

CITY OF GREAT FALLS, MONTANA

AGENDA # 5

AGENDA REPORT

DATE October 2, 2007

ITEM Wholesale Power Contract Between Southern Montana Electric and the City of Great Falls

INITIATED BY Long-Term Stable Electric Supply Needs For the Customers of Electric City Power, Inc.

ACTION REQUESTED Approve Wholesale Power Contract between Southern Montana Electric and the City of Great Falls and Authorize the City Manager to Execute the Contract

PREPARED BY Martha Capps, Operations Supervisor

PRESENTED BY Coleen Balzarini, Fiscal Services Director

RECOMMENDATION: It is recommended that the City Commission approve the Wholesale Power Contract.

MOTION: I move the City Commission approve the Wholesale Power Contract with Southern Montana Electric and authorize the City Manager to execute the contract.

SYNOPSIS: This contract will allow SME and ECPI to continue working together to meet the growing power supply requirements of current and new customers, into the future whether or not the City or ECPI participate in the Highwood Generation Station as an owner.

BACKGROUND: Southern Montana Electric G&T ("SME") has been successfully securing favorable long-term electricity contracts on behalf of the City of Great Falls since September, 2004. The City in turn has been able to provide a reliable and cost effective supply of electricity to its twelve customers, including both commercial and industrial businesses. The existing agreement between the City and SME has a term through 2011. In the event Highwood Generation Station is not built, SME will continue to secure additional power from third-party suppliers as necessary to supply its members, including the City. This contract was written by Dorsey & Whitney, bond counsel for the City, with extensive review by the City's entire finance team, as well as the City's outside consultants. This contract was also presented to the Electric City Power, Inc Board on October 1, 2007.

WHOLESALE POWER CONTRACT BETWEEN SOUTHERN MONTANA ELECTRIC AND THE CITY OF GREAT FALLS

THIS AGREEMENT, is made and entered into this _____ day of _____, 2007 (as amended, this "Agreement"), by and between **SOUTHERN MONTANA ELECTRIC GENERATION AND TRANSMISSION COOPERATIVE, INC.** ("SME" or "Southern Montana"), a corporation organized and existing under the laws of the State of Montana, with its principal place of business at 3521 Gabel Road_ - Suite #5, Billings, Montana 59102, and the **CITY OF GREAT FALLS** ("City"), an incorporated city with its principal place of business at City Hall, 2 Park Drive South, Great Falls, Montana, 59401.

RECITALS

WHEREAS, SME is a rural electrical cooperative organized under the provisions of Title 35, Chapter 18 of the Montana Code Annotated for the purposes of purchasing and reselling, generating, and distributing electrical power to its members;

WHEREAS, the City is a member of SME;

WHEREAS, the City Commission of the City has organized and created Electric City Power, Inc., a Montana nonprofit corporation ("ECP"), as an instrumentality of the City in order to secure and provide reliable and economic supplies of electricity to its commercial and industrial customers, and ECP has obtained a license under Montana law to supply electricity to certain commercial and industrial customers (but ECP is not licensed to operate an electrical distribution system);

WHEREAS, the City has determined that it needs to enter into this Agreement with SME to meet the power requirements of ECP's customers whether or not the City or ECP participate in the Highwood Generating Station as an owner;

WHEREAS, ECP has entered into power supply agreements with certain commercial and industrial customers as identified (along with each customer's projected load and meter and delivery points) on Exhibit A attached hereto;

WHEREAS, on or about the effective date hereof, the City and ECP have entered into a Assignment and Assumption Agreement (the "Electric City Power Contract") under which the City has agreed to assign to ECP and ECP has assumed all of the City's rights to receive the electric energy and related transmission and ancillary services purchased by it from SME under this Agreement to permit ECP to meet its obligations to its commercial and industrial customers;

WHEREAS, SME is currently purchasing electric energy and related transmission services for the purpose of, among other things, supplying wholesale electric energy to its members, including the City;

WHEREAS, for the purpose of acquiring quantities of electric energy and related services for the supply of the City's power requirements, SME has entered into a number of power purchase agreements with PPL Montana, LLC (hereinafter "PPL"), a Delaware limited liability company by and through PPL Energy Plus, LLC, its authorized agent with principal business office at 303 North Broadway, Suite 400, Billings, Montana, 59101 (the "Existing PPL Supply Contracts");

