

ORDINANCE NO. 016
AN ORDINANCE OF THE CITY OF FORT COLLINS, COLORADO,
ELECTRIC UTILITY ENTERPRISE AUTHORIZING A FIRST AMENDMENT TO
THE 2022 LOAN AGREEMENT WITH U.S. BANK NATIONAL ASSOCIATION
TO PROVIDE ADDITIONAL FUNDING FOR THE EPIC LOAN PROGRAM

A. 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 (the “Charter”).

B. The members of the City Council of the City (the “Council”) have been duly elected and qualified.

C. Section 19.3(b), Article V of the Charter (“Section 19.3(b)”) provides that the Council may, by ordinance establish the City’s electric utility (the “Utility”) as an enterprise of the City.

D. Pursuant to Section 19.3(b), the Council has heretofore established the Utility as an enterprise of the City (the “Enterprise”) in ordinances codified in Section 26-392 of the Code of the City of Fort Collins (the “Code”).

E. Pursuant to Section 19.3(b) and Code Section 26-392, the Council has authorized the Enterprise, by and through the Council, sitting as the board of the Enterprise (the “Board”), to issue, by ordinance, revenue and refunding securities and other debt.

F. The City has established a program to assist certain customers of the Utility in financing home energy efficiency and renewable energy improvements by making loans to customers who are property owners (“Epic Loans”).

G. The Enterprise previously entered into a Loan Agreement dated as of May 31, 2022 (the “Original Agreement”), with U.S. Bank National Association (the “Bank”) pursuant to which the Bank agreed to loan the Enterprise an amount not to exceed \$2,500,000 (the “Original Loan Amount”) in order to finance Epic Loans, which Original Loan Amount is evidenced by a promissory note.

H. The Board has determined that in order to finance additional Epic Loans (the “Project”), it is necessary and advisable and in the best interests of the Enterprise (i) to enter into a first amendment to the Original Agreement (the “First Amendment” and together with the Original Agreement, the “Loan Agreement”) with the Bank pursuant to which the Bank will agree to increase the Original Loan Amount to an amount not to exceed \$3,500,000 (the “Loan”) for such purposes, and (ii) to issue a new promissory note (the “Note”) to the Bank to evidence the Enterprise’s repayment obligations under the Loan Agreement.

I. The Enterprise has previously incurred the following financial obligations which are payable from and secured by a lien on the Net Pledged Revenues (as defined in the Loan Agreement): its “City of Fort Collins, Colorado, Electric Utility Enterprise, Tax-Exempt Revenue Bonds, Series 2018A” (the “2018A Bonds”), its “City of Fort Collins, Colorado, Electric Utility Enterprise, Taxable Revenue Bonds, Series 2018B” (the “2018B Bonds” and, together with the 2018A Bonds, the “2018 Bonds”), the Loan Agreement with U.S. Bank National Association, dated December 17, 2019, as amended on December 30, 2021 pursuant to the First Amendment to Loan Agreement (as amended, the “2019 Loan Agreement”), the Loan Agreement with Zions Bancorporation, N.A., dba Vectra Bank Colorado (formerly ZB, N.A., DBA Vectra Bank Colorado) (“Vectra”), dated as of April 17, 2020 (the “2020 Loan Agreement”), the Loan Agreement with the State of Colorado, Colorado Energy Office, with a start date of April 20, 2020 (the “2020 State Loan Agreement”), the Loan Agreement with Vectra, dated as of July 13, 2022 (the “2022 Vectra Loan Agreement”), and its “City of Fort Collins, Colorado, Electric Utility Enterprise Revenue Bonds, Series 2023” (the “2023 Bonds” and together with the 2018 Bonds, the 2019 Loan Agreement, the 2020 Loan Agreement, the 2020 State Loan Agreement and the 2022 Vectra Loan Agreement, the “Prior Obligations”).

J. Except for the Prior Obligations, neither the City nor the Enterprise has pledged or hypothecated the Gross Pledged Revenues (as defined in the Loan Agreement) to the payment of any bonds or for any other purpose, with the result that the Net Pledged Revenues may now be pledged lawfully and irrevocably to the payment of the Loan which pledge will be subordinate to the pledge of Net Pledged Revenues to the payment of the 2018 Bonds and the 2023 Bonds and on a parity with the pledge of Net Pledged Revenues to the payment of the 2019 Loan Agreement, the 2020 Loan Agreement, the 2020 State Loan Agreement and the 2022 Vectra Loan Agreement.

K. Pursuant to Code Section 26-392(a), the Mayor of the City has been appointed President of the Enterprise (the President”), the Mayor Pro Tem of the City has been appointed Vice President of the Enterprise (the “Vice President”), the City Financial Officer has been appointed Treasurer of the Enterprise (the “Treasurer”), and the City Clerk has been appointed Secretary of the Enterprise (the “Secretary”) which appointments the Board hereby reaffirms and ratifies for purposes of this Ordinance.

L. There are attached hereto the forms of the First Amendment and the Note (collectively, the “Financing Documents”).

M. Pursuant to Section 11-57-205, Colorado Revised Statutes (“C.R.S.”), the Enterprise desires to delegate to the President or the Treasurer the independent power to make final determinations relating to the Financing Documents, subject to the parameters contained in this Ordinance.

