

# CITY OF BILLINGS

## CITY OF BILLINGS VISION STATEMENT:

**“THE MAGIC CITY: A DIVERSE, WELCOMING COMMUNITY WHERE PEOPLE PROSPER AND BUSINESS SUCCEEDS.”**

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### WORK SESSION AGENDA

COUNCIL CHAMBERS

January 7, 2019

5:30 P.M.

**CALL TO ORDER:** Mayor Cole

- 1. Oath of Office - Swearing in Ceremony**
- 2. Commission on Energy Conservation - NPRC**  
- Public Comment
- 3. Beartooth RC & D MOU Renewal**  
- Public Comment

**COUNCIL DISCUSSION:**

**PUBLIC COMMENT on “NON-AGENDA ITEMS”.** *Speaker Sign-in required. (Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes. Please sign the roster at the cart located at the back of the Council chambers or at the podium.)*

**ADJOURN:**

Note:

- This meeting is an “informal” meeting of the City Council. The content of the Agenda is subject to change at the meeting.
- In the event there is a Closed Executive Session at the end of a Work Session, the sole purpose is to discuss litigation strategy. The other parties to the case(s) discussed are not public bodies or associations as described in Section 2-3-203(1) and (2), MCA. The meeting is closed, as allowed by Section 2-3-203(4)(a), MCA, “to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position” of the City of Billings.

**Council Work Session**

**2.**

**Meeting Date:** 01/07/2019

**TITLE:** Commission on Energy Conservation - NPRC

**Department:** City Hall Administration

**Presentation:** Yes

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**PROBLEM/ISSUE STATEMENT**

The Northern Plains Resource Council will present information in regards to reestablishing a Commission on Energy & Conservation in Billings, MT. On August 14, 2006 Resolution 06-18468 was adopted by City Council establishing a Mayor's Commission on Energy and Conservation and appointing members. The Resolution expired at the end of 4 years or December 31, 2010.

**RECOMMENDATION**

The previous Energy and Conservation Commission creating Resolution 06-18468 was an *ad hoc* committee created under City Code section 2-224. If the City Council considers creating an Energy and Conservation Commission and it is intended to be permanent or at least of an indefinite duration a ordinance will need to be created pursuant to Section 2-501 and add it to the list of permanent or "standing" boards located at City Code sections 2-511 through 2-585.

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**Attachments**

Permanent Advisory Bd or Commission by Ordinance  
Council Presentation FNL  
Memo  
SignOnLetter

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**Sec. 2-224. - Ad hoc council advisory committees.**

The mayor and city council may, by resolution, create such ad hoc council advisory committees as needed. Provided, however, that all such committees must be created pursuant to an adopted council resolution establishing, at a minimum, the following:

- (a) **The purpose or charge of the committee;**
- (b) **The scope of its responsibilities;**
- (c) **The composition of the committee; and**
- (d) **The duration of the committee.**

The city administrator shall be charged with assigning appropriate staff to any committee created under this paragraph to ensure compliance with all applicable open public meetings law.

(Ord. No. 03-5239, §§ 1, 2, 2-24-03)

**Sec. 2-501. - Permanent advisory boards, ad hoc council advisory committees or statutory boards.**

There are three (3) different types of advisory boards, committees or commissions.

- (1) **Permanent advisory boards are established by ordinance** (this article; City Charter, Article V).
- (2) Ad hoc council advisory committees (section 2-224) are created by council resolution, have a specific purpose, and have a limited duration.
- (3) Statutory boards are required by state or federal law.

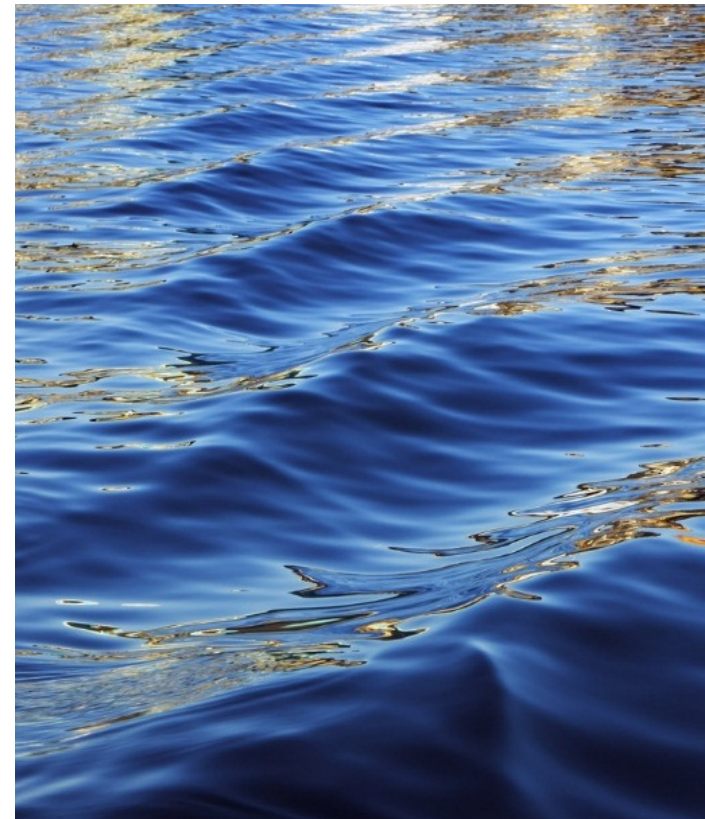
All boards, committees or commissions shall be governed by this article except as otherwise provided by Charter, this Code, statute or interlocal agreement.

