In order to limit the number of people in City Hall and to ensure adequate social distancing, the City is strongly urging community members to access the March 20 Council meeting through remote means described below, unless participation in person is necessary. Here are the options for virtual attendance and remote public participation:

**Watch the Meeting:** Anyone can view the Council meeting live on Channels 14 and 881 or online at [www.fcgov.com/fctv](http://www.fcgov.com/fctv).

**Public Participation:** Individuals who wish to address Council via remote public participation as part of any discussion item, can do so through WebEx. The link and instructions will be posted at [www.fcgov.com/council](http://www.fcgov.com/council).

The meeting will be available beginning at 11:15 a.m., Friday. Participants should complete the registration form to be included in public participation and view further instructions. Staff will moderate the WebEx session to ensure all participants have an opportunity to address Council. Individuals who require user assistance registering or joining the WebEx event can call 970-224-6137 for support.

**Note:** To preserve bandwidth and ensure an orderly meeting, only individuals who wish to address Council should use the WebEx link. Anyone who wants to watch the meeting, but not address Council, should view the FCTV livestream.

Persons wishing to display presentation materials using the City’s display equipment under the Citizen Participation portion of a meeting or during discussion of any Council item must provide any such materials to the City Clerk in a form or format readily usable on the City’s display technology no later than two (2) hours prior to the beginning of the meeting at which the materials are to be presented.

**NOTE:** All presentation materials for appeals, addition of permitted use applications or protests related to election matters must be provided to the City Clerk no later than noon on the day of the meeting at which the item will be considered. See Council Rules of Conduct in Meetings for details.
The City of Fort Collins will make reasonable accommodations for access to City services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call 221-6515 (V/TDD: Dial 711 for Relay Colorado) for assistance.

- PLEDGE OF ALLEGIANCE
- CALL TO ORDER
- ROLL CALL

### Discussion Items

The method of debate for discussion items is as follows:

- Mayor introduces the item number, and subject; asks if formal presentation will be made by staff
- Staff presentation (optional)
- Mayor requests citizen comment on the item (three minute limit for each citizen)
- Council questions of staff on the item
- Council motion on the item
- Council discussion
- Final Council comments
- Council vote on the item

**Note:** Time limits for individual agenda items may be revised, at the discretion of the Mayor, to ensure all citizens have an opportunity to speak. Please sign in at the table in the back of the room. The timer will buzz when there are 30 seconds left and the light will turn yellow. It will buzz again at the end of the speaker’s time.

1. **Resolution 2020-030 Extending the State of Local Emergency Declared by the City Manager.**

   Coronavirus 2019 (COVID-19) threatens the City of Fort Collins with widespread human and economic impact. President Donald J. Trump, Governor Jared Polis and Larimer County have declared a state of emergency in response to the COVID-19 pandemic. On March 13, 2020, the City Manager, as Director of the City’s Office of Emergency Management, proclaimed a local emergency and activated the Emergency Operations Plan established by City Code. City Council is asked to approve the extension of the proclamation of local emergency until such time as the City Manager determines it is no longer necessary.

2. **Emergency Ordinance No. 054, 2020 Enacting Temporary Procedures to Authorize Remote Participation in Meetings.**

   The purpose of this item is to propose temporary procedures that would enable City Councilmembers to remotely participate in meetings during the current Novel Coronavirus 2019 (COVID-19) crisis.

3. **Resolution 2020-029 Accepting and Adopting Ethics Opinion No. 2020-01 of the Ethics Review Board Finding No Violation of State or Local Ethics Provisions by Councilmember Ken Summers.**

   The purpose of this item is consideration of the opinion of the Ethics Review Board to Council for its consideration and possible approval.

The purpose of this item is to review and consider the Council Committee’s recommendations regarding the recruitment and selection of a Chief Judge. Council will consider adoption of a plan and schedule for the Chief Judge recruitment and selection process.

5. Items Relating to the 15-year Capital for the 2020 Epic Homes Loan Program.

A. First Reading of Ordinance No. 047, 2020, Making a Supplemental Appropriation from the Light & Power Fund to be Expended as Loans to Utility Services Customers Under the Epic Loan Program.

B. First Reading of Ordinance No. 048, 2020, Making a Supplemental Appropriation from Unappropriated Prior Year Reserves in the Light & Power Fund to Make Debt Service Payments Under the Vectra Bank Line of Credit for the Epic Loan Program.

The purpose of this item is to appropriate funds for the Epic Loan Program in 2020 for 15-year loan issuance to Fort Collins Utilities electric customers, and anticipated debt service to third-party capital providers. The Epic Loan Program is part of the Epic Homes comprehensive portfolio for single-family home performance for both owner- and renter-occupied homes. These appropriations will cover 15-year loan agreements being considered by the Electric Utility Enterprise Board on March 17 for First Reading and April 7 for Second Reading and are necessary to formally authorize the disbursement of funds for customer loans. For future years, staff will include loan issuance and debt service as part of the biennial Budgeting for Outcomes process. Contingent upon authorization of the 15-year loan agreements by the Enterprise Board, the 2020 appropriation for 15-year loan issuance is $1,600,000 and the appropriation for debt service is $100,000.

The 15-year capital agreements were presented at the January 27, 2020 Council Finance Committee meeting.

• ADJOURNMENT
EXECUTIVE SUMMARY

Coronavirus 2019 (COVID-19) threatens the City of Fort Collins with widespread human and economic impact. President Donald J. Trump, Governor Jared Polis and Larimer County have declared a state of emergency in response to the COVID-19 pandemic. On March 13, 2020, the City Manager, as Director of the City’s Office of Emergency Management, proclaimed a local emergency and activated the Emergency Operations Plan established by City Code. City Council is asked to approve the extension of the proclamation of local emergency until such time as the City Manager determines it is no longer necessary.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution

BACKGROUND / DISCUSSION

On March 5, 2020, the State of Colorado identified its first positive case of COVID-19 and on March 9, 2020, Larimer County identified its first positive case. In order to limit the spread of COVID-19 in the community and slow the transmission of the virus, Colorado State University and Poudre School District have announced remote learning for their students. On March 13, 2020, the City Manager, as Director of the City’s Office of Emergency Operations, proclaimed a local emergency and activated the Emergency Operations Plan to prevent and manage exposure to COVID-19 and mitigate related impact of all kinds. Current conditions warrant the continuation of the City Manager’s proclaimed local emergency until the City Manager determines that conditions justifying this local emergency no longer exist.

Section 2-671(a)(1) of the City Code states that a local emergency shall not be continued or renewed for a period in excess of seven days, except by or with the consent of the City Council. Conditions continue to exist that make it necessary for the proclamation of local emergency remain in place in order to protect the health, safety and welfare of the citizens of Fort Collins. Therefore, this Resolution extends the proclamation of local emergency until such time as the City Manager determines it is no longer necessary.

The City Manager will notify the Council, in writing, that the local emergency is ended.

ATTACHMENTS

1. COVID-19 Local Emergency Proclamation (PDF)
CITY MANAGER'S PROCLAMATION
OF LOCAL EMERGENCY

WHEREAS, the City of Fort Collins is threatened with serious injury and damage, consisting of widespread human and economic impact caused by the Novel Coronavirus 2019 (COVID-19); and

WHEREAS, on March 5, 2020, the State of Colorado identified its first positive case of COVID-19, and Colorado has begun to experience limited community spread; and

WHEREAS, on March 9, 2020, Larimer County identified its first positive case of COVID-19; and

WHEREAS, President Donald J. Trump declared a National Emergency on March 13, 2020, in response to the COVID-19 event; and

WHEREAS, Governor Jared Polis declared a State of Emergency in the State of Colorado on March 10, 2020, in response to the COVID-19 event; and

WHEREAS, the Larimer County Director of Public Health has recommended that a local emergency be declared in Larimer County in response to the COVID-19 event; and

WHEREAS, Larimer County declared a Local Disaster Emergency on March 13, 2020, in response to the COVID-19 event; and

WHEREAS, Colorado State University has announced that all classes will be migrating to online learning beginning March 25, 2020; and

WHEREAS, Poudre School District has announced remote learning for students, beginning on March 23, 2020; and

WHEREAS, the City and the Larimer County Department of Public Health and Environment, state officials, Colorado State University and the Poudre School District are cooperatively working to limit community spread and slow the transmission of COVID-19; and

WHEREAS, pursuant to Section 2-671(a)(1) of the Code of the City of Fort Collins, the City Manager, as Director of the City’s Office of Emergency Management, is empowered to proclaim the existence of a “local emergency” as defined by Section 2-666 of the City Code for the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within the City, including epidemics; and

WHEREAS, the current situation and conditions described above constitute such a local emergency; and

WHEREAS, it is in the best interests of the health, safety and welfare of the citizens of the City of Fort Collins that a local emergency be proclaimed and that the Emergency Operations Plan, established pursuant to Section 2-673 of the City Code, be activated.
NOW, THEREFORE, the City Manager of the City of Fort Collins, as the Director of the City's Office of Emergency Management, hereby finds and proclaims as follows:

1. That the findings and determinations set forth above in the recitals are hereby adopted;

2. That the current situation and conditions described above constitute a local emergency as defined by Section 2-666 of the City Code;

3. That it is in the best interests of the health, safety and welfare of the citizens of the City of Fort Collins that a local emergency be proclaimed and that the Emergency Operations Plan, established pursuant to Section 2-673 of the City Code, be activated;

4. That pursuant to Section 2-671(a)(1) of the City Code, the existence of a local emergency as defined by Section 2-666 of the City Code, is hereby proclaimed;

5. That the activation of the City's Emergency Operations Plan, as established pursuant to Section 2-673 of the City Code, is hereby authorized and ordered; and

6. That this Proclamation shall be given prompt and general publicity and shall be filed promptly with the City Clerk or the Larimer County Clerk and Recorder and with the State Division of Local Government, Colorado Office of Emergency Management.

DATED this 13th day of March, 2020.

Darin Atteberry, City Manager

ATTEST:

[Signature]
City Clerk/Chief Deputy

[Seal]
RESOLUTION 2020-030
OF THE COUNCIL OF THE CITY OF FORT COLLINS
EXTENDING THE STATE OF LOCAL EMERGENCY
DECLARED BY THE CITY MANAGER

WHEREAS, the City of Fort Collins is threatened with serious injury and damage, consisting of widespread human and economic impact caused by the Novel Coronavirus 2019 (COVID-19); and

WHEREAS, on March 5, 2020, the State of Colorado identified its first positive case of COVID-19, and Colorado has begun to experience limited community spread; and

WHEREAS, on March 9, 2020, Larimer County identified its first positive case of COVID-19; and

WHEREAS, President Donald J. Trump declared a National Emergency on March 13, 2020, in response to the COVID-19 event; and

WHEREAS, Governor Jared Polis declared a State of Emergency in the State of Colorado on March 10, 2020, in response to the COVID-19 event; and

WHEREAS, the Larimer County Director of Public Health has recommended that a local emergency be declared in Larimer County in response to the COVID-19 event; and

WHEREAS, Larimer County declared a Local Disaster Emergency on March 13, 2020, in response to the COVID-19 event; and

WHEREAS, Colorado State University has announced that all classes will be migrating to online learning beginning March 25, 2020; and

WHEREAS, Poudre School District has announced remote learning for students, beginning on March 23, 2020; and

WHEREAS, the City and the Larimer County Department of Public Health and Environment, state officials, Colorado State University and the Poudre School District are cooperatively working to limit community spread and slow the transmission of COVID-19; and

WHEREAS, on March 13, 2020, in order to undertake emergency measures to protect the life, health, safety and property of the citizens of the City and persons conducting business therein, and in order to attempt to minimize the loss of human life and the preservation of property, the City Manager, as the Director of the City’s Office of Emergency Management, proclaimed a “local emergency” in accordance with Section 2-671(a)(1) of the City Code and activated the Emergency Operations Plan established pursuant to Section 2-673 of the City Code; and

WHEREAS, the prevention and management of exposure to COVID-19 and mitigation of related impacts of all kinds continue to require emergency action by the City; and
WHEREAS, Section 2-671 (a)(1) of the City Code states that a local emergency proclaimed by the City Manager shall not be continued or renewed for a period in excess of seven days without the consent of the City Council; and

WHEREAS, conditions continue to exist which, for the protection of the health, safety and welfare of the citizens of the City of Fort Collins, warrant the continuation of the previously proclaimed local emergency; and

WHEREAS, the City Manager is requesting that the City Council continue the proclamation of local emergency as established by the City Manager on March 13, 2020, until such time as the City Manager determines the conditions justifying this local emergency no longer exist.

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

Section 1. That the City Council hereby finds that conditions continue to exist which, in the best interests of the health, safety and welfare of the citizens of Fort Collins, warrant the continuation of the previously proclaimed local emergency until such time as the conditions warranting this local emergency no longer exist.

Section 2. That the City Council hereby authorizes, approves, and consents to the continuation of the state of local emergency until such time as the City Manager determines in writing that the conditions justifying this local emergency no longer exist and such written determination is filed with the Office of the City Clerk.

Passed and adopted at a special meeting of the Council of the City of Fort Collins this 20th day of March, A.D. 2020.

_________________________________
Mayor

ATTEST:

______________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
March 20, 2020

STAFF
Carrie Daggett, City Attorney
Delynn Coldiron, City Clerk

SUBJECT
Emergency Ordinance No. 054, 2020 Enacting Temporary Procedures to Authorize Remote Participation in Meetings.

EXECUTIVE SUMMARY
The purpose of this item is to propose temporary procedures that would enable City Councilmembers to remotely participate in meetings during the current Novel Coronavirus 2019 (COVID-19) crisis.

STAFF RECOMMENDATION
Staff recommends adoption of the Emergency Ordinance.

BACKGROUND / DISCUSSION
The City of Fort Collins is threatened with serious injury and damage, consisting of widespread human and economic impact caused by the Novel Coronavirus 2019 (COVID-19) and are working collaboratively with the Larimer County Department of Public Health and Environment, state officials, Colorado State University and the Poudre School District to limit community spread and slow the transmission of COVID-19.

In order to undertake emergency measures to protect the life, health, safety and property of the citizens of the City and persons conducting business therein, and in order to attempt to minimize the loss of human life and the preservation of property, on March 13, 2020, the City Manager, as the Director of the City's Office of Emergency Management, proclaimed a "local emergency" in accordance with Section 2-671(a)(1) of the City Code and activated the Emergency Operations Plan established pursuant to Section 2-673 of the City Code.

The prevention and management of exposure to COVID-19 and mitigation of related impacts of all kinds continue to require emergency action by the City and continued social distancing in order to reduce its transmission. In light of the potential for Councilmembers to be isolated and unable to physically meet together for a Council meeting in order to conduct Council business, Council desires to make provision for an appropriate way to conduct Council business through remote participation during the pendency of the local emergency. Article II, Section 6 of the City Charter authorizes the Council to adopt emergency ordinances, which shall be finally passed on first reading by the affirmative vote of at least five members of the Council and which shall contain a specific statement of the nature of the emergency.

In response to the emergency that exists, the following special provisions for City Council meetings during a declared state of emergency, to supplement the provisions of Division 2, Article II of Chapter 2, are as follows:

1. In the event the City Council is unable to conduct its regular meeting at the day, hour, and place fixed by § 2-28 or at a special meeting pursuant to § 2-29 because meeting in-person would not be prudent due to a public health emergency or other unforeseen circumstances affecting the city, meetings may
be conducted by telephone, electronically, or by other means of communication so as to provide maximum participation,

2. Meetings of the City Council or Council committees may be conducted by telephone, electronically or by other means, and remote participation shall constitute presence and actual attendance for purposes of establishing a quorum, so long as no quasi-judicial matters will be heard or considered, subject to the following conditions:
   a. The City Manager or the Mayor determines that the meeting in person would not be prudent because of a public health emergency or other unforeseen circumstances affecting the city;
   b. All members of the Council participating in the meeting can see and hear one another, or, if circumstances preclude an arrangement that would allow visual communication, hear one another;
   c. All members of the Council participating in the meeting can see, hear or read all discussion, comment, and testimony in a manner designed to provide maximum information sharing and participation.
   d. Members of the public have equivalent access to all discussion, comment, and testimony, and all Council votes and other dialogue, in a manner designed to provide maximum information sharing and participation.
   e. At least one member of the Council must be present at the physical meeting location, unless not feasible due to the public health emergency or other unforeseen circumstances;
   f. All votes must be conducted by roll call;
   g. All other meeting-related requirements must be met, including advance notice with an explanation of how Councilmembers and the public may participate and stating the right of the public to monitor the meeting, as well as the recording and preparation of meeting minutes.

3. The City Clerk shall initiate the meeting by telephone, electronically, or through other means not more than ten (10) minutes prior to the scheduled time of the meeting. Upon disconnection during a meeting, the City Clerk shall make one attempt to re-initiate the connection.

Once adopted, the City Clerk will publish this Ordinance in the Fort Collins Coloradoan no later than March 24, 2020.
EMERGENCY ORDINANCE NO. 054, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ENACTING TEMPORARY PROCEDURES TO
AUTHORIZE REMOTE PARTICIPATION IN MEETINGS

WHEREAS, the City of Fort Collins is threatened with serious injury and damage, consisting of widespread human and economic impact caused by the Novel Coronavirus 2019 (COVID-19); and

WHEREAS, the City and the Larimer County Department of Public Health and Environment, state officials, Colorado State University and the Poudre School District are cooperatively working to limit community spread and slow the transmission of COVID-19; and

WHEREAS, on March 13, 2020, in order to undertake emergency measures to protect the life, health, safety and property of the citizens of the City and persons conducting business therein, and in order to attempt to minimize the loss of human life and the preservation of property, the City Manager, as the Director of the City’s Office of Emergency Management, proclaimed a “local emergency” in accordance with Section 2-671(a)(1) of the City Code and activated the Emergency Operations Plan established pursuant to Section 2-673 of the City Code; and

WHEREAS, the prevention and management of exposure to COVID-19 and mitigation of related impacts of all kinds continue to require emergency action by the City and continued social distancing in order to reduce its transmission; and

WHEREAS, the City Council has, with its adoption of Resolution 2020-030 extended the City Manager’s proclamation of local emergency; and

WHEREAS, in light of the potential for Councilmembers to be isolated and unable to physically meet together for a Council meeting in order to conduct Council business, Council desires to make provision for an appropriate way to conduct Council business through remote participation during the pendency of the local emergency; and

WHEREAS, Article II, Section 6 of the City Charter authorizes the Council to adopt emergency ordinances, which shall be finally passed on first reading by the affirmative vote of at least five members of the Council and which shall contain a specific statement of the nature of the emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby finds that an emergency exists for the immediate adoption of this Ordinance under Article II, Section 6 of the City Charter to immediately enable the City Council to use technology to remotely participate in meetings of the City Council and its committees and by doing so allow the Council to conduct official business
in the event of local emergency or other circumstances that might otherwise prevent the Council from carrying out its responsibilities, now and in the future.

Section 2. That the Council hereby adopts the following special provisions for City Council meetings during a declared state of emergency, to supplement the provisions of Division 2, Article II of Chapter 2, as follows:

1. In the event the City Council is unable to conduct its regular meeting at the day, hour, and place fixed by § 2-28 or at a special meeting pursuant to § 2-29 because meeting in-person would not be prudent due to a public health emergency or other unforeseen circumstances affecting the city, meetings may be conducted by telephone, electronically, or by other means of communication so as to provide maximum participation,

2. Meetings of the City Council or Council committees may be conducted by telephone, electronically or by other means, and remote participation shall constitute presence and actual attendance for purposes of establishing a quorum, so long as no quasi-judicial matters will be heard or considered, subject to the following conditions:
   a. The City Manager or the Mayor determines that the meeting in person would not be prudent because of a public health emergency or other unforeseen circumstances affecting the city;
   b. All members of the Council participating in the meeting can see and hear one another, or, if circumstances preclude an arrangement that would allow visual communication, hear one another;
   c. All members of the Council participating in the meeting can see, hear or read all discussion, comment, and testimony in a manner designed to provide maximum information sharing and participation.
   d. Members of the public have equivalent access to all discussion, comment, and testimony, and all Council votes and other dialogue, in a manner designed to provide maximum information sharing and participation.
   e. At least one member of the Council must be present at the physical meeting location, unless not feasible due to the public health emergency or other unforeseen circumstances;
   f. All votes must be conducted by roll call;
   g. All other meeting-related requirements must be met, including advance notice with an explanation of how Councilmembers and the public may participate and stating the right of the public to monitor the meeting, as well as the recording and preparation of meeting minutes.

3. The City Clerk shall initiate the meeting by telephone, electronically, or through other means not more than ten (10) minutes prior to the scheduled time of the meeting. Upon disconnection during a meeting, the City Clerk shall make one attempt to re-initiate the connection.

Section 3. That the City Clerk is hereby directed to cause the publication of this Ordinance in the Fort Collins Coloradoan no later than March 24, 2020.
Introduced, considered favorably by at least five (5) members of the Council of the City of Fort Collins and finally passed as an emergency ordinance and ordered published this 20th day of March, 2020.

______________________________
Mayor

ATTEST:

______________________________
City Clerk
STAFF

Carrie Daggett, City Attorney

SUBJECT


EXECUTIVE SUMMARY

The purpose of this item is consideration of the opinion of the Ethics Review Board to Council for its consideration and possible approval.

STAFF RECOMMENDATION

Not applicable.

BACKGROUND / DISCUSSION

Under City Code Section 2-569(d), any person who believes a Councilmember or board or commission member has violated any provision of state law of the City Charter or City Code pertaining to ethical conduct may file a complaint with the City Clerk. A Complaint was lodged with the Ethics Review Board through the City Attorney on January 21, 2020, by Rory Heath (the “Complainant”), a Fort Collins resident, against Councilmember Ken Summers and others, alleging that Councilmember Summers has a conflict of interest generally and in connection with the Hughes Rezoning and related Ethics Review Board hearings, in light of a webpage offering his services as a political consultant and lobbyist.

