

CITY OF GREAT FALLS, MONTANA

AGENDA # 11

AGENDA REPORT

DATE November 6, 2007

ITEM Potable and Industrial Process Water Service and Sanitary Sewer Agreements with Montana Megawatts I, LLC

INITIATED BY Montana Megawatts I, LLC, developer

ACTION REQUESTED Approve Potable and Industrial Process Water Service and Sanitary Sewer Agreements and Authorize City Manager to Execute the Agreements

PREPARED BY Martha Cappis, Operations Supervisor, Fiscal Services

APPROVED & PRESENTED BY Coleen Balzarini, Fiscal Services Director

RECOMMENDATION: It is recommended the City Commission approve the Potable and Industrial Process Water Service and Sanitary Sewer Agreements with Montana Megawatts I, LLC.

MOTION: "I move the City Commission approve the Potable and Industrial Process Water Service and Sanitary Sewer Agreements with Montana Megawatts I, LLC and authorize the City Manager to execute the agreements."

SYNOPSIS: Montana Megawatts is in the process of developing, constructing, and operating a natural gas fired power plant which will be located north of Great Falls, near the malt barley facility. The agreements outline the rates charged for water and sewer service for potable and raw water, sanitary and industrial wastewater, and applicable fees. The agreements also outline the responsibilities of the parties in regards to the reporting of data, the ownership of the meters and system, and the payment requirements, along with addressing the water rights issue for raw water.

BACKGROUND: Montana Megawatts has requested potable water and sanitary wastewater service be available during construction and for facility operation. The City agrees to provide these services under terms including, but not limited to the following:

1. Provides for termination of agreements upon written notice to the City that the facility will not be built.
2. Montana Megawatts, in return for services provided, will be charged at the current service rates for such services, as established by the City pursuant to Great Falls City Code, Title 13, Water and Sewer and Storm Discharge, including all fees.
3. Montana Megawatts is responsible for the construction of all infra-structure necessary to provide services to the facility.
4. Montana Megawatts agrees to comply with all applicable Federal, State, and local regulations regarding the Water Service Line Permit and the Permit to Discharge Industrial Wastewater.

Attachments: Montana Megawatts I LLC & the City of Great Falls
Potable & Industrial Process Water Service Agreement
Sewer Service Agreement

MONTANA MEGAWATTS I LLC & the CITY OF GREAT FALLS
Potable & Industrial Process Water Service Agreement

This Potable and Industrial Process Water Service Agreement (the "Agreement") is made and entered into this _____ day of _____, 2007, by and between the City of Great Falls, Montana, a municipal corporation of the State of Montana, (hereinafter referred to as the "CITY"); and Montana Megawatts I LLC, a Delaware limited liability company (hereinafter referred to as the "DEVELOPER");

WHEREAS, the DEVELOPER desires to make connection to the CITY water system to serve the natural gas fired power plant (hereinafter referred to as the "Facility") which will be constructed and operated by the DEVELOPER at the location described as Lot 5, Block 1, International Malting Company, LLC Addition, in Section 30, Township 21 North, Range 4 East, Cascade County, Cascade County, Montana;

NOW, THEREFORE, the parties hereto mutually covenant and agree as follows:

A. System Requirements and Guarantees

- I. The CITY acknowledges that it has been informed of the DEVELOPER'S water requirements necessary to operate the Facility. The CITY shall make available to DEVELOPER the potable water necessary or desirable to operate the Facility. In addition, the CITY shall make available up to 46,500,000 gallons per month (based upon a 31 day month) of the CITY'S total water right from the Missouri River to provide industrial process water to the Facility.

- II. All water shall be metered through appropriately sized water meters selected by the CITY and reasonably acceptable to DEVELOPER. DEVELOPER shall provide appropriate pipes and fittings for the installation of the separate meters for potable and industrial process water. The CITY shall purchase and provide to DEVELOPER (subject to the reasonable approval of DEVELOPER) an appropriately sized potable water meter with register display that indicates total flow volume. The potable water meter shall be capable of field testing and repair made possible by an appropriately sized lockable by-pass installed as part of the potable meter setting. The industrial process water meter shall be an appropriately sized propeller meter with digital register display, showing rate of flow and total flow in gallons, purchased and provided by the CITY to DEVELOPER, subject to the reasonable approval of DEVELOPER. The propeller meter will not be capable of field testing and repair. DEVELOPER shall keep daily records of industrial process water passing through this meter. Both meters shall be installed by DEVELOPER in accordance with manufacturer's requirements. The meters shall be in an appropriate, accessible location that is agreeable to the CITY.

