

RESOLUTION NO. 4448

RESOLUTION AUTHORIZING PARTICIPATION IN THE BOARD OF INVESTMENTS OF THE STATE OF MONTANA ANNUAL ADJUSTABLE RATE TENDER OPTION MUNICIPAL FINANCE CONSOLIDATION ACT EXTENDABLE BOND (INTERCAP LOAN PROGRAM), APPROVING THE FORM AND TERMS OF THE LOAN AGREEMENT AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATED THERETO

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY (the Borrower) AS FOLLOWS:

ARTICLE I

DETERMINATIONS AND DEFINITIONS

Section 1.01. Definitions. The following terms will have the meanings indicated below for all purposes of this Resolution unless the context clearly requires otherwise. Capitalized terms used in this Resolution and not defined herein shall have the meanings set forth in the Loan Agreement.

Adjusted Interest Rate means the rate of interest on the INTERCAP Bond determined in accordance with the Board Resolution.

Authorized Representative shall mean the officers of the Borrower designated and duly empowered by the Governing Body and set forth in the application.

Board shall mean the Board of Investments of the State of Montana, a public body corporate organized and existing under the laws of the State and its successors and assigns.

Board Act shall mean Section 2-15-1808, Title 17, Chapter 5, Part 16, MCA, as amended.

"Board Resolution" means Board Resolution No. 249, adopted November 30, 2021, authorizing the issuance and sale of the INTERCAP Bonds for the purpose of making loans to Eligible Government Units.

Borrower shall mean the local government entity above named, eligible to participate in the INTERCAP Loan Program.

"Electronic Funds Transfer (EFT) Authorization" shall mean the authorization given by the Borrower to the Board to initiate electronic debit and/or credit entries to the Borrower's specified account to fund the Loan and make automatic Loan repayments when due. The Board may also initiate the electronic debit for periodic principal paydown or payoff prior to loan maturity upon the Borrower's request.

INTERCAP Bond shall mean the Bond issued by the Board pursuant to the Board Resolution to finance the Program.

Loan means the loan of money by the Board to the Borrower under the terms of the Loan Agreement pursuant to the Act and the Borrower Act and evidenced by the Note.

Loan Agreement means the Loan Agreement between the Borrower and the Board, including any amendment thereof or supplement thereto entered into in accordance with the provisions thereof and hereof.

Loan Agreement Resolution means this Resolution or such other form of resolution that the

Board may approve and all amendments and supplements thereto.

Loan Date means the date of closing a Loan.

Loan Rate means the rate of interest on the Loan which is initially 1.65% per annum through February 15, 2022 and thereafter a rate equal to the Adjusted Interest Rate on the Bond and up to 1.50% per annum as necessary to pay Program Expenses.

Note means the promissory note to be executed by the Borrower pursuant to the Loan Agreement, in accordance with the provisions hereof and thereof, in substantially the form set forth in the Promissory Note, or in such form that may be approved by the Board.

Program means the Board's INTERCAP Loan Program pursuant to which the Board issued the INTERCAP Bond to use the proceeds to make loans to participating Eligible Government Units.

Project means those items of equipment, personal or real property improvements to be acquired, installed, financed or refinanced under the Program as set forth in the Description of the Project/Summary of Draws.

Section 1.02. Authority. The Borrower is authorized to undertake the Project and is further authorized by the Borrower Act to enter into the Loan Agreement for the purpose of obtaining a loan to finance or refinance the acquisition and installation costs of the Project.

Section 1.03. Execution of Agreement and Delivery of Note. Pursuant to the Board Act, the Board has issued and sold the INTERCAP Bond and deposited a part of proceeds thereof in the Loan Fund held. The Board has, pursuant to the Term Sheet, agreed to make a Loan to the Borrower in the principal amount of \$321,000.00 and upon the further terms and conditions set forth herein, and as set forth in the Term Sheet and the Loan Agreement.

ARTICLE II

THE LOAN AGREEMENT

Section 2.01. Terms. (a) The Loan Agreement shall be dated as of the Loan Date, in the principal amount of \$321,000.00 and shall constitute a valid and legally binding obligation of the Borrower. The obligation to repay the Loan shall be evidenced by a Promissory Note. The Loan shall bear interest at the initial rate of 1.65% per annum through February 15, 2022, and thereafter at the Adjusted Interest Rate, plus up to 1.50% per annum as necessary to pay the cost of administering the Program (the Program Expenses). All payments will be automatic pursuant to the EFT Authorization attached hereto when due.

(b) The Loan Repayment Dates shall be February 15 and August 15 of each year.