After notice to the complaining party and the subject of the complaint, an alternative Ethics Review Board consisting of Councilmembers Pignataro, Cunniff, Gorgol and Gutowsky met on March 6 to conduct an initial screening review of the Complaint to determine whether the Complaint asserted a factual basis for an alleged state or local ethics violation. At that time, the Board determined that further investigation was needed to make a determination regarding the allegation that lobbying and political consulting activities of Councilmember Summers violate state and local ethics laws.

The alternate Ethics Review Board met on March 13, 2020, to conduct a hearing and investigate the allegation, taking evidence and testimony from the Complainant and from the subject of the Complaint, Councilmember Summers. The Board unanimously concluded that that there is no violation of state and local ethics and conflicts of interest laws pertaining to Councilmember Ken Summers’s political consulting/lobbying activities. Upon completion of its determination, the Board considered draft Ethics Opinion 2020-01, Finding No Violation of State or Local Ethics Provisions by Councilmember Ken Summers, and approved it unanimously.

Section 2-569(c) provides for the opinions and recommendations of the Board to be submitted to the full Council for Council consideration and approval.
RESOLUTION 2020-029
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ACCEPTING AND ADOPTING ETHICS OPINION NO. 2020-01
OF THE ETHICS REVIEW BOARD FINDING NO VIOLATION OF STATE
OR LOCAL ETHICS PROVISIONS BY COUNCILMEMBER KEN SUMMERS

WHEREAS, the City Council has established an Ethics Review Board (the “Board”) consisting of designated members of the City Council; and

WHEREAS, the Board is empowered under Section 2-569 of the City Code to render advisory opinions and recommendations regarding actual or hypothetical situations of Councilmembers or board and commission members of the City; and after review and investigation, to render advisory opinions or interpretations pertaining to such complaints or inquiries under the relevant provisions of the Charter and Code and the applicable provisions of state law, if any, and to make written recommendations to the City Council and any affected board or commission concerning the same; and

WHEREAS, an alternate Ethics Review Board consisting of Councilmember Ross Cunniff, Councilmember Susan Gutowsky, Councilmember Julie Pignataro and Councilmember Emily Gorgol (the “Board”), met on March 13, 2020, to hear and consider evidence in connection with a complaint filed by Rory Heath alleging that lobbying and political consulting activities and related website of Councilmember Ken Summers violate state and local ethics laws; and

WHEREAS, at the conclusion of its hearing in this matter, the Board voted unanimously to determine that no evidence was presented showing an ethics violation under state or local law by Councilmember Summers, either specifically related to the Hughes Stadium rezoning matter or generally related to other Council decisions; and

WHEREAS, the Board unanimously adopted and issued an ethics opinion, Ethics Opinion 2020-01, stating and explaining its finding of no violation of state and local ethics provisions by Councilmember Summers; and

WHEREAS, Section 2-569(e) of the City Code provides that all advisory opinions and recommendations of the Board be placed on the agenda for the next special or regular City Council meeting, at which time the City Council shall determine whether to adopt such opinions and recommendations; and

WHEREAS, the City Council has reviewed the opinion of the Board and wishes to adopt the same.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Opinion No. 2020-01 of the Ethics Review Board, a copy of which is attached hereto and incorporated herein by this reference as Exhibit “A,” has been submitted to and reviewed by the City Council, and the Council hereby accepts and adopts the opinion contained therein.

-1-
Passed and adopted at a special meeting of the Council of the City of Fort Collins this 20th day of March A.D. 2020.

______________________________
Mayor

ATTEST:

______________________________
City Clerk
Background.

On January 21, 2020, a complaint was filed with the City Council via the City Attorney by Rory Heath (“Heath”). A copy of the Complaint, along with Exhibit 4 pertaining to the subject of this Opinion, is attached. The Complaint alleges that the webpage through which Councilmember Ken Summers (“Summers”) offers lobbying and political consulting services and such services violate state and local ethics laws, including the conflict of interest rules contained in the City Charter, because he improperly participated in Council decisions generally and in connection with the City Council’s rezoning of the Hughes Stadium annexation property and related matters.

Under Section 2-569 of the City Code, the Complaint was first considered by an alternate Ethics Review Board comprised of Councilmember Ross Cunniff, Councilmember Susan Gutowsky, Councilmember Julie Pignataro and Councilmember Emily Gorgol (the “Board”), for initial screening pursuant to Section 2-569(d) to determine whether the Complaint warranted further investigation. At that time the Board determined that further investigation of this allegation of the Complaint was needed.

Summary of Opinion and Recommendation.

The information presented to us indicates that Ken Summers has not carried out any lobbying or political consulting activities during his time on City Council, which began in April 2017. While it is established that Summers has posted a webpage under the business name of KGS Consulting that offers consulting and lobbying services, the webpage is not related to any public decisions or actions absent actual clients or matters in which Summers is or has been engaged. The Board acknowledges that circumstances can be imagined under which a conflict of interest would arise for a Councilmember lobbying for others, most clearly if that lobbying related to a City issue, but also if it on Colorado Statehouse issues affecting the City. Nonetheless, there is not an inherent conflict of interest arising as a result of lobbying or political consulting activities, and in the complete absence of a lobbying or political consulting project, there is no relationship to any matters or interests coming before Summers as a City Councilmember that can even be evaluated. In addition, had Summers undertaken lobbying or political consulting activities, there would still need to be an identifiable relationship between those undertakings and the rezoning of the Hughes Stadium annexation property in order for a conflict of interest or other ethics violation to be present in regards to the Hughes Stadium item. As stated by the Complainant, there is no evidence suggesting that Summers has such a relationship.

While Summers will need to consider carefully the potential for conflicts of interest should he take on the consulting or lobbying work suggested on his webpage, the Board finds there has been no evidence presented showing an ethics violation under state or local law by Summers.
The Information Presented to the Review Board.

Information was presented to us with regard to the Complaint at our meetings on March 6 and 13, 2020. The Complainant, Rory Heath, presented information at both meetings; Summers appeared and presented information at the March 13 meeting. Approved minutes of the March 6 meeting and draft minutes of the March 13 meeting are attached.

Besides the Complaint itself, and the exhibits provided with it, materials presented to the Board included copies of the City Charter, City Code and statutory provisions cited in the Complaint and applicable to this matter, as well as email communications from Heath, memos to the Board from Summers dated March 5 and March 7, 2020, financial disclosures by Summers in January and April 2017, April 2018 and May 2019, and a Lobbyist Summary regarding the lobbying registration of Kenneth G. Summers, printed from the Colorado Secretary of State’s website on March 7, 2020. Heath provided three additional exhibits, an apparent transcript of Summers comments at the January 21, 2020, Council meeting, and two printouts displaying lobbying activities reported by Summers, showing activity only in 2015 and 2016, dated March 12, 2020, from the Colorado Secretary of State’s webpage.

Summers presented testimony and evidence, supported by the exhibits provided by Heath, document no lobbying activity by Summers since 2016. In addition, Heath has confirmed that he knows of no evidence or information showing or suggesting that Summers has a special relationship with Colorado State University, the owner of the Hughes Stadium property, or any other person, that would give cause to suspect Summers has a business or personal interest in the rezoning decision.

Analysis of the Issue Presented.

Whether Summers posting a website offering lobbying and political consulting services, or carrying out services, violates state or local ethics laws is must be analyzed based on the particular interests arising from that undertaking or business.

Heath has expressed repeatedly his belief that the mere offering of such a website creates the possibility and the route for outside interests to influence the voting decision of Summers in the Hughes Stadium rezoning process. No evidence was offered that showed or even suggested any action or actual interest of Summers with an identifiable relationship to actions taken by Summers as a Councilmember or an identifiable relationship to the Hughes Stadium property or rezoning of it. There is no inherent or categorical conflict of interest that arises from specific employment or from lobbying or political consulting work.

There was no indication of how any decision of the Council would have resulted in any immediate financial return to Summers or any direct and substantial benefit or detriment different in kind from that experienced by the general public. Accordingly, no facts were alleged or shown that support a finding that actions of Summers violated the City Charter’s prohibition against a Councilmember participating in decisions in which they have a financial or personal
Likewise, there was no evidence introduced showing that Summers took action as a Councilmember that would benefit him privately or would directly and substantially benefit a business or undertaking in which he had a substantial financial interest, or by which he is engaged as counsel, consultant, representative or agent. Thus, no facts have been shown that constitute a violation of state ethics laws. (Colorado Revised Statutes Sections 24-18-103 through -105, and Section 24-18-109).

Because of the lack of evidence of any actions by Summers as a lobbyist or political consultant that would constitute a conflict of interest in his role as a City Councilmember, we find no state or local ethics violation has occurred.
Disclaimer: I am not a licensed attorney in Colorado, nor purporting to be one by submitting this Ethics Complaint.

To the best of my knowledge, information contained within this ethics complaint is accurate and factual, as executed to the best of my ability.

I request that the City of Fort Collins Ethics Review Board evaluate the information given herein and that the Board take any and all appropriate procedures and actions as outlined in the applicable City, State, and Federal laws, not solely limited to the specific ones discussed within this complaint.

Due to the nature of submitting a complaint of this weight I ask that the review process be explicitly contingent upon my presence at City Hall during the Ethics Review Board Meeting.

I submit this complaint with the expressed statement that additional material may be submitted, and the complaint revised, as needed, as new information is discovered and investigated, reserving all rights to do so.

COMPLAINANT

Rory Heath
PO Box 271777
Fort Collins, CO 80527

COMPLAINEES

Wade Troxell
Mayor, City of Fort Collins
Associate Professor, Mechanical Engineering, Colorado State University
Director, Center for Networked Distributed Energy, Colorado State University
Director, RamLab, Colorado State University

Kristin Stephens
Mayor Pro Tem, Fort Collins City Council
Councilmember representing District 4, Fort Collins City Council
Graduate Coordinator, Department of Statistics, Colorado State University
Program Assistant II, Department of Statistics, Colorado State University

Ken Summers
Councilmember representing District 5, Fort Collins City Council
Owner and Registered Agent, KGS Consulting
ALLEGATIONS

There exists a consistent betrayal of the public trust vested in the elected officials and the city staff of Fort Collins. This act was evident in varying levels throughout this process and perpetrated by various individuals. The most egregious and measurable violation of this trust was evident in the actions of 3 Fort Collins City Council Members, with questions surrounding why they voted against the overwhelming majority of citizens’ wishes, continually, in strong light of each councilmembers’ obvious conflicts of interest. The councilmembers in violation are Wade Troxell, Kristin Stephens and Ken Summers.

Wade Troxell and Kristin Stephens are both current employees of Colorado State University. Colorado State University, in seeking to sell a tract of land it owns to Lennar Homes, is seeking government approval before the very city council that Wade Troxell and Kristin Stephens are both voting members of. This is textbook conflict of interest and corruption at the elected official level. Each has significant personal and social interests, significant financial interests, and thus, significant related Conflicts of Interest.

Ken Summers, by all indications, owns and operates KGS Consulting, a business with the key taglines of “Opening Doors”, “Providing Access” and “Empowering Influence” listed just below its’ entity name, as currently seen on Ken Summers’ own website, Kensummers.org. The contents of this website are an explicit billboard for “pay for play” in the political realm. Kensummers.org is a website still very much in use and regularly updated, with a post by the user “kensummers” on 12/23/2019. Ken Summers’ email address and personal phone number are listed on the same page, below the list of services he is able to provide. This advertisement for influence into governmental decisions, in light of Ken Summers’ present standing as councilmember brings all of his actions under justified scrutiny. Further, when seen voting opposite of the public will, his actions become that much more suspicious and in question.

Summers himself also possesses a near “sky is the limit” conflict of interest from a personal, social, and even specific business perspective, possibly even including related lobbying statutes and laws. To really understand the extent to which Summers’ actions have effected his position of public trust, an intense investigation will be required; up to and including obtaining copies of financial statements, business transactions and the like. Opening up the possibility of selling influence invites all possible outside suitors into the legislative process.

The actions of the councilmembers in question have specifically affected the integrity and the procedure of Fort Collins City Government in the consideration and the voting of City Ordinance No. 138, 2019 and even the Ethics Review Board that convened on 12/16/2019.

FACTS

1. Wade Troxell is currently and gainfully employed by Colorado State University. Mr. Troxell is an Associate Professor in the Mechanical Engineering department as well as the Director of the Center
for Networked Distributed Energy, as well as Director for RamLab. Kristin Stephens is currently and gainfully employed by Colorado State University. Ms. Stephens is the Graduate Coordinator of the Department of Statistics and Program II Assistant in the Department of Statistics. (continued within Ex. 17)

2. Wade Troxell and Kristin Stephens both took an Oath to CSU as a condition to their employment at CSU. (see Ex. 12)

3. Ken Summers is the presumable owner of KGS Consulting, as displayed as a feature tab on the website kensummers.org. Kenneth G Summers is listed as the registered agent on the Colorado Secretary of State website directory for the same KGS Consulting. (see Ex. 18)

4. Colorado State University is the owner of a tract of land bounded to the West by Horsetooth Reservoir and it’s related Open Space, and bounded to the East by South Overland trail. More particularly described by the accompanying and attached documents, and more generally referred to simply as the former site of Hughes Stadium.

5. The university is attempting to sell this land to a developer, Lennar Homes, under conditional terms, via a Purchase Agreement. (continued within Ex. 17)

6. The Purchase Agreement in place explicitly lists an “Additional Purchase Price” to be paid as bonus for every housing unit sold on the property. Also explicitly listed in the Purchase Agreement is a clause titled “Preliminary Entitlement Confirmation” whereby Lennar homes is given a means by which to remove itself from the agreement if a stated minimum number of units is not met. (continued within Ex. 17)

7. Wade Troxell has collected a paycheck, aka compensation for his employment and efforts. Wages have been exchanged as consideration for services rendered in the past and continuing to be rendered into the future.

8. Further, Mr. Troxell has gained national notoriety from his continued employment and involvement at programs housed within the CSU System and within the academic buildings of Colorado State University. (continued within Ex. 17)

9. Troxell is a director and by extension, a fiduciary, for the Center and the Ramlab. (continued within Ex. 17)

10. Wade Troxell, though currently an associate professor, could conceivably be promoted to a full professor or even further promoted to a Dean or the like, as had been the case in the past. This promotion would carry with it all of the additional benefits of the new title.

11. Kristin Stephens has collected a paycheck, aka compensation for her employment and efforts. Wages have been exchanged as consideration for services rendered in the past and continuing to be rendered into the future. (continued within Ex. 17)

12. Kristin Stephens, though currently listed as a Graduate Coordinator and a Program Assistant, could conceivably be promoted to a position with better career opportunities, research authoring possibilities or a myriad of other benefits.

13. Ken Summers, through his KGS Consulting, offers the following services via his website (see Ex. 4):

   • “Opening Doors”
   • “Providing Access”
   • “Empowering Influence”
   • “PERSONAL CONTACT WITH LEGISLATORS to inform them of your position on a bill and why you support or oppose the legislation.”
   • “COMMUNICATION WITH DEPARTMENTS that interface with your business on the writing and implementation of rules”
   • “TOURS AND RECEPITIONS that provide legislators an opportunity to learn firsthand about the work that you do”
● “Navigating through the maze of the political arena can be a challenge. That is why an individual with experience working with you and advocating on your behalf can make a difference.”

14. In 2017 Mayor Wade Troxell received campaign contributions from the National Association of Realtors Fund in the amount of $39,722. This number was added to $5,000 that had rolled over from a previous campaign, and $15,000 collected during this campaign. By definition, local realtors are dependent on housing as their “inventory” by which to make their commission, an overwhelming part of their personal compensation. (see Ex. 9)

15. Thompson Area Against Stroh Quarry, Inc. et al v. Board of County Commissioners of Larimer et al, Larimer County District Court Case No. 2018CV30371, A court decision within Larimer County, entered in August of 2019, has directly and specifically addressed the question as to whether a campaign contribution would warrant recusal by a government official, in any capacity. (see Ex. 9)

16. Wade Troxell had previously recused himself in a matter related to CSU in 2017 regarding ordinance No.051, 2017. (see Ex. 9)

17. When collecting research data at the Drake Centre Event regarding as to which zoning was preferred by the general public, a narrow offering of 5 different scenarios was given, with none being composed only of RF and none containing POL. (see Ex. 2)

18. When asked for public comment and public feedback throughout the re-zoning process, there exists an absolute preponderance of evidence to support the conclusion that the public would support either the bare minimum of development for that parcel of land or no development at all, leaving it just how it is now, untouched. (see Ex. 1)

GOVERNING LAW

The governing laws presented below are only a selection of applicable laws to the Complaint. As such, consideration of the matter before the Board is not limited only to those cited below and within this Complaint.

The references made below are given in smaller snippet form. Please review the full attached exhibits, and the full verbiage of each statute, etc. Please see Ex. 5, 6, 7, 8, 9.

● Fort Collins City Code Sec 2-568 (a) lays out the definitions by which to define the following portions of the city code
● Fort Collins City Code Sec 2-568 (a) (11) states “personal Interest means any interest (other than a financial interest) by reason of which an officer or employee, or a relative of such officer or employee, would, in the judgement of a reasonably prudent person, realize or experience some direct and substantial benefit or detriment different in kind from that experienced by the general public.” Also citing Section 9(A) of the Charter Article IV.
● Fort Collins City Code Sec 2-568 (a) (18) states: Substantial shall mean more than nominal in value, degree, amount or extent.
● Fort Collins City Code Sec 2-569 (c)(2) states: “To Review and investigate actual or hypothetical situations involving potential conflicts of interest presented by individual Councilmembers or board and commission members”
● Fort Collins City Code Sec 2-569 (d)(1) (a) states: “Any person who believes that a Councilmember or board and commission member had violated any provision of state law or the Charter or Code pertaining to ethical conduct may file a complaint with the city clerk..."
- Fort Collins City Code Sec 2-569 (d)(1) (b) states: "... the Review Board shall consider the following: (1) whether the allegations in the complaint, if true, would constitute a violation of state or local ethical rules."
- Fort Collins City Code Sec 2-569 (g) states: "Compliance with the applicable provisions of the Charter and Code and the provisions of state law, as well as decisions regarding the existence of nonexistence of conflicts of interest and the appropriate actions to be taken in relation thereto, shall be the responsibility of each individual Councilmember or board and commission member, except as provided in..."
- Colorado Revised Statute 24-18-102 states:

"As used in this part 1, unless the context otherwise requires:

(1) "Business" means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(3) "Employee" means any temporary or permanent employee of a state agency or any local government, except a member of the general assembly and an employee under contract to the state.

(4) "Financial interest" means a substantial interest held by an individual which is:

(a) An ownership interest in a business;

(b) A creditor interest in an insolvent business;

(c) An employment or a prospective employment for which negotiations have begun;

(d) An ownership interest in real or personal property;

(e) A loan or any other debtor interest; or

(f) A directorship or officership in a business;

(5) "Local government" means the government of any county, city and county, city, town, special district, or school district;

(6) "Local government official" means an elected or appointed official of a local government but does not include an employee of a local government.

(7) "Official act of a public officer" means any act, decision, recommendation, approval, or other formal or informal action, including policy, which involves the use of discretionary authority;

(8) "Public officer" means any elected officer, the head of a principal department of the executive branch, and any other state officer. "Public officer" does not include a member of the general assembly, a member of the judiciary, any local government

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official, or any member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.

(9) "State agency" means the state; the general assembly and its committees; every executive department, board, commission, committee, bureau, and office; every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof; and every independent commission and other political subdivision of the state government except the courts."

- Colorado Revised Statute 24-18-103 states:

"1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, member of the general assembly, local government official, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The district attorney of the district where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the state or local government. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such public officer, member of the general assembly, local government official, or employee."

- Colorado Revised Statute 24-18-104 (1) states: "Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust. A public officer, a member of the general assembly, a local government official, or an employee shall not:"
- Please consider Colorado Revised Statute 24-18-105, in its entirety.
- Colorado Revised Statute 24-18-109 states:

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust.

(2) A local government official or local government employee shall not:

(a) Engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties;

(b) Perform an official act directly and substantially affecting its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(c) Accept goods or services for his or her own personal benefit offered by a person who is at the same time providing goods or services to the local government for which the official or employee serves, under a contract or other means by which the person receives payment or other compensation from the local government, unless the
totality of the circumstances attendant to the acceptance of the goods or services indicates that the transaction is legitimate, the terms are fair to both parties, the transaction is supported by full and adequate consideration, and the official or employee does not receive any substantial benefit resulting from his or her official or governmental status that is unavailable to members of the public generally.

(3) (a) A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

(b) A member of the governing body of a local government may vote notwithstanding paragraph (a) of this subsection (3) if his participation is necessary to obtain a quorum or otherwise enable the body to act and if he complies with the voluntary disclosure procedures under section 24-18-110.

(4) It shall not be a breach of fiduciary duty and the public trust for a local government official or local government employee to:

(a) Use local government facilities or equipment to communicate or correspond with a member's constituents, family members, or business associates; or

(b) Accept or receive a benefit as an indirect consequence of transacting local government business.

(5) (a) Notwithstanding any other provision of this article 18, it is neither a conflict of interest nor a breach of fiduciary duty or the public trust for a local government official who is a member of the governing body of a local government to serve on a board of directors of a nonprofit entity and, when serving on the governing body, to vote on matters that may pertain to or benefit the nonprofit entity.

(b) Except as provided in subsection (5)(b)(II) of this section, a local government official is not required to provide or file a disclosure or otherwise comply with the requirements of subsection (3) of this section unless the local government official has a financial interest in, or the local government official or an immediate family member receives services from, the nonprofit entity independent of the official's membership on the board of directors of the nonprofit entity.

