

Recovery Zone Facility Bonds

The City of Billings has the authority to extend tax exempt financing to private business activities through the use of Recovery Zone Facility Bonds. The City has up to \$36,804,000 allocated for this purpose. The City is a pass through agency for these transactions and has no financial responsibility regarding these bonds. The applicants will be solely responsible for securing a lender commitment.

The City of Billings or Dorsey & Whitney are not providing income tax advice as to the appropriateness of this financing tool. Pursuing income tax advice is the sole responsibility of the applicant and lender applying for these bonds.

Following is a summary of possible tax status for the lender:

- The City would be the issuer of recovery zone facility bonds and the Applicant would be the borrower of the bond proceeds. Financing can be in the form of private placement, tax exempt mortgage or public offering at the Applicant's request. If issued as recovery zone facility bonds, the interest on the bonds would be exempt from gross income for federal income tax purposes and for State of Montana individual income tax purposes, and included in income for purposes of the Montana corporate income tax and Montana corporate license tax. As a separate matter, these bonds would not be eligible for designation as bank qualified bonds in that they are private activity bonds. Bond Counsel will issue the necessary tax opinion with respect to the bonds.

Facility Bond Process

1. Application completed and sent to:
City of Billings
Financial Services Manager
Attn: Pat Weber
PO Box 1178
Billings, MT 59103
2. The City's Bond Counsel will prepare a preliminary bond inducement resolution for Council approval. This is a 3 to 5 week process involving a public hearing.
3. Applicant, Applicant's attorney and Applicant's bank works with the City's Bond Counsel setting terms and conditions of the bond transaction.
 - a. Time frame will depend upon Applicant's ability to provide all the required information.
 - b. Bond Counsel will prepare financing documents for review and approval of Applicant, lender and respective counsel. This is approximately an 8 week process.
4. Bond Counsel will prepare a resolution approving the issuance of the bonds. This is a 3 to 5 week process
5. Applicant closes with lender.

Attachments

- Application
- Administrative Order 111
- Resolution setting criteria for bonds

Contacts

City of Billings

Assistant City Administrator

Bruce McCandless

(406) 657-8222

mccandlessb@ci.billings.mt.us

Financial Services Manager

Pat Weber

(406) 657-8209

weberp@ci.billings.mt.us

Bond Counsel

Dorsey & Whitney LLP

Mae Nan Ellingson

(406) 721-6025

Ellingson.Mae.Nan@dorsey.com

City of Billings, Montana
(the "City")

Recovery Zone Facility Bond Application Form

A. Applicant Information

- 1. Applicant name _____
- 2. Address _____
- 3. Phone _____
- 4. Email _____
- 5. Taxpayer I.D. number _____

- 6. Contact person _____
Contact information if different from applicant information above:

- 7. Type of entity ___ Corporation ___ Limited liability company
 ___ Partnership ___ Individual

State of organization _____

Date of organization _____

- 8. Nature of business _____

- 9. Ownership

<u>Name of each owner</u>	<u>% owned</u>	<u>Address</u>

B. Project Information

1. Description of Project

2. Components of Project* (check all that apply):

- Acquisition of property
- New construction
- Reconstruction, renovation or improvements

*Refinancing of existing facilities not available under recovery zone facility bond rules

3. Size of facility to be constructed or renovated (sq. ft., number of rooms, floors, etc) _____

4. Location of Project (incl. street address and legal description) _____

5. Project commencement date _____

6. Estimated Project costs:

Land acquisition	\$
Site development	\$
New construction	\$
Acquisition of building	\$
Reconstruction/renovation	\$
Equipment and machinery	\$
Furniture and fixtures	\$
Professional fees	\$
Other (specify):	\$
	\$
	\$
	\$
	\$
Total Project cost	\$

7. Proposed amount of Recovery Zone Bond issue

8. Does Applicant have a written commitment from the lender to make a loan or to underwrite or purchase bonds? _____

Name of proposed lender or underwriter of bonds and contact person

9. Public and economic benefit of Project:

Number of expected jobs created during construction _____

Level of pay _____

Benefits _____

Number of expected long-term jobs created _____

Level of pay _____

Benefits _____

Describe the Project's benefits to the city or neighborhood

Other information _____

C. City's Note to Applicant

Upon receipt of a signed application and confirmation with Bond Counsel that the Project described in the Application is eligible for financing under the American Recovery and Reinvestment Act of 2009 as provided in Section 1400U-3 of the Internal Revenue Code of 1986, as amended, (the "Act") and meets the requirements of the City's Resolution NO. 09-18890 Establishing the Criteria for Financing as Recovery Zone Facility Bonds (the "City Resolution"), the City will proceed with the Application by having the City Council adopt a preliminary resolution calling for a public hearing on the Project and the issuance of the Bonds therefore (the "Project Resolution"). The Project Resolution will enable the Applicant to use proceeds of Bonds, when and if issued, to pay costs of the Project incurred after such date. Applicant should be aware that there are provisions of the Internal Revenue Code in addition to the Act that will affect the tax exemption on the proposed Project financing. Applicant should consult with Bond Counsel early and often in the process.