In light of the foregoing recitals, which the Board hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE BOARD OF THE CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE as follows:

Section 1. Adoption of Recitals, Approvals, Authorizations, and Amendments. The Board hereby adopts and incorporates herein by reference as operative provisions of this Ordinance the recitals set forth above. The forms of the Financing Documents in substantially the forms attached hereto as Exhibit "A" are incorporated herein by reference and are hereby approved. The Enterprise shall enter into and perform its obligations under the Financing Documents in the forms of such documents, with such changes as are not inconsistent herewith and as are hereafter approved by the President or the Treasurer, including any changes required to convert the loan to one or more Term Loans as described in the Loan Agreement. The President and Secretary are hereby authorized and directed to execute the Financing Documents and to affix the seal of the Enterprise thereto, and further to execute and authenticate such other documents or certificates as are deemed necessary or desirable in connection therewith. The Financing Documents shall be executed in substantially the forms approved at this meeting. The execution of any instrument or certificate or other document in connection with the matters referred to herein by the President, the Secretary, the Treasurer, any member of the Board, or by other appropriate officers of the Enterprise, shall be conclusive evidence of the approval by the Enterprise of such instrument.

Section 2. Election to Apply the Supplemental Act. Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S. (the "Supplemental Act") provides that a public entity, including the Enterprise, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Enterprise hereby elects to apply all of the provisions of the Supplemental Act to the Financing Documents.

Section 3. Delegation. (a) Pursuant to Section 11-57-205 of the Supplemental Act, the Board hereby delegates to the President or Treasurer, the independent authority to make the following determinations relating to and contained in the Financing Documents, subject to the restrictions contained in paragraph (b) of this Section 3:

- (i) The interest rate on the Loan;
- (ii) The principal amount of the Loan;
- (iii) The amount of principal of the Loan maturing in any given year and the final maturity of the Loan; and
- (iv) The dates on which the principal of and interest on the Loan are paid.

(b) The delegation in this Section 3 shall be subject to the following parameters and restrictions:

- (i) The interest rate on the Loan shall not exceed 9.5%;
- (ii) The principal amount of the Loan shall not exceed \$3,500,000; and
- (iii) The final maturity of the Loan shall not be later December 31, 2038.

Section 4. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Financing Documents shall contain recitals that the Financing Documents are issued pursuant to certain provisions of the Supplemental Act. Such

recital shall be conclusive evidence of the validity and the regularity of the issuance of the Financing Documents after their delivery for value.

Section 5. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Loan evidenced by the Financing Documents provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance. The amounts pledged to the payment of the Loan evidenced by the Financing Documents shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge shall have the priority described in the Financing Documents. 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 Enterprise irrespective of whether such persons have notice of such liens.

Section 6. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the Financing Documents shall be commenced more than thirty days after the issuance of the Financing Documents.

Section 7. Limited Obligation; Special Obligation. The Loan evidenced by the Loan Agreement and the Note is payable solely from the Net Pledged Revenues and neither the Loan Agreement nor the Note constitutes a debt within the meaning of any constitutional, charter, or statutory limitation or provision.

Section 8. No Recourse Against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Board, or any officer or agent of the Enterprise acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal of or interest on the Loan. Such recourse shall not be available either directly or indirectly through the Board or the Enterprise, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Financing Document and as a part of the consideration for making the Loan, the Bank specifically waives any such recourse.

Section 9. Authorized Persons. Pursuant to the Loan Agreement, the President and the Treasurer are hereby designated as the Authorized Persons (as defined in the Loan Agreement) for the purpose of performing any act or executing any document relating to the Loan, the Enterprise, or the Financing Documents. A copy of this Ordinance shall be furnished to the Bank as evidence of such designation. The President may designate additional authorized Persons.

Section 10. Direction to Take Authorizing Action. The appropriate officers of the Enterprise and members of the Board are hereby authorized and directed to take all other actions necessary or appropriate to effectuate the provisions of this Ordinance, including but not limited to such certificates and affidavits as may reasonably be required by the Bank.

Section 11. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the Enterprise and members of the Board, not inconsistent with the provisions of this Ordinance, relating to the Loan Agreement or the Financing Documents, or actions to be taken in respect thereof, are hereby ratified, approved, and confirmed.

Section 12. 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, the intent being that the same are severable.

Section 13. Repealer. All orders, resolutions, bylaws, ordinances or regulations of the Enterprise, or parts thereof, inconsistent with this Ordinance are hereby repealed to the extent only of such inconsistency.

Section 14. Ordinance Irrepealable. After the Financing Documents are executed and delivered, this Ordinance shall constitute an irrevocable contract between the Enterprise and the Bank and shall be and remain irrepealable until the Loan and the interest thereon, as applicable, shall have been fully paid, satisfied, and discharged. No provisions of any constitution, statute, charter, ordinance, resolution or other measure enacted after the Financing Documents are executed and delivered shall in any manner be construed as impairing the obligations of the Enterprise to keep and perform the covenants contained in this Ordinance.

Section 15. Disposition. A true copy of this Ordinance, as adopted by the Board, shall be numbered and recorded on the official records of the Board and its adoption and publication shall be authenticated by the signatures of the President and the Secretary, and by a certificate of the publisher.

Section 16. Effective Date. This Ordinance shall take effect on the tenth day following its final passage.

Introduced, considered favorably on first reading on May 21, 2024, and approved on second reading for final passage on June 4, 2024.

CITY OF FORT COLLINS, COLORADO,
ELECTRIC UTILITY ENTERPRISE

By: _____
President

(ENTERPRISE SEAL)

ATTEST:

Interim Secretary

Effective Date: June 14, 2024
Approving Attorney: Ryan Malarky