

**Supplemental Agreement  
for  
Firm Power Interchange Service  
between  
Municipal Energy Agency of Nebraska  
and  
The City of Gillette, Wyoming**

This Supplemental Agreement for Firm Power Interchange Service (Agreement), pursuant to Service Schedule J of the Electrical Resources Pooling Agreement (ERPA), is agreed to by the Municipal Energy Agency of Nebraska (MEAN) and the City of Gillette, Wyoming (Participant), a Service Power Participant under the ERPA, to be effective September 1, 2014. MEAN and Participant are sometimes referred to in this Agreement collectively as "Parties" or individually as a "Party".

**Section 1. Service to be Provided**

1.01. This Agreement provides for the sale of Supplemental Energy, as defined in Section 2.02. Such power shall include required operating reserves.

1.02. WAPA Allocation Agent. MEAN shall serve as Participant's exclusive agent for purchasing, scheduling and transmission of firm power and energy from Western Area Power Administration (WAPA) Loveland Area Projects under the terms of the Agreement for Purchasing Agent Services between MEAN and Participant. In the event the Agreement for Purchasing Agent Services is terminated for any reason, MEAN shall continue to serve as Participant's exclusive agent for scheduling and transmission of firm power and energy from WAPA through the term of this Agreement unless MEAN elects to terminate such agent services by providing sixty (60) days written notice to Participant.

1.03. Transmission Agent. MEAN shall serve as Participant's agent for scheduling and transmission of firm power and energy on the system of Black Hills Power, Inc. as Joint Tariff Administrator of the Joint Open Access Transmission Tariff of Black Hills Power, Inc., Basin Electric Power Cooperative, and Powder River Energy Corporation (BHBE).

1.04. NERC Assistance. As set forth on Exhibit A of this Agreement, MEAN will perform certain Purchasing-Selling Entity (PSE) and Resource Planning (RP) functions required by the North American Electric Reliability Corporation (NERC) on behalf of the Participant with regard to Participant's firm power and energy from WAPA and the Supplemental Energy furnished by MEAN. MEAN will not be responsible to perform NERC functions with regard to any other Participant resource.

1.05. Integrated Resource Plan. Participant shall be solely responsible for meeting all requirements relating to the preparation, filing and implementation of the Integrated Resource Plan (IRP) required by WAPA on or after September 1, 2014, including without limitation any annual reporting required for IRPs due on or after such date. Accordingly, MEAN shall have no responsibility for providing IRP assistance for activity occurring (planning or energy consumed) on or after September 1, 2014; provided, however, that MEAN shall include Participant in the IRP reports that MEAN submits to WAPA for activity occurring (planning or energy consumed) before September 1, 2014.

## **Section 2. Term of Agreement; Conditions of Service**

2.01. This Agreement shall be for the sale of firm power and energy, including necessary operating reserves, and for the provision of services, as described herein for a term beginning September 1, 2014 and shall continue in full force through March 31, 2015.

2.02. MEAN will furnish to Participant and Participant will purchase the following supplemental energy (Supplemental Energy):

- (i) MEAN will supply five (5) MW per hour of hourly firm capacity and energy, including reserves, which shall consist of Participant's WAPA LAP capacity and energy allocation, wind-generated energy purchased from MEAN under the Amended and Restated Supplemental Agreement for Wind-Generated Energy Purchase, and any additional power and energy necessary to reach the 5 MW per hour amount, plus
- (ii) MEAN will also supply firm capacity and energy, including reserves, to the Participant in excess of Participant's Wygen III capacity, WAPA LAP capacity, plus its combustion turbine capacity (which resources serve approximately 69 MW of total load).

2.03. The Parties hereby agree to terminate the Supplemental Agreement for Firm Power Interchange Service between MEAN and the City of Gillette, Wyoming, dated effective October 1, 2002, as amended. Such termination shall be effective September 1, 2014.

## **Section 3. Compensation**

3.01. Participant shall be charged for Supplemental Energy at the then-current demand and energy rates set forth in the Schedule of Rates and Charges to Service Schedule K-1, West Side Bulk Power Supply of the Municipal Energy Agency of Nebraska, as such Schedule may be modified from time to time by the MEAN Management Committee; provided, however, that the purchase of wind-generated energy from MEAN under a separate written agreement will be charged in accordance with the terms of such separate agreement. The base demand amount and base energy amount applicable to Participant shall be determined by, and may be modified from time to time by, the MEAN Management Committee. In addition, Participant shall be charged a scheduling fee of \$16,000.00 per month.

