



# Electric Utility Enterprise Board Meeting Agenda

May 21, 2024 at 6:00 PM

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Jeni Arndt, President		City Council Chambers
Emily Francis, District 6, Vice-President		300 Laporte Avenue, Fort Collins &
Susan Gutowsky, District 1		via Zoom at
Julie Pignataro, District 2		<a href="https://zoom.us/j/98241416497">https://zoom.us/j/98241416497</a>
Tricia Canonico, District 3		Cablecast on FCTV
Melanie Potyondy, District 4		Channel 14 on Connexion
Kelly Ohlson, District 5		Channel 14 and 881 on Comcast
Carrie Daggett	Kelly DiMartino	Heather Walls
City Enterprise Attorney	Executive Director	Interim Secretary

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## ELECTRIC UTILITY ENTERPRISE BOARD

**This meeting will be conducted as part of the regular Council meeting during Other Business**

- A) CALL MEETING TO ORDER
- B) ROLL CALL
- C) ITEMS FOR DISCUSSION

**1. Items Relating to Renewal of the Epic Homes Loan Program Third-Party Capital Agreements.**

A. First Reading of Ordinance No. 016, Authorizing a First Amendment to the 2022 Loan Agreement with U.S. Bank National Association to Provide Additional Funding for the Epic Loan Program.

B. First Reading of Ordinance No. 017, Authorizing a First Amendment to the 2022 Loan Agreement with Zions Bancorporation, N.A., DBA Vectra Bank Colorado to Provide Additional Funding for the Epic Loan Program.

The purpose of this item is to seek approval by the Utility Enterprise Board of ordinances authorizing extensions of loan agreements with U.S. Bank and Vectra Bank to provide continuity in funding for the Epic Homes Loans program.

The blended public and private capital strategy of Epic Homes Loan program supports the Our Climate Future plan for residential electrification and renewables and aligns with the Council priority of reducing climate pollution and air pollution through electrification.

The existing U.S. Bank agreement expires on May 31, 2024, and staff is proposing to renew the Vectra Bank agreement in parallel to reduce the administrative efforts and to continue success with program participation.

The Council Finance Committee and the Energy Board both expressed support for the proposed agreement renewals at recent meetings.

Staff recommend renewal of the proposed U.S. Bank and Vectra Bank capital agreements as a key component of the ongoing implementation of the Epic Loans program.

**D) OTHER BUSINESS**

**E) ADJOURNMENT**

*Upon request, the City of Fort Collins will provide language access services for individuals who have limited English proficiency, or auxiliary aids and services for individuals with disabilities, to access City services, programs and activities. Contact 970.221.6515 (V/TDD: Dial 711 for Relay Colorado) for assistance. Please provide advance notice. Requests for interpretation at a meeting should be made by noon the day before.*

*A petición, la Ciudad de Fort Collins proporcionará servicios de acceso a idiomas para personas que no dominan el idioma inglés, o ayudas y servicios auxiliares para personas con discapacidad, para que puedan acceder a los servicios, programas y actividades de la Ciudad. Para asistencia, llame al 970.221.6515 (V/TDD: Marque 711 para Relay Colorado). Por favor proporcione aviso previo cuando sea posible. Las solicitudes de interpretación en una reunión deben realizarse antes del mediodía del día anterior.*

May 21, 2024

# AGENDA ITEM SUMMARY

Utility Enterprise Board



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## STAFF

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Brian Tholl, Energy Services Manager  
Glenn Pease, Energy Services Supervisor

## SUBJECT

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**Items Relating to Renewal of the Epic Homes Loan Program Third-Party Capital Agreements.**

## EXECUTIVE SUMMARY

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A. First Reading of Ordinance No. 016, Authorizing a First Amendment to the 2022 Loan Agreement with U.S. Bank National Association to Provide Additional Funding for the Epic Loan Program.

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The existing U.S. Bank agreement expires on May 31, 2024, and staff is proposing to renew the Vectra Bank agreement in parallel to reduce the administrative efforts and to continue success with program participation.

The Council Finance Committee and the Energy Board both expressed support for the proposed agreement renewals at recent meetings.

Staff recommend renewal of the proposed U.S. Bank and Vectra Bank capital agreements as a key component of the ongoing implementation of the Epic Loans program.

## STAFF RECOMMENDATION

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Staff recommends adoption of both Ordinances on First Reading.

## BACKGROUND / DISCUSSION

### Epic Homes

Epic Homes is a comprehensive program to help Fort Collins Utilities customers achieve more efficient, comfortable, and healthy home living environments for homeowners and renters alike. The program encompasses various offerings, including:

- Discounted home energy assessments
- Equipment rebates on home upgrades and renewable energy projects supporting the Our Climate Future goals
- Participating contractors
- Quality assurance
- Attractive on-bill financing options (Epic Homes Loans)
- Certificates that document energy improvements

In October 2018, Fort Collins became a winner of the 2018 Bloomberg Mayors Challenge and the associated \$1.0M prize. The 2018 Bloomberg Mayors Challenge involved over 300 cities proposing ideas to address important issues in their community. The City's proposal was selected as a winner for its innovative approach to providing health and equity benefits to residents, specifically for low-to-moderate income renters, by improving the energy efficiency of homes. Residential property owners can take advantage of Epic Homes' easy, streamlined steps to make their homes more comfortable, healthy, and efficient. Partnering with Colorado State University, Fort Collins also established a research study which links the health and well-being indicators of improved indoor environmental quality from efficiency upgrades.

Epic Homes provides non-energy benefits in addition to efficiency, such as increased comfort, health, and safety.

### Epic Homes Loan

Epic Homes Loan is Fort Collins' Utilities on-bill finance program. It is a component of the program portfolio which supports community priorities for energy efficiency, renewables, electrification, reduced greenhouse gas emissions, and increased equity and well-being for residents. Providing a simple, low-cost financial tool with Epic Homes Loan helps to meet these objectives by helping property owners undertake comprehensive efficiency improvements. This is especially important for older, less efficient rental properties, which make up a significant percentage of the City's housing stock.

Detailed information regarding the Epic Homes Loan program and loan terms can be found at <https://www.fcgov.com/utilities/epicloan>. The program operates under authorization in the Code and the Financial Officer's Rules and Regulations, as updated periodically. The program operates with a neutral balance sheet impact as the obligations to the third-party capital providers are balanced by the obligations of customers to repay on their monthly utility bills.

The original on-bill finance program started issuing loans in 2013. The program was then paused in 2016 when the program's success resulted in reaching the cap of maximum outstanding loan balance funded through Light & Power reserves (\$1.6M). Building on this success, on-bill finance was revitalized as Epic Homes Loan in August 2018 during the Champions Phase of the Bloomberg Mayors Challenge. The City was awarded grants from the Colorado Energy Office (\$200,000) and from Bloomberg Philanthropies (\$688,350 of the \$1.0M) for the Epic Loan Program.

One of the workstreams of the Bloomberg Mayors Challenge project was to secure third-party capital as a strategy to enable scaling of the program. In 2019, the Utilities entered into a \$2.5M line of credit loan

agreement with U.S. Bank to provide up to 10-year capital for the Epic Homes Loan Program. This line of credit term out in December 2021 and was renewed in May 2022. The line of credit with US Bank will again term out in May 2024. In April 2020, the Utility Enterprise Board authorized a separate \$2.5M line of credit loan agreement with Vectra Bank Colorado to provide 15-year capital. That agreement concluded in April 2022, and was renewed by the Board in May 2022. This line of credit is nearing its cap but will not term out until July 2025. A revision to the agreement to increase the limit is being proposed to sustain the growth of the program. Both agreements are structured as lines of credit which are periodically converted into fixed rate term loans. (See Table 1 for a summary of the program’s capital stack.)

Through 2023, Fort Collins Utilities has serviced 536 on-bill loans to support energy efficiency upgrades in residential homes and to help property owners overcome financial barriers for making these important upgrades. The blending of zero cost capital (reserves and grants) with low interest third-party capital is what enables the program to offer attractive and competitive interest rates and terms for Utilities customers. With the enterprise fund as the borrower, the program can extend the benefits of the high credit rating of the organization to individual customers. These rates are periodically adjusted based on the blended cost of capital. See Table 2 for current interest rates and Table 3 for program results.

An ongoing and attractive financing structure to support energy efficiency retrofits is a critical element for success moving forward. The low rates and scalability of these third-party agreements align with the programmatic objectives and financial requirements of the City.

Capital Type	Provider	Term	Rate	Amount
<b>Internal &amp; Grant</b>				
	Previously authorized Light & Power reserves	Ongoing	0%	\$1,600,000
	Bloomberg Philanthropies	Grant	0%	\$688,350
	Colorado Energy Office – Grant	Grant	0%	\$200,000
	<b>Internal Subtotal</b>			<b>\$2,488,350</b>
<b>External Market</b>				
	Colorado Energy Office – Loan	15 year	0%	<b>\$800,000</b>
	U. S. Bank	5 & 10 year	LOC: 1-Month SOFR + 1.05%  Term: COF + 1.65% for 3 yr or COF + 1.85% for 8yr  (Currently 6.88% and 7.14%)	<b>Up to \$3,500,000</b>

	Vectra Bank Colorado	15 year	LOC 10y T note + 2.75% (Currently 6.89 %)  Term 10y T note  (Currently 4.14%)	<b>Up to \$3,500,000</b>
	<b>External Subtotal</b>			<b>\$7,800,000</b>
<b>Total</b>				<b>\$ 10,288,350</b>

Although the capital stack from Table 1 shows a proposed increase in the total available capital stack of \$10.2M, staff is managing the program to the limits of \$7.4M of outstanding principal balance until we are able to explore ways to scale the program to support its growth and future success. Our timeline for exploring and reporting of scaling strategies to Council is Fall of 2024.

**Table 1. Summary of Proposed Epic Homes Loan Capital Stack**

**Table 2. Customer Interest Rates**

<b>Loan Term</b>	<b>Customer Rate (Effective June 2023)</b>
<b>3 or 5 years</b>	5.25%
<b>7 or 10 years</b>	5.55%
<b>15 years</b>	5.95%

*Note: Customer interest rates are evaluated at a minimum of every 6 months, but usually quarterly when in a rate changing market*

**Table 3. Program Results**

Number of Loans Issued	536
Number of Outstanding Loans	355
Number of Loans Paid in Full	181
Total Amount Funded	\$8,994,010
Amount Outstanding	\$5,634,529
Total Amount of Interest Payments	\$580,428
Median Loan Amount	\$14,985
Median Monthly Principal Payment	\$102.50
Median Monthly Interest Payment	\$35.84

### Third-Party Capital Agreement Summaries:

The terms of the previous U.S. Bank agreement, concluding on May 31, 2024, include:

- Amount: Up to \$2,500,000.
- Length: 10-years inclusive of draw period.
- Draw Period: Up to 2 years, with draw timing and amounts based on program/customer demand.
- Line of Credit Rate: 76% of the Prime Rate (6.46% as of March 2024); Rate set at time of loan closing.
- Term rates: Cost of funds (COF) plus 1.65% for 3-year terms, and COF plus 1.85% for 8-year terms.
- Collateral: None.
- Pre-pay: The loan may be prepaid, in whole or in part, at the option of the Enterprise with no penalty.
- Repayment Position: Senior pledge on customer loan repayments and subordinate position on Electric Utility revenues, after the more senior pledge held by revenue bondholders.

