



Economic Health Office
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80522
970.416.2170
970.224.6107 - fax
fcgov.com

MEMORANDUM

DATE: August 20, 2013
TO: Mayor, and City Councilmembers
THROUGH: Darin Atteberry, City Manager *DA*
FROM: Josh Birks, Economic Health Director *JAB*
SeonAh Kendall, Business Retention Strategist *SK*
RE: **ITEM 26: RESOLUTION 2013-073 APPROVING AN AGREEMENT BETWEEN THE CITY AND CUSTOM BLENDING, INC., TO PROVIDE BUSINESS INVESTMENT ASSISTANCE**

This memorandum provides modification to correct erroneous dates listed on the Custom Blending Financial Incentives Agreement and to clarify the outreach to Council Finance Committee.

Dates corrected in the agreement:

- Item 3.4.2. Updated date to "no later than March 31, 2015..." in regard to submittal of Use Tax Rebate application to the City. In addition, the rebate allowance will include 2013 and 2014 and paid over a three-year period (these dates have also been updated to reflect the preceding change above).
- Item 4.3.3. Specification of the Personal Property Tax Rebate application due date.
- Item 4.3.4. Update the date of a Certificate of Occupancy on the Project to June 1, 2014.

City staff prepared a memorandum for Council Finance Committee's review on July 15, 2013. During the July meeting, the committee was supportive of the agreement.

BUSINESS INVESTMENT AGREEMENT
FOR ECONOMIC DEVELOPMENT
RELATED TO CUSTOM BLENDING

THIS AGREEMENT is entered into this _____ day of _____, 2013, effective as of June 8, 2012, by and between the City of Fort Collins, Colorado, a home rule municipal corporation (the "City"), and Custom Blending, Inc., a Colorado Corporation ("Custom Blending").

RECITALS

WHEREAS, Custom Blending is the owner of property located at 3461 Precision Drive in the City that is more fully described in Exhibit A and incorporated herein by this reference (the "Property"); and

WHEREAS, Custom Blending has committed to expanding the Property by to include a new 34,000 square foot expansion to be fully completed and operational by the end of 2013 (the "Project"); and

WHEREAS, the Project will consist of a construction expansion and remodel in addition to an investment in equipment; and

WHEREAS, Custom Blending estimates that the total investment in the Project will be more than \$6 million (including both construction and equipment purchases) and that the completion of the Project will result in the creation of approximately 16 net new jobs earning with an annual average salary between \$45,000 – \$47,000, and that will provide significant economic benefit to the community at large; and

WHEREAS, the City's Economic Health Office has concluded that the Project will generate an increase in tax revenue for the City, including approximately (i) \$ 203,000 in sales and use tax after rebates; and (ii) \$12,400 in new personal property tax in the first ten years; and

WHEREAS, according to the Economic Health Office, the Project will prevent primary jobs from leaving Fort Collins to other sites in Northern Colorado and elsewhere; and

WHEREAS, according to the Economic Health Office, the Project will bring a vanilla extract manufacturing to the City that has previously occurred out-of-state; and

WHEREAS, Custom Blending has requested that the City enter into a business investment agreement for economic development related to the Project; and

WHEREAS, based on Custom Blending's representations that the Project will (i) be a high quality manufacturing facility that will be owned and operated by Custom Blending, (ii)

generate new primary jobs, and (iii) have a reasonable expectation of long-term operations in the City; and

WHEREAS, in order to encourage the Project, the City Council has determined, through the adoption of Resolution 2013-XXX on August 20, 2013, that it is in the best interests of the City to provide a package of financial assistance for the Project consisting of two components: the rebate of new City use tax revenues generated by the Project and the rebate of City personal property tax on new Eligible Equipment installed as part of the Project; and

WHEREAS, the City Council has further determined, through the adoption of Resolution 2013-XXX that providing the financial assistance described in this Agreement to Custom Blending will serve the important public purposes of maintaining and increasing employment in the City, stabilizing and improving the long term tax base of the City, and providing additional economic development benefits to the City.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows.

SECTION 1. DEFINITIONS

Application for Use Tax Rebate means the application process for a use tax rebate using forms provided by the City.

Custom Blending means Custom Blending, Inc., a Colorado Corporation.

Building Expansion means that building located at 3461 Precision Drive.

Certificate of Occupancy has the same meaning as set forth in the City of Fort Collins Land Use Code.

Charter means the Home Rule Charter of the City.

City means the City of Fort Collins, Colorado, a home rule municipal corporation.

Code means the Code of the City of Fort Collins.