(Ord. No. 09-5485, § 1, 1-12-09)



# Commission on Energy and Conservation

Presentation to Billings City Council  
January 7, 2019



# Commission on Energy and Conservation: Who We Are



- Air Quality Regulations
- SD2 Recycling Program
- LEED Pioneers in Billings
- Reimagining the Riverfront Campaign
- Urban Planning on Transit Alternatives



- 60 Years of Service
- Unbiased Analysis of Key Community Issues
- Citizen Engagement in the Democratic Process
- Voter Registration
- Civics Education
- Grassroots Advocacy



- Advocacy Services for Abused Women
- Addiction and Recovery Support
- Peer Mentoring for Girls
- Supervised Visitation and Parenting Classes
- Eco-Angela

# Commission on Energy & Conservation: History



# Commission on Energy & Conservation: Looking Ahead



Build on Exemplary Work Already Being Done



Regional and Economic Importance of Billings



25,000-100,000 New Residents Projected by 2035



Greater Demand on Infrastructure and Public Services



City of Billings Strategic Plan:  
Comprehensive, Cost Effective and Orderly Growth



City of Billings Growth Policy:  
Strong Neighborhoods; Clean & Safe Housing & Transportation

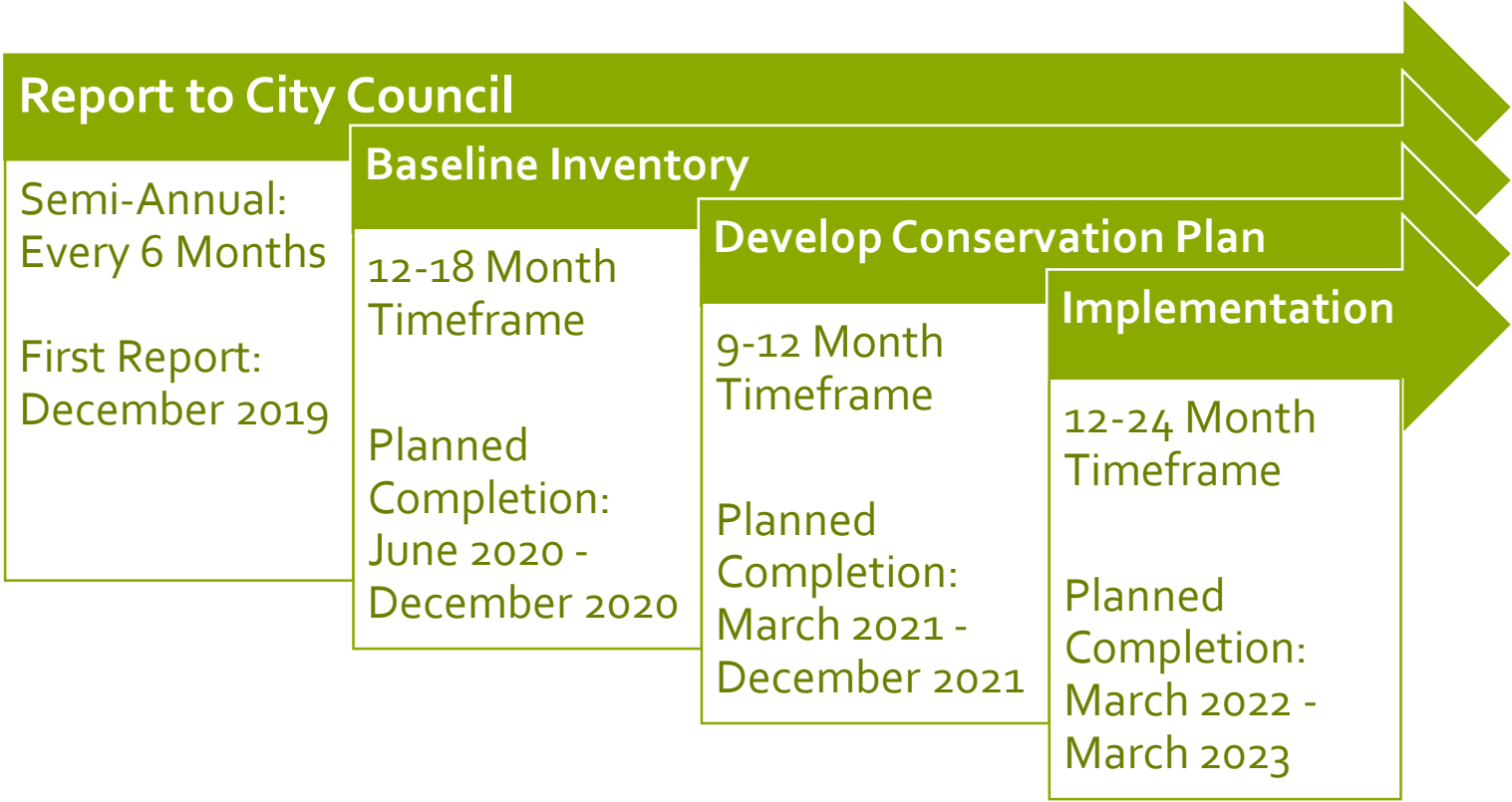
# Commission on Energy & Conservation: Shared Vision