U.S. Bank agreement, revised terms for extension to conclude in November of 2025:

- Amount: From up to \$2,500,000 to up to \$3,500,000.
- Line of Credit Rate: \$1.0M Secured Overnight Financing Rate (SOFR) + 1.05% for 1–1.5 year term or \$1.0 M SOFR + 1.68% for 2-2.5 year term (Currently 6.36% and 6.99%, respectively.).
- Term Rates: Cost of funds (COF) plus 1.65% for 3-year terms, and COF plus 1.85% for 8-year terms.
- Remaining terms carry forward from existing agreement.

The terms of the previous Vectra Bank agreement, which concludes in July 2025, include:

- Amount: Up to \$2,500,000.
- Length: 15-years inclusive of draw period.
- Draw Period: Up to 2 years, with draw timing and amounts based on program/customer demand.
- Fixed Rate: 10-year Treasury +2.75%. Year 1 \$1,012,000 at 5.56%; Year 2 6.908%.
- Collateral: None.
- Pre-pay: City may pre-pay in whole or in part after 2027 with no penalty. No prepayment is allowed prior to 2025, and between 2025 and 2027 there is a 1% prepayment fee.
- Repayment Position: Senior pledge on customer loan repayments and subordinate position on Electric Utility revenues, after the more senior pledge held by revenue bondholders.

The proposed revisions to the Vectra Bank agreement will be:

- Amount: From up to \$2,500,000 to up to \$3,500,000.
- Expiry Date: From July 2025 to July 2026.

### Next Steps

- Continue with program operations and financial transactions.
- Explore third party program administration options for Epic Loans.
- Continue to explore strategies for scaling the program to present to Council as part of seeking expansion of program outstanding balance limits in Fall of 2024.

## CITY FINANCIAL IMPACTS

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The Epic Loan program is managed as a revolving loan program which is balance sheet neutral to the Electric Utility Enterprise fund. The program operates under several core tenets and guardrails, including:

- Maintaining an incremental interest rate of 0.75% to 1.0% above the blended source cost of capital and customer lending rates. This makes the program have a small positive cash flow. Lending rates are reviewed no less than twice annually.
- Ensuring parity between the length of term for borrowed capital and customer loans.
- Having no negative impact on future debt offering by the electric utility enterprise fund.
- Protecting Utilities credit rating and existing bond coverage covenants.

Staff also projects the agreements under consideration will meet the project demand for the next 1 to 2 years, and the agreements are not anticipated to affect electric rates.

Risks include lack of customer demand for energy upgrade loans and /or risk of customer default if borrowers choose not to repay their Epic Loans. Customer default risk is considered de minimis based on lack of defaults over the 10-year history of the Program and the default protections the City already has in place. Customer demand risk is difficult to assess, but the line of credit model helps ensure that principal borrowed matches the Epic Loan volumes as closely as possible.

## BOARD / COMMISSION / COMMITTEE RECOMMENDATION

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The Council Finance Committee reviewed the proposed agreement renewals on April 4, 2024, and supported moving forward for review to Utilities Enterprise Board.

The Energy Board reviewed the proposed agreement renewals on March 14, 2024.

## PUBLIC OUTREACH

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None.

## ATTACHMENTS

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1. Ordinance A for Consideration (U.S. Bank)
2. Exhibit A to Ordinance A
3. Ordinance B for Consideration (Vectra Bank)
4. Exhibit A to Ordinance B
5. Abridged Council Finance Committee Minutes, April 4, 2024
6. Abridged Energy Board DRAFT Minutes, March 14, 2024



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

**DRAFT 5/15/2024**

**FIRST AMENDMENT TO  
LOAN AGREEMENT**

by and between

**CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE**

**AND**

**U.S. BANK NATIONAL ASSOCIATION**

Relating to:

Not to exceed \$3,500,000 2022 Taxable Subordinate Lien Revenue Note

Dated as of [\_\_\_\_\_, 2024]

**FIRST AMENDMENT TO LOAN AGREEMENT**

THIS FIRST AMENDMENT TO LOAN AGREEMENT (this “Amendment”) is made and entered into as of [\_\_\_\_\_, 2024] (the “First Amendment Effective Date”), by and between **CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE**, an enterprise established and existing pursuant to the home rule charter of the City of Fort Collins, Colorado (the “Enterprise”), and **U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**, a national banking association, in its capacity as lender (the “Bank”), as successor to U.S. Bank National Association.

**WITNESSETH:**

WHEREAS, the Enterprise and U.S. Bank National Association previously entered into that certain Loan Agreement dated as of May 31, 2022 (the “Original Agreement”), pursuant to which U.S. Bank National Association (the “Original Lender”) made a loan to the Enterprise in an amount not to exceed \$2,500,000, pursuant to the terms and conditions set forth in the Original Agreement; and

WHEREAS, pursuant to Section 8.06 and Section 8.14 of the Original Agreement, no amendment, modification, supplement, termination or waiver of or to any provision of the Original Agreement, nor consent to any departure by the Enterprise therefrom, shall be effective unless the same shall be in writing and signed by or on behalf of the Bank and the Enterprise; and

WHEREAS, the Enterprise and the Bank wish to amend the Original Agreement as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I****INTENTION OF PARTIES, AGREEMENT PROVISIONS**

The Enterprise and the Bank have entered into this Amendment pursuant to Section 8.06 and Section 8.14 of the Original Agreement to amend their rights and obligations set forth in the Original Agreement and agree that this Amendment does not constitute a novation of and in no way satisfies or refinances the debt evidenced by the Original Agreement. The terms of the Original Agreement, as amended by this Amendment (as so amended, the “Agreement”), shall govern the rights and obligations of the Enterprise and the Bank in connection with the transactions contemplated by the Agreement to the extent provided therein. Capitalized terms used but not defined in this Amendment have the respective meanings assigned thereto in the Original Agreement.



**ARTICLE II**  
**AMENDMENT**

**Section 2.01. Amendment to Definitions.** The following terms contained in Article I of the Original Agreement are hereby amended and replaced to read as follows:

“*2022 Loan Agreement*” means the Enterprise’s Loan Agreement with ZB, N.A., dba Vectra Bank Colorado dated as of July 13, 2022, as amended by the First Amendment to Loan Agreement dated as of [\_\_\_\_\_, 2024].

“*2022 Note*” or “*Note*” means the City of Fort Collins, Colorado, Electric Utility Enterprise not to exceed \$3,500,000 2022 Taxable Subordinate Lien Revenue Note dated as of May 31, 2022, as amended and restated on [\_\_\_\_\_, 2024], which evidences the Loan made by the Bank to the Enterprise pursuant to this Agreement.

“*2023 Bond Ordinance*” means the ordinance of the Enterprise which provides for the issuance and delivery of the 2023 Bonds

“*2023 Bonds*” means the Enterprise’s Revenue Bonds, Series 2023.

“*Advance Maturity Date*” means November 30, 2025, unless earlier terminated as provided herein or extended, upon the City’s written request and in the Bank’s sole discretion, for up to 90 days.

“*Advance Period*” means the period commencing on the date of the Closing Date and terminating on November 30, 2025, unless terminated or extended as provided herein.

“*Authorizing Ordinance*” means, collectively, the Ordinance adopted by the Board on May 3, 2022, authorizing the Enterprise to finance the Project, enter into the Loan and execute and deliver the Note, this Agreement, and the other Financing Documents and the Ordinance adopted by the Board on June 4, 2024, authorizing the First Amendment.

“*Closing*” means May 31, 2022.

“*Closing Date*” means May 31, 2022.

“*Financing Documents*” means this Agreement, as amended by the First Amendment, the Note, the Authorizing Ordinance, and any other document or instrument required or stated to be delivered hereunder or thereunder, all in form and substance satisfactory to the Bank.

“*First Amendment*” means the First Amendment to Loan Agreement by and between the Enterprise and the Bank dated as of [\_\_\_\_\_, 2024].

“*First Amendment Effective Date*” means [\_\_\_\_\_, 2024].

“*Interest Rate*” means (i) for Advances made prior to [\_\_\_\_\_, 2024], a variable rate of interest equal to 76% of the Prime Rate, (ii) for Advances made on and after [\_\_\_\_\_, 2024],

a variable rate of interest calculated in accordance with Section 2.02(a) hereof, and (iii) for Term Loans, a fixed rate of interest determined on the date an Advance converts to a Term Loan pursuant to Section 2.07 hereof.

“*Loan Amount*” means, with respect to the Loan, a maximum amount of Three Million Five Hundred Thousand and 00/100 U.S. Dollars (\$3,500,000), or such lesser amount that has been Advanced by the Bank from time to time in accordance with the terms and provisions of this Agreement.

“*Maximum Advance Amount*” means, with respect to the 2022 Note, \$3,500,000.

“*Parity Debt*” means the 2019 Loan Agreement, the 2020 Loan Agreement, the 2020 State Loan Agreement, the 2022 Loan Agreement and any other obligations of the Enterprise payable from and with a lien on the Net Pledged Revenues on a parity basis with the 2022 Note.

“*Senior Debt*” means the 2018A Bonds, the 2018B Bonds, the 2023 Bonds and any obligations of the Enterprise payable from and with a lien on the Net Pledged Revenues on a basis superior to the 2022 Note.

“*Unfunded Portion*” means, as of any date prior to [\_\_\_\_\_, 2024], an amount equal to \$2,500,000 less the total amount of all Advances funded as of such date, less any reduction of the Unfunded Portion made pursuant to Section 2.01 hereof; and as of [\_\_\_\_\_, 2024], and as of any date thereafter, an amount equal to the Maximum Advance Amount, less the total amount of all Advances funded as of such date, less any reduction of the Unfunded Portion made pursuant to Section 2.01 hereof.

**Section 2.02. Amendment to Exhibit A of the Original Agreement.** Exhibit A to the Original Agreement is hereby amended and replaced by Appendix A of the First Amendment.

**Section 2.03. Amendment to Section 2.01 of the Original Agreement.** Section 2.01 of the Original Agreement is hereby amended and replaced to read as follows:

**Section 2.01. Loan.**

(a) ***Agreement to Make Loan.*** The Bank hereby agrees to extend the Loan to the Enterprise in the maximum aggregate principal amount of \$3,500,000 subject to the terms and conditions of this Agreement. The Loan shall be evidenced by the 2022 Note, the form of which is set forth in Exhibit A attached hereto.

(b) ***Advances.*** Subject to the terms and conditions of this Agreement, including without limitation satisfaction of the conditions set forth in Section 2.06 hereof and upon delivery to the Bank of an Advance Request in the form of Exhibit B hereto, the Bank hereby agrees to make Advances to the Enterprise from time to time during the Advance Period in the aggregate original principal amounts not to exceed \$3,500,000 with respect to the Loan (as more particularly defined in Article I hereof, the “Maximum Advance Amount”). On the Advance Termination Date, the Unfunded Portion shall be reduced to zero and no further Advances will be made hereunder.

(c) **Note.** The Loan shall be evidenced by the 2022 Note. On the Closing Date, the Enterprise shall execute and deliver the 2022 Note payable to the Bank, in substantially the form set forth in Exhibit A attached hereto. On the First Amendment Effective Date, the Enterprise shall execute and deliver an amended and restated 2022 Note payable to the Bank, in substantially the form set forth in Exhibit A attached hereto. The Enterprise shall maintain a book for the registration of ownership of the 2022 Note. Upon any transfer of the 2022 Note as provided herein, such transfer shall be entered on such registration books of the Enterprise.

