

ORDINANCE NO. 2008-08

CITY COUNCIL OF FRUITA, COLORADO

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO (THE "CITY") AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF THE CITY OF FRUITA, COLORADO HOSPITAL REVENUE BONDS (FAMILY HEALTH WEST PROJECT) SERIES 2008 (THE "BONDS") IN A PRINCIPAL AMOUNT NOT TO EXCEED \$30,000,000; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; APPROVING THE FORMS AND AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF THE BONDS, A BOND INDENTURE AND A LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF A BOND PURCHASE AGREEMENT AND ANY AND ALL NECESSARY CLOSING DOCUMENTS; REPEALING ACTION HERETOFORE TAKEN IN CONFLICT HEREWITH; AND AUTHORIZING OFFICIALS OF THE CITY TO DO ALL OTHER THINGS NECESSARY OR ADVISABLE TO COMPLETE THE TRANSACTION AUTHORIZED IN THIS ORDINANCE.

WHEREAS, the City of Fruita, Colorado (the "City") is a home rule city and a political subdivision duly organized and validly existing under the laws and Constitution of the State of Colorado (the "State"); and

WHEREAS, the Fruita City Charter revised April 6, 2006 (the "Charter"), the City and Municipality Development Revenue Bond Act, Article 3 of Title 29, Colorado Revised Statutes, as amended (the "Act") and the Supplemental Public Securities Act, Article 57, Title 11, Sections 201, *et seq.*, Colorado Revised Statutes, as amended (the "Supplemental Act"), authorize the City to finance one or more "projects," including any land, building or other improvement and real and personal properties (other than inventories, raw materials and working capital) suitable or used for or in connection with a hospital; and

WHEREAS, the City is further authorized by the Act and the Supplemental Act to issue revenue bonds for the purpose of defraying the cost of financing and refinancing any "project," and for paying interest on such revenue bonds for a period of time not exceeding three years, and for paying all incidental expenses incurred in issuing such revenue bonds, and to secure payment of such revenue bonds as provided in the Act; and

WHEREAS, representatives of The Lower Valley Hospital Association, a Colorado nonprofit corporation doing business as Family Health West (the "Borrower"), have presented to the City a proposal (the "Proposal") whereby the City would issue hospital revenue bonds pursuant to the Act and the Supplemental Act and lend the proceeds of the Bonds to the Borrower to finance or refinance the acquisition, construction and equipping of a replacement hospital located in the City of Fruita, Colorado, renovations to its existing skilled nursing facilities, and refinance certain outstanding indebtedness, the proceeds of which were used to construct or improve the Borrower's assisted living facilities (the "Project"), to finance a reserve

fund, to pay capitalized interest on the Bonds for a period of up to three years, and to pay certain costs incurred by the Borrower in connection with the Project and the issuance of the Bonds; and

WHEREAS, the City has considered the Proposal and has determined to issue, sell and deliver hospital revenue bonds pursuant to the Act and the Supplemental Act in one or more series or subseries designated as “City of Fruita, Colorado Hospital Revenue Bonds (Family Health West Project) Series 2008” (the “Bonds”) in a principal amount not to exceed \$30,000,000 for the purpose described in the Proposal; and

WHEREAS, pursuant to a Loan Agreement, dated as of April 1, 2008 (the “Loan Agreement”), between the City and the Borrower, the City agrees to lend the proceeds of the Bonds to the Borrower (the “Loan”) and the Borrower agrees to (a) apply proceeds of the Loan to finance or refinance costs of the acquisition or construction or renovation of the Project; (b) make payments sufficient to pay the principal of, premium, if any, and interest on the Bonds when due (whether at maturity, by redemption, acceleration or otherwise); and (c) observe the other covenants and agreements and make the other payments set forth therein; and

WHEREAS, there have been presented to the City Council (the “Council”) at this meeting the proposed forms of: (i) the Loan Agreement and (ii) the Bond Indenture of Trust, dated as of April 1, 2008 (the “Indenture”), by and between the City and a bank with corporate trust powers, in its capacity as trustee thereunder (the “Trustee”).

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO:

Section 1. ***Ratification of Prior Action; Capitalized Terms.*** All action (not inconsistent with the provisions of this Ordinance) heretofore taken by the Council and other officials of the City, relating to the issuance and sale of the Bonds for the purposes herein set forth, is hereby ratified, approved and confirmed. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Indenture.

Section 2. ***Findings.*** The Council does hereby determine, based upon representations of the Borrower heretofore submitted to the City, as follows:

(a) The Project is a “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, providing more adequate hospital care to the citizens of the City, since the Project will be located within the boundaries of the City.

Section 3. ***Approval and Authorization of Documents.*** The Indenture and the Loan Agreement are hereby approved and authorized. The Mayor or any other member of the Council is hereby authorized and directed to execute, and the City Clerk or any Assistant City Clerk of the City is hereby authorized and directed to affix the seal of the City and to attest, in substantially the forms and content as presented to the City on this date, such documents, but with such changes, modifications, additions and deletions therein (including, but not limited to, the dated date of such documents) 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 presented at this meeting.

Section 4. *Authorization to Issue and Sell the Bonds.*

(a) The City shall issue, sell and deliver the Bonds, subject to the terms of the Loan Agreement and the Indenture. The Bonds shall be in such principal amount, bear such date and interest rates and mature as set forth in the Indenture provided, however, that the aggregate principal amount of Bonds issued under the Indenture shall not exceed the amount set forth herein. The Bonds shall be payable at such place, be subject to redemption prior to maturity, carry such registration privileges, be executed and contain such terms, covenants and conditions and be in substantially the form, all as set forth herein and in the Indenture. The maximum principal amount of the Bonds shall not exceed \$30,000,000, the maximum net effective interest rate payable on the Bonds shall not exceed 9% per annum (such rate being hereinafter referred to as the “Maximum Rate”) and the final maturity of the Bonds shall not be after April 1, 2048.

