

Professional Services Agreement

This **PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is dated March 12, 2024, by and between **NewGen Strategies and Solutions, LLC** ("Consultant"), with offices at 900 Bestgate Road Suite 402 Annapolis, MD 21401 and the Village of Lombard ("Client"), with a mailing office at 255 E Wilson Ave. Lombard, IL 60148.

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 described in Exhibit A – Scope of Services.
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.
5. **Fee for Services:** The fee for services associated with Exhibit A 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 Exhibit A, or as otherwise set forth in Exhibit A.

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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.

Remit Payment To: 275 W. Campbell Road, Suite 440 Richardson, TX 75080. Contact Lauree Kiely at 972-590-8940 for ACH Payment Information.

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 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.

Each party (the "First Party") specifically and expressly waives its immunity under applicable worker's compensation and industrial insurance laws regarding liability against the other party (the "Second Party") for actions brought by any of the First Party's employees against the Second Party, to the extent the liability is caused by the First Party's negligent acts, errors or omissions.

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

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reperform its services, Consultant's total obligation to Client will be limited to the costs Consultant would have incurred to reperform the services.

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 hundred fifty thousand dollars (U.S. \$150,000.00), 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

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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 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 shall 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.
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 or when read receipt is transmitted and received by client if sent via email to the address below:

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Client: Village of Lombard
Attention: Jamie Cunningham, Assistant Finance Director
Email Address: cunninghamj@villageoflombard.org
Address: 255 E Wilson Ave.
Lombard, IL 60148

Consultant: NewGen Strategies and Solutions, LLC
Attention: Eric Callocchia, Partner
Email Address: ecallocchia@newgenstrategies.net
Address: 900 Bestgate Road, Suite 402
Annapolis, MD 21401

Copy To: Lauree Kiely
NewGen Strategies and Solutions, LLC
275 W. Campbell Road, Suite 440
Richardson, TX 75080
lkiely@newgenstrategies.net

- c. Client expressly agrees that all provisions of the Agreement, including the clause limiting the liability of Consultant, were mutually negotiated and that but for the inclusion of the limitation of liability clause in the Agreement, Consultant's compensation for services would otherwise be greater and/or Consultant would not have entered into the Agreement.
- d. If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and the provision declared invalid or unenforceable shall continue as to other circumstances.
- e. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois.
- 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.

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

CLIENT


Signature Timothy Sexton
Timothy Sexton (Mar 12, 2024 11:09 CDT)

Name Timothy Sexton

Title Director of Finance

Date 3/12/2024

NewGen Strategies and Solutions, LLC

Signature 
C11651334F8F462...

Name Eric Callocchia

Title Partner

Date March 12, 2024

Exhibit A – Scope of Services



Exhibit A

900 Bestgate Road
Suite 402
Annapolis, Maryland 21401

February 14, 2024

Ms. Jamie Cunningham
Assistant Finance Director
Village of Lombard
255 E Wilson Ave. Lombard, IL 60148

Subject: Water and Sewer Rate Study Update

Dear Ms. Cunningham:

Thank you for the opportunity to continue our professional relationship with the Village of Lombard. Based on your recent request, we have prepared the following scope of work and cost proposal to update the Water and Sewer Rate Study that NewGen completed (as MFSG) for the Village in 2019.

The scope of work outlines the tasks necessary for NewGen to complete a comprehensive update to the 2019 study. Tasks include updating the rate model's expense and revenue forecasts based on the latest available data, providing updated rate recommendations, and submitting to the Village a report and presentation supporting our recommendations. Also included is the option for NewGen to conduct our presentation to a joint meeting of the Public Works and Environmental Concerns and Finance and Administration Committees in person rather than virtually.

If you have any questions about our proposed scope of work, please do not hesitate to contact me directly at ecallocchia@newgenstrategies.net or 443-951-4207.

Very truly yours,

DocuSigned by:

C11651334F8F462...

