

RESOLUTION 9529

A RESOLUTION APPROVING THE ARTICLES OF INCORPORATION OF ELECTRIC CITY POWER, INC.,

* * * * *

WHEREAS, the City Commission adopted Ordinance 2925 which authorized the organization of Electric City Power, Inc. (the "*Corporation*") pursuant to the provisions of the Montana Nonprofit Corporation Act; and

WHEREAS, Ordinance 2925 provides that the Articles of Incorporation of the Corporation shall be approved by resolution of the City Commission; and

WHEREAS, the Articles of Incorporation for Electric City Power, Inc. are attached hereto as Exhibit A and are hereby incorporated herein.

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

The Articles of Incorporation of the Corporation are hereby approved and authorized by the Great Falls City Commission.

PASSED by the Commission of the City of Great Falls, Montana, on this 15th day of November, 2005.

Randall H. Gray, Mayor

ATTEST:

Peggy Bourne, City Clerk

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT:

David V. Gliko, City Attorney

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

I, Peggy J. Bourne, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Resolution 9529 was placed on its final passage and adoption, and was passed and adopted by the City Commission of said City at a Regular Meeting thereof held on the 15th day of November, 2005, and approved by the Mayor of said City, on the 15th day of November, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City, this 15th day of November, 2005.

Peggy J. Bourne, City Clerk

(SEAL OF CITY)

**ARTICLES OF INCORPORATION
OF
ELECTRIC CITY POWER, INC.
a Montana nonprofit corporation**

ARTICLE I

NAME

The name of the nonprofit corporation is Electric City Power, Inc. (the “*Corporation*”).

ARTICLE II

PUBLIC BENEFIT CORPORATION

The Corporation is a “public benefit corporation,” as that term is defined in §35-2-114(28) of the Montana Nonprofit Corporation Act, Title 35, Chapter 2, Montana Code Annotated, as amended (the “*Nonprofit Corporation Act*”).

ARTICLE III

PERPETUAL EXISTENCE

The existence of the Corporation shall be perpetual.

ARTICLE IV

MEMBER

The Corporation shall have a single “member,” as that term is defined in §35-2-213 of the Nonprofit Corporation Act, which shall be the City of Great Falls, Montana (the “*Member*”).

ARTICLE V

PUBLIC PURPOSE; POWERS; LIMITATIONS

The Corporation is organized for the transaction of any lawful activity as provided in the Nonprofit Corporation Act and to act as the agency, instrumentality and constituted authority of the Member. The Corporation will be operated solely and only to accomplish the public purposes of the Member and will be operated as a nonprofit corporation under the provisions of the Nonprofit Corporation Act.

At all times, and notwithstanding merger, consolidation, reorganization, termination, dissolution or winding up of the Corporation, voluntarily or involuntarily, or by operation of law or any other provision hereof:

(a) The Corporation shall neither have nor exercise any power, nor shall it directly or indirectly engage in any activity, that would prevent the Corporation from complying with the provisions of the Nonprofit Corporation Act.

(b) The Corporation shall not be operated for the purpose of carrying on a trade or business for profit.

(c) No part of the income of the Corporation shall inure to the benefit of any director or officer of the Corporation or any private individual, except that reasonable compensation may be paid for services rendered on behalf of the Corporation, and no director or officer of the corporation or any private individual shall be entitled to share in any distribution of any of the assets of the Corporation upon its dissolution. Any net revenues of the Corporation beyond those necessary for the payment of its operating expenses, the retirement of its indebtedness and the implementation of the public purposes of the Corporation and the Member, shall inure solely to the benefit of the Member.

Notwithstanding any other provision of these Articles of Incorporation, (i) the Corporation shall not issue or incur any bonds, notes or other evidences of indebtedness without the prior approval of the Member by action of its City Commission, (ii) the Corporation shall have no power to bind the Member or to create obligations or indebtedness of the Member, and (iii) each bond, note or other evidence of indebtedness of the Corporation shall contain a statement to the effect that (A) neither the Member, the State of Montana (the “*State*”), any agency, authority or instrumentality of the State or any municipality or local governmental unit is obligated to pay the principal thereof or interest thereon; and (B) neither the faith and credit nor the taxing power of the Member, the State, any agency, authority or instrumentality of the State or any municipality or local governmental unit is pledged or in any way obligated to pay the principal thereof or interest thereon.