(II) A local government official who serves on the board of directors of a nonprofit entity shall publicly announce his or her relationship with the nonprofit entity before voting on a matter that provides a direct and substantial economic benefit to the nonprofit entity.

In applying the laws referenced and re-stated above, there exist numerous applications, arguments and even very clear cut violations of law and worse yet, violations of the public trust given to the individuals in question.
ANALYSIS

Wade Troxell and Kristin Stephens have a direct personal interest in CSU, a bias because of their relationship with CSU, and a means by which they can be rewarded by CSU as expertly laid out in a previous, and wholly separate ethics complaint regarding the very same ordinance. (see Ex. 17) Their refusal to recuse themselves from the process gave them a means by which they could exert their bias and personal/professional agenda upon the final decision. (see Ex. 3, in lieu of a typed transcript pertaining to the 11/5/2019 Council Meeting, in addition to all other meetings as related to the Ordinance referenced within this Complaint)

At every occasion that public comment was collected, the overwhelming majority of respondents asked for zoning that maximized open space, and minimized the number of houses placed on the parcel of land in question. The original materials for the First Reading of the ordinance relating to this parcel of land contained a breathtaking 655 pages full of citizens begging their elected officials to vote with the will of the people and approve a zoning solution best exhibited by either RF or POL zoning for the entirety of the tract. (see Ex. 1)

When it came time to declare their voting intentions, both Wade Troxell, Kristin Stephens, and Ken Summers, even upon being directly advised by city staff that affordable housing was unenforceable, chose to vote for higher density/ more housing units under the false rationale that this would create more affordable housing. (see Ex. 3, in lieu of a typed transcript pertaining to the 11/5/2019 Council Meeting, in addition to all other meetings as related to the Ordinance referenced within this Complaint)

This voting rationale, especially when told that their argument was proven invalid on record, is suspicious to say the least. By all appearances and indications, Troxell and Stephens voted in line with a course of action that would benefit their employer/ the entity that they are representatives for. Their votes were just opposite of the overwhelming public opinion. Further, the fact that they were even allowed to guide and participate in the discussion is alarming and a tainting of the sanctity of government, and especially alarming when considering their fiduciary duty to their constituents and the greater good of the Colorado public. (see Ex. 1, and all applicable laws regarding fiduciary duty, not limited only to the ones contained within this complaint)

Further bringing into question the sanctity of the process is the way that research data was collected and presented to Council, and similarly presented to the public. At the Drake Centre, public respondents were railroaded into choosing amongst only 5 options, with all options containing a large amount of homes to be built in their relating zoning. (see Ex. 2)

No options were given that had exclusive RF or POL zoning. Coupled with the slides presented by city staff summarizing support for each of the narrow options, a misrepresentation of the public’s will and wishes was provided, with ease. Even the digitization of the post-it comments edited some comments by practice. (see page 19 and 15 of Ex.1)

Fundamentally, this is an affront to the will of the people, as perpetrated by city staff and further brings into question the trust that is placed in local government officials, and city staff. These were both actions supported by city staff and referenced by the Councilmembers in question. Also interesting was
Troxell's previous recusal when a similar conflict of interest arose in relation to his employment at CSU in 2017 regarding Ordinance No. 051, 2017.

By the wording and definitions of the State Statutes and the Fort Collins Codes that generally reference the State Statutes, (see Ex. 6, 7, 8), Troxell and Stephens are representatives and employees of CSU/ the seller of the parcel described in the ordinance. Within (Ex. 6,7,8), there are numerous applications of the terms and concepts introduced within the law, resulting in a very clear violation of nearly each applicable one.

Councilperson Summers was presented the same overwhelming number of responses from citizens begging for Open Space and at worst, RF zoning, and just like Troxell and Stephens, he voted against the wishes of the very people that he was entrusted to represent and vote in line with. This decision to vote against the people before him, against the 655 pages of public comment and against the public’s wishes in general was particularly alarming when considered in the frame of his website ie “Providing Access”, “Empowering Influence”. When looked at in that context, a vote against the public will, and instead in line with a possible private commercial interest seems to have possibly occurred.

There is also a workplace sociological factor involved in Troxell and Stephens inherent bias towards their workplace. Not only is their future success tied to the future of CSU, but their success is also tied to their relationships with the people whom all fly the same CSU flag. It is a known psychological assertion that those together, all striving towards the same goal, especially in employment, regardless of the sector, tend to exhibit a groupthink mentality and one that is in line with supporting the endeavors of the organization as a whole, regardless of evidence to the contrary; even to the detriment of those not a part of the same organization. Key examples of this can be seen in the Milgram Experiment on Obedience to Authority, The Solomon Asch Conformity Concept, and Irving Janis’ work regarding the identification and study of the idea of “groupthink.” (see Ex. 12, 13, 14)

Previous opponents of the fact that employment within State Education is still employment, with all of it’s associated trappings, have argued that there is somehow a difference between the two. When evaluating any differences between public and private employment, they share nearly all of the same key characteristics: They show up to perform work duties at a common location usually, get a paycheck from this work, network and socialize with their peers and fellow employees while at work. They even share the same common goal of the prosperity and continued success of that entity that they represent.

This goal in this case is firmed up by an oath to CSU which they both took. (see Ex. 11)

When evaluating the issue of conflict of interest, the Academic Faculty and Administrative Professional Manual of Colorado State University (see Ex. 10) states “External obligations, financial interests, and activities of each University employee must be managed so that there is no interference with the employee’s primary obligation and commitment to the University.” When evaluating which of Troxell and Stephen’s conflicting interests will win out, it’s very clear that the CSU Staff Manual dictates that The University’s interests must win out. In this case, dictating that CSU’s interest must win out over the public’s wishes regarding this Ordinance and the fate of the associated parcel of land. This fact is laid out in writing. In fact, Troxell and Stephens are to even remove themselves from the interference, as per the same Manual.
Also in relation to this passage in the CSU Manual is the fact that Troxell and Stephens have not even properly adhered to the policies of CSU, nor the public trust placed within them by that employment, by removing themselves from the interference.

All of these actions, and suspicious voting patterns, coupled with Troxell and Stephens’ steadfast refusal to simply recuse themselves places us on the doorsteps of a very scary political principle: corruption. Continuing on this course and allowing these individuals to vote on, much less influence the discussion on the topic, is improper and casts a shade of impropriety on the process.

Further, it has been shown again and again that this approach to determining the fate of a such a large and valuable swath of land is the wrong way to go about it. This is evidence that the fate of the Hughes Site needs to be in the hands of the thousands of people that have enjoyed it, and not just in the hands of 7 people too easily influenced by outside interests and unwilling to recognize their own inherent bias. (see Ex. 1)

At no point during this process has government aptly summarized the people’s opinion for them, nor should they be allowed to.

Further disconcerting was the question as to whether the Ethics Review Board that previously met on 12/16/2019 can even be considered to be unbiased, when council themselves are asked to essentially police themselves in the manner. I feel that asking anyone to objectively judge and evaluate a peer whom shares the same duties and responsibilities as oneself is not a fair process in the least due to inherent biases. I.e., you’re naturally inclined to feel sympathetic to someone who encounters the same possible challenges and possible pitfalls before them.

What personally concerns me in the matter is the voracity with which Ken Summers attacked all arguments in support of an investigation into the Ethics Complaint (see future exhibit to be added of record of the Ethics Review Board meeting having taken place on 12/16/2019). Considering Ken’s own promises of “Opening Doors”, “Providing Access”, and “Empowering Influence” on his website, I can’t help but fear that Ken’s own consulting business has somehow tainted even the Ethics Review Board. And to be honest, I don’t even know where to start on all of the processes that Ken could have tainted by his actions and questionable motives.

The question to consistently be asked here is: What happens when the needs and goals of a client of Ken’s consulting service runs opposite of that of his constituents? The fact that the possibility even exists that he could arrive at this decision juncture is unacceptable, especially in view of the public trust that is placed upon him. In fact, the very idea of “opening doors” and “selling access” is antithetical to a properly represented constituency.

When looking to outside advice and academic legal guidance on the subject, Robert Wechsler, a graduate of Harvard College and Columbia University Law School, and contributor to Columbia Law School’s Center for The Advancement of Public Integrity, offers terrific exploration of the topic through two writings, Local Government Ethics Programs: A resource for Ethics Commission Member, Local Officials, Attorneys, Journalists, and Students, and A Manual for Ethics Reform EX and Local Government Ethics Programs In a Nutshell. (see Ex. 15, 16) In the past, Wechsler has even contributed to The Washington Post regarding Washington D.C. politics.
Finally, regarding the topic of campaign contributions by the National Association of Realtors Fund to Mayor Troxell’s election campaign, there exists case law regarding proportionally large contributions to a candidate’s election campaign serving to “violate a person’s due process rights to an impartial decision-making body.” (see Ex. 5.9) This case law, found in the same county as the parcel in consideration, is a terrific path by which to approach Troxell’s actions from an additional front.

CONCLUSION

In summary, the following has been presented:

I. Fort Collins Mayor Wade Troxell and Fort Collins City Councilmember Kristin Stephens are both employees of Colorado State University, the very same entity seeking favorable re-zoning so that the sale of a large 165-acre parcel of land may be successfully sold to Lennar Homes, a developer.

II. Fort Collins City Councilmember Ken Summers is currently hosting on his website kensummers.org, a page dedicated to his political consulting business/lobbyist business. This page promises direct influence of legislative matters that can be interpreted to mean either the influence of a third party, or of himself, in exchange for compensation of some sort.

III. The actions of all three individuals, as it pertains to all related activities relating to the consideration of Fort Collins Ordinance No. 138, 2019 (including all related Ethics Complaints hearings), are in direct violation of State and Municipal Ethical and Conflict of Interest Laws. All three individuals have also failed in performing their fiduciary duty to the people of Colorado, a duty ingrained within their public service, and in the case of Troxell and Stephens, their employment by Colorado State University.

IV. A consistent effort to minimize the representation of the public’s wishes regarding the end use of the parcel of land in consideration has been continually undertaken by city staff and City Elected officials.

I request that the Ethics Review Board investigate all ethics violations made by Wade Troxell, Kristin Stephens, and Ken Summers. I request that the Board carry this out using all tools and options at it’s disposal and do so by taking to heart the public’s explicit, expressed, and continual wishes regarding one of the most important pieces of land to Fort Collins’ identity. I specifically request that Wade Troxell, Kristin Stephens and Ken Summers are removed from all interactions with the decision-making process, and severe remediation actions are taken to address the harm to the process already caused.

In closing, I’d like to give the opportunity for a few other members of the public to speak and have their voices heard in a more direct way:

“No westward growth. Open Space. Walking trails only.”

“500-600 Homes added to this area unacceptable”

“Encourage CSU to look for a buyer that will keep it open space”
“This ‘open space’ has been an outdoor recreation location well-known by the community and used as such for many, many years. Development is taking this away from the community. (post-it note placed over word, illegible) allow lots of open space.”

“Takes public access and enjoyment/ shared use out of the picture. Not fair when we have to stare at those houses instead of our beautiful foothills habitat every day.”

Above quotes excerpted from Exhibit 1, and pages 94-112 of the First Reading Packet for Ordinance No. 138, 2019.

In light of this complaint, and consistent with the actions taken regarding past Ethics Review Board Complaints, I respectfully request a delay in any matters before Council in relation to Ordinance No. 138, 2019, commonly referred to as “The Hughes Re-Zoning.” As explicitly acknowledged and stated on 11/19/2019, the mere appearance of impropriety in the process could forever stain the process and further erode the public trust in Council’s actions.

Submitted with respect and severe concern to the Ethics Review Board this 21st day of January, 2020.

____________________________________
Rory Heath
Exhibits

1. All pages of previous submitted comments, pages 94-748 of the packet
2. All pages of narrow options given to drake centre attendees
3. Video of first reading
4. KGS website
5. Referenced court case by lawyer letter
6. Muni Code
7. State Statutes
8. Statutes submitted by city attorney
9. Lawyer letter
10. Excerpt from Academic Faculty and Administrative Professional Manual of Colorado State University
11. Oath of CSU
12. Voltage- Milgram Experiment
13. Group Think- asch conformity concept
15. Shortened Columbia University Paper
16. Long Columbia University Paper
17. Nick Frey Complaint
18. Secretary of State Directory Result for KGS Consulting
19. Official Record of Ethics Meeting to be found in the future
The laws that are passed and the regulations that are established have a significant impact on citizens and of all types in Colorado. Navigating through the maze of the political arena can be a challenge. That is why an individual with experience working with you and advocating on your behalf can make a difference.

**KGS Consulting** provides you with a value-added partnership so you can be proactive on the issues that impact your business. Here's how that is accomplished:

- **PROVIDING INSIGHT** into the legislative process and political environment
- **TRACKING LEGISLATION** that impacts your business and helping you to take a formal position on those pieces of legislation
- **PERSONAL CONTACT WITH LEGISLATORS** to inform them of your position on a bill and why you support or oppose the legislation.
- **PROPOSING NEW LEGISLATION OR CHANGES IN CURRENT LAW**
- **ARRANGING FOR TESTIMONY ON BILLS** before committees in collaboration with others who share your position
- **COMMUNICATION WITH DEPARTMENTS** that interface with your business on the writing and implementation of rules
- **TOURS AND RECEPTIONS** that provide legislators an opportunity to learn firsthand about the work that you do
- **SERVING AS A SPOKESPERSON** for your business at the capitol, with other industry groups and in the community
- **PROVIDING FEEDBACK AND UPDATES** as needed to stay on the forefront of how bills are progressing through the process

These are some of the ways that having a contact inside the capitol can work for you. Some services may be more appropriate than others depending on your needs and area of interest.

I look forward to developing a partnership where I can serve you at the capitol by providing access, opening doors and empowering influence in the legislative process. You can make a difference and be a part of shaping public policy in Colorado.

Ken

**KGS Consulting** * ken@kensummers.org
303-725-4765
Hi Ken,

I guess it is really a small world after all. You met my teenaged son who is an intern for Senator Lundburg a couple of weeks ago. You must have made an impression on him because he came home and told me all about the visit. I knew your name sounded familiar and when I googled you I realized that we had met several years ago. You officiated my uncle's funeral – his name was Bruce Jones.

Anyway Nathaniel told me you were running for city council here in Fort Collins (which is where I live). That is very exciting news as Fort Collins is in desperate need of conservative Christian leadership. I signed up for your newsletter and look forward to keeping up with your campaign.

Blessings,
Julie
Ethics Review Board Meeting Minutes
March 6, 2020
5:00 p.m.

Members in Attendance: Board members Julie Pignataro and Ross Cunniff; Councilmembers Susan Gutowsky, Emily Gorgol; Carrie Daggett, City Attorney; Jeanne Sanford, Paralegal, Delynn Coldiron, City Clerk.

Public in Attendance: Mayor Wade Troxell; Mayor Pro Tem Kristen Stephens; Complainant Rory Heath and his attorney, Andrew Bertrand and approximately 30 members of the public.

A meeting of the City Council Ethics Review Board (“Board”) was held on Friday, March 6, 2020, at 5:00 p.m. in the CIC Room, City Hall West.

The meeting began at 5:00 p.m. The Board reviewed the Agenda which contained the following items:

1. Selection of Presiding Officer for Alternate Ethics Review Board as it considers the pending complaints.
2. Review and Approval of the December 16, 2019 Minutes of the Ethics Review Board.
3. Consider in accordance with City Code Section 2-569(d)(1) whether a complaint filed on January 21, 2020, by Rory Heath, making various allegations regarding the conduct of the Councilmembers below, warrants investigation:
   a. Mayor Wade Troxell
   b. Mayor Pro Tem Kristen Stephens; and
   c. Councilmember Ken Summers

4. Other Business.
5. Adjournment.

The first item on the agenda, selection of a Chair, was discussed. Councilmember Ross Cunniff made a motion to approve Councilmember Pignataro as Chair. Councilmember Emily Gorgol seconded the motion. The motion to appoint Councilmember Pignataro as Chair was adopted by unanimous consent.

The approval of the December 16, 2019 Minutes of the Ethics Review Board was next on the Agenda. Councilmember Cunniff made a motion to approve the December 16, 2019 Minutes and Councilmember Emily Gorgol seconded the motion. The Minutes of the December 16, 2019 Ethics Review Board were approved by unanimous consent.
City Attorney Daggett explained the background materials, including of Rory Heath’s Complaint, were provided with an introductory Agenda Item Summary (“AIS”), accompanied by three sections pertaining to each part of the Complaint. The allegations against Mayor Troxell were contained in AIS 3a, Mayor Pro Tem Kristen Stephens’s portion in AIS 3b and Councilmember Ken Summers’s portion in AIS 3c.

The Board decided to give the Complainant and respondent 5 mins to speak in turn and allowed 5 minutes of rebuttal for each.

City Attorney Daggett discussed the overview of the complaint and the structure of the materials presented. City Attorney Daggett explained supplemental materials received on March 5, 2020, were given to all members of Council and included Ken Summers’s statement and an email exchange with Complainant regarding his procedural concerns. These documents were also posted on the public website.

Complainant Rory Heath introduced his attorney, Andrew Bertrand, and then spoke for 5 minutes, in which he asked the Board for consideration for a more judicious process. Mr. Heath stated he felt his complaint, along with all exhibits referenced and highlighted were not given to the Board.

Councilmember Pignataro assured Mr. Heath they all received the complaint with highlighted exhibits the day he filed the complaint contained on a jump drive which was given to all Councilmembers.

Mr. Heath stated he felt Council was not given the full scope and key ethics laws were not furnished by the City Attorney. Mr. Heath stated that Professor Wade Troxell is an employee of CSU which fits within all applicable Colorado Revised Statutes definitions highlighted in his materials. He asked the Board to consider outsourcing this Ethics Review Board as he felt the process was biased as was the checklist supplied by City Attorney Daggett.

Mayor Troxell next spoke and pointed out previous documents related to conflict of interest with his employment at CSU. Mayor Troxell talked about City Council Resolution 2014-107 wherein he asked for a review regarding the CSU stadium issue. Mayor Troxell read one of the Whereas clauses in that Resolution which stated the attached advisory opinion concluded Mayor Troxell did not have a conflict of interest with the CSU stadium issue considering his employment by CSU.

Mayor Troxell stated as it relates to the previous Ethics Review Board (in December, 2019), two determinations were made. The Board voted unanimously that further investigation of a complaint was not warranted and there was no financial or personal conflict of interest and no violation of any state or city violation of ethics. Mayor Troxell further stated that in this complaint, there is no financial benefit or detriment in this matter; this is a rezoning issue which is more administrative in nature. It does not fit within the definition of financial benefit. Regarding a personal benefit, Mayor Troxell stated he has no direct or substantial personal benefit. The state ethics provisions exclude institutions of higher education, so directorship means fiduciary member; Mayor Troxell stated he is only a faculty member.
In Mr. Heath’s rebuttal time, he stated he was glad Mayor Troxell brought up the previous ethical situation with the stadium as this speaks to a larger problem. Mr. Heath stated it would be of interest how a court of law would interpret this; it is unfair for Councilmembers to judge their peers. This is not fair as Mayor Troxell collects a paycheck which says CSU no matter how one wants to look at it. Mr. Heath explained this is a first piece of a larger piece if the zoning goes through.

Andrew Bertrand spoke to the financial benefit per dwelling payment to CSU in the current development contract for this land being rezoned which is very different than the CSU stadium situation and should be considered as such.

Mayor Troxell then gave his rebuttal, stating that Rory Heath had made no case and these broad allegations did not relate to him. Mayor Troxell asked if Mr. Heath was talking about the CSU system, CSU Fort Collins, or CSU Research Foundation. Mayor Troxell stated he is a faculty member of the College of Engineering and is not involved with the Board of Governors and these conversations. Mayor Troxell also spoke to Mr. Heath’s allegations regarding donations to his campaign, and noted there is nothing to substantiate that allegation. Mayor Troxell stated Mr. Health is factually wrong and his broad-based innuendos do not relate to him.

Councilmember Pignataro brought the issue back to the Board. Ms. Pignataro stated the City Attorney’s Office will be coming to Council with ideas for a different Ethics Review Board structure to hear a complaint against a Councilmember sometime this summer.

Ms. Pignataro asked City Attorney Daggett if the Board was missing the full ethics laws as Mr. Heath alleged.

City Attorney Daggett stated she had a hard time picking out what statutes Mr. Heath was suggesting were not provided. She noted Colorado Revised Statutes Section 24-18-108 only applies to state officers and excludes City officials. City Attorney Daggett stated she did not provide that statute to Councilmembers as it did not apply and that she believed all others had been provided.

Councilmember Ross Cunniff discussed Article XXIX to the State Constitution (also referred to as “Amendment 41”) regarding prohibiting an appearance of a conflict of interest. Mr. Cunniff stated the City needs to update its code to reflect this as he feels the City has not adequately addressed the issue of the appearance of conflict.

City Attorney Daggett stated Amendment 41 adopting Article XXIX of the Colorado constitution was passed in 2006 and the City has not made amendments to its local provisions intended to match that provision. She noted the exception language allowing home-rule cities to adopt their own local ethics provisions, and further noted that the extent of this exception is currently being litigated.

The Board discussed the best way to bring this issue to Council and asked the City Attorney to provide further information to Council on this for further consideration.
Councilmember Gutowsky stated she felt Councilmember Cunniff brought up a good point, expressing that optics and how things look are very important. She has listened to constituents’ comments and while this may not be against the Code of Ethics, people feel the way they feel, and it should be a natural decision to recuse yourself if your employer is involved in an issue. She hears the public’s voice; it is all about impression.

The Board discussed the listed City and statutory ethics provisions, and in particular whether CSU was defined as a “business or other undertaking.” City Attorney Daggett stated the Colorado Independent Ethics Commission has specifically looked at the question of whether a public body is a “business or undertaking” and has found that a public body is not a “business or other undertaking.”

Chair Pignataro then went through the checklist attached to the AIS 3a.

