

RESOLUTION 9537

A RESOLUTION DECLARING THE INTENTION OF THE CITY OF GREAT FALLS TO PARTICIPATE IN THE DEVELOPMENT OF THE HIGHWOOD GENERATING STATION, AUTHORIZING THE CITY MANAGER TO TAKE ALL ACTIONS NECESSARY IN CONNECTION THEREWITH AND RELATED MATTERS

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WHEREAS, the City Commission has previously adopted Ordinance 2925 which authorized and approved the creation of Electric City Power, Inc., a Montana nonprofit corporation (the “Corporation”), in order to secure and provide reliable and economic supplies of electricity to the City of Great Falls (the “City”), its residents and other electric consumers served by the City;

WHEREAS, the City has the opportunity to participate with Southern Montana Electric Generation & Transmission Cooperative, a Montana nonprofit electric cooperative membership corporation (“SME”), in the development of a 250 megawatt coal-fired electric generating facility located near the City to be known as the Highwood Generating Station (the “Station”) and to acquire a 25% undivided ownership interest in the Station (the “Project”);

WHEREAS, the Project is reasonably expected to provide firm and reliable supplies of electricity at stable, cost-based rates for the benefit of the City, its residents and the electric consumers served by the City and the Corporation, and the City expects to derive other substantial benefits from the Station, as described herein; and

WHEREAS, the City Commission now desires to declare the official intention of the City to proceed with the development of the Project, to approve certain basic terms for the development agreement between the City and SME and to authorize and direct the City Manager to take all actions necessary in connection therewith.

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

Section 1. Findings, Determinations and Declarations. The City Commission hereby finds and determines that:

- (a) The continued growth, economic development and prosperity of the City and its residents requires the availability of secure, reliable and economic supplies of electricity at stable, economical and cost-based rates for all residential, commercial, industrial and other electric consumers within the City;

(b) In order to mitigate the exposure of the City and residential, commercial, industrial and other electric consumers within the City to volatile and unstable market-based rates for electricity supply service, it is necessary and desirable for the City to secure long-term, reliable sources of electricity at stable, cost-based rates;

(c) The Project, consisting of a 25% undivided ownership interest in the proposed Highwood Generating Station, is reasonably expected to provide a long-term, reliable source of electricity at stable, cost-based rates for the benefit of the City, its residents and the electric consumers served by the City and the Corporation; and

(d) The City reasonably expects to realize substantial benefits from the construction and operation of the Station and the proposed annexation of the Station site into the City, including, but not limited to, additional employment from construction jobs and long-term jobs in connection with the operation of the Station, an increase in the tax base and tax revenues, and increased revenues from raw water sales and the provision of other municipal services to the Station.

Based upon the foregoing findings and determinations, the City Commission hereby declares the official intention of the City to participate in the development of the Highwood Generating Station and to own, acquire and construct the Project.

Section 2. Development of the Project. (a) The City intends to participate in the development of the Project through the Corporation, and it is the intention of the City that the Corporation shall own and finance the Project for and on behalf of the City. The City Manager is hereby authorized and directed to take all actions necessary or desirable in connection with the development of the Project and to provide all management and administrative services necessary to enable the Corporation to accomplish its purposes.

(b) The City Manager is further authorized and directed to engage in all discussions and negotiations with SME that are necessary or desirable in connection with the Highwood Generating Station and the Project, including the preparation of a development agreement between the City or the Corporation and SME (the "Development Agreement"). It is the intention of the City that the Development Agreement shall be substantially consistent with the terms and provisions attached hereto as EXHIBIT A. Upon the completion of such negotiations, the City Manager shall present a substantially final form of the Development Agreement to the City Commission for final approval.

Section 3. Further Authority. In furtherance of the foregoing, the City Manager is additionally authorized and directed to:

(a) Take all actions necessary to arrange for the funding of the development costs of the Project through the issuance of bonds, notes or other obligations of the City, subject to final approval of the terms thereof by the City Commission;

(b) Continue to develop additional electricity supply customers for the Corporation and take all other actions necessary or desirable to promote the full utilization and benefit of the electric output of the Project upon its commercial operation; and

(c) Take or direct all other actions necessary, convenient or desirable to give effect to this Resolution and the development of the Project

PASSED by the Commission of the City of Great Falls, Montana, on this 6th day of December, 2005.

Randall H. Gray, Mayor

ATTEST:

Peggy Bourne, City Clerk

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT:

City Attorney

EXHIBIT A

BASIC TERMS AND PROVISIONS OF THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF GREAT FALLS AND SOUTHERN MONTANA ELECTRIC GENERATION & TRANSMISSION COOPERATIVE

1. The City (acting through the Corporation) will own a 25% undivided ownership interest in the Highwood Generating Station, including all common facilities, transmission facilities and rights and other interests which are part of the Highwood Generating Station (the "Station"). SME will hold an undivided ownership interest in the remaining 75% of the Station. SME and the City will provide the necessary financing for their respective (75%/25%) ownership interests in the Station.

2. SME and the City will fund the initial development costs of the Station (presently estimated at \$12 million) in accordance with their respective (75%/25%) ownership interests in the Station.

3. SME will permit the City, as the co-owner of the Station, to participate fully in the decision-making process relating to the development of the Station (such as EPC contractor selection and coal supply selection).

4. The City and SME agree to negotiate in good faith to develop a mutually-agreeable and definitive joint ownership or co-tenancy agreement that will specify their respective ownership interests in the Station, provide that each party is entitled to receive the percentage of the output of the Station that is equal to its ownership interest, and will also specify their respective rights, duties and obligations. This agreement will provide a decision-making structure for the Station specifying a committee structure for reporting and decisions by SME and the City (including identification of activities requiring both SME's and the City's approval, such as annual operating and capital expenditure budgets, capital expansions, and planned outage and maintenance programs). The agreement will also address the parties' ability to mortgage or encumber their respective ownership interests for financing purposes and to dispose of their ownership interests.

5. The City and SME agree to negotiate in good faith to develop mutually-agreeable and definitive forms of all other agreements necessary in connection with the ownership and operation of the Station, including:

(a) An operating agreement, under which SME will be appointed as the operator of the Station, with specific rights, duties and obligations. The operating agreement will specify the basis for compensating the operator for its services, the allocation of operating costs between the parties and the circumstances under which the operator may be replaced.

(b) Any transmission agreements or arrangements necessary for the delivery of Station output to the parties, as well as all spinning reserve and ancillary services agreements as may be necessary or desirable for the utilization of the Station.

(c) A resource integration agreement under which SME will provide specified services for the City to support its ownership interest in the Station, and the parties will agree to make available to one another any surplus output to their respective ownership interests in the Station.

(d) A raw water supply agreement under which the City will supply all non-culinary water necessary for Station operations, and will take all actions necessary, including obtaining any needed regulatory approvals, to provide this water supply.

(e) An annexation agreement under which the City will annex the Station site and provide municipal services, including police and fire protection and culinary water supply and wastewater treatment services to the Station at cost-based rates.

6. The City will agree to provide tax increment financing for eligible infrastructure in connection with the Station.

7. The development agreement will set forth the terms and provisions under which the parties may agree to terminate the development of the Project and/or transfer or assign their respective development rights in the Station.