Eric Callocchia
Partner

1. SCOPE OF WORK

TASK 1 – DATA COLLECTION AND KICKOFF MEETING

Upon notice to proceed, NewGen will submit a data request to the Village along with a link to a shared project data folder using Microsoft SharePoint® to which authorized NewGen and Village personnel will have access. The SharePoint® folder will serve as the repository of all study data. NewGen will schedule a virtual kickoff meeting with the Village to discuss the desired outcomes of the study update, including how any issues related to the water and sewer systems have evolved since the previous study. NewGen will also confirm the study's required timeline and key deliverables at the kickoff meeting.

TASK 2 – UPDATE OPERATING AND CAPITAL COSTS

NewGen will update the water and sewer rate model based on the new data provided by the Village. The new base year for the model will be the Village's Fiscal Year (FY) 2024 budget. NewGen will update the model to provide a ten-year projection period beyond the base year, namely FY 2025 – FY 2034. The water and sewer system revenue requirement components that NewGen will update include:

- Operating and maintenance expenses
- Debt service payments on existing obligations
- Future capital improvements projects
- Contributions to reserves

NewGen will also update the model's assumptions regarding escalation rates for various cost components.

TASK 3 – UPDATE CUSTOMER AND CONSUMPTION INFORMATION

NewGen will ask the Village to provide the most recently available customer and consumption data for the water and sewer systems dating back to the most recent actual data within the current model. NewGen will organize the updated data and base all future projections off the most recently available full fiscal year of data, i.e., through the end of FY 2023. NewGen will determine, based on discussions with the Village, the appropriate rate of customer and consumption growth for the new projection period.

TASK 4 – UPDATE FINANCIAL FORECAST AND DEVELOP RATES

NewGen will develop recommended water and sewer rates necessary to maintain the financial and operational health of the Village's water and sewer systems through the projection period.

Note: The scope of work does not include any changes to the Village's rate structure. NewGen will recommend future water and sewer volumetric rates, Capital Charges, Service Charges, and Cross Connection Control Program Charges based on the updated revenue requirement and customer data forecasts. NewGen will maintain the 1.50x differential for outside Village service. No other Village water and sewer related fees or charges will be evaluated during the study update.

TASK 5 – MEETINGS AND REPORTING

NewGen anticipates the following meetings over the course of the study update, which will all be conducted virtually:

- A kickoff meeting with Village staff.
- Semi-monthly project status meetings with Village staff to discuss study progress.
- A public meeting to a joint meeting of the Public Works and Environmental Concerns and Finance and Administration Committees to present NewGen's recommendations.

NewGen will develop a narrative report presenting our findings, conclusions, and recommendations, supported by the updated financial model.

2. PROJECT SCHEDULE

The following is an estimate of the key project deadlines, with the intention to develop rates that will be effective on January 1, 2025:

- **Notice to Proceed and Submission of Data Request:** May 1, 2024
- **Project Kickoff Meeting:** Week of May 6, 2024
- **Draft Results:** Before June 15, 2024
- **Public Presentation to Joint Committee Meeting:** Before July 31, 2024
- **Delivery of Final Report:** Before August 30, 2024
- **Recommended Rates Effective:** January 1, 2025

3. PROJECT COST

We develop our cost proposals by determining the number of hours of effort that will be required by each of our proposed project staff on a task-by-task basis and multiplying this number by each staff member's hourly rate. To this estimate of professional fees, we add estimated out-of-pocket at actual cost, with no profit or overhead added to out-of-pocket expenses. There are two NewGen staff members that will be providing our services to the Village:

ERIC CALLOCCHIA | PROJECT MANAGER



EDUCATION: BA, Economics/Mathematics, Johns Hopkins University

AFFILIATIONS: AWWA, WEF, CSWEA, GFOA

AWWA Rates and Charges Committee - Cost of Service Subcommittee

PUBLICATIONS: Contributing author, WEF Manual of Practice (MOP) 27 – *Financing and Charges for Wastewater Systems*; AWWA Manual M1 – *Principles of Water Rates, Fees, and Charges*

Mr. Callocchia has over thirteen years of utility cost of service and financial consulting experience. His expertise is related to a broad range of industry issues, including revenue stability, customer affordability, operational sustainability, and public education. He is a contributing author to the most recent edition of the Water Environment Federation's Manual of Practice 27 – *Financing and Charges for Wastewater Systems*. He is an active member of the American Water Works Association (AWWA) Rates and Charges Committee, and a *contributing* author to the upcoming eighth edition of AWWA's Manual M1 – *Principles of Water Rates, Fees, and Charges*.

