

**AMENDED AND RESTATED  
LONG TERM POWER SUPPLY AGREEMENT  
CITY OF GREAT FALLS**

This Amended and Restated Long Term Power Supply Agreement (the "*Agreement*") is made as of the Effective Date between Electric City Power, Inc., a Montana nonprofit corporation ("*Electric City*"), an electricity supplier licensed by the Montana Public Service Commission, and the City of Great Falls, Montana ("*Customer*"), a political subdivision of the State of Montana, each a "*Party*" and, collectively, the "*Parties*" to this Agreement.

RECITALS

The circumstances and facts under which this Agreement is made and executed are as follows:

1. The City of Great Falls, Montana (the "*City*") authorized the organization of Electric City as an instrumentality of the City pursuant to the provisions of the Montana Nonprofit Corporation Act, Title 31, Chapter 2, Montana Code Annotated, as amended, to own, construct, finance, operate and maintain the properties, facilities, rights and interests comprising the City's municipal electric utility established pursuant to Section 5.20.030, OCCGF, and to provide reliable electricity supply services to consumers within and outside of the boundaries of the City at stable, cost-based rates, all for and on behalf of the City.

2. Electric City has previously been licensed by the Montana Public Service Commission as an "electricity supplier" under the Electric Utility Restructuring and Customer Choice Act, Title 69, Chapter 8, Montana Code Annotated, as amended (the "*Customer Choice Act*"), with the authority to provide electricity supply services to certain classes of electricity consumers within the State.

3. Effective October 1, 2007, Montana House Bill 25 prospectively repeals the primary elements of the Customer Choice Act but preserves electricity supply contracts that are in effect prior to October 1, 2007 and requires that licensed electricity suppliers under the Customer Choice Act provide, and their customers be afforded, fair and open long-term access to transmission and distribution facilities, as determined by the Montana Public Service Commission.

4. Electric City, through the City, is a member of Southern Montana Electric Generation & Transmission Cooperative, Inc., ("*SME*"), a rural electric cooperative organized and doing business under the provisions of Title 35, Chapter 18 of the Montana Code Annotated.

5. Through the City, Electric City purchases electricity under a full requirements contract with SME, which in turn maintains certain portfolio power supply resources in order to provide reliable, cost-based electricity service to the City and its other member customers.

6. Among other power supply resources, SME is undertaking the development of a 250 megawatt coal-fired electric generating facility located in Cascade County, Montana near the City of Great Falls known as the Highwood Generating Station (“HGS”), presently anticipated to begin commercial operation in 2012, which will be operated by SME and which is anticipated to become a major component of SME’s portfolio power supply resources.

7. Electric City presently intends to acquire a 15% ownership interest in HGS and, in connection with the acquisition and financing of such ownership interest, desires to enter into long-term power supply agreements with retail customers in order to sell the electricity from its ownership interest at cost-based rates that will provide Electric City with revenues sufficient to enable it to pay the costs of operation, maintenance and debt service costs of its ownership interest in HGS as well as to otherwise acquire and provide low-cost power supply resources to Electric City’s customers.

8. Customer operates a number of facilities located throughout the Great Falls area, as described more fully on Schedule A attached hereto and made part hereof (and as may be amended from time to time).

9. Electric City and Customer previously entered into a series of Initial Contracts, dated on or about October 19, 2004, for the supply of electric service for Customer’s Facilities from October 1, 2004 through December 31, 2008, as well as a series of Bridge Contracts, dated on or about January 23, 2007, for supply of electric service for Customer’s Facilities from January 1, 2009 through June 30, 2011 (collectively referred to as the “Previous Contracts”).

10. The Parties desire to amend and restate their Previous Contracts and Customer desires to purchase and receive from Electric City its total electricity requirements for operation of its Facilities, and Electric City is willing and able to secure and furnish Customer the electric power to meet Customer’s needs, during the term of this Agreement and any extension thereof.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises of the parties, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

The following definitions and terms apply to this Agreement and all communications under this Agreement.

“*Billing Month*” means the time elapsed between two successive meter readings by Northwestern.

*“Delinquency Date”* has the meaning given to it in Section 4.2.