## City of Billings Growth Policy Guidelines



# Commission on Energy & Conservation: Timeline

Proposed Launch: Date: June 2019



# Commission on Energy & Conservation: Other Cities

## What's Being Done Elsewhere

### *Red Lodge*

- ✓ Energy Corps Coordinator: 2015-2018
- ✓ Baseline Assessment: 2017
- ✓ Committee Formed: Jan. 2018
- ✓ Plan Adopted: Oct. 2018

### *Whitefish*

- ✓ Energy Corps Coordinator: 2016
- ✓ Baseline Assessment: 2016
- ✓ Committee Formed: Dec. 2016
- ✓ Plan Adopted: Apr. 2018

### *Helena*

- ✓ Plan Adopted: 2009
- ✓ Committee Formed: Jan. 2018
- ✓ Request to Hire Coordinator: Dec. 2018
- ✓ Baseline Inventory: In The Works

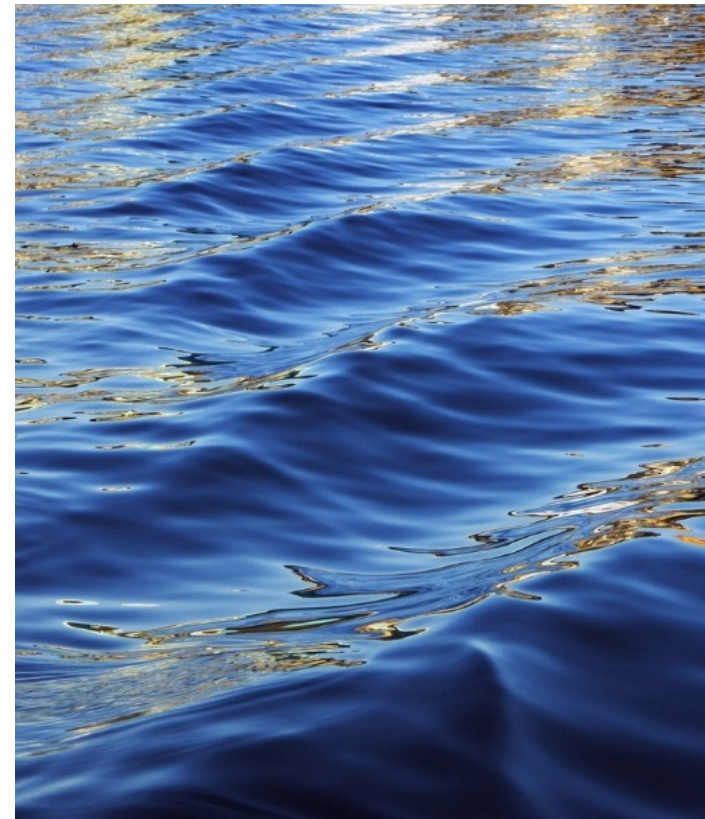
### *Bozeman*

- ✓ Baseline Inventories: 2000 & 2006
- ✓ Commission Formed: Nov. 2006
- ✓ Coordinator Hired: May 2007
- ✓ Plan Adopted: Aug. 2008



# Commission on Energy and Conservation

Presentation to Billings City Council  
January 7, 2019



# memo



To: Billings City Council Members

CC: Mayor Bill Cole  
Chris Kukulski, City Administrator  
Kevin Iffland, Assistant City Administrator

Date: January 7, 2019

Re: Commission on Energy and Conservation

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Comments: In 2017, Yellowstone Valley Citizens Council joined the League of Women Voters and Angela's Piazza to form a Coalition on Energy and Conservation. Councilmember Penny Ronning first brought forward our Energy Cost-Savings Plan at the Council's strategic planning session in January 2018, where it was ranked a medium-to-high priority item.

Since then, Coalition members have held numerous meetings with City staff, administrators, elected officials and other stakeholders to gather feedback on a Resolution to re-establish a Commission on Energy and Conservation. Nearly 120 community members have signed on to a letter in support of the idea, along with 18 organizations and businesses.

The ultimate goal of the Commission would be three-fold:

1. Conduct a baseline inventory of energy consumption by City of Billings
  2. Create a comprehensive plan for reducing energy use and related costs
  3. Make recommendations to City Council on implementation of the plan
- To accomplish this, the Commission would initially be authorized for a term of four years, reporting to Council on a semi-annual basis.