WHEREAS, SME has previously executed the following agreements with the City with respect to its power requirements (collectively, the "Existing Contracts"): (1) September 29, 2004 WHOLESAL POWER CONTRACT; (2) October 22, 2004 AGREEMENT; (3) October 18, 2005 AGREEMENT, ADDENDUM #1; (4) November 8, 2006, AGREEMENT, ADDENDUM #2; and (5) July 17, 2007 AGREEMENT

REGARDING SECURITY FOR POWER PURCHASES FOR THE CITY OF GREAT FALLS;

WHEREAS, SME is undertaking the development of a coal-fired electric generating facility to be located in Cascade County, Montana near the City of Great Falls, which facility will be known as the Highwood Generating Station (“HGS”);

WHEREAS, the City, through EPC, desires to be an equity participant in the HGS if it can secure financing satisfactory to the Rural Utilities Service (“RUS”) and in such time as to not delay SME’s financing and construction of HGS;

WHEREAS, if the City, through ECP, is an equity participant, the HGS will be sized at approximately 250 Megawatts net and ECP will own an undivided ownership interest in, and will be entitled to fifteen percent (15%) of the net output from, HGS on and after it begins commercial operation;

WHEREAS, if the City, through ECP, is not an equity participant in the HGS, the HGS will be sized at approximately 213 to 215 Megawatts net and will be owned and financed solely by SME, primarily by a loan guaranteed through the RUS;

WHEREAS, the Parties anticipate the HGS may not begin commercial operation prior to the second quarter of 2012;

WHEREAS, in connection with its equity participation in the HGS, the parties anticipate that SME, the City and ECP will negotiate and enter into a Coordination and Integration Agreement (if entered into, the “CIA”) providing for the coordinated financing of the HGS and providing that ECP will assign its ownership interest in HGS to SME and that SME will, in turn, make the output of ECP’s ownership interest in HGS,

together with certain other power supply sources, available to ECP and the City so that ECP may meet its commitments to its commercial and industrial customers;

WHEREAS, SME has long-term wholesale power contracts to provide the electric power requirements of its other five members, some or all of which are borrowers of RUS;

WHEREAS, in order to secure a long-term supply of electrical power for the customers of ECP, the City desires a long-term wholesale power contract to satisfy its power and transmission requirements;

WHEREAS, the estimated commercial operation of the HGS is at least 35 years and financing will be for approximately that period;

WHEREAS, SME will continue to enter into power purchase agreements with third-party power suppliers to supply the needs of its members, including the City, until such time as the HGS begins commercial operation;

WHEREAS, after the HGS begins commercial operation SME will continue to secure additional power from third-party suppliers as necessary to supply its members, including the City, with power requirements which exceed the output of the HGS and SME will also provide its members (including the City) with power requirements during outages affecting the HGS, spinning reserves, ancillary services, firming resources, and similar services;

WHEREAS, SME has entered into a contract agreement for electric service with the United States, acting through the Department of Energy, Bonneville Power Administration Power Business Line (hereinafter referred to as Bonneville PBL), and the Western Area Power Administration (hereinafter referred to as "Western") which

includes quantities of electric energy and related services available to its member cooperatives; and

WHEREAS, SME has entered into a contract agreement for Network Integrated Transmission Services with the United States, acting through the Department of Energy, Bonneville Power Administration Transmission Business Line (hereinafter referred to as Bonneville TBL);

WHEREAS, SME has entered into a contract agreement for Network Integrated Transmission Services with NorthWestern Energy;

NOW, THEREFORE, in consideration of the mutual undertakings herein, the Parties agree as follows:

1. GENERAL:

(A) Purchase and Sale of Requirements. SME shall sell and deliver to the City and the City shall purchase and receive from SME all electric energy and related transmission and ancillary services which the City and ECP shall require to meet the electricity requirements of ECP's customers, including the customers of ECP identified on Exhibit A hereto and any additional electric service customers with whom ECP may hereafter enter into power supply agreements pursuant to Section 1(C) (collectively, the "Customers"). This provision shall not preclude the City or ECP from (i) purchasing electric power and related transmission and ancillary services from the Western in the event the City or ECP obtains an allocation of preference power from Western, or (ii) operating a co-generation facility at the City's Wastewater Treatment Facility, provided that all such purchases are made through SME and subject to the terms provide in Section 22.

