

RESOLUTION 9528

A RESOLUTION OF THE CITY OF GREAT FALLS, CASCADE COUNTY, MONTANA APPROVING AND AUTHORIZING AMENDMENT NO. 1 TO 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 BOZEMAN, THE CITY OF MISSOULA AND THE CONSOLIDATED CITY/COUNTY OF BUTTE-SILVER BOW; APPROVING AND AUTHORIZING THE EXECUTION OF SUCH AMENDMENT BY THE CITY; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

CITY OF GREAT FALLS
Cascade County, Montana

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 Montana’s constitution, state law or its charter;

WHEREAS, the City desires to enter into an Amendment No. 1 to the Interlocal Agreement for the Creation, Establishment and Governance of the Montana Public Power Authority with certain other local governments to form the Montana Public Power Authority (the “Interlocal Agreement”) 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. AMENDMENT NO. 1 TO INTERLOCAL AGREEMENT APPROVED AND AUTHORIZED.

Amendment No. 1 to the Interlocal Agreement (“Amendment No. 1”), substantially in the form attached hereto as Exhibit “A” and incorporated herein by reference, by and among the City, the City of Bozeman, the City of Helena, the City of Missoula and the Consolidated City/County of Butte-Silver Bow is hereby approved and authorized by the Commission of the City.

Section 2. CHANGES TO AND EXECUTION OF AMENDMENT NO. 1

The City Clerk of the City is hereby authorized to make changes to Amendment No. 1, prior to its execution, so long as such changes do not materially alter the terms of Amendment No. 1.

The City Manager of the City and the City Clerk are hereby authorized and directed to execute Amendment No. 1 on behalf of the City and to take such further action as is necessary to carry out the intent and purposes thereof.

Section 3. ADDITIONAL ORGANIZATIONAL ASSESSMENTS

The Commission of the City hereby declares its intention to pay any additional organizational assessment authorized to be imposed by the Montana Public Power Authority pursuant to Section 8.5 of the Interlocal Agreement as set forth in Amendment No. 1 only after an agreement has been entered into between Montana Public Power, Incorporated, as purchaser, and NorthWestern Energy to allow Montana Public Power, Incorporated to commence due diligence regarding the purchase all of the outstanding shares of common stock of NorthWestern Energy.

BE IT FURTHER RESOLVED BY SUCH 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 15th day of November, 2005.

Randall H. Gray, Mayor

ATTEST:

Peggy J. Bourne, City Clerk

State of Montana)
 : ss.
County of Cascade)

I, Peggy J. Bourne, City Clerk for the City of Great Falls, Montana, do hereby certify that Resolution 9528 which was placed on its final passage by the Commission of the City of Great Falls, Montana, at a regular meeting thereof held on the fifteenth day of November, 2005, and approved by the Mayor of said City on the _____ day of November 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this ____day of November, 2005.

Peggy J. Bourne, City Clerk

(SEAL OF THE CITY)

AMENDMENT NO. 1

TO INTERLOCAL AGREEMENT

FOR THE CREATION, ESTABLISHMENT AND

GOVERNANCE OF

MONTANA PUBLIC POWER AUTHORITY

This Amendment No. 1 is executed as of the ____ day of _____, 2005, by and among the City of Bozeman, Montana, the consolidated city/county government of Butte-Silver Bow, Montana, the City of Great Falls, Montana, the City of Helena, Montana and the City of Missoula, Montana (collectively the “Members” and individually a “Member”).

RECITALS

WHEREAS, the Members entered into an Interlocal Agreement for the Creation, Establishment and Governance of the Montana Public Power Authority, dated and effective as of the Effective Date, which is attached hereto as Appendix A (the “Interlocal Agreement”). Unless otherwise defined in this Amendment No. 1, each capitalized term used in this Amendment No. 1 shall have the meaning given it in the Interlocal Agreement;

WHEREAS, pursuant to Section 8.1 of the Interlocal Agreement, each Member has made an initial organizational contribution to MPPA in the amount of \$25,000, which initial organizational contributions have been used by MPPA pursuant to such Section 8.1 to pay for costs and fees associated with the exercise by MPPA of its powers set forth in Sections 2.5(c) and 2.5(d) of the Interlocal Agreement;