Councilmember Cunniff made a motion that the Board find that having reviewed the allegations of Mr. Heath’s Complaint and the applicable laws, the Board has determined that the Complaint fails to allege that Mayor Troxell has a financial or personal interest or conflict related to the decision on the Hughes Stadium property rezoning and no further investigation is warranted. Councilmember Pignataro seconded the motion and the motion passed by unanimous voice vote.

The Board moved to AIS 3(b) relating to Mayor Pro Tem Stephens.

Rory Heath spoke that this was the same issue, different person. Mr. Heath stated he felt the materials from the City Attorney’s Office were very biased. Asked again that this issue be reviewed instead by an independent panel of outside experts.

Andrew Bertrand spoke that this is very similar to the last argument and that Amendment 41 has been glossed over. The issue is about optics.

Mr. Heath spoke about financial benefits and drew a correlation with UNC announcing possible layoffs. If the development deal does not go through, CSU can experience those same realities. Mr. Heath stated he feels CSU is a business or other undertaking.

Mayor Pro Tem Stephens talked about the factual allegations and stated she does not take an oath to CSU. Ms. Stephens stated as far as Mr. Heath’s statement about career opportunities, this is not relevant. Mayor Pro Tem Stephens does not believe she has personal or financial interest in the CSU Hughes Stadium rezoning issue. Ms. Stephens insisted she is a state classified employee in the Statistics Department, and as a State classified employee, her pay is awarded by the state; CSU has no say in her pay raises.

Rory Heath rebutted this as follows. Mr. Heath stated Mayor Pro Tem Stephens is an employee on a one-year contract renewal who has to “sing for her supper” every year. There is a method for reward – better position, etc. Andrew Bertrand stated based on public perception, Mayor Pro Tem Stephens should have recused herself.
Mr. Heath stated we need to fix this hole in the system before voting on this. We need to address it now, not in the future.

Mayor Pro Tem Stephens’ rebutted his comments. Mayor Pro Tem Stephens stated she is not on a one-year contact. Mr. Heath’s facts are not true. Mayor Pro Tem Stephens stated she works for the State; there is no benefit or money involved in a rezoning and this is a City administration decision.

Councilmember Cunniff stated the Ethics Review Board is not free to ignore the City Charter or Code or adopt State rules in lieu of a City process. Doing so would be a violation of our Code to shift this decision to a group of other people. While members of this Board have expressed sympathy, we have to change the Charter by a specific process. This Board is required to follow City Code, Charter and State laws as they now apply.

Chair Pignataro directed the Board to go through the checklist attached to AIS 3b.

Chair Pignataro then made a motion that the Board find that having reviewed the allegations of Mr. Heath’s Complaint and the applicable laws, the Complaint fails to allege that Mayor Pro Tem Stephens has a financial or personal interest or conflict related to the decision on the Hughes Stadium property rezoning and no further investigation is warranted. Councilmember Gorgol seconded the motion. The motion passed by unanimous voice consent.

Chair Pignataro directed the Board to AIS 3c, relating to Ken Summers’s alleged personal, business-related conflicts of interest.

A statement Councilmember Summers had submitted to the Board was noted. Chair Pignataro asked City Attorney Daggett to read the statement.

Rory Heath stated this matter was a little more difficult. Councilmember Summers’ website advertises that he helps influence decisions. Mr. Heath stated the Board should subpoena the records of Councilmember Summers including any and all clients he has had. Mr. Heath stressed an investigation is needed here; this billboard is still up for the public to see.

Andrew Bertrand stated he was not sure how anyone voted, but doesn’t care; he cares about how it looks. Now is the time to deal with it – not after Hughes gets decided.

Councilmember Cunniff stated he would like to know if Councilmember Summers has received any revenue on this website.

City Attorney Daggett explained it was unclear in Mr. Heath’s complaint if this was tied to Hughes Stadium or a more general complaint. Ms. Daggett explained if the complaint warrants further investigation, there will be a need to schedule a further hearing for more evidence to be presented. At that time, the Board would have power to subpoena more information if it chooses to. City Attorney Daggett explained that this process would next go to the hearing step where a decision would be made as to whether the Complaint alleges a violation specifically related to Hughes Stadium or otherwise.
The Board asked Rory Heath if this complaint was related to Hughes Stadium.

Mr. Heath replied it was intended to include everything – including Hughes Stadium.

The Board discussed next steps in this process. City Attorney Daggett stated the Board could continue its screening review if that would be helpful or find that the allegation warrants further investigations.

Councilmember Cunniff stated the allegations of the Complaint are broader than Hughes and need further investigation, although regarding a specific complaint on Hughes, there is no evidence to sustain an allegation Councilmember Summers has acted unethically.

Councilmember Gutowsky did not agree with this and stated the Complaint cast doubt in her mind.

Councilmember Cunniff made a motion that the Board find that the allegation that political consulting and lobbying activities could constitute a potential ethics violation, if true, and that further Ethics Review Board investigation and review is warranted on the specific issue of whether Councilmember Summers has carried out political consulting or lobbying activities that constituted an ethics violation. Councilmember Gorgol seconded the motion. The motion was passed by unanimous voice consent.

City Attorney Daggett discussed the timing of the next meeting to review the one remaining allegation and stated her office would get started on scheduling the next meeting.

Under Other Business, the Board briefly discussed Amendment 41 of the State Constitution and stated this process was already in motion.

Meeting adjourned at 7:56
Ethics Review Board Meeting Minutes  
March 13, 2020  
5:00 p.m.

Alternative Ethics Review Board members in attendance: Councilmembers Julie Pignataro, Ross Cunniff, Susan Gutowsky and Emily Gorgol.

Staff in attendance: Carrie Daggett, City Attorney; Jeanne Sanford, Paralegal.

Public in Attendance: Councilmember Ken Summers; Complainant Rory Heath and approximately 15 members of the public.

A meeting of the City Council (alternate) Ethics Review Board (“Board”) was held on Friday, March 13, 2020, at 5:00 p.m. in the CIC Room, City Hall West.

The meeting began at 5:00 p.m. The Board reviewed the Agenda which contained the following items:

1. Selection of Presiding Officer for Ethics Review Board as it considers the pending complaint.
2. Review and Approval of the March 6, 2020 Minutes of the Ethics Review Board.
3. Hearing and investigation in accordance with City Code Section 2-569(e) of a complaint filed on January 21, 2020, by Rory Heath, alleging that political consulting/lobbying activities of Councilmember Ken Summers violate state and local ethics provisions.
4. Other Business.
5. Adjournment.

The first item on the agenda, selection of a Chair, was discussed. The Board unanimously consented to Councilmember Julie Pignataro continuing being the Chair.

The approval of the March 6, 2020, Minutes of the Ethics Review Board meeting was next on the Agenda. Councilmember Gorgol made a motion to approve the March 6, 2020, Minutes and Councilmember Susan Gutowsky seconded the motion. The Minutes of the March 6, 2020, Ethics Review Board meeting were approved by unanimous consent.

Chair Pignataro called up the next order of business, which was the discussion of the Complaint against Councilmember Summers.

City Attorney Carrie Daggett ran through the suggested hearing process that was highlighted in the Agenda Item Summary.

Chair Pignataro announced that each party would have a total of 15 minutes to speak and there was no objection from other members of the Board or either the Complainant or Councilmember Summers.

City Attorney Daggett ran through the Agenda Item Summary with attachments provided in the public packet with the addition of an email from Rory Heath received on Friday.
For his opening remarks, Rory Heath stated Mr. Summers was not present for the last Ethics Review Board meeting, but the crux of the matter was his website, www.kensummers.org and the statements such as “opening doors, empowering influence”, etc. Mr. Heath stated the existence of the website and those statements along with Mr. Summers’s representation on Council were the big issue. Mr. Heath stated this was tip of the iceberg and if Councilmember Summers had nothing to hide, why wouldn’t he open up his bank records for KGS?

For his opening remarks, Councilmember Summers stated Mr. Heath’s allegations were baseless and silly. Councilmember Summers explained having a website that is inactive is not in violation of any code of ethics. Mr. Summers further explained there was no nefarious activities going on due to the fact that he has a tab on a personal website called KGS Consulting. Mr. Summers continued that Mr. Heath has abused this process for political purposes because he does not like the fact that CSU owns property that the City is obligated to zone. Mr. Summers further stated that Mr. Heath has one paragraph of a complaint that I “voted against the 655 pages of public comments” Mr. Summers stated he checked with City Clerk and there were approximately 140 pages, not 655. Councilmember Summers stated he was glad Mr. Heath made it up from Colorado Springs to this meeting, which is interesting to note his interest in Fort Collins matters. Mr. Summers explained that in 2014, he attempted to acquire some work through this business due to his West Nile Virus disability, but never secured a client in those efforts. Mr. Summers concluded that Mr. Heath has an obligation to identify an interest he has that is in conflict to the zoning before Council and he has offered none.

For his presentation of evidence, Rory Heath stated he was glad Mr. Summers brought up his past. There was an interruption from Mr. Summers. Mr. Heath handed out some exhibits to the Board which included as Exhibit 1 a typed transcript of what was described as a statement by Councilmember Summers at the January 21, 2020, City Council meeting. Mr. Heath read Mr. Summers’s statement. Mr. Heath stated his Exhibit 2 was evidence of lobbying from the Secretary of State’s lobbyist website and his Exhibit 3 was client search results from the Colorado Secretary of State’s lobbyist registration and reporting website. The exhibits were handed out to the Board and to Mr. Summers. Mr. Heath stated these reports show there was lobbyist money and not only is Mr. Summers lying to all us, his website solicits work as a lobbyist, when he does not have a current lobbyist license.

In response, and as part of his presentation of evidence, Councilmember Summers rebutted by saying Mr. Heath doesn’t understand what is involved as a lobbyist and explained he was a consultant on one bill in two sessions in the years 2015 and 2016. Mr. Summers explained his lobbying efforts ended in 2016 and he submitted his financial disclosures as all City Councilmembers have to submit. Mr. Summers stated he did not make money as a lobbyist while on City Council and the clear evidence points to that.

In closing, Rory Heath stated in his rebuttal that without Councilmember Summers’s financial records, one is left with a grey area to take his word on this. Mr. Heath stated Councilmember Summers is not to be taken at his word and the things he has said are very scary. In closing, Mr. Heath stated the fact that Councilmember Summers’s LLC is still in operation and the website is still soliciting business, one can argue is negligence. He argued that the appearance of impropriety is an issue in and of itself and could be an offense. Mr. Heath finished by saying we do not have enough evidence as it relates to Hughes and how far this crime and dirt has gone; we need to look at every single action Councilmember Summers has
made so far. If Councilmember Summers has nothing to hide, then he should release his tax returns, bank
statements and emails.

In closing, Councilmember Summers rebutted by stating those requests were ludicrous, insulting, and
way over the top for any reasonable person to expect. Mr. Summers continued by stating Mr. Heath has
the audacity to suggest that he has been lying for over 3 years now because I knew the zoning of Hughes
would come up in 2020 and would request recommendation from our City Staff.

Councilmember Summers further stated in the original analysis of Rory Heath’s complaint, he wants
opportunity for others to speak, no growth, walking trails only, etc. Those are statements of a lobbyist;
He is lobbying without a license. Councilmember Summers stated he does not have a bank statement or
a bank account for KGS Consulting.

At the conclusion of the comments by Rory Heath and Councilmember Summers, Chair Pignataro
brought the discussion back to Board for questions. She asked City Attorney Daggett to explain to the
Board and for the record the financial disclosures that Councilmember Summers had provided (attached
to the Agenda Item Summary) and the legal nature of those.

City Attorney Daggett stated the financial disclosures are required by law and the statements follow a
process required at the state level for state officials. She noted there is not a City process of investigation
and/or checking that the reported income or other information is correct. Mr. Daggett did state there are
legal consequences in filing an incorrect statement, but she did not have specific information about the
nature of the consequences without further checking.

City Attorney Daggett went over the form and read it to the Board and the public and stated the
completed Financial Disclosures are public documents and filed in the City Clerk’s Office.

Councilmember Cunniff directed a question to Mr. Heath and asked if his complaint against
Councilmember Summers was regarding Hughes rezoning specifically or something nonspecific as well.

Mr. Heath stated yes, it is within reason that the most critical of issues, Hughes rezoning, is intended to be
within the scope of this complaint.

Councilmember Cunniff directed a question to Councilmember Summers and asked if his financial
disclosures were accurate and complete.

Councilmember Summers replied yes, they were accurate and complete.

Councilmember Cunniff asked City Attorney Daggett if there were any City Code prohibitions on
Councilmembers having individual employment?

City Attorney Daggett stated no. She explained, however, there might be challenges if a
Councilmember’s employment was funded by the City.

Councilmember Gutowsky asked City Attorney Daggett if there was problem with not having a license if
one was a lobbyist.
City Attorney Daggett replied there is a state statute that lays out the requirements for registering as a lobbyist, which in some instances may be unclear; there are specific conditions that must be met or may create an exception. For example, there is a safe harbor provision for elected officials like councilmembers communicating with state officials that exempts them from having to register.

Councilmember Cunniff asked City Attorney Daggett to explain some examples of lobbyist activities.

City Attorney Daggett explained that generally, lobbying activities would include people getting paid by others to communicate with state officials within the administration of state government on behalf of payors on any policy or regulatory matters. Lobbyists are required to register and file reports on their activities. Ms. Daggett stated when someone is actually hired to lobby, that is a business relationship which is pretty clear.

Councilmember Gutowsky asked City Attorney Daggett if “lobbying” would be considered a job.

City Attorney Daggett responded by saying if there was no activity or income, it would be hard to call it a job.

Councilmember Gutowsky asked if there was a conflict of interest with lobbying. City Attorney Daggett stated no, not by definition.

Councilmember Gutowsky asked Councilmember Summers about his intentions with his webpage; he explained his website was just a placeholder to when he might come back to lobbying in the future; there was just no need to cancel the LLC now and restart it in the future.

City Attorney Daggett asked a question of Mr. Heath in that she has not seen or heard any particular, factual evidence Mr. Heath has identified to tie Councilmembers Summers to CSU, Hughes, or Lennar (the builder), so again asked Mr. Heath if there was some specific thing that gave him a belief that Councilmember Summers had or has a relationship with one of those entities?

Rory Heath replied it was too early in the investigation to be able to know, but it has the optics of impropriety.

City Attorney Daggett was asked to clarify how Councilmember jobs and business interests affect their participation in matters before Council. She stated that Councilmembers are allowed to have jobs and business interests and can participate in matters where those interests are not involved, but are not allowed to participate in a decision that relates in a way that creates a conflict of interest.

Councilmember Cunniff stated he has seen no evidence that anything specific happened with respect to Hughes and that is what the Ethics Review Board needs to look for -- specifics, not hypotheticals. Councilmember Cunniff then stated absent any specifics, he did not see how the Board could conclude there was a conflict of interest in this case.

Chair Pignataro responded by stating that is why the Board is here tonight; we did not have evidence. Councilmember Summers has now offered evidence he did not have a conflict.

Councilmember Gorgol made a motion that the Board find that, based on the evidence presented, Councilmember Summers has not engaged in the business of lobbying or political consulting during his
time on Council, and that the Board conclude for that reason that no state or local ethics violation has been shown.

Councilmember Gutowsky seconded the motion and the Board approved the motion by unanimous vote.

Councilmember Gorgol spoke about grey area and public trust and stated all councilmembers take their oaths very seriously and the Ethics Review Board is an important part of looking at that. Ms. Gorgol further stated that the idea that Councilmembers are lying and do not take these matters seriously, is offensive.

Councilmember Cunniff stated regardless of emotions which are running high, the Board is charged with looking at the City Charter very narrowly and we did not see evidence of a financial or personal conflict largely because no income was earned during Ken Summers’s term on Council.

Under Other Business, City Attorney Daggett suggested she could generate an Opinion quickly if the Board took a break and then if the Opinion was acceptable, City staff could get the item on the agenda for Council consideration next Tuesday night.

The Board agreed to take a fifteen minute break.

The Board reconvened at 6:28 pm and City Attorney Daggett brought a draft of Opinion 2020-01 for the Board to review and consider. City Attorney Daggett explained the next process, once the Board approves the Opinion, would be to schedule Council consideration of a Resolution for next Tuesday night, which would have the Opinion attached. City Council, minus Ken Summers, would vote on the Resolution to accept and adopt the Opinion.

Councilmember Cunniff made a motion for the Board to approve the Opinion 2020-01 and Councilmember Gorgol seconded the motion. The motion was approved by unanimous vote.

The Board inquired if there was any other business and with no replies, the meeting was adjourned at 6:38 pm.
Resolution 2020-027 Adopting the Recommendations of the Council Committee Regarding the Recruitment and Selection of a Chief Judge.

The purpose of this item is to review and consider the Council Committee’s recommendations regarding the recruitment and selection of a Chief Judge. Council will consider adoption of a plan and schedule for the Chief Judge recruitment and selection process.

Staff recommends adoption of the Resolution.

Chief Judge Kathleen Lane notified the City Council of her intent to retire from her employment as Chief Judge effective July 3, 2020. On December 3, 2019, the City Council appointed an ad hoc committee to develop a formal plan and schedule for the Chief Judge recruitment and selection process.

Since December 3, 2019, the Chief Judge Selection Process committee met on two occasions and developed a formal plan and schedule for the recruitment and selection process. The committee voted unanimously to recommend to City Council the formal plan and schedule (as described in Exhibit A to the Resolution) for the recruitment and selection process to the City Council.

The purpose of this Resolution is for the City Council to review and consider the committee’s recommended plan and schedule and adopt a plan and schedule for the recruitment and selection process.

After Resolution 2019-110 was approved by the City Council forming the Council Committee, City staff determined there are limited, if any, search firms with substantial experience in recruiting municipal judges. As a result, City staff elected to use for the Chief Judge search a search firm selected in 2019 using the established City request for proposal process and that had some experience recruiting a municipal judge.
RESOLUTION 2020-027
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADOPTING THE RECOMMENDATIONS OF THE COUNCIL COMMITTEE REGARDING THE RECRUITMENT AND SELECTION OF A CHIEF JUDGE

WHEREAS, on October 18, 2019, Chief Judge Kathleen Lane notified the City Council of her intent to retire from her employment as Chief Judge effective July 3, 2020; and

WHEREAS, the Council desires to move forward with the planning and scheduling of the process for recruitment, selection and appointment of a new Chief Judge; and

WHEREAS, on December 3, 2019, the City Council approved Resolution 2019-110 appointing certain Councilmembers to serve as the ad hoc Chief Judge Selection Process Committee (“Committee”) to recommend a formal plan and schedule for the selection process and other matters related to the Chief Judge recruitment and selection process; and

WHEREAS, City staff is using a qualified search firm selected using the established City request for proposal process that has some experience recruiting a municipal judge; and

WHEREAS, the Chief Judge Selection Process Committee met, developed a plan and schedule for the Chief Judge selection process and approved the plan by unanimous vote; and

WHEREAS, the plan and schedule for the selection process is described on Exhibit “A,” attached hereto and incorporated herein by reference; and

WHEREAS, City Council desires to review the plan and schedule recommended by the Council Committee.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby approves the detailed plan and target schedule for the recruitment and selection of the Chief Judge as described on Exhibit “A.”

Passed and adopted at a special meeting of the Council of the City of Fort Collins this 20th day of March, A.D. 2020.

___________________________________
Mayor

_______________________________
City Clerk

-1-
# Exhibit A Chief Judge Recruitment

**Timeline and Milestones**

*Dates reflect the City’s targeted timeline and are subject to change.*

<table>
<thead>
<tr>
<th>Date</th>
<th>Event / Milestone</th>
<th>Note</th>
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<tbody>
<tr>
<td>1/30 through</td>
<td>Stakeholder Meetings</td>
<td>Engage key stakeholders to learn multiple perspectives on the role of</td>
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<td>March</td>
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<td>the judge.</td>
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<td>2/7</td>
<td>Position Announcement Go Live</td>
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<td>3/6</td>
<td>Application Review Begins</td>
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<td>3/16</td>
<td>Recruiter sends semi-finalist application materials to City representatives for review</td>
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<td>3/19</td>
<td>Ad Hoc Committee meeting to review and identify semi-finalist candidates</td>
<td>Posted for Public</td>
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<tr>
<td>3/26</td>
<td>Deadline for identifying finalist candidates</td>
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<tr>
<td>3/30</td>
<td>Invitation to finalists for onsite interviews</td>
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<td>4/3</td>
<td>Publicly announce finalists</td>
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<td>4/4 to 4/21</td>
<td><strong>Council receives finalists’ materials</strong></td>
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<td>4/21 – 4/23</td>
<td><strong>Chief Judge Onsite Interviews—Councilmembers to Participate in Informal Gatherings with Candidates and Attend Public Forum</strong></td>
<td>Appropriate Events Posted for Public Participation</td>
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<td>4/28</td>
<td>Possible Executive Session to discuss finalist(s)</td>
<td>Posted for Public</td>
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<td>4/28</td>
<td><strong>Council Resolution Authorizing Certain Council Members to Begin Negotiations re Terms and Conditions of Employment Agreement with a Person Named in the Resolution.</strong></td>
<td>Posted for Public</td>
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<td>4/29</td>
<td>City engages in negotiations with top choice candidate (if appropriate)</td>
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<td>5/5</td>
<td><strong>Council Resolutions Appointing Chief Judge and approving the employment agreement for the Chief Judge position and the Assistant Chief Judge</strong></td>
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<tr>
<td>6/1</td>
<td>New Chief Judge start date</td>
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**Bold indicates Council action**
EXECUTIVE SUMMARY

A. First Reading of Ordinance No. 047, 2020, Making a Supplemental Appropriation from the Light & Power Fund to be Expended as Loans to Utility Services Customers Under the Epic Loan Program.