*“Delivery Point”* means the Northwestern electrical substation facility providing service to each of Customer’s Facilities, as designated by Northwestern, or such other location as agreed by the Parties.

*“Delivered Electricity”* means the total metered kilowatt hours of Electricity received by Customer as recorded at the Metering Facilities.

*“Effective Date”* has the meaning given to it in Section 3.2.

*“Electricity”* shall mean electric demand and energy consisting of alternating current, three phase, sixty hertz cycle.

*“Extension Term”* has the meaning given to it in Section 3.1.

*“Facility”* or *“Facilities”* means the locations described on Schedule A.

*“Force Majeure”* has the meaning given to it in Section 7.1.

*“General Administrative Charges”* means Electric City’s reasonable administrative and operational costs and expenses, including overhead.

*“HGS”* has the meaning given to it in the Recitals.

*“Initial Term”* has the meaning given to it in Section 3.1.

*“Metering Facilities”* means the electric meter(s) located at the Customer’s Facility [or Facilities], which Metering Facilities are owned and maintained by Northwestern.

*“Northwestern”* means Northwestern Energy and any successor thereto that operates the electric distribution system which provides the delivery of Electricity to the Facility under this Agreement.

*“Supply Costs”* means, for any Billing Month, all of the actual costs and expenses incurred by Electric City and reasonably allocated to the Billing Month in generating, purchasing or otherwise acquiring sufficient supplies of Electricity to provide service to Customer under this Agreement. “Supply Costs” include, but are not limited to, all fixed and variable expenses, operation, maintenance, power management, and fuel costs of generating resources owned by Electric City, debt service costs, reserve requirements, and other amounts payable in respect of indebtedness incurred by Electric City to finance the costs of generating and power supply resources, purchased electric power costs and expenses, costs of renewable electric resources as and to the extent required by law, Taxes and Assessments, Transmission Costs, General Administrative Charges, and all other costs and expenses allocable to the Electricity supply service to Customer.

*“Taxes and Assessments”* means all applicable present and future taxes, charges, levies, duties, licenses, fees, charges, permits and assessments of any nature (including, without limitation, any universal systems benefits charge or like assessment imposed under Montana law), including interest, penalties, and additions thereto, imposed by any government, taxing, or regulatory authority in respect of or relating to any payments by Customer to Electric City, or deliveries of Electricity from Electric City to Customer, under this Agreement.

*“Transmission Costs”* means Electric City’s actual costs of transmitting electricity to Customer under this Agreement, including transmission losses.

## ARTICLE II

### SALE AND PURCHASE

*Section 2.1 Sale and Purchase of Electricity.* During the Initial Term of this Agreement, and any Extension Term, Electric City hereby agrees to sell and deliver or make available, or cause to be delivered or made available, and Customer agrees to purchase and receive, or cause to be purchased and received, the amount of Electricity as set forth in Section 2.2. In consideration thereof, Customer shall pay Electric City the Supply Costs set forth in Section 4.1 of this Agreement, and shall otherwise comply with the terms and conditions of this Agreement.

*Section 2.2 Full Requirements.* The quantity of Electricity that Customer shall purchase and receive from Electric City under this Agreement shall be the full amount of electricity that is required for all of Customer’s operations at its Facility during the Initial Term and any Extension Term of this Agreement. This Section shall not be deemed to prohibit Customer from utilizing Electricity generated by a standby generation plant, owned and/or operated by Customer, to the extent the use of such electricity may be required for short-term emergency or reliability purposes.

*Section 2.3 Load Forecasts; Changes in Load Requirements.* On or before May 1st for the 12 month period commencing July 1st of each year, Customer shall provide Electric City with a written forecast of its average and peak load requirements during the next calendar year. Customer further agrees to provide Electric City with reasonable advance notice of any significant changes in its load requirements due to events such as scheduled Facility maintenance and Facility expansions. Customer further agrees to comply with reasonable dispatch and scheduling procedures as Electric City may adopt or amend from time to time.

*Section 2.4 No Resale.* Customer agrees that it will not sell or otherwise transfer any of the Electricity delivered to it under this Agreement to any third party without Electric City’s prior written consent.

