

**Amended and Restated Supplemental Agreement
For
Wind-Generated Energy Purchase
Between
Municipal Energy Agency of Nebraska
And
The City of Gillette, Wyoming**

This Amended and Restated Supplemental Agreement for Wind-Generated Energy Purchase (“Agreement”), pursuant to City’s effective firm power Service Schedule of the Electrical Resources Pooling Agreement (“ERPA”), is dated and made between the Municipal Energy Agency of Nebraska, an agency and political subdivision of the State of Nebraska (“MEAN”), and the City of Gillette, Wyoming (“City”) on this ____ day of _____, 2014. MEAN and City are sometimes referred to collectively as the “Parties” and individually as “Party”.

WHEREAS, City is a municipal corporation created under the laws of the State of Wyoming; and

WHEREAS, City and MEAN have entered into an Electrical Resources Pooling Agreement and a Service Schedule Agreement for firm power service, pursuant to which MEAN is to acquire and deliver to City all of City’s electrical energy requirements in excess of City’s existing owned or contracted resources; and

WHEREAS, City has requested MEAN to provide to City wind-generated electrical energy as part of City’s total electrical energy requirements; and

WHEREAS, due to unique circumstances affecting the sale of wind-generated electrical energy, the Parties desire to agree on certain contractual terms and conditions in addition to those that normally attend the sale of the electrical energy by MEAN to City; and

WHEREAS, City understands and acknowledges that the energy output from a wind turbine is weather sensitive and speculative in nature and, therefore, it is likely that MEAN may incur scheduling and/or delivery imbalance penalties and surcharges regarding the delivery of such energy to City; and

WHEREAS, MEAN has acquired, and may continue to acquire, wind generation resources to generate and deliver electrical energy for the benefit of MEAN participants and other regional suppliers; and

WHEREAS, MEAN has acquired, and may continue to acquire under certain circumstances as provided in this Agreement, the rights to environmental attributes which may be used to serve MEAN’s obligations hereunder.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. Representation and Warranties.

- A. Within thirty (30) days of execution of this Agreement, City shall provide an opinion of legal counsel that this Agreement has been duly authorized, executed and delivered by City and that all financial obligations undertaken or assumed by City, in connection herewith, are valid and enforceable against City in accordance with their terms.

2. Obligations of the Parties.

- A. MEAN shall generate or cause to be generated wind-generated electrical energy, or, as permitted by this paragraph, MEAN shall generate or cause to be generated electrical energy and shall acquire equivalent amounts of Environmental Attributes, as defined below (“Contract Wind Energy”) in amounts as shown in Exhibit A attached to and made part of this Agreement and shall cause to be delivered to City equivalent amounts of electrical energy. Exhibit A may be modified from time to time upon mutual agreement of the Parties. In the event that in any year the energy generated by the sources listed on Exhibit D hereto is not sufficient to allow MEAN to fulfill its contractual obligations for such year regarding sales of wind-generated electrical energy from the sources in the MEAN Wind Resource Pool, for reasons including but not limited to events of force majeure, MEAN shall be permitted to acquire Environmental Attributes to fulfill its obligations under this Agreement for such year as described above. MEAN agrees not to enter into this Agreement with the sole intention of fulfilling this contractual obligation by purchasing Environmental Attributes. For any year in which MEAN purchases Environmental Attributes to fulfill its obligations hereunder, MEAN shall provide City with written notification of such purchase. Such notification shall state the amount of energy generated by the MEAN Wind Resource Pool for the applicable period of time, the amount of Environmental Attributes purchased to fulfill MEAN’s contractual obligations to all participants in the MEAN Wind Resource Pool for the applicable time period, and the justification for such purchase.
- B. The generation source(s) of Contract Wind Energy may include but not be limited to the sources listed on Exhibit D, attached hereto and made part of this Agreement (collectively, the “MEAN Wind Resource Pool”). Upon approval of a modification to the MEAN Wind Resource Pool, a revised Exhibit D shall be issued by MEAN and shall be deemed part of this Agreement.
- C. For purposes of this Agreement, “Environmental Attributes” shall mean with respect to a specified quantity of the wind-generated electricity, the right of a purchaser of such Environmental Attributes to claim, under applicable energy

