



Item: Termination, Settlement and Release Agreement between General Mills Operations, LLC, the City of Great Falls, and Electric City Power, Inc.

From: Greg Doyon, City Manager

Initiated By: Electric City Power, Inc., a dissolved Montana public benefit corporation

Presented By: Greg Doyon, City Manager

Action Requested: Approve Settlement Agreement and Accept Settlement Amount

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission (approve/not approve) the Termination, Settlement and Release Agreement among General Mills Operations, LLC, the City of Great Falls, and Electric City Power, Inc. and accept the \$100,000 settlement payment.”

2. Mayor calls for a second, discussion, public comment, and calls the vote.

Background: The City/ECP entered into Amended and Restated Long Term Power Supply Agreement with General Mills (GM) effective September 2005. The initial term of contract was 38 years with the possibility of subsequent five year extensions. The contract required GM to purchase all the electricity it required from ECP.

On May 12, 2011, GM sent a termination letter requesting termination of the electric supply contract effective June 30, 2011. The termination was based on Section 3.4 of the Contract, claiming the City and ECP were no longer pursuing construction of the coal-fired Highwood Generating Station. GM terminated its contract with City/ECP on May 12, 2011 and began purchasing electricity from another supplier.

On May 1, 2013, the City of Great Falls/Electric City Power and Southern Montana G&T reached a settlement that severed the City’s relationship with Southern Montana G&T. On December 3, 2013, Electric City Power was dissolved, but continues its corporate existence necessary to wind up and liquidate assets, including accounts receivable.

October 4, 2013 Mayor Winters, Commissioner Jones and the City Manager met with Bill Harp, General Manager of Great Falls GM facility to request consideration of a substantial and

meaningful contribution to the City in light of the terminated contract and legal resolution with Southern.

As a result discussions with GM, the company is proposing a Termination, Settlement, and Release Agreement with a settlement payment of \$100,000.

Fiscal Impact: The City will receive a settlement in the amount of \$100,000. City manager recommends payment to offset General Fund cash losses.

Alternatives: Reject the proposed settlement.

Attachments/Exhibits: Termination, Settlement and Release Agreement

**TERMINATION, SETTLEMENT AND RELEASE AGREEMENT
(Electric City Power, Great Falls, MT)**

THIS TERMINATION, SETTLEMENT AND RELEASE AGREEMENT (this “**Agreement**”) is made as of _____, 2014 by and among General Mills Operations, LLC, a Delaware limited liability company (“**GMOL**”), The City of Great Falls, a Montana municipal corporation (“**City**”) and Electric City Power, Inc., a Montana corporation (“**ECP**”).

RECITALS

A. GMOL and ECP are parties to that certain Initial Contract dated as of August 2, 2005 (the “**Initial Contract**”) pertaining to the purchase and sale of electricity to be supplied to the property commonly located at 2500 9th Avenue North, Great Falls, Montana.

B. ECP and the City were parties to certain commercial arrangements with Southern Montana Electric Generation & Transmission Cooperative, Inc., (“**Southern**”) pursuant to which ECP ultimately procured the electricity that it sold to GMOL pursuant to the Initial Contract.

C. In 2011, a dispute arose between GMOL and ECP concerning the nature and extent of GMOL’s going-forward obligations to purchase electricity from ECP.

D. A key point of contention in that dispute was the effectiveness and validity of that certain Amended and Restated Long Term Power Supply Agreement purportedly between ECP and GMOL (the “**Long Term Supply Agreement**”).

E. ECP was dissolved on December 6, 2013.

I. ECP and the City and GMOL have reached a fair and equitable agreement to fully and finally settle all claims between them pertaining to the purchase and sale of electricity, pursuant to the Initial Contract, the Long Term Supply Agreement and otherwise.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ECP, the City and GMOL hereby agree as follows:

1. Termination. The Initial Contract and the Long Term Supply Agreement are terminated in their entirety, and neither party may assert otherwise after the date of this Agreement.