County Assessor means the Larimer County Assessor.

Development Agreement means that agreement required when plans, profiles and specification have been approved by the City pursuant to the Land Use Code.

Eligible Equipment means new manufacturing equipment and electronic equipment that is installed or delivered to the Property and incorporated between August 20, 2013 and December 31, 2014, that the installation of which is necessary allow for operation of the Manufacturing Facility. All equipment must be newly installed and located within Custom Blending's facilities

at 3461 Precision Drive, in Fort Collins, Colorado within the time period required in this Agreement.

Employment Target means employment by Custom Blending of no fewer than 51 full-time employees at its Facility as of December 31, 2015.

Facility means the approximately 34,000 square foot Building Expansion facility to be developed, constructed and installed beginning in 2013 and to be fully completed and operational in 2013.

Land Use Code means the Fort Collins Land Use Code.

Manufacturing Equipment Use Tax Rebate Program or Program means the program for generally available limited rebate of use taxes for manufacturing equipment, as described in Chapter 8 of the Code.

Project means Custom Blending's Building Expansion by the development of approximately 34,000 square feet for use as an Manufacturing Facility, pursuant to such building permit as may be issued by the City for the same, and shall include construction as well as acquisition and installation of the Eligible Equipment .

Project Personal Property means the investments in Eligible Equipment and leasehold improvements made by Custom Blending as part of the Project.

Use Tax Rebate means the rebate of use taxes to Custom Blending described in Section 3 of this Agreement. The Use Tax Rebate as described herein is intended to be in lieu of, and not a duplication of, the Manufacturing Equipment Use Tax Rebate Program, which Program Custom Blending agrees it is not entitled to participate in for the Eligible Equipment. Failure to execute this agreement does not exclude Custom Blending from receiving rebates from the Manufacturing Use Tax Rebate Program.

SECTION 2. REPRESENTATIONS AND COVENANTS

2.1. The City represents and covenants that:

2.1.1. The City is a home rule municipal corporation of the State of Colorado.

2.1.2. There is no litigation or administrative proceeding pending or, to the knowledge of the City, threatened, seeking to question the authority of the City to enter into or perform this Agreement.

2.1.3. The City reasonably believes that it has the authority to enter into the Agreement, and, assuming such authority, the City Council has properly and regularly authorized the City to enter into the Agreement.

2.2. Custom Blending represents and covenants that:

- 2.2.1. Custom Blending is a corporation, duly organized and validly existing under the laws of the State of Colorado, is authorized to do business in the State of Colorado, is not in violation of any provisions of its organizational documents or, to its knowledge, the laws of the State of Colorado.
- 2.2.2. Custom Blending has the power and legal right to enter into the Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action, which Agreement will be enforceable against Custom Blending in accordance with its terms.
- 2.2.3. The consummation of transaction contemplated by this Agreement will not violate any provision of the governing documents of Custom Blending or, to its knowledge, constitute a default or result in the breach of any term or provision of any contract or agreement to which Custom Blending is a party or by which it is bound.
- 2.2.4. To its knowledge, there is no litigation, proceeding, or investigation contesting the power of authority of Custom Blending with respect to the Project or this Agreement, and Custom Blending is unaware of that any such litigation, proceeding, or investigation has been threatened.
- 2.2.5. In redeveloping the Property, Custom Blending will comply with all applicable zoning and land use requirements and other applicable federal, state, county, and City statutes, rules, regulations and ordinances.
- 2.2.6. Custom Blending intends to operate, or cause to operate, in Building Expansion a new, Manufacturing Facility through December 31, 2021.
- 2.2.7. Custom Blending will cooperate with the City in taking reasonable actions to defend against any litigation brought by a third party concerning the Project or this Agreement.

SECTION 3. PAYMENT AND REIMBURSEMENT OF USE TAXES

3.1. Custom Blending shall pay to the City all use taxes due from Custom Blending for its Eligible Equipment investment associated with the Project to develop and equip the Manufacturing Facility.

3.2. To the extent permitted by the constitution and laws of the State of Colorado and the Charter, including but not limited to, applicable prohibitions on multiple fiscal year obligations and the condition all obligations be contingent upon the appropriation of funds sufficient and intended therefore by the City Council of the City, in its sole discretion, the City agrees to rebate the following amounts to Custom Blending up to seventy-five percent (75%) of City use taxes paid by Custom Blending for the Eligible Equipment for the period beginning August 20, 2013 and ending December 31, 2014, as described in Section 3.3 (the "Use Tax Rebate"), subject to a limit on the total use tax rebate amount for the Project, of Thirty-One Thousand, One Hundred Thirty Dollars (\$31,130) (the "Maximum Use Tax Reimbursement"). Custom Blending shall not be eligible for a Use Tax Rebate for any use tax paid on any Eligible Equipment unless it has accurately designated and identified the Eligible Equipment on a separate schedule as part of the use tax submission for such Eligible Equipment.

