

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

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 AUTHORIZING A PROJECT UNDER MONTANA CODE ANNOTATED, TITLE 90, CHAPTER 5, PART 1, AS AMENDED, AND THE REFUNDING OF OUTSTANDING BONDS AND THE ISSUANCE AND SALE OF A \$10,200,000 HIGHER EDUCATION REVENUE NOTE (ROCKY MOUNTAIN COLLEGE PROJECT), SERIES 2004, TO FINANCE THE SAME; APPROVING THE FORM OF DOCUMENTATION IN CONNECTION THEREWITH; AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE NOTE AND DOCUMENTATION" (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 regular meeting on November 24, 2003, and that the meeting was duly held by the City Council Members 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notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.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: unanimous

_____; voted against the same: none

_____; abstained from voting thereon: none

_____; or were absent: none

WITNESS my hand officially this 24th day of November, 2003.

City Clerk

RESOLUTION NO. 03-18043

RESOLUTION AUTHORIZING A PROJECT UNDER MONTANA CODE ANNOTATED, TITLE 90, CHAPTER 5, PART 1, AS AMENDED, AND THE REFUNDING OF OUTSTANDING BONDS AND THE ISSUANCE AND SALE OF A \$10,200,000 HIGHER EDUCATION REVENUE NOTE (ROCKY MOUNTAIN COLLEGE PROJECT), SERIES 2004, TO FINANCE THE SAME; APPROVING THE FORM OF DOCUMENTATION IN CONNECTION THEREWITH; AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE NOTE AND DOCUMENTATION

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

Section 1. Authorization and Recitals.

1.01. Authority. The City is authorized by Montana Code Annotated, Title 90, Chapter 5, Part 1, as amended (the "Act"), to issue revenue bonds or notes for the purpose of defraying the cost of acquiring or improving projects consisting of real and personal properties suitable for use for higher education facilities, and to refund bonds issued for such purposes, and to loan the proceeds of such bonds to an institution of higher education to pay such costs or refund such bonds upon such terms and conditions as the governing body shall deem advisable and as shall not conflict with the provisions of the Act.

1.02. Proposed Project and Outstanding Bonds. Representatives of Rocky Mountain College, a Montana nonprofit corporation (the "Corporation"), have advised the City that the Corporation is proposing to undertake a project consisting of the design, construction, furnishing and equipping of a 200 bed suite residence hall and related improvements (the "Project"), at an estimated cost of \$5,960,000, including costs of the financing. Representatives of the Corporation have also advised the City that Yellowstone County, Montana (the "County") issued its \$6,000,000 Higher Education Revenue Bonds (Rocky Mountain College Project), Series 1998 (the "Series 1998 Bonds"), on behalf of the Corporation pursuant to the Act to finance costs of the construction of a new library, renovation and rehabilitation of three residence halls on the campus of the Corporation, refunding a loan for improvements to the Student Union building, acquisition of an administration computer system, acquisition of an aviation simulator and related improvements, and that \$4,110,000 in aggregate principal amount of Series 1998 Bonds will be outstanding as of December 1, 2003.

1.03. Representatives of the Corporation have proposed that the City, acting under and pursuant to the Act, issue its Higher Education Revenue Note (Rocky Mountain College Project), Series 2004, in the principal amount of \$10,200,000 (the "Note"), for the purpose of defraying all or a portion of the costs of the Project, to provide funds to retire the outstanding Series 1998 Bonds, and to pay costs associated with the financing of the Project, the refunding and the issuance of the Note. First Interstate Bank (the "Lender"), has agreed to purchase the Note subject to the terms and conditions set forth in a Commitment Letter dated as of August 7, 2003, as amended November 5, 2003 (the "Commitment Letter"). The Project would be, and the

facilities financed with proceeds of the Series 1998 Bonds are, located on the campus of the Corporation in the City.