After the public hearing, if the City Commission determines that it the Project is in the public's best interest and satisfies the requirements of the City Resolution, it will adopt a resolution allocating authority for Recovery Zone Facility Bonds, which may be revoked if it appears that the Bond cannot be issued by December 31, 2010.

The City makes no representations that the financing provided under the Act would be in the Applicant's best interests.

D. Applicant Certification

I, the undersigned, certify to the City that I am authorized to execute and submit this application on behalf of the Applicant named above (the "Applicant"), and I further certify on behalf of the applicant as follows:

1. The Applicant has sufficient resources to obtain the necessary financing and undertake the Project described above (the "Project") and complete the closing of the Recovery Zone Facility Bond financing by December 31, 2010.
2. The Applicant believes that the Project is eligible for financing under the Act.
3. The Applicant acknowledges that it shall be responsible for all fees of the City and all fees and charges associated with the sale and issuance of the Bonds, as required by the City's Administrative Order No 111, a copy of which is attached to this Application.
4. The City shall not be responsible for, and the Applicant agrees to defend, indemnify and hold the City harmless from any losses or damage, liabilities, claims, settlements costs and expenses arising out of or related (i) to unavailability or loss of tax exempt status in respect of any bonds issued by the City pursuant to allocation of recovery zone facility bonding authority, (ii) the unavailability of financing for the Project, (iii) the creditworthiness of the Applicant, or (iv) any failure to complete the Project.

Signed this _____ day of _____, 20____.

Signature

Name

Title

ADMINISTRATIVE ORDER NO. 111

Administrative order No. 81 is hereby repealed.

Pursuant to Resolution No. 88-15915, there is hereby imposed an initial fee for processing and administrative costs for Industrial Development Revenue (IDR) Bond Projects. Said fee is to be set by Administrative Order.

By the authority granted in Section 2-311 BMCC, there is hereby imposed:

1. City Fee. The City hereby imposes an administrative fee of \$5,000 to cover a portion of the City's staff time in processing the sale and issuance of Bonds. An application or request for the issuance of Bonds shall be accompanied by a check in the amount of \$1,000 made payable to the City of Billings, which amount is not refundable. The remaining \$4,000 shall be due and payable at the closing on the Bonds.
2. Expenses and Costs. The applicant for the Bonds shall be responsible for paying or reimbursing the City for any out-of-pocket costs incurred in publishing any required notices for public hearings and any other out-of-pocket costs and shall enter into a written agreement with the City to that effect. The applicant shall be responsible for paying all costs associated with the sale and issuance of the Bonds, including the costs of the City's Bond Counsel. Such fees and charges may be included in the Bonds, subject to any federal limitations relating to the Bonds.

Dated this 28th day of October, 2009.



Christina F. Volek
City Administrator

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. _____, entitled: "RESOLUTION ESTABLISHING CRITERIA FOR APPROVAL OF PROJECTS FOR FINANCING AS RECOVERY ZONE FACILITY BONDS" (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 October 26, 2009, 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:

_____; voted against the same:

_____; abstained

from voting thereon: _____;

or were absent:

_____.

WITNESS my hand officially this _____ day of October, 2009.

City Clerk

RESOLUTION NO. _____

RESOLUTION ESTABLISHING CRITERIA FOR
APPROVAL OF PROJECTS FOR FINANCING AS
RECOVERY ZONE FACILITY BONDS

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

Recitals.

Pursuant to Resolution No. 09-18866, adopted on September 14, 2009 and in accordance with the provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA"); the policies and procedures established by the Department of Administration of the State of Montana (the "Department"); Internal Revenue Service Notice 2009-50; and Section 1400U-1(b) of the Internal Revenue Code of 1986, the Council designated the City as a recovery zone ("Recovery Zone").

Pursuant to Internal Revenue Service Notice 2009-50, the City was allocated \$26,831,000 of Recovery Zone Facility Bond authority and pursuant to the policies and procedures of the Department, Yellowstone County has allocated its \$9,973,000 of Recovery Zone Facility Bond authority to the City.

