

**SUBJECT**

Resolution 2013-041 Concerning the Fort Collins Urban Renewal Authority and its Tax Increment Revenue Refunding Bonds (North College Avenue Project), Series 2013, Declaring the City Council's Present Intent to Appropriate Funds to Replenish the Reserve Fund Securing Such Bonds, If Necessary; and Authorizing a Cooperation Agreement and Other Actions Taken in Connection Therewith.

**EXECUTIVE SUMMARY**

The Fort Collins Urban Renewal Authority (URA) intends to refinance a portion of the debt it originally borrowed from the City in relation to the North College area. Now that an established revenue stream can be shown to investors, private money can be used to replace City money. The 2013 bonds require the URA to establish a debt reserve fund. To further facilitate the credit rating on the replacement debt, the City needs to make a pledge to consider replenishing the debt reserve fund, if such funds are ever used to make debt payments. With the City's pledge, the new URA debt is expected to have an effective interest rate of 2.98%.

**BACKGROUND / DISCUSSION**

The North College URA Project Area was created in 2004, allowing the URA to receive incremental property taxes through 2029. Property tax increment revenue in North College was first received in 2007 and the 2012 property taxes payable in 2013 are expected to be \$1.3 million.

**Table 1 - Net Property Tax Increment Revenue** \$000's

2007	2008	2009	2010	2011	2012	2013 *
\$110	\$287	\$263	\$493	\$536	\$907	\$1,285

\*anticipated

A common measure used by lenders in determining risk is the ratio of pledged revenue to debt service, called a coverage ratio. Investors want that ratio to be high – at least 125%. The current revenue of \$1.3 million could support up to \$1 million a year in debt service. The proposed maximum annual debt service of \$890,000 yields a good coverage ratio of 144%.

**City Loans to URA** – The initial financing model adopted for North College has the City providing initial capital through a loan until the tax increment revenue reaches a maturity level that can support external financing to third party investors. The City Council first authorized an Interagency Loan Policy in December 2008, with the most recent amendments approved in December 2012.

Eight loans have been made by the City to the URA in the North College District. The first loan has been repaid. Table 2 recaps the current status of the loans.

**Table 2 – North College Loan Status** \$000's

Date	Project	Original Value	Current Balance	Term Years	Rate	City Fund Holding
09/06	V. Steel, URA start-up funds	\$ 150	\$ 0	5	5.55%	General Fund
05/09	N.C. Market Place, phase 1	5,000	4,729	20	2.85%	Capital Expansion
12/10	JAX	173	106	5	2.50%	Capital Expansion
06/11	NEECO	326	326	10	3.01%	Storm Drainage
07/11	Kaufman Robinson	193	193	5	2.46%	General Fund
07/11	N.C. Market Place, phase 2	3,000	2,884	19	4.09%	Water Fund
08/12	N.C. Road Improvements	2,700	2,700	18	3.92%	Capital Projects BCC
<b>Loans to be refinanced</b>		<b>11,542</b>	<b>10,938</b>		3.44%	
06/09	RM12	5,304	5,304	20	2.50%	General Fund
<b>Total North College Area</b>		<b>16,846</b>	<b>16,242</b>			

The proposal is to issue enough debt to takeout \$10.94 million in loans to the City, plus interest and debt issue costs. For the following reasons the City loan to the URA that relates to RMI is not being refinanced.

- The use of the RMI2 loan proceeds does not qualify the interest to be tax exempt. Therefore the interest rate would be significantly higher.
- The new market tax credit deal cannot be refinanced until 2017.
- There is not enough revenue capacity to meet external investor expectations. Only about \$1 million of the \$5.3 million could be considered for refinancing if the favorable coverage ratio was to be preserved.

The General Fund is holding the URA loan relating to RMI2. Later this year, the loan will be reallocated and held equally between the General Fund and Capital Expansion Fund. This will free up some monies in the General Fund. Future debt payments by the URA will then be allocated appropriately to each fund.

### **Preliminary Structure of 2013 Bonds**

Approximately \$11.36 million of bond proceeds will be used to takeout \$10.94 million of debt to the City, plus interest of \$220,000, and pay debt issue costs of \$206,000. Coupon interest rates vary from 2% for near term bonds and 4% for longer term bonds. The collective Net Interest Cost is expected to be 2.98%, which compares favorably to 3.44% weighted average interest rate on the City debt being retired. The interest only payment on December 1, 2013 for \$161,000 will be followed by future annual payments that vary from \$886,000 to \$890,000 through 2029.

### **City Pledge**

The Underwriters for the 2013 Bonds have recommended that a debt service reserve fund in the amount of approximately \$961,000 would be advisable for marketing the 2013 Bonds and that purchasing a Surety Policy for such amount would be preferable to funding such reserve with cash. The cost of such Surety Policy would be \$53,000. If it was ever necessary to draw upon the Surety Policy, the City's replenishment pledge would repay such draw. Staff prefers the Surety Policy option but will make a decision later based on the potential impact on the credit rating. The replenishment pledge is non-binding and subject to annual appropriation of funds by the City Council in its sole discretion.