*Section 2.5 Transmission and Scheduling.* Electric City shall arrange and be responsible for transmission service to the Delivery Point, and shall schedule or arrange for scheduling services with its transmission providers.

*Section 2.6 Distribution.* Under the Customer Choice Act, electricity purchased from licensed electricity suppliers is delivered by the supplier to Northwestern for distribution to the retail customer. As between Customer and Electric City, Customer shall be solely responsible for compliance with all public utility tariffs, rules, regulations, and orders, as may be changed and amended from time to time, relating to the distribution of Electricity provided under this Agreement, including payment of all applicable fees and charges directly to Northwestern. Customer has provided to Electric City copies of any contracts with Northwestern for distribution services and agrees to provide to Electric City any amendments or supplements thereto.

### ARTICLE III

#### TERM AND EFFECTIVE DATE

*Section 3.1 Term.* Subject to Section 3.4, this Agreement shall be in full force and effect from the Effective Date for the period that is thirty-eight (38) years after the Effective Date (the “*Initial Term*”). The Initial Term will be automatically extended for five year periods (the “*Extension Terms*”) unless either Party provides written notice of termination of this Agreement at least one year prior to the expiration of the Initial Term or the Extension Term then in effect.

*Section 3.2 Effective Date.* This Agreement shall be effective as of October 1, 2004 (the “*Effective Date*”).

*Section 3.3 Commencement of Delivery.* The date of first delivery of electricity under this Agreement shall be on or about October 1, 2004. Not less than ten (10) days before the anticipated date for the commencement of service, Customer shall give Electric City written confirmation of the commencement date, together with any revisions to the estimated average and peak demand of the Facilities for the first 90 days of service.

*Section 3.4 Construction of HGS.* If for any reason physical, on-site construction of HGS has not begun by October 1, 2012, Customer may terminate this Agreement by providing written notice to Electric City; provided, however, that such termination may not be effective any sooner than one (1) year from the date of such notice.

### ARTICLE IV

#### SUPPLY COSTS, BILLING, PAYMENT, AND SECURITY

*Section 4.1 Supply Costs.* For all Delivered Electricity made available under this Agreement in any Billing Month, Electric City agrees to charge and accept from Customer, and Customer agrees to pay Electric City, (a) the amounts specified in Schedule B for the periods of time specified therein; or (b) except as otherwise provided in Schedule B, an amount equal to the portion of the Supply Costs allocable to Customer during the relevant Billing Month.

*Section 4.2 Invoicing and Payment.* Electric City will render a monthly billing statement of the Supply Costs for Electricity provided during the preceding Billing Month. The timing of Customer's billing statement will be a function of the date that Northwestern takes a reading from Customer's Metering Facilities. Payment shall be due and payable on or before the 15<sup>th</sup> day after the date of the monthly billing statement. If Customer's invoice has not been paid within fifteen (15) days of the date of the billing statement, Electric City may demand immediate payment by providing notice to Customer. Subject to Section 4.4, if Customer's invoice is not paid in full within ten (10) days of such notice (the "*Delinquency Date*"), the account will be deemed delinquent and the provisions of Section 6.1 will apply.

*Section 4.3 Audit.*

(a) Customer shall have the right upon reasonable notice and during regular business hours to audit Electric City's records supporting any charge made under this Agreement. Customer may not request more than two (2) audits per calendar year and shall bear all costs of such audits. In connection with any such audit, Electric City may not be required to provide documents from the time period that is more than three (3) years prior to the date that the audit is first requested.

(b) Electric City shall have the right upon reasonable notice and during regular business hours to audit Customer's records relating to its compliance with this Agreement, including Section 2.2. Electric City may not request more than two (2) audits per calendar year and shall bear all costs of such audits. In connection with any such audit, Customer may not be required to provide documents from the time period that is more than three (3) years prior to the date that the audit is first requested.

*Section 4.4 Disputed Amounts.* Except with respect to faulty Metering Facilities pursuant to Section 5.1, below, if Customer, in good faith, disputes an invoice it must, within sixty (60) days of the invoice date, provide Electric City with a written statement detailing the basis for the dispute and must pay the full amount invoiced. The Parties agree to attempt in good faith to resolve disputed invoices. Disputed amounts determined to be incorrect will be credited back to Customer within ten (10) days after the determination.