The City wishes to use its Recovery Zone Facility Bond authority in a manner that will preserve and create jobs and promote economic recovery in the City, increase the tax base, provide long term economic benefits to the citizens of the City and complement and enhance the City's goals and objectives of the urban renewal districts created by the City (the "Urban Renewal Districts").

The City wishes to establish the criteria that it will consider for the allocation of its Recovery Zone Facility authority to projects, and the issuance of Recovery Zone Facility Bonds.

Nature and Purpose of Recovery Zone Facility Bond Financing.

Nature of Bonds. ARRA enables the City to issue Recovery Zone Facility Bonds and to pass along its ability to borrow money on a tax exempt basis for most types of private business activities located in the Recovery Zone. The Recovery Zone Facility Bonds will be issued by the City in accordance with the provisions of the Montana Economic Development Bond Act in Title 90, Chapter 5, Part 1 (the "Act") and applicable provisions of the Treasury Department. Under the Act, the City will issue the Recovery Zone Facility Bonds and loan the proceeds thereof (the "Loan") to the private borrower (the "Borrower"), who will enter into a loan agreement (the "Loan Agreement") whereby the Borrower agrees to repay the Loan. The City will assign an interest in the Loan Agreement to the purchaser of the Recovery Zone Facility Bonds, who may require a mortgage on the facility being financed and other security for the Loan. The Recovery Zone Facility Bonds will be special limited obligations of the City, payable solely from the Loan repayments of the Borrower and other security provided by the

Borrower and will not give rise to any pecuniary obligation of the City. Neither the City's credit nor its taxing power will be pledged to the repayment of the Recovery Zone Facility Bonds. The Borrower shall be responsible for securing a purchaser for the Recovery Zone Facility Bonds. All Recovery Zone Facility Bonds must be issued by December 31, 2010.

Types of Eligible Projects. Recovery Zone Facility Bonds can be used for nongovernmental purposes that historically would not qualify for tax-exempt financing; 95% of proceeds (net of any reasonably required reserve funds) must be used for property in the Recovery Zone that is acquired, constructed, reconstructed or renovated after designation of the Recovery Zone. Recovery Zone Facility Bonds cannot be used for residential rental property, golf courses, country clubs, massage parlors, hot tub facilities, suntan facilities, racetrack/gambling facilities, or stores whose primary business is the sale of alcohol for consumption off-premise.

Application Procedure. Developers of eligible projects shall request an allocation of the Recovery Zone Facility Bond authority by filing a letter of application with the Financial Services Manager, which shall include the following information:

- description of the project, including square footage and size of facility;
- street address and legal description;
- estimated costs of the project;
- name and address of owner or developer of the project;
- estimated date of commencement of project; and
- the name, address, and contact person for the lender or purchaser of Recovery Zone Facility Bonds.

Evaluation of Application and Criteria for Allocation of Authority.

Criteria. The City will take the following factors into consideration in allocating its Recovery Zone Bonds:

- whether the project is in an Urban Renewal District or would otherwise enhance or enable the City to accomplish the goals and objectives of an Urban Renewal District;
- whether the developer has sufficient financial resources to undertake the project and complete the closing of the Recovery Zone Facility Bond financing by December 31, 2010;
- whether the developer has firm commitment from a lender to purchase the Recovery Zone Facility Bonds, and under what conditions;
- the number of jobs created during construction of the project and the approximate level of pay and benefits for such jobs;

the number of long term jobs expected to be available after construction and the approximate level of pay and benefits for such jobs; and the need for the project.

Public Hearing; Allocation; Status Report. Allocation of the Recovery Zone Facility Bond authority will be made by the City Council after a public hearing on the project as required by the Act and the Internal Revenue Code. As a condition of the allocation, the City will require monthly status reports on the project and the financing arrangements and the City may nullify the allocation if the Council determines that a particular project is not likely to successfully complete the financing by the deadline.

City Fees for Recovery Zone Facility Bonds. Recipients of Recovery Zone Facility Bond authority shall pay the same fees and charges as for all other industrial development revenue bonds issued under the Act.

Compliance with Wage and Hours Requirements; Montana Labor Preference. The Act requires that contracts for projects financed by Recovery Zone Facility Bonds issued under the Act must give preference to the employment of bona fide Montana residents if their qualifications are substantially equal to those of nonresidents. Contractors on Recovery Zone Facility Bond financed projects must agree to pay the standard prevailing wage rate in effect for the district in which the project is located.

Effective Date. This Resolution shall become effective upon passage.

PASSED AND ADOPTED by the Billings City Council on the 26th of October, 2009.

THE CITY OF BILLINGS

(SEAL)

Ron Tussing, Mayor

ATTEST:

Cari Martin, City Clerk