It is anticipated that the City pledge will result in the replacement debt receiving a credit rating of Aa3. Without the City's pledge and a proven revenue stream the interest rate would likely be 5% or higher, rather than 3%.

### **Concerns about Ability to Make Pledge**

A question has been raised by a local citizen as to whether Council actions such as the making of this pledge violates the City Charter. The Charter provisions in question read as follows:

#### ARTICLE V. FINANCE ADMINISTRATION PART I. BUDGET AND FINANCIAL MANAGEMENT

##### Section 15. Appropriations forbidden.

No appropriation shall be made for any charitable, industrial, educational, or benevolent purposes to any person, corporation, or organization not under the absolute control of the city, nor to any denominational or sectarian institution or association.

(Ord. No. 10, 1991, § 1(a), 2-19-91, approved, election 4-2-91)

##### Section 16. City not to pledge credit.

The city shall not lend or pledge its credit or faith, directly or indirectly, or in any manner to or in aid of any private person or entity for any amount or any purpose whatever, or become responsible for any debt, contract, or liability thereof.

(Ord. No. 203, 1986, § 1, Part D, 12-16-86, approved, election 3-3-87; Ord. No. 10, 1991, § 1(a), 2-19-91, approved, election 4-2-91)

These charter provisions are, in all material respects, identical to provisions contained in the Colorado Constitution. Thus, the limitations contained in the Charter provisions apply to all Colorado municipalities through the state constitution.

In response to the concerns that have been expressed, staff has conferred with both the City Attorney's Office and the City's bond counsel to ensure that the proposed transaction does not violate either of the provisions in question. Legal counsel has confirmed the following.

As noted above, the pledge is not a legally binding obligation but rather is subject to appropriation by the Council, when and if the reserve fund is drawn upon. Since the City cannot be compelled to appropriate funds, the pledge does not create a debt for purposes of the City Charter or the Colorado Constitution.

Article V, Section 15 of the City Charter is not applicable to the pledge because (1) the Urban Renewal Authority is under the absolute control of the City (since its governing body is made up of the same members as the City's governing body) and it is not a denominational or sectarian institution; and (2) the projects refinanced by the bonds are public infrastructure projects; thus, the bond proceeds are not being used, either directly or indirectly, for a charitable, industrial, educational or benevolent purpose.

Article V, Section 16 of the City Charter is not applicable because: (1) the Urban Renewal Authority is a public entity; (2) the City will not incur any indebtedness or other legally binding obligation by making the pledge; and (3) the projects refinanced by the bonds are public infrastructure projects.

It should be noted that this "moral obligation pledge" financing structure is not unique to the City. Other municipalities that have utilized this same procedure in connection with tax increment transactions include the City and County of Denver, the cities of Thornton, Westminster, and Steamboat Springs, and the Town of Avon. The State of Colorado has also used moral obligation financing structures for housing, charter schools and higher education.

### **Cash Flow Projections**

The refinancing of this debt will improve the cash flows of the URA. The URA will save \$922,000 through 2029.

### **Future Financing Model**

City staff have communicated to the URA that going forward the City intends to only loan money when alternative financing agreements are not feasible. The reimbursement agreement recently approved for Aspen Heights is an example of the preferred approach for future development agreements. The Aspen Heights developer will be reimbursed over time as revenue is collected, rather than in a lump sum upon completion of the project.

### **Consultants**

The URA and City have engaged three firms to help issue the new debt: Sherman & Howard as the Bond Attorney, BLX as the Financial Advisor and RBC Capital Markets as the Bond Underwriters.

### **Timeline**

May 9	Complete application for credit rating with Moody's
May 17	Receive credit rating from Moody's
May 22	Publish Preliminary Official Statement on Internet Sites
June 4-6	Market Bonds
June 20	Closing

## **FINANCIAL / ECONOMIC IMPACTS**

The City's pledge includes a commitment to maintain an unrestricted fund balance in the General Fund in an amount at least equal to the Reserve Fund Requirement, estimated at \$961,000. The General Fund can easily meet that requirement because it does not need be separate set aside, but instead maintain unrestricted balances in the aggregate that are greater than the Reserve Fund Requirement. At the end of 2012 the collective unrestricted fund

balances in General Fund totaled \$37 million. Property tax revenue in the North College URA plan area is unlikely to decline enough to trigger the use of the Debt Service Reserve Fund.

The 2013 Bonds will be used to takeout \$10.94 million in debt to the City, pay \$220,000 of interest and pay \$206,000 in delivery date expenses.

Later this summer the City will use some of the returned monies to loan \$5 million to the URA for the first Midtown Project – The Summit (Capstone).

### **STAFF RECOMMENDATION**

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Staff recommends adoption of the Resolution.

### **BOARD / COMMISSION RECOMMENDATION**

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The Council Finance Committee reviewed and tentatively approved the refinancing and the concept of a debt reserve replenishment pledge at its meeting on December 17, 2012.

