

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 12

DATE: March 4, 2008

STAFF: Chuck Seest

SUBJECT

Second Reading of Ordinance No. 022, 2008, Authorizing the Issuance and Sale by the City of Fort Collins, Colorado of Variable Rate Economic Development Revenue Bonds, Series 2008a (Custom Blending, Inc. Project) and of Taxable Variable Rate Economic Development Revenue Bonds, Series 2008b (Custom Blending, Inc. Project) in the Combined Aggregate Principal Amount Not to Exceed \$5,000,000 for the Purpose of Financing the Acquisition, Construction and Equipping of a Manufacturing Facility in the City of Fort Collins, Colorado, and to Pay Certain Costs of Such Bond Issue; Approving and Authorizing Execution of a Trust Indenture, Loan Agreement, Promissory Note and Bond Purchase Agreement with Respect to the Bonds; Making Findings and Determinations with Respect to the Project and the Bonds; Authorizing the Execution and Delivery of Related Documents; and Repealing All Action Heretofore Taken in Conflict Herewith.

RECOMMENDATION

Staff recommends adoption of this Ordinance on Second Reading.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on February 19, 2008, authorizes the issuance of an amount not to exceed \$5,000,000 of economic development revenue bonds for the Custom Blending, Inc. project (a small manufacturing company) from the annual statewide allocation the City receives. This is not the receipt of dollars, but the right to issue tax exempt bonds for purposes prescribed in the Internal Revenue Code by the federal government. Economic development revenue bonds are one type of bond that can be issued for private activity purposes. For fiscal year 2008, the City of Fort Collins received a private activity bond allocation of \$5,504,218. **These bonds are not an obligation of the City of Fort Collins.**

Custom Blending, Inc. relocation and expansion on a site within the City limits will result in additional property taxes for the City as well as use tax on construction materials and equipment purchases. The prospect of additional manufacturing jobs also provides economic benefit.

ATTACHMENTS

1. Copy of First Reading Agenda Item Summary - February 19, 2008.
(w/o original attachments)

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 33 A-B

DATE: February 19, 2008

STAFF: Mike Freeman
Chuck Seest

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SUBJECT

Items Relating to the Issuance of Variable Rate Economic Development Revenue Bonds.

RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading and the Resolution.

EXECUTIVE SUMMARY

- A. Resolution 2008-024 Declaring the Intent of the City of Fort Collins, Colorado to Issue Economic Development Revenue Bonds to Provide Financing for a Manufacturing Facility for Custom Blending, Inc.; Prescribing Certain Terms and Conditions of Such Bonds; and Containing Other Provisions Relating to the Proposed Issuance of Such Bonds.
- B. Hearing and First Reading of Ordinance No. 022, 2008, Authorizing the Issuance and Sale by the City of Fort Collins, Colorado of Variable Rate Economic Development Revenue Bonds, Series 2008a (Custom Blending, Inc. Project) and of Taxable Variable Rate Economic Development Revenue Bonds, Series 2008b (Custom Blending, Inc. Project) in the Combined Aggregate Principal Amount Not to Exceed \$5,000,000 for the Purpose of Financing the Acquisition, Construction and Equipping of a Manufacturing Facility in the City of Fort Collins, Colorado, and to Pay Certain Costs of Such Bond Issue; Approving and Authorizing Execution of a Trust Indenture, Loan Agreement, Promissory Note and Bond Purchase Agreement with Respect to the Bonds; Making Findings and Determinations with Respect to the Project and the Bonds; Authorizing the Execution and Delivery of Related Documents; and Repealing All Action Heretofore Taken in Conflict Herewith.

This Ordinance and Resolution would authorize the issuance of an amount not to exceed \$5,000,000 of economic development revenue bonds for the Custom Blending, Inc. project (a small manufacturing company) from the annual state wide allocation the City receives. This is not the receipt of dollars, but the right to issue tax exempt bonds for purposes prescribed in the Internal Revenue Code by the federal government. Economic development revenue bonds are one type of bond that can be issued for private activity purposes. For fiscal year 2008, the City of Fort Collins received a private activity bond allocation of \$5,504,218. **These bonds are not an obligation of the City of Fort Collins.**

Custom Blending, Inc. relocation and expansion on a site within the City limits will result in additional property taxes for the City as well as use tax on construction materials and equipment purchases. The prospect of additional manufacturing jobs also provides economic benefit.