- III. DEVELOPER must apply and conform to all applicable requirements of the Water Service Line Permit. DEVELOPER must comply with all applicable requirements in accordance with the ordinances and resolutions described in Title 13, Official Code of the City of Great Falls (“OCCGF”).
- IV. In the event construction and operation does not commence by January 1, 2010, the Potable & Industrial Process Water Service Agreement shall be terminated.
- V. Point of Diversion. The preferred point of diversion from the Missouri River for industrial process water is in the Giant Springs area. If the DEVELOPER chooses to move this point of diversion, the costs associated with this relocation shall be the responsibility of the DEVELOPER.

B. System Ownership

- I. The CITY will own and maintain the potable water mains that provide water to the Facility. DEVELOPER shall provide utility easements for said mains, and shall own the water service line from the point at which it is attached to the CITY’S water main. The CITY is responsible for the ownership, maintenance and upkeep of potable water meter(s) noted in Section A.II.
- II. The DEVELOPER will design, install, own and maintain the industrial process water system that will provide water to the Facility. DEVELOPER shall secure the necessary easements to transport the industrial process water to the Facility. Upon request, CITY agrees to provide reasonable assistance in facilitating this undertaking including, but not limited to, providing assistance to DEVELOPER in securing easements and permits for the project. The CITY acknowledges that it and others are interested in possibly providing water to third party users via DEVELOPER’S planned industrial process water system. In light of this interest, CITY and DEVELOPER agree to work, in good faith, to analyze the possible upsizing of the planned DEVELOPER installation to facilitate additional third party use prior to DEVELOPER’S commencement of construction of the industrial process water system. To the extent CITY elects to proceed with the upsizing of DEVELOPER’S system, DEVELOPER will not be liable for the incremental costs associated with the industrial process water system upsizing or any other required infrastructure investment necessary to accommodate this upsizing.

C. Fees and Rates

- I. In consideration of receiving water provided by the CITY, DEVELOPER shall:
 - (a) pay to the CITY all connection charges, service fees and other applicable charges set forth on Exhibit A attached hereto, in accordance with the ordinances and resolutions described in Title 13, OCCGF, as the same may be amended from time to time; and
 - (b) comply with all applicable terms and conditions of Title 13, OCCGF; and by this reference such terms and conditions and related definitions and provisions are hereby incorporated herein as if set forth herein.

- II. DEVELOPER agrees to the rates and requirements for the use of the CITY'S water at the rates set forth on the attached Exhibit A (as may be amended through the Great Falls City Commission via the annual review process).

- III. Charges for potable water shall be based on the total volume of water passing through the potable water meter. Meter readings shall be taken by CITY personnel approximately once per month. Charges will be based on the CITY'S Commercial Water rate as described in the attached Exhibit A.

- IV. DEVELOPER shall keep daily detailed records of the amount of water passing through the industrial process water meter, and report that information in a fashion that is reasonably acceptable by the CITY. The volume of industrial process water will be billed under the Raw Water rate as set forth on the attached Exhibit A. The calculation for the billing of industrial process water shall be as follows:
 - (a) Base Fee. The estimated average daily usage, calculated from the "Great Falls Projected Monthly Dispatch for 2010", provided to the CITY by DEVELOPER on April 10, 2007, and reproduced on attached Exhibit B, is 780,000 gallons per day ("gpd"). This volume of water, converted to the annualized monthly average of 21,840,000 gallons for the month of February; 22,620,000 gallons for the month of February during Leap Years; 23,400,000 gallons for the months of April, June, September, and November; and 24,180,000 gallons for the months of January, March, May, July, August, October, and December, shall be billed to the DEVELOPER each month, whether the water is pumped or not.
 - (b) If monthly water usage exceeds the annualized monthly average, the volume in excess of that amount shall be billed to the DEVELOPER each month.
 - (c) Water rights acquisition or wastewater enhancement fee. DEVELOPER acknowledges that the CITY may exercise its right to acquire additional water rights or develop a tertiary treatment facility in the future for the benefit of all water users in the Great Falls area. If the CITY succeeds in purchasing these additional or develops a tertiary

treatment system in lieu or in addition thereto, the DEVELOPER acknowledges that the rates and fees set forth on Exhibit A (as may be amended through the Great Falls City Commission via the annual review process) shall be adjusted to reflect an allocated increase associated with the contemplated CITY transaction.

D. Billing

- I. Each month the CITY will invoice DEVELOPER for services provided during the prior month in accordance with the attached Exhibit A (as may be amended through the Great Falls City Commission via the annual review process). Payment shall be due and payable fifteen (15) days from each invoice date. Late payment penalties are charged at 1.5% of the balance over sixty (60) days past due.
- II. Pursuant to the OCCGF, water service may be discontinued by the CITY upon continued non-payment of service fees for a period of sixty (60) days or for such other period as may hereafter be established pursuant to any section of or amendment to the OCCGF (after written notice and an opportunity to remedy has been provided by the CITY).

