MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF BILLINGS AND THE BILLINGS INDUSTRIAL REVITALIZATION DISTRICT, INC., AN I.R.C. 501 (c)(6) MONTANA NON-PROFIT CORPORATION, AND BIG SKY ECONOMIC DEVELOPMENT, FOR THE IMPLEMENTATION OF THE MASTER PLAN FOR REVITALIZATION, PROGRAM COORDINATION, AND TAX INCREMENT FINANCING RECOMMENDATIONS AS PER MCA 7-15-4233 IN THE EAST BILLINGS URBAN RENEWAL DISTRICT

This Memorandum of Understanding ("MOU") is made and entered into on _____, 2019 (the "Effective Date") by and between the City of Billings (City), Big Sky Economic Development (BSED), a local port authority created by Yellowstone County, a political subdivision of the State of Montana, and the Billings Industrial Revitalization District , Inc. (BIRD), a 501 c(6) tax exempt corporation of the land owners with property located within the boundaries East Billings Urban Renewal District (EBURD). Management is coordinated with these entities for the purpose of assisting the City in revitalization of the EBURD for all projects, regulations and planning done in the EBURD, and to render opinions and give recommendations to the City Council as outlined in MCA 7-15-4233 on all financial assistance provided by Tax Increment Financing (TIF) in the EBURD. For purposes of this MOU, BSED, the City, and the BIRD are each a "Party" and are sometimes collectively referred to as the "Parties."

I. TERM & TERMINATION OF THIS MOU

This MOU shall be in effect for 5 years from the Effective Date, and the parties agree to conduct an annual progress-review meeting to consider any necessary changes to the implementation strategies and roles and responsibilities as set forth in this Agreement. Any Party may terminate this MOU by giving the other 90-days written notice prior to a fiscal year end of June 30. Days are defined in this Agreement to be business days.

II. BACKGROUND AND PURPOSE OF THIS MOU

A. The EBURD was created by the City of Billings in 2006 and expanded in 2015 (Ordinance No. 06-5395, Ordinance No. 15-5652) and is defined in the attached Exhibit A map.

B. The City of Billings has adopted a Tax Increment Finance Policy (Resolution #18-10750). The BIRD will maintain compliance with the Policy in operating under this MOU and the City will use the Policy in its decisions related to TIF programs and projects.

C. This MOU is a cooperative effort among the City of Billings, BSED and the BIRD. The Parties share the mutual objective of enhancing economic development opportunities

in the EBURD by promoting the ideals of sustainable industry, outstanding quality of life, public infrastructure improvement, and predictable land use decision-making. These efforts are embodied in the 2009 EBURD Master Plan, 2012 EBURD Code (Ordinance No. 12-5581), 2013 Exposition Gateway Concept Plan, 2013 Hospitality Corridor Planning Study, as well as other City-adopted ordinances, plans and programs affecting the EBURD, provided said ordinances, plans and programs are reviewed by the BIRD board.

D. The BIRD is actively working on annexation of County lands in and around the EBURD. Collectively the EBURD and relevant County Land shall be called ("The Study Area").

E. A Master Plan for the Revitalization of the EBURD has been completed pursuant to a grant by the U.S. Department of Commerce – Economic Development Administration. One purpose of this MOU is to define the mutual understanding of BSED, the BIRD, and the City regarding the implementation of the Master Plan the Study Area.

F. The EBURD, as its foundation, is an Urban Renewal District with a Tax Increment Financing Provision.

III. RELATIONSHIP OF THE PARTIES

A. For the life of this MOU, the BIRD will maintain itself as a non-profit advisory board to make recommendations to the Billings City Council regarding all TIF expenditures and land use in the EBURD. This MOU relates only to the cooperative efforts of BSED, the City, and the BIRD described herein in connection with the EBURD. As per Sections 2-3-103, 2-3-111, and 2-3-203(1), Montana Code Annotated (MCA), which specify public participation requirements and that all meetings of public or governmental bodies or organizations supported by or expending public funds must be open to the public, the BIRD will comply with these requirements when acting in its capacity as an advisory board to the City Council.

B. The BIRD Board By-Laws in Article IV specifies the Board shall be made up of stakeholders that represent both business and property interests in the EBURD. As per the City TIF Policy Section 3 (a), this MOU refers to the BIRD By-Laws in outlining the members of the Board. The BIRD must carry Errors and Omissions Insurance for its board members and provide proof of insurance to the City. The Board will ensure a current copy of its By-Laws is provided to the City.