BACKGROUND

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The Project

Under the federal and state laws governing the use of tax-exempt private activity bonds, the City may issue the bonds, but may not use its own revenues to support the project. (See Attachment 1) The project will generate the revenue required to repay the bonds. In the event the project does not generate sufficient revenue, the bondholders may request payment from the letter of credit provider or the insurer of the transaction. The total amount of private activity bonds to be issued will not exceed \$5,000,000. The project proponent, CBI Real Estate Holdings, LLC, a Colorado limited liability corporation, may use its resources to pay for the bonds or issue additional taxable bonds to finance the project.

The proceeds of the bonds, together with the proceeds of certain taxable bonds to be issued by the City concurrently with the Bonds, will be loaned to CBI Real Estate Holdings, LLC (the "Borrower") to finance the acquisition of a manufacturing facility for the production of spices, spice blends and liquid flavorings (the "Project"). The Project consists of a purchase of a parcel of land located in the Harmony Technology Park (the "Park"), bounded on the north by Harmony Road, on the west by Zeigler Road, on the east by Lady Moon Drive and on the south by Rock Creek Drive. The property will consist of a three acre parcel which is the third lot west of the southeast corner of the Park and will be accessed from the proposed Precision Drive. Construction of an approximately 33,000 square foot tilt-up concrete building is to be located there, as well as the purchase of certain equipment. The Project will be owned by the Borrower and operated and managed by Custom Blending, Inc., an entity under common ownership with the Borrower. (See Attachment 2)

In late 2007, Custom Blending, Inc. approached the City with the concept for this Project. An inquiry was made by Custom Blending, Inc. as to the availability of private activity bonds for small manufacturing. Custom Blending, Inc. was established in 1984 and initially provided the food service industry in Colorado with spices and flavoring extracts. Today it is a multi-functional manufacturer of spices, spice blends and liquid flavorings for wholesale operations and retail grocery stores. Custom Blending, Inc. is also a silver level partner in the City's Climate Wise program. The facility that Custom Blending, Inc. will be constructing with the bond proceeds is being designed to achieve minimal impact on the environment. The criteria regarding Leadership in Energy and Environmental Design (LEED) Green Building Rating System, developed by the US Green Building Council is being pursued by Custom Blending, Inc.

The City's Prior Usage of Private Activity Bonds

The most recent direct usage of the City's annual allocation of private activity bonds occurred during 2001 for the Oakridge Affordable Housing Project. Since that time, no direct issuance of private activity bonds by the City has occurred. In the event a project is not identified and approval granted by the City Council prior to September 15th of a given year, the annual allocation is relinquished to the statewide pool and becomes available for projects throughout the State.

Given that the last two projects which utilized this funding seven years ago related to affordable multi-family housing (Oakridge and Comridge), staff inquired of both the Fort Collins Housing Authority and Advance Planning staff responsible for housing. A letter is attached from the Fort Collins Housing Authority stating they will not need the funds this year. (See Attachment 3) Staff also presented this funding option to applicants for the City's CDBG funds last month. The response was interest in the future but not for 2008.

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As a result of no affordable housing projects currently coming forward to utilize this funding option, staff desired to see the funding remain within the City and not revert to the statewide pool as has been the case in the prior six years. In the event a project does come forward, the City will still have a portion of the 2008 allocation of \$5.5 million to issue directly and can also recommend a project to the Colorado Housing and Financing Authority (CHFA).

The last time the City used private activity bonds for a small manufacturing entity was in 1993 for a \$1.5 million bond for Phelps Tointon Millwork, LLC, a manufacturer of wood cabinetry and athletic lockers.

