



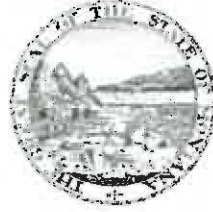
ORIGINAL

The Weekly Update – May 18, 2012

Attachments:

1. Correspondence between the Director of the Department of Commerce, Dore Schwinden, and Senator Jim Keane regarding the Central Montana Agricultural and Technology Park.
2. Montana Water Court Order Vacating May 16 Hearing Date on Objections to Master's Report, Order Consolidating Claims and Setting Telephone Conference.
3. United States Bankruptcy Court RE: Southern Montana Electric G&T, Case No. 11-62031-11: Order dated May 15, 2012, Yellowstone Valley Electric Cooperative's Combined motions are Denied.
4. United States Bankruptcy Court RE: Southern Montana Electric G&T, Case No. 11-62031-11, Memorandum of Decision dated May 15, 2012.
5. Comment from Carole Spahr regarding proposed regulations regarding the use of cell phones and all other forms of communication.
6. Memo from Chief Bowen providing information obtained from conversation with Minot Chief of Police regarding impacts felt from the Bakken Oil Boom in western North Dakota.
7. Information from Big Sky Economic Development regarding Bakken trips planned for this summer.
8. Letter from Great Falls Public Schools notifying Mayor Winters that he has been nominated for the Human Resources Good Apple Award.
9. City Commission Work Session Minutes May 1, 2012.
10. May 15, 2012, City Commission Meeting handouts.

Montana State Senate



SENATOR JIM KEANE
SENATE DISTRICT 38

COMMITTEES:
FINANCE AND CLAIMS
NATURAL RESOURCES
HIGHWAYS AND TRANSPORTATION
RULES

The Big Sky Country

HELENA ADDRESS:
PO BOX 200500
HELENA, MONTANA 59620-0500
PHONE: (406) 444-4850

HOME ADDRESS:
2131 WALL ST.
BUTTE, MT 59701
PHONE: (406) 723-8378

April 11, 2012

Dore Schwinden, Director
Department of Commerce
PO Box 200501
Helena, MT 59620-0501

RECEIVED

APR 19 2012

CITY CLERK

RE: *Central Montana Agricultural and Technology Park*

Dear Director Schwinden:

Thank you for responding to my earlier letter with regard to the above-referenced Park.

I am aware that the Department of Commerce's (DOC) grant was for an extension of a city water line to the Park, and that the grant money did not go toward the design or construction of the railroad spur. However, as my previous letter explained, the proposal to secure state monies for the Park was premised on the rail spur being held by a governmental entity or the Great Falls Development Authority and that it would be open to other parties locating in the Park. The attached string of emails to and from DOC personnel clearly indicates that a condition of the DOC grant for the water line was that the rail spur be owned by the Great Falls Development Authority or some public entity (pertinent parts marked).

In fact, the grant itself required Cascade County to enter into a sub-recipient agreement, which insured that the rail spur would be held by a public entity. Enclosed is an unsigned copy of a sub-recipient agreement dated May 24, 2004 between Cascade County and the Great Falls Development Authority, which would have fulfilled the condition (pertinent parts marked). Apparently, that agreement was not finalized and DOC's condition for receipt of the grant was apparently never fulfilled.

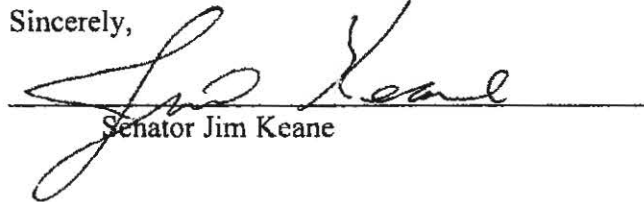
The end result of the various transactions that took place relative to the Park and the spur is that the \$500,000 of public monies (\$400,000 DOC grant and \$100,000 MDOA grant) has been invested to benefit the development of the Park. However, the sole beneficiary of the expenditure of public monies has been the malting barley plant, MaltEurope (MENA). The various transactions between the Great Falls Development Authority and MENA, places MENA in absolute control over access to the spur. This certainly was not the intent of those involved at the time the proposal was put forward, and is contrary to the premise upon which the public monies were secured.

898071/4349.001

RE: Access - Trans-loading Facility
April 5, 2012
Page 2

My goal in raising these issues is to secure open access to the rail spur so that the intent of the public monies is fulfilled. Any assistance the Department of Commerce and the other state agencies can provide in this matter would be greatly appreciated.

Sincerely,



Senator Jim Keane

cc: Greg Doyon, Great Falls City Manager
Jane Weber, Chairman, Cascade County Commissioners
Michael Winters, Mayor, City of Great Falls
Brett Doney, Great Falls Development Authority
Tori Hunthausen, Legislative Auditor
Debra Demarais, CDBG-ED Section Manager

Tobel, Karyl

From: Tobel, Karyl
Sent: Friday, October 03, 2003 4:42 PM
To: Morehouse, Gary; Hanson, Randy (NC Montana)
Subject: FW: Montana Department of Commerce

*What need to collect
fiscal category
information how?*

Last and final item for the day:

Confirmation of access to Giant Springs;
(One from Gary) - Grant Assistance agreement with LMI benefit - documentation.

K

-----Original Message-----

From: Tobel, Karyl
Sent: Friday, October 03, 2003 4:31 PM
To: Morehouse, Gary; Hanson, Randy (NC Montana)
Subject: FW: Montana Department of Commerce

Scratch the last item. I found a letter from the County making the application. Sorry.

K

-----Original Message-----

From: Tobel, Karyl
Sent: Friday, October 03, 2003 4:21 PM
To: Morehouse, Gary; Hanson, Randy (NC Montana)
Subject: FW: Montana Department of Commerce

One more thing - a letter from the County making the application.

-----Original Message-----

From: Tobel, Karyl
Sent: Friday, October 03, 2003 3:55 PM
To: Hanson, Randy (NC Montana); Morehouse, Gary
Subject: FW: Montana Department of Commerce

Should add in:

Formal commitment from the City for the \$3 plus million;
Formal commitment from IMC for \$1 million.

k

-----Original Message-----

From: Tobel, Karyl
Sent: Friday, October 03, 2003 3:51 PM
To: Hanson, Randy (NC Montana)
Cc: Morehouse, Gary
Subject: RE: Montana Department of Commerce

Randy and Gary:

What I see are issues that will have to be conditions on the contract:

10/3/2003

- 1) Need a lease agreement between Northwest Energy and IMC;
- 2) Need agreement stating that Great Falls Development will own rail spur;
- 3) Need approval from MDOT on traffic impact study;
- 4) Need cultural inventory done as per SHPO letter (EA condition);
- 5) Need commitment of funds from EDA;
- 6) Need inter-local agreement between the County and City;
- 7) Do we need an agreement from Northwest Energy for easements?



I concur with Randy on his list of conditions.

The only other thing on Randy's write-up is that at the bottom of the first page, the CDBG application from the County was for \$500,000, not \$400,000. Even though only \$400,000 is eligible, I think the write-up should reflect the original request.

K

-----Original Message-----

From: Randy Hanson [mailto:hanson@ibic4.ibic.org]
Sent: Friday, October 03, 2003 3:02 PM
To: Gary Morehouse; karyl@state.mt.us
Subject: Montana Department of Commerce

Gary - Karyl,

Here is my first draft of narrative. Please review and make comments.

Exhibits are from the application and I will be providing them via mail along with copies of map for LRC and RDO review.

Yesterday, I meet with Cascade County Commissioners to review items in the application that they might like to clarify, replace with updates or add such as a cover letter. I will be picking these up on Tuesday the 7th.

I have not tried to spread the IMC financials as my copy is hard to read, they are not done in GAPP by an external CPA firm, are not specific to this plant (total corporate numbers) and may not be relevant to this project.

I can't spread any financials for the infrastructure of the Industrial Park as all funds will be from grants or other public funds.

Please advise on how to handle this requirement for the LRC.

Gary, I will be calling upon sending this e-mail.

Randy

10/3/2003

Tobel, Karyl

From: Randy Hanson [hanson@ibic4.ibic.org]
Sent: Monday, October 06, 2003 3:11 PM
To: Gary Morehouse; karyl@state.mt.us
Subject: Montana Department of Commerce

Gary - Karyl,

Second draft of IMC narrative.

Please review. All of your suggestions have been incorporated into narrative.

Tomorrow I will be picking up additional information from Cascade County to be included in application.

- * New cover letter
- * Clarification on City of Great Falls providing \$ 143,000 towards water line
- * Providing clarification on who will administer grant [County Vs GFD]
- * Adjustments on Sources and Uses of Funds form

These items will be put in mail tomorrow along with items I have tagged as exhibits.

Randy

CDBG Start-Up Conditions for Cascade County:

In addition to normal project start-up conditions, the following must be met:

- 1) City of Great Falls will ensure line maintenance upon annexation and cover expenses by charging water rates.
- 2) Value-Added Industrial Park management and board are in place as per plan.
- 3) Need agreement between all affected parties that Great Falls Development will own the rail spur.
- 4) Need approval from the Montana Department of Transportation on a completed traffic impact study;
- 5) Need commitment of funds from EDA.
- 6) Need signed inter-local agreement between the County and City for this project.
- 7) Need easement agreement from Northwest Energy.
- 8) Need formal commitment from the City for the \$3 million plus for the wastewater line.
- 9) Need confirmation of IMC's access to Giant Springs water.
- 10) Need formal commitment from IMC on \$1 million Giant Springs water line.
- 11) Need completed grant assistance agreement with LMI benefit between the County and IMC.
- 12) Need cultural inventory completed and approval from SHPO.
- 13) ~~Need hiring and training sheets to reflect new race categories.~~

--- normal
Structure of conditions



CASCADE COUNTY

BOARD OF COMMISSIONERS
15 2nd Avenue North
Great Falls, MT 59401
Tel: (406) 454-6310
Fax: (406) 454-6345
commission@co.cascade.mt.us
www.co.cascade.mt.us

December 11, 2003

Karyl Tobel
Program Manager
CDBG Economic Development
Business Resources Division
Montana Department of Commerce
301 South Park Ave
Helena, MT 59620

Dear Karyl:

Please find enclosed three (3) originals that were approved at the December 9, 2003 Cascade County Commission meeting. Chairman, Tom Stelling has signed all three contracts of the Community Development Block Grant-Economic Development Program Contract No. MT-CDBG-ED03-04 between Cascade County and the Montana Department of Commerce for the purpose of funding the extension of public water main improvements to the value added agricultural park and they are now ready for the signature of Mark A. Simonich. Upon collection of that task please forward one original fully signed contract to the commission office for our official public record.

Thank you for your assistance.

Jackie R O'Fallon
Cascade County Commission Office

MONTANA COMMUNITY DEVELOPMENT BLOCK GRANT
ECONOMIC DEVELOPMENT PROGRAM

MONTANA DEPARTMENT OF COMMERCE Contract MT-CDBG-ED03-04

A. **PARTIES:** The parties to this contract (the Contract) are the State of Montana, Department of Commerce (MDOC) (the Department), 301 South Park, Helena, Montana, 59620-0501, and the CONTRACTOR, Cascade County, 325 Second Avenue North, Great Falls, Montana 59401,

B. **PURPOSE:** The purpose of the Contract is to provide funding for project activities as approved by the Department under the Montana Community Development Block Grant - Economic Development (CDBG-ED) Program for FY 2003.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the parties hereto agree as follows:

1. **AUTHORITY:** The Contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

2. **SCOPE AND DUTIES:**

a) The Contractor will engage in activities as set forth in the Contractor's application, including any written modifications resulting from the review of the applications by the Department for CDBG-ED grant assistance that by this reference are made a part hereof.

b) Grant funds of \$32,000 are budgeted for administrative activities.

c) The Contractor will use up to \$368,000 of CDBG economic development funds to provide extension of water service to the International Malting Company, LLC (the Sub-Recipient), a supplier of malt products, one mile northeast of Black Eagle on Black Eagle Road, one half mile east of Highway 87. The Sub-Recipient has projected thirty five (35) full-time equivalent (FTE) jobs will be created, twenty one (21) of which will be made available to or filled by low and moderate-income persons.

3. **PERIOD OF CONTRACT:** The Contract will be in effect for the period commencing October 15, 2003 and ending October 15, 2005, unless otherwise terminated by law or in compliance with the terms of the Contract.

4. **LIAISON:** The contact person for the Department is Karyl Tobel, Program Manager, Community Development Block Grant-Economic Development Program (CDBG-ED), Helena, Montana, or successor, and Tom Stelling, Chairman, Cascade County Commission, Great Falls, Montana, for the Contractor.

5. BUDGET

- a) The total amount to be awarded to the Contractor under this Contract will not exceed \$400,000.
- b) A copy of the project budget is included as Attachment B to this Contract, and by this reference is made binding upon the Contractor. The Contractor may modify this budget only after having requested and received prior approval of the adjustment from the Department.
- c) For budget adjustments of \$5,000 or less between line items of the CDBG-ED portion of Attachment B, Department approval of the Request for Payment form will constitute approval of the budget adjustment. The rationale for budget adjustment must be described in the Project Progress Report and the proposed adjustments noted in the Request for Payment and Status of Funds Report submitted with draws against the grant funding reserve. Budget adjustments in excess of \$5,000 require formal Department approval.

6. COMPENSATION & CONSIDERATION:

- a) The Department will authorize the Contractor to draw up to \$400,000 against the funding reserved for it by the Department. In drawing against the reserved amount the Contractor will follow the instructions supplied by the Department.
- b) The Department will reimburse all eligible expenses incurred in furtherance of this Contract as provided in this Contract and upon approval by the Department of the Contractor's Request for Payment. The Department will reimburse the Contractor for approved, eligible and necessary expenses according to the documentation submitted by the Contractor to support the expenditures. The Department will not reimburse the Contractor for any costs incurred prior to the date of tentative grant award that was October 15, 2003, nor for any expenses not included in the approved budget or not clearly and accurately supported by the Contractor's records. Any authorized funds not expended under this grant will revert to the Department and will be used to finance other CDBG-ED projects.
- c) The Department agrees to reimburse the Contractor for successfully completing the activities set forth in Section 2 SCOPE AND DUTIES, as the Contractor incurs project costs.
- d) The Contractor will review and determine the propriety of and need for each request for funds by the Sub-Recipient in relation to the proposed uses specified in its final CDBG-ED agreement and in the Contractor's CDBG-ED application to the Department.
- e) The reimbursement of eligible costs incurred is contingent upon the Contractor's completion of Section 11 SPECIAL CONDITIONS. In the event the Contractor is unable to comply with the terms and conditions of this Contract, any costs incurred will be the Contractor's sole responsibility.