Pursuant to the proposal, the proceeds of the Note would be loaned to the Corporation pursuant to a Loan Agreement between the City and the Corporation (the “Loan Agreement”); the Corporation would agree to apply the proceeds to the refunding of the outstanding Series 1998 Bonds and the payment of costs of the Project and to repay the loan at such times and in such amounts to provide for the prompt payment of the principal of and interest on the Note when due; and the Corporation would be obligated to pay all costs of acquiring, constructing and equipping the Project in excess of the Note proceeds available therefor; pursuant to a Disbursing Agreement between the City, the Corporation, the Lender and a disbursing agent (the “Disbursing Agreement”), the Lender will disburse the proceeds of the Note to or on behalf of the Corporation; pursuant to an Assignment of Loan Agreement (the “Assignment”), the City will assign certain of its interests in the Loan Agreement to the Lender; and pursuant to a Combination Mortgage, Security Agreement and Fixture Filing Statement (the “Mortgage”) to be executed by the Corporation, as grantor, for the benefit of the Lender, as beneficiary, the Corporation would grant a mortgage lien and a security interest in certain of its property and assets to secure its obligations under the Loan Agreement.

The Note would be a special, limited obligation of the City payable solely from and secured by the payments to be made by the Corporation under the Loan Agreement and proceeds and revenues from the Project and would not constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taking powers.

1.03. Prior Approval and Public Hearing. This Council called a hearing on the Project and the issuance of approximately \$10,000,000 principal amount Higher Education Revenue Note, as required by the Act. The hearing was duly noticed and held August 11, 2003, at which time all interested persons were given an opportunity to appear and be heard.

1.04. Documentation. Draft forms of the following documents relating to the Project and the Note have been prepared and submitted to this Council, and are hereby directed to be filed with the City Clerk:

- (a) the Loan Agreement;
- (b) the Disbursing Agreement;
- (c) the Assignment;
- (d) the Mortgage; and
- (e) an Employment Preference and Prevailing Wage Agreement to be entered into between the Corporation and the City (the “Employment Agreement”), implementing the requirements of Section 90-5-114 of the Act.

A draft form of the Note is attached to this Resolution as Exhibit A and hereby incorporated herein and made a part hereof.

1.05. Offer to Purchase. The City and the Corporation have received an offer from the Lender to purchase the Note at a price of \$10,200,000, no interest to accrue thereon to the date of delivery thereof. The Corporation has recommended to this Council that the offer be accepted.

Section 2. Findings.

It is hereby found, determined and declared that:

- (a) the Project comprises real and personal properties which shall be suitable for use in connection with a higher education facility as contemplated by the Act;
- (b) in authorizing the Project and the refunding of the outstanding Series 1998 Bonds the City's purpose is, and in its judgment the effect thereof will be, to promote the public welfare of the City and its residents by encouraging the retention, expansion and development of higher education facilities within the City, thereby improving employment and educational opportunities of present and future residents and stimulating economic activity within the City;
- (c) the financing of the Project, the refunding of the outstanding Series 1998 Bonds, the issuance and sale of the Note; the execution and delivery of the Loan Agreement, the Disbursing Agreement and the Assignment and all other acts and things required under the Constitution and laws of the State of Montana and the home rule charter of the City to make the Loan Agreement, the Disbursing Agreement, the Assignment and the Note valid and binding special, limited obligations of the City in accordance with their terms, are authorized by the Act;
- (d) the issuance and sale of the Note, the financing of the Project and the refunding of the outstanding Series 1998 Bonds by the City for the benefit of the Corporation is in the public interest of the City and its citizens;
- (e) it is desirable that the Corporation be authorized, subject to the terms and conditions set forth in the Loan Agreement, which terms and conditions the City determines to be necessary, desirable and proper, to provide for the construction of the Project by such means as shall be available to the Corporation and in the manner determined by the Corporation, and with or without advertisement for bids as required for the construction and acquisition of municipal facilities, but subject to the requirements of Section 90-5-114 of the Act;
- (f) it is desirable that the Note be issued by the City upon the terms set forth in this resolution under the provisions of which certain of the City's interests in the Loan Agreement, and its interest in all loan repayments thereunder, will be assigned and pledged to the Lender as security for the payment of principal of, interest, redemption premiums, if any, and other amounts payable under the Note by the City;
- (g) the loan repayments and other amounts to be paid by the Corporation under the Loan Agreement are sufficient (1) to pay the total principal of, premium, if any, and interest on the Note as it matures and (2) to pay all other costs and expenses of the City in connection with the Project and the issuance of the Note; and the Loan Agreement also

provides that the Corporation is required to pay or cause to be paid all expenses of the operation and maintenance of the Project including, but without limitation, adequate insurance thereon and insurance against all liability for injury to persons or property arising from the operation thereof, and special assessments levied upon or with respect to the Project site and payable during the term of the Loan Agreement; and