(c) The principal amount of the Loan may be prepaid in whole or in part if the Borrower requests that the Board approve prepayment of the loan. Upon approval, the Board will initiate an electronic debit using the attached EFT Authorization for prepayment provided that the Borrower has given written notice of its intention to prepay the Loan in whole or in part to the Board no later than 30 days prior to the designated prepayment date or less if the Board agrees to shorter notice.

(d) The Prepayment Amount shall be equal to the principal amount of the Loan outstanding, plus accrued interest thereon to the date of prepayment.

(e) Within the next month following an Adjustment Date, the Board shall calculate the respective amounts of principal and interest payable by each Borrower on and with respect to its Loan Agreement and Note for the subsequent August 15 and February 15 payments and prepare and mail a

statement therefor to the Borrower.

Section 2.02. Use and Disbursement of the Proceeds. The proceeds of the Loan will be expended solely for the purposes set forth in the Description of the Project/Summary of Draws. The proceeds from the sale of the Note to the Board shall remain in the Borrower's Account pending disbursement at the request of the Borrower to pay the budgeted expenditures in anticipation of which the Note was issued. Requests for disbursement of the Loan shall be made to the Board. Prior to the closing of the Loan and the first disbursement, the Borrower shall have delivered to the Board a certified copy of this Resolution, the executed Loan Agreement and Note in a form satisfactory to the Borrower's Counsel and the Board's Bond Counsel and such other certificates, documents and opinions as set forth in the Loan Agreement or as the Board may require. The Borrower will pay the loan proceeds to a third party within five business days after the date they are advanced (except for proceeds to reimburse the Borrower for previously paid expenditures, which are deemed allocated on the date advanced).

Section 2.03. Payment and Security for the Note. In consideration of the making of the Loan to the Borrower by the Board, the provisions of this Resolution shall be a part of the Agreement of the Borrower with the Board. The provisions, covenants, and Agreements herein set forth to be performed by or on behalf of the Borrower shall be for the benefit of the Board. The Loan Agreement and Note shall constitute a valid and legally binding obligation of the Borrower and the principal of and interest on the Loan shall be payable from the general fund of the Borrower, and any other money and funds of the Borrower otherwise legally available therefor. The Borrower shall enforce its rights to receive and collect all such taxes and revenues to insure the prompt payment of the Borrower obligations hereunder.

Section 2.04. Representation Regarding the Property Tax Limitations. The Borrower recognizes and acknowledges that the amount of taxes it may levy is limited by state law pursuant to § 15- 10-402, MCA, et. seq. The Borrower is familiar with the Montana's property tax limitations and acknowledges that the obligation to repay the Loan under the Agreement and Note are not exceptions to these provisions. The Borrower represents and covenants that the payment of principal of and interest on the Loan can and will be made from revenues available to the Borrower in the years as they become due, notwithstanding the provisions of property tax limitations.

Section 2.05. Levy and Appropriate Funds to Repay Loan. The Borrower agrees that in order to meet its obligation to repay the Loan and all other payments hereunder that it will budget, levy taxes for and appropriate in each fiscal year during the term of the Loan an amount sufficient to pay the principal of and interest hereon within the limitations of the Property Tax Limitation Act, as may be amended, and will reduce other expenditures if necessary to make the payments hereunder when due.

ARTICLE III

CERTIFICATIONS, EXECUTION, AND DELIVERY

Section 3.01. Authentication of Transcript. The Authorized Representatives are authorized and directed to prepare and furnish to the Board and to attorneys approving the validity of the Loan, certified copies of this Resolution and all other resolutions and actions of the Borrower and of said officers relating to the Loan Agreement and the Note and certificates as to all other proceedings and records of the Borrower which are reasonably required to evidence the validity and marketability of the Note. All such certified copies and certificates shall be deemed the representations and recitals of the Borrower as to the correctness of the statements contained therein.

Section 3.02. Legal Opinion. The attorney to the Borrower is hereby authorized and directed to deliver to the Board at the time of Closing of the Loan his or her opinion regarding the Loan, the Loan Agreement, the Note, and this Resolution in substantially the form of the opinion set forth in the Attorney's Opinion.

Section 3.03. Execution. The Loan Agreement, the Note and any other document required to close the Loan shall be executed in the name of the Borrower and shall be executed on behalf of the Borrower by the signatures of the Authorized Representatives of the Borrower.

**PASSED AND APPROVED BY A DULY CONSTITUTED QUORUM OF THE
CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 14TH DAY OF
DECEMBER, 2021**

By 
John Hollowell, Mayor

Attest:

By 
Mary Rowe, City Clerk