- f) If the actual cost of completing the project is less than has been projected by the Contractor in the preliminary budget (Attachment B), the Department may, at its discretion, reduce the amount to be provided under this Contract in proportion to the overall savings. For construction projects, if actual construction bids are less than the estimates included in the preliminary budget, the construction budget in the CDBG-ED Contract will be established at the bid price plus a ten percent (10%) contingency. The difference between actual project costs and the original grant award will be reallocated by the Department for unfunded or inadequately funded projects or added to the following year's CDBG-ED allocation.
- g) If the Department determines that the Contractor has failed to satisfactorily carry out its responsibilities under this Contract, the Department may revoke the Contractor's authority to draw against the reservation described herein until such time as the Department and the Contractor agree on a plan to remedy the deficiency.
- h) The Montana Department of Commerce reserves the right to withdraw a commitment for any CDBG-ED funds which have not been disbursed twenty-four (24) months after the date of the announcement of the tentative grant award.
- i) If needed, travel expenses, meals and lodging will be reimbursed at the Montana State Rate.
- j) Unless otherwise stated herein, the Department is allowed 30 days to process requests for payments. The Contractor may be required to provide banking information at the time of Contract execution in order to facilitate electronic funds transfer payments. The Department may withhold payments to the Contractor if the Contractor has breached the terms of the Contract.

7. PERFORMANCE REPORTING

The Contractor will submit status reports on project performance at the request of, and in the format prescribed by the Department. These reports include, but are not limited to:

- a) Project Progress Reports describing the status of the project with respect to each implementation objective, including at a minimum, the percentage complete, costs incurred, funds remaining, progress towards achievement of hiring and training goals specified in the final plan to be prepared, as specified in Section 11 SPECIAL CONDITIONS, and projected completion date. The report must also describe any significant problems encountered and any necessary scope or implementation schedule modification requested. The Contractor must submit project progress reports to the MDOC with each Request for Payment, or at least quarterly. If a Request for Payment is not submitted during a given calendar quarter, the project progress report must be submitted to the MDOC within one month after the end of the calendar quarter.
- b) The Contractor will monitor the Sub-Recipient's operations to ensure compliance with CDBG-ED requirements during the term of the project. The Contractor will require the Borrower to submit the following:

- c) Quarterly financial status reports;
- d) Hiring and training reports must be submitted four (4) times per year for the periods ending March 31, June 30, September 30 and December 31;
- e) Project Progress Reports describing the status of the project with respect to each implementation objective including at a minimum, the percentage complete, costs incurred, funds remaining and projected completion date. The report must also describe any significant problems encountered and any necessary scope of implementation modifications requested. At a minimum, this report must be submitted to the Department by the Grantee within 30 days of each calendar quarter ending March, June, September, and December;
- f) Evidence documenting the propriety of the proposed use of CDBG-ED funds with each drawdown request and the Grantee's review of the proposed use;
- g) Annual business plan report indicating the Sub-Recipient's progress toward implementing the business plan proposed in the CDBG-ED application or noting any proposed revisions of the plan; and
- h) Annual financial reports reviewed by a certified public accountant with full disclosure notes.

Unless otherwise specified, the Contractor will submit the above listed information to the Department until the goals contained in the hiring and training plan have been achieved, and the Contractor receives project closeout approval from the Department.

3. ASSURANCES:

- a) The Contractor will comply with the Certifications of Application as signed and submitted with the Contractor's CDBG-ED application. The Contractor will comply with all applicable parts of Title I of the Housing and Community Development Act of 1974, as amended; the applicable Department of Housing and Urban Development (HUD) regulations in 24 CFR Part 570, as not in effect or as they may be amended during the term of this Contract, all requirements established by the Department; applicable state and federal laws, regulations, administrative directives and procedures, and local ordinances and resolutions.
- b) The Contractor agrees that all contracts entered into by it for the completion of activities described in Section 2 SCOPE AND DUTIES, will contain special provisions requiring contractors to comply with all applicable state and federal requirements.
- c) The Contractor will comply with the Statement of Assurances as signed and submitted with the Contractor's CDBG-ED application. The Contractor will also comply with all other applicable federal and state statutory and regulatory requirements, administrative directives issued by the Department, and local ordinances and resolutions. All contracts entered into by the Contractor for the completion of activities described in Section 2. hereof must contain special

provisions requiring contractors to comply with all applicable requirements.

d) The Contractor expressly agrees to repay to the Department any funds advanced to the Contractor under this Contract which the Contractor, its subcontractors or Sub-recipient entities, or any public or private agent or agency to which it delegates authority to carry out portions of this Contract expends in violation of the terms of this Contract or the federal statutes and regulations governing the CDBG-ED program.

9. AVOIDANCE OF CONFLICT OF INTEREST: The Contractor will comply with the provisions of 24 CFR 570.611 and with sections 2-2125, 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA (as applicable) regarding the avoidance of conflict of interest.

10. ARTICLES INCORPORATED BY REFERENCE: The Contractor's full application for CDBG-ED grant assistance, the applicable HUD regulations at 24 CFR Part 570, and Title I of the Housing and Community Development Act of 1974, as now in effect or as they may be amended during the term of this Contract are incorporated in this Contract by this reference and are binding upon the Contractor.

11. SPECIAL CONDITIONS

The Contractor will not obligate or utilize funds for any activities provided for by this contract until:

a) The Contractor completes an Environmental Review Record and the Department issues a Notice of Release of Funds, however, upon receiving written authorization from the Department, the Contractor may incur administrative costs necessary for the preparation of the Environmental Review and for planning activities defined as exempt under 24 CFR part 58.34.

b) The Contractor submits to the Department evidence of the firm commitment of the other resources necessary for the completion of the project as defined in Section 2 and Attachment B hereof.

c) The Contractor submits to the Department an acceptable management plan approved by the Department;

d) The Contractor submits an acceptable inter-local agreement between Cascade County and the City of Great Falls, approved by the Department, concerning project administration, management and coordination, and costs associated with the scope of work outlined in Section 2 SCOPE AND DUTIES, including responsibilities after project completion. This agreement will contain each parties' responsibilities for extended water line maintenance. The inter-local agreement will include commitment from the City for funding to complete the proposed wastewater line to the Sub-Recipient.

e) A copy of the Sub-Recipient agreement between the Contractor and the Sub-Recipient must be submitted to the Department for review before it is executed. The Contractor shall not

execute the Sub-Recipient agreement until the Contractor receives written approval from the Department. The Sub-Recipient agreement will include the final hiring and training plan, approved by the Department, which must include the following:

- i) A discussion of actions to be taken to ensure that the positions created will be made available to persons of low and moderate income;
- ii) A breakdown of jobs to be created indicating job titles and hourly or monthly rates of compensation;
- iii) A timetable for creating the jobs;
- iv) An assurance that equal opportunity and nondiscrimination laws will be complied with;
- v) Procedures for outreach, recruitment, screening, selection, training and placement of workers which will ensure maximum access for local residents, particularly persons of low and moderate income;
- vi) A description of the Sub-Recipient's training curriculum and resources, if applicable;
- vii) Written commitments from agencies participating in the implementation of the plan; and
- viii) The Sub-Recipient's written commitment to comply with the plan.

The Sub-Recipient agreement conditions must be consistent with the application and any modifications imposed by the Department's Loan Review Committee.

f) The Contractor completes the civil rights activities described in Chapter 5, "Civil Rights" of the CDBG Administrative Manual. The Department may approve in writing a deferral of certain elements of this requirement until the Contractor submits its conditional closeout report.

g) All project funding must be fully committed and available and the project must be ready to proceed within six (6) months of award. The Montana Department of Commerce reserves the right to withdraw a commitment of any CDBG-ED funds for projects not ready to proceed within six (6) months after the date of tentative grant award.

h) If the Contractor fails to enforce the low and moderate-income verification and documentation requirements and to ensure that at least 51% of the full-time equivalent jobs created or retained as a direct result of this project are filled by or made available to low and moderate-income persons, the grant provided hereby will terminate and the Contractor will reimburse the Department all funds disbursed hereunder. If the projected number of jobs or percentage of low and moderate-income persons is not met during the contract period, the

Contractor must be able to demonstrate a "good faith effort" on the part of the Contractor and the business assisted to achieve the projected goals, or the grant provided hereby will terminate and the Contractor will reimburse the Department all funds disbursed hereunder.

i) The Contractor will provide a commitment from Giant Springs for the Contractor and Sub-Recipient's to have adequate service from its water source.

j) The Contractor will provide an executed agreement between Great Falls Development and the Contractor to identify ownership of the rail spur.

k) The Contractor will provide evidence that the Value-Added Industrial Park's management and board are in place.

12. OWNERSHIP AND PUBLICATIONS OF MATERIALS: All materials developed under the Contract are the property of the Department.

13. PROPERTY MANAGEMENT: Title to real property or equipment acquired under a grant or sub-grant will vest upon acquisition in the Contractor's or sub-grantee. The Contractor or sub-grantee will use, manage, and dispose of this property or equipment in accordance with the requirements set out in 24 CFR Part 85, Subpart C and 24 CFR part 570, Subpart J.

14. ACCESS TO RECORDS AND PROJECT MONITORING:

a) The Contractor will maintain adequate and reasonable records of its performance under this Contract and will allow access to these records at any time during normal business hours by the Department the U.S. Department of Housing and Urban Development, the Comptroller General and, when required by law, the Montana Legislative Auditor. These records will be kept in the Contractor's offices in Great Falls, Montana.

b) The Department or its agents may monitor and inspect all phases and aspects of the Contractor's performance to determine compliance with the SCOPE AND DUTIES, and other technical and administrative requirements, including the adequacy of the Contractor's records and accounts. The Department will advise the Contractor of any specific areas of concern and provide the Contractor opportunity to propose corrective actions acceptable to the Department.

15. EQUAL EMPLOYMENT OPPORTUNITY: Any hiring of employees by the Contractor under this Agreement will be on the basis of merit and qualification, and the Contractor will not discriminate against any person on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. As used herein, "qualification" means qualifications as are generally related to competent performance of the particular occupational task.

16. COMPLIANCE WITH WORKERS' COMPENSATION ACT: The Contractor is required to supply the Department with proof of compliance with the Montana Workers' Compensation Act while performing work for the State of Montana. (Mont. Code Ann. §§ 39-71-120, 39-71-401, and

39-71-405.) Neither the Contractor nor its employees are employees of the State. The proof of insurance/exemption must be valid for the entire Contract period and must be received by the Department within 5 working days of the Contractor's execution of the Contract.

CONTRACTS WILL NOT BE ISSUED TO CONTRACTORS WHO FAIL TO PROVIDE THE REQUIRED DOCUMENTATION WITHIN THE ALLOTTED TIME FRAME.

Coverage may be provided through a private carrier or through the State Compensation Insurance Fund (406) 444-6500. An exemption can be requested through the Department of Labor and Industry, Employment Relations Division (406) 444-1446. Corporate officers must provide documentation of their exempt status.

17. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Contract by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the Department.

18. **FAILURE TO HONOR CONTRACT:** If the Contractor refuses or fails to deliver in accordance with the Contract terms and conditions, the State Procurement Bureau may, in its discretion, suspend the Contractor for a period of time from entering into any contracts with the State of Montana.

19. **ACCESS AND RETENTION OF RECORDS:** The Contractor agrees to provide the Department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the State of Montana or third party.

20. **TERMINATION OF CONTRACT:** Unless otherwise stated, the Department may, by written notice to the Contractor, terminate the contract in whole or in part at any time the Contractor fails to perform the Contract.

21. **UNAVAILABILITY OF FUNDING:** The Department may, at its sole discretion, terminate or reduce the scope of the Contract if available funding is eliminated or reduced for any reason.

22. **U.S. FUNDS:** All prices and payments must be in U.S. dollars.

23. **DEFAULT:** Failure on the part of either party to perform the provisions of the Contract constitutes default. Default may result in the pursuit of remedies for breach of contract, including but not limited to damages and specific performance.

24. **CONFORMANCE WITH CONTRACT:** No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without prior written consent of the Department.

25. **VENUE:** The Contract is governed by the laws of Montana. The parties agree that any litigation concerning the Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

26. **COMPLIANCE WITH LAWS:** The Contractor must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with Mont. Code Ann. § 49-3-207, the Contractor agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Contract.

27. **DISABILITY ACCOMMODATIONS:** The Department does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

28. **NO ARBITRATION:** Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that arise under the Contract.

29. **ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** The Contractor shall not assign, transfer or subcontract any portion of the Contract without the express written consent of the Department. (Mont. Code Ann. § 18-4-141.)

30. **MODIFICATION:** The Contract may not be enlarged, modified, amended or altered except upon written agreement signed by all parties to the Contract.

31. **ALTERATION OF SOLICITATION DOCUMENT:** In the event of inconsistencies or contradictions between language contained in the Department's solicitation document and a Contractor's response, the language contained in the Department's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the Contractor's disqualification and possible debarment.

32. **SOLICITATION DOCUMENT EXAMINATION:** The Contractor shall promptly notify the Department of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

33. **FACSIMILE RESPONSES:** Facsimile responses will be accepted for limited solicitations ONLY if they are completely received by the Department prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered.

34. **NOTICE:** All notices required under the provisions of the Contract must be in writing and delivered to the parties' liaisons either by regular mail or personal service.

35. **SEPARABILITY:** A declaration by any court, or any other binding legal source, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.

36. **SHIPPING:** Supplies shall be shipped prepaid, F.O.B. Destination, unless the Contract specifies otherwise.

37. **TAX EXEMPTION:** The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

38. **WARRANTIES:** The Contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the Department.

39. **HOLD HARMLESS AND INDEMNIFICATION:** The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under the Contract.

40. **REGISTRATION WITH SECRETARY OF STATE:** Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with Mont. Code Ann. §§ 35-1-1026 and 35-8-1001. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://www.sos.state.mt.us>.

41. **TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED:** Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and

services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning non-visual access standards.

42. REFERENCE TO CONTRACT: The Contract number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the Contract.

43. INTEGRATION: The Contract contains the entire agreement between the parties, and no statements, promises, or inducements of any kind made by either party, or the agents of either party, not contained herein are valid or binding.

This Contract is made and entered into on the ___ day of _____, 2003.

