

## CERTIFICATE AS TO RESOLUTION

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "RESOLUTION RELATING TO A PROJECT ON BEHALF OF ROCKY MOUNTAIN COLLEGE AND THE ISSUANCE OF REVENUE BONDS TO FINANCE THE COSTS OF CONSTRUCTING, FURNISHING AND EQUIPPING A NEW 200 BED SUITE RESIDENCE HALL AND RELATED IMPROVEMENTS UNDER MONTANA CODE ANNOTATED, TITLE 90, CHAPTER 5, PART 1, AS AMENDED, AND REFUNDING OUTSTANDING BONDS; GRANTING PRELIMINARY APPROVAL THERETO AND CALLING A PUBLIC HEARING THEREON" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on July 14, 2003, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: McDermott, Gaghen, Iverson, Kennedy, Tooley, Poppler, Ohnstad, Jones and Larson

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\_\_\_\_\_; voted against the same Brown \_\_\_\_\_; abstained from voting thereon: None \_\_\_\_\_; or were absent: Brewster \_\_\_\_\_.

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WITNESS my hand officially this 14th day of July, 2003.

(SEAL)

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City Clerk

RESOLUTION NO. 03-18000

RESOLUTION RELATING TO A PROJECT ON BEHALF OF  
ROCKY MOUNTAIN COLLEGE AND THE ISSUANCE OF  
REVENUE BONDS TO FINANCE THE COSTS OF  
CONSTRUCTING, FURNISHING AND EQUIPPING A NEW  
200 BED SUITE RESIDENCE HALL AND RELATED  
IMPROVEMENTS UNDER MONTANA CODE ANNOTATED,  
TITLE 90, CHAPTER 5, PART 1, AS AMENDED, AND  
REFUNDING OUTSTANDING BONDS; GRANTING  
PRELIMINARY APPROVAL THERETO AND CALLING A  
PUBLIC HEARING THEREON

BE IT RESOLVED by the City Council (the “Council”) of City of Billings, Montana (the “City”), as follows:

Section 1. Recitals.

1.01. Pursuant to Montana Code Annotated, Title 90, Chapter 5, Part 1, as amended (the “Act”), the City is authorized to enter into agreements upon terms the Council considers appropriate, advantageous and not in conflict with the provisions of the Act to issue revenue bonds of the City and sell such bonds at public or private sale in such manner and at such times as may be determined by the Council to be most advantageous; and to loan the proceeds of its revenue bonds for the purpose of defraying the cost of acquiring or improving real and personal properties suitable for use as higher education facilities. Such revenue bonds may be secured by a pledge of the revenues to be derived by the City from a loan agreement with the borrower, by a mortgage on the project and by such other security devices as the Council may deem advantageous. Under the provisions of the Act, any bonds so issued by the City shall be special, limited obligations of the City and shall not constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers.

1.02. Yellowstone County, Montana (the “County”) has issued \$6,000,000 Higher Education Revenue Bonds (Rocky Mountain College Project), Series 1998 (the “Outstanding Bonds”), which are outstanding in the principal amount of \$4,320,000 as of the date hereof.

1.03. It has been proposed that the City, pursuant to the Act, issue its revenue bonds or notes, in one or more series, in an approximate aggregate principal amount not to exceed \$10,000,000 (the “Bonds”), the proceeds of which will be loaned by the City to Rocky Mountain College, a Montana nonprofit corporation (the “Borrower”), to finance all or a portion of the costs of designing, constructing, furnishing and equipping a 200 bed suite residence hall and related improvements (the “Project”); to refund the Outstanding Bonds and to pay costs associated with the financing of the Project. The Project will be located on the campus of the Borrower, which is located at 1511 Poly Drive in Billings, Montana. The total cost of the Project is estimated to not to exceed \$5,500,000.

1.04. The Bonds will be secured by a pledge of the revenues to be derived by the City from a loan agreement with the Borrower and by such other security devices, if any, as may be deemed advantageous or necessary by the Borrower, the City and the purchaser of the Bonds. The Bonds will be special, limited obligations of the City, and the Bonds and interest thereon will be payable solely from the revenues pledged to the payment thereof. No holder of any of the Bonds will ever have the right to compel any exercise of the taxing power of the City to pay the Bonds or the interest thereon, nor to enforce payment thereof against any property of the City except funds or assets the Borrower pledged to the City and to the payment of the Bonds.

