

## **CONSULTING SERVICES AGREEMENT**

**THIS AGREEMENT**, made as of the 24 day of September 2019, by and between GDS Associates, Inc. (“GDS Associates”), a corporation and validly existing under the laws of the State of Georgia and City of Grand Island, Nebraska (“Client”), and validly existing under the laws of the State of Nebraska.

### **WITNESSETH**

**WHEREAS**, GDS Associates is engaged in the business of providing professional engineering and general consulting services; and

**WHEREAS**, Client desires to retain the services of GDS Associates; and

**WHEREAS**, GDS Associates is willing to provide Client with certain consulting services, and Client is willing to accept such services, all upon the terms and conditions contained herein.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, the parties hereto hereby agree as follows:

### **1. SERVICES**

This Agreement shall be applicable, to all professional engineering, engineering consulting, and other consulting services performed for or on behalf of Client by GDS Associates (“Services”) as described in Exhibit A attached hereto and which is incorporated herein and made a part hereof.

### **2. TERM**

- (a) Except as otherwise provided herein, this Agreement is effective from the date first written above and shall remain in effect until the earlier of (i) termination in writing by either party or (ii) upon completion of the Services specified in Exhibit A and payment of

all amounts owing to GDS Associates for such Services but not later than three years from the effective date of this Agreement, unless extended by mutual agreement of Client and GDS.

- (b) (i) This Agreement may be terminated upon the receipt of thirty (30) days' written notice of such termination by either party from the other.
- (ii) In the event of any termination under this subparagraph (b), GDS Associates shall be compensated as provided herein for all Services rendered up to and including the date of receipt of notice of termination.

### **3. RESPONSIBILITIES OF CLIENT**

With regard to the Services, Client, without limitation, shall:

- (a) designate and authorize an officer or other agent of Client to act on Client's behalf in all matters reasonably related to the project;
- (b) provide GDS Associates with all criteria and necessary information;
- (c) furnish to GDS Associates all existing studies, reports, and other data available to Client pertinent to the project;
- (d) obtain for GDS Associates' use additional reports, data, or information as may be reasonably required by GDS Associates;
- (e) review and examine all Services provided by GDS Associates to Client and, when necessary, obtain counsel, whether legal or otherwise, in connection with decisions made pursuant to or collateral to such Services.

In performing Services hereunder, GDS Associates shall have the right to justifiably rely on any and all such studies, reports, data, and services provided to GDS Associates by or on behalf of Client.

#### **4. BREACH**

In the event either party hereto breaches any of the provisions of this Agreement, the non-breaching party at its option may give the breaching party written notice of such breach and shall allow the breaching party reasonable time to cure such breach. In the event such breach is not cured within said time, this Agreement shall terminate, and Client shall compensate GDS Associates for all Services performed or contracted for up to and including the date of the termination of this Agreement.

#### **5. COMPENSATION**

GDS Associates shall be compensated for Services in accordance with Exhibit B attached hereto and which is incorporated herein and made a part hereof.

#### **6. PAYMENT**

GDS Associates shall submit statements to Client for all charges and Services rendered by GDS Associates and for costs incurred by GDS Associates as provided in Exhibit B hereto. Client agrees to pay promptly to GDS Associates all amounts stated on each such statement. If payment is not received by GDS Associates within thirty (30) days after GDS Associates' delivery of such statement to Client by U.S. Mail and/or emailed or otherwise, the amounts due GDS Associates may include a monthly charge equal to the higher of: (a) the prime rate plus one percent (1%) divided by twelve (12); or (b) an amount equal to eighteen percent (18%) annually, one and one-half percent (1-1/2%) monthly. Such monthly charge shall accrue on all amounts due from said thirtieth (30th) day through the date on which such statement is paid in full; provided, however, that in no event shall such charge exceed the maximum legal rate allowable by law. Client understands and agrees that in the event of non-payment, GDS Associates may, after giving written notice to Client, suspend Services under this Agreement. The failure of GDS

Associates to impose any such charges or suspend any Services for any period of time shall not constitute a waiver of GDS Associates' right to do so at any future date.

In the event Client fails to pay GDS Associates all amounts which become due under this Agreement, or fails to perform any of its obligations hereunder, and GDS Associates refers such matter to an attorney, Client agrees to pay, in addition to any amounts due hereunder, any and all costs incurred by GDS Associates as a result of such action, including reasonable attorneys' fees.

In the event GDS Associates defaults under this Agreement, or fails to perform any of its obligations hereunder, and Client refers such matter to an attorney, GDS Associates agrees to pay, in addition to any damages caused their default, any and all costs incurred by Client as a result of such action, including reasonable attorneys' fees.