*Section 4.5 Security.* Unless Customer otherwise establishes its creditworthiness to the reasonable satisfaction of Electric City, Customer shall provide security for its payment obligations hereunder as follows:

(a) Customer shall provide security in an amount equal to Customer's reasonably anticipated Supply Costs for two months of service under this Agreement.

(b) Security shall be provided in the form of (i) cash, (ii) an irrevocable letter of credit issued by a financial institution rated at least "A" by Moody's or Standard & Poor's, (iii) an irrevocable guaranty issued by an entity rated at least "A" by Moody's or Standard & Poor's, (iv) a surety bond issued by an insurance company rated at least "A" by Moody's, Standard & Poor's or A.M. Best or (v) such other forms of security as may

be agreed to by Electric City and Customer in writing. The security shall be delivered to or for the account of Electric City.

(c) In the event of a failure by Customer to pay timely any amount due under this Agreement by the Delinquency Date, Electric City shall have the right to draw upon such security to satisfy Customer's payment obligation, whereupon Customer shall immediately restore or replenish such security to the required amount.

(d) In the event of a failure by Customer to post, maintain or restore security for its payment obligations as provided in this Section, the provisions of Section 6.1 shall apply.

## ARTICLE V

### TECHNICAL AND SERVICE REQUIREMENTS

*Section 5.1 Metering Facilities; Errors and Adjustments.* The Metering Facilities are owned and operated by Northwestern. Upon request by Electric City, Customer agrees to request that Northwestern maintain, replace, or test the Metering Facilities for accuracy. In the event that the Metering Facilities are determined to be inaccurate, the Parties agree to follow such procedures as may be applicable to Northwestern in order to determine the appropriate amount of charge due or credit owed as the result of the inaccurate Metering Facilities. In any event, the Parties agree to attempt to agree, in good faith, as to the amount of energy furnished during such period.

*Section 5.2 Equipment Maintenance and Safety.* Customer shall be solely responsible for the appropriate maintenance of its electric equipment. Northwestern shall be solely responsible for the appropriate maintenance of the relevant Metering Facilities. Customer is further solely responsible to provide adequate safety protection and appropriate fuses or thermal(s) for all of its electrical equipment in order to provide for the safety of its employees, agents, licensees, or other persons, including any foreseeable misuse of electricity or related equipment.

*Section 5.3 Standard of Service.* Electric City agrees to use commercially reasonable diligence to provide a constant and uninterrupted supply of Electricity to Customer under this Agreement. Without limitation on the generality of the foregoing, in performing its obligations under this Agreement, Electric City agrees as follows:

(a) to manage and maintain its electrical supply portfolio in a commercially reasonable manner to provide resources sufficient to render service to Customer in accordance with this Agreement; and

(b) to undertake commercially reasonable actions to secure firm transmission service necessary to meet its service obligations hereunder and to prevent diminutions, interruptions or outage in Electricity deliveries.

*Section 5.4 Compliance with Law.* Customer and Electric City agree to comply with all applicable federal, state, and local laws, rules, regulations, ordinances, orders, licenses, and tariffs, now in existence or as may be enacted or amended in the future, relating to this Agreement or such party's performance hereunder.

*Section 5.5 Access.* Customer grants Electric City, its employees and agents or other authorized persons access at reasonable hours upon reasonable prior notice from Electric City to inspect, test, or read Customer's Metering Facilities and related equipment, provided that Electric City agrees to refrain from using such access in a manner that unreasonably interferes with Customer's operations at the applicable Facility.

## ARTICLE VI

### TERMINATION AND DEFAULT

*Section 6.1 Events of Default.* Each of the following shall constitute an event of default under this Agreement:

- (a) failure by Customer to pay any amount due under this Agreement on or prior to the Delinquency Date;
- (b) failure by Customer to post security for its payment obligations pursuant to Section 4.5 within 30 days of Electric City's request therefor;
- (c) failure by Customer to maintain or replenish security as provided in Section 4.5;
- (d) bankruptcy, insolvency or reorganization of Customer without an assumption of this Agreement within 60 days of the commencement of any such proceeding; or
- (e) any other default by Customer in its material obligations under this Agreement.