(B) Assignment to ECP. Pursuant to the Electric City Contract, (i) the City has assigned to ECP all of the City's rights to receive the electric energy and related transmission and ancillary services purchased by the City from SME under this Agreement for the purpose of permitting ECP to serve ECP's Customers, and (ii) ECP has accepted and assumed all of the City's rights and obligations under this Agreement. The assignment does not relieve the City of the obligations it has to SME under this contract except to the extent those obligations are in fact fulfilled by ECP.

(C) Additional ECP Customers. ECP shall be entitled to enter into power supply agreements with additional customers (in addition to those identified on Exhibit A), so long as the additional customer's load requirements can reasonably be expected to be met from ECP's share of the HGS (if ECP participates as an owner of an undivided interest in HGS) and from other power supply sources available to SME to provide service to the City and ECP.

(D) Limitation on Recourse to the City. SME and the City agree that the City is not pledging any of its revenues or assets to performance of its obligations under this Agreement other than the revenues, rights and assets of the City which are held solely for the purpose of operating its electric supply business (including the revenues and rights of the City under the Electric City Contract). The obligations of the City under this Agreement and SME's rights and remedies against the City shall be limited to (i) the payments received by the City from ECP, (ii) the rights of the City to receive payments from ECP under the Electric City Contract, (iii) the City's equity ownership in ECP, and (iv) any cash reserves or letters of credit or other security provided by the City or ECP in connection with this Agreement.

(E) Nondiscrimination. In meeting the power requirements of the City and ECP's Customers, SME will treat alike each of SME's cooperative members, on the one hand, and the City and ECP, on the other hand, under substantially similar conditions, except to the extent that any such discrimination (i) will not have a material adverse effect on the City or ECP or ECP's Customers or the use of HGS by the City or ECP, and (ii) is otherwise (A) permitted by the terms of this Agreement or (B) is consistent with Prudent Utility Practices; provided further that this provision does not preclude, and allows, SME to treat the City and SME's cooperative members differently with respect to the power supply sources SME utilizes to serve the City and ECP, on the one hand, and SME's cooperative members, on the other hand, and the resulting price for such power; for example, this provision does apply to SME's allocation from Western which will flow through SME only to the cooperative members. "Prudent Utility Practices" means the practices, methods, standards and procedures that (a) are generally accepted and followed by generation and transmission cooperatives and, in the event HGS becomes operational, owners and operators of coal-fired power projects of technology, complexity and size similar to the HGS, and which (b) would be expected by owners and operators of such projects, at the particular time in question and in the exercise of reasonable judgment in light of facts or circumstances then known or that reasonably should have been known, to accomplish the desired results and goals, including such goals as efficiency, reliability, economy and profitability, in a manner consistent with all applicable laws, safety and environmental protection, provided however that the term Prudent Utility Practices is not intended to be limited to the optimum practice or method to the exclusion of all others,

but rather is intended to encompass a spectrum of reasonable and prudent practices, methods, standards and procedures.

2. ELECTRIC CHARACTERISTICS: Electric power and energy to be furnished hereunder shall be alternating current, three phase, sixty cycle.

3. COORDINATION OF INTERCONNECTIONS & SWITCHING: In the event that ECP or the City acquires distribution facilities, the City agrees that, as a safety measure, it will comply with (and will cause ECP to comply with) reasonable safety measures adopted by SME in the operation of such distribution facilities.

4. DELIVERY POINTS: Delivery points, delivery voltage, metering voltage, and special conditions of power and energy delivered, or scheduled for delivery, for the City and ECP's Customers shall be as shown on Exhibit B attached hereto and made a part hereof. In the event ECP enters into contracts with additional Customers as contemplated in Section 1(C), Exhibit B will be amended to reflect the delivery points, delivery voltage, metering voltage, and special conditions applicable to such additional Customers.

