

ORDINANCE NO. 004

AN ORDINANCE OF THE CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE AUTHORIZING THE DEFEASANCE OF THE ENTERPRISE'S TAXABLE REVENUE BONDS (DIRECT PAY QUALIFIED ENERGY CONSERVATION BONDS), SERIES 2010B.

DATE FILED: MARCH 20, 2019 6:07 PM
FILING ID: 8864D66E6104C
CASE NUMBER: 2018CV149

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

WHEREAS, the members of the City Council of the City (the "Council") have been duly elected or appointed and qualified; and

WHEREAS, Section 19.3(b) of Charter Article V provides that the Council may, by ordinance, establish its electric utility as an enterprise of the City; and

WHEREAS, the Council has heretofore established the City's Electric Utility as an enterprise of the City (the "Enterprise") pursuant to Charter Article V, Section 19.3(b), Ordinance No. 60, 1993 and Ordinance No. 38, 2010; and

WHEREAS, pursuant to Ordinance No. 011, 2018, the City Council has amended the City Code to implement the authority granted in Section 7 of Article XII of the Charter and has authorized the Enterprise to acquire, construct, provide, fund, and contract for telecommunication facilities and services in the City, and to take such other actions as may be necessary for the proper administration of said facilities and services; and

WHEREAS, Ordinance No. 60, 1993, Ordinance No. 38, 2010, and Ordinance No. 011, 2018 shall be collectively referred to herein as the "Enterprise Ordinances" and

WHEREAS, pursuant to the Charter and the Enterprise Ordinances, the Council has authorized the Enterprise, by and through the Council, sitting as the board of the Enterprise (the "Board"), to issue revenue and refunding securities and other debt obligations in the manner and to the full extent authorized in Section 7(b) of Charter Article XII and in Code Section 26-392 to fund the Enterprise's provision of telecommunication facilities and services; and

WHEREAS, Charter Article V, Section 19.3(b) provides that the ordinance issuing any such revenue bonds or other obligations of the Enterprise shall be adopted in the same manner and shall be subject to referendum to the same extent as ordinances of the Council; and

WHEREAS, the Board proposes to extend, better, otherwise improve and equip the electrical utility system (the "System") to provide directly or indirectly telecommunication facilities and services, including high-speed broadband Internet facilities and service in the City (the "Project"); and

WHEREAS, the Enterprise intends to issue its "City of Fort Collins, Colorado, Electric Utility Enterprise, Tax-Exempt Revenue Bonds, Series 2018A" and its "City of Fort Collins,

Exhibit
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Colorado, Electric Utility Enterprise, Taxable Revenue Bonds, Series 2018B” (collectively, the “2018 Bonds”) to defray in part the cost of the Project; and

WHEREAS, pursuant to Ordinance No. 001, 2010 (the “2010B Bond Ordinance”), the Board previously authorized the issuance of the City of Fort Collins, Colorado, Electric Utility Enterprise, Tax-Exempt Revenue Bonds, Series 2010A in the aggregate principal amount of \$9,675,000 (the “2010A Bonds”), and its City of Fort Collins, Colorado, Electric Utility Enterprise, Taxable Revenue Bonds (Direct Pay Qualified Energy Conservation Bonds), Series 2010B in the aggregate principal amount of \$6,410,000 (the “2010B Bonds”) to finance various improvements to the System; and

WHEREAS, the 2010A Bonds have been fully paid in accordance with their terms and are no longer outstanding; and

WHEREAS, the 2010B Bonds are currently outstanding in the aggregate principal amount of \$5,270,000; and

WHEREAS, in connection with the issuance of the 2018 Bonds, the Board has determined and hereby determines that it is in the best interest of the Enterprise to defease the outstanding 2010B Bonds in full prior to the issuance of the 2018 Bonds in order to eliminate certain restrictive contractual provisions contained in the 2010B Bond Ordinance; and

WHEREAS, upon such defeasance, the 2010B Bonds will no longer be deemed to be outstanding within the meaning of the 2010B Bond Ordinance; and

WHEREAS, the Board has determined that the Enterprise will utilize available moneys of the Enterprise to defease the 2010B Bonds, subject to appropriation by the Council; and

WHEREAS, in connection with the defeasance of the 2010B Bonds, the Enterprise will enter into an escrow agreement (the “Escrow Agreement”) with U.S. Bank National Association, as escrow agent; and

WHEREAS, the form of the Escrow Agreement is on file with the Enterprise.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF THE CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE as follows:

Section 1. Recitals Incorporated. The foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Board.

