

RESOLUTION 9376

A RESOLUTION OF THE CITY OF GREAT FALLS, CASCADE COUNTY, MONTANA APPROVING AND AUTHORIZING THE EXECUTION OF THE INTERLOCAL AGREEMENT FOR THE CREATION, ESTABLISHMENT AND GOVERNANCE OF THE MONTANA PUBLIC POWER AUTHORITY BY AND AMONG THE CITY OF GREAT FALLS, THE CITY OF HELENA, THE CITY OF BILLINGS, THE CITY OF BOZEMAN, THE CITY OF MISSOULA AND THE CONSOLIDATED CITY/COUNTY OF BUTTE-SILVER BOW; APPROVING AND AUTHORIZING THE EXECUTION OF SUCH AGREEMENT BY CITY; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

**CITY OF GREAT FALLS
Cascade County, Montana**

(MONTANA PUBLIC POWER AUTHORITY)

BE IT RESOLVED BY THE COMMISSION OF THE CITY OF GREAT FALLS, CASCADE COUNTY, MONTANA, as follows:

WHEREAS, the City of Great Falls, Cascade County, Montana (the “City”), a charter city duly organized and existing under and by virtue of the laws of Montana and Charter of the City, has all powers not expressly prohibited by the Montana constitution, state law or its charter;

WHEREAS, the City desires to enter into an agreement with certain other local governments to form the Montana Public Power Authority in order to acquire, develop and operate the assets of the Northwestern Energy division of the NorthWestern Corporation (the “Project”); and

WHEREAS, the City is authorized by Montana Code Ann. § 7-11-104 to enter into agreements between itself and other local governments for cooperative action such as the Project;

NOW THEREFORE, IT IS HEREBY FOUND, DETERMINED AND ORDERED as follows:

Section 1: AGREEMENT APPROVED AND AUTHORIZED

The Interlocal Agreement for the Creation, Establishment and Governance of the Montana Public Power Authority, substantially in the form attached hereto as Exhibit “A” and incorporated herein by reference, by and among the City, the City of Billings, the City of Bozeman, the City of Helena, the City of Missoula and the Consolidated City/County of Butte Silver Bow (the “Agreement”) is hereby approved and authorized by the Commission of the City.

Section 2: CHANGES TO AND EXECUTION OF THE AGREEMENT

The City Clerk of the City is hereby authorized to make changes in the Agreement, prior to its execution, so long as such changes do not materially alter the terms of the Agreement.

The City Manager of the City and the City Clerk are hereby authorized and directed to execute the Agreement on behalf of the City and to take such further action as is necessary to carry out the intent and purposes hereof.

BE IT FURTHER RESOLVED BY THE COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

The Cascade County Clerk and Recorder is hereby authorized and directed to change the appropriate district boundaries of the City of Great Falls, Montana, to include said tract of land; and,

BE IT FURTHER RESOLVED BY SAID CITY COMMISSION that this Resolution shall become effective immediately upon its adoption as provided by law

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, on this ____ day of April, 2004.

Randall H. Gray, Mayor

ATTEST:

Carolyn M. Broquist, Deputy City Clerk

(SEAL OF CITY)

Approved for legal content: City Attorney

State of Montana)
County of Cascade :ss
City of Great Falls)

I, Carolyn M. Broquist, Deputy City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Resolution No. 9376 was placed on its final passage by the

Commission of the City of Great Falls, Montana, at a meeting thereof held on the ____ day of April, 2004, and approved by the Mayor of said City on the ____ day of April, 2004.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this ____ day of April, 2004.

Carolyn M. Broquist, Deputy City Clerk

(SEAL OF CITY)

**INTERLOCAL AGREEMENT
FOR THE CREATION, ESTABLISHMENT AND GOVERNANCE
OF
THE MONTANA PUBLIC POWER AUTHORITY**

This Interlocal Agreement for the Creation, Establishment and Governance of the Montana Public Power Authority (“Agreement”), dated and effective as of the Effective Date (defined below), is by and among the City of Missoula, Montana; the City of Great Falls, Montana; the City of Bozeman, Montana; the City of Billings, Montana; the City of Helena, Montana; and the consolidated city/county government of Butte-Silver Bow, Montana; and such other local governmental units as may become a party to this Agreement in accordance with its terms. Each of the foregoing local governmental units that authorize and approve this Agreement pursuant to an Effective Vote (hereinafter defined) are hereinafter referred to as an “Original Member” and collectively as the “Original Members.” Unless otherwise defined in this Agreement, each capitalized term used in this Agreement shall have the meaning given in Article I.