2. Releases.

2.1 City and ECP Release. The City and ECP hereby release and discharge GMOL, its past and present directors, officers, agents, employees, insurers, reinsurers, accountants, attorneys, affiliates, predecessors and successors, from any and all contracts, actions, claims, causes of action, demands or expenses for damages or injury whether asserted or unasserted, known or unknown, foreseen or unforeseen, including, without limitation, any claims arising out of, related to, or which were or could have been made in connection with the Initial Contract or the Long Term Supply Agreement. This release includes, but is not limited to, claims of violations of any state or federal statute, any federal or state common law doctrine, breach of contract, negligence, actual fraud, negligent misrepresentation, tortious interference, bad faith, breach of the implied covenant of good faith and fair dealing, slander, libel, defamation, negligent or intentional infliction of emotional distress, and any other damages, demands, costs, attorneys' fees, or expenses of any kind.

2.2 GMOL Release. GMOL hereby releases and discharges the City and ECP, and their respective past and present managers, directors, officers, agents, elected officials, employees, insurers, reinsurers, accountants and attorneys, from any and all contracts, actions, claims, causes of action, demands or expenses for damages or injury whether asserted or unasserted, known or unknown, foreseen or unforeseen, including, without limitation, any claims arising out of, related to, or which were or could have been made in connection with the Initial Contract and the Long Term Supply Agreement. This release includes, but is not limited to, claims of violations of any state or federal statute, any federal or state common law doctrine, breach of contract, negligence, actual fraud, negligent misrepresentation, tortious interference, bad faith, breach of the implied covenant of good faith and fair dealing, slander, libel, defamation, negligent or intentional infliction of emotional distress, and any other damages, demands, costs, attorneys' fees, or expenses of any kind.

3. Settlement Payment. In consideration for the terms and conditions set forth in this Agreement, GMOL shall pay the City the sum of \$100,000 (the "**Settlement Payment**") simultaneously with GMOL's execution and delivery of this Agreement.

4. No Admission. This Agreement compromises disputed claims and is intended to prevent further disputes and to avoid the expense and uncertainty of litigation. Nothing contained in this Agreement may be interpreted or construed to be an admission of liability on the part of any party, including, without limitation, any admission by GMOL that either the Initial Contract or the Long Term Supply Agreement was valid or effective as of the date of this Agreement.

5. Final Settlement. The parties fully understand that if the facts are found to be different from facts now believed by either party to be true, they expressly accept and assume the risk of such possible difference in facts, and agree that this Agreement remains effective notwithstanding such differences.

6. Miscellaneous.

6.1 Binding Effect. This Agreement inures to the benefit of any is binding on each of the parties to this Agreement or benefitted by this Agreement including, without limitation, their predecessors, successors, subsidiaries, affiliates, representatives, agents, officers, directors and employees, past present and future.

6.2 Further Documents. To the extent any documents are required to be executed by any of the parties to effectuate this Agreement, each party agrees to execute and deliver such documents as may be reasonably required to carry out the terms of this Agreement.

6.3 No Modification. This Agreement may not be altered, amended or modified in any respect except by a writing duly executed by all parties.

6.4 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each counterpart to be considered an original portion of this Agreement.

6.5 Voluntary and Knowing Release. Each of the parties represents and warrants that it has read, knows and understand s the contents of this Agreement, and has executed this Agreement voluntarily, and has not been influenced by any person or any attorney acting on behalf of any other party. The parties further represent that they are of sound mind, legally competent to enter into this Agreement, and have obtained all authorizations required to enter into and consummate this Agreement. The parties have been represented by counsel and have consulted with counsel before executing this Agreement. The Parties declare that it is their intention that this Release be construed to the broadest extent possible to finally and forever settle and discharge any and all claims arising from the Initial Contract and the Long Term Supply Agreement. GMOL, ECP, and the City represent to each other that they are not reserving or retaining any claims arising from the Initial Contract and/or the Long Term Supply Agreement, but are in fact releasing all such claims.

6.6 Attorneys' Fees and Costs. The parties shall pay their own respective costs and attorneys' fees in connection with the negotiation and preparation of this Agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this Termination, Settlement and Release Agreement as of the date first above written.

General Mills Operations, LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

The City of Great Falls, a Montana municipal corporation

By: _____
Name: _____
Its: _____

Electric City Power, Inc., a dissolved public benefit corporation

By: _____
Name: _____
Its: _____