generation disclosure and tracking laws and regulations, all of the non-energy attributes and value associated with the generation of such renewable power, including: any green tags, tradable renewable certificates or similar renewable energy certificates, credits, values or premiums associated with such renewable energy generation; any output-based incentive, allocation, credit, value, set-aside allowance or non-energy attribute relating to or arising out of the production of renewable wind energy generation, and emission and greenhouse gas reductions; whether any of the foregoing arises pursuant to existing or future energy generation disclosure and tracking laws and regulations, or existing or future certification, certification program, trading market or exchange; provided, however, that for purposes of this Agreement, Environmental Attributes shall specifically exclude any and all state and federal production tax credits, investment tax credits and any other tax credits which are or will be generated by facilities within the MEAN Wind Resource Pool or by other facilities from which the electricity and Environmental Attributes provided hereunder are generated. The Parties agree that the Environmental Attributes are not currently certified, and it is not anticipated that they will be certified by MEAN at any time. MEAN represents that the amount of Environmental Attributes which MEAN enters into bilateral agreements to sell from the MEAN Wind Resource Pool generation in each calendar year during the term of this Agreement shall not exceed the sum of (i) actual energy production by the MEAN Wind Resource Pool in such calendar year, plus (ii) Environmental Attributes procured by MEAN in such calendar year in accordance with this Agreement.

It is expressly agreed that City shall own the Environmental Attributes, as defined above, of the Contract Wind Energy actually generated and sold to City pursuant to this Agreement. Subject to City's right of recall as provided in Section 2.D. below, City hereby assigns to MEAN all rights to the Environmental Attributes, to be effective as provided in this Section 2.C., including but not limited to the right to transfer and sell from time to time the Environmental Attributes or any portion thereof to any other MEAN participant or third party(ies) as approved by the MEAN Management Committee or Board of Directors. This assignment shall take effect upon written notice to City by MEAN of the sale or transfer, or the commitment to such sale or transfer, of Environmental Attributes by MEAN and shall be effective only as to the portion of Environmental Attributes actually sold or transferred, or committed to be sold or transferred, by MEAN.

- i. Financial or billing credit(s) for any net revenue from approved transfers and sales by MEAN of the Environmental Attributes or any portion thereof shall be given to City in the manner and amount approved by the MEAN Management Committee or Board of Directors.
- ii. City acknowledges and agrees that, subject to City's right of recall as provided in Section 2.D. below, City shall have no authority to transfer

any portion of the Environmental Attributes to any person or entity other than MEAN.

- iii. City further acknowledges and agrees that City shall have no authority to market or report as renewable electricity, or to include as renewable electricity when calculating City's product or portfolio resource mix, any of the Contract Wind Energy from which the Environmental Attributes sold, transferred, or committed to be sold or transferred, by MEAN were derived.

D. City may request, upon ninety (90) days advance written notice, that MEAN release back to the City rights to Environmental Attributes not already sold or transferred, or committed to be sold or transferred, by MEAN, and rights to Environmental Attributes of Contract Wind Energy generated thereafter during the term of this Agreement, and MEAN shall release such rights, except the right to sell or transfer the Environmental Attributes to a third party other than City's retail customers, provided at least one of the following two conditions is met:

- i. That Environmental Attributes are required by City to meet a then-current local, state or federal renewable portfolio standard ("RPS") and that City agrees to apply the Environmental Attributes toward the RPS; or
- ii. MEAN receives a certified copy of duly held proceedings of the governing body of City declaring that City shall retain the Environmental Attributes of the Contract Wind Energy.

E. MEAN shall use its available resources and its best efforts to prevent any scheduling, imbalancing, or distribution penalties or surcharges from being incurred in the delivery of the wind-generated electrical energy to City.

F. City shall receive energy amounts equivalent to the Contract Wind Energy for the term of this Agreement and City shall pay all associated monthly charges, as described in Section 3 below.

3. Charges.

A. City agrees to pay all monthly charges, as set forth in Exhibit B of this Agreement, associated with generation and delivery of the Contract Wind Energy as set forth in Exhibit A of this Agreement. The charges and costs are subject to change from time to time. Written notice of changes to the wind energy output charge, listed on Exhibit B of this Agreement, shall be provided by issuance of a revised Exhibit B to City within thirty (30) days of approval by the MEAN Management Committee or the MEAN Board of Directors.

