

RESOLUTION 85 - 170
OF THE COUNCIL OF THE CITY OF FORT COLLINS, COLORADO
SETTING FORTH THE INTENTION
OF THE CITY OF FORT COLLINS, COLORADO
TO ISSUE INDUSTRIAL DEVELOPMENT REVENUE BONDS
FOR J & E ENTERPRISES

WHEREAS, representatives of J & E Enterprises, a Colorado general partnership (the "Company") consisting of James E. Laudick, Jr. and Jean M. Laudick, the sole shareholders of Alpine Manufacturing, Inc., have met with officials of the City of Fort Collins, Colorado (the "City"), and have advised the City of the interest of the Company in constructing an office and manufacturing building subject to the willingness of the City to finance the project (the "Project") by the issuance of industrial development revenue bonds, pursuant to the Colorado County and Municipality Development Revenue Bond Act constituting Article 3, Title 29, Colorado Revised Statutes, as amended (the "Act"); and

WHEREAS, the Company has represented to the City that the Project will qualify as a project within the meaning of the Act; and

WHEREAS, the Project consists of the acquisition and development of land and the construction and equipping of an office and manufacturing building designed to be leased to Alpine Manufacturing, Inc. which will create additional jobs for residents of Larimer County and the City; and

WHEREAS, the Council has considered the proposal and has concluded that the economic benefits to be derived therefrom by the City will be substantial; and

WHEREAS, the Council has determined the Project to be consistent with the goals and objectives of the City; and

WHEREAS, the Council desires to indicate its intent to proceed with financing the Project through the issuance of such revenue bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS, COLORADO:

Section 1. In order to induce the Company to locate and construct the Project within eight miles of the City, the City shall, subject to the provisions hereof, take all necessary and advisable steps to effect the issuance of industrial development revenue bonds (the "Bonds") pursuant to the Act in the maximum aggregate principal amount of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) or such lesser amount as shall be determined and agreed upon by the Company and the City to finance the Project.

The Bonds will not be general obligations of the City. Neither shall the Bonds, including interest thereon, constitute the debt or indebtedness of the City within the meaning of any limitation of the Constitution or statutes of the State of Colorado or the Charter of the City, nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers. The Bonds shall be payable solely from and secured by a pledge of revenues derived from and payable by the Company pursuant to financing agreements with the City.

Section 2. No costs or expenses, whether incurred by the City or any other party in connection with the issuance of the Bonds or the preparation of any documents by any legal or financial consultants retained in connection therewith, shall be borne by the City. All such costs or expenses shall be paid from the proceeds of the Bonds or otherwise borne by the Company. In addition to the costs and expenses to be borne by the Company as described in the preceding sentences, if the Project is approved by the City and the Bonds are issued, the Company shall pay to the City at the time the Bonds are issued a fee equal to the present value of 1/16 of 1% of the unpaid principal amount of the Bonds at the end of each bond year.

Section 3. Prior to any execution of a financing agreement, mortgage, indenture of trust, bond purchase agreement or any other necessary documents and agreements in connection with such Bonds, such documents and/or agreements shall be submitted for approval to the City, and, if satisfactory to the City, their execution shall be authorized by ordinance of the Council pursuant to law.

Section 4. Prior to any further action by the Council, the Company shall provide the City with the opinion of recognized Bond Counsel supporting the legality of the financing of the Project and the utilization of bond proceeds for said Project.

Section 5. Nothing contained in this Resolution shall constitute the debt or indebtedness of the City within the meaning of any limitation of the Constitution or statutes of the State of Colorado or the Charter of the City, nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers.

Section 6. All commitments of the City contained herein are subject to the condition that within twelve (12) months of the date hereof, unless otherwise extended by agreement between the City and the Company, the Bonds to be issued pursuant hereto shall be issued and sold. In the event that said Bonds to be issued pursuant hereto are not issued within twelve (12) months, the City of Fort Collins, Colorado shall be under no obligation to perform any of the terms and conditions contained herein. Nothing contained herein shall constitute a warranty or representation by the City that the Bonds will receive from the State of Colorado an allocation of a portion of the private

activity bond limit authorized for the State of Colorado pursuant to Section 621 of the Deficit Reduction Act of 1984 of the United States of America. The City shall use its best efforts, however, to secure from the State of Colorado such an allocation authorizing the issuance of the Bonds from the 1984 State of Colorado private activity bond limit.

Section 7. Because the Company has not yet completed the City's and Larimer County's planning, zoning and land use processes for approval of the Project at the site in question, this resolution shall in no way be construed to imply or effect a waiver or reduction in the applicable planning, zoning and land use standards nor shall this resolution constitute an expression by the City or Larimer County of their approval of the Project's conformity with such standards. Furthermore, prior to issuance of the bonds, the City will require that a 120 foot (as necessary) right-of-way for the proposed Timberline Road extension be dedicated by the Company.

The Company further agrees that as a condition of the issuance of the Bonds, the Company shall: (1) develop the property only as a planned unit development; (2) comply with all landscaping and buffering requirements of the City; (3) comply with all energy conservation requirements and standards of the City; (4) comply with all development and building requirements and standards of the City; and (5) agree to annex to the City when eligible for annexation.

Section 8. All resolutions or parts thereof concerning the subject matter hereof in conflict with this Resolution are hereby repealed to the extent of such conflict. This repealer shall not be construed to revive any resolution or part thereof heretofore repealed.

Section 9. If any section, paragraph, clause, or provision of this Resolution with the exception of any section, paragraph, clause or provision limiting the City's financial obligation shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 10. The agreements of the City set forth above are expressly conditioned upon the ability and willingness of the City to issue the Bonds as tax exempt obligations under the Federal Income Tax laws existing on the date of the issuance of the bonds. Nothing contained in this resolution shall be construed as requiring the City to issue the Bonds and the decision to issue the Bonds shall be in the complete discretion of the City.

Section 11. This Resolution shall take effect immediately upon its introduction and passage.

Passed and adopted at a regular meeting of the City Council held this 1st day of October, 1985.

Barbara A. Rutstein
Mayor

ATTEST:

Wanda H. Krajeck
City Clerk

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