If approved, Billings would join four other cities in Montana that have formed Commissions to implement an Energy Conservation Plan. Red Lodge, Helena, Bozeman and Whitefish are currently leading the way. All of these cities have conducted baseline inventories and have hired (or are in the process of hiring) Coordinators to oversee the process.

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Here in Billings, a project to retrofit parking garages with motion-sensor LED lighting has reportedly saved \$200,000. Re-establishing the Commission on Energy and Conservation would build on this and other impressive work being done by the City, such as methane capture at the landfill and the efforts by the previous Commission to institute Energy Performance Contracting, along with construction of MET Transit's award-winning Downtown Transfer Center.

In Red Lodge, a \$26,000 grant from Northwestern Energy to install a solar array at the City Library is expected to cut the annual electricity costs for that building in half. Overall, the Energy Conservation Plan by the Red Lodge Commission is expected to save at least \$200,000 a year.<sup>1</sup>

Similarly, the City of Bozeman expects to drastically cut down its annual electricity budget of \$550,000. Among the changes adopted in Bozeman are a lighting retrofit that has saved the City nearly \$17,000 per year and an anti-idling policy that has cut annual costs by more than \$3,000. Low-flow toilets and other water efficiency upgrades have cut the water consumption at City Hall by almost 10%.<sup>2</sup>

On the statewide level, investments in energy conservation from 2009-2017 netted an estimated \$2.1 million in annual cost savings for electricity and natural gas in state-owned buildings alone.<sup>3</sup>

Energy efficiency not only saves taxpayer dollars; it makes local communities more attractive places to live, work, stay and play. For this reason, the City of Billings Strategic Plan prioritizes "comprehensive, cost effective and orderly growth." Likewise, the City of Billings Growth policy places an emphasis on essential investments like securing future utility costs and improving environmental quality, along with an eye towards prosperity in the way of strategically-placed industrial parks designed to manage effluents and emissions.

With all of this in mind, we ask the Council to pass a Resolution to create a Commission on Energy and Conservation. We are available to answer any questions at your convenience. Please contact organizers Kari Boiter or Caroline Canarios at (406) 248-1154 for more information.

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<sup>1</sup> Helena Independent Record article "Red Lodge Sets Its Sights On Sustainability"  
[https://helenair.com/news/state-and-regional/montana/red-lodge-sets-its-sights-on-sustainability-with-new-conservation/article\\_4b67b702-8004-5220-8caf-44cf418abf51.html](https://helenair.com/news/state-and-regional/montana/red-lodge-sets-its-sights-on-sustainability-with-new-conservation/article_4b67b702-8004-5220-8caf-44cf418abf51.html)

<sup>2</sup> City of Bozeman Climate Action Report (2011-2012)  
<https://www.bozeman.net/home/showdocument?id=4857>

<sup>3</sup> 2016 Annual Report from the Montana Energy Office at the Department of Environmental Quality  
[https://deq.mt.gov/Portals/112/Energy/Documents/2016\\_Annual-Energy-Report\\_FINAL.pdf](https://deq.mt.gov/Portals/112/Energy/Documents/2016_Annual-Energy-Report_FINAL.pdf)

Dear Mayor Cole and Billings City Council Members,

We, the undersigned, support the establishment of a Commission on Energy and Conservation for the City of Billings. There is a clear and pressing need to encourage smart and innovative policies that will conserve energy and improve livability. Energy conservation is integral to a smart fiscal strategy that enhances our tax base through cost savings and clean commerce, as well as attracts and retains a workforce that values a clean and healthy environment. We believe that this Commission will support the City's ongoing efforts to grow responsibly, efficiently, and economically in the 21st century.

**Organizations**

Yellowstone Valley Citizens Council  
League of Women Voters  
Angela's Piazza  
Earth Hope  
MusEco Media & Education Project  
Our Montana  
Yellowstone County Democratic  
Central Committee

**Businesses**

CTA Architects Engineers  
Grafix  
High Plains Architects  
Hope's Artisan Foods  
Image 'N That Embroidery  
L.P. Anderson Tire Co., Inc.  
Life's Fast Films  
Second Nature Consulting  
Stocky's Custom Carpentry  
Swift Microgreens  
Yellowstone Naturopathic Clinic