(h) under the provisions of Montana Code Annotated, Sections 90-5-103 and 90-5-104, and as provided in the Loan Agreement and stated on the face of the Note, the Note is a special, limited obligation of the City payable solely from loan repayments to be made by the Corporation (except to the extent payable from proceeds of the Note) and does not constitute a pecuniary liability of the City or a charge against its general credit or taxing powers.

Section 3. Authorization and Approval of the Project and Documents. The City is hereby authorized to finance all or a part of the cost of the Project, and to pledge and assign the Loan Agreement and the loan repayments due thereunder, all as provided in the Loan Agreement, the Disbursing Agreement and Assignment. The issuance of the Note to finance the cost of the Project and to refund the outstanding Series 1998 Bonds is hereby approved. The forms of Loan Agreement, Disbursing Agreement, Assignment, Employment Agreement and Note referred to in Section 1.04 are approved, subject to such modifications as are deemed appropriate and approved by the City Attorney and the Director of Administrative Services, which approval shall be conclusively evidenced by execution of the Loan Agreement, the Disbursing Agreement, the Assignment and the Note by the Mayor, the Director of Administrative Services and the City Clerk. The Loan Agreement, the Disbursing Agreement and the Assignment are directed to be executed in the name and on behalf of the City by the Mayor, the Director of Administrative Services and the City Clerk. Copies of all of the documents shall be delivered, filed and recorded as provided therein. In the absence or disability of the Mayor, any of the documents authorized by this resolution to be executed, may be executed by the acting Mayor and in the absence or disability of the City Clerk or Director of Administrative Services by such officer of the City who, in the opinion of the City Attorney, may execute such documents.

The Mayor, the City Clerk and the Director of Administrative Services are also authorized and directed to execute such other instruments as may be required to give effect to the transactions herein contemplated.

Section 4. The Note: Terms, Sale and Execution.

4.01. **Issuance.** In anticipation of the collection of revenues under the Loan Agreement, the City shall proceed forthwith to issue its Higher Education Revenue Note (Rocky Mountain College Project), Series 2004, in the principal amount of \$10,200,000, in substantially the form attached as Exhibit A, and upon the terms set forth in said form and this Resolution.

4.02. **Terms.** The Note shall be in the principal amount of \$10,200,000, shall bear interest as set forth in the Note and shall be dated as of its date of delivery to the Lender.

4.03. Prepayment. The principal of the Note shall be subject to redemption at times and upon the terms and conditions set forth in the Note.

4.04. Sale; Execution of Note. The proposal of the Lender to purchase the Note at the price of \$10,200,000.00 is hereby found and determined to be reasonable and is hereby accepted. The Mayor, the Director of Administrative Services and the City Clerk are hereby authorized and directed to prepare and execute the Note as prescribed herein and in the Note and to deliver it to the Lender, together with a certified copy of this resolution, and such other certificates, documents and instruments as may be appropriate to effect the transaction herein contemplated. The seal of the City need not be affixed to or imprinted on the Note. In case any officer whose signature shall appear on the Note shall cease to be such officer before the delivery thereof, such signature shall nevertheless be valid and sufficient for all purposes.

4.05. Mutilated, Lost and Destroyed Note. In case the Note shall become mutilated or be destroyed or lost, the City shall cause to be executed and delivered a new Note of like outstanding principal amount and tenor in exchange and substitution for and upon cancellation of the mutilated Note, or in lieu of and in substitution for such Note destroyed or lost, upon payment by the Holder of the reasonable expenses and charges of the City in connection therewith, and, in case the Note is destroyed or lost, filing by the Holder with the City evidence satisfactory to it of such loss or destruction.