5. CONTRACT DEMAND: The estimated contract demand for the City and ECP's Customers at each point of delivery shall be as specified in Exhibit B attached hereto and made a part hereof (where contract demand refers to the amount of power the Customers have a right or obligation to purchase from ECP). On or before the 1st day of April of each year the City shall submit a revised Exhibit B to SME setting forth the estimated maximum number of kilowatts the City and ECP's Customers will require at the respective point(s) of delivery for the following five (5) calendar years. SME shall notify the City in writing as soon as practical after it receives the proposed revision from

the City whether it accepts the proposed revision and any changes SME may suggest or concerns SME may have with respect to the proposed revision, and SME and the City shall each use good faith efforts to agree on the proposed revision at least 90 days prior to the beginning of the next calendar year. If the City and SME agree on a revision to Exhibit B, the revised Exhibit B shall be substituted for the Exhibit B then in effect.

6. SUBSTATION: Unless distribution services are otherwise provided by NorthWestern Energy or other utilities, the City or ECP shall install, own, and maintain (or cause to be installed, owned and maintained) the necessary substation equipment at the points of connection and shall own and maintain (or arrange for) switching and protective equipment which may be reasonably necessary to enable the City and ECP's Customers to take and use electric power and energy hereunder and to protect the system of SME or SME's suppliers. Meters and metering equipment shall be furnished and maintained or caused to be furnished and maintained by the City or ECP, unless otherwise provided by NorthWestern Energy or such other utilities.

7. RATES:

(A) For wholesale electricity supplies previously secured for and furnished to the City by SME as set forth in the Existing Contracts, the following rates apply:

(i). THIRTY-SIX DOLLARS (\$36) per megawatt hour ("mWh") for the 5 megawatt (mW) flat block of power secured for the City from PPL for delivery during the term October 1, 2004 through December 31, 2008. In addition, the City shall pay SME an additional \$5.70 per mWh in the form of a credit against SME's future raw water purchases from the City. SME's monthly billing

statements to the City shall reflect the monthly amount of the water credit. The water credit shall apply to this block of power only.

(ii) FORTY-FOUR DOLLARS AND FIFTEEN CENTS (\$44.15) per mWh for the shaped blocks of power secured for the City from PPL on August 3, 2005, consisting of the following: (a) 6 mWh on-peak and 5 mWh off-peak for delivery during the term September 1, 2005 through June 30, 2006 and (b) 10 mWh on-peak and 8 mWh off-peak for delivery during the term of July 1, 2006 through September 30, 2011.

(iii) FIFTY-TWO DOLLARS AND EIGHTY CENTS (\$52.80) per mWh for a 7 mW flat block of power secured for the City from PPL for delivery during the term January 1, 2007 through December 31, 2008.

(iv) FORTY-SEVEN DOLLARS AND FORTY-FIVE CENTS (\$47.45) per mWh for a 12 mW flat block of power secured for the City from PPL for delivery during the term January 1, 2009 through March 31, 2011.

In addition to the amounts set forth in the sub-paragraphs (i) through (iv), the city shall pay SME an additional 2% for administrative, scheduling, and other services provided by SME. SME will provide separate billing records and invoices to the City for each of the above enumerated blocks of power.

(B) For wholesale electricity supplies purchased after the date of this Agreement, to satisfy the City's requirements until such time as the HGS begins commercial operation, the rates applicable to such electricity supplies shall be the actual cost incurred by SME for the power plus an additional 2% for administrative, scheduling, and other services provided by SME. SME shall purchase such wholesale electricity

supplies only at the request of and in consultation with the City. At the request of the City, SME shall use its best efforts to obtain and submit to the City for approval indicative pricing proposals from third parties to supply the City's requirements at the best available prices. Upon approval of a proposal by the City, SME shall enter into a contract securing the power, provided that the form of the contract has been approved by the City. The price for these purchases will be set at the time the third party purchase is executed.