3.3. The Use Tax Rebates here under shall be conditioned upon the full payment by Custom Blending to the City of all use taxes due and owing from Custom Blending, provided that all applicable conditions are met. If Custom Blending has not paid any use taxes owed to the City due to a good faith dispute as to whether such use tax is due, and such dispute has not been resolved by the time Company requests a Use Tax Rebate hereunder, or if Custom Blending otherwise fails to pay any use taxes owed to the City when due and such use taxes remain unpaid at the time the Company requests a Use Tax Rebate hereunder, then the City may reduce the requested Use Tax Rebate by the amount in dispute until resolution of the dispute, payment of the use tax or payment under protest of the use tax, as the case may be.

3.4. Custom Blending shall apply for the Use Tax Rebate in accordance with the provisions hereafter set forth. The amount of Use Tax Rebate payable by the City and the time when such rebate shall be paid are hereinafter set forth:

3.4.1. In order to be eligible for any Use Tax Rebate hereunder, Custom Blending shall submit an Application for Use Tax Rebate for rebate of City use taxes paid on Eligible Equipment, any such Application (and each such Application for Use Tax Rebate submitted pursuant to this Section 3.3) must identify each item of Eligible Equipment in a manner consistent with, and corresponding to, the manner in which such item of Eligible Equipment was designated and identified in connection with the payment of use taxes for said item.

3.4.2. No later than March 31, 201~~5~~³ Custom Blending shall submit an Application for Use Tax Rebate for rebate of City use taxes paid on Eligible Equipment purchased between August 20, 2013 and December 31, 2014. The related Use Tax Rebate to Custom Blending for 2013 and 2014 use taxes hereunder (the "Total Rebate Payment") will be paid over a period of three (3) years, with the initial installment of thirty-three and one-third percent (33.3%) of the total amount of the Total Rebate Payment due and payable no later than June 30, 201~~5~~⁴, with a second installment of the same amount due and payable no later than June 30, 201~~6~~⁵, and with a final installment equal to thirty-three and one-third percent (33.3%) of the Total Rebate Payment due and payable no later than June 30, 201~~7~~⁶.

3.4.3. The parties acknowledge that the intended effect of this Agreement is to increase net employment by Custom Blending at the Employment Target level. In addition to the specific requirements for net new jobs described below in Section 3.4.5, Custom Blending agrees to maintain no fewer than substantially the same number of employees within its Fort Collins facility (excluding the new jobs as contemplated hereunder) as Custom Blending employed in Fort Collins as of June 30, 2013, which, for the purposes of this Agreement, shall be deemed to have been thirty-five (35) employees. If this level has not been maintained at the time of any payment of Use Tax Rebate hereunder, the City will reduce the Total Rebate Payment amount due in a manner proportional to the difference between the then current Fort Collins employment and the initial employment level of 35.

3.4.4. In the event that the City determines that Custom Blending has not met the Employment Target, the City may reduce the amount of any Use Tax Rebate installment to be paid during the period of such non-compliance by the percentage of shortfall from the Employment Target.

3.5. The City, in its sole discretion, may pre-pay all or any portion of the Use Tax Rebate, without penalty.

3.6. Custom Blending assumes the entire risk that the Project will be unable to begin operations and pay use tax on Eligible Equipment by December 31, 2014, so as to qualify for the Maximum Use Tax Reimbursement, and further assumes all risk associated with legal contingencies limiting the City's obligation to make any payments in future fiscal years and conditioning all future fiscal year obligations on the City's discretionary appropriation of funds therefor.

3.7. It is not the parties' intent that Custom Blending be paid or entitled to any interest or penalty on use taxes paid by Custom Blending, or any penalty or interest on Use Tax Rebate payments delayed or withheld by the City.

3.8. In addition to limit of the Maximum Use Tax Reimbursement, the parties further acknowledge and agree that the Use Tax Rebate for any Eligible Equipment will not at any time be allowed to exceed the amount of City use tax actually paid to the City on such Eligible Equipment. Custom Blending further acknowledges and agrees that the City is in no way responsible for the amount of City use tax actually paid or collected for the Eligible Equipment or any other equipment or corporeal property of Custom Blending.