### **ATTACHMENTS**

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1. Council Finance Committee minutes, December 17, 2012
2. Preliminary debt structure, prepared by RBC Capital Markets
3. Powerpoint presentation



## Council Audit & Finance Committee

Minutes

12/17/12

10:00 to 11:00

CIC Room

**Council Attendees:** Mayor Karen Weitkunat, Mayor Pro Tem Kelly Ohlson, Ben Manvel

**Staff:** Darin Atteberry, John Voss, Mike Beckstead (via conference call), Mindy Pfleiger, Chris Donegon, Megan Bolin, Josh Birks, Bruce Hendee, Harold Hall, Heather Shepherd

**Others:** Jim Manire of BLX; Developers Charlie Vater, Larry Owens, Dan Fredericks, Rick Shannon

### **Approval of the Minutes of November 19, 2012**

Ben Manvel stated that there is a word that should be removed. The words "prior to" in the sentence "...decision scenarios before prior to the executive session to help with the discussion." are repetitive and should be removed. Ben moved to approve the minutes as amended and Kelly Ohlson seconded the motion. The November minutes are approved as amended.

### **URA Debt Refinancing**

John Voss presented data showing how refinancing the current URA debt would be beneficial to the City. The City has loaned a total of \$16.8 million to the URA to date. The URA currently owes \$16.2 million of that to the City. John said that this is the debt related to the North College Tax Increment Financing (TIF) district.

Mayor Weitkunat stated that there should be a notation in the presentation materials of any loans the URA has already paid off.

John Voss said that the City has been waiting for the revenue stream to mature to refinance the URA debt. Since revenue is now more predictable and reliable, it can be marketed to third party lenders. Currently, the North College URA financial situation is healthy and able to repay all existing loans under current terms.

Lenders will require a coverage ratio. For example 135%:

- $\$1,262/1.35 = \$935$  of URA's existing cash balance
- At 4.0% we could refinance about \$11 million



- At 5.5% we could refinance about \$10 million

Lenders will require Debt Service Reserve Fund equal to annual debt service payment

- Ties up approximately \$935 of URA's existing cash balance

These terms are typical for entities with credit similar to the Fort Collins URA.

With this refinancing, the URA would still owe the City between \$5 and \$6 million in debt.

John Voss also suggested that if the City were to provide a Moral Obligation Pledge, the debt would then be viewed as 'investment grade'. The City's pledge would free up an additional \$1 to \$2 million.

Darin Atteberry asked if there would be potential for refinancing to affect the City's overall credit rating. Jim Manire, outside bond counsel, said that he would not expect the City's rating to change in relation to refinancing.

Mike Beckstead told the Committee that he is in solid support of refinancing and the objective at this meeting is simply to inform the Committee and discuss it before the topic is presented to the City Council.

Kelly Ohlson said he would prefer that money savings from the refinancing go to the general fund instead of the staff recommended Summit Project and Capital Expansion Fund.

Darin Atteberry said that overall, he agrees that the refinancing would be a positive move for the City.

Mike Beckstead said that staff members will recommend this to City Council for consideration in the April or May, 2013 timeframe.

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\*\*Preliminary Numbers - Subject to Change\*\*

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## SOURCES AND USES OF FUNDS

Fort Collins Urban Renewal Authority  
Tax Increment Revenue Refunding Bonds, Series 2013  
(North College Avenue Project)  
'Aa3' Est Rating | 4/16/13 Market Rates  
\*\*Preliminary Numbers - Subject to Change\*\*

Dated Date                    06/20/2013  
Delivery Date                06/20/2013

### Sources:

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Bond Proceeds:	
Par Amount	10,645,000.00
Premium	718,718.60
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	11,363,718.60
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### Uses:

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Project Fund Deposits:	
Proceeds to Takeout Loans - Principal	10,938,089.54
Proceeds to Takeout Loans - Interest	<u>220,082.29</u>
	11,158,171.83
Delivery Date Expenses:	
Cost of Issuance	104,232.27
Underwriter's Discount	47,902.50
Surety @ 6% (AGM Est)	<u>53,412.00</u>
	205,546.77
	<hr/>
	11,363,718.60
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## BOND PRICING

Fort Collins Urban Renewal Authority  
 Tax Increment Revenue Refunding Bonds, Series 2013  
 (North College Avenue Project)  
 'Aa3' Est Rating | 4/16/13 Market Rates  
 \*\*Preliminary Numbers - Subject to Change\*\*

Bond Component	Maturity Date	Amount	Rate	Yield	Price	Yield to Maturity	Premium (-Discount)
Serial bonds:							
	12/01/2014	525,000	2.000%	0.670%	101.912		10,038.00
	12/01/2015	540,000	3.000%	0.870%	105.146		27,788.40
	12/01/2016	555,000	3.000%	1.100%	106.409		35,569.95
	12/01/2017	570,000	3.000%	1.360%	107.053		40,202.10
	12/01/2018	590,000	3.000%	1.590%	107.328		43,235.20
	12/01/2019	605,000	3.000%	1.830%	107.084		42,858.20
	12/01/2020	625,000	3.000%	2.110%	106.103		38,143.75
	12/01/2021	640,000	3.000%	2.300%	105.345		34,208.00
	12/01/2022	660,000	3.000%	2.490%	104.268		28,168.80
	12/01/2023	680,000	3.000%	2.630%	103.359		22,841.20
	12/01/2024	700,000	4.000%	2.750%	111.282 C	2.839%	78,974.00
	12/01/2025	730,000	4.000%	2.870%	110.136 C	3.017%	73,992.80
	12/01/2026	760,000	4.000%	3.000%	108.910 C	3.180%	67,716.00
	12/01/2027	790,000	4.000%	3.110%	107.885 C	3.309%	62,291.50
	12/01/2028	820,000	4.000%	3.200%	107.055 C	3.409%	57,851.00
	12/01/2029	855,000	4.000%	3.270%	106.414 C	3.484%	54,839.70
		10,645,000					718,718.60