The powers of the Corporation are subject to further limitations contained in Ordinance 2925 of the Member, as supplemented and amended from time to time (“*Ordinance 2925*”) which limitations are hereby incorporated by reference as though fully set forth in these Articles of Incorporation.

ARTICLE VI

INITIAL REGISTERED OFFICE AND MAILING ADDRESS

The initial registered office and mailing address of the Corporation is: {need street address}, P.O. Box 5021, Great Falls, Montana 59403.

ARTICLE VII

INCORPORATOR

The name and address of the initial incorporator of the Corporation are as follows: City of Great Falls, Montana, {need street address}, P.O. Box 5021, Great Falls, Montana 59403.

ARTICLE VIII

DIRECTORS

The number of directors (“*Directors*”) of the Corporation and the manner in which such Directors are to be appointed by the Member shall be as set forth in the bylaws of the Corporation (the “*Bylaws*”). In no event shall there be fewer than three Directors.

The Directors shall constitute the “*Board of Directors*” of the Corporation. The initial Directors shall serve on the Board of Directors until replaced as provided in the Bylaws.

ARTICLE IX

DISTRIBUTION UPON DISSOLUTION

Upon dissolution of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities and obligations of the Corporation, distribute all assets of the Corporation exclusively to the Member.

ARTICLE X

LIMITATION ON DIRECTOR LIABILITY

No Director of the Corporation shall be personally liable to the Corporation or its Member for monetary damages for his or her conduct as a director, except for (i) a breach of the Director’s duty of loyalty to the Corporation or the Member, (ii) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law or (iii) a transaction from which the Director derived an improper personal benefit. If the Nonprofit Corporation Act is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a Director of the Corporation shall be deemed eliminated or limited to the fullest extent permitted by the Nonprofit Corporation Act, as so amended, without any requirement of further action by the Member.

ARTICLE XI

REGISTERED AGENT AND OFFICE

The name of the initial registered agent of the Corporation and the address of the initial registered office are as follows: {need name and street address of registered agent}, P.O. Box 5021, Great Falls, Montana 59403.

ARTICLE XII

FINANCING

The Corporation may from time to time issue bonds, notes or other obligations upon the approval of the Member as provided in Ordinance 2925. The Corporation intends to issue certain bonds, notes or other obligations the interest on which is excludable from the gross income of the holder (“*Tax-Exempt Obligations*”) pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the “*Code*”). In order to issue such Tax-Exempt Obligations on behalf of the Member, the Corporation intends to comply with the requirements of Revenue Procedure 82-26, 1982-1 C.B. 476, or any successor thereto. Pursuant to the requirements of Revenue Procedure 82-26, the Member has approved the organization of the Corporation and, in general, the issuance of Tax-Exempt Obligations by the Corporation. However, no Tax-Exempt Obligations shall be issued unless the City Commission of the Member shall adopt a resolution approving the purposes and activities of the Corporation and approving the issuance of specified Tax-Exempt Obligations to be issued by the Corporation within one year prior to the issuance of such specified Tax-Exempt Obligations.

XIII

AMENDMENT OF ARTICLES AND BYLAWS

These Articles of Incorporation and the Bylaws of the Corporation may be amended from time to time as provided in the Nonprofit Corporation Act; *provided, however*, that in no event shall these Articles of Incorporation or the Bylaws be amended without the approval of the Member by resolution adopted by its governing body.

Dated: _____, 2005.

CITY OF GREAT FALLS, MONTANA,
as Incorporator

By _____
Its _____

CONSENT TO APPOINTMENT AS REGISTERED AGENT

I, _____, hereby consent to serve as Registered Agent in the State of Montana for Electric City Power, Inc. (the "*Corporation*"). I understand that, as agent for the Corporation, I will be my responsibility to accept Service of Process on behalf of the Corporation; to forward license renewals and other mail to the Corporation; and to immediately notify the Secretary of State in the event of my resignation or of any changes in the Registered Office address.

By _____
Registered Agent
Date: _____, 2005