3.02. Participant shall make payments for the power, energy, and services supplied to it by MEAN pursuant to this Agreement in accordance with Article XVI of the ERPA, except that payment shall be due within ten (10) days of Participant's receipt of the invoice and the monthly energy billing under this Agreement shall be the total monthly metered energy (using actual meter readings), adjusted for losses to the point of delivery described in Section 4 below, less energy furnished by Participant's non-MEAN resources listed in Section 2.02, net of applicable transmission losses, times the applicable rate described in Section 3.01 above. For billing purposes, a month shall be defined as beginning at hour ending 0100 on the first day of each calendar month and ending each month at hour 2400 on the last day of each calendar month. If actual meter readings are not available, estimated readings shall be used for billing purposes. Any necessary adjustments between the actual meter reading and estimated meter reading shall be made the following month or as soon as revenue quality meter data is received.

3.03. The rates as set forth in the Schedule of Rates and Charges will be adjusted to reflect the impact of any Governmental Imposition, such as changes in or additions to sales tax, property tax, energy use tax, energy carbon tax, surcharge or other governmental or regulatory

fees (including without limitation emissions allowances, renewable portfolio standards, charges or expenses), or any Independent Transmission System Operator (ISO) or Regional Transmission Organization (RTO) fees, costs or penalties, which are adopted, implemented or enforced after execution of the Agreement between MEAN and the Participant or which occur as a result of a change after execution of the Agreement in the interpretation or enforcement by the governmental or regulatory body of an existing governmental imposition.

#### **Section 4. Point of Delivery**

4.01. The Point of Delivery (POD) for firm power and energy furnished by MEAN shall be points of interconnection on the BHBE transmission system as agreed upon by the City, MEAN and the transmission service provider.

#### **Section 5. Point of Measurement**

5.01. The Point of Measurement (POM) shall be the Gillette metering point(s). Metered quantities are adjusted for losses over BHBE transmission system to the POD. The Parties further agree that if Participant and BHBE agree on a new delivery point for Participant, MEAN will agree to schedule to the new or multiple delivery points. Any and all costs associated with the new delivery point(s), including but not limited to transmission facilities charges, transmission interconnection charges and charges for ancillary services, shall be borne by Participant.

#### **Section 6. Transmission**

6.01. Participant shall designate MEAN as its transmission agent on the BHBE transmission system for delivery of firm power and energy from MEAN and WAPA. Participant shall also designate all of its resources listed in Section 2.02, including without limitation Participant's rights under this Agreement, as well as other resources that Participant may acquire, as network resources on the BHBE transmission system. Participant will be responsible for securing and paying for all necessary transmission paths needed to deliver Participant resources to Participant loads. For purposes of clarity, Participant will notify BHBE in writing that a copy of all transmission notifications shall be sent to MEAN, along with the original copy to Participant for its records.

6.02. MEAN is responsible for all transmission charges and losses from MEAN resources to the POD. Participant is responsible for all transmission charges, losses and associated ancillary services for delivery of firm power and energy from all non-MEAN resources to Participant, and if billed to MEAN, shall be charged to Participant on a cost pass-through basis at the transmission provider's then-current rate in accordance with Service Schedule F of the ERPA. Participant is responsible for all transmission and subtransmission charges and losses from the POD to the Participant, including without limitation any energy imbalance penalties, for the MEAN Supplemental Energy and all other Participant resources.

#### **Section 7. Telemetry**

7.01. Participant shall provide telemetry access to MEAN to access the electronic recorder (or successor recorders which must be compatible with the then-current MEAN equipment) located at the Gillette POM, for scheduling and billing purposes. Any and all costs associated with replacing and maintaining the electronic recorders in order to stay compatible with MEAN's system shall be borne by the Participant.

7.02. The Participant and applicable transmission provider will determine the appropriate revenue metering equipment. MEAN has installed or will install a data recorder from which to schedule the load and/or generation. Any costs of MEAN equipment, maintenance and communication with MEAN's telemetry will be borne by City if not replacing existing equipment. Any cost charged by the applicable transmission provider as part of its transmission services, including metering, will be paid for by the Participant.

### **Section 8. MEAN Administrative Fee**

8.01. The MEAN Administrative Fee under ERPA Exhibit C, Allocation of MEAN Coordination Center Costs, for Service Schedule J participants is included in the rates as set forth in Section 3.

### **Section 9. Scheduling of Deliveries**

9.01. All power and energy delivered by MEAN to Participant will be scheduled by the MEAN Coordination Center.

9.02. All power and energy from WAPA to which Participant is entitled will be scheduled with the MEAN Coordination Center.