- B. The Parties agree, for the term of this Agreement, that the monthly Contract Wind Energy, as set forth in Exhibit A of this Agreement, will be subtracted from the City's monthly energy requirement to be supplied by MEAN as described in Section 2.02(i) of the Service Schedule Agreement before any other energy rate calculations are performed under City's Service Schedule Agreement for firm power service, which is attached hereto as Exhibit C of this Agreement. There shall be no capacity credit applied for the wind resource since it is considered a non-firm resource.
4. **Billing and Payment.** The terms and conditions for billing and payment set forth in City's Service Schedule Agreement shall apply to charges under this Agreement.
5. **Term of Agreement.**
- A. This Agreement shall become effective on, and purchase of wind-generated energy by City hereunder shall begin as of September 1, 2014.
 - B. This Agreement, and purchase of wind-generated energy by City hereunder, shall continue so long as City has an effective Service Schedule Agreement for firm power service with MEAN, unless sooner terminated in accordance with the terms below in this Section 5. In the event City converts its ERPA participation from one firm power Service Schedule to another firm power Service Schedule, this Agreement shall continue and become supplemental to the subsequent Service Schedule, or in the case of Service Schedule J, to the Supplemental Agreement for Firm Power Interchange Service. At such time, MEAN and City shall execute an addendum to the subsequent Service Schedule Agreement for firm power service to incorporate this supplemental Agreement. At that time and as necessary, MEAN shall issue a revised Exhibit A, Exhibit B and Exhibit C of this Agreement.
 - C. If at any time, through City's termination of its Service Schedule Agreement or otherwise, City ceases to purchase firm power from MEAN, this Agreement shall terminate, provided that because this Agreement is supplemental to City's firm power Service Schedule with MEAN, written notice of intent by City to terminate purchase of firm power from MEAN, which notice has been given in satisfaction of the notice requirements of City's firm power Service Schedule, shall be deemed to be adequate notice of intent to terminate this Agreement.
 - D. MEAN shall have the right but not the obligation, upon thirty (30) days advance written notice to City, to terminate this Agreement or reduce the Contract Wind Energy amounts and issue a revised Exhibit A, in the event that one or more of the following occurs:
 - i. One or more of the facilities or generating units within the MEAN Wind Resource Pool permanently ceases commercial operation or is reduced in available energy output, as declared by the owner(s) of such

facility (including MEAN, in its sole discretion, for the Kimball Wind Project and all other wind generation facilities for which MEAN is the owner); or

- ii. The Participation Power Agreement (as defined in Exhibit D), or other agreement by which MEAN participates in a MEAN Wind Resource Pool facility or by which MEAN purchases output from a MEAN Wind Resource Pool facility, expires, is reduced in available energy output, or is terminated in accordance with the terms thereof.

In the event MEAN chooses to terminate this Agreement pursuant to this Section 5.D., the obligation of City to purchase Contract Wind Energy pursuant to this Agreement shall terminate on the date specified in the official notice of termination from MEAN, and this Agreement shall terminate upon issuance of the final invoice by MEAN and full payment by City.

6. **Relationship to Other Agreements.** Termination or expiration of this Agreement shall not impair, amend, or change City's then-current Service Schedule Agreement for firm power service, and nothing in this Agreement shall limit the rights of MEAN to enforce such Service Schedule Agreement.
7. **Severability.** If any provision of this Agreement is determined by any court or regulatory body having jurisdiction over this Agreement to be invalid or unenforceable, then it is the intention of the Parties that in lieu of each such invalid or unenforceable provision, there be added as part of this Agreement a provision as similar in terms as possible to such invalid or unenforceable provision. The remaining portions of the Agreement shall not be affected thereby and shall remain in full force and effect.
8. **Limitation of Liability.** In no event shall either Party be liable to the other Party for indirect, special, incidental, or consequential damages, including but not limited to the loss of revenues or profits, cost of substitute services, cost of purchased power, loss of opportunity, loss of goodwill, loss of data, governmental sanctions or penalties or claims of third parties, whether such liabilities arise as a result of breach of contract, warranty, indemnity, tort, negligence, strict liability or otherwise; and MEAN and City hereby release each other from any such liabilities. Further, in no event shall MEAN be liable to City for any public claims or marketing efforts made by a person or entity not a party to this Agreement (including without limitation the political subdivisions participating in MEAN) regarding the purchase or ownership of the Environmental Attributes.
9. **Integration Clause.** This Agreement, the attached Exhibits, and the ERPA constitute the complete agreement of the Parties relating to the matter specified in this Agreement and supersede all prior representations or agreements, whether oral or written, with respect to such matters, including without limitation that certain Amended and Restated Supplemental Agreement for Wind-Generated Energy

Purchase executed as of July 17, 2006 between the Parties, which shall terminate on the effective date of this Agreement. Except as provided in this Agreement, no modification of this Agreement shall be binding upon either Party unless agreed to in writing and signed by both Parties.

