

**AGREEMENT FOR
FINANCIAL PLAN, COST OF SERVICE
AND
RATE DESIGN STUDY
FOR WASTEWATER RATES**

This Agreement for a Financial Plan, Cost of Service and Rate Design Study for Wastewater Rates is made this _____ day of _____, 20____, between the Nebraska Municipal Power Pool, a non-profit corporation of the State of Nebraska, hereinafter called "NMPP," and the City of Gillette, Wyoming, hereinafter called "Municipality."

RECITALS:

NMPP, under the provisions of its Articles of Incorporation, has the authority to enter into and perform contracts with its members.

NMPP has initiated a Financial Plan, Cost of Service and Rate Design Study (Rate Study) designed to provide assistance in certain technical areas related to calculating rates for municipal utility systems for all customer classes and to provide ongoing rate support.

Municipality is a member of NMPP and recognizes the importance of completing a Rate Study.

In consideration of the mutual promises contained herein, NMPP and Municipality agree as follows:

1. TERM

1.1 This Agreement shall become effective upon execution. The term of this Agreement shall begin on the date of execution and terminate two (2) years after the date of the delivery of the documents referred to in Section 2.1.3.6.

2. SCOPE OF SERVICES TO BE PROVIDED AND RESPONSIBILITIES OF THE PARTIES

2.1 Responsibilities of NMPP

2.1.1 Questions regarding services under this Agreement should be directed to NMPP's Director of Retail Utility Services and Member Relations, or to such other person as may be designated by NMPP from time to time. NMPP will complete the scope of work of this Agreement typically within ninety (90) days of the receipt of all data requested by NMPP. Such data must be accurate and in a format easily usable by NMPP in order for the scope of work to be done on time. Reports and other document

presentation are delivered to the Municipality as outlined in Section 2.1.3.6.

2.1.2 The Rate Study computer models shall be retained by and become the property of NMPP. The Municipality will receive all tables and charts from the model and may use the Rate Study findings and recommendations at Municipality's sole risk and without liability or legal exposure to NMPP.

2.1.3 The Rate Study will include completion by NMPP of the following tasks:

1. Data Collection – NMPP will request data, including but not limited to, customer rate class usage by rate block and revenue billed, and audited and budgeted assets including financial and operating data for the utility as necessary to prepare the Rate Study. This data is to be in an easy to read and organized format. To the extent the requested data is not readily available, NMPP and Municipality will develop and agree upon estimates for the missing data.
 - A. As requested by Municipality, NMPP will use FY2017 audit data to perform the Rate Study.
2. Develop a Financial Model – NMPP will develop a five-year Financial pro forma model that will provide net-income, target return on facilities investments, minimum cash reserve policy, capital improvements, borrowing, and recommend future rate increases to achieve financial targets.
3. Calculate Revenue Requirements for Test Year to be used in Rate Study – NMPP will calculate Municipality's revenue requirements in a financial pro forma to determine cost of service rate elements to be used in future rate design.
4. Functional Costs – NMPP will assign a function to each expense and each non-retail revenue including, but not limited to, generation, transmission and customer service, as applicable. The items will also be assigned to a sub-category of a function as necessary.

Expenses will be allocated to the various cost classifications based on methodologies that are generally applied to municipal utilities. These allocations will enable NMPP to separately identify and establish cost elements for each rate class provided by the Municipality, including, but not limited to, commodity generation or treatment, transmission, distribution, and customer service and accounting, as applicable.

5. Rate Design – NMPP will design rates using cost elements determined for one or two years to recover adequate revenue for the system and move classes toward cost of service revenue recovery.

NMPP will work with Municipality to develop rates that maintain the financial integrity of each municipal utility system being studied. New rate schedules and ordinances will be drafted by NMPP for approval by Municipality.