RECITALS

WHEREAS, under Article XI, Section 6 of the Montana constitution, a local governmental unit with self-governing powers has the authority to Acquire and Develop electric and natural gas utilities within and outside the boundaries of such local governmental unit;

WHEREAS, Title 7, Chapter 1, Part 101, Montana Code Annotated holds that as provided by Article XI, section 6, of the Montana constitution, a local governmental unit, such as each Original Member, that is possessed of self-government powers may exercise any power not prohibited by the constitution, law, or charter, such powers to include (by way of example and not by way of limitation) those powers granted to general power governments;

WHEREAS, Title 7, Chapter 11, Part 1, Montana Code Annotated (the “Interlocal Cooperation Act”) authorizes local governmental units to enter into interlocal agreements to perform any undertaking that any of the public agencies entering into the Agreement are authorized by law to perform;

WHEREAS, each of the Original Members, as a local governmental unit within Montana, has the desire, obligation or responsibility to secure, for themselves and for their respective citizens, adequate, reliable and low-cost electric and natural gas utility services; and

WHEREAS, the Original Members hereby find and determine that it is in their mutual interest to join with each other and with other local governmental units located throughout Montana to create a joint authority (by and through this Agreement as an interlocal agreement under the Interlocal Cooperation Act) for the purposes of undertaking and accomplishing the Acquisition (hereinafter

defined) and Development (hereinafter defined) of the T&D Assets (hereinafter defined).

NOW THEREFORE each of the Original Members, and each other local government unit as may elect to participate in this Agreement and who may be authorized by the Board to become a Member, all as may be hereinafter provided (such parties collectively the "Members"), and in consideration of the mutual covenants and agreements of the Original Members, do hereby covenant, agree, acknowledge, establish, represent and warrant as follows:

ARTICLE I - DEFINITIONS

Unless otherwise defined in this Agreement, each of the following terms shall have the meaning set forth in this Article I.

1.1 *Acquisition, acquiring or acquire* shall include acquisition, purchase, securing, obtaining, lease, receipt by gift or grant, condemnation, transfer or other acquirement, or any combination thereof.

1.2 *Agreement* shall mean this Interlocal Agreement for the Creation, Establishment and Governance of the Montana Public Power Authority, dated and effective as of the Effective Date.

1.3 *Board or Board of Directors* shall have the respective meanings given such terms in Article IV.

1.4 *Code* means the Internal Revenue Code of 1986, as amended, together with corresponding and applicable final or temporary regulations and revenue rulings issued or amended with respect thereto by the United States Treasury Department or the Internal Revenue Service.

1.5 *Develop or Development* includes any one or more of the following: construction of, ownership of, remodeling, maintaining, equipping, re-equipping, repairing, financing, refurbishing, refurbishing, holding and operating assets or properties.

1.6 *Effective Date* shall mean the date upon which a simple majority of the Original Members shall have taken all proper action under applicable law to authorize and approve to be bound to this Agreement. This Agreement shall be effective as of and on the Effective Date notwithstanding the fact that all of the herein recited Original Members may not have taken all proper action under applicable law to authorize and approve this Agreement. This Agreement shall be of no further force and effect in the event that the Effective Date is determined to occur on or after 12:01 a.m., May 4, 2004, Mountain Standard Time (*i.e.*, in the event that by such date no simple majority of the Original Members shall have taken all proper action under applicable law to authorize and approve this Agreement). With respect to all Members who may authorize and approve this Agreement subsequent to the Effective Date, this Agreement shall be deemed to bind such Members as of the date of such authorization and approval by such Member; *provided further, however*, that each new Member's

status as a Member shall be further subject to those approvals and confirmations of the Original Board or of the Original Members as required by Article IV hereunder. Notwithstanding the foregoing sentence with respect to Members, each Original Member which shall authorize and approve this Agreement shall be deemed to be bound to this Agreement as of the Effective Date.

1.7 *Effective Vote* shall mean any official action by any Original Member or by any Member to authorize and approve this Agreement.

1.8 *Member* shall mean any party to this Agreement, including, but not limited to, the Original Members.

1.9 *MPPA* shall mean the Montana Public Power Authority created and established pursuant to this Agreement, and any successor entity created and established by the MPPA or by the Members pursuant to an amendment and restatement of this Agreement.

1.10 *NorthWestern Energy* shall mean NorthWestern Energy, a division of NorthWestern Corporation and all affiliates thereof. Whenever the term “NorthWestern Energy” shall be used with respect to T&D Assets, the term shall be deemed to be inclusive of each corporate entity or entities affiliated with, or under common control with, NorthWestern Corporation, it being the intention of the Original Members that the term T&D Assets set forth in this Agreement include the T&D Assets of NorthWestern Energy regardless of the actual corporate ownership of such assets.