Section 2. Preliminary Findings. Based on representations made by representatives of the Borrower to the City, the Council hereby makes the following preliminary findings, determinations and declarations, subject to final findings, determinations and declarations following the public hearing called pursuant to Section 4:

(a) The Project, as proposed, will be suitable for use as a higher education facility eligible for financing under the Act.

(b) The City is authorized by the Act to issue the Bonds to defray the costs of making a loan to the Borrower, the proceeds of which will be used to finance part or all of the costs of the Project, to refund the Outstanding Bonds and paying the costs and expenses incident to the issuance and sale of the Bonds, and to enter into a loan agreement (the “Loan Agreement”) with the Borrower requiring loan repayments from the Borrower in amounts and at times sufficient to pay the principal of and interest on the Bonds when due and requiring the Borrower to pay all costs of maintaining and insuring the Project, including taxes thereon to the extent applicable.

(c) In preliminarily authorizing the Project and the issuance of the Bonds, the City’s purpose is, and the Council believes the effect thereof will be, to promote the public welfare of the City and its residents by encouraging and fostering the location of institutions of higher education, their continued viability within the City by making the Project more financially feasible because of tax-exempt financing. The Project will result in additional construction jobs within the Community.

(d) The undertaking of the Project, the refunding the Outstanding Bonds and the issuance of the Bonds to finance all or a portion of the costs thereof are in the public interest.

Section 3. Preliminary Approval. This Council hereby gives preliminary approval to the Project, refunding the Outstanding Bonds and the issuance of the Bonds in the approximate aggregate principal amount of \$10,000,000 to finance all or a portion of the costs thereof, subject to final approval following the public hearing provided for in Section 4, and subject to final determination by the Council that the financing of the Project, the refunding of the Outstanding Bonds and the issuance of the Bonds are in the best interest of the City.

Section 4. Public Hearing. Section 90-5-104 of the Act requires that, prior to the issuance of the Bonds, a public hearing duly noticed shall be held by the Council on the proposed Project and the issuance of the Bonds to finance the costs thereof. Pursuant to such authority, a

public hearing on the proposed Project, the refunding of the Outstanding Bonds and the issuance of the Bonds to finance the costs thereof shall be held by the Council on August 11, 2003, at 6:30 p.m., in the Council Chambers, 2<sup>nd</sup> Floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana.

Section 5. Notice of Hearing. The City Clerk is hereby authorized and directed to cause notice of the public hearing to be published in the *The Billings Times*, the official newspaper of the City, once a week for three consecutive weeks before the date of the hearing, as required by Section 90-5-104(1) of the Act. The notice shall be published in substantially the form attached hereto as Exhibit A hereto (which is incorporated by reference and made a part hereof).

Section 6. Costs. Given the nature of the Project financed, the City hereby waives its standard fee associated with the issuance of bonds under Title 90, Chapter 5, Part 1 (\$2.00 per \$1,000 of bonds issued) and hereby imposes an issuance fee of \$2,000. The Borrower will pay, or upon demand reimburse the City for payment of, any and all costs incurred by the City in connection with the Project, refunding the Outstanding Bonds and the issuance of the Bonds in excess of the \$2,000 fee whether or not the Bonds are issued.

Section 7. Commitment Conditional. The adoption of this resolution does not constitute a guarantee or a firm commitment that the City will issue the Bonds as requested by the Borrower. If, based on comments received at the public hearing to be held pursuant to this resolution or other information made available to or obtained by the City during its review of the Project, it appears that the Project, the refunding of the Outstanding Bonds or the issuance of Bonds to finance the costs thereof is not in the public interest or is inconsistent with the purposes of the Act, the City reserves the right not to authorize the issuance of the Bonds. The City also retains the right, in its sole discretion, to withdraw from participation and accordingly not issue the Bonds if the Council, at any time prior to the issuance thereof, determines that it is in the best interests of the City not to issue the Bonds or if the City and other parties to the transaction are unable to reach agreement as to the terms and conditions of any of the documents for the transaction.