Dated Date	06/20/2013	
Delivery Date	06/20/2013	
First Coupon	12/01/2013	
Par Amount	10,645,000.00	
Premium	718,718.60	
Production	11,363,718.60	106.751701%
Underwriter's Discount	-47,902.50	-0.450000%
Purchase Price	11,315,816.10	106.301701%
Accrued Interest		
Net Proceeds	11,315,816.10	

## BOND SUMMARY STATISTICS

Fort Collins Urban Renewal Authority  
 Tax Increment Revenue Refunding Bonds, Series 2013  
 (North College Avenue Project)  
 'Aa3' Est Rating | 4/16/13 Market Rates  
 \*\*Preliminary Numbers - Subject to Change\*\*

Dated Date	06/20/2013
Delivery Date	06/20/2013
Last Maturity	12/01/2029
Arbitrage Yield	2.668434%
True Interest Cost (TIC)	2.894357%
Net Interest Cost (NIC)	2.976786%
All-In TIC	3.010203%
Average Coupon	3.631204%
Average Life (years)	9.629
Duration of Issue (years)	8.157
Par Amount	10,645,000.00
Bond Proceeds	11,363,718.60
Total Interest	3,722,190.69
Net Interest	3,051,374.59
Total Debt Service	14,367,190.69
Maximum Annual Debt Service	890,200.00
Average Annual Debt Service	873,532.96

Bond Component	Par Value	Price	Average Coupon	Average Life	PV of 1 bp change
Serial bonds	10,645,000.00	106.752	3.631%	9.629	7,847.25
	10,645,000.00			9.629	7,847.25

	TIC	All-In TIC	Arbitrage Yield
Par Value	10,645,000.00	10,645,000.00	10,645,000.00
+ Accrued Interest			
+ Premium (Discount)	718,718.60	718,718.60	718,718.60
- Underwriter's Discount	-47,902.50	-47,902.50	
- Cost of Issuance Expense		-104,232.27	
- Other Amounts	-53,412.00	-53,412.00	-53,412.00
Target Value	11,262,404.10	11,158,171.83	11,310,306.60
Target Date	06/20/2013	06/20/2013	06/20/2013
Yield	2.894357%	3.010203%	2.668434%

## BOND DEBT SERVICE

Fort Collins Urban Renewal Authority  
Tax Increment Revenue Refunding Bonds, Series 2013  
(North College Avenue Project)  
'Aa3' Est Rating | 4/16/13 Market Rates  
\*\*Preliminary Numbers - Subject to Change\*\*

Period Ending	Principal	Coupon	Interest	Debt Service
12/01/2013			161,290.69	161,290.69
12/01/2014	525,000	2.000%	360,650.00	885,650.00
12/01/2015	540,000	3.000%	350,150.00	890,150.00
12/01/2016	555,000	3.000%	333,950.00	888,950.00
12/01/2017	570,000	3.000%	317,300.00	887,300.00
12/01/2018	590,000	3.000%	300,200.00	890,200.00
12/01/2019	605,000	3.000%	282,500.00	887,500.00
12/01/2020	625,000	3.000%	264,350.00	889,350.00
12/01/2021	640,000	3.000%	245,600.00	885,600.00
12/01/2022	660,000	3.000%	226,400.00	886,400.00
12/01/2023	680,000	3.000%	206,600.00	886,600.00
12/01/2024	700,000	4.000%	186,200.00	886,200.00
12/01/2025	730,000	4.000%	158,200.00	888,200.00
12/01/2026	760,000	4.000%	129,000.00	889,000.00
12/01/2027	790,000	4.000%	98,600.00	888,600.00
12/01/2028	820,000	4.000%	67,000.00	887,000.00
12/01/2029	855,000	4.000%	34,200.00	889,200.00
	10,645,000		3,722,190.69	14,367,190.69

## BOND SOLUTION

Fort Collins Urban Renewal Authority  
 Tax Increment Revenue Refunding Bonds, Series 2013  
 (North College Avenue Project)  
 'Aa3' Est Rating | 4/16/13 Market Rates  
 \*\*Preliminary Numbers - Subject to Change\*\*