B. First Reading of Ordinance No. 048, 2020, Making a Supplemental Appropriation from Unappropriated Prior Year Reserves in the Light & Power Fund to Make Debt Service Payments Under the Vectra Bank Line of Credit for the Epic Loan Program.

The purpose of this item is to appropriate funds for the Epic Loan Program in 2020 for 15-year loan issuance to Fort Collins Utilities electric customers, and anticipated debt service to third-party capital providers. The Epic Loan Program is part of the Epic Homes comprehensive portfolio for single-family home performance for both owner- and renter-occupied homes. These appropriations will cover 15-year loan agreements being considered by the Electric Utility Enterprise Board on March 17 for First Reading and April 7 for Second Reading and are necessary to formally authorize the disbursement of funds for customer loans. For future years, staff will include loan issuance and debt service as part of the biennial Budgeting for Outcomes process. Contingent upon authorization of the 15-year loan agreements by the Enterprise Board, the 2020 appropriation for 15-year loan issuance is $1,600,000 and the appropriation for debt service is $100,000.

The 15-year capital agreements were presented at the January 27, 2020 Council Finance Committee meeting.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on First Reading.

BACKGROUND / DISCUSSION

Epic Homes

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 communities. The City’s proposal, Epic Homes, 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 rental homes. Residential property owners can take advantage of Epic Homes’ easy streamlined steps to make their homes more comfortable, healthy and
Agenda Item 5

Efficient. Partnering with Colorado State University, Fort Collins is also establishing a research study which links the health and well-being indicators of improved indoor environmental quality.

Epic Homes provides non-energy benefits in addition to efficiency, such as increased comfort, health and safety. In nearly every energy assessment, energy advisors identify a health and safety hazard in need of attention. This could vary from a back-drafting water heater, to air leakage pollutants entering the home from the garage or crawlspace, to combustion appliances that need tuning or replacing producing excess carbon monoxide. Loans are available for over 25 different types of efficiency measures, including replacing an old furnace with a new efficient furnace that has important safety features, such as sealed combustion with intake and exhaust to the outside.

**Epic Loans**

Fort Collins’ On-Bill Finance program (previously also known as Home Efficiency Loan Program or HELP, and now called the Epic Loan Program), a component of the Epic Homes portfolio ([Attachment 1](#)), supports a number of community and City Council priorities, including ambitious goals for energy efficiency and renewable energy, reduced greenhouse gas emissions and increased equity and well-being for residents. Meeting these objectives will require, among other activities, greater numbers of property owners to undertake comprehensive efficiency improvements in the coming years, particularly for older, less-efficient rental properties which make up a significant percentage of the City’s housing stock.

The original On-Bill Finance program issued loans from 2013 through 2016 when the maximum outstanding loan balance funded through Light & Power reserves was reached ($1.6 million). On-Bill Finance was revitalized as the Epic Loan Program in August 2018 during the Champions Phase of the Bloomberg Mayors Challenge. The City has been awarded grants from the Colorado Energy Office ($200,000) and from Bloomberg Philanthropies ($688,350) for the Epic Loan Program. The Electric Utility Enterprise has also entered into a $2.5M line of credit loan agreement with U.S. Bank to provide up to 10-year capital for the Program.

Staff has been working to develop third-party capital agreements to scale impact for owners and renters in Fort Collins. This has included presentations with the Council Finance Committee to discuss the Request for Proposals for third-party capital providers, discuss the capital strategy and review proposed capital agreement terms.

An ongoing and attractive financing structure to support energy efficiency retrofits will be a critical element for success moving forward. Through 2019, Fort Collins Utilities has serviced 211 on-bill loans to support energy efficiency upgrades in residential homes and overcome financial barriers for making these important upgrades. Detailed information regarding the Epic Homes program and loan terms can be found at [https://www.fcgov.com/utilities/epichomes/](https://www.fcgov.com/utilities/epichomes/).

**2020 15-Year Capital Appropriation for Loan Issuance and Anticipated Debt Service**

These appropriations will cover 15-year loan agreements being considered by the Electric Utility Enterprise Board on March 17 for First Reading and April 7 for Second Reading and are necessary to formally authorize the disbursement of funds for customer loans. The Epic Loan Program will have available $1,600,000 from 15-year capital sources being considered by the Electric Utility Enterprise Board, and contingent upon authorization of the loan agreements, for loan issuance to support energy efficiency upgrades in Fort Collins’ owner- and renter-occupied homes. The capital available is summarized in Table 1.

<table>
<thead>
<tr>
<th>Capital Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vectra Bank Colorado</td>
<td>$800,000 (of $2,500,000 line of credit)</td>
</tr>
<tr>
<td>Colorado Energy Office</td>
<td>$800,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,600,000</strong></td>
</tr>
</tbody>
</table>

Table 1. 15-year Capital Sources for Loan Issuance in 2020
The Epic Loan Program blends various capital sources to meet customer demand and offer attractive interest rates for customers, including grants, Light and Power reserves, and third-party market capital. The third-party capital will have associated debt service, anticipated to be up to $100,000 in 2020 for the Vectra Bank Colorado loan. The Colorado Energy Office loan will not require debt service in 2020. The anticipated debt service is summarized in Table 2. The source of funding for the associated debt service will be from prior years reserves in the Light & Power Fund.

Table 2. Anticipated 15-Year Capital Debt Service in 2020

<table>
<thead>
<tr>
<th></th>
<th>Interest Rate</th>
<th>Anticipated 2020 Borrowing</th>
<th>Anticipated 2020 Debt Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vectra Bank Colorado</td>
<td>10-year US Treasury + 2.75% (4.30% Currently)*</td>
<td>Up to $730,435</td>
<td>Up to $100,000</td>
</tr>
<tr>
<td>Colorado Energy Office</td>
<td>0%</td>
<td>Up to $389,565</td>
<td>None until 2035</td>
</tr>
</tbody>
</table>

*As of February 18, 2020; subject to change.

These appropriations are in addition to the appropriations authorized in Ordinance No. 004 and 005, 2020. For future years, staff will include loan issuance and debt service as part of the biennial Budgeting for Outcomes process.

The City Manager recommended the appropriations described in both Ordinances and the City Finance Department determined that the total amount of these appropriations, together with all previous appropriations from the Light & Power Fund for this fiscal year, will not cause the total amount appropriated in the Light & Power Fund to exceed the current estimate of actual and anticipated revenues to be received in the Light & Power Fund during this fiscal year.

**CITY FINANCIAL IMPACTS**

Staff projects the Program will be cashflow positive. Staff also projects the Ordinances under consideration will meet the projected demand in loans for 2020 and anticipated debt service for loan terms up to 15 years. The Ordinances 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 6-year history of the Program and the default protections the City already has in place. Customer demand risk is difficult to assess however the line of credit model helps ensure that principal borrowed matches the Epic Loan volumes as closely as possible.

Core tenants of the loan program are to ensure no negative impact on Light & Power planned debt offerings, and to protect the Utilities credit rating and broadband coverage covenants.

**BOARD / COMMISSION RECOMMENDATION**

The 15-year loan agreement details and capital sources were discussed at the January 27, 2020, Council Finance Meeting (Attachment 2)

**ATTACHMENTS**

1. Epic Homes Structure and Components Diagram (PDF)
2. Council Finance Committee Minutes, January 27, 2020 (excerpt) (PDF)
FUTURE ACTION ITEM: When we have capacity, I think at some point it would be good to talk with Council Finance about these relationships and providers and to delve into their ability to serve. How do we go about having those providers coming in to talk about their ability to serve as well and how we are aligning with the city objectives - they are separate entities. Kevin Gertig’s teams are working very closely with these providers on a daily basis sometimes but I don’t think we have good alignment on a policy standpoint.

What is Loveland / Fort Collins water district’s 10-year capital plan? What is their financial capacity? What should we be aware of? There should be a bright light on that

Mayor Troxell; same presentation as we just had.

Ross Cunniff; I think we do have an obligation to understand the other utility districts; their capital plans - provide for those utilities - I support having that discussion. Policies regarding conservation, energy, river health, etc.

B. EPIC 15 Year Loan Program

Blaine Dunn, Sr. Treasure Analyst
Sean Carpenter, Climate Economy Advisor

SUBJECT FOR DISCUSSION: Epic Homes 15-Year Capital

EXECUTIVE SUMMARY
This item will provide updated details to Council Finance regarding the proposed Epic Homes 15-year capital sources. Staff will present on two capital agreements with attractive terms and no associated City financial policy exceptions. One agreement is for a fixed-interest rate loan up to $2.5M with a Denver-based bank and the other is for an $800k interest-free loan from the Colorado Energy Office.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED
Does the Committee support presentation of the proposed 15-year capital agreements to the Electric Utility Enterprise Board on February 18th?

BACKGROUND/DISCUSSION
Epic Homes
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, Epic Homes, 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 rental 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 is also establishing a research study which links the health and well-being indicators of improved indoor environmental quality.

Epic Homes provides non-energy benefits in addition to efficiency, such as increased comfort, health and safety. In nearly every energy assessment, energy advisors identify a health and safety hazard in need of attention. This could vary from a back-drafting water heater, to air leakage pollutants entering the home from the garage or crawlspace, to combustion appliances that need tuning or replacing producing excess carbon monoxide. Loans
are available for over 25 different types of efficiency measures, including replacing an old furnace with a new
efficient furnace that has important safety features, such as sealed combustion with intake and exhaust to the
outside.

**Epic Loans**

Fort Collins’ On-Bill Finance program (previously also known as Home Efficiency Loan Program or HELP, and now
called the Epic Loan Program), a component of the Epic Homes portfolio (Attachment 1), supports a number of
community and City Council priorities, including ambitious goals for energy efficiency and renewables, reduced
greenhouse gas emissions and increased equity and well-being for residents. Meeting these objectives will
require, among other activities, greater numbers of property owners to undertake comprehensive efficiency
improvements in the coming years, particularly for older, less-efficient rental properties which make up a
significant percentage of the City’s housing stock.

The original On-Bill Finance program issued loans from 2013 through 2016 when the maximum outstanding loan
balance funded through Light & Power reserves was reached ($1.6 million). On-Bill Finance was revitalized as the
Epic Loan Program in August 2018 during the Champions Phase of the Bloomberg Mayors Challenge. The City
has been awarded grants from the Colorado Energy Office ($200,000) and from Bloomberg Philanthropies
($688,350) for the Epic Loan Program. The Electric Utility Enterprise has also entered into a $2.5M line of credit
loan agreement with U.S. Bank to provide up to 10-year capital for the Epic Loan Program.

Staff has been working to develop third-party capital agreements to scale impact for owners and renters in Fort
Collins. This has included presentations with the Council Finance Committee to discuss the Request for Proposals
for third-party capital providers, discuss the capital strategy and review proposed capital agreement terms. The
proposed ‘capital stack’ is provided below in Table 1 and the customer interest rates based on third-party capital
terms are provided in Table 2.

An ongoing and attractive financing structure to support energy efficiency retrofits will be a critical element for
success moving forward. Through 2019, Fort Collins Utilities has serviced 211 on-bill loans to support energy
efficiency upgrades in residential homes and overcome financial barriers for making these important upgrades.
Detailed information regarding the Epic Homes program and loan terms can be found at [fcgov.com/epichomes](http://fcgov.com/epichomes).

Table 1. Epic Loan Capital Stack Summary

<table>
<thead>
<tr>
<th>Capital Type</th>
<th>Provider</th>
<th>Term</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internal &amp; Grant</td>
<td>Previously authorized Light &amp; Power reserves</td>
<td>Ongoing</td>
<td>0%</td>
<td>$1,600,000</td>
</tr>
<tr>
<td></td>
<td>Bloomberg Philanthropies</td>
<td>Grant</td>
<td>0%</td>
<td>$688,350</td>
</tr>
<tr>
<td></td>
<td>Colorado Energy Office – Grant</td>
<td>Grant</td>
<td>0%</td>
<td>$200,000</td>
</tr>
<tr>
<td></td>
<td><strong>Internal Subtotal</strong></td>
<td></td>
<td></td>
<td><strong>$2,488,350</strong></td>
</tr>
<tr>
<td>External Market</td>
<td>Colorado Energy Office – Loan</td>
<td>15 year</td>
<td>0%</td>
<td><strong>$800,000</strong></td>
</tr>
<tr>
<td>U. S. Bank</td>
<td>5 &amp; 10 year</td>
<td>76% of Prime (3.99% Currently)</td>
<td>Up to $2,500,000</td>
<td></td>
</tr>
<tr>
<td>--------------------</td>
<td>-------------</td>
<td>-------------------------------</td>
<td>------------------</td>
<td></td>
</tr>
<tr>
<td>Denver Based Bank</td>
<td>15 year</td>
<td>10-year US Treasury + 2.75% (4.55% Currently)</td>
<td>Up to $2,500,000</td>
<td></td>
</tr>
<tr>
<td><strong>External Subtotal</strong></td>
<td></td>
<td></td>
<td><strong>$5,800,000</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>$8,288,350</strong></td>
<td></td>
</tr>
</tbody>
</table>

Table 2. Customer Interest Rate

<table>
<thead>
<tr>
<th>Loan Term</th>
<th>Customer Rate (Effective Aug. 2019)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 or 5 years</td>
<td>3.75%</td>
</tr>
<tr>
<td>7 or 10 years</td>
<td>4.25%</td>
</tr>
<tr>
<td>15 years*</td>
<td>4.75%</td>
</tr>
</tbody>
</table>

*The 15-year loan option is currently paused until external capital is secured.

Council Finance Meetings Review

An overview of Council Finance Committee presentations and discussions related to Epic Homes is provided below in Table 3.

Table 3. Overview of Council Finance Committee Items Related to Epic Homes

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Outcomes</th>
</tr>
</thead>
</table>
| November 2018 | Program background and issuing an RFP for third-party capital sources | • City issued RFP #8842 in December 2018  
• Staff pursued conversations and negotiations with respondents and other potential capital providers                                                                                                               |
| May 2019   | Capital strategy, potential capital sources and next steps for bringing capital agreements to Council | • Staff continued negotiations with potential capital providers (including a locally managed national bank, a regional bank, Colorado Clean Energy Fund, and the CEO)  
• Received Legal and Purchasing review of draft contracts                                                                                                                                  |
| July 2019  | Capital agreement terms                                             | • Staff directed to bring two of the three capital sources to full Council for consideration (*US Bank Loan authorized by Electric Utility Enterprise Board in Ordinance 007 & 008, 2019*)  
• Staff directed to provide additional information on interest rate swaps and 15-year capital to Council Finance                                                                                |
| August 2019 | 15-year capital and interest rate swaps                             | • Staff directed to bring third capital source to full Council for consideration (*Staff reached impasse in terms with capital provider and is proposing new 15-year capital sources*)                                                                                       |
Importance of 15-year Capital
During prototyping for the Bloomberg Mayors Challenge, rental property owners reported that no-money-down, affordable monthly payments are critical considerations, in particular for owners with multiple units. OBF 1.0 (also known as HELP) proved these factors are also important for owner-occupied properties, where many homeowners preferred longer term loans which often allow for more comprehensive projects and/or solar installations with affordable monthly payments. In 2016, Fort Collins Utilities implemented the Efficiency Works Neighborhood pilot, with nearly 60 long term loans issued totaling over $750,000. Additionally, of those that used a loan during the pilot, 80% of customers stated they would not have done a project without the attractive on-bill loan option.

Throughout the on-bill financing history (2013-2016 and 2018-2019), 50% of customers have used longer loan terms to reduce monthly payments and/or undertake more comprehensive energy efficiency projects (Table 4). As a result, the longer-termed loans account for a larger percentage of the on-bill loan portfolio value, at 60%. Longer term loans are generally used for bigger, more comprehensive projects that can generate increased benefits for the people who live in and own those homes, as well as positively impacting overall City goals.

Table 4. Summary of On-Bill Financed Projects by Loan Term

<table>
<thead>
<tr>
<th>Loan Terms</th>
<th>3 &amp; 5 year</th>
<th>7 &amp; 10 year</th>
<th>15 (&amp; 20) year</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Projects Using OBF by Term</td>
<td>41</td>
<td>71</td>
<td>99</td>
<td>211</td>
</tr>
<tr>
<td>Percentage of Total</td>
<td>19%</td>
<td>34%</td>
<td>47%</td>
<td>100%</td>
</tr>
</tbody>
</table>

In order to keep monthly payments low and make energy retrofit projects attractive, longer loan terms are required. The average on-bill long-term loan amount is $13,000, with monthly payments of $101. Heating, ventilation and cooling (HVAC) projects are an example of higher cost projects where longer loan terms are more attractive. The average HVAC project loan in Epic Loans is $14,000. With a 10-year loan, the monthly payment is $143; however, with a 15-year loan, the monthly payment is $109, a 30% lower monthly payment that is much more attractive and feasible. These attractive monthly payments are critical for overcoming cost barriers for home and rental property owners considering energy upgrades.

Denver Based Bank Overview
Staff previously presented a 15-year capital source with a Midwest-based commercial bank through the Colorado Clean Energy Fund, which included some uncommon terms for City loan agreements, such as a required collateral deposit and variable interest rate resulting in the need for a derivative instrument. After presentation of this capital source to the Council Finance Committee, staff reached an impasse in terms with the capital provider as the terms became unfavorable for the City. Staff was able to find a new source for 15-year capital from an in-state commercial bank with highly desirable terms, including a fixed interest rate at the time of closing, no collateral requirements, and no debt policy exceptions needed.

Staff has reviewed a draft loan agreement with the Denver Based bank for 15-year capital. The terms include:

- **Amount:** Up to $2,500,000
- **Length:** 17-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 US Treasury + 2.75% (4.55% Currently); Rate set at time of loan closing
• **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

**Colorado Energy Office Overview**
The Colorado Energy Office (CEO) showed support of Epic Loans in 2018 with a $200,000 grant. Staff have also negotiated a $800,000 loan from CEO. Terms of the agreement include:

- **Amount:** $800,000
- **Length:** 15-years
- **Draw period:** None
- **Fixed Rate:** 0%

The principal will be due at the end of the 15-year period and any program income may be used for administrative expenses and/or issuing new loans. Any unused program income will also be due at the time of principal repayment.

**Next Steps**
Staff seeks approval from Council Finance to proceed for Electric Utility Enterprise Board consideration of the proposed 15-year agreements. If supported, staff is scheduled to present the 15-year agreements on February 18, 2020.

**Discussion / Next Steps:**
Better, cleaner deal / better partner / lower cost - eliminated complexity - no collateral required

These will be through the electric enterprise - we will need to go through the Electric Enterprise Board. Will be able to draw in tranches up to once per quarter in the 2-year period. We will make those decisions based on the demand. The rate when we close will be the rate for the duration of the loan and will include all tranches. We will pay Interest only during 2-year draw period – then it will turn into a 15-year loan (principle and interest)

Mike Beckstead; this is a rate risk question - before we had talked about locking in at stages. There is a little rate risk - policy change risk went away - much better terms overall

No debt policy exception or interest rate swap instrument needed for this program as was for the previous program.
**Amount:** $800,000  
**Length:** 15-years  
**Draw period:** None  
**Fixed Rate:** 0%

- Principal due at end of 15-year period
- Program income may be used for administrative expenses and/or issuing new loans
  - Any unused program income will be repaid with principal

No draw period - 0% total principle will be due at end of loan - one-time balloon payment

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

Does the Committee support presentation of the proposed 15-year capital agreements to the Electric Utility Enterprise Board on February 18th?

**Results:**
Ross Cunniff; yes - this sounds great. Thank you for finding this and bringing it to us. I enthusiastically support this.

Mayor Troxell and Ken Summers also support going forward.  
Good meeting - US Mayor’s Challenge oversite perspective this is viewed as a good project

Sean Carpenter; we are excited to get the financing in place so we can move aggressively into outreach - start getting projects done.
ORDINANCE NO. 047, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING A SUPPLEMENTAL APPROPRIATION FROM THE LIGHT
AND POWER FUND TO BE EXPENDED AS LOANS TO UTILITY
SERVICES CUSTOMERS UNDER THE EPIC LOAN PROGRAM

WHEREAS, the City has previously established and funded a program to assist certain Electric Utility customers of Fort Collins Utility Services (“Utility Services”) in financing home-energy-efficiency and renewable-energy improvements for single-family residential properties they own by making loans to these customers, whether their properties are owner- or renter-occupied (“Epic Loan Program”); and

WHEREAS, two new sources of funds for such loans in the Epic Loan Program have recently become available to Utility Services through an anticipated $800,000 loan to be obtained by the City’s Electric Utility Enterprise (the “Enterprise”) from the Colorado Energy Office (the “CEO Loan”) and an anticipated $2.5 million line-of-credit to be obtained by the Enterprise from Vectra Bank Colorado (the “Vectra Bank Line of Credit”); and

WHEREAS, for loans under the Epic Loan Program in 2020, Utility Services expects to need all $800,000 of the proceeds from the CEO Loan and to draw up to $800,000 from the Vectra Bank Line of Credit; and

WHEREAS, this $1.6M in total proceeds from the CEO Loan and the Vectra Bank Line of Credit will be deposited into the City’s Light and Power Fund established in City Code Section 8-77 (the “Light & Power Fund”); and

WHEREAS, City Charter Article V, Section 8 allows an appropriation to be made by City Council based upon anticipated revenues, reserves or other funds provided such appropriation does not exceed those anticipated revenues, reserves or other funds; and

WHEREAS, City Charter Article V, Section 9 permits the City Council, upon recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriations, in combination with all previous appropriations for that fiscal year, do not exceed the current estimate of actual and anticipated revenues to be received during this fiscal year; and

WHEREAS, the City Manager has recommended the appropriations described herein and determined that the total amount of these appropriations, together with all previous appropriations from the Light & Power Fund for this fiscal year, will not cause the total amount appropriated in the Light & Power Fund to exceed the current estimate of actual and anticipated revenues to be received in the Light & Power Fund during this fiscal year; and

WHEREAS, this appropriation benefits the public’s health, safety and welfare and serves the utility and public purposes of improving the energy efficiency of older homes in Fort Collins, thereby benefiting Electric Utility ratepayers and the health, safety and comfort of the inhabitants of the improved homes.
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from the Light & Power Fund, in anticipation of receiving the proceeds from the CEO Loan and the Vectra Bank Line of Credit, the sum of ONE MILLION SIX HUNDRED THOUSAND DOLLARS ($1,600,000) to be expended as loans to Utility Services customers under the Epic Loan Program.

