

CITY OF GREAT FALLS, MONTANA
A G E N D A R E P O R T

AGENDA# 4
DATE December 6, 2005

ITEM: ENGAGEMENT LETTERS AND FEE PROPOSAL FOR BOND COUNSEL SERVICES FROM CHAPMAN & CUTLER, LLP AND DORSEY & WHITNEY, LLP AS RELATED TO THE CITY OF GREAT FALLS' SHARE OF CONSTRUCTION FINANCING FOR HIGHWOOD GENERATING STATION, UNIT 1.

INITIATED BY: ELECTRIC CITY POWER

ACTION REQUESTED: APPROVE ENGAGEMENT LETTERS AND FEE PROPOSAL FOR BOND COUNSEL SERVICES

PRESENTED BY: COLEEN BALZARINI, FISCAL SERVICES DIRECTOR

RECOMMENDATION: Staff recommends the City Commission approve the following motion:

MOTION:

I move the City Commission approve the Engagement Letters and Fee Proposal of Chapman & Cutler, LLP and Dorsey & Whitney, LLP for services as co-bond counsels related to the City of Great Falls' share of construction financing for Highwood Generating Station, Unit 1.

SYNOPSIS:

In the summer of 2005, the City Commission approved retaining Chapman & Cutler, LLP and Dorsey & Whitney, LLP as co-bond counsel to assist the City in financing its portion of the Highwood Generating Station, Unit 1.

The attached contracts and fee proposal outlines the scope of services and the methodology for payment of those services since work commenced and pending receipt of the final financing proceeds which are anticipated in December 2006. Bond Counsel services are eligible costs that will be including in the financing of the project. At the time of the original bond counsel selection it was anticipated that the firms would provide services based on a fee system with one component that reflected time devoted to initial research and development and a second component contingent upon a bond issue.

The Engagement Letters and Fee Proposal will be delivered Monday December 5, 2005.

BACKGROUND:

The engagement letters contain standard language regarding scope of work, duties, and responsibilities of bond counsel in a local government financed project. The fee proposal, as presented, occurs after the first component, time devoted to initial research and development, has been essentially completed. The creation of the on-behalf non-profit corporation, Electric City Power, Inc. and the adoption of the related articles of incorporation and by-laws were included in this first component.

Each firm will provide itemized quarterly billing statements. The City will pay an initial amount up to \$20,000 to each firm in December 2005, with an additional amount of up to \$25,000 to each firm prior to the issuance of bond proceeds. The hourly amount billed will be at 50% of the actual hourly rate. Assuming the bond financing is carried through to completion, the firms will each receive 110% of total hourly fees incurred, plus 100% of actual expenses, less all fee and expense amounts paid previously. In the event financing is not successfully completed, the final amount due is adjusted dependent upon the conditions present at the time of discontinuation.

It is still necessary to issue an RFP for bond underwriter services. The selected underwriter will be an important component of the financing team to assure a marketable product. The addition of these two professional elements will strengthen the City's ability to issue desirable, affordable debt and illuminate a more complete spectrum of options for financing our portion of the plant.

**WATERMARK FEE PROPOSAL FOR BOND COUNSEL SERVICES
TO THE CITY OF GREAT FALLS
FROM CHAPMAN AND CUTLER AND DORSEY & WHITNEY**

Based on discussions between representatives of our two firms, we propose the following arrangements for payments of our fees and expenses as bond counsel in connection with Electric City Power and the financing of the ownership interest in the Highwood Generating Station (the “Project”):

1. Each firm will submit quarterly billing statements to the City, in an amount equal to the sum of (a) 50% of its fees (calculated at its standard hourly rates), plus (b) 100% of its expenses (travel, telephone, copying, etc.). Each firm will submit an initial billing statement in December 2005 for its fees and expenses for the period July-November 2005.

2. The total of all billing statements submitted by each firm in a calendar year will not exceed \$25,000, and the amount of each firm’s initial bill (submitted in December 2005) will not exceed \$20,000.

3. Each firm will carry its unbilled fees (and any unbilled expenses that result from the annual cap described in paragraph 2) until the earlier of (a) the closing of a financing for the costs of the City’s ownership interest in the Project, (b) a sale by the City of its rights to participate in the development of the Project, and (c) a final determination by the City to abandon the Project (without any sale of its development rights).

4. In the event financial closing is achieved (as described in paragraph 3(a)), each firm will submit a billing to the City in an amount equal to the sum of (a) 110% of its total hourly fees incurred, plus (b) 100% of its actual expenses, less (c) all fee and expense amounts contained in billing statements previously submitted to and paid by the City.

5. In the event of a sale by the City of its development rights in the Project (as described in paragraph 3(b)), each firm will submit a billing to the City in an amount equal to the sum of (a) 100% of its total hourly fees incurred, plus (b) 100% of its actual expenses, less (c) all fee and expense amounts contained in billing statements previously submitted to and paid by the City.

6. In the event of abandonment of the Project (as described in paragraph 3(c)), each firm will submit a billing to the City in an amount equal to the sum of (a) 75% of its total hourly fees incurred, plus (b) 100% of its actual expenses, less (c) all fee and expense amounts contained in billing statements previously submitted to and paid by the City.

7. The City agrees to pay promptly all billing statements submitted by each firm.