1.11 *Original Board* shall have the respective meanings given such term in Article IV.

1.12 *Original Members* shall have the meaning set forth in the first paragraph of this Agreement.

1.13 *Outstanding* or *Outstanding Obligation* means, any obligation of the MPPA that has not yet been paid, retired, redeemed or legally defeased.

1.14 *T&D Assets* shall mean any and all assets hereinafter Acquired or Developed by the MPPA that may consist of, among other matters, natural gas and electric transmission and distribution systems, real and personal property, administrative systems and assets (including human resource assets), contract rights, accounts receivable, computer software, business assets, good will, and other items of real, personal, intellectual and intangible property. The Original Members by this Agreement intend that initially during the period of due diligence time immediately following the creation and establishment of the MPPA the term “T&D Assets” shall mean only the T&D Assets of NorthWestern Energy.

ARTICLE II – CREATION, NAME, PURPOSES, AND POWERS

2.1 Findings Regarding Creation and Establishment of Montana Public Power Authority. Pursuant to Article XI, Section 6 of the Montana constitution, pursuant to the charters and self-governing authorities and powers enjoyed by or possessed of any of the Original Members, and pursuant to the Interlocal Cooperation Act, the Original Members hereby find that they each individually and respectively have and enjoy all right, title, power and authority to form, create and establish, and such Original Members hereby do agree to form, create and establish, an authority to jointly pursue and exercise the purposes, powers, and duties as set forth below that any of the Original Members are independently capable of pursuing and exercising.

2.2 Creation and Establishment of the MPPA. Pursuant to the Interlocal Cooperation Act, there is hereby created a public entity separate and apart from that of each of the Members to be known as the Montana Public Power Authority, with such powers as are set forth in the Agreement. The creation and establishment of the MPPA herein-created shall be as of and on the Effective Date. Unless dissolved in accordance with the terms and provisions of this Agreement, the existence of the MPPA shall be perpetual.

2.3 Scope of Powers. In all of its actions and activities, the MPPA shall be entitled to exercise the power or powers and perform those acts that any one of the Members may themselves possess or perform in connection with the Acquisition and Development of T&D Assets. Notwithstanding the foregoing, and except as otherwise provided below, the MPPA shall be operated separately from the administrative structure or structures of any or all of the Members, and shall be governed solely and independently by a Board of Directors as provided below.

2.4 Purpose and Duties of MPPA. Under this Agreement, MPPA shall have the purposes and duties enumerated below.

a. To investigate the feasibility of Acquiring and Developing the T&D Assets.

b. If, after such investigation, a two-thirds (2/3rds) majority of the Original Board determines that it is in the MPPA's best interest to pursue the Acquisition or Development of any or all of the proposed or identified T&D Assets, and subject to the initial financial limitations set forth in Article VIII, below, and to the extent (as anticipated by the Original Members) that the T&D Assets shall be those T&D Assets of NorthWestern Energy, which T&D Assets (as anticipated by the Original Members) remain subject to federal bankruptcy proceedings, the MPPA shall prepare and tender (or shall cause to be prepared and tendered) to the Official Committee of Unsecured Creditors and/or the United States Bankruptcy Court for the District of Delaware in Case No. 03-12872, as may be appropriate (and in each such other successor or ancillary legal proceeding), one or more term sheets, offers, letter of intent, proposals, or other appropriate pleadings, agreements, certificates, documents and instruments evidencing the MPPA's desire to Acquire or Develop some or all of the T&D Assets,

and the proposed terms and conditions of the Acquisition or Development thereof.

c. If the proposal tendered by the MPPA shall be accepted, the MPPA shall commence on behalf of the Original Members, all appropriate due diligence activities and, if after exercising such due diligence, the Original Board determines to proceed with the Acquisition or Development of T&D Assets, to negotiate one or more legal agreements, documents or instruments concerning the same. In this regard, the Original Members hereby acknowledge and agree that it may be necessary to amend and restate this Agreement in several respects in order to proceed with such Acquisition or Development.

d. Contemporaneously with the anticipated activities set forth in this Agreement, the MPPA shall be and hereby is empowered to Acquire and Develop the T&D Assets and to own, operate, manage and administer the same.