Mr. Callocchia has worked with over 100 water, wastewater, and stormwater utilities throughout the United States. Through his efforts, clients have justified revenue increases, adopted rate structure changes, enhanced reserve policies, funded capital financing plans, and applied other industry best practices.

AIDAN OATES | FINANCIAL ANALYST



EDUCATION: Master of Energy Management, Tulane University

Bachelor of Arts in English Literature and Finance, The College of William and Mary

Mr. Aidan Oates joined NewGen in 2021. He provides financial modeling, cost of service and rate design for water, wastewater, solid waste, and energy projects. His experience includes valuation, trading, economics, and investment banking specific to the Energy industry. He earned his BA in English Literature and Finance from William and Mary and a

Masters in Energy Management from Tulane University.

Mr. Callocchia and Mr. Oates will be supported by NewGen's administrative staff to produce the study's deliverables.

PROJECT COST

Assuming that all meetings are held virtually, our cost for the scope of work and deliverables outlined in this document is \$25,400 as set forth below:

Exhibit 1. Study Cost Detail

Task		Hourly Rate	Callocchia	Oates	Admin	Hours	Professional Fees	Expenses	Total
			\$260	\$165	\$120				
Task 1	Data Collection and Kickoff Meeting		8	8		16	\$ 3,400		\$ 3,400
Task 2	Update Operating and Capital Costs		4	12		16	\$ 3,020		\$ 3,020
Task 3	Update Customer and Consumption		4	24		28	\$ 5,000		\$ 5,000
Task 4	Update Financial Forecast and Develop Rates		8	24		32	\$ 6,040		\$ 6,040
Task 5	Meetings and Reporting		16	20	4	40	\$ 7,940		\$ 7,940
Labor Hours			40	88	4	132			
			Subtotals				\$25,400	\$ -	
			Total Project Cost						\$25,400

If the Village desires any of the study's meetings to be in-person, the cost per meeting with our Project Manager is as follows:

Exhibit 2. Cost per In-Person Meeting

		Hourly Rate	Callocchia	Oates	Admin	Hours	Professional Fees	Expenses	Total
			\$260	\$165	\$120				
Optional In-Person Meeting			8				\$ 2,080	\$ 920	\$ 3,000

By engaging NewGen, you agree that the services rendered by NewGen will be accomplished in accordance with instructions or specifications provided by authorized representatives of the Village of Lombard and will be performed with the degree of skill and judgment exercised by recognized professionals performing services of similar nature and consistent with the applicable industry best practices.

If the preceding scope of work and cost proposal are acceptable to the Village, then please contact Mr. Callocchia to organize contract documents that meet your procurement requirements.


PSA_NewGen_2024_Model_Update_w_Exhibit_A


Final Audit Report

2024-03-12


Created:	2024-03-12
By:	Jamie Cunningham (cunninghamj@villageoflombard.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAbzg_XrQtNFEx7kAsdJD9C6jn-dk8Ghw7


"PSA_NewGen_2024_Model_Update_w_Exhibit_A" History


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 Email viewed by tims@villageoflombard.org
2024-03-12 - 4:08:45 PM GMT

 Signer tims@villageoflombard.org entered name at signing as Timothy Sexton
2024-03-12 - 4:09:20 PM GMT

 Document e-signed by Timothy Sexton (tims@villageoflombard.org)
Signature Date: 2024-03-12 - 4:09:22 PM GMT - Time Source: server

 Agreement completed.
2024-03-12 - 4:09:22 PM GMT