**Individuals**

Dr. Kathy Aragon	Dale Detrick	Neil Kiner	Bernard Rose
Chuck Aragon	Lani Easton	Caden Kosovich	Kathy Rumph
Adela Awner	Kriss Erickson	Robin Kratschmer	Eric Schmidt
Susan Baack	Elaine Fischer	Caleb Lande	Judy Senteney
Joy Barber	Cathy Fitzgerald	Jodie Lindbo	Stuart Shay
Lizbeth Barnea	Mary Fitzpatrick	Bonnie Lorenzen	John Smilie
Marcy Baumgartner	Candace Forrette	Margie MacDonald	Hope Smith
Arlene Becker	June Genger	Dylan Malloy	Joan Smith
Dr. Margaret Beeson	Maggie Gordon	Dr. Kathleen Masis	Sonya Smith
Aubrey Bertram	Dave Gorton	Amber McDermott	Nadine Smith
Ruth Blott	Brandi Graham	Bev McHugh	Joe Splinter
Kari Boiter	Marya Gratwohl	Rick McIntyre	Karen Stears
Debra Bonogofsky	Barbara Gulick	Megan McLean	Joe Stockburger
Jean Boone	Ed Gulick	Mary McNally	Paul Stockburger
Barbara Bryan	Walter Gulick	Barbara Medicine Horse	Olivia Stockman Splinter
Jerry Burrigh	Maribeth Habeck	Carol Mick	Katie Sutton
Dr. Lori Byron	Bob Habeck	Debra Miller	Selinda Todd
Robin Alexis Byron	Eileen Hancett	Becky Mitchell	Michael Tuss
Caroline Canarios	Sandra Haney	Mikindra Morin	Jan Van Dyk
Pauline Catchpole	Curt Haney	Tyler Mortenson	Elizabeth Vanderhorst
Patrick Certain	Anne Harris	Jane Moses	Donald Vorisek
Sara Channell	Allie Hay	Janice Munsell	Joanette Wagner
Richard Clawson	Linda Healow	Dustin Ogdin	Jessica Walton
Dan Cohn	Chuck Heath	Claire Overholt	Luke Ward
Todd Cohn	Theresa Helus	Mike Penfold	Ashley Warren
Caitlin Cromwell	Annette Hernandez	Gary Peterson	Eric Warren
Dr. Kari Dahle-Huff	Allison Johnson	Ali Pistora	Betty Whiting
Jill Dawson	Barb Johnston	Kristen Prinzing	
Corinne Day	Kari Kaiser	Joe Reyna	
Nancy Detrick	Emma Kerr-Carpenter	Nancy Rigg	

**Council Work Session**

**3.**

**Meeting Date:** 01/07/2019

**TITLE:** Beartooth RC & D MOU Renewal

**Department:** City Hall Administration

**Presentation:** Yes

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**PROBLEM/ISSUE STATEMENT**

The Beartooth Resource Conservation and Development Area, Inc, will present information from their annual report and review a renewal of a Memorandum of Understanding between the Beartooth Resource Conservation and Development Area, Inc, City Of Billings, Big Sky Economic Development, City of Laurel and Yellowstone County Commissioners.

**RECOMMENDATION**

The Memorandum of Understanding with Beartooth Resource Conservation and Development Area, Inc will be brought to City Council on January 14, 2019 for action.

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**Attachments**

Cover Page  
2018 Projects  
Draft MOU Renewal

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## Getting the Job Done

We work with you to develop projects and move the regional economy forward. This happens as a result of local engagement and regional collaboration with knowledge of and access to local, state and federal programs designed to assist the people we serve. We have a proven track record of project development and strive to ensure positive results.

We work in partnership with Big Sky Economic Development to develop and support projects in your area.

How can we help you in 2019 and beyond?

- Plan review and implementation
- CEDS project goals
- Letters of Support
- Project identification and development
- Partner for training opportunities identified through industry requests and trends

[www.Beartooth.org](http://www.Beartooth.org)

406-962-3914

### **Beartooth RC&D Staff:**

Joel Bertolino, Executive Director

Food & Ag Center Director

[jbertolino@beartooth.org](mailto:jbertolino@beartooth.org)

Jillann Knutson, Finance Director

[jknutson@beartooth.org](mailto:jknutson@beartooth.org)

Sue Taylor, Economic Development Director

[staylor@beartooth.org](mailto:staylor@beartooth.org)

## Economic Development Program

Beartooth RC&D (Resource Conservation and Development) serves the cities, towns and counties of Big Horn, Carbon, Stillwater, Sweet Grass and Yellowstone as a state-designated Certified Regional Development Corporation (CRDC) and as a federally designated Economic Development District (EDD). We work closely with local economic development authorities and organizations in order to leverage the best possible options for communities, non-profits and private businesses in the region.

## Food and Ag Program

Beartooth is home to one of four Food & Ag Development Centers located across the state. The Centers help Montanans innovate and grow businesses that produce and commercialize food, agricultural and renewable energy products and processes – creating wealth and jobs in our communities and on our farms and ranches. The centers support economic development by ensuring that more of the state's food, agricultural and energy dollars circulate in Montana. The program provides training, technical assistance, and access to funding through grants and loans.

## Revolving Loan Fund Program

The purpose of the Revolving Loan Fund is to encourage and accelerate economic development activities in the region. The role of the RFL is to provide gap financing to businesses who would find it difficult to meet conventional underwriting standards. The RLF is not an alternative to private lenders or equity capital as most loans are a combination of all three. The RLF can provide financing for business equipment or improvements, land and buildings. Rates are competitive to bank terms/rates.