C. This MOU is not intended to create or constitute any joint venture, partnership, joint powers agency, or other formal organization of any kind.

D. No Party is authorized herein to act as the agent of the other.

E. This MOU is for the sole benefit of the parties herein and their successors and assigns. This MOU is not intended to and shall not be interpreted to create or confer to a third party any rights, entitlements or interest, including any third

party beneficiary rights.

F. Sections IV through XIII of this MOU outline roles and responsibilities of the City, BSED and BIRD related to the EBURD. The Parties shall collaborate with the identified lead organization to carry out these identified activities. The attached Exhibit B outlines the EBURD administration.

IV. BIRD BOARD AND STAFF

A. The BIRD board may hire, contract for, or coordinate with the City, for support for the implementation of this MOU. Support includes, but is not limited to, program coordination, application review and processing, tax increment financing recommendations, administration and implementation of the EBURD Master Plan. TIF funding used for operations and staff must be approved by the City Council through its annual budgeting process as part of its review and approval of the EBURD annual budget. If the BIRD does seek contract services, supplies, or expenditures for other capital costs that utilize TIF funds, the BIRD must follow City purchasing and procurement policies in effect at the time.

B. The BIRD Board has adopted a policy that board members and staff cannot receive TIF funding for Development Incentives while in the employment of the BIRD or serving as a member of the board of directors of the BIRD.

V. TAX INCREMENT FINANCING AUTHORITY AND ADMINISTRATION

A. The City Council shall have the ultimate decision-making authority regarding any expenditure of TIFD Funds related to the EBURD. The BIRD will present recommendations for expenditures to the City Council.

B. The BIRD and the City will maintain an application form and assistance guidelines for parties seeking the use of TIF Funds.

C. Review and Action on TIF fund applications in the EBURD will go as follows:

1. The BIRD staff will accept and review complete applications for TIF funds related to the EBURD and then will provide a copy of the application to the City staff for review.
2. The City staff will review the application and provide comments and recommendations, which shall be returned to the BIRD Board.
3. The BIRD Board shall review the recommendations of City staff and, upon concurrence, BIRD staff will meet with the applicant to review any application questions or changes.
4. Any recommended changes will be incorporated into the application and the BIRD Board will make a recommendation to the City Council regarding funding of the application.

5. BIRD staff and City staff will prepare a development agreement for the expenditures of the TIF funds in the application to coordinate submittal of the application and development agreement to City Council for action.
6. The complete application and development agreement shall be processed and placed on a City Council Meeting for action within fifty (50) days after receipt of a properly completed application as specified in C 1.

VI. BIRD TRAINING AND CONFLICT OF INTEREST

A. Training – The BIRD Board and support staff will participate with all City Urban Renewal District (URD) advisory boards in biannual training conducted in coordination with City staff and URD support staff. The training shall include, but is not limited to review of URD and TIF laws, Administrative Rules, ethics, conflicts of interest, meeting management, and maintenance of minutes and records.

B. Conflict of Interest – The BIRD will adopt a resolution stating the Board and any employees of the BIRD will follow the conflict of interest rules adopted by the City under BMCC Article 2-507 (8)(b)(15) and BMCC Article 2-702. The BIRD Board also addresses elements of conflict of interest in Section IV (B) of this MOU. If the City finds an appearance of conflict of interest during review of a program or project seeking TIF funding, the matter will be reviewed by the City Attorney's Office.

VII. LAND USE DECISION AUTHORITY

A. The City shall have final decision-making authority regarding any land use or zoning decision related to the EBURD, provided those items are first reviewed by the BIRD which shall present its recommendation to the City Council.

B. Subject to existing land use law, the City may develop and administer land use and design regulations with consideration to the EBURD Master Plan, EBURD Code and other plans and ordinances adopted by the City. As referenced in Section II C. of this MOU, the City and the BIRD share the mutual objective of enhancing economic development opportunities in the EBURD by promoting the ideals of sustainable industry, public infrastructure improvement, and predictable land use decision-making consistent with those proposed in the Master Plan as recommended by the BIRD. The City and the BIRD shall cooperatively explore potential incentives for developers and property owners subject to such regulations.

VIII. BROWNFIELDS ASSESSMENT

A. BSED has and is currently administering grants from the Environmental Protection Agency (EPA) to undertake brownfields assessments of petroleum and hazardous substance contamination on sites within and adjacent to the EBURD.

B. BSED has assembled a steering committee to help recommend sites to be assessed. The City and BIRD have both contributed time to this steering committee to help prioritize potential assessment sites. This steering committee

will also apply EPA's Brownfields criteria of future reuse, expansion, and/or redevelopment in recommending assessment sites throughout the life of the project.