3.9. The parties agree that the provisions of this Agreement do not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation or provision. The commitment of the City to pay the Use Tax Rebate under this Agreement is from year to year only and does not constitute a mandatory payment obligation of the City in any fiscal year beyond the present fiscal year. This Agreement does not directly or indirectly obligate the City to make any payment of a Use Tax Rebate beyond those for which funds have been appropriated as of the date of this Agreement. The City Manager (or any other officer or employee at the time charged with the responsibility of formulating budget proposals) shall make a good faith effort to include in the budget proposals and appropriation ordinances proposed to the City Council, in each year prior to expiration of this Agreement, amounts sufficient to meet the City's commitments hereunder, subject to the conditions and contingencies set forth herein. Notwithstanding the foregoing, the parties expressly acknowledge that the decision as to whether to appropriate such amounts is in the discretion of the City Council.

SECTION 4. PAYMENT AND REBATE OF PERSONAL PROPERTY TAXES

4.1. Custom Blending shall pay to the City all personal property taxes due from Custom Blending Project Personal Property associated with the Project and Building Expansion to develop and equip the Manufacturing Facility.

4.2. To the extent permitted by the constitution and laws of the State of Colorado and the Charter, including but not limited to, applicable prohibitions on multiple fiscal year obligations and the condition all obligations be contingent upon the appropriation of funds sufficient and intended therefore by the City Council of the City, in its sole discretion, the City agrees to rebate to Custom Blending a portion of the City personal property taxes paid for the Project Personal Property under the terms and conditions set forth in Section 4.3 below (the "Personal Property Tax Rebate"). If, as presently contemplated by the parties, the contingencies and requirements described in this Agreement are satisfied as to each of the seven (7) payments provided for therein, and subject to the legal limitations as noted above, the City will rebate to Custom Blending up to the amount shown on the Payment Schedule defined below, of City personal property taxes actually paid for the Project Personal Property in the increments and for the time periods described therein, subject to a limit on the total amount of Personal Property Tax Rebate to be paid by the City of Twelve Thousand Three Hundred Ninety-Five Dollars (\$12,395) in total, and a limit on each annual payment of Two Thousand, Seven Hundred Fifty-Four Dollars (\$2,754). The parties acknowledge that the intended effect of this Agreement is to increase net employment by Custom Blending at the level described as the Employment Target. In addition to the specific requirements for net new jobs described below in Section 4.3, Custom Blending agrees to maintain no fewer than substantially the same number of employees within its Fort Collins facility (excluding the new jobs as contemplated hereunder) as Custom Blending employed in Fort Collins as of June 30, 2013, which, for the purposes of this Agreement, shall be deemed to have been thirty-five (35) employees. If this level has not been maintained at the time of any payment of Personal Property Tax Rebate hereunder, the City will reduce the Personal Property Tax Rebate amount due in a manner proportional to the difference between the then current Fort Collins employment and the initial employment level of 35.

4.3. The payments of Personal Property Tax Rebates referenced in Section 4.2 above will be made by the City to Custom Blending as follows:

4.3.1. Custom Blending has supplied a 7 year schedule of estimated personal property taxes to be paid in calendar years 2015 through 2022 for the Project Personal Property ("Payment Schedule") associated with the Project as described in this Agreement, attached hereto as Exhibit B and incorporated herein by this reference. This Payment Schedule also provides the basis for a schedule of personal property tax rebate payments.

4.3.2. At its option, Custom Blending may, no later than December 31, 2014, submit one updated 7 year schedule of estimated personal property taxes to be paid in calendar years 2015 through 2022 for Project Personal Property installed during the Project (“Revised Payment Schedule”), subject to the City’s review and written approval, in its reasonable discretion. If a Revised Payment Schedule has been approved, it shall upon approval become the operative schedule for the purposes of this Agreement, and shall thenceforth replace the Payment Schedule originally attached hereto. If no such Revised Payment Schedule is submitted and approved by December 31, 2014, then no revision to the Payment Schedule shall be made, except as otherwise provided in this Agreement.

4.3.3. Custom Blending shall apply for each annual rebate payment no later than June 30 using a form to be provided by the City. The annual Personal Property Tax Rebate contemplated by this Section will be paid by December 31 of each year, with the first such annual payment scheduled for 2015, as set forth in the Payment Schedule.