Tom Stelling 12-10-03
Tom Stelling, Chair Date
Cascade County Commission
(The Contractor)

Mark A. Simonich 12/18/03
Mark A. Simonich Date
Director/Montana Department of Commerce
(The Department)

**ATTACHMENT A
PROJECT IMPLEMENTATION SCHEDULE
CONTRACT #MT-CDBG-ED03-04
Cascade County/IMC**

PROJECT START-UP

Submit Complete Application	4 th Quarter 2003
Begin Project Planning	
Establish Project Files	
Prepare Management Plans/Prog. Inc.	
Finalize Engineer Selection	
Prepare Environmental Review Record	
Finalize Contract with DOC	

Start-Up Conditions

Draft Sub-Recipient Agreement	4 th Quarter 2003
Submit Draft Sub-Recipient Agreement to MDOC	
Final Sub-Recipient Agreement after MDOC approval	
Commence Project Design	
Complete Project Design	1 st Quarter 2004
Environmental Review and other required start-up	
Conditions Completed	
MDOC Release of Funds	

CONSTRUCTION

Submit Bid Package to MDOC for review	2 nd Quarter 2004
Secure MDOC/DEQ approval of Bid Package	
Finalize Acquisition	
Advertise Bid	
Select Contractor/Debarment Check	
Issue Notice to Proceed	
Begin Construction	

HIRING AND TRAINING

Implement Hiring and Training of New Employees	2nd/3 rd Quarter 2005
Document Verification of LMI Status for New Hires	On-Going
Monitor Hiring Process and Project Progress	Quarterly
Obtain and Submit Hiring and Training Progress	
Reports to DOC	Quarterly
Obtain & Submit Financial Statements to DOC	Quarterly

REQUESTS FOR FUNDS

Submit requests for funds	On-Going
---------------------------	----------

CFDA NO. 14.228

PROJECT CLOSE-OUT

Project Audited as Part of Organization-wide
Audit of the Local Government
Submit Audit to CDBG Program Officer
Conditional Close-out
Submit Audit Report to DOC
Final Close-out

3rd Quarter 2005

ATTACHMENT B
PROJECT BUDGET
CONTRACT #MT-CDBG-ED03-04
Cascade County/IMC

BUDGET FORM FOR CDBG ECONOMIC DEVELOPMENT PROJECTS (Sources and Uses)					
SOURCE(S)	CDBG	City of Great Falls	EDA/USDA-RD	IMC	TOTAL
ADMINISTRATION					
County Administration	32,000				32,000
TOTAL ADMINISTRATION	32,000				32,000
ACTIVITY					
IMC Plant Construction				74,555,000	74,555,000
Engineering	42,000	200,000	400,000	100,000	742,000
Public Water Line Construction	300,000	143,000			443,000
Raw Water Line Construction				839,000	839,000
Sewer Line Construction		2,901,000			2,901,000
Construction of Rail Spur			5,002,000		5,002,000
Roadway from Highway 87				82,600	82,600
Contingency	26,000				26,000
TOTAL ACTIVITY	368,000	3,244,000	5,402,000	75,576,600	84,590,600
TOTAL PROJECT BUDGET	400,000	3,244,000	5,402,000	75,576,600	84,622,600

Revised OMB Circular A-133 does not allow a local government, grant-recipient, or sub-recipient expending less than the amount of federal funds identified in OMB Circular A-133 in a fiscal year, to charge the cost of audits to the federal award.

Tobel, Karyl

From: Tobel, Karyl
Sent: Friday, March 19, 2004 3:37 PM
To: 'hand@co.cascade.mt.us'
Subject: Release of Funds - IMC Project

Randy:

Thank you for sending the Consolidated Environmental Assessment Form. In order for the Department to do a release of funds, the following items need to be submitted:

Letter designating the environmental certifying officer (Exhibit 2-A);

Prepare combined FONSI/NOI/RROF (Exhibit 2-N);

Affidavit of publication for FONSI/NOI/RROF;

Prepare and submit Request for Release of Funds and Certification (RROF) (Exhibit 2-Q);

Submit signed depository form;

Submit signed signatory form;

Submit final management plan;

Submit firm evidence of all funding sources;

Submit executed inter-local agreement between Cascade County and the City of Great Falls;

Submit executed sub-recipient agreement between Cascade County and Great Falls Development Authority;]*

Submit proof of Workman's Comp coverage for IMC;

Submit proof of commitment from Giant Springs;

Submit executed agreement between Great Falls Development Authority and Cascade County identifying ownership of rail spur;]*

Submit proof that Value-Added Industrial Park's management and board are in place.

The County will have to show compliance with the following civil rights requirements during the project (not necessarily a start-up activity);

- Hatch Act
- Equal Employment Opportunity
- Fair Housing Act
- Analysis of Impediments in accordance with the American Disabilities Act

It's a lot, Randy - but, I'll do my best to help you through it.

Karyl



Karyl S. Tobel
Program Manager
CDBG-ED Program
Commerce Loan Fund

Montana Department of Commerce

-----Original Message-----

From: Tobel, Karyl
Sent: Friday, March 19, 2004 3:38 PM
To: Hanson, Randy (NC Montana)
Subject: FW: Release of Funds - IMC Project

Randy:

Just to keep you in the loop on IMC.

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- Submit signed signatory form;
- Submit final management plan;
- * Submit firm evidence of all funding sources;
- ✓ Submit executed inter-local agreement between Cascade County and the City of Great Falls;
- Submit executed sub-recipient agreement between Cascade County and Great Falls Development Authority;
- Submit proof of Workman's Comp coverage for IMC;
- Submit proof of commitment from Giant Springs;
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Hatch Act

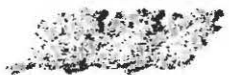
Equal Employment Opportunity

Fair Housing Act

Analysis of Impediments in accordance with the American Disabilities Act

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Karyl



Karyl S. Tobel
Program Manager
CDBG-ED Program
Commerce Loan Fund
Montana Department of Commerce

Tobel, Karyl

From: Lance Olson [olson@co.cascade.mt.us]
Sent: Monday, March 22, 2004 11:54 AM
To: 'GFDA-John Kramer'
Cc: Dave Dobbs; Jim Kaitschuck; Joe Murphy; Tobel, Karyl; Lyle Meeks; Mike Rattray; Randy Hand
Subject: RE: CDBG-ED

John,

We have not been given that information. Yes we would like to spend some time with him if he can find the time. At the very least we need to establish contact. If you can relay that to him, I would appreciate it!

Lance

-----Original Message-----

From: GFDA-John Kramer [mailto:jkramer@hpda.org]
Sent: Monday, March 22, 2004 11:06 AM
To: Lance Olson
Subject: Re: CDBG-ED

IMC has hired their own council and I believe he is in town this week. His name is Chris Kaltenbach, and he is responsible to finish all loose ends. Have we talked with him about what is going on so that he can expedite things. Let me know and I will ask him to get right to it.

----- Original Message -----


From: Lance Olson
To: 'GFDA-John Kramer'
Cc: Randy Hand
Sent: Monday, March 22, 2004 8:42 AM
Subject: RE: CDBG-ED

John,

That call may help but I really don't think the holdup (water line funding) is at their Dept. The DOC is just waiting on the required information from us. We have not as of this date, received any required information from IMC! I think a group conference call to them may be helpful also?

Lance

3/22/2004



-----Original Message-----

From: GFDA-John Kramer [mailto:jkramer@hpda.org]

Sent: Sunday, March 21, 2004 1:49 PM

To: Lance Olson

Subject: Re: CDBG-ED

I have some letters coming from both senators supporting our angering application to ag. I think that will help. Do we need to talk with Mark Siminick to clear this up.

----- Original Message -----

From: Lance Olson

To: 'GFDA-John Kramer'

Sent: Friday, March 19, 2004 4:43 PM

Subject: RE: CDBG-ED

John,

We can meet at your convenience. All we need for release of CDBG-ED funding is commitment for railroad spur funding and source. I don't believe timing is as important.]*

Lance

-----Original Message-----

From: GFDA-John Kramer [mailto:jkramer@hpda.org]

Sent: Friday, March 12, 2004 4:22 PM

To: Lance Olson

Subject: Re: CDBG-ED

Lance we need to talk about the rail spur, there is not a problem with the funding I believe but there is going to be in timing. They moved the time up. I need to talk with you about it.....

----- Original Message -----

From: Lance Olson

To: Dave Dobbs ; Jim Kaitschuck ; John Kramer ; Lisa R. Jacobs ; Mike Rattray

Cc: Randy Hand ; Joe Murphy

Sent: Friday, March 12, 2004 11:31 AM

Subject: CDBG-ED

As Cascade County is still working on the release of funding, we would like to have everyone revisit getting the information from each partner to facilitate and finalize this application. Information source is as listed. If anyone disagrees or has input for different sources, let us know.

International Malting Company:

- a. Sub-Recipient agreement:
- b. Giant Spring Water supply agreement
- c. Giant Springs Water line Construction agreement
- d. Evidence of Workman's Comp for State of Montana

Great Falls Development Authority:

- a. Rail Spur Construction funding commitment
- b. Ag-Parks management and Board plan

City of Great Falls:

- a. Sewer line construction commitment

All Partners involved:

- a. All CDBG resources involved in project firmly committed.

Please be aware that with out these conditions being met, the water line funding will not be released.

Thanks,

Lance

3/22/2004

Lance Olson

Cascade County Commissioner

325 2nd Ave No. Rm 111

Great Falls, Mt. 59401

Phone:454-6816

Fax: 454-6945

Tobel, Karyl

From: Tobel, Karyl
Sent: Monday, March 22, 2004 2:02 PM
To: 'Randy Hand'
Subject: RE: Release of Funds - IMC Project



EXHIBIT_8M_Subre
ipient_Agreem...

Randy:

I don't have an example that would be an exact match for the IMC project. You can use the same sub-recipient agreement and modify it to cover what GFDA's responsibilities will be. Since the sub-recipient is geared towards RLF management, it will take more modifications than usual. I would try to keep the clauses as intact as possible, and edit language that clearly corresponds to this project. I'd be happy to look at your draft and of course, it should be viewed by the County's legal department. This is one very important component of this project and an area where there could be real headaches if the responsibilities aren't clearly understood.

I've attached another boilerplate sub-recipient agreement.

Karyl

Karyl S. Tobel
Program Manager
CDBG-ED Program
Commerce Loan Fund
Montana Department of Commerce

-----Original Message-----

From: Randy Hand [mailto:hand@co.cascade.mt.us]
Sent: Monday, March 22, 2004 12:29 PM
To: Tobel, Karyl
Cc: Lance Olson
Subject: Re: Release of Funds - IMC Project

Any chance you would have an example of what the sub-recipient agreement should look like. It would be helpful if you could give me a checklist of items that would belong in it. As far as I know there is no agreement with Northwestern Energy with the County. There might be one with the GFDA but am not sure. I will check on it. I do appreciate the time you take on helping me with this project.

Randy

----- Original Message -----

From: "Tobel, Karyl" <karylt@state.mt.us>
To: <hand@co.cascade.mt.us>
Sent: Monday, March 22, 2004 12:10 PM
Subject: FW: Release of Funds - IMC Project

> Randy:

>

> I wanted to get back to you on our conversation this morning.

> 1) As far as GFDA's involvement in the IMC project, starting on the
> first page of the County's applicaiton states the following:
>
> "GFDA will act as the lead agency in teh management of hte park. John
> Kramer, President m abnd jerry Chavez, VP - Marketing, will intensively
> marke tthe park. Dan Vuchovish, CPA, Hamilton Misfeldt & Co. will supply
> accounting support. Mike Rattray, Dierctor of Community Development of
the
> City of Great Ells will assist in the physical operation of hte park and
> will coordinate assistance from the City of Great Fall."
>
> "GFDA staff is very experienced in mmarketing industrial parks and has
> developed similarly sized parks in North Dakota, Iowa and Colorado...GFDA
> will contract with ont of them to conduct a targeted industries study to
> identify those companies whose needs best match the advantages offered by
> the industrial park."
>
> "2. Initially GFDA will own the rail spur but eventually this asset will
be
> transferred to the Industrial Park." *
>
> Randy - these are the reasons why there needs to be an agreement with
GFDA.
> If the above items are still to occur, a sub-recipient agreement is very
> necessary.
>
> 2) Looking at the application again, it states that:
>
> "The land for the Industrial Park will be owned by Northwestern Energy and
> will be leased to the end user for \$37.50 per month per acre."
>
> Does the County have a signed agreement with Northwestern Energy for this?
> Please let me know.
>
> 3) I'm faxing you some materials on ADA compliance. One item is a
> letter mailed from MDOC about this compliance issue, and then there are
two
> examples that Counties have done (Lake and Jefferson).
>
> Karyl
>
>
>
>
>
> <<...OLE_Obj...>>
> Karyl S. Tobel
> Program Manager
> CDBG-ED Program
> Commerce Loan Fund
> Montana Department of Commerce
>
> -----Original Message-----
> > From: Tobel, Karyl
> > Sent: Monday, March 22, 2004 8:07 AM
> > To: 'hand@co.cascade.mt.us'
> > Subject: FW: Release of Funds - IMC Project
> >
> > Randy;
> >
> > I thought about one more thing this weekend. I may have already talked
to
> > you about it, but in case I didn't - here it is. I'm going to fax you
> > over a copy of a sub-recipient agreement between Ravalli County/City of
> > Hamilton and Corixa for an infrastructure project where the County ran
> > water lines out to Corixa. We require a security clause which states

that

> > if the business assisted should decide to abandon its facilities, or leave

> > before a specified period of time, they'd have to reimburse the County/City for funds used for their assistance. In Corixa's case, the security clause refers to the pay back of training funds if Corixa leaves

> > within so many years. The County/City did not hold them to the infrastructure dollars.

> >

> > For Cascade County, only infrastructure dollars are involved. The County

> > could set up a deferral schedule for the specified number of years IMC is

> > to remain in the county. This agreement is also a start-up condition to get a release of funds.

> >

> > I'll get you that fax ASAP.

> >

> > Karyl

> >

> >

> >

> > <<...OLE Obj...>>

> > Karyl S. Tobel

> > Program Manager

> > CDBG-ED Program

> > Commerce Loan Fund

> > Montana Department of Commerce

> >

> > -----Original Message-----

> > From: Tobel, Karyl

> > Sent: Friday, March 19, 2004 3:38 PM

> > To: Hanson, Randy (NC Montana)

> > Subject: FW: Release of Funds - IMC Project

> >

> > Randy:

> >

> > Just to keep you in the loop on IMC.