## 2018 Projects

- Revolving Loan Fund
  - Four loans totaling \$152,849
- Comprehensive Economic Development Strategy (CEDS)
  - Finalizing our five year regional economic development planning document which is available for public input on our website [www.beartooth.org](http://www.beartooth.org)
- Yellowstone Valley Food Hub
  - Growth through Ag grant to fund marketing and equipment for food hub launch
- NRCS/RCPP Grant
  - Collaborative research project with Western Sugar Co. and MillerCoors involving irrigated barley and sugar beet producers to define production practices that conserve water and soil and create more efficient operations.
- Cooperative Development Impact Week
  - Outreach activities held at Billings City College, House of Books, and Yellowstone Valley Electric Co-op
- Yellowstone County Sports Facilities Feasibility Study
  - Better off in Billings event presentation
- Riverside Park, Southside grocery, LARC planning
- EDA i6 Challenge Grant
  - Three year grant with a focus on entrepreneurship and innovation
  - Innovation coordinator and pop-up store initiative
  - Partners include BSED/SBDC, MSUB, Billings Library, MMEC, GOED

<b>Calculation of 2019 EDA dues:</b>						
	Est Census (as of 07/2017)	Per Capita	Base		Total	Share
	% share	Per Capita	Base Fee		Assessment	% of County
	County	(Population x .19)				Assessment
<b>Big Horn</b>	13,360	\$2,538.40	\$2,250.00		\$4,788.40	
<b>Big Horn County</b>	1/3	\$846.13	\$750.00			\$1,596.13
<b>City of Hardin</b>	1/3	\$846.13	\$750.00			\$1,596.13
<b>Two Rivers Authorit</b>	1/3	\$846.13	\$750.00			\$1,596.13
<b>Carbon</b>	10,696	\$2,032.24	\$2,250.00		\$4,282.24	\$4,282.24
<b>Stillwater</b>	9,419	\$1,789.61	\$2,250.00		\$4,039.61	\$4,039.61
<b>Sweet Grass</b>	3,691	\$701.29	\$2,250.00		\$2,951.29	\$2,951.29
<b>Yellowstone</b>	158,980	\$30,206.20	\$4,500.00		\$34,706.20	
<b>Big Sky EDA</b>	34.00%	\$10,270.11	\$1,530.00			\$11,800.11
<b>City of Billings</b>	36.00%	\$10,874.23	\$1,620.00			\$12,494.23
<b>City of Laurel</b>	6.00%	\$ 1,812.37	\$270.00			\$2,082.37
<b>Yellowstone County</b>	24.00%	\$ 7,249.49	\$1,080.00			\$8,329.49
<b>Total</b>					<b>\$50,767.74</b>	<b>\$50,767.74</b>
<i>(Est Census Population x .19 c Base Assessment Fee) + Base Assessment Membership = Total Dues to County</i>						

A  
**MEMORANDUM OF UNDERSTANDING**

**Between**  
**Yellowstone County Commissioners, Big Sky Economic Development Authority,**  
**City of Billings, City of Laurel**  
**And**  
**Beartooth Resource Conservation & Development Area, Inc.**

**THIS MEMORANDUM OF UNDERSTANDING** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between **Beartooth Resource Conservation & Development Area, Inc.**, whose principal business address is P.O. Box 180, Joliet, Montana 59041, hereinafter referred to as “Beartooth RC&D” and **Yellowstone County Commissioners (in cooperation with the City of Billings, City of Laurel, and Big Sky EDA)**, and hereinafter referred to as “**the Entity**”.

**WHEREAS**, The Beartooth RC&D has been formally recognized by the U.S. Department of Commerce, Economic Development Administration (EDA) as a designated Economic Development District (EDD), and as a District, the Beartooth RC&D has been awarded funding to carry out its Comprehensive Economic Development Strategy (CEDS). This funding will provide a staff person, administrative support and operating costs. This is a continual grant, renewable based on successful program operation and availability of federal funds. Local match is required.

**WHEREAS**, Each entity participating in the District will designate a representative and an alternate to the regional Beartooth RC&D Board. This individual will convey the needs and economic development goals of the community to the Beartooth RC&D board meetings. Regular board meetings will be held every two months to assess project status and evaluate regional economic development needs.

**NOW THEREFORE IT IS UNDERSTOOD AS FOLLOWS:**

**ARTICLE 1: SCOPE OF WORK:**

Beartooth RC&D employs an Economic Development Director to assist in the completion of the Comprehensive Economic Development Strategy for the five county region. The Director’s time will be allocated consistent with the goals in the CEDS by the Beartooth RC&D board of directors. The board is composed of one representative and an alternate from business partners, county and local elected officials and local economic development partners from our five county region. Input from this board is essential for meeting the needs of the communities in our region.

Priority will be assigned projects of regional scope or projects with strong local leadership. Grant funding for this position is from EDA, therefore, emphasis will be on regional economic development planning and projects which have a correlation to job creation, economic diversification and increased tax base. Matching funds are from participating entities and emphasis will be placed on their specified projects.