2.5 Delegation of Powers to MPPA. The Members hereby delegate the following powers to MPPA to the greatest extent allowed by law:

a. to operate and be governed by a Board of Directors selected in accordance with the provisions of this Agreement and any amendments to this Agreement, or any By-Laws (the "By-Laws") anticipated by the Original Members to be subsequently authorized and approved;

b. to establish a budget and make expenditures pursuant thereto, and to set assessments for each Member within the limits and on the conditions set forth in Article VIII;

c. to hire or retain employees, independent contractors, professionals, and other personnel as may be reasonably necessary to accomplish the purposes and duties of the MPPA;

d. to make an offer on behalf of the MPPA to purchase or otherwise Acquire and Develop some or all of the T&D Assets;

e. to pursue all appropriate due diligence activities as may be reasonably required in connection with the Acquisition and Development of the T&D Assets;

f. to incur debts, liabilities and obligations and to arrange for the offer, sale and issuance of bonds or other liabilities or debt obligations, which bonds, liabilities or other debt obligations may be secured by the T&D Assets and the revenues to be derived therefrom; *provided, however*, that each such bond or debt obligation issued by the MPPA and represented by a certificate or instrument shall contain on its face a statement substantially to the effect that (i) neither Montana, any municipality or local governmental unit thereof, or any other municipal corporation, quasi-municipal corporation, subdivision, authority or agency thereof is obligated to pay the principal or the interest arising thereon, (ii) no tax funds may be used to pay the principal or interest thereon; and (iii) neither any nor all of the faith and credit nor the taxing power of Montana, any municipality or local governmental

unit thereof, or any other municipal corporation, quasi-municipal corporation, subdivision, authority or agency thereof, is pledged to the payment of the principal or the interest thereon;

g. to negotiate and enter into contracts, to perform contracts, to make covenants and representations, to convey and to receive legal rights, and to take such other actions as may be reasonably incident to the Acquisition or Development of the T&D Assets;

h. to pursue all governmental or regulatory review and approvals as may be required in connection with Acquiring and Developing the T&D Assets;

i. to propose and lobby for the enactment of such legislation as may be necessary to provide for the effective operation of the MPPA and the effective Acquisition and Development of T&D Assets by the MPPA;

j. to Acquire, Develop, own, hold, refurbish, reconstruct, sell, transfer, lease, bargain, convey, pledge, mortgage, devise, dispose or hypothecate (or cause to occur any of the foregoing through delegation or otherwise) the T&D Assets;

k. to: (i) Acquire and Develop the T&D Assets, and to engage in the provision of electric and natural gas transmission and distribution services in certain service areas upon accomplishing any Acquisition or Development of T&D Assets; (ii) to purchase, contract for, generate, or otherwise secure energy and capacity (provided, however, that nothing in this Agreement shall be interpreted or construed to prohibit or restrict any Member from generating or otherwise securing its own energy and capacity independently of the MPPA); (iii) construct, purchase and improve sources of electricity and natural gas; (iv) construct, purchase, and improve T&D Assets or other substantially similar, ancillary or related properties or assets; and (v) engage in all activities as may be required to provide customers with stable, secure and reasonably-priced supplies of electricity and natural gas;

l. to sue and be sued in its own name and its own right, to seek opinions of counsel, to request opinions of counsel or attorney general's opinions in Montana or otherwise, to institute, prosecute, defend or intervene in all such actions or proceedings to establish the validity of this Agreement, any powers granted herein, any authority or action of the MPPA, and any of the obligations sought to be undertaken by the MPPA;

m. to Acquire, hold or dispose of property, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and government entities and to receive contributions or donations of property, funds, services and other forms of assistance from any source;

n. to receive, collect, disburse and invest money or property;

o. to establish rates, to establish one or more systems composed of all or part of

the T&D Assets, to establish one or more contract resource obligations with respect to all or any part of any of the T&D Assets;

p. to exercise such other powers as may be reasonably implied or necessary to undertake, accomplish or effect the various and several purposes set forth in this Agreement; and

q. to carry out all the provisions of this Agreement and the By-Laws.

2.6. Restrictions on Powers. Under this Agreement, the MPPA shall:

a. engage only in the activities which are enumerated above or such activities that are reasonably or necessarily implied from the activities enumerated above;

b. not allow any of its income and assets to be used for or inure to the benefit of any private person or corporation;

c. not directly obligate any Member without such Member's prior consent; and

d. not take any action or fail to take any action that is or would be in violation of the Montana constitution.

2.7 Payment in Lieu of Taxes. The MPPA shall make provision to compensate local governmental units within the state of Montana (and the state of Montana) for tax revenue loss associated with the MPPA ownership of the T&D Assets, in amounts and at such times as the Board determines to be appropriate under the circumstances.