Period Ending	Proposed Principal	Proposed Debt Service	Total Adj Debt Service	Revenue Constraints	Unused Revenues	Debt Serv Coverage
12/01/2013		161,291	161,291	1,300,000	1,138,709	805.99816%
12/01/2014	525,000	885,650	885,650	1,300,000	414,350	146.78485%
12/01/2015	540,000	890,150	890,150	1,300,000	409,850	146.04280%
12/01/2016	555,000	888,950	888,950	1,300,000	411,050	146.23995%
12/01/2017	570,000	887,300	887,300	1,300,000	412,700	146.51189%
12/01/2018	590,000	890,200	890,200	1,300,000	409,800	146.03460%
12/01/2019	605,000	887,500	887,500	1,300,000	412,500	146.47887%
12/01/2020	625,000	889,350	889,350	1,300,000	410,650	146.17417%
12/01/2021	640,000	885,600	885,600	1,300,000	414,400	146.79313%
12/01/2022	660,000	886,400	886,400	1,300,000	413,600	146.66065%
12/01/2023	680,000	886,600	886,600	1,300,000	413,400	146.62757%
12/01/2024	700,000	886,200	886,200	1,300,000	413,800	146.69375%
12/01/2025	730,000	888,200	888,200	1,300,000	411,800	146.36343%
12/01/2026	760,000	889,000	889,000	1,300,000	411,000	146.23172%
12/01/2027	790,000	888,600	888,600	1,300,000	411,400	146.29755%
12/01/2028	820,000	887,000	887,000	1,300,000	413,000	146.56144%
12/01/2029	855,000	889,200	889,200	1,300,000	410,800	146.19883%
	10,645,000	14,367,191	14,367,191	22,100,000	7,732,809	

# URA Refinancing

City Council/URA Board  
May 7, 2013

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## Overview

- City has loaned money to the URA
- Looking to refinance some of those loans with external investors
- Returns about \$11.2 million, including interest, to the City

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## Financing Model for URA Projects

- Initial financing model
  - City provides capital upfront
  - Establish a stable revenue stream
  - Replace with external financing
  
- Future financing will be similar to Aspen Heights
  - No lump sum at completion of project
  - Share percent of revenue as collected
  - Consider exceptions for special circumstances

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## City Loans to URA for N. College

\$000's

Date	Project	Orig. Value	Current Balance	Term Years	Rate	City Fund Holding
09/06	V. Steel, URA start-up funds	\$ 150	\$ 0	5	5.55%	General Fund
05/09	N.C. Market Place, phase 1	5,000	4,729	20	2.85%	Capital Expansion
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06/09	RMI2	5,304	5,304	20	2.50%	General Fund
	<b>Total North College Area</b>	<b>16,846</b>	<b>16,242</b>			

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## North College TIF District

- Created in 2004, expires in 2029
- Increment on property taxes, none on sales tax
- Property tax increment revenue started flowing in 2007
- Revenue is now mature and stable, more attractive to investors

Tax Increment Revenue						\$000s
2007	2008	2009	2010	2011	2012	2013 *
\$110	\$287	\$263	\$493	\$536	\$907	\$1,285

\* anticipated

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## City Pledge Highlights

- Pledging to replenish URA's debt service reserve fund, if it were to be used to make debt payments
  - Non-binding; pledge is to *consider* replenishing
  - However, not honoring the pledge would significantly impact the City's credit rating and ability to borrow money in future
- Commits the General Fund to maintain unrestricted fund balance at least equal to the Reserve Fund Requirement
  - Estimated reserve required is \$961,000
  - Current unrestricted balance is \$37 million
  - Does not require a special set aside in the General Fund

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## Concerns about Ability to Pledge

- Charter Article V, Section 15 prohibits appropriations for specified purposes to entities not under absolute control of the City or to denominational or sectarian institutions. Not applicable to pledge because:
  1. Council and Board have same members, so URA under absolute control of City;
  2. URA not a denominational or sectarian institution; and
  3. Bonds are refinancing public infrastructure, not prohibited purposes.
- Charter Article V, Sections 16 prohibits City from lending or pledging faith or credit to private person or entity or becoming responsible for any debt, contract, or liability of private person or entity. Not applicable to pledge because:
  1. URA is not a private entity;
  2. No legally binding City obligation is being created;
  3. Loan proceeds were used for public infrastructure, not private benefit.
- Same procedure used by other municipalities in Colorado

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## 2013 Bonds (preliminary)

- 2.98% Interest Rate, lower than City rate
- 16 year term
- Saves the URA \$922,000 through 2029

Bond Proceeds	\$11,364
Costs of Issuance	<u>(206)</u>
Repay City Loans with interest	\$11,158

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## Next Steps

- May 9 complete credit application
- May 17 receive credit rating from Moody's
- May 22 publish preliminary official statement
- June 4-6 market bonds
- June 20 closing

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City of  
Fort Collins



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City of  
Fort Collins

RESOLUTION 2013-041  
CONCERNING THE FORT COLLINS URBAN RENEWAL AUTHORITY AND ITS TAX  
INCREMENT REVENUE REFUNDING BONDS (NORTH COLLEGE AVENUE PROJECT),  
SERIES 2013, DECLARING THE CITY COUNCIL'S PRESENT INTENT TO  
APPROPRIATE FUNDS TO REPLENISH THE RESERVE FUND SECURING SUCH  
BONDS, IF NECESSARY; AND AUTHORIZING A COOPERATION AGREEMENT AND  
OTHER ACTIONS TAKEN IN CONNECTION THEREWITH

