

DATE: October 2, 2012
STAFF: John Voss

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

9

SUBJECT

Second Reading of Ordinance No. 102, 2012, Authorizing and Approving the Execution and Delivery by the City of a Site and Improvement Lease and a Lease Purchase Agreement and Related Documents, Concerning the Leasing by the City of Open Space and Natural Areas, a Deicing Materials Storage Facility and a Centralized Police Services Building, to Refinance the City's 2004 Lease Agreement at a Lower Interest Rate; Ratifying Action Previously Taken; and Providing Other Matters Related Thereto.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on September 18, 2012, authorizes the refinance of the 2004 Certificates of Participation (COPs). Bank of America has proposed terms for the new debt that result in a net present value savings of \$4.8 million and equates to 13.4% of the refunded principal. The 2012 debt will mature in the same time frames as before: Police through 2026, Natural Areas through 2019, and Transportation through 2024.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. Copy of First Reading Agenda Item Summary - September 18, 2012
(w/o attachments)

DATE: September 18, 2012
STAFF: John Voss

AGENDA ITEM SUMMARY
 FORT COLLINS CITY COUNCIL

24

SUBJECT

First Reading of Ordinance No. 102, 2012, Authorizing and Approving the Execution and Delivery by the City of a Site and Improvement Lease and a Lease Purchase Agreement and Related Documents, Concerning the Leasing by the City of Open Space and Natural Areas, a Deicing Materials Storage Facility and a Centralized Police Services Building, to Refinance the City's 2004 Lease Agreement at a Lower Interest Rate; Ratifying Action Previously Taken; and Providing Other Matters Related Thereto.

EXECUTIVE SUMMARY

Circumstances are favorable to refinance the 2004 Certificates of Participation (COPs). Bank of America has proposed terms for the new debt that result in a net present value savings of \$4.8 million and equates to 13.4% of the refunded principal. The 2012 debt will mature in the same time frames as before: Police through 2026, Natural Areas through 2019, and Transportation through 2024.

BACKGROUND / DISCUSSION

In 2004 COPs of \$48.7 million were issued to acquire open space areas that included Soapstone, Bobcat Ridge, Andrijeski, and Coyote Ridge; construct a new police facility; and construct a sand/salt storage facility for the streets department. Debt payments go through June 1, 2026. The average coupon interest on the remaining 2004 certificates is 5.19%.

Although market rates have been low for some time now, refinancing was delayed because the 2004 debt is not callable until June 1, 2014. An escrow account will continue to make payments on the 2004 COP's until the call date.

Bank of America submitted the best and lowest proposal among four proposals received through a Request for Proposal process. Terms are 1.82% through 2026, callable in 5 years, and a step down payment structure relating to each project that is similar to the existing debt service schedule.

The settlement date for issuing the refunding certificates is expected to occur before October 18, 2012.

Supporting the City in this financing deal are the law firm of Sherman & Howard and the financial consulting firm of BLX.

FINANCIAL / ECONOMIC IMPACTS

The net cash savings will be about \$5.9 million with a net present value of \$4.8 million that is 13.4% of the refunded principal. In 2013 the savings will be approximately \$648,000.

Refunding Impact to 2013 Budget

	Original 2013	Revised 2013	Change Inc(Dec)
General Fund	\$ 1,478,531	\$ 1,881,729	\$ 403,198
Capital Expansion Fund	350,090	350,090	-
Capital Project Fund	750,192	-	(750,192)
Police Facility	2,578,813	2,231,819	(346,994)
Natural Areas Fund	1,396,131	1,126,674	(269,458)
Transportation Fund	136,919	105,860	(31,059)
	<u>\$ 4,111,863</u>	<u>\$ 3,464,352</u>	<u>\$ (647,510)</u>

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

ATTACHMENTS

1. Powerpoint presentation

COPY

COPY

COPY

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ORDINANCE NO. 102, 2012

AN ORDINANCE AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY BY THE CITY OF A SITE AND IMPROVEMENT LEASE AND A LEASE PURCHASE AGREEMENT AND RELATED DOCUMENTS, CONCERNING THE LEASING BY THE CITY OF OPEN SPACE AND NATURAL AREAS, A DEICING MATERIALS STORAGE FACILITY AND A CENTRALIZED POLICE SERVICES BUILDING, TO REFINANCE THE CITY'S 2004 LEASE AGREEMENT AT A LOWER INTEREST RATE; RATIFYING ACTION PREVIOUSLY TAKEN; AND PROVIDING OTHER MATTERS RELATED THERETO.