9.03. In order to minimize energy imbalance penalties, Participant shall notify the MEAN Coordination Center immediately of any changes in the level of generation available due to unit availability problems or any forced outage of the generating unit.

### **Section 10. Billing and Payment**

10.01. Except as provided in Section 3.02 with regard to actual meter readings, invoices shall be rendered in accordance with Article XVI of the ERPA. Payment shall be made in accordance with Article XVI of the ERPA, except that payment shall be due within ten (10) days of Participant's receipt of the invoice.

10.02. If and to the extent MEAN is billed therefor, MEAN shall invoice Participant on a cost pass-through basis for firm capacity and energy allocations from WAPA and the cost of transmission, subtransmission, losses and associated ancillary services.

### **Section 11. Covenant as to Rates**

11.01. Participant covenants and agrees that it will fix rates and charges for the services of its municipal electric utility system, and revise the same from time to time, and collect and account for the revenues therefrom, so that such rates and charges will produce revenues and receipts which will at all times be sufficient to enable Participant to pay the amounts payable by it hereunder when and as the same become due, to carry out its other obligations hereunder and to pay all other amounts which are payable from or a charge upon the revenues derived from the operation of its municipal electric utility system as and when the same become due.

### **Section 12. Collateral**

12.01. MEAN may require security to ensure its risks associated with this Agreement are mitigated. If from time to time MEAN has reasonable grounds for insecurity regarding the performance of any obligation under this Agreement by the Participant, MEAN may demand

Adequate Assurance of Performance, which shall be defined as sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to MEAN, including, but not limited to cash, an irrevocable standby letter of credit, or a prepayment. Participant hereby grants to MEAN a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Participant to MEAN pursuant to this Section. Upon the return by MEAN to Participant of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.

12.02. In addition to the Adequate Assurance of Performance requirements above, Participant agrees to provide additional security as may be required by an ISO or RTO from time to time for MEAN to perform services under this Agreement. MEAN will pass through the costs of such credit requirements to Participant, and Participant agrees to promptly pay MEAN for such costs incurred. The provisions above regarding security interests and rights of setoff shall apply to such additional credit.

### **Section 13. Events of Default**

13.01. The following events shall constitute an event of default (Event of Default) hereunder: Participant is unable to pay its debts as they fall due; Participant fails to perform any obligation to MEAN with respect to any collateral relating to this Agreement; Participant fails to give Adequate Assurance of Performance within 48 hours but at least one business day of a written request by MEAN; Participant has not paid any amount due MEAN hereunder on or before the second business day following written notice that such payment is due; or material breach by Participant of any obligation hereunder which is not remedied on or before the second business day following written notice that such material breach has occurred. In the event of a default under this Agreement, MEAN is entitled to a funding of the letter of credit and shall have the right, at its sole election, to immediately withhold and/or suspend services, deliveries or payments upon written notice, to net payments due by MEAN against amounts outstanding from Participant, and/or to terminate this Agreement in the manner provided below, in addition to any and all other remedies available hereunder or at law or in equity. If an Event of Default has occurred and is continuing, the non-defaulting party shall have the right, by written notice to the defaulting party, to designate a day, no earlier than the day such notice is given and no later than 15 days after such notice is given, as an early termination date for this Agreement and all services and deliveries hereunder. Participant acknowledges and agrees that in the event of a suspension or termination of services as permitted by this Section, MEAN shall not be responsible for any penalties or charges incurred by the Participant arising out of or in connection with the suspension or termination of services including without limitation imbalance/Real Time charges, fees and charges for transmission, ancillary services, applicable ISO or RTO fees and charges, taxes, and any applicable surcharges.

### **Section 14. Indemnification; Limitation of Liability**

14.01. Notwithstanding any other provision of this Agreement and subject to the delineated limitation of liability set forth in Exhibit A, MEAN's total liability to Participant for any loss or damage, including, but not limited to, special and/or consequential damages arising out of or in connection with the performance of services or any other cause shall not exceed the scheduling fee compensation (excluding amounts paid for energy, fees and charges for transmission, ancillary services, Auction Revenue Rights, Transmission Congestion Rights, applicable BHBE and ISO or RTO fees and charges, taxes, and any applicable surcharges or penalties) received by MEAN from Participant under this Agreement during the preceding twelve

(12) months, and Participant hereby releases and will hold harmless MEAN from any liability above such amount. Participant further agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless MEAN and its officers, employees and agents from and against all claims, damages, losses and expenses, direct or indirect, or consequential damages including, but not limited to, attorney's fees arising out of or resulting from the performance of MEAN's services hereunder.