Upon the occurrence of an event of default, Electric City may (i) immediately suspend all service under this Agreement by written notice to Customer and (ii) terminate this Agreement by an additional written notice to Customer fixing a termination date which shall be no earlier than thirty (30) days after the date of the notice of termination. At the time Electric City provides such additional notice of termination to Customer, Electric City may also inform the distribution utility of the effective date of such contract termination. Any notice of termination of this Agreement may be rescinded by Electric City in the event that Customer cures all events of default that have occurred and are continuing and takes such other actions (including the prepayment of future billing statements and/or the posting of additional security) as Electric City may reasonably require.



*Section 6.2 Electric City Default; Emergency Service.* In the event that Electric City fails to provide Electricity under this Agreement sufficient to meet Customer's requirements pursuant to Section 2.2 and Customer obtains electricity service from a public utility or other electricity service supplier ("*Emergency Service*"), Electric City agrees to pay directly for such Emergency Service to the extent required by law, rule, regulation, or tariff and to otherwise hold Customer harmless for the costs of such Emergency Service; provided, however, that Customer shall remain responsible for payment under this Agreement during the time that Customer receives such Emergency Service at a rate that is not higher than Customer's average Service Charges for the previous three months of service. Customer may terminate this Agreement if and only to the extent that Customer is required by law to take electricity service, on a permanent basis, solely from a public utility as the result of Electric City's failure to provide Electricity pursuant to this Agreement sufficient to meet Customer's requirements pursuant to Section 2.2.

*Section 6.3 Remedies.* The rights and remedies set forth in this Agreement are cumulative with all other rights and remedies available at law or equity and each Party reserves all of its rights and remedies available in law or equity unless otherwise expressly provided in this Agreement.

*Section 6.4 Limitation on Damages.* If no remedy or measure of damages is expressly provided for with regard to an event of default under this Agreement, then the liability of the defaulting Party is limited to direct damages actually suffered by the non-breaching Party. Anything in this Agreement or at law or in equity to the contrary notwithstanding, in no event will either Party be liable to the other Party or to any third party for incidental, indirect, consequential or punitive damages relating to or otherwise arising out of this Agreement, including without limitation, lost profits or business interruption, regardless of how such damages are caused, including the sole, joint or concurrent negligence of either Party, and each Party hereby releases the other from such claims, damages, and liabilities.

*Section 6.5 Mitigation of Damages.* Electric City and Customer shall act in a commercially reasonable manner to mitigate any and all damages incurred in connection with this Agreement. Neither Party may terminate this Agreement, or default on this Agreement, with the sole intent of selling or purchasing supply electrical service to or from another, non-affiliated party.

## **ARTICLE VII**

### **FORCE MAJEURE**

*Section 7.1 Force Majeure Event.* For purposes of this Agreement, Force Majeure shall mean any event or occurrence which causes the inability of Electric City to perform under this Agreement and which is not reasonably within the control of Electric City. Force Majeure shall include but not be limited to the following:

- (a) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms, or storm warning, such as tornados, which result in evacuation of affected

area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or lines of electric transmission or distribution systems;

(b) interruption, diminution, or curtailment of all or any part of the power supply resources to Electric City necessary to enable it to meet its obligations under this Agreement for reasons that would constitute force majeure under the supply agreement between Electric City and its supplier;

(c) an event or circumstance by reason of which Electricity cannot be physically delivered to or received by Customer at the Delivery Point other than as a result of an act or failure to act by any of the Parties hereto;

(d) acts of others including but not limited to strikes, lockouts, or other industrial acts of others, or other industrial disturbances, riots, sabotage, insurrections of wars; and

(e) governmental actions such as those requiring compliance with any court order, administrative order, fine, penalty, enforcement order, directive, law, statute, ordinance or regulation promulgated by a governmental authority having jurisdiction.

*Section 7.2 Performance Excused; Obligations Suspended.* If Electric City is unable to perform all or part of its obligations under this Agreement due to Force Majeure, and Electric City notifies Customer as soon as is reasonably practicable of the Force Majeure and the extent to which the Force Majeure is expected to impact Electric City's performance, then the failure by Electric City to perform is excused to the extent and for the duration of the Force Majeure, and the obligations of Electric City shall be suspended to the extent and for the duration of the Force Majeure. Electric City shall use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations.