(b) The sale of the Bonds to Red Capital Markets, Inc. and Herbert J. Sims & Co., Inc. (collectively, the “Underwriter”) pursuant to the terms of a bond purchase agreement is hereby authorized. The Mayor or any other member of the Council is hereby authorized and directed to approve the form of a bond purchase agreement and final principal amount, interest rate and maturities of the Bonds, the purchase price of the Bonds by the Underwriter and to execute the bond purchase agreement and the Bonds, and the City Clerk or any Assistant City Clerk of the City is hereby authorized and directed to affix the seal of the City and to attest the bond purchase agreement and the Bonds and each is hereby authorized to deliver the bond purchase agreement and the Bonds for and on behalf of the City.

(c) The City has not participated in the preparation of, and makes no representation or warranty as to, and has no responsibility for, the accuracy or completeness of the information contained in, any private placement memorandum, limited offering memorandum, official statement or other offering, marketing or remarketing document (the “Disclosure Document”) used or to be used to offer and sell the Bonds.

Section 5. *Determinations Required Under the Act.* In connection with the issuance of the Bonds and pursuant to Sections 29-3-113, 29-3-114 and 29-3-120 of the Act, the City hereby makes the following determinations:

(a) that the amounts necessary in each year to pay the principal of and interest on the Bonds are dependent upon the rate of interest on each of the Bonds determined in accordance with the Indenture, but in any event shall not exceed the principal amount of the Bonds plus interest at the Maximum Rate;

(b) that the terms of the Loan Agreement require that the Borrower will cause to be maintained or maintain the Project and will cause to be carried or carry all proper insurance with respect thereto and require the payment of all applicable taxes with respect thereto;

(c) in reliance upon information provided by the Borrower and Underwriter, that the amounts required to be paid by the Borrower under the terms of the Loan Agreement will be adequate to retire the Bonds;

(d) that a reserve fund to secure repayment of the Bonds has been established under the Indenture; and

(e) that proceeds from the issuance and sale of the Bonds will be deposited as set forth in the Indenture.

Section 6. ***Investments.*** Proceeds from the sale of the Bonds and any special funds from the revenues from the Project are required to be invested and reinvested in such securities and other investments specified in, and otherwise in accordance with, the Indenture.

Section 7. ***Authority to Execute and Deliver Additional Documents.*** The officials, employees and agents of the City shall take all action in conformity with the Act necessary or advisable to effectuate the issuance of the Bonds and shall take all action necessary or advisable in conformity with the Act to finance the Project and for carrying out, giving effect to and consummating the transactions contemplated by this Ordinance, the Loan Agreement and the Indenture, including the execution and delivery of the bond purchase agreement referred to in Section 4, tax agreements and other appropriate closing documents.

Section 8. ***Authorization of Disclosure Document.*** The Borrower is hereby authorized to circulate a preliminary and final Disclosure Document in connection with the offer and sale of the Bonds. The City will not comment on the Disclosure Document except for the description of the City and litigation matters with respect to the City.

Section 9. ***Bonds are 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 City, municipality or political subdivision of the State within the meaning of any provision or limitation of the Constitution or statutes of the State 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 City, 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 State Constitution.

Section 10. ***No Pecuniary Liability.*** Nothing contained in this Ordinance or in the Bonds, the Loan Agreement, the Indenture, 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 city, municipality or political subdivision of the State. The breach by any party of any agreement contained in this Ordinance, the Bonds, the Loan Agreement, the Indenture, or any other instrument shall not impose any pecuniary liability upon, or a charge upon the general credit or taxing powers of, the City, the State or any city, 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 the Project, or power to operate the Project as a business or in any manner.

Section 11. **Limitation of Rights.** With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this 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 12. **Immunity of Officers.** 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, member 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 13. **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 14. **Bond Recital.** Each Bond shall contain a recital that such Bond is issued pursuant to the Act and the Supplemental Act, and such recital shall be conclusive evidence of its validity and of the regularity of its issuance.

Section 15. **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 16. **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 17. **Inconsistent Actions Repealed.** All resolutions and ordinances, or parts thereof, inconsistent herewith and with the documents hereby approved, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any resolution or ordinance or part thereof. Notwithstanding the foregoing, Ordinance No. 2008-03 shall stay in full force and effect, to the extent permitted by law, until this Ordinance shall take effect.

Section 18. **Public Hearing.** Pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended, after a public hearing on the Bonds and the Project proceeded by reasonable public notice, the Council hereby approves the issuance of the Bonds and the financing of the Project.

Section 19. **Effectiveness.** This Ordinance shall take effect in accordance with Section 2.13 of the Charter.

INTRODUCED, READ, AND ORDERED PUBLISHED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE CITY OF FRUITA, ON THE 18TH DAY OF MARCH 2008, BY A VOTE OF ____ IN FAVOR AND ____ AGAINST.

CITY OF FRUITA, COLORADO

By: _____
_____, Mayor

ATTEST:

_____, City Clerk

FINALLY ADOPTED AND APPROVED THIS 1ST DAY OF APRIL, 2008.

CITY OF FRUITA, COLORADO

By _____
_____, Mayor

ATTEST:

_____, City Clerk