will agree on a schedule to perform the work. To the extent required, the schedule may be revised by mutual agreement.



# TASK AUTHORIZATION NO. 1

## Kentucky Municipal Energy Agency

---

### Fee for Services

Consultant will provide general consulting services as described above on a time-and-material basis. Fees for services under this Task Authorization will be based on actual hours of services furnished multiplied by Consultant's billing rates as of the date of its monthly invoice plus all reasonable expenses directly related to the services provided under this Task Authorization. Fees for services will not exceed initial budget estimates without written authorization by the Client.

### Deliverables

Meeting debrief and notes, presentation materials, power supply evaluation, financial and economic analysis, wholesale power and transmission service arrangements, and other deliverables as mutually agreed by Client and Consultant.

**Kentucky Municipal Energy Agency**

**NewGen Strategies and Solutions, LLC**

Signature \_\_\_\_\_

Signature Brown Thornton

Name \_\_\_\_\_

Name Brown Thornton

Title \_\_\_\_\_

Title Director

Date \_\_\_\_\_

Date 11/16/2015

<b>NewGen Strategies &amp; Solutions</b> <b>FY 2015 Billing Rates</b>
--------------------------------------------------------------------------

<b>Title</b>	<b>Billing Rate</b>
Director or Executive Consultant	\$225-285
Senior Consultant	\$150-220
Staff Consultant	\$135-145
Analyst	\$100-115
Administrative	\$75