With respect to each Advance funded by the Bank from time to time hereunder, the Bank shall maintain, in accordance with its usual practices, records evidencing the indebtedness resulting from each such Advance and the amounts of principal and interest payable and paid from time to time hereunder. In any legal action or proceeding in respect of any Advance or the Loan, the entries made in such records shall be conclusive evidence (absent manifest error) of the existence and amounts of the obligations therein recorded. The Note shall evidence the obligation of the Enterprise to pay the Loan and shall evidence the obligation of the Enterprise to pay the principal amount of each Advance funded by the Bank hereunder, as such amounts are outstanding from time to time, and accrued interest

(d) **Non-Use Fees** The Enterprise shall pay to the Bank a nonrefundable fee (the “Non-Use Fee”), which shall be in the amount of (i) 0.30% of the weighted average balance of the Unfunded Portion from the Closing Date to [\_\_\_\_\_, 2024], and (ii) 0.35% of the weighted average balance of the Unfunded Portion from [\_\_\_\_\_, 2024], to the Advance Termination Date. The Non-Use Fee shall be calculated and paid on the Advance Termination Date.

(e) **Application of Loan Proceeds.** The Enterprise shall apply the proceeds of each Advance to pay the costs of the Project.

(f) **Special Obligations.** All amounts due under this Agreement or the 2022 Note shall be payable and collectible solely out of the Net Pledged Revenues, which revenues are hereby so pledged which pledge is in all respects subordinate to the pledge and lien thereon of the Senior Debt at any time outstanding. The Bank may not look to any general or other fund for the payment of such amounts; this Agreement and the 2022 Note shall not constitute a debt or indebtedness within the meaning of any constitutional, charter, or statutory provision or limitation; and this Agreement and the 2022 Note shall not be considered or held to be general obligations of the Enterprise or the City but shall constitute special obligations of the Enterprise. No statutory or constitutional provision enacted after the execution and delivery of this Agreement or the 2022 Note shall in any manner be construed as limiting or impairing the obligation of the Enterprise to comply with the provisions of this Agreement or the 2022 Note. None of the covenants, agreements, representations and warranties contained herein or in the 2022 Note shall ever impose or shall be construed as imposing any liability, obligation or charge against the Enterprise or the City (except the Net Pledged Revenues and the special funds pledged therefor), or against its general credit, or as payable out of its general fund or out of any funds derived from taxation or out of any other revenue source (other than those pledged therefor). The payment of the amounts due under this Agreement or the 2022 Note is not secured by an encumbrance, mortgage or other pledge of property of the City or the Enterprise, except for the Net Pledged Revenues. No property

of the City or the Enterprise, subject to such exception, shall be liable to be forfeited or taken in payment of such amounts.

**Section 2.04. Amendment to Section 2.02(a) of the Original Agreement.** Section 2.02(a) of the Original Agreement is hereby amended and replaced to read as follows:

(a) ***Interest Rate.*** The unpaid principal balance of the Loan will bear interest at the Interest Rate. All interest due and payable under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months. Interest payments on the Loan shall be due on each Interest Payment Date and on the Maturity Date.

Interest on each Advance made hereunder on and after [\_\_\_\_\_, 2024], shall accrue at an annual rate equal to 1.05% plus the Term SOFR Base Rate, which shall be that one-month Term SOFR rate in effect two New York Banking Days prior to the Rate Adjustment Date, adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation, and reset monthly on each Rate Adjustment Date; provided that if the Term SOFR rate is not published on such New York Banking Day due to a holiday or other circumstance that the Bank deems in its sole discretion to be temporary, the applicable Term SOFR rate shall be the Term SOFR rate last published prior to such New York Banking Day. The term “Interest Period” means, with respect to an advance, a period of one month (in each case, subject to the availability thereof) commencing on a Business Day selected by the Borrower pursuant to this Agreement and ending on the day that corresponds numerically to such date one month thereafter, provided that (i) if any Interest Period would otherwise end on a day which is not a New York Banking Day, then the Interest Period shall end on the next succeeding New York Banking Day unless the next succeeding New York Banking Day falls in another calendar month, in which case the Interest Period shall end on the immediately preceding New York Banking Day; (ii) if any Interest Period begins on the last New York Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), then the Interest Period shall end on the last New York Banking Day of the calendar month at the end of such Interest Period; and (iii) no Interest Period may extend beyond the Advance Maturity Date, and if the Interest Period should happen to extend beyond the Advance Maturity Date, such Borrowing must be prepaid on the Advance Maturity Date. The term “Board” means the Board of Governors of the Federal Reserve System. The term “New York Banking Day” means any day (other than a Saturday or Sunday) on which commercial banks are open for business in New York, New York. The term “Rate Adjustment Date” means the first day of each month. The term “SOFR” means the secured overnight financing rate which is published by the Board or any committee convened by the Board and available at [www.newyorkfed.org](http://www.newyorkfed.org). The term “Term SOFR” means a forward-looking term rate based on SOFR and recommended by the Board. The term “Term SOFR Base Rate” means the greater of (a) zero and (b) the forward-looking term rate based on SOFR for the applicable Interest Period quoted by the Bank from the Term SOFR Administrator’s Website (or other commercially available source providing such quotations as may be selected by the Bank from time to time), which shall be the Term SOFR rate in effect two New York Banking Days prior to commencement of the advance), adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation; provided that if the Term SOFR rate for such Interest Period is not published on such New York Banking Day due to a holiday or other circumstance that the Bank deems in its sole discretion to be temporary, the applicable Term SOFR rate shall be the Term SOFR rate for such Interest Period

last published prior to such New York Banking Day. If the initial Advance on any facility to which this paragraph applies occurs other than on the Rate Adjustment Date, the initial one-month Term SOFR rate shall be that one-month Term SOFR rate in effect two New York Banking Days prior to the later of (a) the immediately preceding Rate Adjustment Date and (b) the First Amendment Effective Date, which rate plus the percentage described above shall be in effect until the next Rate Adjustment Date. If Term SOFR is replacing a different rate index for an existing facility, and if such replacement becomes effective on a date other than the Rate Adjustment Date, the initial one-month Term SOFR rate hereunder shall be that one-month Term SOFR rate in effect two New York Banking Days prior to the effective date of such replacement, which rate plus the percentage described above shall be in effect until the next Rate Adjustment Date. The term “Term SOFR Administrator’s Website” means the website or any successor source for Term SOFR identified by CME Group Benchmark Administration Ltd. (or a successor administrator of Term SOFR). If the Bank has determined in its sole discretion that (i) the administrator of Term SOFR, or any relevant agency or authority for such administrator of Term SOFR (or any substitute index which replaces Term SOFR (Term SOFR or such replacement, the “Benchmark”)), has announced that such Benchmark will no longer be provided, (ii) any relevant agency or authority has announced that such Benchmark is no longer representative, or (iii) any similar circumstance exists such that such Benchmark has become permanently unavailable or ceased to exist, the Bank will (x) replace such Benchmark with a replacement rate or (y) if any such circumstance applies to fewer than all tenors of such Benchmark used for determining an interest period hereunder, discontinue the availability of the affected interest periods. In the case of Term SOFR, such replacement rate will be Daily Simple SOFR. In the case of the replacement of a rate other than Term SOFR, the Bank may add a spread adjustment selected by the Bank, taking into consideration any selection or recommendation of a replacement rate by any relevant agency or authority, and evolving or prevailing market practice. For purposes of this Agreement, (a) “SOFR” means the secured overnight financing rate which is published by the Board of Governors of the Federal Reserve System (together with any committees convened by the Board, the “Board”) and available at [www.newyorkfed.org](http://www.newyorkfed.org); and (b) “Daily Simple SOFR” means a daily rate based on SOFR and determined by the Bank in accordance with the conventions for such rate selected by the Bank. In connection with the selection and implementation of any such replacement rate, the Bank may make any technical, administrative or operational changes that the Bank decides may be appropriate to reflect the adoption and implementation of such replacement rate. Without limitation of the foregoing, in the case of a transition to Daily Simple SOFR, the Bank will remove any option to select another rate that may change or is reset on a daily basis, including, without limitation, the Bank’s prime rate. The Bank does not warrant or accept any responsibility for the administration or submission of, or any other matter related to, Term SOFR or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation whether any such alternative, successor or replacement rate will have the same value as, or be economically equivalent to, Term SOFR. The Bank’s internal records of applicable interest rates shall be determinative in the absence of manifest error.

**Section 2.05. Amendment to Section 2.07 of the Original Agreement.** Section 2.07 of the Original Agreement is hereby amended and replaced to read as follows:

**Section 2.07. Conversion to Term Loan.** Provided that (i) no Event of Default shall have occurred and be continuing (ii) all representations and certifications and agreements herein are then true and correct, and (iii) the outstanding Senior Debt is rated in one of its four highest rating

categories by a national recognized organization which regularly rates obligations such as the Senior Debt, the Enterprise may elect to convert all or a portion of the outstanding Advances on or before the Advance Maturity Date to one or more term loans, but not more than four term loans (each a “Term Loan”) that shall be payable in full by no later than the 10th anniversary of the Closing Date. Such election shall be exercised by the Enterprise delivering to the Bank a Conversion Notice, appropriately completed and signed by an Authorized Person, at least three (3) Business Days prior to the Advance Maturity Date. Each Term Loan shall be a fully amortizing loan in approximately equal installments of principal and interest and shall mature on the Term Loan Maturity Date specified in the Conversion Notice, which date shall be either the 5th anniversary of the Closing Date or the 10th anniversary of the Closing Date. Principal and interest on each Term Loan shall be payable on each Interest Payment Date. The Interest Rate on a Term Loan shall be a fixed rate determined on the date an Advance converts to a Term Loan and shall equal the Cost of Funds plus 1.65% for a Term Loan which matures on the 5th anniversary of the Closing Date or the Cost of Funds plus 1.85% for a Term Loan which matures on the 10th anniversary of the Closing Date. The Enterprise and the Bank agree that the aggregate principal amount of all Advances which is converted to a Term Loan shall be divided approximately equally between Term Loans which mature on the 5th anniversary of the Closing Date and Term Loans which mature on the 10th anniversary of the Closing Date.

**Section 2.06. Amendment to Section 5.10 of the Original Agreement.** Section 4.15 of the Original Agreement is hereby amended and replaced to read as follows:

**Section 4.15. Outstanding Debt.** Upon the execution and delivery of this Agreement on the Closing Date, except for the Financing Documents and the 2018A Bonds, the 2018B Bonds, the 2019 Loan Agreement, the 2020 Loan Agreement, and the 2020 State Loan Agreement, the Enterprise will have no other Debt outstanding payable from or secured by the Net Pledged Revenues or any portion thereof. Upon the execution and delivery of the First Amendment on the First Amendment Effective Date, except for the Financing Documents and the outstanding Parity Debt and outstanding Senior Debt, the Enterprise will have no other Debt outstanding payable from or secured by the Net Pledged Revenues or any portion thereof. The Enterprise represents and warrants that it will incur additional Debt only in accordance with the provisions of Section 5.23 of this Agreement.

**Section 2.07. Amendment to Section 5.10 of the Original Agreement.** Section 5.10 of the Original Agreement is hereby amended and replaced to read as follows:

**Section 5.10. Other Liens.** Other than the Parity Debt and the Senior Debt, there are no liens or encumbrances of any nature whatsoever on or against the System, or any part thereof, or on or against the Net Pledged Revenues on a parity with or superior to the lien thereon of this Agreement and the Note.

**Section 2.08. Amendment to Section 5.23 of the Original Agreement.** Section 5.23 of the Original Agreement is hereby amended and replaced to read as follows:

**Section 5.23. Additional Debt.** The Enterprise may issue Debt with a lien on the Net Pledged Revenues that is on a parity with or subordinate to the lien of this Agreement, without the Bank’s prior written consent. The Enterprise may issue Debt with a lien on the

Net Pledged Revenues that is senior to the lien of this Agreement, without the Bank’s prior written consent, if such Debt is issued pursuant to the provisions of the 2018 Bond Ordinance and the 2023 Bond Ordinance.