### **Annual Evaluation:**

The performance of the Economic Development District will be evaluated annually by local entities participating on the regional Beartooth RC&D Board. Progress and/or accomplishments on each program/project will be reported and evaluated to ensure resources are being utilized in the most effective and efficient manner possible. Annual Comprehensive Economic Development Strategy updates and an annual plan of work will be developed with input from the Beartooth RC&D staff and board. Annual reports on projects and economic development activities will be provided to the board and participating entities along with the renewal of the Memorandum of Understanding.

### **ARTICLE 2: PERIOD OF PERFORMANCE:**

The term of this Memorandum of Understanding shall be from the date it is signed through **December 31, 2019**, unless extended by mutual agreement by both parties. Such extension must be in writing, signed by authorized representatives of both parties, and made a part of the original Memorandum of Understanding by modification reference. This Memorandum of Understanding supersedes the prior Memorandum for participation in the Economic Development District.

### **ARTICLE 3: PAYMENT:**

The Entity's annual contribution will be **\$4,500.00** as a "Membership" fee plus a per capita assessment of **.19** cents per person. These funds will provide the necessary match to obtain the \$70,000.00 in federal funds. Entities who do not participate financially in the match requirement will not receive services from the Economic Development Coordinator. The calculated fee for **Yellowstone County** is **\$34,706.20**. This figure is a total of the **\$4,500.00** county fee plus **\$30,206.20** per capita formula using a population of **158,980** as per the 2017 Census data. Yellowstone County's full payment will be separated into a four-way payment system. Each entity within the county will pay a percentage (%) similar to the previous year. Big Sky EDA- 34% or **\$11,800.11**, City of Billings- 36% or **\$12,494.23**, City of Laurel- 6% or **\$2,082.37** and Yellowstone County- 24% or **\$8,329.49**.

Annually, the Beartooth RC&D/EDD staff will provide a comprehensive report of the past year's activity. A new Memorandum of Understanding will be prepared and a request for the following year's match submitted. Entities will be billed for match funds after January 1, 2019, for the current year's assessment.

Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment, and incidentals necessary to complete the work.

### **ARTICLE 4: EXAMINATION OF RC&D RECORDS:**

The Entity or its representatives shall have the right to examine any books, records, or other documents of the Beartooth RC&D, directly relating to costs when such costs are the basis of compensation hereunder.

**ARTICLE 5: OWNERSHIP AND USE OF DOCUMENTS:**

Reproducible copies of all documents and other materials produced by the Beartooth RC&D in connection with the services rendered under this memorandum of understanding shall be provided to the Entity for the Entity's use whether the project for which they are made is executed or not. The Beartooth RC&D shall be permitted to retain originals, including reproducible originals, of drawings and specifications for information, reference and use in connection with Beartooth RC&D endeavors.

**ARTICLE 6: WARRANTY:**

The Beartooth RC&D warrants that all services performed herein shall be performed using that degree of skill and care ordinarily exercised in and consistent with generally accepted practices for the nature of the services and shall conform to all requirements of this Memorandum of Understanding.

**ARTICLE 7: SAFETY:**

The Beartooth RC&D agrees to fully comply with the Occupational Safety and Health Act of 1970, all regulations issued there under and all state laws and regulations enacted and adopted pursuant thereto. The Beartooth RC&D shall take all necessary precautions in performing the services hereunder to prevent injury to persons or damage to property.

**ARTICLE 8: CONFIDENTIALITY AND CONFLICTS OF INTEREST:**

The Beartooth RC&D agrees to hold in strict confidence any proprietary or other data, findings, results, or recommendations deemed to be confidential by the Entity and obtained or developed by the Beartooth RC&D in connection with the work under this memorandum of understanding. The Beartooth RC&D warrants and agrees they do not and will not have any conflicts of interest regarding the performance of services hereunder.

**ARTICLE 9: APPLICABLE LAW:**

This Memorandum of Understanding shall be governed in all respects by the laws of the State of Montana. No changes, amendments or modifications of any of the terms and conditions hereof shall be valid unless agreed to in writing. Venue of any proceeding arising hereunder shall be the Twenty-second Judicial District.

**ARTICLE 10: COMPLIANCE WITH LAWS:**

The Beartooth RC&D shall in performing the services contemplated by this Memorandum of Understanding, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this Memorandum of Understanding.

**ARTICLE 11: CHANGES:**

The parties, by mutual agreement, may, at any time during the term of this Memorandum of Understanding and without invalidating the Memorandum of Understanding, make changes within the general scope of the Memorandum of Understanding. The Beartooth RC&D to perform such changed services. The Entity's priority list for project work within their county can be changed at any time. In such case, the District will be informed of this change at the Entity's earliest convenience.

**ARTICLE 12: TERMINATION:**

This Memorandum of Understanding may be terminated in whole or in part, in writing, by either party in the event of substantial failure by the other party to fulfill its obligations under this Memorandum of Understanding through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

Upon such termination the Entity shall pay the Beartooth RC&D amounts due and unpaid for services rendered as of the effective date of termination, and the Beartooth RC&D shall provide to the Entity all materials, surveys, reports, data, and other information performed or prepared as of such date.