> >

> > Karyl

> >

> > <<...OLE Obj...>>

> > Karyl S. Tobel

> > Program Manager

> > CDBG-ED Program

> > Commerce Loan Fund

> > Montana Department of Commerce

> >

> > -----Original Message-----

> > From: Tobel, Karyl

> > Sent: Friday, March 19, 2004 3:37 PM

> > To: 'hand@co.cascade.mt.us'

> > Subject: Release of Funds - IMC Project

> >

> > Randy:

> >

> > Thank you for sending the Consolidated Environmental Assessment Form.

In

> > order for the Department to do a release of funds, the following items need to be submitted:

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> >

> > Prepare combined FONSI/NOI/RROF (Exhibit 2-N);

> >

> > Affidavit of publication for FONSI/NOI/RROF;

>>
>> Prepare and submit Request for Release of Funds and Certification (RROF)
>> (Exhibit 2-Q);
>>
>> Submit signed depository form;
>>
>> Submit signed signatory form;
>>
>> Submit final management plan;
>>
>> Submit firm evidence of all funding sources;
>>
>> Submit executed inter-local agreement between Cascade County and the
City
>> of Great Falls;
>>
>> Submit executed sub-recipient agreement between Cascade County and Great
>> Falls Development Authority;
>>
>> Submit proof of Workman's Comp coverage for IMC;
>>
>> Submit proof of commitment from Giant Springs;
>>
>> Submit executed agreement between Great Falls Development Authority and
>> Cascade County identifying ownership of rail spur;
>>
>> Submit proof that Value-Added Industrial Park's management and board are
>> in place.
>>
>>
>> The County will have to show compliance with the following civil rights
>> requirements during the project (not necessarily a start-up activity);
>>
>> Hatch Act
>> Equal Employment Opportunity
>> Fair Housing Act
>> Analysis of Impediments in accordance with the American Disabilities Act
>>
>> It's a lot, Randy - but, I'll do my best to help you through it.
>>
>> Karyl
>>
>> <<...OLE_Obj...>>
>> Karyl S. Tobel
>> Program Manager
>> CDBG-ED Program
>> Commerce Loan Fund
>> Montana Department of Commerce
>>
>>
>

SUB-RECIPIENT AGREEMENT

Between

Cascade County, MT and Great Falls Development Authority, Inc.

THIS AGREEMENT is entered into this 24th day of May, 2004, by Cascade County, herein referred to as the "County" and Great Falls Development Authority, Inc., a nonprofit economic development corporation herein referred to as the "Sub-recipient."

WITNESSETH THAT:

WHEREAS, the County is the recipient of a Community Development Block Grant (CDBG) by the Montana Department of Commerce, Economic Development Division herein referred to as the "Department"; and

WHEREAS, the purpose of this Agreement is to set guidelines for the management of the Value Added Commodity-Processing Industrial Park herein referred to as the "Park"; and

WHEREAS, the Department has required the County to enter into a Sub-recipient agreement with the Sub-recipient specifying the terms and conditions of the County's, delegation of certain CDBG responsibilities to the Sub-recipient; and

WHEREAS, Great Falls Development Authority, Inc. is qualified as a nonprofit organization serving the development needs of the communities of Cascade County as defined by Section 105(a)(15) of Title I of the Housing and Community Development Act ("Act"); and

WHEREAS, the parties agree that this Agreement neither abrogates, expressly or impliedly, any of its individual powers, nor does it create any new organization or legal entity.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set out in this Agreement, the parties agree as follows:

A. SPECIAL PROVISIONS.

The County agrees, under the terms and conditions of this Agreement that the sub-recipient be the lead agency for the management of the Park. The sub-recipient will work in conjunction with the City of Great Falls and the County in developing, marketing, and expanding the Park.

B. INDEPENDENT CONTRACTOR.

It is understood by the parties hereto that the Sub-recipient is an independent contractor and that neither its principals nor its employees, if any, are employees of the County for purposes of tax, retirement system, or social security (FICA) withholding. It is further understood that pursuant to section 39-71-401, MCA, the Sub-recipient has obtained, and will maintain at its expense for the duration of this Agreement, coverage in a workers' compensation plan for its principals and employees for the services to be performed hereunder.

C. SCOPE OF SERVICES.

The Sub-recipient will perform the following services:

1. The Sub-recipient will perform the overall management and marketing of the Park.

Return to Commissioners Subrecipient Agreement



R0084010

Page: 1 of 7

06/03/2004 03:28P

0.00 By: RKIRKEGAARD

CASCADE COUNTY MT CAG

2. The Sub-recipient will contact potential board members that are leading people in agriculture and production. The Sub-Recipient will present a recommendation to the City and County on the Board membership. The County, City, and Sub-recipient (one representative each) will appoint the initial board. In addition, the County will appoint one County official or employee to the board.
3. During the term of this Agreement, the Sub-recipient will maintain reasonable records of its performance under this Agreement in a manner consistent with generally accepted accounting principles of the United States. The Sub-recipient will allow the County's and Department's authorized representatives' access to these records at anytime during normal business hours.
4. The sub-recipient will enter an agreement with the City of Great Falls, Community Development, for assistance in the physical operation and other assistance as needed for the Park.
5. The sub-recipient will enter an agreement with Hamilton Misfeldt & Co. for accounting support of the operations of the Park.
6. The sub-recipient will give all assistance needed for the new board in completing all legal work for the formation of the new company. The County will supply legal staff as assistance.
7. The sub-recipient will present for approval on a yearly basis a budget and requested amount of support from the County and the City of Great Falls. This will be done in accordance with the County's and City's budget process.
8. The sub-recipient will supply to the County and Department the agreement with Northwestern Energy for lease of the land in the Park.
9. The sub-recipient will supply the County and Department an agreement with the Park on the transfer of the rail spur to the Park. This agreement will also address how the maintenance costs will be financed; during the time it belongs to the sub-recipient and after it is transferred to the Park.
10. The sub-recipient will bore all costs associated with marketing the Park.

D. DURATION OF THE AGREEMENT.

This Agreement will become effective upon authorization by the Cascade County Board of Commissioners and the Great Falls Development Authority Board of Directors and approval by the Department. The term of this Agreement shall be three years from the date of full execution and shall be renewable yearly thereafter upon the agreement of all parties. If the Sub-recipient wishes to renew, it shall notify the County at least 90 days prior to the end of the agreement for the County's approval or disapproval.

This Agreement will terminate if either party fails to meet the conditions of this Agreement, ceases to exist, or if an Event of Default occurs.

E. COMPENSATION.

The County, City of Great Falls and the sub-recipient will negotiate a budget for the newly formed company and agree upon the amount of support to be paid by each.

F. ADMINISTRATION

1. For the purposes of implementing this Agreement, the County will appoint Randy Hand as a local government project liaison to work with the Sub-recipient. The Sub-recipient will appoint Jim

Kaitschuck as project liaison to work with the County. The parties will meet as necessary to provide for the efficient and smooth implementation of this Agreement and the activities contained herein

2. The Sub-recipient will comply with the "Certifications for Application" signed by the County and submitted with the application for economic development assistance to the Department of Commerce.
3. The company will be audited on a yearly basis in conjunction with Sub-recipient's agency-wide audit which will be conducted in accordance to properly applied auditing standards.

F. CONFLICT OF INTEREST.

The Sub-recipient covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the activities that would result from this Agreement which would conflict in any manner or degree with the performance of its services hereunder. The Sub-recipient further covenants that in performing this Agreement it will employ no person who has any such interest.

G. DISPOSITION OF REAL PROPERTY OR EQUIPMENT ACQUIRED.

Upon the expiration of this Agreement, the Sub-recipient will transfer to the County and City any assets associated with the company.

H. DOCUMENTS INCORPORATED BY REFERENCE.

The County's application to the Department for CDBG funding, dated June 27, 2003, and all applicable federal and state statutes and regulations are incorporated into this Agreement by this reference and are binding upon the Sub-recipient.

J. CIVIL RIGHTS ACT OF 1964.

The Sub-recipient will abide by the provisions of the Civil Rights Act of 1964 which states that under Title VI, no person may, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

K. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974.

The Sub-recipient will comply with the following provision:

No person in the United States may, on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 will also apply to any such program or activity.

L. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968.

The Sub-recipient will ensure that to the greatest extent feasible, opportunities for training and employment arising in connection with this CDBG-assisted project will be extended to lower income project area residents. Further, the Sub-recipient will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the award of contracts and purchase of services and supplies.

M. MINORITY BUSINESS ENTERPRISE.

Consistent with the provisions of Executive Order 11246, the Sub-recipient will take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and



20084010

Page: 3 of 7

06/03/2004 03:20P

CASCADE COUNTY MT COG

0 00 Av. RYTRKFGARD

services. Additionally, the Sub-recipient will document all affirmative steps taken to solicit minority businesses and will forward this documentation along with the names of the minority subcontractors and suppliers to the local government CDBG recipient upon request.

N. NONDISCRIMINATION.

The Sub-recipient will not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

O. OWNERSHIP AND PUBLICATION OF MATERIALS.

All reports, information, data, and other materials prepared by the Sub-recipient pursuant to this Agreement are the property of the County and the Department which have the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any reuse without written verification or adaptation by the County and the Department for the specific purpose intended will be at the user's sole risk and without liability or legal exposure to the County or the Department. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of the County and the Department.

P. REPORTS AND INFORMATION.

The Sub-recipient shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Agreement. Such other records as may be deemed necessary by the County to assure proper accounting for all company funds, shall also be maintained by Sub-recipient. These records shall be made available for audit purposes to the County and Department or their authorized representative, and shall be retained for three years after termination or conclusion of this Agreement unless permission to destroy them is granted by the County or Department.

Q. ACCESS TO RECORDS.

It is expressly understood that the Sub-recipient's records relating to this Agreement shall be available during normal business hours for inspection by the County, the Department, the U.S. Department of Housing and Urban Development, the U.S. Comptroller General, and, when required by law, the Montana Legislative Auditor and Legislative Fiscal Analyst.

R. INDEMNIFICATION.

The Sub-recipient waives any and all claims and recourse against the County, including the right of contribution of loss or damage to person or property arising from, growing out of, or in any way connected with or incidental to the Sub-recipient's performance of this Agreement, except claims arising from the concurrent or sole negligence of the County or its officers, agents or employees. The Sub-recipient will indemnify, hold harmless, and defend the County against any and all claims, demands, damages, costs, expenses, or liability arising out of the Sub-recipient's performance of this Agreement except for liability arising out of the concurrent or sole negligence of the County or its officers, agents, or employees.

S. TERMINATION OF AGREEMENT.

If any of the following events occur, the County may, in its sole discretion, declare such event a default under this Agreement:

1. Any representation or warranty made by the Sub-recipient in this Agreement or in any request or certificate or other information furnished to the County under this Agreement proves to be incorrect in any material respect.



R0084010

Page: 4 of 7

08/02/2004 02:20P

CASCADE COUNTY, MT CAG

0.00 By: RKIRKEGAARD

Tobel, Karyl

From: Tobel, Karyl
Sent: Tuesday, July 06, 2004 8:29 AM
To: 'hand@co.cascade.mt.us'
Subject: IMC Project

*to per
hand
7/8/04*

Randy:

Hope you had a Happy 4th celebration!

Just checking in to see where the County is on working towards a release of funds. I know that in the draft grant assistance agreement, it states December 2004 as a construction end date and we don't have a release of funds yet. Can the December date be pushed into 2005?

In looking at my notes, I wondered what the status was for the following:

- etc* - commitment of funds for EDA/USDA-RD - are they still in the project? - *not used - will come later*
- commitment of funds for the City of Great Falls for \$3,244,000 - has this been passed in a resolution? - *letter to City*
- sub-recipient agreement between the County and Great Falls Development Authority for this project including ownership of the rail spur? *executed - ownership documentation in train (check copy)*
- agreement with Giant Springs for water supply? - *executed through news media - state has approved*
- list of board members for the industrial park? - *working on it*
- grant assistance agreement between the County and IMC? - *in Tom's hands*

also as per Lance Olson:

- ✓ Giant Springs water line construction agreement (would this be the same as the water supply agreement?)
 - sewer line construction agreement - *don't know*
- Randy - can you also update me on the status of the final engineering for the water line construction - and easements? *City is licensed w. review is for DCA approval*
- Have bid specs and plans been drafted - will need Davis Bacon in it and I'd like to see the draft.

I know this is the middle of Montana's construction season and I don't want the County to be pushed towards a December deadline when it may not be ready to work towards that as a comfortable goal.

Thanks, Randy



Karyl S. Tobel
Program Manager
CDBG-ED Program
Commerce Loan Fund
Montana Department of Commerce

Joe Murphy

*Easements -
Handled - not sure*

IMC : FWP - agreements City gave Tom the water rights

Tobel, Karyl

From: Tobel, Karyl
Sent: Thursday, July 08, 2004 11:03 AM
To: 'joem@neilconsultants.com'
Cc: 'hand@co.cascade.mt.us'
Subject: IMC Project

Joe:

Hi, Joe. I'm sending you an email to find out where we are on the final engineering for the IMC project. I spoke to Randy Hand on the phone this morning regarding the status of the engineering and told him that I would contact you to find out. Can you update us on where you are on the design work and plans and specs? Your input is really appreciated. Randy has been working hard on getting the Department's start-up conditions met so the County can get a release of funds for this project.

If you need to call me, I'm at 406-841-2733.



Karyl S. Tobel
Program Manager
CDBG-ED Program
Commerce Loan Fund
Montana Department of Commerce

7/8/04

Phone conversation with Randy Hand:

Start-up conditions to be met:

- 1) Commitment of EDA/USAD-RD funds (for rail spur) – told Randy that since this part of the project will be completed after the water line, the Department won't hold this commitment at a start-up condition.
- 2) List of board members for industrial park is being worked on – completion of this list won't be a start-up condition.

THESE ITEMS ARE NEEDED FOR ROF:

- 3) Commitment of funds from the City for 3.2 million – Randy stated he had a letter of commitment in hand – will send us a copy of it.
- 4) Sub-recipient agreement between the County and Great Falls Development Authority has been executed and ownership of rail spur is outlined. Randy will get us a copy of that letter.]*
- 5) Agreement of water service between Giant Springs and IMC was made public in the press. The agreement is not with the city or county as the city gave IMC its water rights. I told Randy that at the minimum, we would need a letter from Fish, Wildlife and Parks stating that there is a commitment pending with IMC.
- 6) Grant assistance agreement between IMC and the County is still not executed. This agreement is a condition for a release of funds.
- 7) Status of sewer line construction – Randy is unsure of this. This is not a start-up condition, however, Randy will find out the status of this.
- 8) Status of easements – Randy is not sure but will find out.

needed

I'll contact Joe Murphy and find out what the status is for final engineering, plans and specs. I explained to Randy that the Department needs to review bid document before it is made public.