4.06. Registration and Assignment. The City will cause to be kept at the office of the Director of Administrative Services a Note Register in which, subject to such reasonable regulations as it may prescribe, the City shall provide for the registration of transfers of ownership of the Note, as more fully prescribed in the Note. The Director of Administrative Services is hereby appointed Note Registrar for this purpose.

The Note shall be transferable by the registered owner or its attorney duly authorized in writing upon presentation thereof to the Director of Administrative Services together with a written instrument of transfer satisfactory to the Director of Administrative Services duly executed by the registered owner or its attorney. The following form of assignment shall be sufficient for said purpose:

For value received _____ hereby sells, assigns and transfers unto _____ the within Note of the City of Billings, Montana, and does hereby irrevocably constitute and appoint _____ attorney to transfer said Note on the books of said City with full power of substitution in the premises.

Dated: _____

Registered Owner

Such transfer shall also be noted on the Note.

Section 5. Authentication of Proceedings. The Mayor, the City Clerk and the Director of Administrative Services and other officers of the City are authorized and directed to furnish to the Lender and bond counsel certified copies of all proceedings and records of the City relating

to the Note, and such other affidavits and certificates as may be required to show the facts relating to the legality and marketability of the Note as such facts appear from the books and records in the officers' custody and control or as otherwise known to them; and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the City as to the truth of all statements of fact contained therein.

Section 6. Tax Matters.

6.01. General. The City recognizes the obligation to comply with the provisions of Section 148(f) of the Code, relating to the rebate of certain amounts to the United States, and has caused the Corporation to covenant in the Loan Agreement that it will take or refrain from any actions, the result of which would be to cause the interest on the Note to become includable in gross income for purposes of federal income taxation as a result of the failure to comply with Section 148(f) of the Code and applicable Treasury Regulations. The City, by the Loan Agreement, has obligated the Corporation to take all actions necessary to comply with the rebate requirement, including making or causing to be made the computations of rebate or penalty amounts and paying the costs of computing any such rebate or penalty amounts.

6.02. Not Bank Qualified. The City is not designating the Note as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code.

6.03. Arbitrage Certification. The Mayor, the City Clerk and the Director of Administrative Services, being the officers of the City charged with the responsibility for issuing the Note pursuant to this resolution, are authorized and directed to execute and deliver to the Lender a certificate, based on representations to be made by the Corporation, in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Note, it is reasonably expected that the proceeds of the Note will be used in a manner that would not cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Code and the Regulations.

Section 7. Fee. The Corporation will pay, or upon demand reimburse the City for payment of, any and all costs incurred by the City in connection with the Project, the refunding of the outstanding Series 1998 Bonds, whether or not the Project is carried to completion, and the issuance of the Note, including the City's issuance fee, whether or not the Note is issued.

Section 8. Limitations of the City's Obligations. Notwithstanding anything contained in the Note, the Loan Agreement, the Disbursing Agreement or the Assignment or any other documents referred to in Section 1.04, the Note shall not constitute a debt of the City within the meaning of any constitutional, statutory or charter limitation, and shall not be payable from nor charged upon any funds other than the revenues pledged to the payment thereof, and the City shall not be subject to any liability thereon, and no Holder of the Note shall ever have the right to compel any exercise of the taxing power of the City to pay the Note or the interest thereon, or to enforce payment thereof against any property of the City other than those rights and interests of the City under the Loan Agreement which have been pledged to the Lender by the Assignment, and the Note shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the City other than those rights and interests of the City under the Loan Agreement.

which have been pledged to the Lender by the Assignment. The agreement of the City to perform the covenants and other provisions contained in this Resolution or the Note, the Loan Agreement, the Disbursing Agreement or the Assignment and the other documents relating to the Note shall be subject at all times to the availability of revenues furnished by the Corporation sufficient to pay all costs of such performance or the enforcement thereof, and the City shall not be subject to any liability thereon other than as stated above.

Section 9. Effective Date. This resolution shall become effective immediately upon its passage and approval.

Adopted by the City Council of the City of Billings, Montana, this 24th day of November, 2003.

CITY OF BILLINGS, MONTANA

Mayor

Attest: _____
City Clerk