Introduced, considered favorably on first reading, and ordered published this 20th day of March, A.D. 2020, and to be presented for final passage on the 7th day of April, A.D. 2020.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk

Passed and adopted on final reading on the 7th day of April, A.D. 2020.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk
ORDINANCE NO. 048, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING A SUPPLEMENTAL APPROPRIATION FROM UNAPPROPRIATED PRIOR YEARS RESERVES IN THE LIGHT & POWER FUND TO MAKE DEBT SERVICE PAYMENTS UNDER THE VECTRA BANK LINE OF CREDIT FOR THE EPIC LOAN PROGRAM

WHEREAS, the City has previously established and funded a program to assist certain Electric Utility customers of Fort Collins Utility Services ("Utility Services") in financing home-energy-efficiency and renewable-energy improvements for single-family residential properties they own by making loans to these customers, whether their properties are owner- or renter-occupied ("Epic Loan Program"); and

WHEREAS, as one source of funds for the Epic Loan Program, the City’s Electric Utility Enterprise (the “Enterprise”) anticipates obtaining a $2.5 million line-of-credit from Vectra Bank Colorado ("Vectra Bank Line of Credit"); and

WHEREAS, it is anticipated that up to $800,000 will be drawn from the Vectra Bank Line of Credit in 2020 by the Enterprise and then loaned to eligible Utility Services customers under the Epic Loan Program, thereby requiring a debt service payment in 2020 from the City to Vectra Bank Colorado in an amount of up to $100,000; and

WHEREAS, this Ordinance authorizes the appropriation of this $100,000 from unappropriated prior years’ reserves in the Light and Power Fund established in City Code Section 8-77 (the “Light & Power Fund”); and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriations, in combination with all previous appropriations for that fiscal year, do not exceed the current estimate of actual and anticipated revenues to be received during this fiscal year; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that the total amount of this appropriation, together with all previous appropriations from the Light & Power Fund for this fiscal year, will not cause the total amount appropriated in the Light & Power Fund to exceed the current estimate of actual and anticipated revenues to be received in the Light & Power Fund during this fiscal year; and

WHEREAS, Article V, Section 9 of the City Charter also permits the City Council to appropriate by ordinance at any time during the fiscal year such funds for expenditure as may be available from reserves accumulated in prior years in the Light & Power Fund, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, this appropriation benefits the public’s health, safety and welfare and serve the utility and public purposes of improving the energy efficiency of older homes in Fort Collins, thereby benefiting Electric Utility ratepayers and the health, safety and comfort of the inhabitants of the improved homes.
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from unappropriated prior years reserves in the Light & Power Fund the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) to be used for the payment of debt service under the Vectra Bank Line of Credit.

Introduced, considered favorably on first reading, and ordered published this 20th day of March, A.D. 2020, and to be presented for final passage on the 7th day of April, A.D. 2020.

________________________________________
Mayor

ATTEST:

________________________________________
City Clerk

Passed and adopted on final reading on the 7th day of April, A.D. 2020.

________________________________________
Mayor

ATTEST:

________________________________________
City Clerk
CALL MEETING TO ORDER

1. **Items Relating to the Epic Loan Program.** (staff: Blaine Dunn, Sean Carpenter; 5 minute staff presentation; 10 minute discussion)

   A. First Reading of Ordinance No. 009, Authorizing a Loan Agreement with Vectra Bank Colorado to Provide Funding for the Epic Loan Program.

   B. First Reading of Ordinance No. 010, Authorizing a Loan Agreement with the Colorado Energy Office to Provide Funding for the Epic Loan Program.

In 2012, the City Council established, by ordinance, the On-Bill Utility Financing Program, which is now known as the Epic Loan Program. The Program provides financing for home energy upgrades by making loans to property owners who are customers of Fort Collins Utilities. Staff is recommending the Electric Utility Enterprise borrow additional capital for the Program from two third party lenders for 15-year capital. Ordinance No. 009 authorizes the Enterprise to borrow up to $2.5 million, under a line of credit, from Vectra Bank Colorado (Vectra Loan) as additional funding for the Program. Ordinance No. 010 authorizes the Enterprise to borrow $800,000 at 0% interest from the Colorado Energy Office (CEO Loan) as additional funding for the Program. Fifty percent of customers to date have used longer loan terms to reduce monthly payments and/or undertake more comprehensive energy efficiency projects, making 15-year capital an essential component for the success of the Program. These items were presented at the January 27, 2020 Council Finance Committee meeting and received support for bringing these Ordinances to the Electric Utility Enterprise Board for consideration.

• OTHER BUSINESS

• ADJOURNMENT
STAFF

Terra Sampson, Project Manager, Energy Services
John Phelan, Energy Services Manager
Sean Carpenter, Climate Economy Advisor
Blaine Dunn, Senior Treasury Analyst
John Duval, Legal

SUBJECT

Items Relating to the Epic Loan Program.

EXECUTIVE SUMMARY

A. First Reading of Ordinance No. 009, Authorizing a Loan Agreement with Vectra Bank Colorado to Provide Funding for the Epic Loan Program.

B. First Reading of Ordinance No. 010, Authorizing a Loan Agreement with the Colorado Energy Office to Provide Funding for the Epic Loan Program.

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STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on First Reading.

BACKGROUND / DISCUSSION

Epic Homes

In 2012, the City Council established, by ordinance, the On-Bill Utility Financing Program, which is now known as the Epic Loan Program. The Program provides financing for home energy upgrades by making loans to property owners who are customers of Fort Collins Utilities. Initial funding of $1.6 million for the loan fund and lending (Epic Loans) were authorized by City Council and drawn from Light and Power and Water reserve funds (Utility Reserves). The City has also recently been awarded a grant for the Program from the Colorado Energy Office ($200,000), and prize monies from winning the 2018 Bloomberg Philanthropies Mayors Challenge ($1 million total/$688,350 of which is dedicated to providing capital for Epic Loans). With Ordinance
No. 110, 2019, Council adopted an increase in the amount of loan capital available for the Program reflecting the existing Utility Reserve funds, grant and prize monies, and proposed new borrowing. Ordinance No. 007 and 008, 2019 authorized the Electric Utility Enterprise to borrow up to $2.5 million under a line of credit from a third party lender, U. S. Bank (US Bank Loan), allowing Epic Loans to offer utility customers loan terms of up to 10-years.

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 communities. The City’s proposal, Epic Homes, 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 rental 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 is also establishing a research study which links the health and well-being indicators of improved indoor environmental quality.

Epic Homes provides non-energy benefits in addition to efficiency, such as increased comfort, health and safety. In nearly every energy assessment, energy advisors identify a health and safety hazard in need of attention. This could vary from a back-drafting water heater, to air leakage pollutants entering the home from the garage or crawlspace, to combustion appliances that need tuning or replacing producing excess carbon monoxide. Loans are available for over 25 different types of efficiency measures, including replacing an old furnace with a new efficient furnace that has important safety features, such as sealed combustion with intake and exhaust to the outside.

**Epic Loans**

Fort Collins’ On-Bill Finance program (previously also known as Home Efficiency Loan Program or HELP, and now called the Epic Loan Program), a component of the Epic Homes portfolio (Attachment 1), supports a number of community and City Council priorities, including ambitious goals for energy efficiency and renewable energy, reduced greenhouse gas emissions and increased equity and well-being for residents. Meeting these objectives will require, among other activities, greater numbers of property owners to undertake comprehensive efficiency improvements in the coming years, particularly for older, less-efficient rental properties which make up a significant percentage of the City’s housing stock.

The original On-Bill Finance program issued loans from 2013 through 2016 when the maximum outstanding loan balance funded through Light & Power reserves was reached ($1.6 million). On-Bill Finance was revitalized as the Epic Loan Program in August 2018 during the Champions Phase of the Bloomberg Mayors Challenge. The City has been awarded grants from the Colorado Energy Office ($200,000) and from Bloomberg Philanthropies ($688,350) for the Epic Loan Program. The Electric Utility Enterprise has also entered into a $2.5M line of credit loan agreement with U.S. Bank to provide up to 10-year capital for the Program.

Staff has been working to develop third-party capital agreements to scale impact for owners and renters in Fort Collins. This has included presentations with the Council Finance Committee to discuss the Request for Proposals for third-party capital providers, discuss the capital strategy and review proposed capital agreement terms. The proposed “capital stack” is provided below in Table 1 and the customer interest rates based on third-party capital terms are provided in Table 2.

An ongoing and attractive financing structure to support energy efficiency retrofits will be a critical element for success moving forward. Through 2019, Fort Collins Utilities has serviced 211 on-bill loans to support energy efficiency upgrades in residential homes and overcome financial barriers for making these important upgrades. Detailed information regarding the Epic Homes program and loan terms can be found at [fcgov.com/epichomes](http://fcgov.com/epichomes).
Table 1. Epic Loan Capital Stack Summary

<table>
<thead>
<tr>
<th>Capital Type</th>
<th>Provider</th>
<th>Term</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internal &amp; Grant</td>
<td>Previously authorized Light &amp; Power reserves</td>
<td>Ongoing</td>
<td>0%</td>
<td>$1,600,000</td>
</tr>
<tr>
<td></td>
<td>Bloomberg Philanthropies Grant</td>
<td></td>
<td>0%</td>
<td>$688,350</td>
</tr>
<tr>
<td></td>
<td>Colorado Energy Office - Grant</td>
<td></td>
<td>0%</td>
<td>$200,000</td>
</tr>
<tr>
<td></td>
<td><strong>Internal Subtotal</strong></td>
<td></td>
<td></td>
<td><strong>$2,488,350</strong></td>
</tr>
<tr>
<td>External Market</td>
<td>Colorado Energy Office - Loan</td>
<td>15 year</td>
<td>0%</td>
<td>$800,000</td>
</tr>
<tr>
<td></td>
<td>U. S. Bank</td>
<td>5 &amp; 10 year</td>
<td>76% of Prime (3.99% Currently)</td>
<td>Up to $2,500,000</td>
</tr>
<tr>
<td></td>
<td>Vectra Bank Colorado</td>
<td>15 year</td>
<td>10-year US Treasury + 2.75% (4.30% currently)*</td>
<td>Up to $2,500,000</td>
</tr>
<tr>
<td></td>
<td><strong>External Subtotal</strong></td>
<td></td>
<td></td>
<td><strong>$5,800,000</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$8,288,350</strong></td>
</tr>
</tbody>
</table>

*As of February 18th, 2019; subject to change.

Table 2. Customer Interest Rate

<table>
<thead>
<tr>
<th>Loan Term</th>
<th>Customer Rate (Effective Aug. 2019)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 or 5 years</td>
<td>3.75%</td>
</tr>
<tr>
<td>7 or 10 years</td>
<td>4.25%</td>
</tr>
<tr>
<td>15 years*</td>
<td>4.75%</td>
</tr>
</tbody>
</table>

*The 15-year loan option is currently paused until third party external capital is secured.

Importance of 15-year Capital

During prototyping for the Bloomberg Mayors Challenge, rental property owners reported that no-money-down, affordable monthly payments are critical considerations, in particular for owners with multiple units. OBF 1.0 (also known as HELP) proved these factors are also important for owner-occupied properties, where many homeowners preferred longer term loans which often allow for more comprehensive projects and/or solar installations with affordable monthly payments. In 2016, Fort Collins Utilities implemented the Efficiency Works Neighborhood pilot, with nearly 60 long term loans issued totaling over $750,000. Additionally, of those that used a loan during the pilot, 80% of customers stated they would not have done a project without the attractive on-bill loan option.

Throughout the on-bill financing history (2013-2016 and 2018-2019), approximately 50% of customers have used longer loan terms to reduce monthly payments and/or undertake more comprehensive energy efficiency projects (Table 3). As a result, the longer-termed loans account for a larger percentage of the on-bill loan portfolio value, at approximately 60%. Longer term loans are generally used for bigger, more comprehensive projects that can generate increased benefits for the people who live in and own those homes, as well as positively impacting overall City goals. Attractive monthly payments are critical for overcoming cost barriers for home and rental property owners considering energy upgrades.
Table 3. Summary of On-Bill Financed Projects by Loan Term

<table>
<thead>
<tr>
<th>Loan Terms</th>
<th>3 &amp; 5 year</th>
<th>7 &amp; 10 year</th>
<th>15 (&amp; 20) year</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Projects Using OBF by Term</td>
<td>41</td>
<td>71</td>
<td>99</td>
<td>211</td>
</tr>
<tr>
<td>Percentage of Total</td>
<td>19%</td>
<td>34%</td>
<td>47%</td>
<td>100%</td>
</tr>
</tbody>
</table>

**Vectra Bank Colorado**

Staff has negotiated a loan agreement with Vectra Bank Colorado, a Denver-based bank, for 15-year capital with highly desirable terms, including a fixed interest rate at the time of closing and no collateral requirements. The terms include:

- **Amount:** Up to $2,500,000
- **Length:** 17-years inclusive of 2-year draw period
- **Draw period:** Up to 2 years, with draw timing and amounts based on program/customer demand (no more than quarterly)
- **Fixed rate:** 10-year US Treasury + 2.75% (4.30% Currently); Rate set at time of loan closing
- **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:** Parity pledge (with other Epic Loans) on customer loan repayments and subordinate position on Electric Utility revenues, after the more senior pledge held by revenue bondholders

These and other terms are reflected in the Loan Agreement attached as Exhibit A to Ordinance No. 009.

**Colorado Energy Office**

The Colorado Energy Office (CEO) showed support of Epic Loans in 2018 with a $200,000 grant. Staff have also negotiated a $800,000 loan from CEO. Terms of the agreement include:

- **Amount:** $800,000
- **Length:** 15-years
- **Draw period:** None
- **Fixed Rate:** 0%

The principal will be due at the end of the 15-year period and any program income may be used for administrative expenses and/or issuing new loans. Any unused program income will also be due at the time of principal repayment.

These and other terms are reflected in the Loan Agreement attached as Exhibit A to Ordinance No. 010.

**Third-Party Capital**

Leveraging external capital is critical to achieving the long-term “revolving loan” vision of Epic Loans and offers a continuing source of funds to meet increasing customer demand for energy efficiency financing. Epic Loans is designed to balance the programmatic objectives and financial requirements of the City, while also meeting the needs and expectations of capital providers and Utilities customers.

In all third-party loan agreements, the Enterprise would be the borrower, with the third-party funds being loaned to customers by Utilities. The Enterprise would be responsible for the repayment to the capital provider. In turn, Utilities customers carry the obligation for repayment of loans to the City via their utility bill. Utilities has various code-specified tools for recourse of delinquent utility bills that makes the risk profile for the Epic Loan portfolio extremely low. There have been zero loan defaults since OBF began in 2013.
CITY FINANCIAL IMPACTS

Staff projects the Program will be cashflow positive. Staff also projects the Ordinances under consideration will meet the project demand for the next 4 years or more, for loans with a payback of up to 15 years. The Ordinances 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 6-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.

Core tenants of the loan program are to ensure no negative impact on Light & Power planned debt offerings, and to protect the Utilities credit rating and broadband coverage covenants.

BOARD / COMMISSION RECOMMENDATION

Third-party loan agreements and terms were discussed at the July 15, 2019 Council Finance Meeting. (Attachment 2) Details of the 15-year lending agreement were discussed further at the August 19, 2019 Council Finance Meeting (Attachment 3), and updated details and capital sources were discussed at the January 27, 2020 Council Finance Meeting. (Attachment 4) Council Finance supported bringing forward the included Ordinances for consideration.

ATTACHMENTS

1. Epic Homes Structure and Components Diagram (PDF)
2. Council Finance Meeting Minutes, July 15, 2019 (PDF)
3. Council Finance Meeting Minutes, January 27, 2020 (PDF)
4. Council Finance Meeting Minutes, August 19, 2019 (PDF)
5. Powerpoint presentation (PDF)
A comprehensive portfolio for single-family home performance.

**Owner-Occupied Properties**
- Marketing to owner-occupied properties

**Renter-Occupied Properties**
- Marketing to rental properties (Bloomberg)

**Efficiency Works Homes**
- Home efficiency assessment, upgrade and rebate program

**Participating Contractors**
- EWH participating contractors for upgrade projects

**On-Bill Loan**
- On-bill financing leveraging third-party capital (Bloomberg)

**IEQ Study**
- Indoor environmental quality and health/well-being study with CSU (Bloomberg)

**Certificate**
- Documentation of home score and improvements

**Real Estate Professionals**
- Network to promote energy upgrades value in the market

(for internal use only)
Travis Storin; these are not cash accounts but are upstream from JDE - managing developer escrows to funds – there is no interface built into the system, so the balancing activity is a manual activity (similar to balancing checkbook)

Mike Beckstead; we will get a process defined and a cadence to that process put in place and the team will be focused on this effort in 2019 – 20.

Chris Telli; our recommendation is exactly as Mike Beckstead stated (analyze, clean up, reconciliation, no impact)

Ross Cunniff; you mentioned that some smaller federal grants might never be audited - risk to city is much lower but randomly picking one of them every year for auditing might be something to consider.

Chris Telli; we can look into doing that – they would never be required due to $750K threshold. Programs that never reach that threshold typically don’t get to the point of requiring an audit.

ACTION ITEM
Ross Cunniff; Do any of your other clients have whistle blower programs?

Chris Tilly; many clients have a fraud hotline in place which we highly recommend - it should be available to all employees and to the community at large. There are many other vendors that offer this service in addition to BKD.

Kelly DiMartino; we have an Ethics Hotline available to employees and citizens. It is promoted on our website.

Ross Cunniff; what about policies against retaliation?

Darin Atteberry; we have internal administrative policies around retaliation

ACTION ITEM:
Ross Cunniff; I would recommend we take this to Council as a Resolution given that we have a significant finding.

Mike Beckstead; we will get that scheduled and bring it forward to Council.

Kudos to BKD and to the Staff for a great working relationship.

B. Epic External Borrowing Terms / Details
   Sean Carpenter, Lead Specialist, Economic Sustainability
   Travis Storin, Director, Accounting

SUBJECT FOR DISCUSSION: Epic Homes Capital Plan - Update & Next Steps

EXECUTIVE SUMMARY
This item will provide an update to Council Finance regarding the Epic Homes capital plan and next steps for capital agreements. Updates include:
• Review of on-bill financing history and capital recruitment process;
• Future capital stack;
• Loan terms and rates;
• Cash flow projections; and
• Next steps regarding securing and appropriation of third-party capital into a revolving loan fund.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED
• Does the Council Finance Committee approve the presentation of financial / loan agreements to the full City Council for consideration in August?

BACKGROUND/DIscussion
Fort Collins’ innovative On-Bill Finance (OBF) program supports a number of community and City Council priorities, including ambitious goals around energy efficiency and renewables, reduced greenhouse gas emissions and increased equity and wellbeing of all residents (see Energy Policy and Climate Action Plan). Meeting these objectives will require, among other activities, that greater numbers of property owners undertake comprehensive efficiency improvements in the coming years, particularly for older, less-efficient rental properties which make up a large percentage of the City’s housing stock. An ongoing and attractive financing structure to support energy efficiency retrofits will be a critical element for success moving forward.

On-Bill Financing History
The Home Efficiency Loan Program (HELP, aka OBF 1.0) operated successfully from January 2013 through early 2017 when the maximum outstanding loan balance of $1.6M was reached. In 2017, Elevations Credit Union was selected through an RFP process for energy loan financing. Utilities staff qualify the efficiency project based on the rebate measures in the Efficiency Works Home program; however, the loan origination and servicing are independent of Utilities programs. With the implementation of Epic Loans, Elevations loans will continue to be an option for interested customers.

Epic Loans (aka OBF 3.0) were revitalized in August 2018 during the Champions Phase of the Bloomberg Mayors Challenge. The $100,000 award from the Champions Phase and a $200,000 grant from the Colorado Energy Office were used to kick off the revitalized on-bill financing. Fort Collins is among nine winning cities for the Mayor Challenge, each receiving $1 M to implement their winning idea. The grant agreement with Bloomberg Philanthropies was completed in February 2019 and the initial $100,00 tranche of the $1M was awarded. As of March 2019, Epic Loans has serviced over 20 on-bill loans for $280,000 to support energy efficiency retrofits that would not have occurred without an attractive financing option.

Leveraging external capital is critical to achieving the long-term vision of Epic Loans and offers a continuing source of funds to meet increasing customer demand for energy efficiency financing. Epic Loans is designed to balance the programmatic objectives and financial requirements of the City, while also meeting the needs and expectations of capital providers and Utilities customers. The program team seeks to design an “evergreen” revolving loan fund which:
• Supports residential energy efficiency upgrades for years to come;
• Scales to meet long-term efficiency objectives;
• Removes financial barriers to efficiency upgrades with attractive rates and terms;
• Aligns capital commitments with customer loan terms; and
• Minimizes the City and Utilities risk and administrative effort.
Council Finance Meetings Review
The Epic Homes team presented to Council Finance in November 2018 regarding the program background and issuing an RFP for third-party capital sources. The City issued RFP #8842 in December 2018 and the team pursued conversations and negotiations with respondents and other potential capital providers.

The Epic Homes team presented to Council Finance again in May 2019 regarding the potential capital sources and next steps for bringing capital agreements to Council. Staff have continued negotiations with potential capital providers (including a locally managed national bank, a regional bank, Coalition for Green Capital, and the Colorado Energy Office) and received Legal and Purchasing review of draft contracts.