(C) When the HGS begins commercial operation, rates shall be determined as follows:

(i) If the City, through ECP, owns a percentage undivided interest in the HGS, then the City's price of power for its percentage share of the output of the HGS shall be a corresponding percentage of the total cost of operating the HGS and delivery of power to the point of delivery (where the total operating cost is determined based on reasonable and equitable methods of allocation of the actual costs incurred by SME as the operator of the HGS), including (a) the costs of operating the transmission facilities which are part of the HGS (from the HGS to the interconnection with Northwestern Energy), plus (b) the costs of acquiring and managing necessary firming resources, ancillary services and supplemental power supply sources, plus (c) amounts as may be equitably determined by the SME Board of Trustees and applicable to all SME Members as necessary to establish reserves and other such financial devices which benefit in an equitable manner all of the SME Members including the City, plus (d) SME's administrative and general expenses which are appropriately attributed to the

operation of the HGS; but in any event excluding (e) SME's debt service expense and charges allocable to SME's financing. In the event that the City's electricity supply requirements exceed its percentage share of the output of the HGS, then the price of the additional supply will be the cost SME incurs for the additional power on a pass-through cost basis plus 2% for administrative, scheduling, and other services provided by SME.

(ii) If the City, through ECP, is not a percentage owner of an undivided interest in the HGS, then the City's price of power shall be the cost SME incurs for the power provided by SME to the City on a pass-through basis plus 2% for administrative, scheduling, and other services provided by SME. To the extent of availability, SME agrees to first make available to the City all electricity generated by the HGS that is in excess of the demands of SME's member cooperatives and other contractual obligation made to secure operating and spinning reserves as well as contracts made in advance of the request by ECP to purchase capacity from HGS, at a price based on the cost of operating the HGS together with a reasonable charge reflecting an allocated share of SME's debt service requirements including revenues necessary to meet RUS' requirements for an appropriate Times Interest Earned Ratio (TIER) and a 2% charge for administrative, scheduling, and other services provided by SME. When the power generated by the HGS and made available to the City is insufficient to meet the City's demands, then SME shall purchase power from third-party suppliers to fulfill the City's demands at a price based on the pass-through cost of such purchased power plus a 2% charge for administrative, scheduling, and other

services provided by SME. In this event, SME shall purchase such blocks of power at the request of and in consultation with the City. At the request of the City, SME shall use its best efforts to obtain and submit to the City for approval bids from third parties to supply the City's requirements at the best available prices. Upon approval of a proposal by the City, SME shall enter into a contract securing the power, provided that the form of the contract has been approved by the City.

(D) The City shall provide all letters of credit and other security required by any third-party supplier of power purchased by SME to meet the City's requirements.

8. METER READING AND PAYMENT OF BILLS: SME shall read or cause to be read each meter on approximately the same date each month. Electric energy and related services furnished hereunder shall be paid for by the City at the offices of SME monthly within ten (10) days after the bill therefore is mailed. If the City shall fail to pay any such bill within such ten-day period, SME may discontinue delivery of electric energy and related services hereunder upon fifteen (15) days' written notice to the City of its intention to do so. SME shall timely pay for all wholesale electric energy, transmission services and other incurred costs in accordance with the provisions of contracts between SME and providers of said energy and related services.

9. METER TESTING AND BILLING ADJUSTMENT:

(A) SME shall without charge to the City inspect and/or test metering equipment or cause metering equipment to be inspected and/or tested at least once each year and at any reasonable time upon request therefore by the City. Any metering equipment found to be defective or inaccurate shall be repaired and readjusted or replaced.

Should any meter fail to register, the electric demand and energy delivered during such period of failure to register shall, for billing purposes, be that amount determined to be appropriate pursuant to the meter testing and billing adjustment provisions of the contract between SME and the United States, between SME and NorthWestern Energy, between SME and PPL, whichever contract(s) is (are) applicable to said metering equipment failure.

If any of the inspections and/or tests provided for herein disclose an error exceeding two percent (2%), corrections based upon the inaccuracy found shall be made pursuant to the meter testing and billing adjustment provisions of the contract between SME and the United States, and/or between SME and NorthWestern Energy or PPL, whichever contract(s) is (are) applicable to said inaccuracy. Any correction in billing resulting from such correction in meter records shall be made in the next monthly bill rendered by SME to the City and such correction when made shall constitute full adjustment of any claim between the parties hereto arising out of such failure or inaccuracy of metering equipment.

(B) SME shall notify the City or arrange notification in advance of the time of any City requested meter test so that a representative of such City may be present at such meter test.

10. ADJUSTMENTS FOR FRACTIONAL BILLING PERIOD: For a fractional part of a billing period at the beginning or end of service, and for fractional periods due to withdrawals of service, the applicable charges for demand or capacity, for kilowatt hour blocks of energy, and/or for a minimum bill shall each be proportionately adjusted in the ratio that the number of hours that electric service is furnished to the City

in such fractional billing period bears to the total number of hours in the billing period involved.