4.3.4. Custom Blending expressly agrees that no portion of the Personal Property Tax Rebate will be paid if, at the time specified for payment, the City determines that Custom Blending has not received a Certificate of Occupancy for the Project on or before ~~December 31, 2013~~June 1, 2014, and thereafter continuously operated the Manufacturing Facility as described in this Agreement.

4.3.5. The City may reduce the amount of any Personal Property Tax Rebate paid during any period non-compliance with any of the following requirements, by the percentage of shortfall from full compliance with each such requirement:

- (a) Custom Blending shall have actually paid to the City personal property taxes equal to or greater than two (2) times the combined total of all Personal Property Tax Rebates scheduled to be paid by the City to Custom Blending for that year under the Agreement;
- (b) Custom Blending shall have maintained no fewer than 35 full-time jobs in Fort Collins for the payment made to Custom Blending in 2015, and, for all subsequent payments, shall meet the Employment Target.

4.4. The City reserves the right to modify the Payment Schedule in the event that material change to the City’s mill levy or personal property tax assessment methodology would make the Payment Schedule provided herein inconsistent with the parties’ intent that the Personal Property Tax Rebate not exceed fifty percent (50%) of the amount of personal property tax actually collected by the City for the Eligible Equipment installed and operating as part of the Facility.

4.5. The parties agree that the City may, at its option, require Custom Blending to make available to the City all documents that verify the purchase of Project Personal Property installed in Manufacturing Building whether or not as part of the Project, including the County Assessor's certification of value. The City agrees that, except as otherwise provided by law or applicable court order, such documents constitute privileged information and confidential financial data within the meaning of the Colorado Open Records Act, and, to the extent permitted by law, the City will deny the right of inspection of such documents to any third party without the consent of Custom Blending.

4.6. The City, in its sole discretion, may pre-pay all or any portion of the Personal Property Tax Rebate, without penalty.

4.7. Custom Blending assumes the entire risk that the Project will be unable to begin and maintain operations at the levels sufficient to generate the level of personal property tax identified above, and the risk that all or any portion of the Personal Property Tax Rebate may be forfeited unless the requirements of this Agreement have been satisfied. Custom Blending further assumes all risk associated with legal contingencies limiting the City's obligation to make any payments in future fiscal years and conditioning all future fiscal year obligations on the City's discretionary appropriation of funds therefor.

4.8. It is not the parties' intent that Custom Blending be paid or entitled to any interest or penalty on personal property taxes paid, or any penalty or interest on Personal Property Tax Rebate payments delayed or withheld by the City.

4.9. The parties agree that the provisions of this Agreement do not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation or provision. The commitment of the City to pay the Personal Property Tax Rebate described in this Agreement is from year to year only and does not constitute a mandatory payment obligation of the City in any fiscal year beyond the present fiscal year. This Agreement does not directly or indirectly obligate the City to make any payment of any Personal Property Tax Rebate beyond those for which funds have been appropriated as of the date this Agreement. The City Manager (or any other officer or employee at the time charged with the responsibility of formulating budget proposals) shall make a good faith effort to include in the budget proposals and appropriation ordinances proposed to the City Council, in each year prior to expiration of this Agreement, amounts sufficient to meet the City's commitments hereunder, subject to the conditions and contingencies set forth herein. Notwithstanding the foregoing, the parties expressly acknowledge that the decision as to whether to appropriate such amounts is in the discretion of the City Council.

SECTION 5. RECORDS AND AUDITS

5.1. Custom Blending must keep true, accurate and complete records of all equipment installed and operated in Manufacturing Facility and identifying and document all equipment and Project Personal Property installed or operated in the Manufacturing Facility, whether or not as part of the Project, which records will be available for inspection by the City without unreasonable delay and without City expense. Custom Blending agrees that the City has the right, through its duly authorized agents or representatives, to examine all such records upon ten (10) days notice at all reasonable times, for the purpose of determining the accuracy and propriety of the financial representations which have been made by Custom Blending as well as the right to inspect and inventory the Project Personal Property in or associated with the Manufacturing Facility in order to confirm that the same is in place and in use as required in connection with any rebate hereunder. This right of review and inspection terminates upon termination of the later of the City's payments of Use Tax Rebate as provided in Section 3 of this Agreement and the payments of Personal Property Tax Revenues as provided in Section 4 of this Agreement. In the event that the City becomes the custodian of any such records which may contain trade secrets or confidential or proprietary information, and are so marked, the City will, to the extent permitted by law, protect the confidentiality of such information and deny any request for inspection of such records.