WHEREAS, the City of Fort Collins, Colorado (the "City") is a home rule municipality and political subdivision of the State of Colorado (the "State") organized and existing under a home rule charter (the "Charter") pursuant to Article XX of the Constitution of the State; and

WHEREAS, the City is authorized by Article XX, Section 6 of the Colorado Constitution and Chapter 23, Article IV, Division 2 of the Code of the City of Fort Collins to sell, convey or otherwise dispose of any and all interests in real property owned in the name of the City, provided that the City Council of the City (the "City Council") first finds, by ordinance, that such sale or other disposition is in the best interests of the City; and

WHEREAS, the City has previously entered into a Site Agreement dated July 27, 2004, as amended by the First Amendment to Site Agreement dated as of May 1, 2005, between the City, as lessor, and Fort Collins Capital Leasing Corporation (the "Corporation"), as lessee (collectively, the "2004 Site Agreement"), and a Lease Agreement, dated July 27, 2004, as amended by the First Amendment to Lease Agreement dated as of May 1, 2005, between the Corporation, as lessor, and the City, as lessee (collectively, the "2004 Lease") pursuant to which the City currently leases certain natural areas or open space properties, a deicing materials storage facility and a centralized police services building (collectively, the "Leased Property"); and

WHEREAS, in connection with the execution and delivery of the 2004 Site Agreement and 2004 Lease, certain Certificates of Participation, Series 2004A (the "2004A Certificates") were executed and delivered pursuant to a Trust Indenture dated July 27, 2004 between the Corporation and the Trustee (the "2004 Indenture" and together with the 2004 Site Agreement and the 2004 Lease, the "2004 Documents"), and the proceeds thereof were used to acquire, construct and install the Leased Property and to fund certain street improvement projects (collectively, the "2004 Project"); and

WHEREAS, the City Council has determined, and now hereby determines, that it is in the best interest of the City and its inhabitants that the City refinance the 2004 Project by exercising the City's option to purchase the Corporation's interest in the Leased Property and refunding all the outstanding 2004A Certificates (the "Refunding Project"); and

WHEREAS, City Council has determined, and now hereby determines, that in order to effectuate the Refunding Project, and in connection with the City's exercise of its purchase option pursuant to the terms and provisions of the 2004 Documents, it is in the City's best interest to enter into a Site and Improvement Lease (the "Site Lease") pursuant to which the City, as lessor, will lease the Leased Property to U.S. Bank National Association, as trustee under the Indenture (the "Trustee") and to enter into a Lease Purchase Agreement (the "Lease") pursuant to which the City will lease back the Leased Property from the Trustee; and

WHEREAS, pursuant to the Lease, and subject to the right of the City to terminate the Lease and other limitations as therein provided, the City will pay certain Base Rentals and Additional Rentals (as such terms are defined in the Lease) in consideration for the right of the City to use the Leased Property; and

WHEREAS, the Trustee will enter into an Indenture of Trust (the "Indenture") pursuant to which there is expected to be issued certain certificates of participation (the "2012 Certificates") dated as of their date of delivery that shall evidence proportionate interests in the right to receive certain Revenues (as defined in the Lease), shall be payable solely from the sources therein provided and shall not directly or indirectly obligate the City to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect; and

WHEREAS, the net proceeds of sale of the 2012 Certificates are expected to be used, together with other available money of the City, to refinance the 2004 Project and effectuate the Refunding Project; and

WHEREAS, the City's obligation under the Lease to pay Base Rentals and Additional Rentals shall be from year to year only; shall constitute currently budgeted expenditures of the City; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional, statutory or Charter limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect; and

WHEREAS, there has been presented to the City Council and are on file with the City Clerk the following: (i) the proposed form of the Site Lease; (ii) the proposed form of the Lease; and (iii) the proposed form of Escrow Agreement (the "Escrow Agreement") between the City and U.S. Bank National Association, as escrow agent; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease; and

WHEREAS, Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes (the "Supplemental Act"), provides that a public entity, including the City, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS,
COLORADO:

Section 1. Ratification and Approval of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or the officers, agents or employees of the City Council or the City relating to the Site Lease, the Lease, the implementation of the Refunding Project, and the pricing, execution, delivery and sale of the 2012 Certificates is hereby ratified, approved and confirmed.

Section 2. Finding of Best Interests. The City Council hereby finds and determines, pursuant to the Constitution, the laws of the State, the Charter and the Code of the City, that the implementation of the Refunding Project and financing the costs thereof pursuant to the terms set forth in the Site Lease and the Lease, together with other available moneys of the City, are necessary, convenient, and in furtherance of the City's purposes and are in the best interests of the inhabitants of the City, and the City Council hereby authorizes and approves the same.