Capital Stack and Terms
Capital sources for the Epic Loan need to align with the following high-level objectives:
- Attractive: The loan program must be able to provide attractive loan terms to customers, specifically attractive interest rates.
- Scalable: The program must be scalable in support of Fort Collins ambitious energy goals. It is anticipated that Fort Collins will upgrade thousands of homes in the coming years.
- Parity: In both length and rate, borrowed capital should match loaned capital as closely as possible.
- Simple: The implementation and administration of the program must be as simple as possible for all parties, including customers, Utilities, and the capital partners.

Capital Stack
To provide sufficient financing for the expected number of projects, the short-term (3-4 year) capital goal is $7M to $8M. This assumes $1.5M to $2M annually in energy efficiency project financing. The longer-term capital goal is up to $16M in order to establish a self-sustaining revolving loan. To meet the short-term capital goal, the Epic Homes team proposes the capital stack below.

<table>
<thead>
<tr>
<th>Capital Type</th>
<th>Provider</th>
<th>Term</th>
<th>Rate</th>
<th>Amount</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low or No Cost</td>
<td>Bloomberg Philanthropies – Champions Phase Award</td>
<td>N/A</td>
<td>0%</td>
<td>$100,000</td>
<td>Appropriated July 2018</td>
</tr>
<tr>
<td></td>
<td>Bloomberg Philanthropies – Award Initial Tranche</td>
<td>N/A</td>
<td>0%</td>
<td>$100,000</td>
<td>Appropriated March 2019</td>
</tr>
<tr>
<td></td>
<td>Bloomberg Philanthropies – Award Second Tranche</td>
<td>N/A</td>
<td>0%</td>
<td>$488,350</td>
<td>To be appropriated August 20</td>
</tr>
<tr>
<td></td>
<td>Colorado Energy Office – Grant</td>
<td>N/A</td>
<td>0%</td>
<td>$200,000</td>
<td>Appropriated August 2018</td>
</tr>
<tr>
<td></td>
<td>Colorado Energy Office – Loan</td>
<td>15 year</td>
<td>1-2%</td>
<td>$1,000,000</td>
<td>To be appropriated August 20</td>
</tr>
<tr>
<td>External Market</td>
<td>National Commercial Bank</td>
<td>5 &amp; 10 year</td>
<td>3.95% - 4.25%</td>
<td>$2,500,000</td>
<td>To be appropriated August 20</td>
</tr>
<tr>
<td></td>
<td>Regional Private Bank (through National Green Bank)</td>
<td>15 year</td>
<td>5.75%</td>
<td>$2,500,000</td>
<td>To be appropriated August 20</td>
</tr>
<tr>
<td>Internal</td>
<td>Repayments of previously paid loans</td>
<td>N/A</td>
<td>0%</td>
<td>$374,000</td>
<td>Appropriated as part of revolving loan fund in OBF 1.0</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>$7,262,350</td>
<td></td>
</tr>
</tbody>
</table>

Capital Provider Terms
Flexible structures which minimize the need for the City to carry non-deployed debt capital, such as lines of credit versus term loans, are being pursued with the capital providers. In all cases, Fort Collins Utilities would be the borrower, with the third-party funds being loaned to customers by Utilities. Fort Collins Utilities would be responsible for the repayment to the capital provider. In turn, Utilities customers carry the obligation for repayment of loans to the City via their utility bill. Utilities has various code-specified tools for recourse of delinquent utility bills that makes the risk profile for the Epic Loan portfolio extremely low. Third-party capital providers will have a senior pledge on customer loan repayments and second position on Electric Utility revenues, after the more senior pledge held by revenue bondholders. Finally, the City may pre-pay any of these agreements in whole or in part at any time and without penalty.

Capital Source #1: Colorado Energy Office
- **Amount:** Up to $1,000,000
- **Length:** 15-years inclusive of draw period
- **Draw period:** None
- **Fixed Rate:** 1.25% to 2.25%

External Capital Source #2: National Commercial Bank
- **Amount:** Up to $2,500,000
- **Length:** 5-year and 10-year portions, inclusive of draw period
- **Draw period:** Up to 2 years with monthly draws based on customer loans
- **Variable Rate Period:** Fed SOFR plus X% (applies during draw period)
- **Fixed Rate:** 5-year or 10-year Treasury Note plus X% (rate becomes fixed after draw period)

External Capital Source #3: National Green Bank
- **Amount:** Up to $2,500,000
- **Length:** 15-years inclusive of draw period
- **Draw period:** Up to 2 years with quarterly draws based on customer loans
- **Variable Rate:** Wall Street Journal Prime + 0.25% (currently 5.75%)
- **Collateral:** City will deposit 50% of drawn amount into FDIC-insured account

**Policy Exceptions**
Source #2 and #3 each have terms that interact or conflict with Financial Policy #7.

<table>
<thead>
<tr>
<th>Debt Instrument</th>
<th>Policy Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Source #1: State Energy Office</td>
<td>• None</td>
</tr>
<tr>
<td>Source #2: 5- and 10-year National Commercial Bank</td>
<td>• Variable rate for 2 years, managed in 6-month intervals</td>
</tr>
<tr>
<td>Source #3: 15-year National Green Bank</td>
<td>• Credit Enhancement, and</td>
</tr>
<tr>
<td></td>
<td>• Variable Rate, or</td>
</tr>
<tr>
<td></td>
<td>• Derivative Swap instrument</td>
</tr>
</tbody>
</table>

For source #2 (5- and 10-year commercial funds), staff has arranged for rate-lock rights during the 2-year variable draw window which effectively stabilizes the debt service per policy.
For source #3 (15-year green bank funds), staff assesses an appropriate use of a credit enhancement via the collateral pledge.

The note is written with variable rate for its duration, however. Staff has attempted to negotiate rate lock-in rights during the draw period, but the lender has been unable to flex. Alternatives are to accept the terms of this deal, terminate the deal, or manage the variable rate risk via an interest rate swap. The swap would qualify as a derivative instrument, which is also covered by policy as an instrument the City should avoid.

**Retail Rates and Terms**

In December 2018, the financial officer’s rules and regulations were revised to remove language about specific interest rates and allows for regular review and necessary adjustments of interest rates based on third-party capital terms, and approval of the City CFO. The City will blend capital sources and interest rates into loan offerings that recover the cost of capital and include a modest administrative premium to cover administrative costs in the future. The current loan interest rates interest rates based on capital sources are as follows:

<table>
<thead>
<tr>
<th>Loan Term</th>
<th>Interest Rate (Effective Jan. 2019)</th>
<th>Interest Rate (Effective Jul 2019)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 or 5 years</td>
<td>3.49%</td>
<td>3.75%</td>
</tr>
<tr>
<td>7 or 10 years</td>
<td>3.99%</td>
<td>4.25%</td>
</tr>
<tr>
<td>15 years</td>
<td>4.49%</td>
<td>4.75%</td>
</tr>
</tbody>
</table>

**Next Steps**

The Epic Homes team is finalizing lending agreements with third-party capital providers. The Epic Homes team seeks approval from Council Finance to proceed with City Council consideration of financial agreements during the August 20 Council session. A separate ordinance will be prepared for each capital provider.

**NEXT STEPS / DISCUSSION:**

Mike Beckstead; policy consideration - some I would consider to be in a bit of a gray zone - we want to be clear - we will be coming back to clarify consistency in terms with our current debit policy. Variable rates, slots. There is one that is are looking for a 50% deposit of what we borrow as a credit enhancer which is a stretch to our current policy and needs to be discussed. We pushed back hard, and they came back and said it is a requirement to do this loan.

Sean Carpenter; we have heard consistently that trying to borrow money beyond 10 years will be difficult - finding 15 year money has been a real challenge but it is important programmatically especially in the Bloomberg project where we are targeting rental properties - HVACS - owners need that longer term to keep payments lower.

Travis Storin; there are several interactions with policy and one outright exception - we will be very transparent and upfront about any proposed policy exceptions when this is brought forward.

L&P reserves would fund it and would be restricted for the life of the contract and would become reserves we can’t appropriate.

Variable Rate Debt – discouraged by not prohibited by policy - if we feel it is warranted.
15 year money variable rate for life offered - we can terminate the deal if we needed to or modify our program or product offerings to Epic loan customers or we can try to manage that risk with another instrument - variable interest rate swap which is a derivative financial instrument and is to be avoided per policy - approach a separate bank - the financial industry calls it a plain vanilla swap - fixed for variable rate trade. Low risk and widely available.

Mike Beckstead; challenge to me is borrowing 15-year money at a variable rate and loaning it out at a fixed rate is a bit of a non-starter from my perspective - that is where the swap came from – has some challenges but might be better than doing nothing.

Ross Cunniff; access to larger pool of money - moves some of the risk to the lender - use our capital as collateral 3 different policy excursions from this same source - to get us a 15-year product it will cost us half of that total - we could do 15-year terms but we would assume the risk

Mike Beckstead; we have the Council approved $1.6M of L&P reserves and of that amount $400K is still available. Less attractive because it will take a while to get those funds paid back but using our money is an option if we wanted to do that out of reserves and fund balance

Travis Storin; From a scalability perspective, we have gone at this from the view that the city cannot be the banker long term - Staff assessment to date is that it is unattractive to use our own money to deploy loans

Darin Atteberry; what is the cost premium for the plain vanilla swap?

Travis Storin; currently it would be 25-50 basis points above the prevailing variable rate. 100 basis points of spread between our overall costs and the costs the consumer sees- this is not intended to be money making. We previously offered a 20-year product, but we are not going to offer 20-year product in the future.

Mike Beckstead; one of our tenets is we don’t borrow money for a shorter period than we loan money.

Ross Cunniff; 15-year loans would be for HVAC and largely for multi-family rental housing. Do we ask for any collateral?

Travis Storin; UCC filing - right to shut off the utility - No defaults in 300 loans we have issued

Ross Cunniff; heading down the road of using our own capital – one of the considerations to mitigate our risk

Sean Carpenter; more comprehensive programs – folks also want that 15-year loan - Want to prove our hypothesis – positive impacts from these upgrades / changes.

Variable draw period lines up with program parameters nicely

Mike Beckstead; we are thinking $1.5 - 2M a year in loans - Can we get an option for year 3 from the lenders if we don’t draw at all or do we renegotiate a separate program in year 3 – our expectation is that we won’t use $6M in a two year process - we will be 2/3 of that at best based on our historical loan rates - still some ambiguity with what we do in year 3
Mike Beckstead; August 20th is the design to put these in place in time to support the program - we are not presuming Council Finance is going to support. That date is subject to this discussion.

Ken Summers; what is the largest amount we would loan in a 15-year time frame?

Sean Carpenter; $25K is the maximum loan amount - multi-unit apartment buildings, duplex / triplex / quad plex - larger than that would be commercial. Average loan size is in the $11-12K range. Larger would include solar - other features - solar companies - attractive financing

Ross Cunniff; heat pump type installation - solar which as an obvious payoff - solar companies are able to create their own deals

Sean Carpenter; after almost a year of prototyping these with rental property owners, we learned that the 15 year was critical to get monthly payments down - to incentivize them to make these upgrades on older, inefficient properties.

<table>
<thead>
<tr>
<th>Debt Instrument</th>
<th>Policy Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Source #1: State Energy Office</td>
<td>• None</td>
</tr>
<tr>
<td>Source #2: 5- and 10-year National Commercial Bank</td>
<td>• Variable rate for 2 years, managed in 6-month intervals</td>
</tr>
<tr>
<td>Source #3: 15-year National Green Bank</td>
<td>• Credit Enhancement, and</td>
</tr>
<tr>
<td></td>
<td>• Variable Rate, or</td>
</tr>
<tr>
<td></td>
<td>• Derivative Swap instrument</td>
</tr>
</tbody>
</table>

Ross Cunniff; I understand and support the analysis - I don’t know about question #3 - what is your recommendation as of now?

Mike Beckstead; I haven’t had a chance to meet with Lance Smith to investigate implications - borrowing variable and lending fixed is a non-starter for me so that is where the swap comes into play. 25-50 basis point premium - that is a way to contain risk. Making sure we are not lending at low end of curve then locking in a higher end. Our ability to adjust rates when we need to - Can’t borrow low and lend high

Action Item; Keep Option 3 separate – We have work to do to tighten up before 20th
Research on interest rate
Ross Cunniff; come back to Council Finance to discuss #3 (15-year product)
#1 and #2 sources can come forward on the 20th but let’s discuss #3 again at Council Finance (scheduled for August 19th)
B. Northfield Metro District Application
Josh Birks, Director Economic Sustainability

SUBJECT FOR DISCUSSION
Proposed Metro District by Landmark Homes for the Northfield Metropolitan District

EXECUTIVE SUMMARY
The developer of the proposed Northfield Metro District has submitted a Metro District Service Plan to support a proposed development of approximately 56 acres located north of Vine Street on the west side of Lindenmeier Road/Lemay Avenue (southeast of the Lake Canal and north of the to-be designated historic Alta Vista neighborhood). The development is anticipated to include approximately 442 attached housing units, of which a minimum of approximately fourteen percent (14%) will be designated and sold as deed-restricted affordable housing, and the majority of the rest of the units will be sold as attainable housing units. The Planned Development is also anticipated to include a mixed-use center that will offer light commercial use on the first floor, residential for-rent units on the second floor, and small amenities open to the public. The estimated population at build-out is 1,139. Construction of the Planned Development is planned to be completed by year 2026.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED
1. What additional information does the committee recommend including for the Council evaluation of the Landmark Development’s proposed Metro District Service Plan?

BACKGROUND/DISCUSSION
Landmark Homes is proposing a residential community situated within walking distance of the City’s Old Town. The Planned Development incorporates goals of the following plans: City Plan, Transportation Master Plan, Master Street Plan, Nature in the City Strategic Plan, Natural Areas Master Plan, Paved Recreational Trail Master Plan, Northside Neighborhoods Plan, Pedestrian Plan, and Bicycle Master Plan.

PROJECT OVERVIEW
The proposed Metro District will support 56 acres of planned development located north of Vine Street on the west side of Lindenmeier Road/Lemay Avenue (southeast of the Lake Canal and north of the to-be designated historic Alta Vista neighborhood). The project anticipates constructing:

- Approximately 442 residential units (a mix of single-family and multi-family);
- Minimum of 14.7% affordable (65 units)
- The remaining housing units in the project are expected to be priced in an attainable range, considered by other cities to be between 80% and 120% of AMI.
- A mixed-use center that will offer light commercial use on the first floor, residential for-rent units on the second floor, and small amenities open to the public
FUTURE ACTION ITEM: When we have capacity, I think at some point it would be good to talk with Council Finance about these relationships and providers and to delve into their ability to serve. How do we go about having those providers coming in to talk about their ability to serve as well and how we are aligning with the city objectives - they are separate entities. Kevin Gertig’s teams are working very closely with these providers on a daily basis sometimes but I don’t think we have good alignment on a policy standpoint.

What is Loveland / Fort Collins water district’s 10-year capital plan? What is their financial capacity? What should we be aware of? There should be a bright light on that

Mayor Troxell; same presentation as we just had.

Ross Cunniff; I think we do have an obligation to understand the other utility districts; their capital plans - provide for those utilities - I support having that discussion. Policies regarding conservation, energy, river health, etc.

B. EPIC 15 Year Loan Program

Blaine Dunn, Sr. Treasure Analyst
Sean Carpenter, Climate Economy Advisor

SUBJECT FOR DISCUSSION: Epic Homes 15-Year Capital

EXECUTIVE SUMMARY
This item will provide updated details to Council Finance regarding the proposed Epic Homes 15-year capital sources. Staff will present on two capital agreements with attractive terms and no associated City financial policy exceptions. One agreement is for a fixed-interest rate loan up to $2.5M with a Denver-based bank and the other is for an $800k interest-free loan from the Colorado Energy Office.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED
Does the Committee support presentation of the proposed 15-year capital agreements to the Electric Utility Enterprise Board on February 18th?

BACKGROUND/DISCUSSION
Epic Homes
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, Epic Homes, 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 rental 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 is also establishing a research study which links the health and well-being indicators of improved indoor environmental quality.

Epic Homes provides non-energy benefits in addition to efficiency, such as increased comfort, health and safety. In nearly every energy assessment, energy advisors identify a health and safety hazard in need of attention. This could vary from a back-drafting water heater, to air leakage pollutants entering the home from the garage or crawlspace, to combustion appliances that need tuning or replacing producing excess carbon monoxide. Loans
are available for over 25 different types of efficiency measures, including replacing an old furnace with a new efficient furnace that has important safety features, such as sealed combustion with intake and exhaust to the outside.

**Epic Loans**

Fort Collins’ On-Bill Finance program (previously also known as Home Efficiency Loan Program or HELP, and now called the Epic Loan Program), a component of the Epic Homes portfolio (Attachment 1), supports a number of community and City Council priorities, including ambitious goals for energy efficiency and renewables, reduced greenhouse gas emissions and increased equity and well-being for residents. Meeting these objectives will require, among other activities, greater numbers of property owners to undertake comprehensive efficiency improvements in the coming years, particularly for older, less-efficient rental properties which make up a significant percentage of the City’s housing stock.

The original On-Bill Finance program issued loans from 2013 through 2016 when the maximum outstanding loan balance funded through Light & Power reserves was reached ($1.6 million). On-Bill Finance was revitalized as the Epic Loan Program in August 2018 during the Champions Phase of the Bloomberg Mayors Challenge. The City has been awarded grants from the Colorado Energy Office ($200,000) and from Bloomberg Philanthropies ($688,350) for the Epic Loan Program. The Electric Utility Enterprise has also entered into a $2.5M line of credit loan agreement with U.S. Bank to provide up to 10-year capital for the Epic Loan Program.

Staff has been working to develop third-party capital agreements to scale impact for owners and renters in Fort Collins. This has included presentations with the Council Finance Committee to discuss the Request for Proposals for third-party capital providers, discuss the capital strategy and review proposed capital agreement terms. The proposed ‘capital stack’ is provided below in Table 1 and the customer interest rates based on third-party capital terms are provided in Table 2.

An ongoing and attractive financing structure to support energy efficiency retrofits will be a critical element for success moving forward. Through 2019, Fort Collins Utilities has serviced 211 on-bill loans to support energy efficiency upgrades in residential homes and overcome financial barriers for making these important upgrades. Detailed information regarding the Epic Homes program and loan terms can be found at [fcgov.com/epichomes](http://fcgov.com/epichomes).

### Table 1. Epic Loan Capital Stack Summary

<table>
<thead>
<tr>
<th>Capital Type</th>
<th>Provider</th>
<th>Term</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internal &amp; Grant</td>
<td>Previously authorized Light &amp; Power reserves</td>
<td>Ongoing</td>
<td>0%</td>
<td>$1,600,000</td>
</tr>
<tr>
<td></td>
<td>Bloomberg Philanthropies</td>
<td>Grant</td>
<td>0%</td>
<td>$688,350</td>
</tr>
<tr>
<td></td>
<td>Colorado Energy Office – Grant</td>
<td>Grant</td>
<td>0%</td>
<td>$200,000</td>
</tr>
<tr>
<td></td>
<td><strong>Internal Subtotal</strong></td>
<td></td>
<td></td>
<td><strong>$2,488,350</strong></td>
</tr>
<tr>
<td>External Market</td>
<td>Colorado Energy Office – Loan</td>
<td>15 year</td>
<td>0%</td>
<td><strong>$800,000</strong></td>
</tr>
<tr>
<td>U. S. Bank</td>
<td>5 &amp; 10 year</td>
<td>76% of Prime (3.99% Currently)</td>
<td>Up to $2,500,000</td>
<td></td>
</tr>
<tr>
<td>-----------------</td>
<td>-------------</td>
<td>--------------------------------</td>
<td>------------------</td>
<td></td>
</tr>
<tr>
<td>Denver Based Bank</td>
<td>15 year</td>
<td>10-year US Treasury + 2.75% (4.55% Currently)</td>
<td>Up to $2,500,000</td>
<td></td>
</tr>
<tr>
<td><strong>External Subtotal</strong></td>
<td></td>
<td></td>
<td><strong>$5,800,000</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>$8,288,350</strong></td>
<td></td>
</tr>
</tbody>
</table>

Table 2. Customer Interest Rate

<table>
<thead>
<tr>
<th>Loan Term</th>
<th>Customer Rate (Effective Aug. 2019)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 or 5 years</td>
<td>3.75%</td>
</tr>
<tr>
<td>7 or 10 years</td>
<td>4.25%</td>
</tr>
<tr>
<td>15 years*</td>
<td>4.75%</td>
</tr>
</tbody>
</table>

*The 15-year loan option is currently paused until external capital is secured.

Council Finance Meetings Review
An overview of Council Finance Committee presentations and discussions related to Epic Homes is provided below in Table 3.

Table 3. Overview of Council Finance Committee Items Related to Epic Homes

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Outcomes</th>
</tr>
</thead>
</table>
| November 2018 | Program background and issuing an RFP for third-party capital sources | • City issued RFP #8842 in December 2018  
• Staff pursued conversations and negotiations with respondents and other potential capital providers |
| May 2019    | Capital strategy, potential capital sources and next steps for bringing capital agreements to Council | • Staff continued negotiations with potential capital providers (including a locally managed national bank, a regional bank, Colorado Clean Energy Fund, and the CEO)  
• Received Legal and Purchasing review of draft contracts |
| July 2019   | Capital agreement terms                                                | • Staff directed to bring two of the three capital sources to full Council for consideration *(US Bank Loan authorized by Electric Utility Enterprise Board in Ordinance 007 & 008, 2019)*  
• Staff directed to provide additional information on interest rate swaps and 15-year capital to Council Finance |
| August 2019 | 15-year capital and interest rate swaps                                | • Staff directed to bring third capital source to full Council for consideration *(Staff reached impasse in terms with capital provider and is proposing new 15-year capital sources)* |
Importance of 15-year Capital
During prototyping for the Bloomberg Mayors Challenge, rental property owners reported that no-money-down, affordable monthly payments are critical considerations, in particular for owners with multiple units. OBF 1.0 (also known as HELP) proved these factors are also important for owner-occupied properties, where many homeowners preferred longer term loans which often allow for more comprehensive projects and/or solar installations with affordable monthly payments. In 2016, Fort Collins Utilities implemented the Efficiency Works Neighborhood pilot, with nearly 60 long term loans issued totaling over $750,000. Additionally, of those that used a loan during the pilot, 80% of customers stated they would not have done a project without the attractive on-bill loan option.