10. **Waiver.** Any waiver at any time by either Party to the Agreement of its rights with respect to a default or any other matter arising under or in connection with the Agreement shall not be deemed a waiver with respect to any subsequent default or matter arising under or in connection with the Agreement.
11. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the substantive and procedural laws of the State of Nebraska.
12. **Regulatory Approvals.** This Agreement may be subject to the regulatory powers of any state or federal agency having jurisdiction. Each Party shall use its best efforts and shall cooperate with the other Party to obtain from all such state and federal authorities as may have jurisdiction, all authorizations, approvals, and orders to the extent required by law in order to enable them to validly enter into this Agreement and to perform all their obligations hereunder.
13. **Force Majeure.** No Party shall be liable for any failure to perform its obligations in connection with this Agreement, where such failure results from any act of God or other causes beyond such Party's reasonable control (including, without limitation, war, terrorism, extreme weather conditions, substantial unplanned maintenance activities, strikes, fires, embargos, actions of civil or military enforcement authorities) and which, by the exercise of due diligence, such Party is unable to prevent or overcome. Any Party that becomes unable to perform its obligations under this Agreement because of any such event shall immediately give notice to the other Party of the occurrence of such an event, and shall promptly notify the other Party of the anticipated duration of such an event.
14. **Changes in Regulations.** Should changes in legislation or regulation, either state or federal, make performance by either Party under the Agreement commercially impracticable or impractical, the Parties agree that they will renegotiate the terms of the Agreement as they have been affected by such change in regulation or legislation.
15. **Notices.** All notices required or permitted to be given with respect to this Agreement shall be given by (a) mailing the same postage prepaid, or (b) given by facsimile or by courier, to the addressee Party at such Party's address as set forth below. Either Party may change its address for the purpose of notice hereunder by giving the other Party no less than five (5) days prior written notice of such new address in accordance with the preceding provisions.

To MEAN: **Municipal Energy Agency of Nebraska**
 ATTN: Executive Director
 8377 Glynoaks Drive
 Lincoln, Nebraska 68516
 (402) 474-4759 voice
 (402) 474-0473 facsimile

To City: **The City of Gillette**
 ATTN:

voice
facsimile

16. **Assignment.** Neither this Agreement nor the rights or obligations of the Parties under this Agreement may be assigned or transferred by either Party without the prior written approval of the other Party, which approval shall not be unreasonably withheld; provided, any assignment or transfer, whether by merger or otherwise, to a Party's affiliate or successor in interest shall be permitted without prior consent if such affiliate or successor in interest assumes this Agreement in total and the assignor provides notice to the other Party at least thirty (30) days prior to the assignment or transfer.
17. **Arbitration.** If a dispute between the Parties should arise under this Agreement, either Party may call for submission of the dispute to arbitration, which call shall be binding upon the other Party. The arbitration shall be governed by the Commercial Industry Rules of the American Arbitration Association (or the rules and practice of a similar organization if the American Arbitration Association should not then exist), with the proviso that the arbitration panel shall, in all events, consist of three (3) arbitrators, one chosen by each of the Parties and the third chosen by those two (2) arbitrators. The Parties agree that once the three (3) arbitrators are selected that they shall at all times thereafter function as neutral arbitrators.

[SIGNATURE PAGE FOLLOWING.]

IN WITNESS WHEREOF, the Parties hereto have caused this Amended and Restated Supplemental Agreement for Wind-Generated Energy Purchase to be executed by their duly authorized representatives as of the date and year first above written.