IX. MAINTENANCE, PRIORITIZATION, AND IMPLEMENTATION OF THE 2009 EBURD MASTER PLAN

A. The BIRD will work to maintain, prioritize, and implement the EBURD Master Plan, as its staffing capacity will allow and in consultation with the Parties.

B. The BIRD Board will convene a committee of all Parties to discuss and suggest recommendations to the City regarding maintenance, prioritization, implementation and updates to the EBURD Master Plan.

X. IDENTIFY FUNDING SOURCES AND FACILITATE PUBLIC INFRASTRUCTURE IMPROVEMENTS

A. The City will identify and make application for appropriate funding sources in order to facilitate necessary infrastructure improvements as identified in the City's Capital Improvement Plan and other infrastructure master plans for projects within the EBURD boundary. The BIRD will assist the City with funding applications, as appropriate.

B. The BIRD will work with City staff and property owners to consider public infrastructure projects in the EBURD and bring recommendations to City Council through processes, including the City's Capital Improvement Plan.

C. In partnership with the City and the BIRD, BSED will seek, apply for, and administer grant opportunities well suited for the EBURD. Specifically, in development projects where there will be an increase of additional new jobs, BSED will apply on behalf of, or assist in the preparation of, applications to the Montana Department of Commerce New Worker Training Grant and Big Sky Economic Development Trust Fund incentive programs. All applications for grants will be reviewed by the BIRD. The BIRD also will make recommendations on grants to the City Council. Acceptance of any grant awards where TIF funds are used must be approved by the City Council.

D. When an appropriate grant or funding opportunity is not available to BSED, for eligibility reasons, BSED will identify a potential applicant among the Parties and will notify such Party of the funding opportunity. BSED will assist these Parties in preparing applications for these funding opportunities on a fee-for-service basis at the hourly rate normally charged by BSED for grant-writing services.

E. Whenever possible, funds secured by BSED for implementation of Master Plan recommendations should be matched with local dollars, including TIFD funds, in order to maximize impact.

XI. RECRUITMENT OF PRIVATE INVESTORS AND DEVELOPERS TO THE EBURD

A. BIRD will actively work to recruit private investment in the EBURD, as its staffing capacity will allow.

B. The Parties, under BIRD leadership, will assemble a "Response Team" of Party representatives to meet with potential investors and to coordinate recruitment efforts on a case-by-case basis.

XII. OTHER SERVICES

The BIRD may, at its sole option, contract professional services for security and maintenance services within the EBURD funded through property owner participation in a business improvement district or sub-district. However, the City Council shall have the ultimate decision making authority regarding any expenditure of TIFD Funds related to the EBURD, including funds allocated to professional services for a business improvement district or sub-district.

XIII PUBLIC RELATIONS

Any news release, public announcement, advertisement or publicity proposed to be released by BIRD, BSED or the City regarding the work outlined in this MOU shall be subject to the approval of the other Parties prior to release. The Parties agree that such approval shall not be unreasonably withheld.

XIV. NOTICE

The Parties have identified individuals as outline below as point persons for all communication and coordination. Any notice required hereunder shall be provided in writing.

XV. AUTHORITY AND EXECUTION

Each Party represents that it has the authority to enter into this MOU and to perform the functions stated herein, and that the persons executing this MOU on their respective behalf are authorized by law, resolution or other requisite action of the Party's governing body.

BSED:	Dianne Lehm Director of Community Development 222 North 32nd Street, Suite 200 Billings, MT 59101 lehm@bigskyeda.org (406) 869-8409	Patrick Klugman Senior Community Development Project Manager 222 North 32nd Street, Suite 200 Billings, MT 59102 patrick@bigskyeda.org (406) 869-
City:	Wyeth Friday, Planning Director Planning and Community Services Dept. 2825 3rd Ave. North, 4th Floor Billings, MT 59101 fridayw@ci.billings.mt.us (406) 657-8249	Monica Plecker, Planning Manager City-County Planning Division 2825 3rd Ave. North, 4th Floor Billings, MT 59101 pleckerm@ci.billings.mt.us (406) 247-8660
BIRD:	Marshall Knick President, BIRD, Inc. 1413 4th Ave. North, Ste C Billings, MT 59101 {406) 245-3133	Lenette Kosovich Treasurer BIRD, Inc. 1413 4th Ave. North, Ste C Billings, MT 59101

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the dates indicated below.