**Section 2.09. Amendment to Section 8.03 of the Original Agreement.** Section 8.03 of the Original Agreement is hereby amended and replaced to read as follows:

**Section 8.03. Notices.** Notices shall be deemed delivered when the notice has been (a) deposited in the United States Mail, postage pre-paid; (b) received by overnight delivery service; (c) received by Electronic Notification; or (d) when personally delivered at the following addresses (the “Notice Parties”): Notice of any record shall be deemed delivered when the record has been (a) deposited in the United States Mail, postage pre-paid; (b) received by overnight delivery service; (c) received by Electronic Notification; or (d) when personally delivered at the following addresses (the “Notice Parties”):

- to Enterprise: City of Fort Collins  
P.O. Box 580  
Fort Collins, CO 80522  
Attn: City Manager
  
- with a copy to: City of Fort Collins  
P.O. Box 580  
Fort Collins, CO 80522  
Attn: City Attorney
  
- to Bank: U.S. Bank National Association  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
Attn: Brian Richter
  
- with a copy to: U.S. Bank National Association  
777 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
Attn: Dan Clements

**ARTICLE III**

**REISSUANCE OF NOTE**

**Section 3.01. Reissuance of Note.** In connection with the execution of this Amendment, the Bank shall surrender the Note delivered to the Bank by the Enterprise on May 31, 2022, evidencing the Loan, to the Enterprise to be canceled, which Note will no longer evidence the outstanding Loan Amount. The Enterprise shall execute and deliver to the Bank a new Note, in substantially the form attached hereto as Appendix A, in the name of the Bank, as payee, which shall evidence the Loan and shall bear interest as set forth in the Loan Agreement.

**ARTICLE IV****MISCELLANEOUS**

**Section 4.01. Full Force and Effect.** The Original Agreement is hereby amended as of the First Amendment Effective Date to the extent provided in this Amendment and, except as specifically provided herein, the Original Agreement shall remain in full force and effect in accordance with its terms.

**Section 4.02. Applicable law and jurisdiction.** This Amendment will be governed by and interpreted as provided in Section 8.05 of the Original Agreement and the Parties hereto consent to the exclusive jurisdiction of any state court situated in Larimer County, Colorado in accordance with Section 8.05 of the Original Agreement.

**Section 4.03. Headings.** Section headings in this Amendment are included herein for convenience of reference only and shall not have any effect for purposes of interpretation or construction of the terms of this Amendment.

**Section 4.04. Counterparts.** This Amendment may be signed in any number of counterpart copies, but all such copies shall constitute one and the same instrument.

**Section 4.05. Representations and Warranties.** Each party hereto represents and warrants to the other that this Amendment has been duly authorized and validly executed by it and that the Original Agreement as hereby amended constitutes its valid obligation, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and subject to the application of general principles of equity including but not limited to the right of specific performance.

The Enterprise further represents and warrants to the Bank that (a) as of the First Amendment Effective Date, no Event of Default has occurred and is continuing and (b) since the Closing Date, the organizational documents of the Enterprise have not been amended, restated, supplemented or otherwise modified, rescinded or revoked.

**Section 4.06. Severability.** In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby.

**Section 4.07. Electronic Signature; Electronically Signed Document.** The parties agree that the electronic signature of a party to this Amendment (or any amendment or supplement of this Amendment) shall be as valid as an original signature of such party and shall be effective to bind such party to this Amendment. The parties agree that any electronically signed document (including this Amendment) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "electronic signature" means a manually-signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the Internet as a pdf (portable document format) or other replicating image attached to an e-mail message; and,



“electronically signed document” means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature. Paper copies or “printouts”, if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

**ARTICLE V**

**CONDITIONS PRECEDENT; FEES**

**Section 5.01. Conditions Precedent.** This Amendment shall become effective as of the First Amendment Effective Date subject to the satisfaction, in the opinion of the Bank, of or waiver by the Bank of each of the following conditions precedent:

- (a) Delivery by the Enterprise to the Bank of an executed counterpart of this Amendment.
- (b) The Bank shall have received such other certificates, approvals, filings, opinions and documents as shall be reasonably requested by the Bank.
- (c) All other legal matters pertaining to the execution and delivery of this Amendment shall be satisfactory to the Bank and its counsel (and the execution and delivery hereof by the Bank shall constitute conclusive evidence that all such legal matters have been completed to the satisfaction of the Bank).

**Section 5.02. Fees.** The Enterprise shall pay the reasonable fees and expenses of counsel to the Bank promptly following receipt of an invoice for such fees and expenses.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the parties hereto have caused this First Amendment to Loan Agreement to be duly executed and delivered as of the date set forth above.

**U.S. BANK NATIONAL ASSOCIATION**, a national banking association

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE**, an enterprise of the City of Fort Collins, Colorado

By \_\_\_\_\_  
President

[ENTERPRISE SEAL]

Attest:

By \_\_\_\_\_  
Secretary

[Signature Page to First Amendment to Loan Agreement]

**APPENDIX A TO FIRST AMENDMENT TO LOAN AGREEMENT**

**EXHIBIT A**

**FORM OF 2022 NOTE**

**THIS NOTE MAY NOT BE SOLD TRANSFERRED OR OTHERWISE DISPOSED OF WITHOUT THE CONSENT OF THE ENTERPRISE.**

**UNITED STATES OF AMERICA  
STATE OF COLORADO  
CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE**

**2022 TAXABLE SUBORDINATE LIEN REVENUE NOTE**

**IN THE AGGREGATE PRINCIPAL AMOUNT OF  
NOT TO EXCEED \$3,500,000**

**Advances Not to Exceed US \$3,500,000**

**Original Date May 31, 2022**

**Amended and Restated Date \_\_\_\_\_, 2024**

FOR VALUE RECEIVED, CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE, an enterprise of the City of Fort Collins, Colorado, (hereinafter referred to as “Maker”), promises to pay to the order of U.S. BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns (hereinafter referred to as “Payee”), at the office of Payee or its agent, designee, or assignee at 400 South Howes Street, Fort Collins, Colorado 80521, or at such place as Payee or its agent, designee, or assignee may from time to time designate in writing, all Advances made in an amount not to exceed the principal sum of THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (US \$3,500,000) (this “Note”) pursuant to the terms of the Loan Agreement dated as of May 31, 2022, as amended by the First Amendment to Loan Agreement dated as of [\_\_\_\_\_, 2024], by and between Maker and Payee (as amended, the “Loan Agreement”), in lawful money of the United States of America.

This Note shall bear interest, be payable, and mature pursuant to the terms and provisions of the Loan Agreement. All capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed in the Loan Agreement.

All amounts due under this Note shall be payable and collectible solely out of the Net Pledged Revenues, which revenues are hereby so pledged which pledge is in all respects subordinate to the pledge and lien thereon of the Senior Debt at any time outstanding. The Bank may not look to any general or other fund for the payment of such amounts; this Note shall not constitute a debt or indebtedness within the meaning of any constitutional, charter, or statutory provision or limitation; and this Note shall not be considered or held to be general obligations of the Enterprise or the City but shall constitute a special obligation of the Enterprise. No statutory or constitutional provision enacted after the execution and delivery of the Note shall in any manner

be construed as limiting or impairing the obligation of the Enterprise to comply with the provisions of this Note. None of the covenants, agreements, representations and warranties contained herein or in this Note shall ever impose or shall be construed as imposing any liability, obligation or charge against the Enterprise or the City (except the Net Pledged Revenues and the special funds pledged therefor), or against its general credit, or as payable out of its general fund or out of any funds derived from taxation or out of any other revenue source (other than those pledged therefor). The payment of the amounts due under this Note is not secured by an encumbrance, mortgage or other pledge of property of the City or the Enterprise, except for the Net Pledged Revenues. No property of the City or the Enterprise, subject to such exception, shall be liable to be forfeited or taken in payment of such amounts.

Amounts received by Payee under this Note shall be applied in the manner provided by the Loan Agreement. All amounts due under this Note shall be payable without setoff, counterclaim or any other deduction whatsoever by Maker.

Unless payments are made in the required amount in immediately available funds in accordance with the provisions of the Loan Agreement, remittances in payment of all or any part of the amounts due and payable hereunder shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Payee in funds immediately available at the place where this Note is payable (or any other place as Payee, in Payee's sole discretion, may have established by delivery of written notice thereof to Maker) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Payee of any payment in an amount less than the amount then due shall be deemed an acceptance on account only and any unpaid amounts shall remain due hereunder, all as more particularly provided in the Loan Agreement.

In the event of nonpayment of this Note, Payee shall be entitled to all remedies under the Loan Agreement and at law or in equity, and all remedies shall be cumulative.

It is expressly stipulated and agreed to be the intent of Maker and Payee at all times to comply with applicable state law and applicable United States federal law. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under this Note or under the Loan Agreement, or contracted for, charged, taken, reserved or received with respect to the indebtedness evidenced by this Note, then it is Maker's and Payee's express intent that all excess amounts theretofore collected by Payee be credited on the principal balance of this Note (or, if this Note has been or would thereby be paid in full, refunded to Maker), and the provisions of this Note shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and under the Loan Agreement. All sums paid or agreed to be paid to Payee for the use, forbearance and detention of the indebtedness evidenced hereby and by the Loan Agreement shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the maximum rate permitted under applicable law from time to time in effect and applicable to the indebtedness evidenced hereby for so long as such indebtedness remains outstanding.

Maker and any endorsers, sureties or guarantors hereof jointly and severally waive presentment and demand for payment, protest and notice of protest and nonpayment, all applicable exemption rights, valuation and appraisal, notice of demand, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note and the bringing of suit and diligence in taking any action to collect any sums owing hereunder or in proceeding against any of the rights and collateral securing payment hereof. Maker and any surety, endorser or guarantor hereof agree (a) that the time for any payments hereunder may be extended from time to time without notice and consent; (b) to the acceptance of further collateral; (c) to the release of any existing collateral for the payment of this Note; (d) to any and all renewals, waivers or modifications that may be granted by Payee with respect to the payment or other provisions of this Note; and/or (e) that additional makers, endorsers, guarantors or sureties may become parties hereto all without notice to them and without in any manner affecting their liability under or with respect to this Note. No extension of time for the payment of this Note shall affect the liability of Maker under this Note or any endorser or guarantor hereof even though Maker or such endorser or guarantor is not a party to such agreement.

Failure of Payee to exercise any of the options granted herein to Payee upon the happening of one or more of the events giving rise to such options shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time in respect to the same or any other event. The acceptance by Payee of any payment hereunder that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the options granted herein or in the Loan Agreement to Payee at that time or at any subsequent time or nullify any prior exercise of any such option without the express written acknowledgment of Payee.

Maker (and the undersigned representative of Maker, if any) represents that Maker has full power, authority and legal right to execute, deliver and perform its obligations pursuant to this Note and this Note constitutes the legal, valid and binding obligation of Maker.

All notices or other communications required or permitted to be given hereunder shall be given in the manner and be effective as specified in the Loan Agreement, directed to the parties at their respective addresses as provided therein.

This Note is governed by and interpreted in accordance with the internal laws of the State of Colorado, except to the extent superseded by federal law. Invalidity of any provisions of this Note will not affect any other provision.

Pursuant to Section 11-57-210 of the Colorado Revised Statutes, as amended, this Note is entered into pursuant to and under the authority of the Supplemental Public Securities Act, being Title 11, Article 57, of the Colorado Revised Statutes, as amended. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of this Note after delivery for value and shall conclusively impart full compliance with all provisions and limitations of said statutes, and this Note shall be incontestable for any cause whatsoever after delivery for value.