**MUNICIPAL ENERGY AGENCY
OF NEBRASKA**

CITY OF GILLETTE, WYOMING

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

AMENDED AND RESTATED SUPPLEMENTAL AGREEMENT
FOR WIND-GENERATED ENERGY PURCHASE
BETWEEN
MUNICIPAL ENERGY AGENCY OF NEBRASKA
AND
CITY OF GILLETTE, WYOMING

EXHIBIT A

Contract Wind Energy

Month	kWh
January	473,000
February	374,000
March	463,000
April	423,000
May	366,000
June	299,000
July	270,000
August	261,000
September	345,000
October	421,000
November	464,000
December	515,000
Annual Total	4,674,000

Effective date of this Exhibit A: September 1, 2014

WHEREAS, the Parties have duly executed this Exhibit A to the Amended and Restated Supplemental Agreement for Wind-Generated Energy Purchase as of the date and year shown below.

**MUNICIPAL ENERGY AGENCY
OF NEBRASKA**

CITY OF GILLETTE, WYOMING

By:_____

By:_____

Title:_____

Title:_____

Date:_____

Date:_____

AMENDED AND RESTATED SUPPLEMENTAL AGREEMENT
FOR WIND-GENERATED ENERGY PURCHASE

EXHIBIT B

Monthly Charges:

1. Wind Energy Output: \$0.05100/kWh, subject to change from time to time by action of the MEAN Management Committee or the MEAN Board of Directors.
 2. Transmission Charges: Charged at the City's transmission provider's then-current transmission rate.
 3. Other Charges: Other charges shall be those directly attributable to the MEAN Wind Resource Pool, including but not limited to such things as energy imbalance charges, ancillary service charges, and scheduling fees. Other charges will be assessed at the transmission provider's then-current rates.
 4. Adjustments: The rates and charges shall be adjusted to reflect the impact of any governmental imposition, such as changes in or additions to sales tax, property tax, energy use tax or other governmental or regulatory fees, which are adopted, implemented or enforced after the execution of the Amended and Restated Supplemental Agreement for Wind-Generated Energy Purchase or which occur as a result of a change after the execution of the Amended and Restated Supplemental Agreement for Wind-Generated Energy Purchase in the interpretation or enforcement by the governmental or regulatory body of an existing governmental imposition.
- Point(s) of Delivery:** One or more of the resources in the MEAN Wind Resource Pool

Effective date of this Exhibit B: April 1, 2011
Supersedes Exhibit B dated effective: April 1, 2010

AMENDED AND RESTATED SUPPLEMENTAL AGREEMENT
FOR WIND-GENERATED ENERGY PURCHASE

EXHIBIT C

Copy of the Service Schedule Agreement for firm power service between MEAN and City is hereby attached.

AMENDED AND RESTATED SUPPLEMENTAL AGREEMENT
FOR WIND-GENERATED ENERGY PURCHASE

REVISED EXHIBIT D

MEAN Wind Resource Pool Facilities List

Effective as of January 19, 2012

- i. Wind generation facility near Kimball, Nebraska, which MEAN installed, operates and maintains (“Kimball Wind Project”);
- ii. Wind generation facility near Ainsworth, Nebraska (“Ainsworth Wind Facility”), in which MEAN participates pursuant to the Participation Power Agreement executed as of October 26, 2004, between MEAN and the Nebraska Public Power District;
- iii. Wind generation facility near Wessington Springs, South Dakota (“Wessington Springs Wind Project”), from which MEAN purchases output pursuant to an agreement with Heartland Consumers Power District;
- iv. Wind generation facility near Bloomfield, Nebraska (“Elkhorn Ridge Wind Plant”), from which MEAN purchases output pursuant to an agreement with Nebraska Public Power District;
- v. Wind generation facility near Petersburg, Nebraska (“Laredo Ridge Wind Plant”), from which MEAN purchases or will purchase output pursuant to an agreement with Nebraska Public Power District;
- vi. Power Sales Agreement with the Nebraska Public Power District for 10% (approximately 4 MW) of the energy production that the Nebraska Public Power District purchases from the Crofton Bluffs Wind, LLC, Plant; and
- vii. Any other wind generation resource(s) which MEAN designates as part of the MEAN Wind Resource Pool and which MEAN acquires through ownership or in which MEAN participates or purchases output for the benefit of MEAN participants or other regional suppliers.

The composition of the MEAN Wind Resource Pool is subject to change from time to time upon action by the MEAN Board of Directors or the MEAN Management Committee in accordance with the Amended and Restated Supplemental Agreement for Wind-Generated Energy Purchase.