## **Section 15. General**

15.01. The Participant shall not sell at wholesale any of the electric energy and power delivered to it hereunder to any purchaser from the Participant for resale by that purchaser, unless such resale is specifically approved in writing by MEAN. The Participant agrees that it will not use or permit to be used any power purchased from MEAN in any manner or for any purpose which would cause interest on any bonds to be subject to federal income taxation; this prohibition shall include contracts between the Participant and certain nonexempt persons or corporate bodies for the sale of power and energy.

15.02. No assignment or transfer of this Agreement may be made except in accordance with the ERPA, provided, however that it is recognized that MEAN may assign its rights and interests in this Agreement to the extent necessary to accomplish borrowing from time to time by MEAN, all upon the terms and conditions specified by the Management Committee.

15.03. It is recognized and agreed that this constitutes an agreement and contract between the Participant and MEAN within the meaning of Sections 2.04 and 2.05 of the ERPA.

15.04. Terms used herein and not otherwise defined shall have the same meaning ascribed thereto in the ERPA.

15.05. The Laws of the State of Nebraska shall apply to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the Participant and MEAN have caused this Supplemental Agreement for Firm Power Interchange Service to be executed by these duly authorized officers, the day and year shown below.

**MUNICIPAL ENERGY AGENCY OF  
NEBRASKA**

**CITY OF GILLETTE, WYOMING**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Exhibit A, NERC Assistance  
To  
Supplemental Agreement for Firm Power Interchange Service  
Between  
Municipal Energy Agency of Nebraska  
And  
City of Gillette, Wyoming

Pursuant to the Supplemental Agreement for Firm Power Interchange Service dated effective September 1, 2014 (Agreement) between the Municipal Energy Agency of Nebraska (MEAN) and the City of Gillette, Wyoming (Participant):

MEAN will use reasonable efforts to provide the following services to Participant:

1. Resource Planning (RP) functions as required by NERC and limited as indicated below. MEAN will coordinate with BHBE to provide data to Western Electricity Coordinating Council (WECC) pursuant to NERC Reliability Standard MOD-017-0.1 (Aggregated Actual and Forecast Demands and Net Energy for Load) excluding data required pursuant to R1.1 (integrated hourly demands in megawatts (MW) for the prior year) of MOD-017-0.1. MEAN will perform this function for the portion of Participant's load served by MEAN and will coordinate with BHBE to perform this function for the Participant's WAPA-LAP allocation. It is the intent of the Parties that BHBE will provide data to WECC pursuant to NERC Reliability Standard MOD-017-0.1 on behalf of the Participant for all other Participant resources.

It is the intent of the Parties that BHBE will perform the RP functions on behalf of the Participant for NERC Reliability Standard MOD-010-0. MEAN will perform such functions in the event BHBE cannot or does not provide such services, subject to the terms of this Exhibit A including without limitation the provisions below regarding Limitation of Liability and Indemnification.

2. Purchasing-Selling Entity functions as required by NERC for the portion of Participant's load served by MEAN and for the Participant's WAPA-LAP allocation

The parties acknowledge that the NERC Standards naming convention may change from time to time and that services described in this Exhibit shall continue with respect to the applicable successor NERC Standards unless MEAN elects to terminate this Exhibit by providing thirty (30) days advance written notice to Participant. The parties further acknowledge that MEAN's performance of PSE functions on behalf of Participant shall terminate in the event such PSE functions are no longer required by NERC.

Limitation of Liability and Indemnification: MEAN's services are contingent upon MEAN receiving all requested data from Participant as soon as practicable after MEAN's request. MEAN is not responsible for any damages resulting from Participant's failure to timely provide the necessary data to MEAN for these submissions. Participant agrees to bear total responsibility for problems with the submissions which arise because of omissions or technical inaccuracies or missing data which Participant provides or fails to timely provide to MEAN. Notwithstanding any other provision of this Exhibit or the Agreement, MEAN's total liability to Participant for any loss or damage arising out of this Exhibit, including, but not limited to, special and/or consequential damages arising out of or in connection with the performance of services or any other cause shall not exceed \$5,000.00.

Terms used but not defined in this Exhibit shall have the meaning ascribed thereto in the Agreement.

This Exhibit may be modified from time to time in accordance with the Agreement.

All other terms and conditions for this arrangement will be governed by the Agreement and the ERPA between MEAN and Participant.