- - BILLINGS INDUSTRIAL REVITALIZATION DISTRICT, INCORPORATED - -

By: _____
Marshall Knick, President

BIG SKY ECONOMIC DEVELOPMENT AUTHORITY

By: _____
Steve Arveschoug, Executive Director

THE CITY OF BILLINGS:

By: _____
William A. Cole, MAYOR

ATTEST:

By: _____

Denise R. Bohlman, CITY CLERK

APPROVED AS TO FORM:

By: _____

Brent Brooks, CITY ATTORNEY

Exhibit A

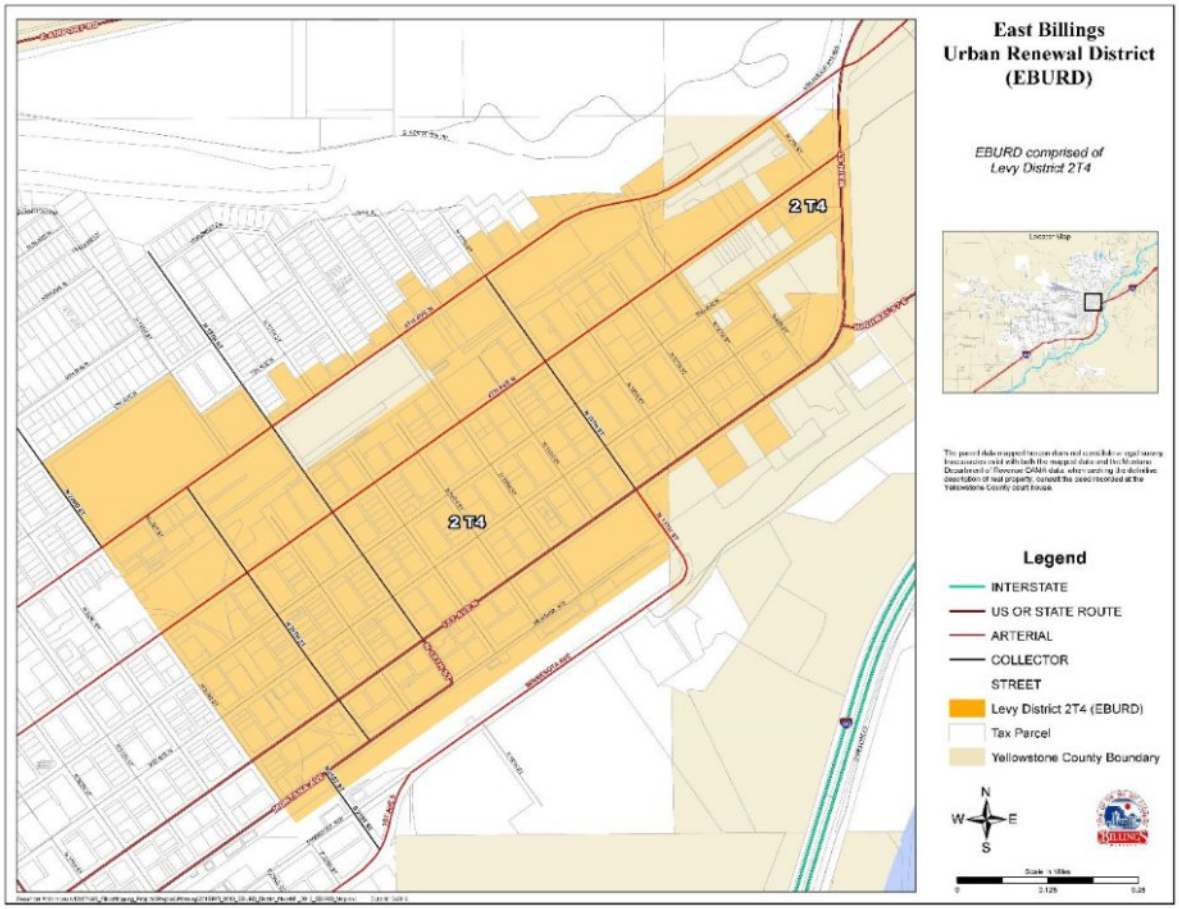
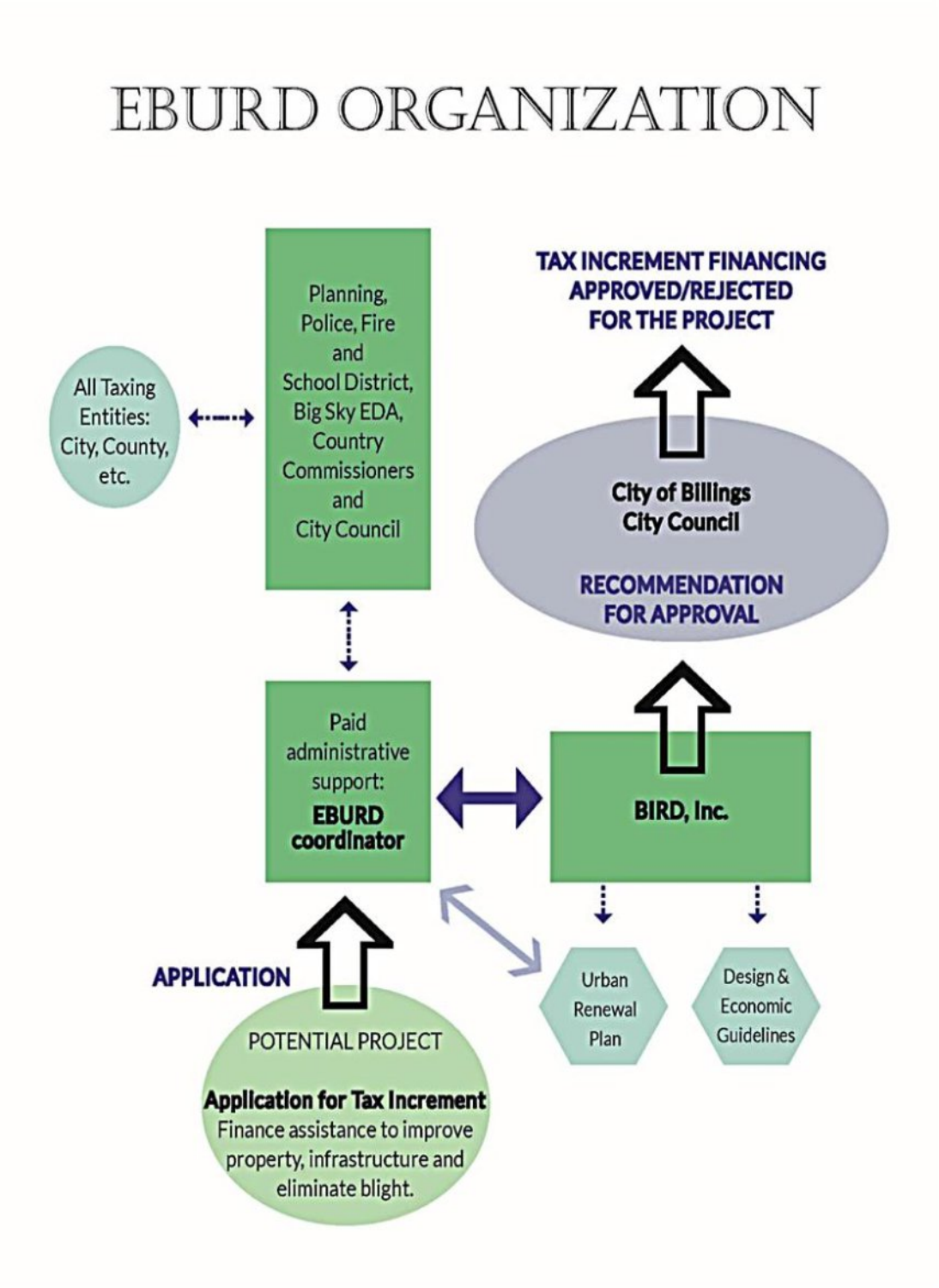

East Billings
Urban Renewal District
(EBURD)
EBURD comprised of
Levy District 2T4
2T4
2T4
Legend
INTERSTATE
US OR STATE ROUTE
ARTERIAL
COLLECTOR
STREET
Levy District 2T4 (EBURD)
Tax Parcel
Yellowstone County Boundary
N
W
E
S

Exhibit B


EBURD ORGANIZATION
All Taxing Entities: City, County, etc.
Planning, Police, Fire and School District, Big Sky EDA, Country Commissioners and City Council
TAX INCREMENT FINANCING APPROVED/REJECTED FOR THE PROJECT
City of Billings City Council
RECOMMENDATION FOR APPROVAL
Paid administrative support: EBURD coordinator
BIRD, Inc.
APPLICATION
POTENTIAL PROJECT
Application for Tax Increment
Finance assistance to improve property, infrastructure and eliminate blight.
Urban Renewal Plan
Design & Economic Guidelines