The City's Role in Issuance of Private Activity Bonds

Under the federal tax laws and the Colorado Revised Statutes, the City's role in this transaction is to be the Issuer of the Bonds. City staff has also reviewed the application and related federal income tax returns

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THE BONDS SHALL BE SPECIAL, LIMITED OBLIGATIONS OF THE CITY. THE CITY WILL NOT BE OBLIGATED TO PAY THE BONDS OR THE INTEREST THEREON, EXCEPT FROM THE ASSETS OR REVENUES PLEDGED THEREFOR. IN NO EVENT SHALL THE STATE, THE CITY (OTHER THAN THE FROM THE BORROWER'S ASSETS PLEDGED THEREFORE) OR ANY POLITICAL SUBDIVISION THEREOF BE LIABLE FOR THE BONDS, AND THE BONDS SHALL NOT CONSTITUTE A DEBT OF THE STATE, THE CITY OR ANY SUCH POLITICAL SUBDIVISION THEREOF.

The proceeds of the Bonds will be loaned to CBI Real Estate Holdings, LLC. according to the terms of the Loan Agreement to provide the financing of the project.

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SOURCES AND USES

The estimated sources and uses of funds relating to the Bonds are summarized below:

	Estimated Amount
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SOURCES OF FUNDS:	
Proceeds of Series 2008A Bonds	\$4,375,000*
Proceeds of Series 2008B Bonds	275,000*
Additional Equity Contribution	1,000,000
TOTAL SOURCES OF FUNDS	\$ 5,650,000
USES OF FUNDS:	
Deposit to Project Funds	
Construction of Facility	\$5,500,000
For payment of Costs of Issuance, including Underwriter's fee (1)(2)	150,000
TOTAL USES OF FUNDS	\$5,650,000

* Preliminary, subject to change

(1) Any such costs treated as allocable costs of issuance of the Series 2008A Bonds under present Treasury Department regulations and rulings which in the aggregate exceed 2% of Series 2008A Bond proceeds (net of certain ineligible proceeds) will be paid by the Borrower or from proceeds of the Series 2008B Bonds.

Sources and uses are estimates and will likely change prior to second reading.

STRUCTURE OF BOND ISSUE

The objective of this financial transaction is to achieve the lowest possible borrowing costs for the Project through tax-exempt financing. In return for the tax-exempt financing, the City is able to assist and retain a small manufacturing company that has been a long standing member of the community. The underwriter believes this can best be accomplished by structuring the transaction using variable rate bonds. Using this technique, interest rates fluctuate and reset periodically. The underwriter is estimating an interest rate of about 3.50% on the variable rate bonds issued for 25 years.

The Bond documents set up the repayment schedule. The documents supporting this transaction have estimated the following principal repayment schedule:

<u>Date of Principal Redemption</u>	<u>Principal Amount to be Redeemed</u>
2009	0
2010	155,000
2011	165,000
2012	170,000
2013	180,000
2014	190,000
2015	195,000
2016	205,000
2017	215,000
2018	225,000
2019	235,000
2020	250,000
2021	260,000
2022	275,000
2023	285,000
2024	300,000
2025	315,000
2026	330,000
2027	345,000
2028	365,000
TOTAL	<u>\$4,660,000</u>

Debt service schedule includes the \$275,000 of taxable bonds in addition to the not to exceed \$5,000,000 of tax-exempt financing. Payments are scheduled to be made on June 1 and December 1 of each year.

According to the City of Fort Collins policies regarding issuance of tax-exempt financing for this type of project, the City charges an issuer's fee when the bonds are issued. This fee is estimated to be \$3,400 based on the projected debt service.

General Description of Bond Proceedings

In connection with the issuance of the Custom Blending Project Bonds, the City Council will be asked to take the following actions on February 19, 2008: (1) hold a "TEFRA" hearing, (2) adopt an inducement resolution (Resolution 2008-024) and (3) consider on First Reading an ordinance authorizing the bonds. The purpose of the ordinance is addressed elsewhere in the summary, but the other two actions are described more fully below:

TEFRA Public Approval Requirement

As a condition of federal tax exemption for all private activity bonds, the Internal Revenue Code requires that such bonds be approved by the proper elected officials subsequent to a public hearing for which reasonable public notice was provided. The requirement is typically referred to as "TEFRA" because it was added by a federal act passed in 1982 called the Tax Equity and Fiscal Responsibility Act. Reasonable notice is considered to be by publication in a local newspaper over 14 days in advance of the hearing. Accordingly, notice of the hearing on February 19th was published in the Coloradoan on January 27, 2008. The Council can declare the hearing open during the meeting and simply ask if anyone from the public would like to say anything with respect to the project. More often than not, no one from the public appears to speak. After providing such opportunity, the hearing can be closed and this federal requirement will be met.