E. Term of Agreement

- I. The initial term of this Agreement shall commence on a date declared by DEVELOPER in writing to the CITY (which date will occur during the construction process) and continue through June 30, 2010. Thereafter, this Agreement shall automatically renew on each June 30th anniversary up through June 30, 2035, unless DEVELOPER notifies CITY on or before December 31st of DEVELOPER'S intention to terminate the Agreement as of the next June 30th anniversary date.
- II. If either party defaults in its material obligations under this Agreement and such default remains unremedied for a period of sixty (60) days after written notice from the non-defaulting party (or for such other time as mutually agreed by the parties), then the non-defaulting party may terminate this Agreement; provided, however, that so long as the party in default is working diligently to correct the default condition, the non-defaulting party may not terminate this Agreement.

F. Provisions

- I. The CITY shall not be liable for any failure in the water system, unless such failure shall have been caused by the gross negligence or willful misconduct of the CITY, its employees, agents or contractors. DEVELOPER shall hold the CITY harmless and indemnify the CITY for any and all claims and actions for property damage or personal injury

arising from any acts or omissions of DEVELOPER and with respect to DEVELOPER'S construction and use of pipelines and buildings located upon realty or rights-of-way of the CITY unless such damage or injury shall arise from the gross negligence or willful misconduct of the CITY, its employees, agents or contractors.

- II. No delay by the CITY or DEVELOPER in exercising any right or power or in enforcing any of its remedies hereunder shall be deemed a waiver of such default of the rights, power and remedies herein provided.
- III. The provisions of this Agreement will be binding upon and inure to the benefit of the successors and assignees of each of the parties hereto. Neither party shall assign any of its rights or obligations hereunder without the consent of the other party. Any consent required by this Section shall not be unreasonably withheld.
- IV. The Agreement shall be interpreted according to the laws of the State of Montana.
- V. Any notice, demand, request, statement or correspondence provided for in this Agreement, or any notice which a party may desire to give to the other, shall be in writing (unless otherwise provided elsewhere in this Agreement) and shall be considered duly delivered when received by mail, facsimile or overnight courier, at the address below unless otherwise required or directed in this Agreement:
 - a. To CITY:
City of Great Falls
Fiscal Services Director
P. O. Box 5021
Great Falls, MT 59403-5021
Fax Number: (406) 452-8048
 - b. To DEVELOPER:
Montana Megawatts I LLC
403 Corporate Woods Drive
Magnolia, TX 77354
Attn: Frank Giacalone
Fax Number: (832) 442-3259

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED this Agreement to be executed by persons duly authorized on this ____ day of _____, 2007.

John W. Lawton, City Manager
City of Great Falls

Developer

David V. Gliko
City Attorney

MONTANA MEGAWATTS I LLC & the CITY OF GREAT FALLS
Sewer Service Agreement

This Sewer Service Agreement (the “Agreement”) is made and entered into this _____ day of _____, 2007, by and between the City of Great Falls, Montana, a municipal corporation of the State of Montana, (hereinafter referred to as the “CITY”); and Montana Megawatts I LLC, a Delaware limited liability company (hereinafter referred to as the “DEVELOPER”);

WHEREAS, the DEVELOPER desires to make connection to the CITY’S sanitary sewer system and sewer service provided by the CITY to serve the natural gas fired power plant (hereinafter referred to as the “Facility”) which will be constructed and operated by the DEVELOPER at the location described as Lot 5, Block 1, International Malting Company, LLC Addition, in Section 30, Township 21 North, Range 4 East, Cascade County, Cascade County, Montana;

NOW, THEREFORE, the parties hereto mutually covenant and agree as follows:

A. System Requirements and Guarantees

- I. The CITY acknowledges that it has been informed of the DEVELOPER’S wastewater requirements necessary to operate the Facility. The CITY shall make available to DEVELOPER at all times the wastewater capacity necessary or desirable to operate the Facility. All discharged wastewater must be in compliance with applicable local, state and federal laws.
- II. Wastewater from sanitary facilities shall be discharged separately from Industrial Process Wastewater. Industrial Process Wastewater shall be metered through an appropriately sized magnetic flow meter or a similar meter acceptable to the CITY. The meter shall have a digital display that indicates current flow rate and total flow volume. The meter will be purchased and owned by the DEVELOPER and shall be installed in accordance with the manufacturer’s requirements and be factory calibrated. The meter shall not be capable of field calibration. DEVELOPER shall record daily flow volumes and report them to the CITY pursuant to mutually acceptable procedures. Sanitary wastewater shall be discharged without passing through a meter and shall be billed based on potable water usage.
- III. DEVELOPER must make application for and, upon receipt, comply with all applicable requirements of the Permit to Discharge Industrial Wastewater as issued by the CITY. DEVELOPER must comply with all applicable requirements regarding discharging wastewater in accordance with the ordinances and resolutions described in Title 13, Official Code of the City of Great Falls (“OCCGF”). Violation of the material terms of the

permit will be considered a breach of terms of this Agreement in addition to any enforcement actions resulting from the violation.