WHEREAS, pursuant to Section 8.2 of the Interlocal Agreement, each Member has made additional organizational assessments to MPPA in the total amount of \$75,000, which additional organizational assessments have been used by MPPA pursuant to Section 8.2 of the Interlocal Agreement to pay for costs associated with the exercise by

MPPA of its powers set forth in Sections 2.5(a) through 2.5(j) of the Interlocal Agreement;

WHEREAS, pursuant to Section 8.2 of the Interlocal Agreement, it was the intention of the Members that each Member's liability for all organizational assessments and contributions in aggregate (including the initial organizational contribution) arising under Sections 8.1 and 8.2 of the Interlocal Agreement shall not exceed the sum of \$100,000 without further amendment to the Interlocal Agreement by all Members;

WHEREAS, the Members desire to amend certain sections of the Interlocal Agreement in order to increase each Member's organizational assessment as set forth below;

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants contained herein, the Members agree as follows:

Section 1. The Interlocal Agreement shall be amended to add a Section 8.5 and a Section 8.6 which shall state as follows:

“8.5 Additional Organizational Assessments. Furthermore, and not by way of derogation of Section 8.1 or 8.2 of this Agreement, the Board shall have the power to make an additional organizational assessment against each Member for the costs associated with the exercise by MPPA of the powers set forth in Section 2.5 of this Agreement; *provided, however,* that the maximum additional organizational assessment imposed by the Board upon the Members for such costs associated with the exercise by MPPA of its powers set forth in Section 2.5 shall be \$100,000 per Member, exclusive of any assessments against the Members for costs previously imposed pursuant to Section 8.1 or 8.2 of this Agreement.

8.6 Additional Organizational Assessments: Reverse Breakup Fee. Furthermore, and not by way of derogation of Section 8.1, 8.2 or 8.5 of this Agreement, the Board shall have the power to make an additional organizational assessment against each Member for certain costs associated with the exercise by MPPA of the powers set forth in Section 2.5(g) of this Agreement, specifically, to pay to NorthWestern Energy a Reverse Breakup Fee in the event that a purchase agreement between Montana Public Power, Incorporated, as purchaser (the “Purchaser”), and NorthWestern Energy to purchase all of the outstanding shares of common stock of NorthWestern Energy is terminated by NorthWestern Energy on the grounds the Purchaser has committed a willful breach of any representation, warranty, covenant or agreement that remains uncured for 30 days after notice and which breach would have a material adverse effect on the ability of the Purchaser to consummate such purchase; *provided, however,* that (a) the maximum additional organizational assessment that may be imposed by the Board upon the

Exhibit A

Members for such Reverse Breakup Fee shall be \$100,000 per Member, exclusive of any assessments against the Members for costs previously imposed pursuant to Section 8.1, 8.2 or 8.5 of this Agreement; and (b) such assessment shall be imposed and such Reverse Breakup Fee shall be paid only upon a willful breach by the Purchaser under the circumstances set forth above.”

Section 2. Except as set forth in this Amendment No. 1, all the provisions of the Interlocal Agreement shall remain in full force and effect.

Section 3. This Amendment No. 1 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 Amendment No. 1.

Section 4. Within ten days after approval or authorization of this Amendment No. 1 by all of the Members, each Member, or its agents, shall file a copy of this Amendment No. 1 with the Secretary of State for Montana and with the county clerk and recorder of each of the counties in which the Members are located. Notwithstanding the foregoing, it is the intention of the Members that this Amendment No. 1 be effective as of the date first written above.

IN WITNESS WHEREOF, each of the Members have executed this Amendment No. 1 as of the date first above written.

IN WITNESS WHEREOF, The City Manager of the City of Great Falls on behalf of the City has subscribed his name and affixed hereto the seal of said City this 15th day of November, 2005.

CITY OF GREAT FALLS, MONTANA

A Municipal Corporation of the State of Montana

John W. Lawton, City Manager

ATTEST:

Peggy J. Bourne, City Clerk

(SEAL)

Exhibit A