6. Present Findings – (a) NMPP will typically within sixty (60) days of receipt of sound data provide a Preliminary Executive Summary, which will present the Financial Plan, first to the Municipality's staff and then to rate making authority. Such presentations will be typically a combination of electronic mail and telephone and/or video conference presentation. An in-person presentation by NMPP may be scheduled as is agreed to by both Parties. (b) The Final Report including draft rate approval documents will be completed by NMPP typically thirty (30) days after direction is provided to NMPP regarding the level of rate adjustments desired as directed by either Municipality's staff or the rate making authority. If additional trips are necessary for (a) or (b) above or other purposes, the trips will be billed on a time and expense basis.

- A. As requested by Municipality, NMPP will present the final report by the end of January 2018.
- B. As requested by Municipality, NMPP will provide Municipality with editable support documents.

7. Support – As a part of this Agreement, upon request NMPP will provide to Municipality the following support:

- A. Review of up to five (5) large customer bills for accuracy.
- B. Up to ten (10) hours of telephone support to answer rate application questions from Municipality.

- 2.1.4 The Parties hereby agree that the Rate Study to be provided by NMPP to Municipality pursuant to this Agreement shall include only the following study(ies) as indicated below:

- ☒ Electric study
- ☐ Water study
- ☐ Wastewater study
- ☐ Water and Wastewater study
- ☐ Trash study
- ☐ Natural Gas study

2.2 Responsibilities of Municipality

- 2.2.1 Municipality shall furnish to NMPP, as requested by NMPP, available cost of serve studies, audited financial reports and other data; obtain or authorize NMPP to obtain or provide additional reports and data as required; and furnish to NMPP any required services of outside third parties. NMPP shall be entitled to use and rely upon all information and services provided by or on behalf of Municipality as accurate without independent verification in the completion of the services provided hereunder.
- 2.2.2 Municipality shall designate, in writing, a person with authority to act on Municipality's behalf on all matters concerning the services provided by NMPP under this Agreement.
- 2.2.3 Municipality shall perform the responsibilities outlined in this Section 2 in a timely manner so as not to delay the services of NMPP. A delay in Municipality's performance of more than three (3) months for any specific responsibility of Municipality shall be deemed an event of default, and NMPP shall have the right to suspend services or terminate this Agreement in the event such default is not cured within ten (10) days after written notice to Municipality.
- 2.2.4 Municipality shall bear all costs associated with the completion of all requirements under this Section 2.

3. LIMITATION OF LIABILITY AND INDEMNIFICATIONS

3.1 Notwithstanding any other provision of this Agreement, NMPP's total liability to Municipality 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 compensation received by NMPP from Municipality under this Agreement, and Municipality hereby releases and will hold harmless NMPP from any liability above such amount. Municipality further agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless NMPP 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 NMPP's services hereunder. Notwithstanding the above, nothing in this Agreement shall be read to constitute or to require a waiver of any rights of the City under the doctrine of sovereign immunity, or a waiver of its immunity under the Wyoming Governmental Claims Act, W.S. 1 39 101 *et seq.*

3.2 NMPP shall exercise the same degree of care, skill, and diligence in the performance of services as is ordinarily possessed and exercised by a professional consultant under similar circumstances. **NO WARRANTY, EXPRESSED OR IMPLIED, IS INCLUDED IN THIS AGREEMENT OR IN ANY DRAWING, SPECIFICATION, REPORT OR OPINION PRODUCED PURSUANT TO THIS AGREEMENT.**

3.3 All express representations, indemnifications or limitations of liability included in this Agreement will survive its completion or termination for any reason.

4. FEES AND PAYMENT

4.1 Municipality shall pay NMPP for performance of the services described in Section 2.1 as follows:

Total Fee for Section 2.1 Services	Current Municipal Energy Agency of Nebraska (“MEAN”) Funding (subject to change per Section 4.7)	Municipality eligible for MEAN funding as of date of execution of the Agreement	Total Fee Due from Municipality for Section 2.1 Services
\$11,700.00	50% ¹	Yes <input checked="" type="radio"/> No	\$11,700.00 ¹

¹For qualifying participants of MEAN, the MEAN Funding amount and the Total Fee Due will be automatically adjusted in accordance with Section 4.7 in the event MEAN modifies or eliminates funding for the Rate Study service.