- IV. DEVELOPER must annually obtain independent certification of the accuracy of the meter. This information and findings shall be forwarded to the CITY'S Public Works Director within 30 days of this determination.
- V. This Sewer Service Agreement shall terminate prior to the date stated in Section E only upon written notice from DEVELOPER that the Facility will not be built.

B. System Ownership

- I. The CITY owns and maintains the existing lift station near the Facility. The CITY will also own and maintain any gravity sewer mains necessary to convey DEVELOPER'S sanitary and Industrial Process Wastewater to the CITY'S lift station. DEVELOPER shall provide utility easements for said mains. DEVELOPER shall provide a meter for measuring Industrial Process Wastewater discharged as described above. The meter shall be properly maintained by DEVELOPER in accordance with manufacturer's recommendations and shall be accessible to the CITY during normal working hours.

C. Fees and Rates

- I. In consideration of receiving wastewater processing provided by the CITY, DEVELOPER shall:
 - (a) pay to the CITY all sewer connection charges, service fees and other applicable charges set forth on Exhibit A attached hereto, in accordance with the applicable ordinances and resolutions described in Title 13, OCCGF, as the same may be amended from time to time; and
 - (b) comply with all applicable terms and conditions of Title 13, OCCGF; and by this reference such terms and conditions and related definitions and provisions are hereby incorporated herein as if set forth herein.
- II. Charges for service shall be based on total monthly discharge of Industrial Process Wastewater and discharge from sanitary facilities. Industrial Process Wastewater shall be measured through the meter described in Section A.II of this Agreement. Discharge from sanitary facilities shall be assumed to be equal to the consumption of potable water measured by the City's water meter. Meter readings shall be taken by CITY personnel approximately once per month.
- III. DEVELOPER agrees to the rates and requirements for the use of the CITY'S sewer service at the rates set forth on the attached Exhibit A (as

may be amended through the Great Falls City Commission via the annual review process).

D. Billing

- I. Each month the CITY will invoice DEVELOPER for services provided during the prior month in accordance with the attached Exhibit A (as may be amended through the Great Falls City Commission via the annual review process). Payment shall be due and payable fifteen (15) days from each invoice date. Late payment penalties are charged at 1.5% of the balance over sixty (60) days past due.
- II. Pursuant to the OCCGF, sewer service may be discontinued by the CITY upon continued non-payment of service fees for a period of sixty (60) days or for such other period as may hereafter be established pursuant to any section of or amendment to the OCCGF (after written notice and an opportunity to remedy has been provided by the CITY).

E. Term of Agreement

- I. The initial term of this Agreement shall commence during the course of construction and will be fully implemented upon plant commissioning. It will continue throughout the operating life of the plant.

F. Provisions

- I. The CITY shall not be liable for any failure in the sewer system, unless such failure shall have been caused by the gross negligence or willful misconduct of the CITY, its employees, agents or contractors. DEVELOPER shall hold the CITY harmless and indemnify the CITY for any and all claims and actions for property damage or personal injury arising from any acts or omissions of DEVELOPER and with respect to DEVELOPER'S construction and use of pipelines and buildings located upon realty or rights-of-way of the CITY unless such damage or injury shall arise from the gross negligence or willful misconduct of the CITY, its employees, agents or contractors.
- II. No delay by the CITY or DEVELOPER in exercising any right or power or in enforcing any of its remedies hereunder shall be deemed a waiver of such default of the rights, power and remedies herein provided.
- III. The provisions of this Agreement will be binding upon and inure to the benefit of the successors and assignees of each of the parties hereto. Neither party shall assign any of its rights or obligations hereunder without the consent of the other party. Any consent required by this Section shall not be unreasonably withheld.

IV. The Agreement shall be interpreted according to the laws of the State of Montana.

V. Any notice, demand, request, statement or correspondence provided for in this Agreement, or any notice which a party may desire to give to the other, shall be in writing (unless otherwise provided elsewhere in this Agreement) and shall be considered duly delivered when received by mail, facsimile or overnight courier, at the address below unless otherwise required or directed in this Agreement:

a. To CITY:
City of Great Falls
Fiscal Services Director
P. O. Box 5021
Great Falls, MT 59403-5021
Fax Number: (406) 452-8048

b. To DEVELOPER:
Montana Megawatts I LLC
403 Corporate Woods Drive
Magnolia, TX 77354
Attn: Frank Giacalone
Fax Number: (832) 442-3259

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED this Agreement to be executed by persons duly authorized on this ____ day of _____, 2007.

John W. Lawton, City Manager
City of Great Falls

Developer

David V. Gliko
City Attorney