## **ARTICLE VIII**

### **INDEMNIFICATION**

#### *Section 8.1 Indemnification.*

(a) Except as otherwise provided in this Agreement, Electric City hereby agrees to indemnify, defend, and hold harmless Customer, including, without limitation, Customer's agents, officers, employees, elected and appointed officials, and members, from any claim, liability, demand, judgment, right or cause of action arising out of or in any way related to any wrongful act or omission of Electric City or its agents or employees acting within the scope of their employment;

(b) Except as otherwise provided in this Agreement, Customer hereby agrees to indemnify, defend, and hold harmless Electric City, including, without limitation, Electric City's agents, officers, employees, elected and appointed officials, and members, from any claim, liability, demand, judgment, right or cause of action arising out of or in any way related to any

wrongful act or omission of Customer or its agents or employees acting within the scope of their employment.

## ARTICLE IX

### NOTICES

*Section 9.1 Notices.* All notices and requests pursuant to the Agreement shall be given by facsimile, prepaid registered or certified mail return receipt requested, private courier service, or by personal delivery, and shall be deemed to have been given on the date received, except facsimile notification shall be deemed given when sent, and shall be sent to the following addresses or facsimile numbers:

#### NOTICES AND BILLING TO CUSTOMER:

City of Great Falls  
City Manager  
P.O. Box 5021  
Great Falls, MT 59403  
Telephone: (406) 771-1180

#### Notice and Billing to Electric City:

Electric City Power  
Attn: Fiscal Services  
PO Box 5021  
Great Falls, MT 59403  
Telephone: (406) 455-8478  
Facsimile: (406) 452-8048

Either Party may change its notice address by written notice to the other Party, which notices shall be effective only upon receipt.

## ARTICLE X

### GENERAL PROVISIONS

#### *Section 10.1 Representations and Warranties; Interlocal Cooperation.*

(a) Electric City hereby represents, covenants, and warrants to Customer as follows: (i) Electric City is a nonprofit corporation duly organized by the City under the provisions of the Montana Nonprofit Corporation Act; (ii) Electric City was created and is operated for the purpose, among other things, to own, construct, finance, operate and maintain the properties, facilities, rights and interests comprising the City's municipal electric utility; (iii) Electric City is duly licensed by the Montana Public Service Commission as an "electricity

supplier” under the Customer Choice Act, with the authority to provide electricity supply services to certain classes of electricity consumers within the State; and (iv) Electric City has the power to enter into this Agreement and to perform and observe the agreements and covenants on its part contained herein and by proper corporate action has duly authorized the execution and delivery hereof.

(b) Customer hereby represents, covenants, and warrants to Electric City as follows: (i) Customer is a municipality and political subdivision of the State of Montana, duly organized and operating under the provisions of the Montana Code; and (ii) Customer has the power to enter into this Agreement and to perform and observe the agreements and covenants on its part contained herein and by proper corporate action has duly authorized the execution and delivery hereof.

(c) In addition to all other powers of the Parties to enter into this Agreement, the Parties intend that this Agreement constitute an interlocal contract between public agencies authorized by the Interlocal Cooperation Act, Title 7, Chapter 11, Part 1, MCA (the “*Interlocal Act*”). In furtherance of the foregoing, each of the Parties finds, determines and declares as follows:

(i) it is a “public agency” within the meaning of the Interlocal Act;

(ii) this Agreement constitutes a contract for the sale of electricity supply service by Electric City under its authority as a licensed electricity supplier and for the purchase of electricity supplier service by Customer under its authority to purchase electricity to meet its requirements;

(iii) this Agreement has been authorized and approved by the governing body of each Party and outlines fully the purposes, powers, rights, obligations and responsibilities of the Parties;

(iv) the terms and provisions of this Agreement specify the matters required by Section 7-11-105 of the Interlocal Act, *provided* that (A) no separate legal entity is created by this Agreement, and (B) each Party shall be separately responsible for its administration, budgeting, financing and performance of this Agreement and for its reports and payment of retirement system contributions pursuant to Section 19-2-506; and

(v) this Agreement shall be filed with (A) the county clerk and recorder of the county or counties where the Parties are situated and (B) the Montana Secretary of State.