By acceptance of this instrument, the Payee agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Note contained herein, in the

Authorizing Ordinance of the Maker authorizing the issuance of this Note and in the Agreement, as the same may be amended from time to time.

TO THE EXTENT PERMITTED BY LAW, MAKER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE COURT SITUATED IN LARIMER COUNTY, COLORADO, AND WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS, WITH REGARD TO ANY ACTIONS, CLAIMS, DISPUTES OR PROCEEDINGS RELATING TO THIS NOTE, THE LOAN AGREEMENT, THE NET PLEDGED REVENUES, ANY OTHER FINANCING DOCUMENT, OR ANY TRANSACTIONS ARISING THEREFROM, OR ENFORCEMENT AND/OR INTERPRETATION OF ANY OF THE FOREGOING.

TO THE EXTENT PERMITTED BY LAW, MAKER HEREBY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS NOTE, THE LOAN AGREEMENT, OR ANY OF THE OTHER FINANCING DOCUMENTS, THE OBLIGATIONS THEREUNDER, ANY COLLATERAL SECURING THE OBLIGATIONS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. MAKER REPRESENTS TO PAYEE THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

THE PROVISIONS OF THIS NOTE MAY BE AMENDED OR REVISED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY MAKER AND PAYEE. THERE ARE NO ORAL AGREEMENTS BETWEEN MAKER AND PAYEE WITH RESPECT TO THE SUBJECT MATTER HEREOF.

IN WITNESS WHEREOF, an authorized representative of City of Fort Collins, Colorado, Electric Utility Enterprise, as Maker, has executed this Note as of the day and year first above written.

CITY OF FORT COLLINS, COLORADO,  
ELECTRIC UTILITY ENTERPRISE

By \_\_\_\_\_  
President

[SEAL]

Attest:

By \_\_\_\_\_  
Secretary

ORDINANCE NO. 017  
AN ORDINANCE OF THE CITY OF FORT COLLINS, COLORADO,  
ELECTRIC UTILITY ENTERPRISE AUTHORIZING A FIRST AMENDMENT  
TO THE 2022 LOAN AGREEMENT WITH ZIONS BANCORPORATION,  
N.A., DBA VECTRA BANK COLORADO 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 July 13, 2022 (the “Original Agreement”), with Zions Bancorporation, N.A., dba Vectra Bank Colorado (formerly known as ZB, N.A., dba Vectra Bank Colorado) (the “Bank”) pursuant to which the Bank agreed to loan the Enterprise an amount not to exceed \$1,800,000 (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 herein): 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 the Bank, 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 U.S. Bank National Association, dated as of May 31, 2022, as amended (the “2022 U.S. Bank 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 U.S. Bank 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 U.S. Bank 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 the 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

**DRAFT 5/15/2024**

**FIRST AMENDMENT TO  
LOAN AGREEMENT**

by and between

**CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE**

**AND**

**ZIONS BANCORPORATION, N.A., DBA VECTRA BANK COLORADO**

Relating to:

Not to exceed \$3,500,000 2022 Taxable Subordinate Lien Revenue Note

Dated as of [\_\_\_\_\_, 2024]

**FIRST AMENDMENT TO LOAN AGREEMENT**

THIS FIRST AMENDMENT TO LOAN AGREEMENT (this “Amendment”) is made and entered into as of [\_\_\_\_\_, 2024] (the “First Amendment Effective Date”), by and between **CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE**, an enterprise established and existing pursuant to the home rule charter of the City of Fort Collins, Colorado (the “Enterprise”), and **ZIONS BANCORPORATION, N.A., DBA VECTRA BANK COLORADO** (formerly known as ZB, N.A. dba Vectra Bank Colorado), a national banking association, in its capacity as lender (the “Bank”).

**WITNESSETH:**

WHEREAS, the Enterprise and the Bank previously entered into that certain Loan Agreement dated as of July 13, 2022 (the “Original Agreement”), pursuant to which the Bank made a loan to the Enterprise in an amount not to exceed \$1,800,000, pursuant to the terms and conditions set forth in the Original Agreement; and

WHEREAS, pursuant to Section 8.06 and Section 8.14 of the Original Agreement, no amendment, modification, supplement, termination or waiver of or to any provision of the Original Agreement, nor consent to any departure by the Enterprise therefrom, shall be effective unless the same shall be in writing and signed by or on behalf of the Bank and the Enterprise; and

WHEREAS, the Enterprise and the Bank wish to amend the Original Agreement as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I****INTENTION OF PARTIES, AGREEMENT PROVISIONS**

The Enterprise and the Bank have entered into this Amendment pursuant to Section 8.06 and Section 8.14 of the Original Agreement to amend their rights and obligations set forth in the Original Agreement and agree that this Amendment does not constitute a novation of and in no way satisfies or refinances the debt evidenced by the Original Agreement. The terms of the Original Agreement, as amended by this Amendment (as so amended, the “Agreement”), shall govern the rights and obligations of the Enterprise and the Bank in connection with the transactions contemplated by the Agreement to the extent provided therein. Capitalized terms used but not defined in this Amendment have the respective meanings assigned thereto in the Original Agreement.

**ARTICLE II****AMENDMENT**

**Section 2.01. Amendment to Definitions.** The following terms contained in Article I of the Original Agreement are hereby amended and replaced to read as follows:

“*2022 Loan Agreement*” means the Enterprise’s Loan Agreement with U.S. Bank National Association dated as of May 31, 2022, as amended by the First Amendment to Loan Agreement dated as of [\_\_\_\_\_, 2024].

“*2022 Note*” or “*Note*” means the City of Fort Collins, Colorado, Electric Utility Enterprise not to exceed \$3,500,000 2022 Taxable Subordinate Lien Revenue Note dated as of July 13, 2022, as amended and restated on [\_\_\_\_\_, 2024], which evidences the Loan made by the Bank to the Enterprise pursuant to this Agreement.

“*2023 Bond Ordinance*” means the ordinance of the Enterprise which provides for the issuance and delivery of the 2023 Bonds

“*2023 Bonds*” means the Enterprise’s Revenue Bonds, Series 2023.

“*Advance Period*” means the period commencing on the date of the Closing Date and terminating on November 30, 2025, unless terminated or extended as provided herein.

“*Authorizing Ordinance*” means, collectively, the Ordinance adopted by the Board on May 3, 2022, authorizing the Enterprise to finance the Project, enter into the Loan and execute and deliver the Note, this Agreement, and the other Financing Documents and the Ordinance adopted by the Board on June 4, 2024, authorizing the First Amendment.

“*Closing*” means July 13, 2022.

“*Closing Date*” means July 13, 2022.

“*Final Advance Maturity Date*” means November 30, 2025.

“*Final Advance Period*” means the period commencing on the Third Anniversary Advance Maturity Date and terminating on November 30, 2025, unless terminated or extended as provided herein.

“*Financing Documents*” means this Agreement, as amended by the First Amendment, the Note, the Authorizing Ordinance, and any other document or instrument required or stated to be delivered hereunder or thereunder, all in form and substance satisfactory to the Bank.

“*First Amendment*” means the First Amendment to Loan Agreement by and between the Enterprise and the Bank dated as of [\_\_\_\_\_, 2024].

“*First Amendment Effective Date*” means [\_\_\_\_\_, 2024].

“*Interest Payment Date*” means, for Advances, the first Business Day of each month, commencing the first such day occurring after the Initial Advance, and continuing through and including the First, Second, and Third Anniversary Advance Maturity Dates, and the Final Advance Maturity Date, as applicable.

“*Loan Amount*” means, with respect to the Loan, a maximum amount of Three Million Five Hundred Thousand and 00/100 U.S. Dollars (\$3,500,000), or such lesser amount that has been Advanced by the Bank from time to time in accordance with the terms and provisions of this Agreement.

“*Maximum Advance Amount*” means, with respect to the 2022 Note, \$3,500,000.

“*Prior Obligations*” means the outstanding Parity Debt and the outstanding Senior Debt.

“*Senior Debt*” means the 2018A Bonds, the 2018B Bonds, the 2023 Bonds and any obligations of the Enterprise payable from and with a lien on the Net Pledged Revenues on a basis superior to the 2022 Note.

**Section 2.02. Amendment to Exhibit A of the Original Agreement.** Exhibit A to the Original Agreement is hereby amended and replaced by Appendix A of the First Amendment.

**Section 2.03. Amendment to Section 2.01 of the Original Agreement.** Section 2.01 of the Original Agreement is hereby amended and replaced to read as follows:

(a) **Agreement to Make Loan.** The Bank hereby agrees to extend the Loan to the Enterprise in the maximum aggregate principal amount of \$3,500,000 subject to the terms and conditions of this Agreement. The Loan shall be evidenced by the 2022 Note, the form of which is set forth in **Exhibit A** attached hereto.

(b) **Advances.** Subject to the terms and conditions of this Agreement, including without limitation satisfaction of the conditions set forth in Section 2.06 hereof and upon delivery to the Bank of an Advance Request in the form of **Exhibit B** hereto, the Bank hereby agrees to make Advances to the Enterprise from time to time during the Advance Period in the aggregate original principal amounts not to exceed \$3,500,000 with respect to the Loan (as more particularly defined in Article I hereof, the “Maximum Advance Amount”). On the Advance Termination Date, the Unfunded Portion shall be reduced to zero and no further Advances will be made hereunder.

(c) **Note.** The Loan shall be evidenced by the 2022 Note. On the Closing Date, the Enterprise shall execute and deliver the 2022 Note payable to the Bank, in substantially the form set forth in **Exhibit A** attached hereto. On the First Amendment Effective Date, the Enterprise shall execute and deliver an amended and restated 2022 Note payable to the Bank, in substantially the form set forth in Exhibit A attached hereto. The Enterprise shall maintain a book for the registration of ownership of the 2022 Note. Upon any transfer of the 2022 Note as provided herein, such transfer shall be entered on such registration books of the Enterprise.

With respect to each Advance funded by the Bank from time to time hereunder, the Bank shall maintain, in accordance with its usual practices, records evidencing the indebtedness resulting from each such Advance and the amounts of principal and interest payable and paid from



time to time hereunder. In any legal action or proceeding in respect of any Advance or the Loan, the entries made in such records shall be conclusive evidence (absent manifest error) of the existence and amounts of the obligations therein recorded. The 2022 Note shall evidence the obligation of the Enterprise to pay the Loan and shall evidence the obligation of the Enterprise to pay the principal amount of each Advance funded by the Bank hereunder, as such amounts are outstanding from time to time, and accrued interest

(d) **Commitment Fee.** The Enterprise shall pay to the Bank a nonrefundable fee (the “Commitment Fee”), which shall be in the amount of 0.005% (\$9,000) of \$1,800,000. The Commitment Fee shall be paid on the Closing Date.

(e) **Application of Loan Proceeds.** The Enterprise shall apply the proceeds of each Advance to pay the costs of the Project.

(f) **Special Obligations.** All amounts due under this Agreement or the 2022 Note shall be payable and collectible solely out of the Net Pledged Revenues, which revenues are hereby so pledged which pledge is in all respects subordinate to the pledge and lien thereon of the Senior Debt at any time outstanding. The Bank may not look to any general or other fund for the payment of such amounts; this Agreement and the 2022 Note shall not constitute a debt or indebtedness within the meaning of any constitutional, charter, or statutory provision or limitation; and this Agreement and the 2022 Note shall not be considered or held to be general obligations of the Enterprise or the City but shall constitute special obligations of the Enterprise. No statutory or constitutional provision enacted after the execution and delivery of this Agreement or the 2022 Note shall in any manner be construed as limiting or impairing the obligation of the Enterprise to comply with the provisions of this Agreement or the 2022 Note. None of the covenants, agreements, representations and warranties contained herein or in the 2022 Note shall ever impose or shall be construed as imposing any liability, obligation or charge against the Enterprise or the City (except the Net Pledged Revenues and the special funds pledged therefor), or against its general credit, or as payable out of its general fund or out of any funds derived from taxation or out of any other revenue source (other than those pledged therefor). The payment of the amounts due under this Agreement or the 2022 Note is not secured by an encumbrance, mortgage or other pledge of property of the City or the Enterprise, except for the Net Pledged Revenues. No property of the City or the Enterprise, subject to such exception, shall be liable to be forfeited or taken in payment of such amounts.