4.2 Additional services not provided for in the scope of services set forth herein shall be provided only upon separate mutual written agreement between the Parties or upon modification of the scope of services in accordance with Section 4.5 of this Agreement. Expenses will be those incurred in completing the services at the cost or fee associated with the expense.

4.3 The fees established in this Section 4 may be reviewed and updated by NMPP from time to time in accordance with Section 4.5 of this Agreement.

4.4 Fifty percent (50%) of the total fee due from Municipality for Section 2.1 services will be invoiced after NMPP presents the Preliminary Executive Summary, including the Financial Plan, to the Municipality’s staff and/or the rate making authority, with the balance invoiced after delivery of the Final report and Rate Ordinances. For any additional services provided under Section 4.2, and for any additional trips needed pursuant to Section 2.1.3.6, bills for services shall be rendered upon completion of each such additional service. Each bill shall be paid by Municipality within thirty (30) days after the date the bill is rendered. If any bill is not paid within thirty (30) days, it shall be deemed delinquent and interest shall accrue at the rate of 1.25% per month, or fraction thereof, on any unpaid amount from the date the bill becomes delinquent until the date on which payment is made. This Agreement may be terminated by NMPP for non-payment by Municipality.

4.5 Notwithstanding any provision to the contrary in this Agreement, NMPP shall have the right to modify any of the terms and conditions of this Agreement, including but not limited to the scope of services and fees for participation, at any time, by providing written notice to

Municipality. Municipality shall have thirty (30) days from the issuance of such notice to inform NMPP in writing of Municipality's objection to modification of the terms and conditions. Upon receipt by NMPP of Municipality's sufficient notice of objection, NMPP shall cease providing services to Municipality under this Agreement and this Agreement shall automatically terminate; provided, however, that such termination shall not take effect unless and until Municipality has made complete payment for any outstanding amount due and for services provided pursuant to this Agreement prior to receipt of Municipality's notice of objection.

4.6 If at any time during the term of this Agreement Municipality's membership in NMPP is withdrawn or terminated for any reason, the fees for services provided to Municipality pursuant to this Agreement shall automatically convert to the non-member fee, where such a fee is applicable, which fee may be modified from time to time by NMPP, and NMPP shall have the right to terminate this Agreement upon written notice at any time to Municipality.

4.7 For qualifying participants of the Municipal Energy Agency of Nebraska (MEAN), the Board of Directors of MEAN has approved partial funding of the cost of Service Schedule M and K participants to utilize the Section 2.1 services under this Agreement. If this funding is applicable to Municipality as of the date of execution of this Agreement, this amount has been reflected in Section 4.1. Funding is subject to change or elimination without notice from time to time by action of the MEAN Board of Directors. In such event, the amount due from Municipality will be adjusted accordingly and any balance due will be billed by NMPP to Municipality.

5. USE OF ELECTRONIC MEDIA

5.1 Copies of documents that may be relied upon by Municipality are limited to the printed copies, also known as hard copies, which are signed by NMPP. Files in electronic media format of text, data, graphics, or of other types that are furnished by NMPP to Municipality are only for the convenience of Municipality. Any conclusion or information obtained or derived from such electronic files will be used at Municipality's sole risk.

5.2 When transferring documents in electronic media format, NMPP makes no representations as to compatibility, usability, or readability of documents resulting from such transfer or from the use of software application packages, operating systems, or computer hardware differing from those used by NMPP at the beginning of services rendered.

5.3 If there is a discrepancy between the electronic files and the hard copies, the hard copies shall govern.

5.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the Party receiving electronic files agrees that it will perform acceptance tests or procedures within thirty (30) days, after which the receiving Party shall be deemed to have accepted the data thus transferred. Any errors reported by receiving Party to delivering Party within the thirty (30)-day acceptance period will be corrected by the delivering Party within sixty (60) days of such notification.