The hearing can take place any time prior to the issuance of the bonds. However, the meeting on February 19th was selected because the City will already be discussing the bond issue.

Inducement Resolution

The primary reason for adopting an inducement resolution is also found in federal tax law. If a municipal borrower or private activity bond beneficiary (e.g., CBI Real Estate Holdings, LLC) desires the ability to reimburse itself out of the tax exempt bond proceeds for expenditures that accrue before the issuance of the bonds, the Internal Revenue Code will permit such reimbursement provided that the public issuer adopts an inducement resolution and the expenditure accrued no earlier than 60 days prior to the date such resolution was adopted. Accordingly, inducement resolutions are often adopted very early in the bond process to maximize the project costs to which the tax exempt proceeds can be applied. However, as made clear in the resolution, adoption does not create an obligation on the part of the City to authorize the bonds.

ATTACHMENTS

1. PowerPoint presentation on Private Activity Bonds.
2. PowerPoint presentation on Custom Blending Private Activity Bonds Overview.
3. Letter from the Fort Collins Housing Authority.

COPY

ORDINANCE NO. 022, 2008

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE BY THE CITY OF FORT COLLINS, COLORADO OF VARIABLE RATE ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2008A (CUSTOM BLENDING, INC. PROJECT) AND OF TAXABLE VARIABLE RATE ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2008B (CUSTOM BLENDING, INC. PROJECT) IN THE COMBINED AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$5,000,000 FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A MANUFACTURING FACILITY IN THE CITY OF FORT COLLINS, COLORADO, AND TO PAY CERTAIN COSTS OF SUCH BOND ISSUE; APPROVING AND AUTHORIZING EXECUTION OF A TRUST INDENTURE, LOAN AGREEMENT, PROMISSORY NOTE AND BOND PURCHASE AGREEMENT WITH RESPECT TO THE BONDS; MAKING FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT AND THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; AND REPEALING ALL ACTION HERETOFORE TAKEN IN CONFLICT HEREWITH.

WHEREAS, the City of Fort Collins, Colorado (the "City") is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Article XX of the Constitution of the State of Colorado and the home rule charter of the City; and

WHEREAS, the County and Municipality Development Revenue Bond Act, constituting Article 3 of Title 29, Colorado Revised Statutes, as amended (the "Act"), authorizes cities and counties in the State to finance or refinance one or more manufacturing projects, including any land, buildings or other improvements, and all real and personal properties, whether or not in existence, necessary therefor, which projects promote industry or other economic activity to mitigate unemployment and secure and maintain a balanced and stable economy; and

WHEREAS, the City is further authorized by the Act to issue its revenue bonds for the purposes of defraying the costs of financing or refinancing any such project, including all incidental expenses incurred in issuing such bonds, and to secure the payment of such bonds as provided in the Act; and

WHEREAS, representatives of CBI Real Estate Holdings, LLC, a Colorado limited liability company (the "Borrower") have requested that the City issue its economic development revenue bonds pursuant to terms of the Act to finance a portion of the cost of a project under the Act, which project consists of: (a) the acquisition, construction and improvement of an approximately 33,000 square foot manufacturing facility located at Harmony Technology Park,

within the boundaries of the City, and (b) the payment of the costs of issuing such bonds (collectively, the "Project"); and

WHEREAS, the City has considered the request of the Borrower and has concluded that the Project will mitigate unemployment and promote trade and a balanced and stable economy within the City, and that the City should issue its economic development revenue bonds under the Act to finance a portion of the cost of the Project, subject to the conditions set forth herein; and