**Section 2.04. Amendment to Section 2.02(a) of the Original Agreement.** Section 2.02(a) of the Original Agreement is hereby amended and replaced to read as follows:

(a) **Interest Rate and Payments.** The unpaid principal balance of the Loan will bear interest at the Interest Rate as determined in Sections 2.07 and 2.08 below. All interest due and payable under this Agreement shall be calculated on the basis of actual interest due based on a 360-day year. Interest payments on each Advance under the Loan shall be due on each Interest Payment Date and on the First, Second, and Third Anniversary Advance Maturity Dates, and on the Final Advance Maturity Date, as applicable. Principal and interest payments on each Term Loan shall be due on each Principal and Interest Payment Date.

**Section 2.05. Amendment to Section 2.07 of the Original Agreement.** Section 2.07 of the Original Agreement is hereby amended and replaced to read as follows:

**Section 2.07. Setting Interest Rate on Advances.**

- (a) For all Advances made to the Enterprise during the First Anniversary Advance Period, the Interest Rate shall be the rate of interest of the United States 10-Year Treasury Note at the end of the Business Day on the date of the first Advance made to the Enterprise during the First Anniversary Advance Period plus 2.75%.
- (b) For all Advances made to the Enterprise during the Second Anniversary Advance Period, the Interest Rate shall be the rate of interest of the United States 10-Year Treasury Note at the end of the Business Day on the date of the first Advance made to the Enterprise during the Second Anniversary Advance Period plus 2.75%.
- (c) For all Advances made to the Enterprise during the Third Anniversary Advance Period, the Interest Rate shall be the rate of interest of the United States 10-Year Treasury Note at the end of the Business Day on the date of the first Advance made to the Enterprise during the Third Anniversary Advance Period plus 2.75%.
- (d) For all Advances made to the Enterprise during the Final Advance Period, the Interest Rate shall be the rate of interest of the United States 10-Year Treasury Note at the end of the Business Day on the date of the first Advance made to the Enterprise during the Final Anniversary Advance Period plus 2.75%.

**Section 2.06. Amendment to Section 2.08 of the Original Agreement.** Section 2.08 of the Original Agreement is hereby amended and replaced to read as follows:

**Section 2.08. Conversion to Amortizing Term Loan and Interest Rate.** Provided that (i) no Event of Default shall have occurred and be continuing, (ii) all representations and certifications and agreements herein are then true and correct, and (iii) the outstanding Senior Debt is rated on the date of conversion in one of its four highest rating categories by a national recognized organization which regularly rates obligations such as the Senior Debt, Advances shall convert to a term loan, bear interest, and be payable in full by no later than the Maturity Date as hereafter provided (a "Term Loan"):

- (a) All Advances made to the Enterprise during the First Anniversary Advance Period shall convert in total to a single Term Loan on the First Anniversary Advance Maturity Date with the Interest Rate being the rate of interest of the United States 10-Year Treasury Note at the end of the Business Day on the First Anniversary Advance Maturity Date;
- (b) All Advances made to the Enterprise during the Second Anniversary Advance Period shall convert in total to a single Term Loan on the Second Anniversary Advance Maturity Date with the Interest Rate being the rate of interest of the United States 10-Year Treasury Note at the end of the Business Day on the Second Anniversary Advance Maturity Date; and
- (c) All Advances made to the Enterprise during the Third Anniversary Advance Period

shall convert in total to a single Term Loan on the Third Anniversary Advance Maturity Date with the Interest Rate being the rate of interest of the United States 10-Year Treasury Note at the end of the Business Day on the Third Anniversary Advance Maturity Date.

(d) All Advances made to the Enterprise during the Final Advance Period shall convert in total to a single Term Loan on the Final Advance Maturity Date with the Interest Rate being the rate of interest of the United States 10-Year Treasury Note at the end of the Business Day on the Final Advance Maturity Date.

**Section 2.07. Amendment to Section 5.23 of the Original Agreement.** Section 5.23 of the Original Agreement is hereby amended and replaced to read as follows:

**Section 5.23. Additional Debt.** The Enterprise may issue Debt with a lien on the Net Pledged Revenues that is on a parity with or subordinate to the lien of this Agreement, without the Bank's prior written consent. The Enterprise may issue Debt with a lien on the Net Pledged Revenues that is senior to the lien of this Agreement, without the Bank's prior written consent, if such Debt is issued pursuant to the provisions of the 2018 Bond Ordinance and the 2023 Bond Ordinance.

### ARTICLE III

#### REISSUANCE OF NOTE

**Section 3.01. Reissuance of Note.** In connection with the execution of this Amendment, the Bank shall surrender the Note delivered to the Bank by the Enterprise on July 13, 2022, evidencing the Loan, to the Enterprise to be canceled, which Note will no longer evidence the outstanding Loan Amount. The Enterprise shall execute and deliver to the Bank a new Note, in substantially the form attached hereto as Appendix A, in the name of the Bank, as payee, which shall evidence the Loan and shall bear interest as set forth in the Loan Agreement.

### ARTICLE IV

#### MISCELLANEOUS

**Section 4.01. Full Force and Effect.** The Original Agreement is hereby amended as of the First Amendment Effective Date to the extent provided in this Amendment and, except as specifically provided herein, the Original Agreement shall remain in full force and effect in accordance with its terms.

**Section 4.02. Applicable law and jurisdiction.** This Amendment will be governed by and interpreted as provided in Section 8.05 of the Original Agreement and the Parties hereto consent to the exclusive jurisdiction of any state court situated in Larimer County, Colorado in accordance with Section 8.05 of the Original Agreement.

**Section 4.03. Headings.** Section headings in this Amendment are included herein for convenience of reference only and shall not have any effect for purposes of interpretation or construction of the terms of this Amendment.

**Section 4.04. Counterparts.** This Amendment may be signed in any number of counterpart copies, but all such copies shall constitute one and the same instrument.

**Section 4.05. Representations and Warranties.** Each party hereto represents and warrants to the other that this Amendment has been duly authorized and validly executed by it and that the Original Agreement as hereby amended constitutes its valid obligation, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and subject to the application of general principles of equity including but not limited to the right of specific performance.

The Enterprise further represents and warrants to the Bank that (a) as of the First Amendment Effective Date, no Event of Default has occurred and is continuing and (b) since the Closing Date, the organizational documents of the Enterprise have not been amended, restated, supplemented or otherwise modified, rescinded or revoked.

**Section 4.06. Severability.** In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby.

**Section 4.07. Electronic Signature; Electronically Signed Document.** The parties agree that the electronic signature of a party to this Amendment (or any amendment or supplement of this Amendment) shall be as valid as an original signature of such party and shall be effective to bind such party to this Amendment. The parties agree that any electronically signed document (including this Amendment) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "electronic signature" means a manually-signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the Internet as a pdf (portable document format) or other replicating image attached to an e-mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature. Paper copies or "printouts", if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

## ARTICLE V

### CONDITIONS PRECEDENT

**Section 5.01. Conditions Precedent.** This Amendment shall become effective as of the First Amendment Effective Date subject to the satisfaction, in the opinion of the Bank, of or waiver by the Bank of each of the following conditions precedent:

(a) Delivery by the Enterprise to the Bank of an executed counterpart of this Amendment.

(b) The Bank shall have received such other certificates, approvals, filings, opinions and documents as shall be reasonably requested by the Bank.

(c) All other legal matters pertaining to the execution and delivery of this Amendment shall be satisfactory to the Bank and its counsel (and the execution and delivery hereof by the Bank shall constitute conclusive evidence that all such legal matters have been completed to the satisfaction of the Bank).

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the parties hereto have caused this First Amendment to Loan Agreement to be duly executed and delivered as of the date set forth above.

**ZIONS BANCORPORATION, N.A., DBA  
VECTRA BANK COLORADO**, a national  
banking association

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**CITY OF FORT COLLINS, COLORADO,  
ELECTRIC UTILITY ENTERPRISE**, an  
enterprise of the City of Fort Collins, Colorado

By \_\_\_\_\_

President

[ENTERPRISE SEAL]

Attest:

By \_\_\_\_\_

Secretary

[Signature Page to First Amendment to Loan Agreement]

**APPENDIX A TO FIRST AMENDMENT TO LOAN AGREEMENT****EXHIBIT A****FORM OF 2022 NOTE**

**THIS NOTE MAY NOT BE SOLD TRANSFERRED OR OTHERWISE DISPOSED OF WITHOUT THE CONSENT OF THE ENTERPRISE.**

**UNITED STATES OF AMERICA  
STATE OF COLORADO  
CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE**

**2022 TAXABLE SUBORDINATE LIEN REVENUE NOTE**

**IN THE AGGREGATE PRINCIPAL AMOUNT OF  
NOT TO EXCEED \$3,500,000**

**Advances Not to Exceed US \$3,500,000**

**Original Date July 13, 2022**

**Amended and Restated Date \_\_\_\_\_, 2024**

FOR VALUE RECEIVED, CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE, an enterprise of the City of Fort Collins, Colorado, (hereinafter referred to as “Maker”), promises to pay to the order of ZIONS BANCORPORATION, N.A., DBA VECTRA BANK COLORADO, a national banking association, its successors and assigns (hereinafter referred to as “Payee”), at the office of Payee or its agent, designee, or assignee at 2000 South Colorado Blvd., Denver, Colorado 80222, or at such place as Payee or its agent, designee, or assignee may from time to time designate in writing, all Advances made in an amount not to exceed the principal sum of THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (US \$3,500,000) (this “Note”) pursuant to the terms of the Loan Agreement dated as of July 13, 2022, as amended by the First Amendment to Loan Agreement dated as of [\_\_\_\_\_, 2024], by and between Maker and Payee (as amended, the “Loan Agreement”), in lawful money of the United States of America.

This Note shall bear interest, be payable, and mature pursuant to the terms and provisions of the Loan Agreement. All capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed in the Loan Agreement.

All amounts due under this Note shall be payable and collectible solely out of the Net Pledged Revenues, which revenues are hereby so pledged which pledge is in all respects subordinate to the pledge and lien thereon of the Senior Debt at any time outstanding. The Bank may not look to any general or other fund for the payment of such amounts; this Note shall not constitute a debt or indebtedness within the meaning of any constitutional, charter, or statutory provision or limitation; and this Note shall not be considered or held to be general obligations of the Enterprise or the City but shall constitute a special obligation of the Enterprise. No statutory

or constitutional provision enacted after the execution and delivery of the Note shall in any manner be construed as limiting or impairing the obligation of the Enterprise to comply with the provisions of this Note. None of the covenants, agreements, representations and warranties contained herein or in this Note shall ever impose or shall be construed as imposing any liability, obligation or charge against the Enterprise or the City (except the Net Pledged Revenues and the special funds pledged therefor), or against its general credit, or as payable out of its general fund or out of any funds derived from taxation or out of any other revenue source (other than those pledged therefor).

The payment of the amounts due under this Note is not secured by an encumbrance, mortgage or other pledge of property of the City or the Enterprise, except for the Net Pledged Revenues. No property of the City or the Enterprise, subject to such exception, shall be liable to be forfeited or taken in payment of such amounts.