11. RIGHT OF ACCESS: In the event the City or ECP acquires any distribution facilities, the City hereby agrees that Southern Montana, and its authorized agents, contractors, or employees, may enter City's or ECP's distribution facilities, including its substations, at all reasonable times, provided proper advance arrangements have been made with the City. All activities of Southern Montana and its authorized agents, contractors, or employees, shall be performed so as not to interfere with the operation and maintenance of the facilities of the City or ECP.

12. INDEMNIFICATION: Subject to the limitation on recourse to the City contained in Section 1(D), in the event the City or ECP acquires any distribution facilities, the City hereby agrees to indemnify and hold harmless Southern Montana, and its authorized agents, contractors, and employees, from any loss or damage and from any liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of the wrongful act or omission of the City or ECP or their agents or employees acting within the scope of their employment, except to the extent caused by the negligence or willful misconduct of the indemnified party.

13. CONTINUITY OF SERVICE: SME shall use reasonable diligence to provide a constant and uninterrupted supply of electric energy and related services hereunder. If the supply of electric energy and related services shall fail or be interrupted, or become defective through an act of God or of the public enemy, or

because of accident, labor dispute, or any other cause beyond the control of Southern Montana, SME shall not be liable therefore or for damages caused thereby.

14. CONSERVATION AND RENEWABLE ENERGY PROGRAM:

(A) The Parties acknowledge that the City does not currently have a conservation commitment, but the Parties also agree that the City shall develop and implement a conservation and renewable energy program (hereinafter referred to as the “program”), as may hereafter be required by any governmental authority (hereinafter referred to as the “agency”) with jurisdiction over SME or the City.

(B) Southern Montana, with the guidance and assistance of the agency, will assist the City in development of a program which will qualify under the agency’s guidelines or requirements.

(C) The City will develop a program and will submit said program in timely fashion to the agency for review and approval in accordance with the agency’s guidelines or requirements.

(D) If the City does not obtain the approval of its program by the agency or if such approval has been revoked, the net monetary cost resulting therefrom or any penalty imposed on SME by the agency will be passed through and imposed on the City.

15. TRANSFER OF INTEREST IN CONTRACT BY CITY: No voluntary transfer of this contract or of the rights of the City hereunder shall be made without the written approval of Southern Montana. In the event the City is a percentage owner of an undivided interest in the HGS, this provision shall be modified to allow for those assignments specified by the parties in their HGS ownership agreements.

16. MISCELLANEOUS:

(A) Substation Charges. City agrees to reimburse SME for any expenses incurred for materials, labor, and replacement parts, if any, in maintaining and repairing voltage regulators, by-pass switches, and other related equipment installed to provide or maintain service to the City in substations of the Western and/or NorthWestern Energy and/or PPL and to the extent that charges therefore may be made to SME by the Western and/or NorthWestern Energy, and/or PPL, and have been mutually agreed to in advance by the City and Southern Montana.

(B) Entire Agreement. This Agreement represents the complete agreement of the Parties and supersedes and replaces all prior agreements and understandings of the Parties, whether written or oral.

(C) 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.

17. WAIVERS: Any waiver at any time by either party hereto if its rights with respect to a default or any other matter arising in connection with this contract shall not be deemed to be a waiver with respect to any subsequent default or matter.

18. TERMINATION OF EXISTING CONTRACTS: This Agreement supersedes and replaces the Existing Contracts. All rights and liabilities of the Parties arising under the Existing Contracts prior to the date of this Agreement or relating to periods prior to the date of this Agreement shall be and are hereby preserved and shall be governed by the provisions of the Existing Contracts.

19. TERM AND EARLY TERMINATION:

(A) Term. This Agreement shall become effective on the date specified in the first sentence of this Agreement and (unless terminated early pursuant to Section 19(B)) shall remain in effect through the 31st day of December, 2048, and shall thereafter continue in full force and effect until it is terminated by either party's giving to the other not less than twelve (12) months written notice of its intention to terminate.