Section 8. Reimbursement of Costs Paid Before Bonds Are Issued.

(a) The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, such as the Bonds, all or a portion of which are to be used to reimburse the Borrower for Project expenditures paid by the Borrower prior to the date of issuance of the Bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse the Borrower from proceeds of the Bonds for an original expenditure not later than 60 days after payment of the original expenditure. Representatives of the Borrower have advised the City that the Borrower may undertake the Project and pay costs thereof before the Bonds are issued, recognizing the preliminary and conditional nature of the commitment of the City to issue the Bonds.

The Regulations also generally require that the Bonds be issued and the reimbursement allocation be made from the proceeds of the Bonds within 18 months after the later of (i) the date the expenditure is paid or (ii) the date the Project is placed in service or abandoned, but in no

event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

(b) By this resolution and based on representations of the Borrower, the City declares its official intent to reimburse the expenditures made for costs of the Project from proceeds of the Bonds after the date of payment of all or a portion of the costs of the Project. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

(c) Based on representations of the Borrower, other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a "de minimus" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Project have heretofore been paid by the Borrower.

(d) Based on representations of the Borrower, there are no Borrower funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Project, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is consistent with the Borrower's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

Passed by the City Council of the City of Billings, Montana, this 14th day of July, 2003.

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Mayor

Attest: \_\_\_\_\_  
City Clerk

## EXHIBIT A

NOTICE OF PUBLIC HEARING ON A PROPOSED PROJECT FOR  
ROCKY MOUNTAIN COLLEGE AND THE ISSUANCE OF  
REVENUE BONDS UNDER  
MONTANA CODE ANNOTATED, TITLE 90, CHAPTER 5,  
PART 1, AS AMENDED, TO FINANCE THE COSTS THEREOF

CITY OF BILLINGS, MONTANA

NOTICE IS HEREBY GIVEN that the City Council (the "Council") of City of Billings, Montana (the "City"), will meet on August 11, 2003, at 6:30 p.m., M.D.T., in the Council Chambers, 2<sup>nd</sup> Floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana, for the purpose of conducting a public hearing on a proposal that the City issue its revenue bonds (the "Bonds"), under Montana Code Annotated, Title 90, Chapter 5, Part 1, as amended (the "Act"), on behalf of Rocky Mountain College, a Montana nonprofit corporation (the "Borrower").

The Bonds would be issued in order to provide funds to finance all or a portion of the costs of certain improvements and equipment for Rocky Mountain College, consisting of designing, constructing, furnishing and equipping a 200 bed suite residence hall and related improvements (the "Project"); to refund the \$6,000,000 Higher Education Revenue Bonds (Rocky Mountain College Project), Series 1998 issued on behalf of the Borrower by Yellowstone County, Montana, and to pay costs associated with the financing of the Project. The maximum aggregate principal amount of the Bonds is \$10,000,000. The Project would be located on the campus of the Borrower at 1511 Poly Drive in Billings, Montana.

The Bonds will be secured by a pledge of the revenues to be derived by the City from a loan agreement with the Borrower and by such other security devices, if any, as may be deemed advantageous or necessary by the Borrower, the City and the purchaser of the Bonds. The Bonds will be special, limited obligations of the City, and the Bonds and interest thereon will be payable solely from the revenues pledged to the payment thereof. No holder of any of the Bonds will ever have the right to compel any exercise of the taxing power of the City to pay the Bonds or the interest thereon, nor to enforce payment thereof against any property of the City except funds or assets the Borrower pledged to the City and to the payment of the Bonds.

All persons interested may appear and be heard at the time and place set forth above, or may file written comments with the City Clerk prior to the date of the hearing set forth above. Further information may be obtained from Robert G. Keefe, Director of Administrative Services, 210 North 27<sup>th</sup> Street, Billings, Montana 59101, telephone (406) 657-8222.

Dated: August 11, 2003.

BY ORDER CITY COUNCIL

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City Clerk

Publish: July 17, July 24, and July 31, 2003