Amounts received by Payee under this Note shall be applied in the manner provided by the Loan Agreement. All amounts due under this Note shall be payable without setoff, counterclaim or any other deduction whatsoever by Maker.

Unless payments are made in the required amount in immediately available funds in accordance with the provisions of the Loan Agreement, remittances in payment of all or any part of the amounts due and payable hereunder shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Payee in funds immediately available at the place where this Note is payable (or any other place as Payee, in Payee's sole discretion, may have established by delivery of written notice thereof to Maker) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Payee of any payment in an amount less than the amount then due shall be deemed an acceptance on account only and any unpaid amounts shall remain due hereunder, all as more particularly provided in the Loan Agreement.

In the event of nonpayment of this Note, Payee shall be entitled to all remedies under the Loan Agreement and at law or in equity, and all remedies shall be cumulative.

It is expressly stipulated and agreed to be the intent of Maker and Payee at all times to comply with applicable state law and applicable United States federal law. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under this Note or under the Loan Agreement, or contracted for, charged, taken, reserved or received with respect to the indebtedness evidenced by this Note, then it is Maker's and Payee's express intent that all excess amounts theretofore collected by Payee be credited on the principal balance of this Note (or, if this Note has been or would thereby be paid in full, refunded to Maker), and the provisions of this Note shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and under the Loan Agreement. All sums paid or agreed to be paid to Payee for the use, forbearance and detention of the indebtedness evidenced hereby and by the Loan Agreement shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the maximum rate



permitted under applicable law from time to time in effect and applicable to the indebtedness evidenced hereby for so long as such indebtedness remains outstanding.

Maker and any endorsers, sureties or guarantors hereof jointly and severally waive presentment and demand for payment, protest and notice of protest and nonpayment, all applicable exemption rights, valuation and appraisal, notice of demand, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note and the bringing of suit and diligence in taking any action to collect any sums owing hereunder or in proceeding against any of the rights and collateral securing payment hereof. Maker and any surety, endorser or guarantor hereof agree (a) that the time for any payments hereunder may be extended from time to time without notice and consent; (b) to the acceptance of further collateral; (c) to the release of any existing collateral for the payment of this Note; (d) to any and all renewals, waivers or modifications that may be granted by Payee with respect to the payment or other provisions of this Note; and/or (e) that additional makers, endorsers, guarantors or sureties may become parties hereto all without notice to them and without in any manner affecting their liability under or with respect to this Note. No extension of time for the payment of this Note shall affect the liability of Maker under this Note or any endorser or guarantor hereof even though Maker or such endorser or guarantor is not a party to such agreement.

Failure of Payee to exercise any of the options granted herein to Payee upon the happening of one or more of the events giving rise to such options shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time in respect to the same or any other event. The acceptance by Payee of any payment hereunder that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the options granted herein or in the Loan Agreement to Payee at that time or at any subsequent time or nullify any prior exercise of any such option without the express written acknowledgment of Payee.

Maker (and the undersigned representative of Maker, if any) represents that Maker has full power, authority and legal right to execute, deliver and perform its obligations pursuant to this Note and this Note constitutes the legal, valid and binding obligation of Maker.

All notices or other communications required or permitted to be given hereunder shall be given in the manner and be effective as specified in the Loan Agreement, directed to the parties at their respective addresses as provided therein.

This Note is governed by and interpreted in accordance with the internal laws of the State of Colorado, except to the extent superseded by federal law. Invalidity of any provisions of this Note will not affect any other provision.

Pursuant to Section 11-57-210 of the Colorado Revised Statutes, as amended, this Note is entered into pursuant to and under the authority of the Supplemental Public Securities Act, being Title 11, Article 57, of the Colorado Revised Statutes, as amended. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of this Note after delivery for value and shall conclusively impart full compliance with all provisions and limitations of said statutes, and this Note shall be incontestable for any cause whatsoever after delivery for value.

By acceptance of this instrument, the Payee agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Note contained herein, in the Authorizing Ordinance of the Maker authorizing the issuance of this Note and in the Agreement, as the same may be amended from time to time.

TO THE EXTENT PERMITTED BY LAW, MAKER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE COURT SITUATED IN LARIMER COUNTY, COLORADO, AND WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS, WITH REGARD TO ANY ACTIONS, CLAIMS, DISPUTES OR PROCEEDINGS RELATING TO THIS NOTE, THE LOAN AGREEMENT, THE NET PLEDGED REVENUES, ANY OTHER FINANCING DOCUMENT, OR ANY TRANSACTIONS ARISING THEREFROM, OR ENFORCEMENT AND/OR INTERPRETATION OF ANY OF THE FOREGOING.

TO THE EXTENT PERMITTED BY LAW, MAKER HEREBY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS NOTE, THE LOAN AGREEMENT, OR ANY OF THE OTHER FINANCING DOCUMENTS, THE OBLIGATIONS THEREUNDER, ANY COLLATERAL SECURING THE OBLIGATIONS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. MAKER REPRESENTS TO PAYEE THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

THE PROVISIONS OF THIS NOTE MAY BE AMENDED OR REVISED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY MAKER AND PAYEE. THERE ARE NO ORAL AGREEMENTS BETWEEN MAKER AND PAYEE WITH RESPECT TO THE SUBJECT MATTER HEREOF.

IN WITNESS WHEREOF, an authorized representative of City of Fort Collins, Colorado, Electric Utility Enterprise, as Maker, has executed this Note as of the day and year first above written.

CITY OF FORT COLLINS, COLORADO,  
ELECTRIC UTILITY ENTERPRISE

By \_\_\_\_\_  
President

[SEAL]

Attest:

By \_\_\_\_\_  
Secretary



Council Finance Committee Hybrid Meeting  
 CIC Room / Zoom  
 April 4, 2024  
 4:00 - 6:00 pm

- Council Attendees: Emily Francis, Kelly Ohlson, Mayor Jeni Arndt
- Staff: Kelly DiMartino, Travis Storin, Tyler Marr, Ginny Sawyer, Teresa Roche, Kelley Vodden, Chris Martinez, Jennifer Poznanovic, Lawrence Pollack, Trevor Nash, Renee Reeves, Monica Martinez, Brian Tholl, Glenn Pease, Terri Runyan, Victoria Shaw, Dave Lenz, Joe Wimmer, Zack Mozer, Nina Bodenhamer, Carolyn Koontz
- Others: Kevin Jones, Chamber

Meeting called to order at 4:00 pm

NOTE: Staff follow-up included on the last page of draft minutes.

Approval of minutes from March 20<sup>th</sup>, 2024, Council Finance Committee Meeting. Kelly Ohlson moved for approval of the minutes as presented. Emily Francis seconded the motion. The minutes were approved unanimously via roll call by; Emily Francis, Kelly Ohlson.

- A. 2025-2026 Budget Process Review**  
 Jennifer Poznanovic, Revenue Manager  
 Chris Martinez, FP&A Manager  
 Kelley Vodden, Compensation, Benefits and Wellbeing Director  
 Lawrence Pollack, Budget Director

**SUBJECT FOR DISCUSSION** (a short title)  
 2024 BFO Assumptions for funding availability, expense pressures, salary adjustments, and changes to benefits costs in the 2025-26 Budget.

**EXECUTIVE SUMMARY** (a brief paragraph or two that succinctly summarizes important points that are covered in more detail in the body of the AIS.)

## B. EPIC Home Loan Bank Renewal

Brian Tholl, Sr. Manager Mechanical Engineering  
Glenn Pease, Mechanical Engineer II

**SUBJECT FOR DISCUSSION:** Renewal of Epic Homes Loan Program Third-Party Capital Agreements

### EXECUTIVE SUMMARY

The purpose of this item is to update Council Finance regarding the capital sources for Utilities on-bill loan financing component, Epic Homes Loan, and to seek support for presenting US Bank and Vectra Bank capital agreement renewals to the Electric Utility Enterprise Board for approval. The blended public and private capital strategy of Epic Loans supports the Our Climate Future plan and the council priority of reducing climate pollution and air pollution through electrification.

The existing US Bank agreement expires on May 31, 2024, and staff is proposing to renew the Vectra Bank agreement in parallel to reduce administrative efforts and to continue success with program participation.

Staff recommend renewal of the proposed US Bank and Vectra Bank capital agreements as a key component of the ongoing implementation of Epic Homes Loan.

### GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

- What questions does Council Finance Committee have on the Epic Homes Loan program?
- Does the Committee support bringing the proposed third-party capital agreements to the Electric Utility Enterprise Board for approval?

### BACKGROUND/DISCUSSION

#### Epic Homes

Epic Homes is a comprehensive program to help Fort Collins Utilities customers achieve more efficient, comfortable, and healthy home living environments for homeowners and renters alike. The program encompasses various offerings, including:

- Discounted home energy assessments
- Equipment rebates on home upgrades and renewable energy projects supporting the Our Climate Future goals
- Participating contractors
- Quality assurance
- Attractive on-bill financing options (Epic Homes Loans)
- Certificates that document energy improvements

In October 2018, Fort Collins became a winner of the 2018 Bloomberg Mayors Challenge and the associated \$1M prize. The 2018 Bloomberg Mayors Challenge involved over 300 cities proposing ideas to address important issues in their community. The City's proposal was selected as a winner for its innovative approach to providing health and equity benefits to residents, specifically for low-to-moderate income renters, by improving the energy efficiency of homes. Residential property owners can take advantage of Epic Homes' easy, streamlined steps to make their homes more comfortable, healthy, and efficient. Partnering with Colorado State University, Fort Collins also established a research study which links the health and well-being indicators of improved indoor environmental quality from efficiency upgrades.

Epic Homes provides non-energy benefits in addition to efficiency, such as increased comfort, health, and safety.

### **Epic Homes Loan**

Epic Homes Loan is Fort Collins' Utilities on-bill finance program. It is a component of the program portfolio which supports community priorities for energy efficiency, renewables, electrification, reduced greenhouse gas emissions, and increased equity and well-being for residents. Providing a simple, low-cost financial tool with Epic Homes Loan helps to meet these objectives by helping property owners undertake comprehensive efficiency improvements. This is especially important for older, less efficient rental properties, which make up a significant percentage of the City's housing stock.

Detailed information regarding the Epic Homes Loan program and loan terms can be found at <https://www.fcgov.com/utilities/epicloan>. The program operates under authorization in Code and the Financial Officer's Rules and Regulations, as updated periodically. The program operates with a neutral balance sheet impact as the obligations to the third-party capital providers are balanced by the obligations of customers to repay on their monthly utility bills.

The original on-bill finance program started issuing loans in 2013. The program was then paused in 2016 when the program's success resulted in reaching the cap of maximum outstanding loan balance funded through Light & Power reserves (\$1.6 million). Building on this success, on-bill finance was revitalized as Epic Homes Loan in August 2018 during the Champions Phase of the Bloomberg Mayors Challenge. The City was awarded grants from the Colorado Energy Office (\$200,000) and from Bloomberg Philanthropies (\$688,350 of the \$1M) for the Epic Loan Program.

One of the workstreams of the Bloomberg Mayors Challenge project was to secure third-party capital as a strategy to enable scaling of the program. In 2019, the Utilities entered into a \$2.5M line of credit loan agreement with U.S. Bank to provide up to 10-year capital for the Epic Homes Loan Program. This line of credit termed out in December 2021 and will again in May 2024. In 2020, an additional \$2.5M line of credit loan agreement was signed with Vectra Bank Colorado to provide 15-year capital. This line of credit is nearing its cap but will not term out until July 2025. A revision to the agreement to increase the limit is being proposed to sustain the growth of the program. Both of these agreements are structured as lines of credit which are periodically converted into fixed rate term loans. (See Table 1 for a summary of the program's capital stack.)