WHEREAS, the City Council (the "City Council") of the City of Fort Collins, Colorado (the "City") has heretofore created the Fort Collins Urban Renewal Authority ("Authority") as an urban renewal authority pursuant to Colorado Revised Statutes, Part 1 of Title 31, Article 25, as amended (the "Act"); and

WHEREAS, the City Council by Resolution No. 2004-152 approved and adopted on December 21, 2004 has authorized and approved the "North College Urban Renewal Plan" as an urban renewal plan under the Act (the "Plan") for the area described therein (the "Plan Area"); and

WHEREAS, in order to undertake certain urban renewal projects within the Plan Area, the Authority has previously borrowed money from the City and entered into certain prior loan agreements with the City and executed certain prior promissory notes (collectively, the "Prior City Loans") in connection therewith; and

WHEREAS, pursuant to an Indenture of Trust (the "Indenture") between the Authority and U.S. Bank National Association, as trustee (the "Trustee"), the Authority is issuing its Tax Increment Revenue Refunding Bonds (North College Avenue Project), Series 2013 (the "Series 2013 Bonds") for the purpose of repaying the Prior City Loans made by the City to the Authority; and

WHEREAS, a reserve fund (the "Reserve Fund") will be created under the Indenture to secure the payment of the Series 2013 Bonds and such Reserve Fund is required to be maintained in an amount equal to the Reserve Fund Requirement (as defined in the Indenture); and

WHEREAS, the Indenture provides that the Reserve Fund may either be cash funded or that a reserve fund insurance policy (a "Reserve Fund Policy") may be deposited in the Reserve Fund; and

WHEREAS, the City Council wishes to make a non-binding statement of its present intent with respect to the appropriation of funds for the replenishment of the Reserve Fund or the repayment of any draws made under any Reserve Fund Policy, if necessary, and to authorize and direct the City Manager to take certain actions for the purpose of causing requests for any such appropriation to be presented to the City Council for consideration; and

WHEREAS, in connection with the issuance of the Series 2013 Bonds, it is necessary and in the best interests of the City to enter into a Cooperation Agreement (the "Cooperation Agreement") between the City and the Authority; and

WHEREAS, there is attached hereto as Exhibit A the proposed form of the Cooperation Agreement; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Indenture.

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

Section 1. Finding of Best Interests and Public Purpose. The City Council hereby finds and determines, pursuant to the Constitution, the laws of the State and the City's Charter, and in accordance with the foregoing recitals, that adopting this Resolution, entering into the Cooperation Agreement, and facilitating the issuance of the Series 2013 Bonds by the Authority to finance the Refunding Project are necessary, convenient, and in furtherance of the City's purposes and are in the best interests of the inhabitants of the City; and will serve the important public purpose of facilitating the repayment of the Prior City Loans by the Authority to the City.

Section 2. Replenishment of Reserve Fund; Declaration of Intent. To the extent that the Reserve Fund is cash funded, within 90 days after the City's receipt of the written notice from the Trustee of a draw on the Reserve Fund, to the extent that such draw has not been replenished by another source, as provided in Section 4.06 of the Indenture (the "Written Notice"), the City shall replenish the Reserve Fund to the Reserve Fund Requirement from legally available funds of the City, subject to appropriation by the City Council in its sole discretion. Any such City payment (the "City Payment") shall be made directly to the Trustee for deposit in the Reserve Fund in immediately available funds pursuant to the instructions set forth in the Written Notice. It is the present intention and expectation of the City Council to appropriate the City Payment requested in any such Written Notice received by the City, within the limits of available funds and revenues, but this declaration of intent shall not be binding upon the City Council or any future City Council in any future fiscal year. The City Payments shall constitute currently appropriated expenditures of the City.

In the event that a Reserve Fund Policy is deposited in the Reserve Fund and the City receives written notice from the Trustee that it has drawn on the Reserve Fund Policy and such draw has not been repaid by another source, the City shall repay the provider of the Reserve Fund Policy in the amount of such draw, plus any interest due thereon, from legally available funds of the City, subject to appropriation by the City Council in its sole discretion. Any such payment shall be made directly to the provider of the Reserve Fund Policy. It is the present intention and expectation of the City Council to appropriate moneys to repay the provider of any Reserve Fund Policy in the event of a draw thereunder, within the limits of available funds and revenues, but this declaration of intent shall not be binding upon the City Council or any future City Council in any future fiscal year. Any such payments shall constitute currently appropriated expenditures of the City.

This Resolution shall not create a general obligation or other indebtedness or multiple fiscal year direct or indirect debt or other financial obligation of the City within the meaning of its Home Rule Charter or any constitutional debt limitation, including Article X, Section 20 of the Colorado Constitution. Neither this Resolution nor the issuance of the Series

2013 Bonds shall obligate or compel the City to make City Payments or to repay the provider of any Reserve Fund Policy in the event of a draw thereunder beyond those appropriated in the City Council's sole discretion.