C. Bruce Loble
Chief Water Judge
Montana Water Court
PO Box 1389
Bozeman MT 59771-1389
(406) 586-4364
1-800-624-3270 (IN-STATE)
FAX: (406) 522-4131

RECEIVED

MAY 14 2012

CITY MANAGER

CC: Commission ✓
PW
legally
FILED
MAY 11 2012
Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER - FROM HOLTER DAM TO SUN RIVER - BASIN 41QJ

CLAIMANT: City of Great Falls

CASE 41QJ-30
41QJ 123408-00
41QJ 123410-00
41QJ 123411-00

**ORDER VACATING MAY 16 HEARING DATE ON OBJECTIONS
TO MASTER'S REPORT,
ORDER CONSOLIDATING CLAIMS AND SETTING TELEPHONE
CONFERENCE**

On March 30, 2012, the Water Court set a May 16, 2012 hearing on the objections to the Master's Report addressing some of the City of Great Falls water right claims. To facilitate the attendance by the Great Falls public, the hearing was scheduled for 7:00 P.M. in the Great Falls Commission Chambers at the Civic Center.

For the reasons set forth below, **the May 16, 2010 hearing is VACATED.** It will be reset at a future date.

On April 27, 2012, attorney Stuart F. Lewin filed his *Notice of Appearance* for himself, Aart Dolman, Hilary Ransdell, and "Joe and Jane Does up to the total population of Great Falls." On the same date, attorney Lewin filed his *Citizens' Motions* requesting the Court (1) to vacate the May 16 hearing, (2) to determine the City acted illegally when it requested amendment to its water rights, (3) to reject the Water Master's determination to reduce the City's water right claims, and (4) to reset the hearing to a date no earlier than December 16, 2012. Also on April 27, 2012, attorney Lewin filed a *Brief in Support of Citizens' Motions*.

Beginning on April 30, 2012, the Court also began receiving a series of forty-two

identically printed, but individually signed postcards. Each card requested the May 16 hearing date be reset to a later date to allow the postcard signatory enough "time to properly prepare for the hearing." The printed postcard specified the new hearing date be set sometime after December 16, 2012, but a few of the cards were modified by interlineation and requested a date "after November 5th," after the "November election date," "after November 16, 2012, or "prior to the next legislative session." One letter was received explaining that "the current schedule is too tight to allow citizens sufficient time to adequately and completely present a 'proper case' with appropriate documentation."

Accordingly, it is

ORDERED that the hearing on the objections to the Master's Report, previously scheduled for May 16, 2012 at 7:00 P.M. in the Great Falls City Commission Chambers in the Civic Center, 2 Park Drive South, Great Falls, Montana, is **VACATED**.

ORDERED that notice of this hearing be provided to the City of Great Falls through its special counsel, Stephen R. Brown and Elena J. Zlatnik of Garlington, Lohn & Robinson, PLLP.; to the Great Falls City Manger and City Attorney; to Kelly Parks, attorney Stuart F. Lewin, and to the signatories on the recently received postcards, all at their last known address.

ORDERED that the Court will mail a copy of this Order to the list of postcard signatories to give them notice that the May 16 hearing date has been vacated. Due to the number of postcards, and to save money on postage and copying expense, the names and addresses on the postcards will not appear on the Certificate of Service of the copy of this Order mailed to the postcard signatories. A list of their names and addresses will be attached to the file copy of this Order and a copy of that list is available on request. Furthermore, due to the cost of doing so, the City of Great Falls does not need to mail copies of any documents it files in this case to the list of postcard signatories.

ORDERED that the requirement of the City of Great Falls to file an Answer Brief to the motions and briefs filed by attorney Lewin is **STAYED** until further order.

ORDERED that these three claims are consolidated into Case 41QJ-30, that all original documents filed in these three claims on or after October 10, 2010 be physically moved to case file 41QJ-30, and that all future filed documents bear the Case 41QJ-30

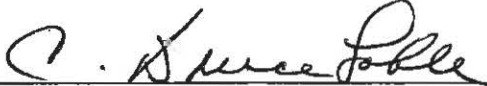
caption set forth at the top of the first page of this Order.

ORDERED that a telephone conference call be held on **May 21, 2012 at 10:00 a.m.** to discuss future proceedings. The procedure for accessing the conference is as follows:

1. At the designated conference time dial the toll free telephone number:
1-866-479-6576.
2. At the prompt, enter the participant pin code followed by the pound (#) key:
51610471#.
3. At the prompt state your name followed by the pound (#) key:

Parties not listed in this Order who wish to participate in this call must contact the Water Court no less than two business days before the conference. Individuals who experience problems placing this call can contact the Water Court at (406) 586-4364 or 1-800-624-3270.

DATED this *11* day of May 2012.



C. Bruce Loble
Chief Water Judge

CERTIFICATE OF SERVICE

I, Jamie Pope, Deputy Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above **ORDER VACATING MAY 16 HEARING DATE ON OBJECTIONS TO MASTER'S REPORT, ORDER CONSOLIDATING CLAIMS AND SETTING TELEPHONE CONFERENCE** was duly served upon the persons listed below by depositing the same, postage prepaid, in the United States mail.

Helena DNRC Adjudication Office
Team A
PO Box 201602
Helena, MT 59620-1602

Stephen R. Brown
Elena J. Zlatnik
Attorney-at-Law
PO Box 7909
Missoula, MT 59807-7909

Stuart F. Lewin
Attorney-at-Law
615 3rd Ave N.
Great Falls, MT 59401

This Order Only:
Greg Doyon
City Manager
Civic Center
PO Box 5021
Great Falls MT 59403

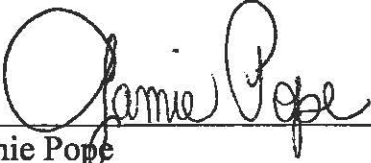
James W. Santoro
City Attorney
Civic Center
PO Box 5021
Great Falls MT 59403

Kelly Parks
Great Falls Realty
400 4th Ave North
Great Falls, MT 59401

Signatories on Filed Postcards
Requesting Extension of Time
Approximately 43 Addresses
See Case file for names and addresses.

Service List Updated 5-11-2012

DATED this 11th day of May, 2012.



Jamie Pope
Deputy Clerk of Court

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**SOUTHERN MONTANA ELECTRIC
GENERATION AND TRANSMISSION
COOPERATIVE, INC,**

Debtor.

Case No. 11-62031-11

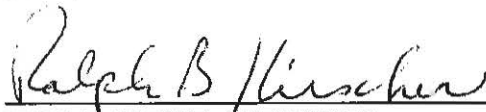
ORDER

At Butte in said District this 15th day of May, 2012.

In accordance with the Memorandum of Decision entered in the above-referenced bankruptcy case on this same date,

IT IS ORDERED that Yellowstone Valley Electric Cooperative, Inc.'s ("YVEC") combined Motion for: (1) Abstention Regarding Its Pending Litigation Against Southern Montana, and (2) Entry of an Order Granting Relief From the Automatic Stay filed February 17, 2012, at docket entry nos. 274 and 278, is DENIED, without prejudice.

BY THE COURT



HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**SOUTHERN MONTANA ELECTRIC
GENERATION AND TRANSMISSION
COOPERATIVE, INC,**

Debtor.

Case No. **11-62031-11**

MEMORANDUM of DECISION

At Butte in said District this 15th day of May, 2012.

In this Chapter 11 bankruptcy, after due notice, a hearing was held April 24, 2012, in Billings on Yellowstone Valley Electric Cooperative, Inc.'s ("YVEC") combined Motion for: (1) Abstention Regarding Its Pending Litigation Against Southern Montana, and (2) Entry of an Order Granting Relief From the Automatic Stay filed February 17, 2012, at docket entry nos. 274 and 278. The Chapter 11 Trustee, Tongue River Electric Cooperative, Inc., Mid-Yellowstone Electric Cooperative, Inc., and Fergus Electric Cooperative, Inc. oppose YVEC's aforementioned Motion. Beartooth Electric Cooperative, Inc. filed a joinder to YVEC's aforementioned Motion on March 22, 2012, at docket entry no. 334. Western Area Power Administration ("WAPA"), an agency with the Department of Energy, provided notice and clarification that it is not a party to certain litigation commenced by YVEC, has not waived immunity and that any attempted assignment of allocations of Federal hydropower under that certain Contract for Firm Electric Service, Contract No. 04-UGPR-26, as amended, whether by the parties, a State Court order, or

otherwise, is subject to WAPA's determination and approval under applicable Federal law and WAPA's procedures.

John Cardinal Parks and Bart B. Burnett of Denver, Colorado and Joseph V. Womack of Billings, Montana appeared at the hearing on behalf of the Chapter 11 Trustee; Annette W. Jarvis of Salt Lake City, Utah and John G. Crist of Billings, Montana appeared on behalf of YVEC; Harold V. Dye of Missoula, Montana appeared on behalf of the Unsecured Creditors' Committee; Martin S. King of Missoula, Montana appeared on behalf of PPL Energy, Plus, LLC; Jeffery A. Hunnes of Billings, Montana appeared on behalf of Tongue River Electric Cooperative, Inc.; Gary Ryder of Hysham, Montana appeared on behalf of Mid-Yellowstone Electric Cooperative, Inc.; Martin S. Smith of Billings, Montana appeared on behalf of Beartooth Electric Cooperative, Inc.; Doug James of Billings, Montana and James W. Santoro of Great Falls, Montana appeared on behalf of the City of Great Falls and Electric City Power; Jonathan B. Alter of Hartford, Connecticut appeared on behalf of noteholders Modern Woodmen of America, Forethought Life Insurance Company, Universal Prudential Arizona Reinsurance Company, and Prudential Insurance Company of America; John P. Paul of Great Falls, Montana appeared on behalf of Fergus Electric Cooperative, Inc., and Ross P. Richardson of Butte, Montana appeared on behalf of NorthWestern Energy. Terry Holzer, Lee Freeman and Ted Church testified. YVEC's Exhibits 1 through 15, Tongue River Electric Cooperative, Inc.'s Exhibits AA, BB, CC, II and JJ, and the Trustee's Exhibits A through E were admitted into evidence without objection. At the conclusion of the hearing, the Court took the matters under advisement.

This Court has jurisdiction of this Chapter 11 bankruptcy under 28 U.S.C. § 1334(a).

YVEC's motion to modify stay is a core proceeding under 28 U.S.C. § 157(b)(2)(G). This Memorandum of Decision includes the Court's findings of fact and conclusions of law.

FACTS

The Debtor was formed in 2003 as a not-for-profit under Montana's Rural Electric and Telephone Cooperative Act. *See* MONT. CODE ANN. ("MCA") § 35-18-101, *et seq.* YVEC, Tongue River Electric Cooperative, Inc., Mid-Yellowstone Electric Cooperative, Inc., Beartooth Electric Cooperative, Inc., Fergus Electric Cooperative, Inc. were the original Members of Debtor.¹ The original Members were previously members of Central Electric Supply Cooperative. In 2004, the City of Great Falls/Electric Power City requested and was accepted as a purchasing member of Debtor and was granted a seat on Debtor's Board of Directors.² Thus, for purposes of this Memorandum of Decision, Debtor is deemed to have six Members.

In 2004, the original Members entered into Wholesale Power Contracts with Debtor. The Wholesale Power Contract ("WPC") between Debtor and YVEC dated April 27, 2004, recognizes that Debtor "may construct an electric generating plan or transmission system, or both, for the purpose, of among other things, of supplying electric energy and related services to borrowers from [the Rural Utilities Service], which are or may become members of" Debtor. The WPC "shall remain in effect through the 31st day of December, 2030[.]" The WPC further provides:

¹ Member is defined at MCA § 35-18-102(4) as "each incorporator of a cooperative and each person admitted to and retaining membership in a cooperative as provided by the articles of incorporation or bylaws of the cooperative, including persons admitted to joint membership."

² Under Debtor's Bylaws, a Board of Trustees manages the business and affairs of Debtor. Each Member is authorized in the Bylaws to elect one trustee to serve on Debtor's Board of Trustees.

[Debtor] shall sell and deliver to the Member and the Member shall purchase and receive from [Debtor] all electric energy and related transmission services which the Member shall require for the operation of the Member's system to the extent that [Debtor] shall have such wholesale electric energy, transmission services agreements, and associated facilities available . . .

Also in 2004, Debtor and the original Members entered into a power sales agreement with the Bonneville Power Administration and Debtor entered into a contract to purchase power from the Western Area Power Administration ("WAPA"). The power sales agreement with the Bonneville Power Administration expired by its own terms on October 31, 2011. The agreement with WAPA is still in effect and provides part of the electricity supplied by Debtor to its Members. Debtor's agreement with WAPA is considered a contract with an agency of the United States Government.

After Debtor's formation in 2003, the original Members began investigating alternative sources of power, including the possibility of constructing a coal-fired electric generating facility. Construction of a coal-fired electric generating facility was ultimately abandoned and discussions began about the possibility of building of a gas-fired generation plant. By 2007, YVEC alleges it began questioning the cost and financial viability of a gas-fired generation plan.

In November of 2007, YVEC submitted a resolution to Debtor's Board of Trustees (the "November 2007 Resolution"), requesting that Debtor's Board of Trustees negotiate the terms and conditions of YVEC's withdrawal from Debtor. Debtor's Board of Trustees was apparently not receptive to YVEC's request for withdrawal. YVEC contends the Board of Trustees adopted new Policies to change the way costs relating to a Member's withdrawal would be calculated. YVEC argues the new Policies were an effort by the Board of Trustees to make it prohibitively expensive and punitive for YVEC to withdraw as a Member.

In April of 2008, Tongue River Electric Cooperative, Inc., Mid-Yellowstone Electric Cooperative, Inc., Beartooth Electric Cooperative, Inc., and Fergus Electric Cooperative, Inc. decided to proceed with construction of an electric generating plant. On June 15, 2008, Tongue River Electric Cooperative, Inc., Mid-Yellowstone Electric Cooperative, Inc., Beartooth Electric Cooperative, Inc., and Fergus Electric Cooperative, Inc. formed SME Electric Generation and Transmission Cooperative ("SME") to proceed with construction of a gas-fired generating station, which is now known as the Highwood Generation Station.