Through 2023, Fort Collins Utilities has serviced 536 on-bill loans to support energy efficiency upgrades in residential homes and to help property owners overcome financial barriers for making these important upgrades. The blending of zero cost capital (reserves and grants) with low interest third-party capital is what enables the program to offer attractive and competitive interest rates and terms for Utilities customers. With the enterprise fund as the borrower, the program is able to extend the benefits of the high credit rating of the organization to individual customers. These rates are periodically adjusted based on the blended cost of capital. See Table 2 for current interest rates and Table 3 for program results.

An ongoing and attractive financing structure to support energy efficiency retrofits is a critical element for success moving forward. The low rates and scalability of these third-party agreements align with the programmatic objectives and financial requirements of the City.

**Table 1. Summary of Proposed Epic Homes Loan Capital Stack**

Capital Type	Provider	Term	Rate	Amount
<b>Internal &amp; Grant</b>				
	Previously authorized Light & Power reserves	Ongoing	0%	\$1,600,000
	Bloomberg Philanthropies	Grant	0%	\$688,350
	Colorado Energy Office – Grant	Grant	0%	\$200,000
	<b>Internal Subtotal</b>			<b>\$2,488,350</b>
<b>External Market</b>				
	Colorado Energy Office – Loan	15 year	0%	<b>\$800,000</b>
	U. S. Bank	5 & 10 year	LOC: 1-Month SOFR + 1.05% Term: COF + 1.65% for 3 yr or COF + 1.85% for 8yr (Currently 6.88% and 7.14%)	<b>Up to \$2,500,000</b>
	Vectra Bank Colorado	15 year	LOC 10y T note + 2.75% (Currently 6.89 %) Term 10y T note (Currently 4.14%)	<b>Up to \$3,500,000</b>
	<b>External Subtotal</b>			<b>\$6,800,000</b>
<b>Total</b>				<b>\$9,288,350</b>

**Table 2. Customer Interest Rates**

Loan Term	Customer Rate (Effective June 2023)
<b>3 or 5 years</b>	5.25%
<b>7 or 10 years</b>	5.55%
<b>15 years</b>	5.95%

*Note: Customer interest rates are evaluated at a minimum of every 6 months, but usually quarterly when in a rate changing market*



**Table 3. Program Results**

Number of Loans Issued	536
Number of Outstanding Loans	355
Number of Loans Paid in Full	181
Total Amount Funded	\$8,994,010
Amount Outstanding	\$5,634,529
Total Amount of Interest Payments	\$580,428
Median Loan Amount	\$14,985
Median Monthly Principal Payment	\$102.50
Median Monthly Interest Payment	\$35.84

**Third-Party Capital Agreement Summaries:**

- The terms of the previous US Bank agreement, concluding on May 31, 2024, include:
- Amount: Up to \$2,500,000
- Length: 10-years inclusive of draw period
- Draw period: Up to 2 years, with draw timing and amounts based on program / customer demand.
- Line of Credit rate: 76% of the Prime Rate (6.46% as of March 2024); Rate set at time of loan closing.
- Term rates: Cost of funds (COF) plus 1.65% for 3-year terms, and COF plus 1.85% for 8-year terms.
- Collateral: None
- Pre-pay: The loan may be prepaid, in whole or in part, at the option of the Enterprise with no penalty.
- Repayment position: Senior pledge on customer loan repayments and subordinate position on Electric Utility revenues, after the more senior pledge held by revenue bondholders.

US Bank agreement, revised terms for extension to conclude in November of 2025:

- Line of Credit rate: 1M Secured Overnight Financing Rate (SOFR) + 1.05% for 1 –1.5-year term or 1M SOFR + 1.68% for 2-2.5 year term. (Currently 6.36% and 6.99% respectively)
- Term rates: Cost of funds (COF) plus 1.65% for 3-year terms, and COF plus 1.85% for 8-year terms.
- Remaining terms carryforward from existing agreement.

The terms of the previous Vectra Bank agreement, which concludes in July 2025, include:

- Amount: Up to \$2,500,000
- Length: 15 years inclusive of draw period
- Draw period: Up to 2 years, with draw timing and amounts based on program / customer demand.
- Fixed rate: 10 yr Treasury +2.75%. Yr 1 \$1,012,000 at 5.56%; Yr 2 6.908%
- Collateral: None
- Pre-pay: City may pre-pay in whole or in part after 2027 with no penalty. No prepayment is allowed prior to 2025, and between 2025 and 2027 there is a 1% prepayment fee.
- Repayment position: Senior pledge on customer loan repayments and subordinate position on Electric Utility revenues, after the more senior pledge held by revenue bondholders.

The proposed revisions to the Vectra Bank agreement will be:

- Amount: from up to \$2,500,000 to up to \$3,500,000
- Expiry Date: From July 2025 to July 2026

*\*Vectra Agreement still under internal review at Vectra and is subject to change. US Bank and Vectra Agreements. Pending review and recommendations from City Attorney's office*

**Next Steps**

- Staff seeks support from Council Finance Committee to proceed with Electric Utility Enterprise Board consideration of the proposed agreements.
- If supported, staff will finalize agreements and associated term sheets.
- Staff will present the agreements at soonest possible Council meeting.
- Continue with program operations and financial transactions.
- Continue to explore strategies for scaling the program to present to Council as part of seeking expansion of program limits in Fall of 2024

**GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED**

- What questions does Council Finance Committee have on the Epic Homes Loan program?
- Does the Committee support bringing the proposed third-party capital agreements to the Electric Utility Enterprise Board for approval?

**DISCUSSION / NEXT STEPS**

Mayor Arndt; I am fully supportive and love the on-bill financing program. This program is a win win. This is something government is good at. Minimizing risk

Travis Storin; this is one of the most innovative programs we have developed. We are leveraging our institutional borrowing power and extending it to the consumer level in a way that drives our climate goals. We have had zero defaults in 10 years which is amazing.

Mayor Arndt; this failed at the state level, but it is a perfect role for government.

Kelly Ohlson; are these ten-year agreements with the banks?

Brian Tholl; they are actually two-year agreements with the enterprise board of the city. The terms are 5 years with US Bank and a 15-year term with Vector Bank. The debt service and how we are paying the loans back is over a varied timeline.

Kelly Ohlson; I am so supportive of this program. Do we get good deals on the rates?

Travis Storin; yes, this is a creative instrument and I have to commend our two lending partners on this as they took some risk here with the idea of a two-year window where we can draw down the funds and extend it to our customers. At the end of the two years, it locks for a 5-, 10- and 15-year period. It is a variable rate product for the two-year window and then we lock in a rate for those intervals. It is an innovative and creative product.

Emily Francis; is the customer rate changing with these new agreements?

Brian Tholl; we don't anticipate that these new agreements would drive any changes to the customer rate.



Emily Francis; do we still partner with Larimer County to do the assessments?

Brian Tholl; that is a slightly different program – there are two different programs.

Mayor Arndt; there is no assessment just for HVAC, right?

Brian Tholl; due to the nature of emergency replacements, we don't require an audit in order to be eligible for incentives such as the loan product itself.

Glenn Pease; you do need to have an assessment which is required for installation for HVAC and solar. Harris is the company that does the assessments.

Kelly Ohlson; do we help in any way if someone gets a bum contractor?

Brian Tholl; part of the requirements for receiving the incentives, are that our contractors go through a series of trainings on the requirements for the program which include quality assurance standards for the Installers. We require photo documentation of the installation as well. We assist by ensuring quality and providing training. This is a closed program, which means we have a relationship with the contractors as well.

Kelly Ohlson; we don't want residents to be taken advantage of.

Meeting Adjourned

**Staff Follow Up from Lawrence Pollack:**

Question: What drove the significant increases in 2023 actual revenue in the categories of Transportation Fee revenue and Utilities Other Miscellaneous revenue?

Response: 2023 Transportation Fee revenue was \$4.7M over budget, primarily driven by Transportation Capital Expansion Fees of \$3.5M. Another \$765k was from Payments in Lieu of Development and \$375k from hourly garage parking revenue. Utilities Other Miscellaneous revenue was over budget by \$1.1M split across the Utility Funds as follows: Light and Power \$512k, Water \$39k, Wastewater \$31k, Stormwater \$52k. and Customer Service & Administration (CS&A) \$512k. Of the two larger amounts, Light and Power's other miscellaneous revenue was primarily comprised of \$225k in repair charges (one of which was over \$100K for one of the switch cabinets), as well as warehouse revenue of just under \$300k for heightened transactional volumes. For CS&A, the amount over budgeted revenue was mostly driven by late fees of \$390k and reconnect charges of \$50k.

# MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



## ENERGY BOARD

March 14, 2024 – 5:30 pm  
222 Laporte Ave – Colorado Room

### ROLL CALL

**Board Members Present:** Bill Althouse, Marge Moore (remote), Alan Braslau, Stephen Tenbrink, Thomas Loran, Jeremy Giovando

**Board Members Absent:** Brian Smith, Bill Becker

### OTHERS PRESENT

**Staff Members Present:** Christie Fredrickson, Phillip Amaya, Michael Authier, Jim Spaulding, Cyril Vidergar (remote), Phil Ladd (remote), Leland Keller (remote), Glenn Pease

**Members of the Public:** Wendell Stainsby

### EPIC LOAN CAPITAL BLENDING STATUS

*Glenn Pease, Mechanical Engineer II*

The Epic Homes program started with a goal to make our community a better place to live, while helping reduce our environmental impact. Epic Loans is a part of the Epic Homes portfolio of resources and helps customers with the upfront cost to complete larger and more comprehensive projects than they may have without loans. This program centers community with an integrated approach to local partnerships and centers equity by increasing focus on rental properties. This program aligns with Our Climate Future under Big Move 6: Efficient Emissions Free Buildings.

Epic Homes On-Bill Loans offers competitive rates with no money down and to-date the program has processed 536 loans, issuing \$9 million. There is currently \$5.6 million outstanding with zero defaults.

Board member Althouse asked what the interest rate is now. Mr. Pease said it is between 5.5% (on a five-year term) and 5.95% (on a 15-year term). The average customer with good credit may save over \$600 dollars over the life of the loan. The portfolio risk is very low because it is tied to the customer's utility bill and the program hasn't had a single default in its 10-year history.

Landlords can also take out loans, staff will set up a separate utility bill for that premise specifically associated to the project and loan terms. This helps reduce maintenance costs on the property.

Mr. Pease explained the high-level mechanics of the loans program. The loans start with the customer having a work agreement with a contractor, then they submit their application to our CDFI (Community Development Financial Institution). The CDFI administers the loan applications with the customer and pays the contractors the amounts they charge for their work, then the Utility pays the CDFI the loaned amount as well as the processing fees for CDFI's work. The loan payments are collected by Fort Collins Utilities Billing Department and are included in each monthly utility bill, and those funds are used to pay the Utility's Capital Partners. There is a blended fund for loans where grants, public capital (such as loans from our State Energy Office), and private banks create the fund. Private banks are key to scale participation, otherwise the Utility would run out of funds.

Board member Althouse asked if the loan can cover solar, batteries, etc. Mr. Pease said yes, the maximum loan limits were increased from \$25,000 to \$50,000 and the program saw a significant boost in solar installation projects. Board member Moore said she participated in the loan program many years ago and back then limit was \$15,000.

Staff will be asking City Council to support renewing the capital agreement bank terms, as well as an increase on the 15-year bank loan limits (currently at \$1.5 million), because the 15-year loans have been more popular.