2.8 Noncompetition. The Members each agree that during the term of this Agreement, no Member shall take any action (or permit any action to be taken by that Member or its agents) that would create a transmission or distribution service to be operated in a manner that would compete with the business of the MPPA.

ARTICLE III – MEMBERSHIP AND WITHDRAWAL

3.1 Representations. Each of the Original Members who shall make an Effective Vote in respect of this Agreement shall be deemed to have represented and warranted to all of the other Original Members and to MPPA as of the date of such Effective Vote that:

a. It is a self-governing municipality, or consolidated city-county government that is duly organized and validly existing under the laws of Montana.

b. The governing board, council, or commission of such Member has authorized and approved this Agreement by way of a resolution, ordinance or other official action that has been

duly and validly adopted and that is legally effective.

c. It has power and authority to authorize and approve this Agreement and to perform its obligations arising hereunder.

3.2 Membership. The Original Members of the MPPA as of the Effective Date shall be those Original Members who shall make an Effective Vote. Membership in the MPPA shall be open to all cities, counties and consolidated city-county governments located within Montana and within the service territory (whether in whole or in part) of the distribution system represented by the T&D Assets, *provided, however*, that each admission to membership shall require the confirming approval of no less than three-fourths (3/4^{ths}) of the Original Board. New Members may be admitted as further set forth in the By-Laws. Notwithstanding anything in this Section 3.2, the Original Board shall have no power to approve the admission of a new Member except as set forth in Article IV of this Agreement.

3.3 Withdrawal. Any Member may withdraw from the MPPA upon ninety (90) days written notice to the Board for any reason whatsoever or for no reason; *provided, however*, that withdrawal from the MPPA shall not relieve a Member of its obligations for any liability incurred on account of its membership in the MPPA, including any amounts owed under any assessment made pursuant to Article VIII, or otherwise under any contract between the withdrawing Member and the MPPA. Further, such withdrawal by a Member may not cause the MPPA to violate or breach any covenant to third parties (such as creditors of the MPPA, including bondholders) without such third parties' prior written consent(s). Withdrawal shall not become effective until the withdrawing Member has discharged all of its duties and obligations to the MPPA up to the date of withdrawal.

ARTICLE IV - BOARD OF DIRECTORS

4.1 Powers. All of the powers delegated to MPPA shall be exercised by and under the authority of the Board, which shall conduct its business as provided herein.

4.2 Board of Directors. The Board shall consist of up to ten (10) representatives of the Members. The Original Members shall each have one (1) permanent seat on the Board; *provided, however*, that in the event less than six (6) of the Original Members make an Effective Vote, so many of the Original Members as make an Effective Vote shall each have one (1) permanent seat on the Board. Such of the representatives of the Original Members who shall constitute the original Board shall hereinafter be referred to as the "Original Board." The remaining seats on the Board after the representatives constituting the Original Board shall take their seats on the Original Board may be allocated to any Members which may later join the MPPA in the manner that a simple majority of the Original Board may approve, or as further established in the By-Laws. Notwithstanding the foregoing, the Original Board shall have no power to approve the applications for membership into the MPPA by other Members nor appoint any Director to any vacant seat on the Board (nor to authorize or approve any By-Laws that call for a vacant seat on the Board to be filled by any party other than the representative of an Original Member) until such time as the T&D Assets shall have been Acquired or

until such earlier time as all Original Members shall unanimously agree. The qualifications, terms of service, duties, tenure, rights, privileges and obligations of those persons serving as Directors on the Board shall be as further set forth in the By-Laws, together with provisions concerning resignations, vacancies, voting matters and the like. Notwithstanding the foregoing, an Original Member may remove its representative serving on the Board, with or without cause, at any time. In no event shall a Director be other than an individual.

4.3 Meetings; Voting. Regular and special meetings of the Board shall be called and conducted in accordance with the provisions set forth in the By-Laws, or if none, as a simple majority of the Original Board may determine. For purposes of taking action at meetings of the Board, the Board shall be required to obtain a Quorum, as the same shall be set forth from time to time in the By-Laws (it being acknowledged and agreed that for purposes of the Original Board no less than four (4) such members of the Board shall constitute a Quorum). Each Director who shall serve on the Board shall carry and be empowered to cast one (1) vote at each regular or special meeting of the Board. Each vote or votes of a Director at any duly held meeting shall be conclusively deemed to be the vote for and on behalf of the Member or Members that he or she shall represent. The Board of the MPPA is expressly authorized to adopt, amend or repeal the By-Laws.