5.2. The City will keep, or cause to be kept, true, accurate and complete records of all calculations relating to the Use Tax Rebate; the Personal Property Tax Rebate and such other calculations, allocations and payments required by this Agreement, and will make such records available for inspection by Custom Blending upon ten (10) days notice at all reasonable times, to the extent permitted by law.

SECTION 6. RESTRICTIONS ON ASSIGNMENT

6.1. The qualifications of Custom Blending to accomplish the objectives of the City hereunder are of particular concern to the City. Therefore, no voluntary or involuntary successor in interest of Custom Blending shall acquire any rights or powers under this Agreement except as expressly set forth herein and Custom Blending will not assign all or any part of this Agreement, except either:

6.1.1. with the prior written approval of the City, through its City Council, in its sole discretion; or

6.1.2. as collateral to a lender in connection with the financing of the Project.

6.2. Custom Blending must notify the City within fifteen (15) days of any and all changes whatsoever in the identity of the parties in control of Custom Blending, or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

SECTION 7. EVENTS OF DEFAULT; REMEDIES

7.1. Default or an event of default by Custom Blending mean one or more of the following events:

7.1.1. Any representation or warranty made in this Agreement by Custom Blending was materially inaccurate when made or shall prove to be materially inaccurate;

7.1.2. Custom Blending assigns or attempts to assign this Agreement in violation of Section 6 of this Agreement; or

7.1.3. Custom Blending fails to substantially observe or perform any other material covenant, obligation or agreement required under this Agreement.

7.2. In order to exercise any remedy for default hereunder, upon the occurrence of any event of default, the City shall provide written notice to Custom Blending. Custom Blending must immediately proceed to cure or remedy such default, and in any event, such default shall be cured within thirty (30) days after receipt of the notice, or such longer time as the City and Custom Blending agree in writing. Upon the failure of Custom Blending to so cure any such default, the City shall have all remedies available to it, in law or in equity, excluding specific performance.

7.3. Default or an event of default by the City shall mean one or more of the following events:

7.3.1. Any representation or warranty made in this Agreement by the City was materially inaccurate when made or shall prove to be materially inaccurate; or

7.3.2. perform any nonmonetary, material covenant, obligation or agreement required of it under this Agreement.

7.4. Upon the occurrence of any event of default, Custom Blending will provide written notice to the City. The City must immediately proceed to cure or remedy such default, and in any event, such default shall be cured within thirty (30) days after receipt of the notice, or such longer time as the City and Custom Blending agree in writing. Upon the failure of the City to so cure any such default, Custom Blending will have all remedies available to it, in law or in equity excluding specific performance.

SECTION 8. NOTICES

8.1. All notices required or permitted hereunder shall be in writing and shall be effective upon mailing, deposited in the United States Mail, postage prepaid, and addressed to the intended recipient as follows. Any party can change its address by written notice to the other given in accordance with this Section.

8.1.1. City of Fort Collins: City of Fort Collins
Attention: City Manager
300 LaPorte Avenue, PO Box 580
Fort Collins, CO 80522-0580

8.1.2. With a copy to: City of Fort Collins
Attention: City Attorney
300 LaPorte Avenue, PO Box 580
Fort Collins, CO 80522-0580

8.2. Custom Blending: _____ Custom Blending, Inc.
Attention: ~~General Counsel~~ [Scott Sliski](#)
3461 Precision Drive
Fort Collins, CO 80528

8.3. With a copy to: ~~Need a new name~~ [Minor & Brown, P.C.](#)
[Barb Wells or Lisa D' Ambroisa](#)
[650 South Cherry Street, Suite 1100](#)
~~8.3.~~ [Denver, CO 80246](#)
~~Custom Blending, Inc.~~
~~3461 Precision Drive~~
~~Fort Collins, CO 80528~~

Formatted: Indent: Left: 2", No bullets or numbering

SECTION 9. MISCELLANEOUS

9.1. Binding Effect. This Agreement inures to the benefit of and is binding upon the City and Custom Blending and Custom Blending's assignees permitted pursuant to Section 6 of this Agreement, if any.

9.2. No Third Party Beneficiaries. The City is not obligated or liable under the terms of this Agreement to any person or entity not a party hereto except any assignee permitted pursuant to Section 6 of this Agreement. Further, the City is not bound by any contracts or conditions that Custom Blending may negotiate with third parties related to the Project.

9.3. Interpretation, Jurisdiction and Venue. This Agreement is being executed and delivered and is intended to be performed in the State of Colorado, and the laws of Colorado, excluding its conflicts of laws principles, govern the validity, construction, enforcement and interpretation of this Agreement. Exclusive jurisdiction and venue for resolution of any dispute arising hereunder will be in the Larimer County, Colorado District Court.