(B) Early Termination Upon Member Termination Event. This Agreement will terminate early, prior to the end of the initial term, upon the occurrence of a Member Termination Event, effective on the date on which the Member Termination Event is deemed to be effective. For this purpose, a "Member Termination Event" means the occurrence of one or more of the following events:

(a) Receipt of written notice by SME from ECP to SME to the effect that this Agreement will terminate on an effective date not less than 60 days no more than 180 days after the date of the notice, following a final decision of the courts of Montana or the United States, or other body having jurisdiction over the issue, determining that this Agreement is void or unenforceable or that SME otherwise lacks the legal authority to provide electricity supply and transmission services to the City; or

(b) Receipt by SME of written notice from the City or ECP to the effect that this Agreement will terminate on an effective date not less than 60 days no more than 180 days after the date of the notice, following a final decision of the courts of Montana or the United States, or other body having jurisdiction over the issue, determining that the City cannot be a voting member of SME;

provided, however, no Member Termination Event will be deemed to occur if SME and the City mutually agree upon an alternative arrangement acceptable to SME and the City prior to the date the Membership Termination Event is effective.

20. SPECIFIC PERFORMANCE AVAILABLE: Southern Montana and the City agree that (i) if the City shall fail to comply with any provision of the Wholesale Power Contract, Southern Montana, or the Administrator of RUS, if the Administrator so elects, shall have the right to enforce the obligations of the City under the provisions of this Agreement, and (ii) if SME shall fail to comply with any provisions of this Agreement, the City, or the Administrator of RUS, if the Administrator so elects, shall have the right to enforce the obligations of SME under the provisions of this Agreement. Such enforcement may be by instituting all necessary actions at law or suits in equity, including, without limitation suits for specific performance. Such rights of the Administrator to enforce the provisions of this Agreement are in addition to and shall not limit the rights which the Administrator shall otherwise have pursuant to any financing agreement it may have with SME. RUS shall not, under any circumstances, assume or be bound to the obligations of SME or City under this Agreement except to the extent the Government shall agree in writing to accept and be bound by any such obligation in whole or in part.

21 COUNTERPARTS AND DUPLICATE ORIGINALS: This Agreement may be simultaneously executed and delivered in two or more counterparts and/or duplicates, each of which so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.

22. COGEN FACILITY: The City may operate a cogeneration facility at its Wastewater Treatment Facility. It shall sell power generated by the Cogen Facility to SWE on terms mutually agreed by the Parties. SME will resell that power back to the City at the same price subject to terms and conditions established by the Board for the resale, including an administrative fee for administration and scheduling.

23. FUTURE AMENDMENTS, INCLUDING AMENDMENTS REQUIRED BY HGS FINANCING

This Agreement may be amended in writing signed by both parties. The parties recognize that in the event the City is an equity participant in the HGS the agreements made in connection with the financing and ownership of the City's and SME's respective shares of the HGS, including but not limited to any Ownership Agreement and any Coordination and Integration Agreement, may contain terms which will require the parties to supplement, modify and amend this Agreement to comport with those agreements.

24. FURTHER RIGHTS OF THE PARTIES:

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.

EXECUTED the day and year first hereinabove written.

Southern Montana Electric Generation and Transmission
Cooperative, Inc.

DRAFT

By: _____
President

Attest: _____
Vice-President

The City of Great Falls, Montana

By: _____
Its: _____

Attest: _____
Its: _____

STATE OF MONTANA)
 :ss.
County of _____)

On this _____ day of _____, 2007, before me, the undersigned, a Notary Public in and for said state, personally appeared _____ and _____, the President and Vice-President of Southern Montana Electric Generation and Transmission Cooperative, Inc., a Montana corporation, each known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same, on behalf of said corporation, for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first hereinabove written.

(Notarial Seal)

Printed Name: _____
Notary Public for the State of Montana
Residing at: _____
My Commission Expires: _____

STATE OF MONTANA)
 :ss.
County of _____)

On this _____ day of _____, 2007, before me, the undersigned, a Notary Public in and for said state, personally appeared _____ and _____, the _____ and the _____ of The City of Great Falls, Montana, an incorporated city, each known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same, on behalf of the city, for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first hereinabove written.

(Notarial Seal)

Printed Name: _____
Notary Public for the State of Montana
Residing at: _____
My Commission Expires: _____