4.4 Compensation. No Director shall receive any compensation from the MPPA for the performance of his or her duties as a Director except that all Directors shall be reimbursed for all reasonable travel costs and expenses (included but not limited to costs and expenses associated with meals, lodging and transportation).

4.5 Personal Liability. The personal liability of the Directors who shall serve on the Board shall be and hereby is eliminated to the fullest extent permitted by Montana law. The MPPA is authorized and directed to indemnify (and advance expenses to) its Directors and officers to the fullest extent permitted by Montana law. The MPPA is authorized and directed to obtain directors' and officers' insurance policies and to enter into indemnification or contribution agreements with Directors. Neither the amendment, modification or repeal of this Section shall adversely affect any right or protection of a Director or officer of the MPPA with respect to any act or omission that occurred prior to the time of such amendment, modification, repeal or adoption.

4.6 Place and Manner of Meetings. All meetings, whether of the Board or of the Original Board, shall be open to the public. All official acts of the Board shall be by a regular or special meeting and by a majority of the Board. Meetings of the Board shall be held at such places, either within or without Montana, as the Board shall determine. Rather than holding a meeting at any particular place, the Board may determine that a meeting shall be held solely by means of remote communications, which means shall meet the requirements of applicable law.

ARTICLE V – OFFICERS

5.1 Officers. The MPPA shall have such officers as may be specified in the By-Laws.

5.2 Initial Officer. Until such time as the By-Laws shall be authorized and approved by the Board pursuant to Article VI of this Agreement, the Original Board may appoint an Executive Director who shall be delegated responsibility and authority for the activities of the MPPA.

ARTICLE VI - BYLAWS

6.1 By-Laws. The Board of the MPPA, acting with no less than a simple majority, shall authorize and approve By-Laws on or after the Effective Date to be effective as of the Effective Date and shall conduct its affairs in accordance with this Agreement and in accordance therewith. The By-Laws may be amended in the manner specified therein, which may be by less than a unanimous vote of the Directors but which in no event may be by less than a two-thirds (2/3rds) majority. Notwithstanding the foregoing, the By-Laws may be amended at any time by a three-fourths (3/4ths) majority vote of the Original Board.

6.2 Agreement Controls. In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of the By-Laws, this Agreement shall control.

ARTICLE VII -- DISSOLUTION AND AMENDMENT

7.1 Dissolution. Whenever, at a regular or special meeting for which notice stating the purpose has been given, a three-fourths (3/4ths) majority of the Board shall determine that the purposes for which the MPPA was formed have been fulfilled, accomplished or otherwise completed the MPPA may be dissolved. Any such resolution of dissolution shall only be effective, and the MPPA shall only be dissolved, if: (i) the MPPA has no property to administer, other than funds or property, to be paid or transferred to a Member or other person prior to such dissolution in connection with such dissolution, and (ii) at the time of such dissolution all obligations of MPPA shall no longer be Outstanding and all such obligations shall have been satisfied or provision for the satisfaction thereof shall be made prior to the effective date of such dissolution. Thereafter, the Board shall liquidate the business of the MPPA and distribute the net proceeds (if any) to the Members in the most equitable manner possible.

7.2 Amendment. This Agreement may be amended only by a written instrument and only by a three-fourths (3/4ths) of the Original Members.

ARTICLE VIII – CONTRIBUTIONS, ASSESSMENTS, BUDGET AND RATES

8.1 Initial Organizational Contributions and Initial Organizational Assessments. Each of the Original Members shall make an initial organizational contribution to MPPA in the amount indicated in Exhibit 1 to this Agreement, which Exhibit 1 is incorporated herein by this reference. Such initial organizational contributions shall be used by the MPPA to pay for costs and fees associated with the exercise by the MPPA of its powers set forth in Section 2.5(c) or 2.5(d) of this Agreement. In addition, each local governmental unit becoming a Member shall make an initial organizational

contribution in an amount as the Board may determine to be appropriate. The simple majority of the Board shall have the power to make further additional organizational assessments against each Original Member for the costs of organizing the MPPA and all costs reasonably associated with the exercise of the MPPA's powers as provided in Section 8.2 below. Provided however, that each such additional organizational assessment as among the Original Members shall be in equal proportion at all times (*e.g.*, in the case of 6 Original Members who shall make an Effective Vote, 1/6th).