Section 3. Supplemental Act; Parameters. The City Council hereby elects to apply all of the Supplemental Act to the Site Lease and the Lease and in connection therewith delegates to each of the City Manager and the Financial Officer of the City (the "Financial Officer") the independent authority to make any determination delegable pursuant to Section 11-57-201(1)(a-i), Colorado Revised Statutes, in relation to the Site Lease and the Lease, and to execute a sale certificate (the "Sale Certificate") setting forth such determinations, including without limitation, the term of the Site Lease, the rental amount to be paid by the Trustee pursuant to the Site Lease, the term of the Lease and the rental amount to be paid by the City pursuant to the Lease, subject to the following parameters and restrictions: (a) the total amount of prepaid rental payments to be received by the City from the Trustee under the Site Lease shall not be less than \$34,000,000; (b) the Site Lease Term shall not extend beyond June 1, 2036; (c) the aggregate principal amount of the Base Rentals payable by the City pursuant to the Lease shall not exceed \$38,500,000; (d) the Lease Term shall not extend beyond June 1, 2026; and (e) the maximum net effective interest rate on the interest component of the Base Rentals relating to the 2012 Certificates shall not exceed 3.00%.

Pursuant to Section 11-57-205 of the Supplemental Act, the City Council hereby delegates to each of the City Manager or the Financial Officer the authority to sign a contract for the purchase of the 2012 Certificates or to accept a binding bid for the 2012 Certificates and to execute any agreement or agreements in connection therewith.

The delegation set forth in this Section 3 shall be effective for one year following the date hereof.

Section 4. Approval of Documents. The Site Lease, the Lease and the Escrow Agreement, in substantially the forms on file with the City Clerk, are in all respects approved, authorized and confirmed. The Mayor of the City is hereby authorized and directed to execute and deliver the Site Lease, the Lease and the Escrow Agreement, for and on behalf of the City, in substantially the forms and with substantially the same contents as on file with the City Clerk, provided that such documents may be completed, corrected or revised as deemed

necessary by the parties thereto in order to carry out the purposes of this Ordinance. The execution of the Site Lease, the Lease and the Escrow Agreement by the Mayor shall be conclusive evidence of the approval by the City Council of such documents in accordance with the terms hereof and thereof.

Section 5. Direction to Act. The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this Ordinance and to place the seal of the City on any document authorized and approved by this Ordinance. The Mayor, the Mayor Pro-Tem of the City, the City Manager, the Financial Officer, the City Clerk and other appropriate officials or employees of the City are hereby authorized and directed to execute and deliver for and on behalf of the City any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they deem necessary or appropriate, in order to implement and carry out the transactions and other matters authorized by this Ordinance. The approval hereby given to the various documents referred to above includes an approval of such additional details therein as may be necessary and appropriate for their completion, deletions therefrom and additions thereto as may be approved by bond counsel prior to the execution of the documents. The execution of any instrument by the aforementioned officers or members of the City Council shall be conclusive evidence of the approval by the City of such instrument in accordance with the terms hereof and thereof.

Section 6. No General Obligation Debt. No provision of this Ordinance, the Site Lease, the Lease, the Indenture, or the 2012 Certificates shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional, statutory or Charter provision, nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the then current fiscal year. The City shall not have any obligation to make any payment with respect to the 2012 Certificates except in connection with the payment of the Base Rentals and certain other payments under the Lease, which payments may be terminated by the City in accordance with the provisions of the Lease. The 2012 Certificates shall not constitute a mandatory charge or requirement of the City in any ensuing fiscal year beyond the then current fiscal year, and shall not constitute or give rise to a general obligation or other indebtedness of the City within the meaning of any constitutional, statutory or Charter debt limitation and shall not constitute a multiple fiscal year direct or indirect City debt or other financial obligation whatsoever. No provision of the Site Lease, the Lease or the 2012 Certificates shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the City within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. Neither the Site Lease, the Lease nor the 2012 Certificates shall directly or indirectly obligate the City to make any payments beyond those budgeted and appropriated for the City's then current fiscal year.

Section 7. Reasonableness of Rentals. The City Council hereby determines and declares that the Base Rentals due under the Lease, in the maximum amounts authorized pursuant to Section 3 hereof, constitute the fair rental value of the Leased Property and do not exceed a reasonable amount so as to place the City under an economic compulsion to renew the Lease or to exercise its option to purchase the Trustee's leasehold interest in the Leased Property pursuant to the Lease. The City Council hereby determines and declares that the period during which the City has an option to purchase the Trustee's leasehold interest in the Leased Property

(i.e., the entire maximum term of the Lease) does not exceed the useful life of the Leased Property. The City Council hereby further determines that the amount of rental payments to be received by the City from the Trustee pursuant to the Site Lease is reasonable consideration for the leasing of the Leased Property to the Trustee for the term of the Site Lease as provided therein.