YVEC asserts Debtor's Board of Trustees and SME proceeded to engage in multiple acts in violation of the WPC, Debtor's bylaws and Debtor's policies, prompting YVEC to file a complaint in the Montana Thirteenth Judicial District Court for Yellowstone County, requesting termination of its membership in Debtor, termination of its WPC, an accounting and return of all funds it contributed toward expenses of the Highwood Generating Station and all deposit and equity contributions to Debtor, and order that Debtor assign to YVEC its WAPA contract and a share of the Bonneville Power Administration contract and for punitive damages. *See Yellowstone Valley Electric Coop., Inc. v. Southern Montana Elec. Generation and Transmission Coop., Inc., et al.*, Cause No. DV 08-1797. YVEC filed an amended complaint on or about July 26, 2010.

Debtor and the other Members filed an answer to YVEC's amended complaint on or about July 20, 2010. The answer included a counterclaim requesting declaratory relief by determining and declaring that YVEC's WPC is a valid and binding contract which Plaintiff is obligated to timely perform until its expiration. In October of 2010, YVEC and the City of Great Falls/Electric Power City entered into a stipulation to dismiss the City of Great Falls/Electric

Power City from the YVEC litigation. However, on March 15, 2011, the City of Great Falls/Electric Power City filed a complaint seeking declaratory judgment against Debtor requesting entry of a judgment that the City of Great Falls/Electric Power City is not a proper member of Debtor, that the City of Great Falls/Electric Power City's Wholesale Power Contract and other obligations of Debtors and SME are void or voidable, for access to documents, and return of a security deposit. In response to the City of Great Falls/Electric Power City's complaint, debtor filed an answer and counterclaim.

On or about February 26, 2010, Debtor and SME completed a financing package for construction of the Highwood Generating Station as a gas-fired generation plan. As part of the loan package, financed primarily by Prudential Insurance Company of America, the assets of SME developed in connection with the Highwood Generating Station, were transferred to Debtor. A 40 megawatt gas-fired simple cycle generation facility was ultimately constructed by Debtor as Phase One of a 120 megawatt combined cycle facility. The plant, which became operational in September of 2011, is the Highwood Generating Station.³

In the litigation commenced by YVEC, the parties have completed all discovery necessary to prepare for trial. In addition, fifteen depositions have been taken and the parties have exchanged in excess of 15,000 documents. The State Court considered and denied a comprehensive Motion for Judgment on the Pleadings. The State Court likewise considered and denied the Defendants' Motion for a TRO and for Preliminary Injunction that sought an immediate order that YVEC be required to pay the amounts sought through their Counterclaims.

³ YVEC asserts that as of April 30, 2008, Debtor's total investment in the development of the Highwood Generating Station was just over \$19.4 million. YVEC further asserts that its share of the Highwood Generating Station project costs was just over \$7 million.

After completing discovery and after receiving rulings on dispositive pre-trial motions, YVEC's State Court action was set for jury trial on November 9, 2011.

Prior to the scheduled trial, Debtor filed on October 21, 2011, its voluntary chapter 11 bankruptcy petition. By agreement of the U.S. Trustee and the six Members of Debtor, Lee A. Freeman was appointed on November 29, 2011, as the Chapter 11 Trustee for the Debtor. YVEC's pending State Court action has not been removed to this Court, but YVEC requests that this Court abstain from hearing the matter. In the alternative, YVEC requests that this Court lift the automatic stay to allow the State Court action to proceed.

APPLICABLE LAW and DISCUSSION

I. Abstention

YVEC filed its combined motion for abstention or for relief from the automatic stay on February 17, 2012. YVEC asks this Court to abstain from hearing any arguments or issues raised in the State Court action pursuant to 28 U.S.C. § 1334(c)(2) arguing: (a) the request for abstention is timely; (b) the State Court action is based on Montana State law claims; (c) the State Court action is a non-core proceeding; (d) absent 28 U.S.C. § 1334(b) the State Court action could not have been commenced in federal court; and (e) the State Court action is ready for a jury trial, and can be timely adjudicated therein. In the alternative, YVEC requests that the Court exercise its discretion and decline to exercise jurisdiction over the State Court action pursuant to 28 U.S.C. § 1334(c)(1) based on the application of the relevant factors outlined by the Ninth Circuit Court of Appeals in *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990).

A civil proceeding may (a) arise under title 11, (b) arise in a case under title 11 or (c)

relate to a case under title 11. Mandatory abstention is governed by 28 U.S.C. § 1334(c)(2), and applies only to “related to” proceedings. *Sec. Farms v. Int’l Bhd. of Teamsters*, 124 F.3d 999, 1009 (9th Cir. 1997).

Discretionary abstention, on the other hand, is governed by 28 U.S.C. § 1334(c)(1), and applies to all three types of civil proceedings: “Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.” *In re General Carriers Corp.*, 258 B.R. 181, 189-190 (9th Cir. BAP 2001). “[A]bstention provisions implicate the question whether the bankruptcy court should exercise jurisdiction, not whether the court has jurisdiction in the first instance.... The act of abstaining presumes that proper jurisdiction otherwise exists.” *In re General Carriers Corp.*, 258 B.R. at 190, quoting *In re S.G. Phillips Constructors, Inc.*, 45 F.3d 702, 708 (2nd Cir.1995); *In re Lewis*, 20 Mont. B.R. 364, 368 (Bankr. D. Mont. 2003).

In *Lewis*, this Court cited controlling authority for the following proposition on abstention:

In *Security Farms v. International Brotherhood of Teamsters*, 124 F.3d 999 (9th Cir.1997), however, the Ninth Circuit noted that “[a]bstention can exist only where there is a parallel proceeding in state court.” *Id.* at 1009. Section §1334(c) abstention should be read *in pari materia* with 28 U.S.C. § 1452(b) remand, so that § 1334(c) applies only in those cases in which there is a related proceeding that either permits abstention in the interest of comity, section 1334(c)(1), or that, by legislative mandate, requires it, section 1334(c)(2). *Id.* at 1010; *In re Lazar*, 237 F.3d 967, 981 (9th Cir. 2001). A decision to abstain or not to abstain is not reviewable by appeal. § 1334(d); *see also, Security Farms*, 124 F.3d at 1009-10 & n. 7; *In re Lazar*, 237 F.3d at 982.

Lewis, 20 Mont. B.R. at 369.. Permissive abstention is a matter within the sound discretion of

the bankruptcy court, and a federal court may voluntarily abstain from hearing a particular proceeding on core or non-core matters "in the interest of justice, or in the interest of comity with State courts or respect for State law" 28 U.S.C. § 1334(c)(1); *Gober v. Terra + Corp. (In re Gober)*, 100 F.3d 1195, 1206 (5th Cir. 1996).

The Ninth Circuit has set forth several factors that bankruptcy courts employ in evaluating whether permissive abstention is proper:

(1) the effect or lack thereof on the efficient administration of the estate if a court recommends abstention; (2) the extent to which state law issues predominate over bankruptcy issues; (3) the difficulty or unsettled nature of the applicable law; (4) the presence of a related proceeding in state court or other nonbankruptcy court; (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334; (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case; (7) the substance rather than form of an asserted core proceeding; (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgment to be entered in state court with enforcement left to the bankruptcy court; (9) the burden on the bankruptcy court's docket; (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties; (11) the existence of a right to a jury trial; and (12) the presence in the proceeding of nondebtor parties.

Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1167 (9th Cir. 1990).

Nothing in the record suggests the parties have sought to remove the State Court action from the Thirteenth Judicial District Court to either this Court or federal district court and none of the parties have commenced an adversary proceeding. YVEC's request for abstention is, therefore, premature because other than Debtor's Chapter 11 case itself, there is no pending proceeding before this Court from which to abstain. *In re General Carriers Corp.*, 258 B.R. at 190 ("One of the threshold requirements for mandatory or discretionary abstention, as set forth above, is that there must be a 'proceeding' from which the bankruptcy court can abstain.")

Accordingly, YVEC's request for abstention, whether mandatory or permissive, is denied.

II. Relief from the Automatic Stay

In the alternative, YVEC requests relief from the automatic stay arguing cause exists to terminate the stay based on the relevant factors set forth in *In re Curtis*, 40 B.R. 795 (Bankr. D.Utah 1984), as adopted by the Ninth Circuit Bankruptcy Appellate Panel in *In re Kronemyer*, 405 B.R. 915 (9th Cir. BAP 2009). YVEC also asserts cause exists to lift the automatic stay because this Court lacks subject matter jurisdiction to hear and decide the pending State Court litigation based on the Supreme Court of the United States' recent decision in *Stern v. Marshall*, 131 S. Ct. 2594, 2608, 2615, 2620 (2011).

The Court first rejects YVEC's argument that after *Stern v. Marshall*, this Court does not have subject matter jurisdiction over the pending dispute between YVEC and Debtor. The "jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in, and limited by, statute." *Battleground Plaza, LLC v. Ray (In re Ray)*, 624 F.3d 1124, 1130 (9th Cir. 2010) (quoting *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995)). A bankruptcy court's jurisdiction is, generally, prescribed by 28 U.S.C. § 1334(b). In addition to granting jurisdiction to bankruptcy courts over bankruptcy cases, the statute provides that "the district courts [and by reference pursuant to 28 U.S.C. § 157, the bankruptcy courts] shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11."

In a 5-4 decision, the Supreme Court in *Stern v. Marshall* concluded that -- even though the proceeding was core under 28 U.S.C. § 157(b)(2)(C) and that the bankruptcy court had the statutory authority to resolve the matter --the bankruptcy court nevertheless lacked the

constitutional power to finally decide a state-law counterclaim where the counterclaim was not so closely related to the creditor's claim that it could be adjudicated as part of the claims resolution process.

In March of 2011, the United States Supreme Court entered another decision that provides instructful guidance on YVEC's subject matter jurisdiction argument. *See Henderson ex rel. Henderson v. Shinseki*, — U.S. —, 131 S.Ct. 1197, 1202, 179 L.Ed.2d 159 (2011). In an attempt to "bring some discipline" to the use of the term "jurisdictional" the Supreme Court in *Henderson* wrote:

Branding a rule as going to a court's subject-matter jurisdiction alters the normal operation of our adversarial system. Under that system, courts are generally limited to addressing the claims and arguments advanced by the parties. *See Sanchez-Llamas v. Oregon*, 548 U.S. 331, 356-357, 126 S.Ct. 2669, 165 L.Ed.2d 557 (2006). Courts do not usually raise claims or arguments on their own. But federal courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press. *See Arbaugh, supra*, at 514, 126 S.Ct. 1235.

Jurisdictional rules may also result in the waste of judicial resources and may unfairly prejudice litigants. For purposes of efficiency and fairness, our legal system is replete with rules requiring that certain matters be raised at particular times. *See Sanchez-Llamas, supra*, at 356-357, 126 S.Ct. 2669. Objections to subject-matter jurisdiction, however, may be raised at any time. Thus, a party, after losing at trial, may move to dismiss the case because the trial court lacked subject-matter jurisdiction. *Arbaugh*, 546 U.S., at 508, 126 S.Ct. 1235. Indeed, a party may raise such an objection even if the party had previously acknowledged the trial court's jurisdiction. *Ibid.* And if the trial court lacked jurisdiction, many months of work on the part of the attorneys and the court may be wasted.

Because the consequences that attach to the jurisdictional label may be so drastic, we have tried in recent cases to bring some discipline to the use of this term. We have urged that a rule should not be referred to as jurisdictional unless it governs a court's adjudicatory capacity, that is, its subject-matter or personal jurisdiction. *Reed Elsevier, supra*, at ---, 130 S.Ct., at 1243-1244; *Kontrick, supra*, at 455, 124 S.Ct. 906. Other rules, even if important and mandatory, we

have said, should not be given the jurisdictional brand. *See Union Pacific*, 558 U.S., at ----, 130 S.Ct., at 596.

In *Stern v. Marshall*, the Supreme Court reiterated:

Because “[b]randing a rule as going to a court’s subject-matter jurisdiction alters the normal operation of our adversarial system,” *Henderson v. Shinseki*, 562 U.S. —, — — —, 131 S.Ct. 1197, 1201–03, 179 L.Ed.2d 159 (2011), we are not inclined to interpret statutes as creating a jurisdictional bar when they are not framed as such. *See generally Arbaugh v. Y & H Corp.*, 546 U.S. 500, 516, 126 S.Ct. 1235, 163 L.Ed.2d 1097 (2006) (“when Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional in character”).

Section 157(b)(5) does not have the hallmarks of a jurisdictional decree. To begin, the statutory text does not refer to either district court or bankruptcy court “jurisdiction,” instead addressing only where personal injury tort claims “shall be tried.”

The statutory context also belies Pierce’s jurisdictional claim. Section 157 allocates the authority to enter final judgment between the bankruptcy court and the district court. *See* §§ 157(b)(1), (c)(1). That allocation does not implicate questions of subject matter jurisdiction. *See* § 157(c)(2) (parties may consent to entry of final judgment by bankruptcy judge in non-core case). By the same token, § 157(b)(5) simply specifies where a particular category of cases should be tried. Pierce does not explain why that statutory limitation may not be similarly waived.

Consistent with the above, several courts have recently concluded that *Stern v. Marshall* does not deprive bankruptcy courts of subject matter jurisdiction. *See, e.g., In re Wilderness Crossings, LLC*, 2011 WL 5417098, *1 (Bankr. W.D.Mich. Nov 08, 2011); *In re Bujak*, 2011 WL 5326038, *2 (Bankr. D.Idaho Nov 03, 2011); *In re Sunra Coffee LLC*, 2011 WL 4963155, *4 (Bankr. D.Haw. Oct 18, 2011); and *In re Citron*, 2011 WL 4711942, *2 (Bankr. E.D.N.Y. Oct 06, 2011). For the reasons discussed above, the Court rejects YVEC’s argument that *Stern v. Marshall* stripped this Court of subject matter jurisdiction over the State Court litigation between YVEC and Debtor.

Next, under 11 U.S.C. § 362, a bankruptcy petition generally “operates as a stay, applicable to all entities” of the commencement or continuance of judicial proceedings against the debtor. *See* 11 U.S.C. § 362(a). The importance of the automatic stay is discussed in the legislative history of § 362:

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

H.R.Rep. No. 95-595, 95th Cong. 1st Sess. 340-42 (1977); S.Rep. No. 95-989, 95th Cong., 2d Sess. 54-55 (1978); *reprinted in* 1978 U.S.Code Cong. & Admin. News 5787 at 5840-41 and 6296-97. *See also* *Midlantic Nat'l Bank v. New Jersey Dep't of Env'tl. Protection*, 474 U.S. 494, 503, 106 S.Ct. 755, 760, 88 L.Ed.2d 859 (1986) (Acknowledging that the “automatic stay provision of the Bankruptcy Code, § 362(a), has been described as ‘one of the fundamental debtor protections provided by the bankruptcy laws.’”) (footnote omitted).