8.2 Contemplated Additional Organizational Contributions and Assessments; Powers of Original Board Related Thereto. Furthermore, and not by way of derogation of Section 8.1 of this Agreement, the Original Board shall have the power to make any necessary additional organizational assessment against each Member for the costs associated with the exercise by the MPPA of the powers set forth in 2.5(a) through 2.5(j) of this Agreement; *provided, however*, that the maximum additional organizational assessment (*e.g.*, the maximum additional organizational assessment beyond those initial organizational contributions called for to be made under Section 8.1 above) imposed by the Original Board or the subsequent Board upon the Original Members for such costs associated with the exercise by the MPPA of its powers set forth in Section 2.5(e), (g) and (h) shall be \$75,000 per Original Member, exclusive of the initial organizational assessments against the Original Members for costs previously imposed. It is the intention of the Original Members in setting forth this Section 8.2 that each Original Member's liability for all organizational assessments and contributions in aggregate (including the initial organizational contribution) arising under Section 8.1 and Section 8.2 shall not exceed the sum of \$100,000, respectively, without further amendment to this Agreement by all Original Members.

8.3 Budget and Rates. In furtherance of the powers set forth in Section 2.5 of this Agreement, the MPPA shall authorize, approve and publish for the benefit of its Members an annual budget for its operations. To the extent allowed by law, the budget shall provide for rates and terms and conditions of service to all electric and natural gas customers served by the MPPA which shall be sufficient to: (i) meet operating costs; (ii) provide for appropriate debt service coverage (including maintaining an investment-grade credit rating) on any obligations of the MPPA that may be Outstanding; (iii) establish and maintain reasonable reserves; (iv) provide for adequate maintenance and investment; and (v) to provide for adequate and reliable service to customers.

8.4 Assessments. Unless otherwise required by law, the Board may not make assessments against Members for any of the items of cost that are to be recovered through rates as provided in Section 8.3 above. However, and only if and to the extent Members may by law become liable for payment or discharge of any obligation of MPPA, such liability shall be assessed against them by the Board in a ratio approved by the Board in its sole and absolute discretion, subject to the last sentence of Section 8.1 and the last sentence of Section 8.2 above.

ARTICLE IX - MISCELLANEOUS PROVISIONS

9.1 Bonds and Debt Obligations. Unless and to the extent the Members may otherwise

unanimously agree, all bonds or other debt obligations approved to be offered, sold and issued by the MPPA shall be as approved by a simple majority of the Board. Such bonds or other debt obligations are presently contemplated for issuance in order to undertake and accomplish the anticipated Acquisition and Development of the T&D Assets. Such bonds or other debt obligations, to the extent issued, shall be obligations solely of the MPPA, and accordingly, without the express consent of individually effected Members, none of the Members shall be liable for the payment of the principal of, premium (if any), or interest on such bonds or other debt obligations or for the performance of any other obligation that may be undertaken by the MPPA with respect thereto. The Members acknowledge that the Board shall take all reasonable best efforts to reimburse the Members for initial costs and assessments incident to the authorization and approval of this Agreement by such Members to the greatest extent permitted by the Code and other applicable law (and from proceeds of the proposed bonds, other debt obligations or otherwise).

9.2 Insurance. The Board shall procure and maintain insurance, self-insurance reserves, or both, in an amount sufficient to satisfy all liabilities reasonably foreseeable or otherwise incident to the operation of the MPPA.

9.3 Retirement System Contributions. With respect to its employees (if any), and to the extent required by applicable law, the MPPA shall be the party responsible for reports and payment of retirement system contributions pursuant to MCA § 19-2-506.

9.4 Effective as of the Effective Date. This Agreement shall become effective as of and on the Effective Date.

9.5 Administrator of Joint Undertaking. For purposes of MCA § 7-11-105, the Executive Director of the MPPA (or if none, such other chief executive officer of the MPPA established under the By-Laws) shall serve as the administrator responsible for administering the joint and cooperative undertaking among the Members to this Agreement. To the extent determined necessary to comply with MCA § 7-11-105 the Board shall serve as the “joint board” under this Agreement, otherwise, there shall be no “joint board” as that term is used in MCA § 7-11-105.

9.6 Supplemental Agreements. The Members agree to complete and execute all supplemental agreements, documents and instruments reasonably necessary or appropriate (in the opinion of a simple majority of the Board) to fully implement the terms of this Agreement.

9.7 Assignment. No Member shall assign any of its rights or delegate any of its duties arising under or by virtue of such Member’s membership in the MPPA or pursuant to this Agreement without the express written approval of the Board.

9.8 No Third Party Beneficiaries. Except as expressly provided by this Agreement, the Members shall not be obligated or liable by virtue of this Agreement to any third party. This Agreement may be amended pursuant to the terms and provisions of this Agreement without the consent of any

other third parties or the holders of any bonds or other debt obligations of the MPPA.