WHEREAS, the City will issue, sell and deliver its City of Fort Collins, Colorado Variable Rate Economic Development Revenue Bonds, Series 2008A (Custom Blending, Inc. Project) (the "2008A Bonds"), and its City of Fort Collins, Colorado Taxable Variable Rate Economic Development Revenue Bonds, Series 2008B (Custom Blending, Inc. Project) (the "2008B Bonds") (together, the 2008A Bonds and the 2008B Bonds are referred to herein as the "Bonds"), pursuant to the terms of a Trust Indenture dated as of March 1, 2008 (the "Indenture") between the City and Wells Fargo Bank, National Association, as trustee (the "Trustee") to pay a portion of the cost of financing the Project; and

WHEREAS, the Borrower will enter into a Loan Agreement, dated as of March 1, 2008 (the "Loan Agreement") between the City and the Borrower pursuant to which the proceeds of the Bonds will be loaned to the Borrower; and

WHEREAS, the Borrower will execute a Promissory Note (the "Promissory Note") evidencing its obligations under the Loan Agreement which Promissory Note evidences the Borrower's obligation to repay the principal of, premium, if any, and interest on the Bonds; and

WHEREAS, Wells Fargo Bank, National Association (the "Bank") will issue its irrevocable direct pay letter of credit (the "Letter of Credit") for the benefit of the Trustee which Letter of Credit will secure the payment of the purchase price of the Bonds, including certain interest thereon and the payment of the principal of the Bonds and certain interest thereon when due whether upon prior redemption, acceleration or maturity of the Bonds; and

WHEREAS, pursuant to the terms of a Reimbursement Agreement dated as of March 1, 2008, between the Borrower and the Bank, the Borrower will be obligated to reimburse the Bank for draws upon the Letter of Credit, including interest thereon, and to pay certain fees and expenses of the Bank related thereto; and

WHEREAS, Wells Fargo Bank Brokerage Services, LLC (the "Remarketing Agent") will act as the initial remarketing agent for the Bonds pursuant to the terms of a Remarketing Agreement dated as of March 1, 2008 between the Borrower and the Remarketing Agent; and

WHEREAS, the Bonds shall be sold by Wells Fargo Bank Brokerage Services, LLC (the "Underwriter"), pursuant to the terms of a Bond Purchase Agreement (the "Bond Purchase Agreement") among the City, the Borrower and the Underwriter; and

WHEREAS, there have been presented to the City Council of the City (the "Council") and is on file at the City offices the forms of the following documents: (a) the proposed form of the Loan Agreement, including therein the proposed form of the Promissory Note, (b) the proposed form of the Indenture, (c) the proposed form of the Bond Purchase Agreement and (d) the proposed form of Official Statement (the "Official Statement") prepared in connection with the offering and sale of the Bonds; and

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

Section 1. Definitions. Unless the context indicates otherwise, as used herein, capitalized terms shall have the meanings ascribed by the preambles hereto and the Indenture, and the following capitalized terms shall have the respective meanings set forth below:

C.R.S.: the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

Official Statement: the final version of the Official Statement.

Ordinance: this Ordinance which authorizes the issuance of the Bonds, and any amendment or supplement lawfully made hereto.

Sale Certificate means a certificate executed by the Mayor, the City Manager, or the Finance Director dated on or before the date of delivery of the Bonds, setting forth the price at which the Bonds will be sold, the total principal amount of the Bonds, the amount of principal maturing or subject to mandatory redemption on each date, and the final maturity of the Bonds, subject to the parameters and restrictions contained in this Ordinance.

Supplemental Act: the Supplemental Public Securities Act, being Title 11, Article 57, Part 2, C.R.S.

Section 2. Legal Authorization. The City is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Article XX of the

Constitution of the State of Colorado and the home rule charter of the City and is authorized under the Act to issue and sell its economic development revenue bonds in the form of one or more debt instruments, such as the Bonds, for the purpose, in the manner and upon the terms and conditions set forth in the Act, in this Ordinance, and in the Indenture.

Section 3. Findings. The Council has heretofore determined, and does hereby determine, based upon the representations of the Borrower, as follows:

(a) The Project is an eligible “project,” as defined in the Act.