NMPP shall not be responsible to maintain documents stored in electronic media format after acceptance by Municipality.

6. GENERAL

6.1 Neither Party shall have the right to assign this Agreement without the consent, in writing, of the other Party.

6.2 This Agreement shall be governed by the laws of the State of Wyoming.

6.3 In no event shall any delay by any party in enforcing (in whole or in part) any provision of this Agreement be or be deemed to be a waiver thereof or a waiver of any other provision or shall in any way prejudice any right of that party under this Agreement. Any waiver in regard to the performance of this Agreement shall operate only if in writing and mutually agreed upon by each Party.

6.4 In the event any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

6.5 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than NMPP and Municipality.

6.6 Neither Party shall be liable to the other for any delay in the performance of its duties hereunder or for any loss or damage arising from uncontrollable forces including but not limited to fire, theft, storm, war, terrorism, power outage, regulatory action or any other force majeure that could not have been reasonably avoided by exercise of due diligence by the Parties. In the event of such a force majeure, the affected Party shall notify the other Party of the circumstances surrounding the force majeure and provide an estimate of delay time caused thereby. The affected Party shall use due diligence to remove such force majeure as soon as is reasonably practicable.

7. NOTICES

7.1 Any notice required under this Agreement will be in writing, addressed to the appropriate Party at its address on the signature page and given personally, or by mail postage prepaid, or by commercial courier service.

8. OTHER AGREEMENTS

8.1 This Agreement constitutes the entire agreement between the parties and supersedes any oral or written representations, understandings, proposals, or communications heretofore entered into by or on account of the parties and may not be changed, modified, or amended except in a writing signed by both parties.

9. INSURANCE

9.1 The applicable insurance obligations are as set forth on Exhibit A, attached hereto and made part of this Agreement.

WHEREAS, NMPP and Municipality have caused this Agreement for a Financial Plan, Cost of Service and Rate Design Study for Wastewater Rates to be duly executed by their authorized officers.

NEBRASKA MUNICIPAL POWER POOL

CITY OF GILLETTE, WYOMING

By:_____

By:_____

Title:_____

Title:_____

Date:_____

Date:_____

Address: 8377 Glynoaks Drive
Lincoln, NE 68516

Address: _____

EXHIBIT A

City of Gillette Consultant Insurance Obligations

In any contract between the City of Gillette and any professional service provider, hereinafter the Contractor or Consultant, the CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, his agents, representatives, employees, or subcontractors. With respect to General Liability, coverage should be maintained for a minimum of three (3) years after contract completion. CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

Minimum Scope and limit of Insurance

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 07 04 covering CGL on an “occurrence” basis, including products-completed operations, property damage, bodily injury, & personal injury, with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. The General Commercial General Liability shall be endorsed to include Employers’ Liability or Stop Gap coverage.

2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering any auto (Code 1) with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

3. **Workers’ Compensation** insurance as required by the State of Wyoming with Statutory Limits. The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONSULTANT, its employees, agents, and subcontractors

Other Insurance Provisions

1. **The CITY, its officers, officials, employees, and volunteers are to be covered as additional insureds** with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the CONSULTANT and with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT’S insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

2. For any claims related to this project, **the CONSULTANT's insurance coverage shall be primary insurance** as respects the CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.

3. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the CITY.

4 If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the CONSULTANT must purchase an extended period coverage for a minimum of three (3) years after completion of contract work.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII if admitted in the State of Wyoming. Insurance may be written by a non-admitted insurance company. A non-admitted company should have an A.M. Best rating of A:X or higher.

Verification of Coverage

CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the CITY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. A copy of the claims reporting requirements must be submitted to the CITY for review.

Waiver of Subrogation

CONSULTANT hereby grants to CITY a waiver of subrogation which any insurer may acquire against CITY, its officers, officials, employees, and volunteers, from CONSULTANT by virtue of the payment of any loss. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.