Section 8. Exercise of Purchase Option. In connection with the execution and delivery of the Site Lease and the Lease, the City Council hereby directs the appropriate officials and officers of the City to take whatever action is deemed necessary to exercise the City's purchase option pursuant to the 2004 Documents and to purchase the Corporation's interest in the Leased Property pursuant to the terms and provisions of the 2004 Documents.

Section 9. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the City Council, or any officer or agent of the City acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the 2012 Certificates. Such recourse shall not be available either directly or indirectly through the City Council or the City, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the 2012 Certificates and as a part of the consideration of their sale or purchase, any person purchasing or selling the 2012 Certificates specifically waives any such recourse.

Section 10. Severability. If any section, subsection, paragraph, clause or provision of this Ordinance or the documents hereby authorized and approved (other than provisions as to the payment of Base Rentals by the City during the Lease Term, provisions for the quiet enjoyment of the Leased Property by the City during the Lease Term and provisions for the conveyance of the Trustee's leasehold interest in the Leased Property to the City under the conditions provided in the Lease) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance or such documents, the intent being that the same are severable.

Section 11. Repealer. All orders, resolutions, bylaws, ordinances or regulations of the City, or parts thereof, inconsistent with this Ordinance are hereby repealed to the extent only of such inconsistency.

Section 12. Charter. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this Ordinance are hereby superseded to the extent of any inconsistencies between the provisions of this Ordinance and such statutes. Any such inconsistency is intended by the City Council and shall be deemed made pursuant to the Charter.

Introduced, considered favorably on first reading and ordered published this 18th day of September, 2012.

CITY OF FORT COLLINS, COLORADO

Mayor

(SEAL)

ATTESTED:

City Clerk

Passed and adopted, without amendment, on final reading this 2nd day of October, 2012.

CITY OF FORT COLLINS, COLORADO

Mayor

(SEAL)

ATTESTED:

City Clerk

STATE OF COLORADO)
)
 COUNTY OF LARIMER) ss.
)
 CITY OF FORT COLLINS)

I, Wanda Nelson, City Clerk of the City of Fort Collins, Colorado (the “City”), do hereby certify the following:

1. The attached copy of Ordinance No. _____ (the “Ordinance”) is a true, correct and complete copy thereof.

2. The Ordinance was introduced, read, and approved on first reading by the City Council of the City (the “Council”) at a regular meeting thereof held at Council Chambers, City Hall, 300 West LaPorte Avenue, Fort Collins, Colorado, the regular meeting place thereof, on Tuesday, the 18th day of September, 2012, by the members of the Council as follows:

Name	“Yes”	“No”	Absent
Karen Weitkunat, Mayor			
Kelly Ohlson, Mayor Pro Tem			
Gerry Horak			
Aislinn Kottwitz			
Ben Manvel			
Lisa Poppaw			
Wade Troxell			

3. The Ordinance was duly published in full at least seven days before its final passage on the City’s official internet web site. In addition, the Ordinance was duly published by number and title only, together with a statement that the text thereof was available for public inspection and acquisition in the office of the City Clerk and on the City’s internet web site, in The Coloradoan, a newspaper of general circulation published in the City in its issue of September __, 2012 as evidenced by the certificate of the publisher attached hereto as Exhibit A. Both publications contained a notice giving the date when the Ordinance would be presented for final passage.

4. The Ordinance was passed and adopted, without amendment, on second reading by the City Council at a regular meeting thereof held at Council Chambers, City Hall, 300 West LaPorte Avenue, Fort Collins, Colorado, the regular meeting place thereof, on Tuesday, the 2nd day of October, 2012, by the members of the Council as follows:

Name	“Yes”	“No”	Absent
Karen Weitkumat, Mayor			
Kelly Ohlsen, Mayor Pro Tem			
Gerry Horak			
Aislinn Kottwitz			
Ben Manvel			
Lisa Poppaw			
Wade Troxell			

5. Following its final passage, the Ordinance was duly published in full on the City’s official internet web site within seven days following its final passage. In addition, a notice of the final passage of the Ordinance was duly published in The Coloradoan, a newspaper of general circulation published in the City, in its issue of October __, 2012, as evidenced by the certificate of the publisher attached hereto as Exhibit B.

6. A true copy of the Ordinance has been authenticated by the signatures of the Mayor of the City and myself as City Clerk and by the certificate of the publisher, sealed with the seal of the City, and numbered and recorded in a book marked “Ordinance Record” kept for that purpose in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins, Colorado this _____ day of October, 2012.

(CITY SEAL)

City Clerk
City of Fort Collins, Colorado

Exhibit A

(Attach certificate of publication of Ordinance after first reading)

Exhibit B

(Attach certificate of publication of Ordinance after final passage)