(b) The issuance of the Bonds will effectuate the public purposes of the City and carry out the purposes of the Act by, among other things, mitigating unemployment and promoting trade and a balanced and stable economy within the City.

(c) The Bonds are special, limited obligations of the City payable solely out of the income, revenues and receipts specifically pledged pursuant to the Indenture. The Bonds, the premium, if any, and the interest thereon shall never constitute the debt or indebtedness of the City within the meaning of any provision or limitation of the State Constitution, State statutes, and shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing power and shall not constitute a “multiple fiscal year direct or indirect debt or other financial obligation” of the City under Article X, Section 20 of the Colorado Constitution. None of the State of Colorado, the City or any political subdivision thereof shall be obligated to pay the principal of, premium, if any, or interest on the Bonds (except the City to the extent of the revenues pledged under the Indenture) or other costs incident thereto. The Bonds do not constitute a debt, loan, credit or pledge of the faith and credit or taxing power of the State, the City or any political subdivision thereof.

Section 4. Authorization of Issuance of Bonds. To defray the cost of the Project (including incidental expenses incurred in issuing the Bonds), there is hereby authorized and created two series of variable rate revenue bonds designated “City of Fort Collins, Colorado, Variable Rate Economic Development Revenue Bonds, Series 2008A (Custom Blending, Inc. Project)” and “City of Fort Collins, Colorado, Taxable Variable Rate Economic Development Revenue Bonds, Series 2008B (Custom Blending, Inc. Project)” in a combined aggregate principal amount not to exceed \$5,000,000. The Bonds shall be in such principal amounts, shall be dated as of their date and shall bear interest at the rates determined pursuant to the terms of the Indenture and Sale Certificate. The Bonds shall be payable, shall be subject to redemption or

purchase in lieu of redemption and tender prior to maturity and shall be in substantially the forms as provided in the Indenture. Furthermore, the Bonds shall be payable at such place and in such form, shall carry such registration privileges, shall be executed, and shall contain such terms and conditions, as set forth in the Indenture.

Section 5. Sale of Bonds. The purchase and sale of the Bonds pursuant to the terms of the Bond Purchase Agreement be and the same are in all respects hereby approved, authorized and confirmed, and the Mayor is hereby authorized and directed to execute the Bonds and the City Clerk is hereby authorized and directed to affix the seal of the City and to attest the Bonds and each is hereby authorized to deliver the Bonds for and on behalf of the City to the Trustee for authentication pursuant to the Indenture. The Bonds shall be sold to the Underwriter for the purchase price as set forth in the Bond Purchase Agreement (subject to the parameters set forth herein).

Section 6. Application of Supplemental Act. The Council hereby elects to apply all of the Supplemental Act to the issuance of the Bonds.

Section 7. Parameters. The Council hereby delegates to the Mayor and the City Manager of the City the authority to make any determination delegable pursuant to Section 11-57-205(1)(a-i) of the Supplemental Act in relation to the Bonds, subject to the following parameters and restrictions: (a) the combined aggregate principal amount of the 2008A Bonds and the 2008B Bonds shall not exceed \$5,000,000; (b) the combined maximum net effective interest rate shall not exceed 10%; (c) neither the 2008A Bonds nor the 2008B Bonds shall mature later than December 1, 2032; (d) the combined maximum annual repayment cost shall not exceed \$650,000; (e) the combined total repayment cost shall not exceed \$16,500,000; and (f) the combined purchase price of the Bonds shall not be less than 99%.

Section 8. Approval and Authorization of Documents. The Indenture, the Loan Agreement, the Promissory Note and the Bond Purchase Agreement be and the same are in all respects hereby approved, authorized and confirmed, and the Mayor is hereby authorized and directed to execute and the City Clerk is hereby authorized and directed to affix the seal of the City and to attest the Indenture, the Loan Agreement and the Bond Purchase Agreement in substantially the forms and content as presented to the City on this date, subject to the approval of bond counsel to the City, but with such changes, modifications, additions and deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute

conclusive evidence of their approval of any and all changes, modifications, additions and deletions from the forms thereof as before this date.