*Section 10.2 Dispute Resolution.* The Parties agree to attempt, in good faith, to resolve informally and promptly any controversy or claim arising out of any matter relating to this Agreement in discussions to be undertaken by senior executives of the Parties.

*Section 10.3 Governing Law.* This Agreement must be construed and its performance enforced under the laws of the State of Montana, excluding any choice of law or rules that would otherwise require the application of the laws of any other jurisdiction.

*Section 10.4 Interpretation.* In this Agreement, (a) words denoting the singular shall include the plural and vice versa; (b) the references to “Section” or “Article” mean the specified Section or Article of this Agreement and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement as a whole and not to any particular Section, subsection or other subdivision, attachment or schedule; (c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; (d) the use of words with a particular gender and where applicable, to a corporation, shall not limit the scope or exclude the application of any provision of this Agreement to such person or person(s) or circumstances as the context otherwise permits; (e) the headings of Articles and Sections in this Agreement are inserted solely for the convenience of reference and are not intended as complete or accurate descriptions of their content; and (f) all dollar amounts referred to in this Agreement are in United States dollars unless otherwise noted.

*Section 10.5 Assignment.* Neither Party shall assign this Agreement or its rights without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided that Electric City may pledge its rights and interests under the Agreement to secure the financing for its interest in HGS and the indenture trustee for or any receiver in connection with such financing shall be a third-party beneficiary of this Agreement.

*Section 10.6 Entire Agreement.* This Agreement amends, restates, and supercedes the Previous Contracts and contains the Parties’ final and mutual understanding relating to the matters in this Agreement. This Agreement supersedes and replaces all prior agreements and understandings, whether written or oral. This Agreement may not be modified or replaced except by another written agreement signed by an authorized representative of each Party.

*Section 10.7 Waivers.* None of the requirements of this Agreement shall be considered waived by either Party unless the waiver is written and signed by an authorized representative of the Party. Further, no waiver by either Party hereto of any one or more defaults by the other in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.

*Section 10.8 Severability.* If any provision of this Agreement is held invalid or unenforceable, all other provisions shall not be affected. With respect to any provision held invalid or unenforceable, the Parties shall amend or modify this Agreement as necessary to effect as closely as possible the Parties’ original intent.

*Section 10.9 Preparation of Agreement.* This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the manner in which this Agreement was negotiated, prepared, drafted, or executed.

*Section 10.10 No Third-Party Beneficiaries.* Except as provided in Section 10.5, nothing in this Agreement, either expressed or implied, is intended or shall be construed to create in favor of any person or entity not a Party to this Agreement any rights or remedies under this Agreement except for a successor or permitted assignee of a Party.

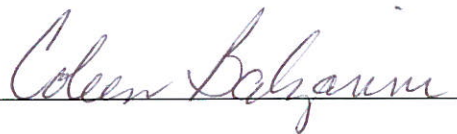
*Section 10.11 Further Assurances.* Consistent with the Parties' intention to provide for the long-term supply of Electricity under this Agreement at stable, cost-based rates, if either Party reasonably determines or is reasonably advised that any further instruments, actions, or any other things are necessary, prudent, or desirable to effectuate the terms of this Agreement, the other Party shall execute and deliver all such instruments and assurances and do all things reasonably necessary to carry out the terms of this Agreement.

*Section 10.12 Time of Essence.* Time shall be of the essence in this Agreement.

*Section 10.13 Counterparts.* This Agreement may be executed in any number of counterparts and each executed counterpart shall have the same force and effect as an original instrument.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as follows:

**ELECTRIC CITY POWER, INC.**

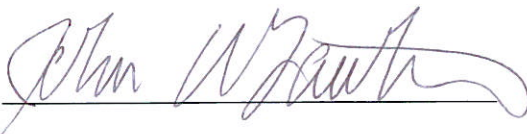
By: 

Name: Coleen Balzarini

Title: Executive Director

Date: 9/30/07

**CITY OF GREAT FALLS, MONTANA**

By: 

Name: John W Lawton

Title: City Manager

Date: 9/14/07