9.9 Actions Contesting Agreement. At the written request of the Board, each Member shall be required to appear and to defend any action or legal proceeding in any jurisdiction that is prosecuted by any party (whether or not a Member) or otherwise brought to determine or contest: (i) the validity of this Agreement; (ii) the lawfulness or the authority of the MPPA hereby created, (iii) the legal authority of any Member to undertake the activities contemplated by this Agreement, (iv) the legal authority of the MPPA to undertake the activities contemplated by this Agreement; or (v) the legal authority to perform any of the Members' respective obligations arising under or by virtue of this Agreement. Each Member so appearing in all such contexts shall be responsible for its own expenses including without limitation legal expenses, arising under or in connection with any such proceeding. All Members agree not to commence or prosecute an action to challenge the validity or interpretation of this Agreement without having first obtained the consent of the Board to commence or prosecute such action. If all Members are not named as parties to any action or proceeding involving this Agreement or the MPPA, the party named shall give all other Members and the MPPA prompt notice of the action or proceeding and provide to the MPPA and each of its Members with an opportunity to intervene. Each Member shall bear any respective costs and expenses assessed by any court or tribunal against it, except as may be covered by policies of insurance or by Section 9.2. While the MPPA shall be without income or a source of revenue, in the event the MPPA is made a party to any proceeding, the Members agree that the defense costs for the MPPA shall be borne by the Members in equal proportions (*e.g.*, in the case of 6 Original Members who shall make an Effective Vote, 1/6th).

9.10 Entire Agreement, Amendment, Waiver. This Agreement contains the entire agreement and understanding of the Members with respect to the subject matter hereof as of the Effective Date, and supersedes all prior or contemporaneous oral or written understandings, agreements, promises, or other undertakings by and among the Members. This Agreement may not be modified or amended, nor any rights thereunder waived, other than by a written instrument and in all cases in the manner set forth in Section 7.2 of this Agreement. No course of dealing by or among the Members or the MPPA or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any party.

9.11 Governing Law; Venue. This Agreement shall be governed by, interpreted and construed in accordance with the laws of Montana. The venue of any suit or arbitration arising under this Agreement shall be in Lewis and Clark County, Montana.

9.12 Captions. The article and section captions used in this Agreement are for convenience only and shall not control and affect the meaning or construction of any of the provisions of this Agreement.

9.13 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. In the event any provision of this Agreement is held to be prohibited by or invalid under applicable law such provision

shall be ineffective only to the extent of such prohibition or invalidity, without affecting or invalidating the remainder of this Agreement.

9.14 Counterparts. This Agreement may be executed in counterparts and via facsimile. Each counterpart shall be deemed to be an original instrument. All such counterparts together will constitute one and the same Agreement.

9.15 Time is of the Essence. It is hereby agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.

9.16 Filing under the Interlocal Cooperation Act. Within ten days after approval or authorization of this Agreement by no less than four Original Members, each such approving Original Member, or their agents, shall file a copy of this Agreement with the Secretary of State for Montana and with the county clerk and recorder of each of the counties in which Original Members casting an Effective Vote are located. Notwithstanding the foregoing, it is the intention of the Original Members that this Agreement be effective, if at all, as of the Effective Date.

IN WITNESS WHEREOF, the City Manger of the City of Great Falls on behalf of City has subscribed his name and affixed hereto the seal of said City this ____ day of _____, 2004.

THE CITY OF GREAT FALLS, MONTANA
A Municipal Corporation of the State of Montana

John W. Lawton, City Manager

ATTEST:

Carolyn M. Broquist, Deputy City Clerk

(SEAL)

EXHIBIT 1

INITIAL CONTRIBUTIONS OF THE ORIGINAL MEMBERS

ASSUMING 100% EFFECTIVE VOTE BY ALL ORIGINAL MEMBERS**

Local Government:	Amount:
City of Billings	\$25,000
City of Bozeman	\$25,000
Consolidated Government of the City/County of Butte-Silver Bow	\$25,000
City of Great Falls	\$25,000
City of Helena	\$25,000
City of Missoula	\$25,000

**In the event that all of the Original Members stated above fail to make an Effective Vote, those Original Members who do make an Effective Vote agree and acknowledge that each shall be required to increase the amount of their initial contribution as required by the Original Board.

The Members acknowledge that such increase shall be on a proportionate basis (*e.g.*, in the event of 6 Original Members, on the basis of 1/6th and in the event of 5 Original Members, on the basis of 1/5th).