Section 2. Ratification and Approval of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Board, the officers, and employees of the Enterprise and otherwise taken by the Enterprise directed toward the defeasance of the 2010B Bonds are ratified, approved, and confirmed.

Section 3. Finding of Best Interests; Authorization. The Board hereby finds and determines that the defeasance of the 2010B Bonds with available moneys of the Enterprise in connection with the issuance of the 2018 Bonds is in the best interest of the City and the Enterprise,

and the Board hereby authorizes and approves the same. The President is hereby authorized to determine the date that the 2010B Bonds shall be defeased, provided that such defeasance shall occur prior to the issuance of the 2018 Bonds, and provided further that the Council has appropriated the money necessary to defease the 2010B Bonds.

Section 4. Approval of Escrow Agreement. The Board hereby approves the Escrow Agreement in substantially the form of such document on file with the Secretary of the Enterprise, with only such changes therein as are not inconsistent herewith. The President of the Enterprise is hereby authorized and directed to execute the Escrow Agreement and the Secretary is hereby authorized to attest and to affix the seal of the Enterprise to the Escrow Agreement. The Escrow Agreement is to be executed in substantially the form hereinabove approved, provided that such documents may be completed, corrected, or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. The execution of the Escrow Agreement by the appropriate officers of the Enterprise herein authorized shall be conclusive evidence of the approval by the Enterprise of the Escrow Agreement in accordance with the terms hereof.

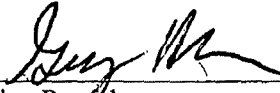
Section 5. Other Related Documents. The President and the Secretary and all other appropriate officers or employees of the Enterprise are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance, including without limiting the generality of the foregoing, executing, attesting, authenticating, and delivering for and on behalf of the Enterprise any and all necessary documents, instruments, or certificates and performing all other acts that they deem necessary or appropriate. The execution of any instrument by the appropriate officers of the Enterprise herein authorized shall be conclusive evidence of the approval by the Enterprise of such instrument in accordance with the terms hereof.

Section 6. Repealer. All ordinances, resolutions, bylaws, orders, and other instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw, order, or other instrument, or part thereof, heretofore repealed.

Section 7. Severability. If any section, subsection, paragraph, clause or other provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs, clauses or provisions of this Ordinance.

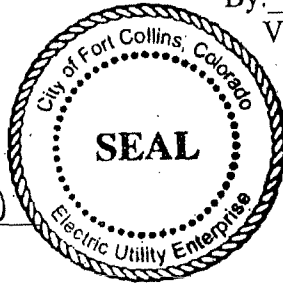
Section 8. Governing Law. This Ordinance shall be governed by and construed in accordance with the laws of the State of Colorado.

Introduced, considered favorably on first reading and ordered published this 20th day of March, A.D. 2018, and to be presented for final passage on the 3rd day of April, A.D., 2018.

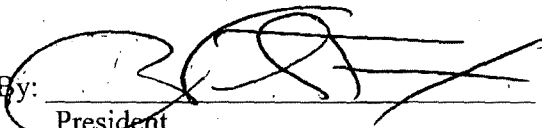
By: 
Vice President

ATTEST:

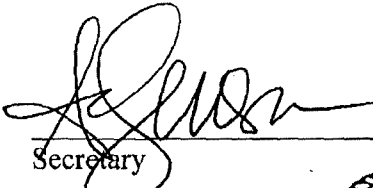

Secretary



Passed and adopted on final reading this 3rd day of April, A.D., 2018.

By: 
President

ATTEST:


Secretary