The fundamental debtor protections afforded by § 362(a) are not absolute. 11 U.S.C. 362(d). As explained in § 362(d):

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause[.]

What constitutes cause for purposes of § 362(d) “has no clear definition and is determined on a case-by-case basis.” *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990). The Ninth Circuit Court of Appeals has not addressed the particular issue of whether the automatic stay may be lifted to permit pending litigation to go forward. The Second Circuit Court of Appeals,

2 *Collier on Bankruptcy* ¶ 362.07(3), at 362-65 to -67 (footnotes omitted).

Sonnax Indus., Inc. v. Tri Component Products Corp. (In re Sonnax Indus., Inc.) 907 F.2d 1280, 1285-1286 (2nd Cir. 1990). After setting forth the foregoing, the Second Circuit Court of Appeals adopted twelve factors to consider when deciding whether pending, nonbankruptcy, litigation should be permitted to continue outside the bankruptcy forum. *Sonnax*, 907 F.2d at 1286 (adopting the twelve factors “catalogued” by the Bankruptcy Court for the District of Utah in *In re Curtis*, 40 B.R. 795 (Bankr. D.Utah 1984)). The twelve factors referenced in *Sonnax* are:

- (1) [W]hether relief [from the automatic stay] would result in a partial or complete resolution of the issues;
- (2) lack of any connection with or interference with the bankruptcy case;
- (3) whether the other proceeding involves the debtor as a fiduciary;
- (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;
- (5) whether the debtor’s insurer has assumed full responsibility for defending it;
- (6) whether the action primarily involves third parties;
- (7) whether litigation in another forum would prejudice the interests of other creditors;
- (8) whether the judgment claim arising from the other action is subject to equitable subordination;
- (9) whether movant’s success in the other proceeding would result in a judicial lien avoidable by the debtor;
- (10) the interests of judicial economy and the expeditious and economical resolution of litigation;
- (11) whether the parties are ready for trial in the other proceeding; and
- (12) impact of the stay on the parties and the balance of harms.

Id. The Ninth Circuit Bankruptcy Appellate Panel agrees that the twelve *Sonnax* factors “are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum.” *Kronemyer*, 405 B.R. at 921.

Neither the decision of the Second Circuit Court of Appeals in *Sonnax* nor the decision of

the Ninth Circuit Bankruptcy Appellate Panel in *Kronemyer* are binding upon this Court.

However, the Court finds that the factors considered by both courts are instructive. Additionally, this Court agrees with the Ninth Circuit Bankruptcy Appellate Panel that “[w]e should ‘give most respectful consideration to the decisions of the other courts of appeals and follow them whenever we can.’” *Camilli v. Indus. Comm’n of Ariz. (In re Camilli)*, 182 B.R. 247, 251 (9th Cir. BAP 1995) (quoting *Colby v. J.C. Penny Co., Inc.*, 811 F.2d 1119, 1123 (7th Cir. 1987)); accord, *Taffi v. United States (In re Taffi)*, 68 F.3d 306, 308 (9th Cir. 1995) (adopting “a cautionary rule, counseling against creating intercircuit conflicts”). Given the foregoing, the Court finds the holding set forth in *Sonnax* and *Kronemyer*, persuasive and will consider the above factors for resolution of the question at bar.

In addition, although “[t]he burden of proof on a motion to lift or modify the automatic stay is a shifting one,” § 362(d)(1) “requires an initial showing of cause by the movant.” *In re Sonnax Indus.*, 907 F.2d at 1285. If such an initial showing of cause is not made, “the court should deny relief without requiring any showing from the debtor that it is entitled to continued protection.” *Id.*

For the reasons discussed below, the Court finds that YVEC has not satisfied its initial burden of showing cause for this Court to lift the automatic stay at this time. Thus, YVEC’s motion to modify the automatic stay is denied at this time.

This case does not present the usual scenario of a secured creditor who seeks relief from the automatic stay imposed under § 362(a) because its collateral is eroding, or it lacks adequate protection, or the market rate of interest is higher, or the debtor shows little prospect for achieving an effective reorganization. This case similarly does not involve an injured party

seeking to proceed against a debtor's insurance carrier. Rather, unlike *Kronemyer*, which involved a chapter 7 liquidation, this case is a chapter 11 case in which the Trustee is seeking to reorganize Debtor's business and financial affairs. Therefore, the Court cannot grant YVEC its requested relief at this time.

For instance, under 11 U.S.C. § 365, the Trustee is permitted to assume or reject Debtor's executory contracts. Notwithstanding the rights afforded Debtor under § 365, YVEC seeks relief from the automatic stay to proceed with litigation which, in part, seeks termination of the WPC between Debtor and YVEC.

YVEC also seeks in its State Court litigation to terminate its membership in Debtor and to require that Debtor assign the WAPA contract to YVEC. The Trustee in this case is working on formulating a plan of reorganization. YVEC's request to terminate its membership in Debtor and secure the WAPA contract will interfere with the Trustee's reorganizational efforts because it will be time-consuming, expensive and could potentially undermine the chances for a successful reorganization. Moreover, YVEC seeks assignment of the WAPA contract, but WAPA has not been joined in the State Court litigation. WAPA has provided notice and clarification that it has not waived immunity and that any attempted assignment of allocations of Federal hydropower under that certain Contract for Firm Electric Service, Contract No. 04-UGPR-26, as amended, whether by the parties, a State Court order, or otherwise, is subject to WAPA's determination and approval under applicable Federal law and WAPA's procedures.


YVEC also seeks in its State Court litigation an accounting of all funds it contributed toward expenses of the Highwood Generating Station. YVEC can secure an order for such an accounting from this Court.

Finally, YVEC seeks return of all deposit and equity contributions to Debtor, yet YVEC has not filed a claim for such sums in Debtor's bankruptcy case. In sum, YVEC has not established any extraordinary circumstances to justify causing the Debtor and Trustee, at this early stage of the Chapter 11 process, to spend valuable time, funds and effort to defend the State Court litigation which may ultimately be irrelevant and which would interfere with the Trustee's efforts to formulate and achieve a successful Chapter 11 plan of reorganization. The Court finds it in the economic interests of both YVEC and the Debtor that this Chapter 11 case proceed and that the bankruptcy process not be usurped by YVEC's pending State Court litigation. If the Trustee is unable to formulate a confirmable plan within a reasonable period of time or if this case is later converted to Chapter 7, the Court would, as appropriate, entertain a renewed motion to abstain or lift the automatic stay.

For the reasons discussed above, the Court will enter a separate order providing as follows:

IT IS ORDERED that Yellowstone Valley Electric Cooperative, Inc.'s ("YVEC") combined Motion for: (1) Abstention Regarding Its Pending Litigation Against Southern Montana, and (2) Entry of an Order Granting Relief From the Automatic Stay filed February 17, 2012, at docket entry nos. 274 and 278, is DENIED, without prejudice.

BY THE COURT



HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana

Joyce Thares

From: Web Master
Sent: Tuesday, May 15, 2012 6:20 AM
To: Joyce Thares
Subject: Citizen Request 20957 - Use of Cell Phones

A new Citizen Request has been submitted to the Citizen Support Center, and assigned to you for prompt response. Please use the online Citizen Support Center to respond to this Citizen Request. As a reminder, your response will be included in the online tracking system for this Citizen Request. Thank you.

Original Request	05/15/2012
SummaryDate:	
Reference Number:	20957
Status:	New
Name:	Carole Spahr
Email:	<u>enspahr12@gmail.com</u>
Phone:	268-1716
Source:	online
Assigned To:	jthares
Assigned Group:	City Manager
Topic	<u>Use of Cell Phones</u>
Request Details:	I think all forms of communication in cars, bikes, etc., should be banned, including the use of hands-free devices. If you are talking on any of the devices, you are not paying attention to the road. Carole Spahr
Comment:	Citizen request/question created.



Captain Bryan Lockerby
Investigative Services
Great Falls Police Department

Lieutenant John Schaffer
Patrol Services
Great Falls Police Department

Captain Lockerby,

On 05/07/12 I spoke with Minot North Dakota Chief of Police Jason Olson regarding the impacts felt in his community from the Bakken Oil Boom in western North Dakota. Olson gave the following synopsis of the issues facing his community:

Housing/Commercial Property

Olson states that this is the biggest challenge he and his community faces and provided the following:

- No commercial space is available for purchase or lease in the City- Oil companies have taken all space.
- Currently there are four residential properties in the City of Minot for sale at less than \$200,000.00. Housing prices are drastically inflated but continue to sell all though there are not many homes on the market. Contractors are building entire neighborhoods but homes sell for a premium price.
- He is currently approved to hire five additional officers but cannot find a place for them to live as they cannot afford to purchase homes with new officer salaries.
- Minot State University has built an apartment complex on campus to house faculty.
- Minot Air Force Base has built four new dormitories to house Air Force personnel. The base is located 8 miles north of the city.
- Motels are usually full and start at \$220.00 a night if you can find one.
- Property taxes are increasing by about half. Fixed income, long term residents are being hit the hardest.

Crime

- Crimes against persons have increased at a rate of 20%-30%. Sex Offenses are the highest increase. Olson states these crimes are being committed in motels by males being housed by oil companies.
- Property crimes are maintaining current levels due to the large amount of disposable monies held by oil field workers. Olson states they have money so they do not have to commit thefts and related offenses.
- DUI is also up considerably. Olson estimates by 25%.
- City Court cases filed are up 25% as compared to this time last year.
- Bar fights consume a great deal of afternoon and night shift. Again large amounts of disposable income are being spent at bars and strip clubs.
- A large amount of prostitution is taking place in Minot and surrounding areas. Olson states the crime is a class B misdemeanor (30 days, \$500 max). Prostitution cases demand considerable resources that Chief Olson is not willing to expend. He has other priorities.

Funding

- Police Officers are funded through the general fund and are paid through property taxes. Property tax increases are paying for five new officers this year and 5 new officers next year.
- North Dakota has a 5% sales tax and the cities can levy an additional 2% that goes directly into the city funds. Olson states Minot has set up the sales tax to be used for infrastructure such as building improvements and street and sewer repair. It cannot be used for additional LE resources at this time. Each city in ND can choose where they want their funding to be routed.
- Olson states current budgeting practices are also hampering his efforts. Olson stated his budget year is from January 1 to December 31. He has found that his priorities are constantly changing and would like to budget six months at a time to account for the fluid nature of this environment.

→ Chief Bowen notes that PD budgeting for Minot has changed significantly - GFDP is beginning to track oil related incidents in GF.



BIG SKY ECONOMIC DEVELOPMENT

EDA • EDC CREATING MONTANA BUSINESS OPPORTUNITIES



Flockin' to the Bakken 2.0

Big Sky Economic Development is hosting a 2-day tour to the Bakken oil fields. This tour will serve as a way to educate and inform members of our business community on the economic impacts from this area. It will also give people a first-hand look at the impacts and look at potential opportunities, challenges, and successes for Montana as we look to further develop our natural resources. Participants will get a perspective from a variety of tours and panel discussions with leaders in the industry and respective communities.

Registration Form

Name: _____

Company: _____

Mailing address: _____

City: _____ State: _____ Zip: _____

Contact phone: _____

Email: _____

Due to the limited availability of hotel rooms in Williston, the tour will be on a first-come, first-serve basis. In order to guarantee your spot, payment must be received **NO LATER THAN MAY 31, 2012**. No refunds will be given; however the registration can be transferred to someone else.

BSED member investors please check one:

- Single room option **\$215 per person**
- Double room option **\$165 per person**
Price is based on double occupancy
- Non-member investor **\$295 per person**

Cost includes all meals, transportation and lodging.

Return registration and payment to:
222 N. 32nd St. Ste. 200
Billings, MT 59101

DEADLINE: MAY 31, 2012

Questions?

Email: laura@bigskyeda.org or ph: 869-8419

Tentative Agenda

(Subject to change & times are approximate)

Thursday, June 14th

7:00 am-meet at BSED

7:15 am-Depart for Sanjel in Billings for breakfast, tour, presentation

9:00 am-Depart for Sidney

1:15 pm-Arrive Sidney: Tour of Sidney with mayor, tour/presentation by Continental Resources

4:30 pm-Depart for Williston

6:30 pm-Arrive Williston (time change) tour, dinner, presentation by Target Logistics

8:30 pm-Arrive at hotel

Friday, June 15th

7:30-8:45 am-Breakfast panel with Billings businesses impacted by Bakken Field

9:15 am-10:15 am-Tour/presentation with Mountrail-Williams Electric Cooperative

10:15 am-noon- Tour of Williston area including oil rig
Noon-1:30 pm-Local panel discussion from business and community leaders of Williston: what are challenges, successes, opportunities?

1:45 pm-Depart for Billings

6:30 pm- Arrive in Billings



- S p o n s o r s -

CROWLEY FLECK

SANDERSON STEWART

Sanjel

TARGET LOGISTICS
WHEREVER YOU ARE, WE'RE THERE.



BIG SKY ECONOMIC DEVELOPMENT

EDA · EDC CREATING MONTANA BUSINESS OPPORTUNITIES



Bakken: The Montana Experience

Big Sky Economic Development is hosting a 2-day tour to Glendive and Sidney, MT. This tour will serve as a way to educate and inform members of our business community on the economic impacts from this area. It will also give people a first-hand look at the impacts and look at potential opportunities, challenges, and successes for Montana as we look to further develop our natural resources. Participants will get a perspective from a variety of tours and panel discussions with leaders in the industry and respective communities.

Registration Form

Name: _____

Company: _____

Mailing address: _____

City: _____ State: _____ Zip: _____

Contact phone: _____

Email: _____

Due to the limited availability of hotel rooms in Williston, the tour will be on a first-come, first-serve basis. In order to guarantee your spot, payment must be received **NO LATER THAN MAY 31, 2012**. No refunds will be given; however the registration can be transferred to someone else.

BSED member investors please check one:

_____ Single room option **\$215 per person**

_____ Double room option **\$165 per person**
Price is based on double occupancy

_____ Non-member investor **\$295 per person**

Cost includes all meals, transportation and lodging.

Return registration and payment to:
222 N. 32nd St. Ste. 200
Billings, MT 59101

DEADLINE: MAY 31, 2012

Questions?