**7. DOCUMENTS, SOFTWARE, SYSTEMS, AND PROCESSES**

- (a) Unless otherwise provided Exhibit A, all documents provided by GDS Associates to Client pursuant to this Agreement are instruments of service with respect to a particular project and are not intended or represented to be suitable for reuse by Client or others. Client understands and agrees that any such reuse by Client without the written verification and authorization by GDS Associates of such reuse shall be at Client's sole risk and without liability or legal exposure to GDS Associates.
- (b) Unless otherwise provided in Exhibit A, all software, systems, and processes formulated or developed by GDS Associates in connection with a project pursuant to this Agreement are the sole property of GDS Associates, and Client shall have no rights to the use of nor make any proprietary claims to such software, systems, processes or items.
- (c) Without limitation, GDS Associates shall not be liable for any suits or claims for infringement of any patent rights or copyrights resulting from GDS Associates'

infringement of such rights in connection with any Project Assignment involving any invention, design, process, product, or device specified or included in a Project Assignment by Client.

- (d) Without limitation, GDS Associates shall hold any information given to them by Client as confidential and proprietary information and shall protect such information from unauthorized dissemination.
- (e) Without limitation, GDS Associates shall be liable for any suits or claims for unauthorized dissemination of confidential and proprietary information given to them by Client in connection with this Agreement.

#### **8. COST CONTROL**

Opinions of probable costs, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by GDS Associates hereunder shall be made on the basis of GDS Associates' best judgment as a consulting firm in accordance with generally accepted standards. Client understands and agrees that GDS Associates' opinions, evaluations, studies, analyses, and considerations are often based on conditions over which GDS Associates has no control and that any such studies, analyses, evaluations, and opinions of probable costs prepared by GDS Associates must of necessity be speculative. Accordingly, GDS Associates in no way warrants or represents that any of such studies, analyses, evaluations, or opinions of probable costs will not vary as a result of such conditions.

#### **9. INDEMNIFICATION AND INSURANCE**

- (a) Client understands and agrees that Client shall immediately indemnify and hold GDS Associates harmless against and in respect to, without limitation, any and all actions,

suits, proceedings, demands, assessments, judgments, costs, expenses, losses or attorneys' fees (hereinafter referred to as "Liabilities") arising out of, in connection with, or as a result of the performance of Services by GDS Associates on behalf of Client; provided, however, that such indemnification shall not apply to the extent GDS Associates is liable for any such Liability due to GDS Associates' negligence.

- (b) GDS Associates understands and agrees that it shall immediately indemnify and hold Client harmless against and in respect to, without limitation, any and all "Liabilities" arising out of, in connection with, or as a result of GDS Associates unauthorized dissemination of proprietary and confidential information.
- (c) Without limitation, Client understands and agrees that in the event Client is required to indemnify GDS Associates under the provisions of this Paragraph 9 for Services, or costs or expenses associated thereunder, the terms and conditions for compensation of GDS Associates contained in Paragraph 5 hereof shall be controlling where applicable and to the fullest extent possible.

#### **10. PROJECT ASSIGNMENTS**

- (a) Client understands and agrees that all Services provided by GDS Associates to Client shall be upon the terms and conditions contained in this Agreement. Client understands and agrees and further warrants and represents to GDS Associates that such Services shall only be performed pursuant to the terms and conditions of this Agreement and may only be amended as provided herein.
- (b) Exhibit A to this Agreement specifies the duties and responsibilities of GDS Associates pursuant to this Agreement. To the extent there is a conflict between this Agreement and Exhibit A, this Agreement shall prevail.

- (c) Any project schedule, as it pertains to the project, and any subsequent modification thereto shall be prepared with GDS Associates' concurrence. GDS Associates shall not be liable for any damages arising from late performance caused by riots, storms, fire, explosions, war, embargo, acts of God, or any other cause beyond GDS Associates' reasonable control.
- (d) GDS Associates agrees to use its best efforts to commence work on the project as scheduled and to comply with the project schedule as mutually agreed upon by Client and GDS Associates. Client agrees that it shall furnish GDS Associates with all necessary data and fulfill its responsibilities and obligations hereunder in a timely manner. Client further agrees that if Client fails to fulfill its responsibilities and obligations in a timely manner hereunder, GDS Associates shall be due an extension of time to such project schedule due to such failure.
- (e) If Services required as a result of a change requested by the Client and mutually agreed to by the parties extend the time required for completion of the project, the time allocated for the Project Assignment shall be adjusted accordingly.