Section 9. All Actions Heretofore Taken. All actions (not inconsistent with the provisions of this Ordinance) heretofore taken by the Council and the officers of the City directed toward the issuance and sale of the Bonds therefor are hereby ratified, approved and confirmed.

Section 10. Compliance with the Act. The following determinations and findings are hereby made in accordance with Sections 29-3-113, 29-3-114 and 29-3-120 of the Act:

(a) The maximum amount necessary in any year to pay the principal of and the interest on the Bonds is \$650,000, assuming that the Bonds bear interest at a rate of 10%, which is the maximum rate permitted under the Indenture.

(b) No reserve funds have been established pursuant to the Indenture and a determination is hereby made that it is not necessary to establish any reserve funds for payment of the Bonds and maintenance of the facilities constituting the Project, except those required pursuant to the Reimbursement Agreement.

(c) In the Loan Agreement, the Borrower has covenanted to maintain, or cause to be maintained, the facilities constituting Project and to carry, or cause to be carried, all proper insurance with respect thereto.

(d) The revenues and other amounts payable under the Loan Agreement are sufficient to pay, in addition to all other requirements of the Loan Agreement and this Ordinance, all sums referred to in paragraphs (a) and (c) of this Section and all taxes or payments in lieu of taxes levied upon the facilities constituting the Project.

Section 11. Investments. Proceeds from the sale of the Bonds and special funds from the revenues from the facilities constituting the Project shall be invested and reinvested in such securities and other investments specified in, and otherwise in accordance with, the Indenture and Section 29-3-109 of the Act.

Section 12. Authority to Execute and Deliver Additional Documents. The officers, employees and agents of the City shall take all action in conformity with the Act necessary or reasonably required to effectuate the issuance of the Bonds and shall take all action necessary or desirable in conformity with the Act to financing the portion of the costs of the Project to be financed with proceeds of the Bonds and for carrying out, giving effect to and consummating the

transactions contemplated by this Ordinance, the Loan Agreement, the Promissory Note, the Indenture and the Bond Purchase Agreement, including without limitation the execution, delivery and filing of any documents, statements or reports with the United States Internal Revenue Service or with the Secretary of the United States Treasury or his delegate necessary to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes, the execution of any letter of representation or similar document required of any securities depository, and the execution and delivery of additional security documents and any closing documents to be delivered in connection with the sale and delivery of the Bonds.

Section 13. Bonds are Special, Limited Obligations. The Bonds shall be special, limited obligations of the City payable solely from the receipts and revenues of the City under the Loan Agreement that are specifically pledged therefor under the Indenture; the Bonds shall never constitute a debt or indebtedness of the City, the State or any county, municipality or political subdivision of the State within the meaning of any provision or limitation of the Constitution or statutes of the State or the home rule charter of the City or of any political subdivision of the State; and the Bonds shall never constitute nor give rise to any pecuniary liability of, or a charge against the general credit or taxing powers of, the City, the State or any county, municipality or political subdivision of the State. The Bonds shall not constitute a “multiple fiscal year direct or indirect debt or other financial obligation” of the City under Article X, Section 20 of the Colorado Constitution.

Section 14. No Pecuniary Liability. Nothing contained in this Ordinance or in the Bonds, the Indenture, the Loan Agreement or the Bond Purchase Agreement or any other instrument shall give rise to a pecuniary liability of, or a charge upon the general credit or taxing powers of, the City, the State or any county, municipality or political subdivision of the State. The breach by any party of any agreement contained in this Ordinance, the Bonds, the Indenture, the Loan Agreement, the Bond Purchase Agreement or any other instrument shall not impose any pecuniary liability upon, or any charge upon the general credit or taxing powers of, the City, the State or any county, municipality or political subdivision of the State, none of which has the power to pay out of its general fund, or otherwise contribute, any part of the cost of financing or refinancing of the Project, or power to operate the Project as a business or in any manner.

Section 15. No Condemnation by City. The City shall not condemn any land or other property for the Project.

Section 16. Trustee and Remarketing Agent. Wells Fargo Bank West, National Association, located in Denver, Colorado, is hereby appointed as Trustee, paying agent and registrar under the Indenture and Wells Fargo Brokerage Services, LLC, is hereby appointed as Remarketing Agent under the Indenture.