Section 3. Direction to City Manager. To the extent that the Reserve Fund is cash funded, within five (5) Business Days following a draw on the Reserve Fund to pay the debt service requirements on the Series 2013 Bonds, to the extent any such draw is not replenished from another source, the Trustee is required under Section 4.06 of the Indenture to provide Written Notice of such draw to the City. The Written Notice shall state the amount required to be paid by the City to restore the Reserve Fund to the Reserve Fund Requirement after replenishment from all other sources available under the Indenture. The Written Notice shall also include instructions for making the City Payment. Any such Written Notice is required to be sent to the City Manager. Upon receipt of a Written Notice by the City Manager, the City Council hereby authorizes and directs the City Manager to prepare and submit to the City Council a request for an appropriation of the amount set forth in the Written Notice. Such request shall be made in sufficient time to enable the City to make the City Payment within 90 days of receipt of the Written Notice as provided in Section 1 hereof.

In the event that a Reserve Fund Policy is deposited in the Reserve Fund and the City receives written notice from the Trustee that a draw has been made on the Reserve Fund Policy and such draw has not been repaid from another source, the City Council hereby directs the City Manager, upon receipt of such notice, to forthwith prepare and submit to the City Council a request for an appropriation in an amount sufficient to repay the provider of such Reserve Fund Policy for such draw, plus any interest due thereon.

Section 4. Fund Balance Covenant. So long as the Series 2013 Bonds are outstanding, the City covenants to maintain an unrestricted fund balance in its General Fund in an amount at least equal to the Reserve Fund Requirement (as defined in the Indenture).

Section 5. Repayment of Amounts Appropriated. In the event that the City Council appropriates funds to make a payment as contemplated by Section 1 hereof, any amounts actually transferred by the City to the Trustee in accordance with the provisions of Section 1 or transferred by the City to the provider of a Reserve Fund Policy in accordance with the provisions of Section 1, shall be treated as an advance under the Cooperation Agreement and shall be repaid by the Authority in accordance with the provisions of the Cooperation Agreement, on a basis expressly subordinate and junior to that of the Series 2013 Bonds, any Additional Bonds and any other obligations or indebtedness that is secured or payable in whole or in part by the Pledged Revenues on a parity with the Series 2013 Bonds.

Section 6. Limitation to Series 2013 Bonds. Unless otherwise expressly provided by a subsequent resolution of the City Council, the provisions of this Resolution shall apply only to the replenishment of the Reserve Fund originally established in the Indenture that secures the payment of the Series 2013 Bonds and shall not apply to any other reserve funds established in connection with the issuance of any other obligations.

Section 7. Approval of Cooperation Agreement. The Cooperation Agreement, in substantially the form attached hereto as Exhibit A, is in all respects approved,

authorized and confirmed. The Mayor is hereby authorized and directed to execute and deliver the Cooperation Agreement, for and on behalf of the City, in substantially the form and with substantially the same content as attached hereto as Exhibit A, provided that such document may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Resolution. The execution of the Cooperation Agreement by the Mayor shall be conclusive evidence of the approval by the City Council of such document in accordance with the terms hereof and thereof.

Section 8. Direction to Act. The City Clerk of the City (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 Resolution and to place the seal of the City on any document authorized and approved by this Resolution. 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 Resolution.

Section 9. Ratification. All actions (not inconsistent with the provisions of this Resolution) heretofore taken by the City Council or the officers, employees or agents of the City directed toward the issuance of the Series 2013 Bonds by the Authority and the execution and delivery of the Cooperation Agreement are hereby ratified, approved and confirmed.

Section 10. Severability. If any section, subsection, paragraph, clause or provision of this Resolution or the documents hereby authorized and approved 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 Resolution or such documents, the intent being that the same are severable.

Section 11. Repealer. All prior resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 12. Effectiveness. This Resolution shall take effect immediately upon its passage.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 7th day of May, A.D., 2013.

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Mayor

ATTEST:

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City Clerk

**COOPERATION AGREEMENT  
BETWEEN THE CITY OF FORT COLLINS AND  
THE FORT COLLINS URBAN RENEWAL AUTHORITY**

THIS COOPERATION AGREEMENT (this "Agreement") dated as of \_\_\_\_\_, 2013, is made and entered into between the CITY OF FORT COLLINS, COLORADO (the "City") and the FORT COLLINS URBAN RENEWAL AUTHORITY (the "Authority").

WHEREAS, the City is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, the Authority is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, Colorado Revised Statutes ("C.R.S.") (the "Urban Renewal Law"); and

WHEREAS, pursuant to Article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and the Authority are authorized to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each governmental entity; and

WHEREAS, the City Council of the City (the "City Council") by Resolution No. 2004-152 approved and adopted on December 21, 2004 has authorized and approved the "North College Urban Renewal Plan" as an urban renewal plan under the Act (the "Plan") for the area described therein (the "Plan Area"), and the urban renewal projects described therein (collectively, the "Project"); and

WHEREAS, the Project is being undertaken to facilitate the elimination and prevention of blighted areas and to promote redevelopment, conservation and rehabilitation of the Plan Area; and

WHEREAS, pursuant to section 31-25-112, C.R.S., the City is specifically authorized to do all things necessary to aid and cooperate with the Authority in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations, or activities of the Authority, to enter into agreements with the Authority respecting such actions to be taken by the City, and appropriating funds and making such expenditures of its funds to aid and cooperate with the Authority in undertaking the Project and carrying out the Plan; and