#### **11. SUBCONTRACTORS**

GDS Associates may, upon consultation with Client, retain qualified subcontractors from time to time to assist in the performance of Services under this Agreement.

#### **12. CONTRACTUAL RELATIONS**

Nothing contained in this Agreement or any amendments hereto shall create or cause any contractual relationship or liability between GDS Associates and any third parties.

### **13. SPECIAL AND CONSEQUENTIAL DAMAGES**

In no event shall GDS Associates be liable for any special or consequential damages even if GDS Associates has been advised of the possibility of such damages.

### **14. GENERAL**

This Agreement between GDS Associates and Client contains the entire agreement of the parties hereto regarding the subject matter hereof, and no representation, inducement, promise or agreement, oral or otherwise, between the parties hereto regarding the subject matter hereof, not embodied herein, shall be of any force or effect. The provisions hereof shall inure to the benefit of and be binding upon the parties hereto, their legal representatives, successors, and permitted assigns.

### **15. SEVERABILITY**

If any clause or provision of this Agreement is held or deemed to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be deemed to have been added as a part of this Agreement, a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible, and at the same time, be legal, valid, and enforceable. All rights, powers, and privileges conferred hereunder upon the parties hereto shall be deemed cumulative of and in addition to those provided by law.

### **16. CAPTIONS**

The captions in this Agreement are added as a matter of convenience only and shall not be considered in the construction, interpretation, or enforcement of any provision hereof.



## **17. ASSIGNMENTS**

This Agreement may not be assigned by either party without the written approval of the other party; provided, however, approval of such assignment shall not be unreasonably withheld.

## **18. WAIVER**

Any waiver at any time by either party hereto of its rights with respect to the other party or with respect to any matter arising in connection with this Agreement shall not be considered a waiver with respect to any subsequent default or matter.

## **19. NOTICES**

All notices required to be given in writing under this Agreement shall be deemed delivered when deposited in the United States mail with first class postage prepaid unless otherwise provided herein. Such notice if being given to GDS Associates shall be addressed to:

President  
GDS ASSOCIATES, INC.  
Suite 800  
1850 Parkway Place  
Marietta, Georgia 30067-8237

and if being given to Client shall be addressed to:

Grand Island Utilities  
Attn: Assistant Utilities Director – Transmission  
700 E. Bischeld St.  
Grand Island, NE 68801

Either party may change its respective notice address by written notice as specified above.

## **20. GOVERNING LAW**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first written above.

*Jay R. Wark*  
Interim City Attorney

CITY OF GRAND ISLAND, NEBRASKA

By: *Roger G. Steele*

Print Name: Roger G. Steele

Title: Mayor

GDS ASSOCIATES, INC.

By: *Seth W. Brown*

Print Name: SETH W. BROWN

Title: VICE PRESIDENT

## Exhibit A: Project Scope

GDS will perform the Transmission Planner (TP) NERC tasks for the City of Grand Island (GIUD). GIUD will register as the TP with NERC and GDS will perform the TP tasks. GDS and GIUD will meet and determine the contacts, timelines, and create the action plan to manage the tasks. The base tasks include the following:

1. Modeling Data Requirements (MOD-032)
2. Annual Planning Assessment and Modeling (TPL-001-4)
3. Reliability Coordinator Conflict Resolution (IRO-017)
4. Develop and/or update TP Planning Criteria
5. Develop SOLs (FAC-014)
6. Model Validation for the generation models (MOD-026 / -027)
7. Generator Capabilities (MOD-025)
8. Capacity Benefit Margin (MOD-004)

GDS will work with GIUD to gather needed information to perform the tasks. Documentation will be created to demonstrate compliance with the NERC Standards and Requirements for each task. All findings, reports, and supporting documentation that is produced as part of this project will be treated as confidential and will only be shared with the GDS and the GIUD team. If the time required to perform the tasks change due to SPP processes or other issues arise, GDS will identify these and discuss any additional costs that may need to be considered with GIUD.

The GIUD Standards table workbook will be kept up to date with any changes in the TP requirements and the documentation collected for the NERC evidence files. The workbook identifies some of the documentation expected to show that GIUD meets the requirements. GDS will provide all documentation created to support the requirement to GIUD for the NERC files.

GDS will also perform one-time studies as requested. These additional studies will be scoped in coordination with GIUD and GDS and billed at the hourly rate noted in Exhibit B.

Exhibit B: Compensation

**CONFIDENTIAL**