**ARTICLE 13: INDEMNIFICATION:**

The Beartooth RC&D agrees to and does hereby indemnify and save the Entity, its officers, officials and employees, harmless against and from:

1. Any and all claims and liabilities, including but not limited to costs, expenses, and attorney fees arising from injury to, or death of, persons (including claims and liabilities for care or loss of services in connection with any bodily injury or death) and including injuries, sickness, disease, or death to Beartooth RC&D employees occasioned by a negligent act, omission, or failure of the Beartooth RC&D;
2. Any and all claims and liabilities, including costs and expenses, for loss or destruction of or damage to any property belonging to the Beartooth RC&D or the Entity caused by a negligent act, omission, or failure of the Beartooth RC&D and;
3. Any fines, penalties, or other amounts assessed against the Entity by reason of the Beartooth RC&D failure to comply with all health, safety, and environmental laws and regulations applicable to the services; resulting directly or indirectly from, or occurring in the course of the Beartooth RC&D performance of the services. However, this indemnity shall not extend to claims and liabilities for (i) injury or death to persons or (ii) loss of or damage to property to the extent that these claims and liabilities result directly from the Entity's negligence or willful misconduct.

**ARTICLE 14: INSURANCE:**

The Beartooth RC&D shall maintain and demonstrate the following types of insurance:

1. The Beartooth RC&D agrees that its employees and particularly the employees designated to work on this memorandum of understanding are covered by applicable Worker's Compensation provisions. The Beartooth RC&D further agrees that if the Entity should legally incur any costs whatsoever under the Worker's Compensation laws by reason of the Beartooth RC&D employees' injury or death while engaged in the contract work, the Beartooth RC&D will indemnify and hold harmless the Entity for such costs which the Entity may be legally be required to pay to employees of the Beartooth RC&D.

2. Comprehensive general liability insurance for bodily injury, death, or loss of or damage to property of third persons or other liability due to the negligent acts of the Beartooth RC&D in the minimum amounts of \$500,000 per occurrence and \$1,000,000 aggregate for personal injury; and \$500,000 per occurrence/aggregate for property damage. Proof of coverage as required by this section shall be delivered to the Entity within fifteen (15) days of execution of this Agreement.

3. Professional liability errors and omissions insurance in a minimum amount of \$100,000.00.

**ARTICLE 15: NONDISCRIMINATION:**

The Beartooth RC&D will not discriminate against any employee or applicant for employment relating to this project on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap or national origin. All hiring associated with any project shall be on the basis of merit and qualifications related to the requirements of the particular position being filled.

**ARITCLE 16: INDEPENDENT CONTRATOR:**

The Beartooth RC&D and the Entity agree that the Beartooth RC&D is an independent contractor with respect to the services provided pursuant to this Memorandum of Understanding. Nothing in this Memorandum of Understanding shall be considered to create the relationship of employer and employee between the parties hereto. Neither the Beartooth RC&D nor any employee of the Beartooth RC&D shall be entitled to any benefits accorded Entity's employees by virtue of the services provided under this Memorandum of Understanding. The Entity shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state Worker's Compensation program, nor shall the Entity be deemed in any way to assume the duties of an employer with respect to the Beartooth RC&D, or any employee of the Beartooth RC&D.

**ARTICLE 17: ASSIGNMENT:**

The Beartooth RC&D shall not sublet or assign any of the services covered by this Memorandum of Understanding without the express written consent of the Entity.

**ARTICLE 18: NON-WAIVER:**

Waiver by the County of any provision of this memorandum of understanding or any time limitation provided for in this memorandum of understanding shall not constitute a waiver of any other provision.

**ARTICLE 19: NOTICES:**

Any Notice to be served hereunder may be served upon the parties personally or served by certified mail, return receipt. Notice served by mail shall be deemed complete upon deposit of said notice in any United States Post Office, postage prepaid, directed to the party to be served, at the following addresses:

**ENTITY:**        **City of Billings**  
                  **PO Box 1178**  
                  **Billings, MT 59101**

**RC&D:**        **Beartooth RC&D**  
                  **P.O. Box 180**  
                  **Joliet, MT 59041**

**ARTICLE 20: INTEGRATED AGREEMENT:**

This Memorandum of Understanding together with attachments or addenda represents the entire and integrated Agreement between the Entity and the Beartooth RC&D and supersedes all prior negotiations, representations, or agreements, written or oral. This Memorandum of Understanding may be amended only by written instrument signed by both the Entity and the Beartooth RC&D.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals to this Memorandum of Understanding the day and year in this instrument first above written.

**CITY OF BILLINGS**

**BEARTOOTH RC&D/EDD**

\_\_\_\_\_  
William A. Cole  
Mayor

\_\_\_\_\_  
William Foisy  
Chairman

ATTEST: \_\_\_\_\_

Date: \_\_\_\_\_