9.4. Entire Agreement. This Agreement embodies the whole agreement of the parties concerning financial assistance by the City for the Project. Although it is anticipated there will be at least one other agreement governing general development issues related to the Project, there are no promises, terms, conditions, or obligations other than those contained herein exist with respect to the financial assistance package. This Agreement supersedes all provisions, communications, representations, or agreement, either verbal or written, between the parties with respect to the financial assistance package.

9.5. Waiver of Breach. Any waiver of any requirement or obligation hereunder must be in writing to be effective. Any waiver by either party to this Agreement of any term or provision of this Agreement will be narrowly construed, and will not operate or be construed as a subsequent or continuing waiver of said term or provision.

9.6. Article and Section Captions. The captions of the articles and sections of this Agreement are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

9.7. City and Custom Blending Not Partners. Notwithstanding any language in this Agreement, the City is not a member, partner, or joint venturer of Custom Blending, and the City shall not be responsible for any debt or liability of Custom Blending or its contractors or agents. Custom Blending is not responsible for any debt or liability of the City or their contractors or agents.

9.8. Severability. If any portion or portions of this Agreement are determined to be illegal or unenforceable, the remainder of this Agreement will not be affected thereby and will remain in full force and effect as if such illegal or unenforceable portion or portions did not exist. If all or any portion of the payments required by the terms of this Agreement are determined, by a court of competent jurisdiction in a final non-appealable judgment, to be contrary to public policy or otherwise precluded, and if the decision of such court clearly indicates how the payments may be made differently and in a manner that is legal, valid and enforceable, then the Parties will utilize their reasonable, best, good faith efforts to promptly restructure and/or amend this Agreement in accordance with such court decision, or to enter into a new agreement, to assure, to the extent legally permissible, that all payments are made to Custom Blending as contemplated by this Agreement.

9.9. Originals. This Agreement may be simultaneously executed in any number of counterparts, each of which will be deemed original but all of which constitute one and the same Agreement.

9.10. Joint Draft. The parties agree they drafted this Agreement jointly with each having the advice of legal counsel and an equal opportunity to contribute to its content.

IN WITNESS WHEREOF, the City and Custom Blending have executed this Agreement as of the date first above written.

CITY OF FORT COLLINS, COLORADO
a municipal corporation

By: _____
Darin A. Atteberry, City Manager

Attest:

City Clerk

Approved as to form:

Deputy City Attorney

CUSTOM BLENDING, INC.
a Colorado corporation

By: _____
Name and title

Attest:

Corporate Secretary

CORPORATE SEAL

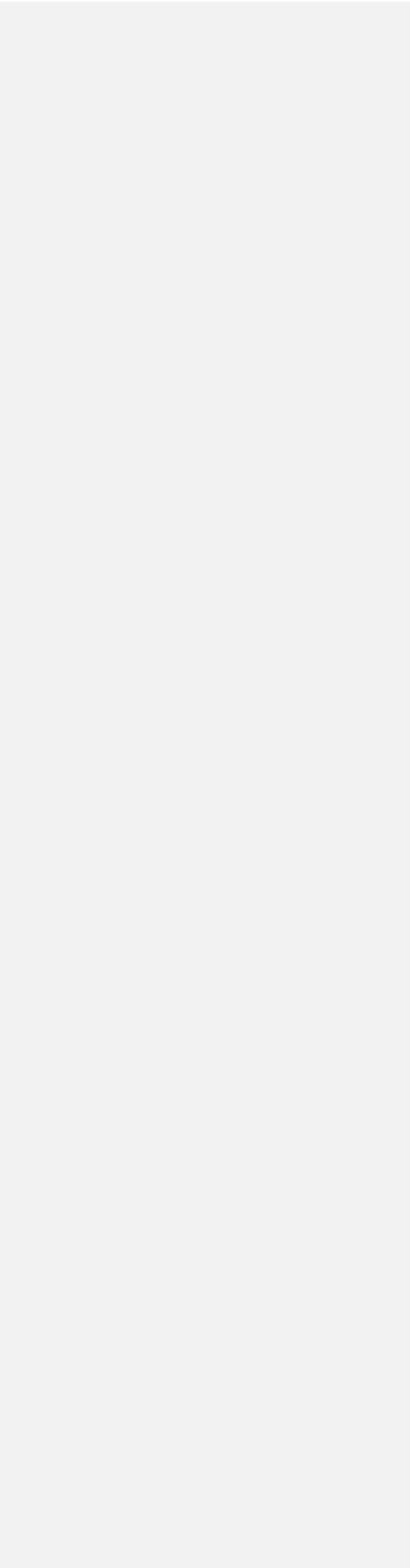


EXHIBIT A

PROPERTY DESCRIPTION:

LOT 2, HARMONY TECHNOLOGY PARK 3RD, FTC (20080034504)

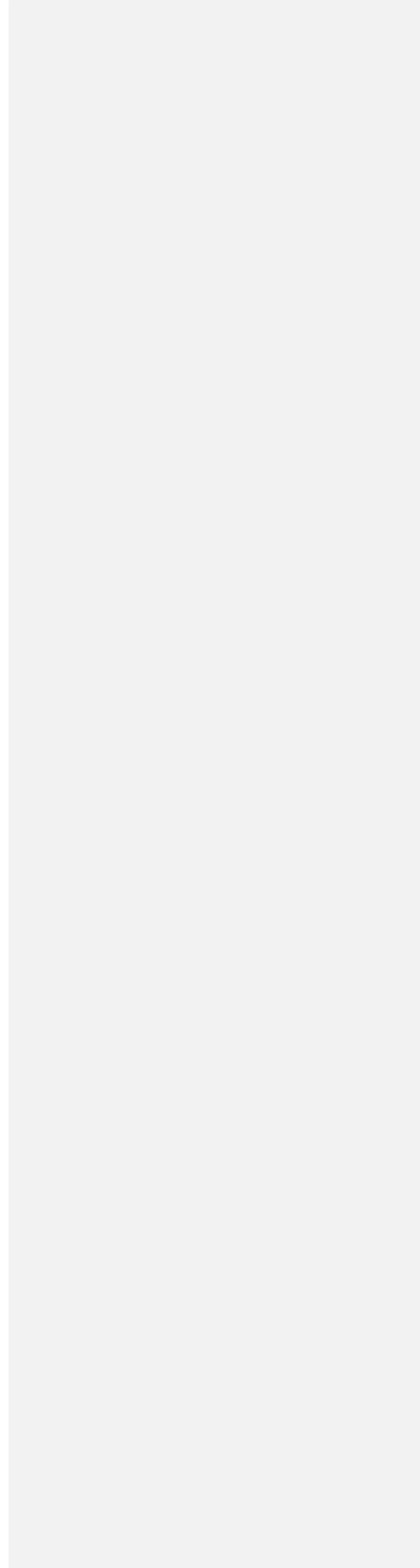


Exhibit B
Custom Blending
Personal Property Tax Rebate Estimate

| Assessed Year | Payable Year | Actual Value Starting | Assessment Rate | Assessed Value | City Mill | City Taxes | County Fee | Tax Paid to City | Rebate Rate | Eligible Max Rebate | Depreciation | Ending Value |
|---------------|--------------|-----------------------|-----------------|----------------|-----------|------------|------------|------------------|-------------|---------------------|--------------|--------------|
| 2014 | 2015 | 1,978,561 | 29% | 573,783 | 0.009797 | 5,621 | 2% | 5,509 | 50% | 2,754 | 141,665 | 1,836,896 |
| 2015 | 2016 | 1,836,896 | 29% | 532,700 | 0.009797 | 5,219 | 2% | 5,114 | 50% | 2,557 | 282,538 | 1,554,357 |
| 2016 | 2017 | 1,554,357 | 29% | 450,764 | 0.009797 | 4,416 | 2% | 4,328 | 50% | 2,164 | 282,538 | 1,271,819 |
| 2017 | 2018 | 1,271,819 | 29% | 368,827 | 0.009797 | 3,613 | 2% | 3,541 | 50% | 1,771 | 282,538 | 989,280 |
| 2018 | 2019 | 989,280 | 29% | 286,891 | 0.009797 | 2,811 | 2% | 2,754 | 50% | 1,377 | 282,538 | 706,742 |
| 2019 | 2020 | 706,742 | 29% | 204,955 | 0.009797 | 2,008 | 2% | 1,968 | 50% | 984 | 282,538 | 424,203 |
| 2020 | 2021 | 424,203 | 29% | 123,019 | 0.009797 | 1,205 | 2% | 1,181 | 50% | 591 | 282,538 | 141,665 |
| 2021 | 2022 | 141,665 | 29% | 41,083 | 0.009797 | 402 | 2% | 394 | 50% | 197 | 141,665 | - |
| | | | | | | | | | | 12,395 | | |