Email: laura@bigskyeda.org or ph: 869-8419

Tentative Agenda

(Subject to change & times are approximate)

Tuesday, July 10th

7:30-8:00 am-Breakfast in BSED board room

8:00 am-Depart Billings from BSED office

11:30 am-Arrive in Glendive

11:45-1:30 pm-Overview of Glendive growth and panel lunch with local businesses impacted by Bakken field

1:30-2:45 pm-Tour of Glendive with mayor

3:00-4:30 pm-Presentation by Mud Masters Group

4:45-7 pm-TBD

7:15-8:15 pm-Panel with Billings businesses impacted by Bakken Field

8:30 pm-Arrive at hotel

Wednesday, July 11th

7:30-8:00 am-Check out of hotel

8:00-9:00 am-Breakfast en route to Sidney

9:15-11 am-Tour of Sidney with mayor

11:15-1 pm-Local panel discussion from business and community leaders of Sidney

1:15-2:30 pm-tour/presentation by XTO

2:30 pm-Depart for Billings

6:15 pm-Arrive in Billings



- S p o n s o r s -

CROWLEY FLECK ATTORNEYS

SANDERSON STEWART





Great Falls Public Schools

Human Resources • 1100 4th Street South • P.O. Box 2429
Great Falls, Montana 59403 • 406.268.6010 • Fax 406.268.6094 • www.gfps.k12.mt.us

May 1st, 2012

Mayor Winters
PO Box 5021
Great Falls MT 59403

RECEIVED

MAY 15 2012

CITY CLERK

Dear Mayor Winters:

CONGRATULATIONS!

We are pleased to inform you that you have been nominated for our Human Resources "Good Apple" award by Irina Payne, ESOL Teacher K-12. This award has long been associated with education. In our field, receiving an apple is an expression of appreciation and esteem! The presentation of the enclosed pin is appropriate in light of their letter, which reads in part:

As an ESOL teacher this year I was able to work with bicultural students in our schools and their families and much of my focus was directed not only at fostering the development of the students' language skills but also at building relational ties between the school and their homes. I organized a monthly ESL club, which provided us with opportunities to address both goals. Last Saturday two members of our community teamed up with us and presented our students with an unforgettable experience.

Mayor Winters and Judge Sandefur volunteered to come in on a Saturday and give our club members an exclusive behind the scenes tour of the City Commission office and the county courthouse. The students were able to reenact the proceedings and both Mayor Winters and Judge Sandefur did an outstanding job of engaging the children in authentic learning. Not only our students were able to practice Social Studies vocabulary and concepts, they and their families gained a better understanding and appreciation of our community. It is my pleasure to thank both Mayor Winters and Judge Sandefur for their commitment to quality education in Great Falls.

Please accept this award as a token of our sincere appreciation. The Board of Trustees will be informed of your efforts during their next meeting. In addition, a written record will be attached to the Trustee minutes which are kept permanently on file in our District. We ask you to wear this "Good Apple" award with pride!

Sincerely,

A handwritten signature in black ink, appearing to read "Tammy Ladey".

Tammy Ladey
Human Resources Director

cc: Personnel File
Irina Payne

TL; sb

JOURNAL OF COMMISSION WORK SESSION
May 1, 2012

City Commission Work Session

Mayor Winters presiding

CALL TO ORDER: 5:30 p.m.

ROLL CALL: City Commissioners present: Michael J. Winters, Fred Burow, Mary Jolley, and Robert Jones. Commissioner Bronson was excused.

STAFF PRESENT: City Manager; Deputy City Manager; Directors of Fiscal Services, Planning and Community Development, and Public Works; Police Chief; and the Administrative Secretary.

1. BUILDING COALITION GROUP

Building Coalition Group (BCG) representative Rick Tryon introduced Great Falls Association of Realtors Executive Officer Terry Thompson, Great Falls Homebuilders Association Executive Officer Katie Hanning, and Great Falls Area Chamber of Commerce Executive Officer Steve Malicott. Other BCG members include Rickey Linafelter with the Great Falls Landlords Association, and Gary Sorum with Great Falls Income Property Managers and Owners.

Mr. Tryon provided a PowerPoint presentation and explained the purpose of BCG is to work with the City to change the perception that Great Falls is not a business or development friendly place. BCG has identified 13 recommendations and would like to present four of those recommendations at a City Commission meeting in the near future for public comment and a vote.

Ms. Thompson reviewed four current City Commission goals and excerpts from a memo from City Manager Greg Doyon to the City Commission dated December 14, 2011 to validate the BCG's support and offer some solutions.

Ms. Hanning reported BCG wants Great Falls to become the most business and development friendly city in the state. BCG is requesting the Planning and Community Development Department make a greater effort to find a solution when a project doesn't meet code.

Mr. Tryon noted the Great Falls Development Authority (GFDA), the Great Falls Homebuilders Association, the Great Falls Association of Realtors, the Great Falls Area Chamber of Commerce, and others are all stakeholders in development for Great Falls and Cascade County.

Mr. Malicott believes that with good partnerships, the City can become the most business and development friendly city in the State of Montana.

Ms. Thompson reported Recommendation 1, to establish a publicly stated goal, mission, and vision that Great Falls will be proactive in becoming the most business and development friendly city in the state, can be achieved by adding it to the City Commission Vision/Goals.

Recommendation 2, that all levels of staff in the Planning and Community Development Department will strive to implement a “we are here to serve you, how can we help you get your project done” attitude, may be achieved by creating a catch phrase that would be posted in the Department for staff and the public to see and printed on documents such as applications, permits, etc.

Mr. Tryon suggested a mission statement be created that Great Falls will be the most business friendly, development friendly city in the state.

Mr. Tryon reported Recommendation 3 is to eliminate the Design Review Board (DRB). Community aesthetics may be addressed in another way.

Commissioner Jolley expressed concern that the DRB considers buildings in relation to others nearby. She believes business owners do not want to blend in with other businesses. She also questioned the DRB appeal process.

Planning and Community Development Director Mike Haynes responded the DRB can only make recommendations for improving a project.

Commissioner Burow noted applicants are subject to the opinion of another person, rather than written requirements.

Mr. Tryon believes that anyone who would purchase property for a business would want to make the property look as nice as they can afford.

Mr. Tryon expressed concern with potential conflict of interest with members of the DRB.

Mr. Tryon reported Recommendation 4 is to create a Development Process Advisory Review Board (DPARB), similar to Billings.

Ms. Thompson discussed the Billings DPARB which was created as a buffer for their City Administrator, staff, and building professionals. DPARB allows the community to file appeals.

Mr. Tryon discussed the purpose of the Billings DPARB.

Ms. Hanning discussed the proposed Great Falls DPARB.

Mayor Winters expressed concern there would be another layer of people determining what could be done on a business owner’s property.

Mr. Tryon responded the purpose of the DPARB is to act as a mediator and facilitator between the development community and the Planning and Community Development Department to address issues as they arise before they become problems.

Ms. Hanning believes the DPARB would provide a huge education component.

Ms. Thompson noted the DPARB would help communicate the facts to the public.

Mr. Malicott commented the DPARB would formalize all the processes into one board that would discuss issues and recommendations, and the builder would have opportunity to present complaints without fear of retribution.

Mr. Haynes stated there is currently a Board of Adjustment/Appeals, however, he noted no objections to the proposed DPARB.

Mr. Tryon suggested some members to be appointed by the City to the DPARB, and some members selected by the development community.

Commissioner Burow questioned the need for the DRB.

Mayor Winters stated the Commission would review and discuss the proposed DPARB.

Mr. Malicott commented the efforts of the BCG are to be partners to work toward a common goal.

ADJOURN

There being no further discussion, Mayor Winters adjourned the informal work session of May 1, 2012, at 6:38 p.m.

Bankruptcy judge denies co-op's request to leave Southern

4 hours ago • By CLAIR JOHNSON cjohnson@billingsgazette.com

[http://www.skweezer.com/s.aspx/-/billingsgazette~com/news/state-and-regional/montana/bankruptcy-judge-denies-co-op-s-request-to-leave-southern/article_b79b7c86-0b23-5e19-893d-793a6f0f2084~html\(0\)Comments](http://www.skweezer.com/s.aspx/-/billingsgazette~com/news/state-and-regional/montana/bankruptcy-judge-denies-co-op-s-request-to-leave-southern/article_b79b7c86-0b23-5e19-893d-793a6f0f2084~html(0)Comments)

A federal bankruptcy judge on Tuesday denied Yellowstone Valley Electric Cooperative's request to resume its lawsuit against its wholesale supplier in state court.

U.S. Bankruptcy Judge Ralph Kirscher ruled against YVEC on all of its claims in its battle to leave the Billings-based Southern Montana Electric Generation and Transmission and Cooperative.

The judge said it was in the economic interests of both YVEC and Southern that reorganization proceeds and that the bankruptcy process "not be usurped" by YVEC's pending state court litigation.

YVEC's request to end its membership in Southern, Kirscher said, will interfere with the trustee's efforts to reorganize the bankrupt wholesale provider because it "will be time-consuming, expensive and could potentially undermine the chances for a successful reorganization."

YVEC can renew its request later if the trustee fails to come up with a reorganization plan within a reasonable amount of time or if Southern's case is converted to a liquidation, Kirscher said.

The judge's 19-page ruling comes after a hearing in Billings on April 24.

YVEC, based in Huntley, sued Southern in 2008 in state court, alleging it breached its wholesale power contract. Settlement talks failed, and the case was set for a jury trial last November. A few weeks before trial, Southern filed for bankruptcy, effectively halting the state case.

YVEC is one of five rural electric co-ops, along with the city of Great Falls, that are members of Southern, which has power contracts with other providers and also built the Highwood Generating Station, a 40-megawatt gas-fired power plant outside Great Falls.

Southern's financial mess stems from having contracted for more power than it needed, primarily from PPL, at expensive rates. Southern also borrowed \$85 million to build the Highwood plant and was seeking to borrow up to \$215 million more to enlarge the plant when it went broke.

Great Falls also has sued Southern to end its contract. And another member, Beartooth Electric Cooperative, based in Red Lodge, has asked Kirscher to declare its Southern contract null and void.

"We respect the judge's ruling even though we're disappointed. We'll have to take this under advisement with our counsel," said Terry Holzer, YVEC's retired general manager and consultant.

YVEC's attorney, John Crist of Billings, said the judge exercised his discretion to give the trustee a chance to develop and to get a plan confirmed.

"I think the ball is squarely in the trustee's court to either get a plan together and get it filed or this case should move into a Chapter 7 liquidation," Crist said. "We would expect that plan to be filed within the next 30 to 40 days. That would be our hope," he said.

Denver attorney John Parks, who represents Southern's trustee, Lee Freeman, told the court at the April hearing that the trustee intended to file a plan within a couple of months, Crist said.

Crist questioned whether a plan is possible, given Southern's dysfunction.

"This is a very difficult organization to reorganize. You've got three of the six members – Yellowstone, Beartooth and Great Falls -- who have made it very clear they don't want anything to do with Southern Montana. What ever plan the trustee comes up with is going to have to deal with that," Crist said.

"This case will have been in bankruptcy six months this week. It's time for the trustee to step up and file a plan. Let's see what he can come up with," Crist said.

Southern's trustee, Parks said, is "obviously pleased with the court's decision and looks forward to continuing to work with all parties, including Yellowstone Valley, toward confirming a consensual plan of reorganization."

The trustee has not committed to a timetable and setting a deadline is unnecessary, Parks said.

"We're moving forward with all possible dispatch. We don't want to conclude the process in such a hurry that we don't realize full value for the company's assets," Parks said. "We hope to complete this process before the end of the year. That's our hope. That's our goal," he said.

Southern is in a stronger financial position than it was six months ago. The trustee has rejected the PPL contract and is buying wholesale power at far cheaper rates on the market while talking to other potential power suppliers and negotiating with creditors.

Last week, two interested parties toured the Highwood plant, Parks said.

Southern is building its bank account and expects to have about \$5.5 million in cash by the end of October, Parks said. A monthly operating report for April showed Southern had an ending cash balance of \$2.95 million.

"We're making progress. We are making money. And we'll continue to build up cash on a monthly basis. More cash means we have more options. This is not a sinking ship," Parks said. "That means we can realize the full market value for this company and its assets," he added.

Meanwhile, the trustee wants to keep negotiating with Southern's members even though the court did not order mediation with YVEC, as the trustee suggested in the April hearing.

"We'd like to reach a negotiated resolution," Parks said.

Southern's smallest member, the Mid-Yellowstone Cooperative in Hysham, also welcomed Kirscher's ruling. Gary Ryder, Mid-Yellowstone's attorney, said he hoped the decision would bring the co-ops to the table to reach a mutual resolution. "We simply don't have the financial resources to litigate the issue in state court. We relied on Southern to do that," he said.



News & Notes

from State Farm®



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Put burglary prevention on your vacation to-do list

The next time you pack your bags to leave town, go with peace of mind. Asking someone to house sit is the preferred method to protect your property, but if that isn't feasible, follow these steps to make your home appear occupied:

- Have your telephone calls forwarded, if possible.
- Have a trusted neighbor pick up your mail and newspapers instead of having services stopped.
- Arrange to have the yard tended to.
- Consider installing light timers.
- Never leave notes on your door that can tip off burglars of your absence.

For more information, read about protecting yourself from home burglary on statefarm.com. You can also talk to your State Farm agent about home safety.

Driveways pose a danger to kids

Back-over accidents account for about 183 fatalities and approximately 7,000 injuries to children under the age of 15 each year. Help keep children safe:

- Do not let children play in the driveway unattended. Have them stand in a visible location such as the front steps before moving the vehicle.
- Check the driveway carefully before backing out. Several newer vehicles have cameras or other warning systems that can help minimize back-over incidents, but the best defense is to look behind the vehicle *just* before you back up.

Source: kidsandcars.org

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How to find product recalls

On a daily basis, recalls are announced on various consumer products.

There are recalls on vehicles, foods, medicines and toys—just to name a few. Consumers have the ability to learn of recalls that may impact the products they use. Information on recalls in general can be found at www.recalls.gov/recent.html. In addition, recalls related to vehicles can be found at www.nhtsa.gov/Vehicle+Safety/Recalls+&+Defects.

Your cell phone rings – do you answer it?

Chatting on a cell phone while driving increases your risk of a collision fourfold. According to the Insurance Institute of Highway Safety (IIHS), it's as dangerous as driving under the influence of alcohol, even if you switch to a hands-free model.

Distractions, including using cell phones or other electronic devices, applying makeup, eating and adjusting the radio or CD-player, worsen a driver's ability to react to hazardous situations.

The safest way to drive is to avoid distractions and keep your attention on the road.

Source: IIHS

If you would like more information about articles in this newsletter, write:

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