WHEREAS, the Authority is issuing its Fort Collins Urban Renewal Authority, Tax Increment Revenue Refunding Bonds (North College Avenue Project), Series 2013 (the "Series 2013 Bonds") for the purpose of refinancing certain obligations owing by the Authority to the City that financed certain urban renewal projects in the Plan Area; and

WHEREAS, the City Council has adopted a Resolution declaring its nonbinding intent and expectation that it will appropriate any funds requested, within the limits of available funds and revenues, in a sufficient amount to replenish the Reserve Fund to the Reserve Fund

Requirement or to repay the provider of any reserve fund insurance policy in the event of a draw thereunder (the "Replenishment Resolution") as defined in the Indenture of Trust (the "Indenture"), between the Authority and U.S. Bank National Association, as trustee (the "Trustee"); and

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

NOW, THEREFORE, in consideration of the mutual promises set forth below, the City and the Authority agree as follows:

1. **LOAN.** If the City Council appropriates funds pursuant to the Replenishment Resolution, such funds shall be a loan from the City to the Authority to be repaid as provided herein.

2. **PAYMENT.** (a) All amounts payable by the Authority to the City hereunder shall constitute "Subordinate Debt" for purposes of the Indenture. The Authority shall cause such amounts to be paid from and to the extent of Pledged Revenue (as defined in the Indenture) available for the payment of Subordinate Debt in accordance with the terms of the Indenture including, in particular, Section 4.04(c) thereof.

(b) The Authority agrees to pay the City interest on the principal balance of any amounts designated as a loan hereunder at a rate to be determined based upon applicable City policies in effect at the time of any such loan.

3. **FURTHER COOPERATION.** (a) The City shall continue to make available such employees of the City as may be necessary and appropriate to assist the Authority in carrying out any authorized duty or activity of the Authority pursuant to the Urban Renewal Law, the Plan, or any other lawfully authorized duty or activity of the Authority.

(b) The City agrees to assist the Authority and the Trustee by pursuing all lawful procedures and remedies available to it to collect and transfer to the Authority on a timely basis all Pledged Revenues for deposit into the Revenue Fund. To the extent lawfully possible, the City will take no action that would have the effect of reducing tax collections that constitute Pledged Revenues.

(c) The City agrees to pay to the Authority any Pledged Property Tax Revenues when, as and if received by the City, but which are due and owing to the Authority pursuant to the Plan.

(d) In connection with the issuance of the Series 2013 Bonds, the Authority agrees that so long as the Series 2013 Bonds are outstanding, the Authority shall submit to the City Manager by February 15 of each year a report in substantially the form set forth as Exhibit B to the Indenture. The City Manager agrees to submit such report to the City Council at its first regular meeting in March in each year. Notwithstanding the foregoing,

failure by the Authority to provide the report required by this Section 3(d) of this Agreement and Section 5.13 of the Indenture or failure by the City Manager to submit such report to the City Council shall not constitute a default under this Agreement or under the Indenture.

4. **SUBORDINATION.** The Authority's obligation under this Agreement to repay the City for the loan referred to in Section 1 hereof is subordinate to the Authority's obligations for the repayment of the Series 2013 Bonds, any Additional Bonds and any other obligations or indebtedness that is secured or payable in whole or in part by the Pledged Revenues on a parity with the Series 2013 Bonds.

5. **GENERAL PROVISIONS.**

(a) **Separate Entities.** Nothing in this Agreement shall be interpreted in any manner as constituting the City or its officials, representatives, consultants, or employees as the agents of the Authority, nor as constituting the Authority or its officials, representatives, consultants, or employees as agents of the City. Each entity shall remain a separate legal entity pursuant to applicable law. Neither party shall be deemed hereby to have assumed the debts, obligations, or liabilities of the other.

(b) **Third Parties.** Neither the City nor the Authority shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto, other than the Trustee.

(c) **Modifications.** No modification or change of any provision in this Agreement shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by both parties and incorporated as a written amendment to this Agreement. Memoranda of understanding and correspondence shall not be construed as amendments to the Agreement.

(d) **Entire Agreement.** This Agreement shall represent the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the parties relating to the subject matter of this Agreement and shall be independent of and have no effect upon any other contracts.

(e) **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

(f) **Assignment.** Except for the pledge under the Indenture, this Agreement shall not be assigned, in whole or in part, by either party without the written consent of the other and of the Bank.

(g) **Waiver.** No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach or of such provision. Failure of either party to enforce at any time, or from time to time, any provision of this Agreement shall



not be construed as a waiver thereof. The remedies reserved in this Agreement shall be cumulative and additional to any other remedies in law or in equity.

IN WITNESS HEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date above.

CITY OF FORT COLLINS, COLORADO

\_\_\_\_\_  
Mayor

(SEAL)

ATTESTED:

\_\_\_\_\_  
City Clerk

FORT COLLINS URBAN RENEWAL  
AUTHORITY

[SEAL]

By \_\_\_\_\_  
Chairperson, Board of Commissioners

Attest:

By \_\_\_\_\_  
Executive Director