Section 17. Official Statement. The City hereby acknowledges the Underwriter's use of the Official Statement, substantially in the form presented to the Council, in the marketing of the Bonds.

Section 18. Supplemental Ordinances. The City may, subject to the terms and conditions of the Indenture, pass and execute Ordinances supplemental to this Ordinance which shall not be inconsistent with the terms and provisions hereof.

Section 19. Limitation of Rights. With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from the Ordinance or the Bonds is intended or shall be construed to give to any person, other than the City, the Borrower and the Underwriter, any legal or equitable right, remedy or claim under or with respect to this Ordinance or any covenants, conditions and provisions herein contained; this Ordinance and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the City, the Borrower and the Underwriter as herein provided.

Section 20. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of the Security (as defined in the Indenture) to secure or pay the Bonds as provided herein and in the Indenture shall be governed by Section 11-57-208 of the Supplemental Public Securities Act, Article 57 of Title 11 of Colorado Revised Statutes, as amended (the "Public Securities Act"), which is hereby adopted for such purpose, and this Ordinance. The Security for the payment of the Bonds, as received by or otherwise credited to the City and the Trustee, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the Security shall have priority over any or all other obligations and liabilities of the City. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the City irrespective of whether such persons have notice of such liens.

Section 21. Immunity of Officers. Pursuant to Section 11-57-209 of the Public Securities Act, if a member of the Council, or any officer or agent of the City acts in good faith, no civil recourse shall be available against such commissioner, officer, or agent for payment of

the principal of or interest on the Bonds. No recourse for the payment of any part of the principal of, premium, if any, or interest on the Bonds for the satisfaction of any liability arising from, founded upon or existing by reason of the issue, purchase or ownership of the Bonds shall be had against any official, officer, commissioner or agent of the City or the State, all such liability to be expressly released and waived as a condition of and as a part of the consideration for the issue, sale and purchase of the Bonds.

Section 22. Limitations on Actions. In accordance with the Act, no action shall be brought questioning the legality of any contract, financing agreement, mortgage, trust indenture, proceeding relating to the Bonds or the Bonds, or the Project on and after thirty days from the effective date of this Ordinance.

Section 23. Counterparts. This Ordinance may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 24. Captions. The captions or headings in this Ordinance are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Ordinance.

Section 25. Validity of Bonds. Each Bond shall contain a recital that such Bond is issued pursuant to the Act and the Public Securities Act, and such recital shall be conclusive evidence of its validity and of the regularity of its issuance.

Section 26. Irrepealability. After any of the Bonds are issued, this Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall have been fully paid, canceled and discharged.

Section 27. Repealer. All orders, resolutions, bylaws or regulations of the City, or parts thereof, inconsistent with this Ordinance are hereby repealed to the extent only of such inconsistency.

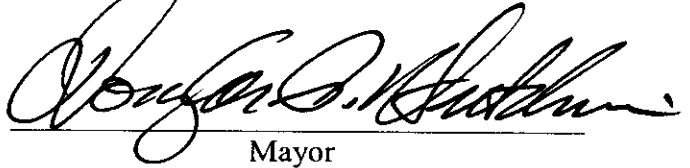
Section 28. Severability. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 29. 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, READ, APPROVED ON FIRST READING AND ORDERED PUBLISHED BY NUMBER AND TITLE ONLY this 19th day of February, 2008.

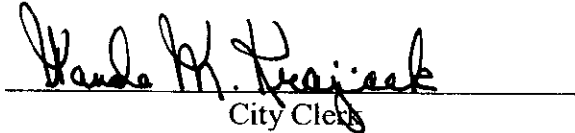
CITY OF FORT COLLINS, COLORADO



Mayor

(SEAL)

ATTESTED:



City Clerk

INTRODUCED, READ, APPROVED ON SECOND READING AND ORDERED PUBLISHED BY NUMBER AND TITLE ONLY this 4th day of March, 2008.

CITY OF FORT COLLINS, COLORADO

Mayor

(SEAL)

ATTESTED:

City Clerk