Throughout the on-bill financing history (2013-2016 and 2018-2019), 50% of customers have used longer loan terms to reduce monthly payments and/or undertake more comprehensive energy efficiency projects (Table 4). As a result, the longer-termed loans account for a larger percentage of the on-bill loan portfolio value, at 60%. Longer term loans are generally used for bigger, more comprehensive projects that can generate increased benefits for the people who live in and own those homes, as well as positively impacting overall City goals.

Table 4. Summary of On-Bill Financed Projects by Loan Term

<table>
<thead>
<tr>
<th>Loan Terms</th>
<th>3 &amp; 5 year</th>
<th>7 &amp; 10 year</th>
<th>15 (&amp; 20) year</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Projects Using OBF by Term</td>
<td>41</td>
<td>71</td>
<td>99</td>
<td>211</td>
</tr>
<tr>
<td>Percentage of Total</td>
<td>19%</td>
<td>34%</td>
<td>47%</td>
<td>100%</td>
</tr>
</tbody>
</table>

In order to keep monthly payments low and make energy retrofit projects attractive, longer loan terms are required. The average on-bill long-term loan amount is $13,000, with monthly payments of $101. Heating, ventilation and cooling (HVAC) projects are an example of higher cost projects where longer loan terms are more attractive. The average HVAC project loan in Epic Loans is $14,000. With a 10-year loan, the monthly payment is $143; however, with a 15-year loan, the monthly payment is $109, a 30% lower monthly payment that is much more attractive and feasible. These attractive monthly payments are critical for overcoming cost barriers for home and rental property owners considering energy upgrades.

Denver Based Bank Overview
Staff previously presented a 15-year capital source with a Midwest-based commercial bank through the Colorado Clean Energy Fund, which included some uncommon terms for City loan agreements, such as a required collateral deposit and variable interest rate resulting in the need for a derivative instrument. After presentation of this capital source to the Council Finance Committee, staff reached an impasse in terms with the capital provider as the terms became unfavorable for the City. Staff was able to find a new source for 15-year capital from an in-state commercial bank with highly desirable terms, including a fixed interest rate at the time of closing, no collateral requirements, and no debt policy exceptions needed.

Staff has reviewed a draft loan agreement with the Denver Based bank for 15-year capital. The terms include:
- **Amount**: Up to $2,500,000
- **Length**: 17-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 US Treasury + 2.75% (4.55% Currently); Rate set at time of loan closing
- **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

**Colorado Energy Office Overview**
The Colorado Energy Office (CEO) showed support of Epic Loans in 2018 with a $200,000 grant. Staff have also negotiated a $800,000 loan from CEO. Terms of the agreement include:

- **Amount:** $800,000
- **Length:** 15-years
- **Draw period:** None
- **Fixed Rate:** 0%

The principal will be due at the end of the 15-year period and any program income may be used for administrative expenses and/or issuing new loans. Any unused program income will also be due at the time of principal repayment.

**Next Steps**
Staff seeks approval from Council Finance to proceed for Electric Utility Enterprise Board consideration of the proposed 15-year agreements. If supported, staff is scheduled to present the 15-year agreements on February 18, 2020.

**Discussion / Next Steps:**
Better, cleaner deal / better partner / lower cost - eliminated complexity - no collateral required

These will be through the electric enterprise - we will need to go through the Electric Enterprise Board. Will be able to draw in tranches up to once per quarter in the 2-year period. We will make those decisions based on the demand. The rate when we close will be the rate for the duration of the loan and will include all tranches. We will pay Interest only during 2-year draw period – then it will turn into a 15-year loan (principle and interest)

Mike Beckstead; this is a rate risk question - before we had talked about locking in at stages. There is a little rate risk - policy change risk went away - much better terms overall

No debt policy exception or interest rate swap instrument needed for this program as was for the previous program.
**Amount:** $800,000  
**Length:** 15-years  
**Draw period:** None  
**Fixed Rate:** 0%

- Principal due at end of 15-year period  
- Program income may be used for administrative expenses and/or issuing new loans  
  - Any unused program income will be repaid with principal

No draw period - 0% total principle will be due at end of loan - one-time balloon payment

**GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED**  
Does the Committee support presentation of the proposed 15-year capital agreements to the Electric Utility Enterprise Board on February 18th?

**Results:**  
Ross Cunniff; yes - this sounds great. Thank you for finding this and bringing it to us. I enthusiastically support this.

Mayor Troxell and Ken Summers also support going forward.  
Good meeting - US Mayor’s Challenge oversite perspective this is viewed as a good project

Sean Carpenter; we are excited to get the financing in place so we can move aggressively into outreach - start getting projects done.
Reappropriations shown in red address Ken’s question

Ross Cunniff; I assume new Council members know many of these funds are not mix and match

Mike Beckstead; yes, the color of money will be covered in our Council on Boarding later this week
Confirmed that there is a continency fund of $2.2M in case it is needed – inflation, etc. which we have not touched.

Mayor Troxell; I am in support of where you are - you have done a great job of delicately teasing out and putting together a proposal that makes sense.

E. Epic Program – Long Term Financing
Travis Storin, Director Accounting
Sean Carpenter, Lead Specialist, Economic Sustainability

SUBJECT FOR DISCUSSION: Epic Homes 15-year Capital Options

EXECUTIVE SUMMARY
This item will provide an update to Council Finance regarding the Epic Homes 15-year capital options and discussion of each. Topics include:
- Review of capital recruitment process;
- Importance of 15-year capital in achieving desired program outcomes;
- 15-year capital options;
- Banking relationship with the national green bank; and
- Interest rate swap background.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED
- Does the Committee support funding a 15-year Epic Loan option?
- Which 15-year capital option does the Committee support?
- Does the Committee support staff analysis of the debt policy and the exception request if the variable-rate, collateralized option is desired?

BACKGROUND/DISCUSSION
Fort Collins’ innovative Epic Homes portfolio supports several community and City Council priorities, including ambitious goals around energy efficiency and renewables, reduced greenhouse gas emissions and increased equity and wellbeing of all residents. Meeting these objectives will require, among other activities, greater numbers of property owners to undertake comprehensive efficiency improvements in the coming years, particularly for older, less-efficient rental properties which make up a large percentage of the City’s housing stock. An ongoing and attractive financing structure to support energy efficiency retrofits will be a critical element for success moving forward.

On-Bill Financing (OBF) 1.0 (also known as the Home Efficiency Loan Program or HELP) operated successfully from 2013 through 2016 when the encumbered funds reached the maximum outstanding loan balance of $1.6M. At that time, Elevations Credit Union was selected through an RFP process to continue HELP for energy
loan financing. Utilities staff qualify the efficiency project based on the rebate measures in the Efficiency Works Home program; however, the loan origination and servicing are independent of Utilities programs. With the implementation of Epic Loans, Elevations loans will continue to be an option for interested customers.

Epic Loans began in August 2018 during the Champions Phase of the Bloomberg Mayors Challenge, using the $100,000 award from the Champions Phase and a $200,000 grant from the Colorado Energy Office (CEO) to revitalize on-bill financing. Fort Collins is among nine winning cities for the Mayors Challenge, each receiving $1M to implement their winning idea.

Leveraging external capital is critical to achieving the long-term “revolving loan” vision of Epic Loans and offers a continuing source of funds to meet increasing customer demand for energy efficiency financing. Epic Loans is designed to balance the programmatic objectives and financial requirements of the City, while also meeting the needs and expectations of capital providers and Utilities customers.

Council Finance Meetings Review
Staff presented to Council Finance in November 2018 regarding the program background and issuing an RFP for third-party capital sources. The City issued RFP #8842 in December 2018 and staff pursued conversations and negotiations with respondents and other potential capital providers.

Staff presented to Council Finance in May 2019 regarding the potential capital sources and next steps for bringing capital agreements to Council. Staff have continued negotiations with potential capital providers (including a locally managed national bank, a regional bank, Colorado Clean Energy Fund, and the CEO) and received Legal and Purchasing review of draft contracts.

Staff presented to Council Finance in July 2019 regarding capital agreement terms. Staff was directed to bring two of the three capital sources to full Council for consideration. Staff was also directed to explore 15-year capital options and provide additional information on interest rate swaps to Council Finance.

Importance of 15-year Capital
During prototyping for the Bloomberg Mayors Challenge competition, rental property owners reported that no money down, affordable monthly payments are critical considerations, in particular for owners with multiple units. OBF 1.0 proved these factors are also important for owner-occupied properties, where many homeowners preferred longer term loans which often allow for more comprehensive projects and /or solar installations with affordable monthly payments. In 2016, Fort Collins Utilities implemented the Efficiency Works Neighborhood pilot, with nearly 60 long term loans issued totaling over $750,000. An additional $1.5M in 15-year capital for Epic Loans would support approximately120 similar projects.

Throughout the program history (2013-2019, including Elevations Credit Union loans), 35% of customers have used longer loan terms to reduce monthly payments and / or undertake more comprehensive energy efficiency projects. As a result, the longer-termed loans account for a larger percentage of the total loan portfolio value, at 45%. When looking specifically at on-bill financed loans (2013-2016 and 2018-2019), nearly 50% of customers have used longer term loans (Table 1), accounting for approximately 60% of the on-bill financed loan portfolio value. In short, longer term loans are generally used for bigger, more comprehensive projects that can generate increased benefits for the people who live in and / or own those homes, as well as positively impacting overall City goals.
In order to keep monthly payments low and make energy retrofit projects attractive, longer loan terms are required. With a 15-year loan at the average long-term loan amount of $13,000, monthly payments are $101. These attractive monthly payments are critical for overcoming both upfront cost and continual cost barriers for home and rental property owners considering energy upgrades.

**15-year Capital Options**

Per Council Finance request, staff has identified the following four options for 15-year capital:

1. Pursue an agreement with the national green bank for up to $2.5M with the required 50% deposit and use an interest rate swap to stabilize variable rates (This is the staff recommendation.)
2. Use L&P Reserves to fund $1.5M, in addition to the current $1.6M that is currently deployed or has been repaid
3. Use only the 15-year funding available from CEO, Bloomberg, and repaid L&P Reserves
4. Implement a hybrid of Options 2 and 3, using L&P Reserves to provide backfill demand once other Option 3 sources are exhausted

To provide sufficient financing for the expected number of projects, the short-term (3-4 year) capital goal is $7M to $8M. This assumes $1.5M to $2M annually in energy efficiency project financing. As staff has outlined, sufficient 15-year capital is critical to the success of the overall program.

**Option 1: National Green Bank**

Staff has been in discussions with a national green bank to negotiate 15-year loan terms, which were presented and discussed at the July 15, 2019 Council Finance meeting. The terms include:

- **Amount:** Up to $2,500,000 (staff expects to only draw $1,500,000)
- **Length:** 15-years inclusive of draw period
- **Draw period:** Up to 2 years with quarterly draws based on customer loans
- **Variable rate:** Wall Street Journal Prime + 0.25% (currently 5.50%)
- **Collateral:** City will deposit 50% of drawn amount into interest bearing account from L&P Reserves (staff expects $750,000 deposit)
- **Pre-pay:** City may pre-pay in whole or in part at any time and without penalty
- **Repayment position:** Senior pledge on customer loan repayments and second position on Electric Utility revenues, after the more senior pledge held by revenue bondholders

**Banking Relationship**

Staff issued RFP #8842 in December 2018, to which the Colorado Green Energy Fund was one of two respondents. The Colorado Green Energy Fund has found and managed the relationship with a financier willing to provide 15-year terms (Figure 1). If this option is selected, Fort Collins Utilities would borrow from the Colorado Green Energy Fund.
Policy Interactions
This Option has two interactions with Financial Policy #7 - Debt.

The first interaction is the required 50% collateral, or credit enhancement. Staff assesses an appropriate use of a credit enhancement via the collateral pledge.

The second interaction is the variable rate and/or derivative swap instrument. The proposed lender is offering a variable interest rate for the loan duration. Staff has attempted to negotiate rate lock-in rights during the draw period, but the lender has been unable to flex. An alternative is to use an interest rate swap, which would qualify as a derivative instrument and is covered by policy as an instrument the City should avoid. Staff assesses a “plain vanilla” interest swap is a feasible solution, although it carries a cost premium, but it would effectively “lock in” a fixed rate on the 15-year note if City is unwilling to accept variable rate risk.

Interest Rate Swap
Interest rate swaps are a common financial instrument, used by a wide variety of businesses to manage their debt service payments in a manner that best suits their organizational needs. For some entities, variable rates are preferred; for others, fixed rate obligations are best. In this option, the City would negotiate with another party (who prefers a variable rate interest obligation) and the City would exchange the variable rate obligation under the proposed loan with the national green bank (Option 1) for the swap party’s fixed rate instrument (Figure 2), using well established markets / providers for these types of financial transactions. The swap would be based on the notional principal, and only the netted difference between fixed and variable interest rate amounts is paid. The interest swap party would also agree to a settlement cadence.

Figure 2. Example of Cash Flows of Interest Rate Swap
Option 2: Light & Power Reserves
Currently, $1.6M of L&P Reserves have been deployed for on-bill financing since 2013, of which nearly $400,000 have been repaid without any losses to date. Option 2 would dedicate an additional $1.5M of L&P Reserves for 15-year loans. Available Reserves at the end of 2018 were $8.4M. Anticipated 2019-20 budget changes include a 2019 drawdown on Reserves by $340K and a 2020 increase on Reserves by $320K. The Capital Improvement Plan will be updated in Fall 2019, prior to updating the Strategic Financial Plans for a November 2019 presentation to Council Finance.

There is no anticipated need to increase electric rates for a one-time $1.5M appropriation of Reserves. However, appropriating L&P Reserves for use in Epic Loans will make those funds unavailable for use in other future capital projects, until such time that those funds are repaid by Epic Loan customers.

Option 3: 15-year Funding from Grants and Low-Cost Capital Only
There are currently other sources of limited 15-year capital, which include:
- Up to $1M low-cost loan from CEO dedicated to 15-year projects (to be presented to Council on September 3, 2019)
- Re-allocation of up to $900K from Bloomberg and CEO grant funds, away from 5-year and 10-year projects

Without external or Reserve financing, the full capital stack across all product offerings will support approximately 130 fewer home upgrades for each “cycle” of the loan portfolio (e.g. each time the capital is lent, repaid and therefore available to be re-loaned), or approximately 370 projects versus an estimated 500 projects. In this Option, the capital burn rate would be 1 to 1.5 years faster.

Option 4: Hybrid of Options 2 & 3 Using L&P Reserves After Other Sources Exhausted
A final Option is to use the 15-year capital sources outlined in Option 3 above and use L&P Reserves once all other sources have been exhausted.

15-year Capital Option Analysis
Staff analysis of the benefits and challenges for each Option is outlined in Table 2. If supported by Council Finance, staff recommends bringing Option 1 to full Council for consideration on October 1, 2019.
<table>
<thead>
<tr>
<th>Option</th>
<th>Benefits</th>
<th>Challenges</th>
</tr>
</thead>
</table>
| Option 1: National Green Bank (staff recommendation) | • Provides sufficient funding for expected 15-year projects  
• Scalable for the long-term, and replicable for other cities  
• Only market capital provider willing to provide 15-year terms, all other market capital providers will not go over 10-year terms | • Requires a 50% deposit into an interest-bearing account from L&P Reserves  
• Requires a policy exception to use an interest rate swap  
• Contingent on other low-cost capital sources to provide an attractive rate for customers |
| Option 2: Light & Power Reserves | • Provides easy access to low-cost capital | • Impacts the opportunity costs of other important Utilities needs  
• Not scalable for long-term, or replicable for other cities |
| Option 3: 15-year Funding from Grants and Low-Cost Capital Only | • No additional capital agreements needed (after CEO loan presented to full Council) | • Does not provide sufficient funding for expected 15-year projects  
• Not scalable for long-term  
• Removes low-cost capital from 5-year and 10-year loans for blending to create attractive customer rates |
| Option 4: Hybrid of Options 2 & 3 Using L&P Reserves After Other Sources Exhausted | • No additional capital agreements needed (after CEO loan presented to full Council) | • Not scalable for long-term, or replicable for other cities  
• Removes low-cost capital from 5-year and 10-year loans for blending to create attractive customer rates  
• Impacts the opportunity costs of other important Utilities needs |

Next Steps
Staff seeks direction from Council Finance with which option to proceed for City Council consideration. If supported, staff is tentatively scheduled to present the selected 15-year capital option to full Council on October 1, 2019.

DISCUSSION / NEXT STEPS:
A 15 year loan term is programmatically important - 80% of customers/owners said if longer term is not available, it would not be feasible for them to participate.

Ross Cunniff; see if my impression is right – interest rate swap – really a bet that the variable rate will go down and they will potentially make potentially more money –

Travis Storin; speculating or they have a hedge of their own that they are trying to install

Ross Cunniff; re: the risk to the person who wants to pay the fixed interest  
1) Variable rate goes down - paying more for money than we would have had to  
2) Hard to back up - there may be some potential that a partner might default on the agreement

What are our contingencies if that happened?
Travis Storin; credibility of the institution - that is a key element as we go shop for this
Will have to be one of the large multi-national banks we are targeting to take on this risk.
They do have the risk of defaulting - it is a possibility and deliberate vendor selection is our mitigating measure.

Ross Cunniff; if the economy tanked, we could decide to not engage or draw the full amount, right?
Travis Storin; yes, the notional amount is going to be whatever we have drawn - we will have a draw period on
the facility and only swap the amount we have drawn not the full amount -

Ross Cunniff; still some risk - the advantage to program and to businesses that cannot make the cash flow work
Are powerful to me along with the ability to make this a sustainable proposition. My concern is I would not want
to make this a standing change to policy - I would want to make it a case by case basis – so would need to be
very narrowly tailored for this circumstance - vitally important program. I am supportive of moving forward -
we need to be careful sending the message – I don’t want us to be used as part of a portfolio
This is really a special case - Fort Collins is not going to be a variable interest player - bigger picture policy
perspective

Mike Beckstead; staff is very much aligned with that - This is an exception specific to version 3.0. If we find this
works and would want to do it again - we would need to come back to Council and share our experience for 4.0 -
we view this is a one-time event as well.

Mayor Troxell; I would agree - let’s keep it as a one-time exception
Option 1 with the National Green Bank is my preference.
Question – with the interest rate swap how does the deposit play into that?
Travis Storin; the deposit scales with what we draw at a rate of 50% - according to policy we are only to do this
when we run an NPV and this is still beneficial to City of Fort Collins. In this case there is really not an NPV to run
- more a deal or no deal – we are working with Lance Smith and we have determined that it is up to $750K
earmark on reserves which would go into an interest bearing account - Comparable rates to a money market -
when we prepay or it matures, we would get those funds back

Sean Carpenter; The max loan amount would be $25K - we have not issued any loans that large to date
The average loan amount is currently $14K so we anticipate $10-14K will be the range for the vast amount of
these projects over 5, 10 or 15-year terms

Mike Beckstead: the consumer chooses the term based on the value of the energy efficiency they want to put
into their properties – the savings from the improvements are hard to realize over a shorter term - which
impacts their cashflow

Ken Summers: how many loans are we anticipating?
Travis Storin; our peak year was 2016 where we did 110 loans

Ken Summers; what happens if they default? Concerned about someone needing to borrow that amount over
such a long term
Mike Beckstead; we would have a lien on the house but our experience to date in the 4-5 years of this program is that we have not had a single delinquent loan - part of that is the nature of what people are borrowing for – they know with the lien in place that if they do sell we will get our piece.

Darin Atteberry; projects like new windows, furnaces, major capital equipment

Ross Cunniff; we are targeting certain types of projects that typically pay back similar or higher value on their energy bill what they are paying - that is probably also why you would want to get the monthly cost down.

Travis Storin; one of our iterations was a strictly 3rd party bank that they would go to as a qualified borrower – with much the same amount of rigor as a mortgage – not serviced on the bill so the protections were different – the demand for that product has been pretty limited - people like being able to pay it on their utility bill the on-bill portion is a positive.

Ken Summers; we are talking about modifying policy and additional risk – I am concerned on the trade-off standpoint

Mike Beckstead; might be helpful is we zoom out to 10K feet and provide some context - we started this program in 1012 using $800K from L&P reserves as the funding source for the loans and in 2014 Council approved another $800K for additional loans -revolving.  Currently there is $1.8M in reserves available for these loans - we can’t continue to use that funding methodology and make the volume of energy efficiency changes we want to make in our community so we turned to how to use 3rd party capital - we went to version 2.0 with a local credit union but when we did that the number of loans tanked dramatically.   Now we are at version 3.0 where we are trying to figure out how to get a competitive capital stack across 3 different terms providing home energy efficiencies that would not happen without this type of financing - a little bit of history on how we came to this point. Our goal has been to figure out how we can use 3rd party capital as opposed to using our own capital which comes with some risk.

Travis Storin; This is one component of the greater energy works portfolio - of the energy efficiency improvements that are made - loans account for 25% of the expenditure and 15-year loans count for 50% of loans and for 60% of the dollars

80% of those who used 10-15 year terms and on-bill financing said that they would not have done it without the 10 or 15 year terms.

Mayor Troxell; this is a model - some other municipalities are looking to us -

Sean Carpenter; that is right - some of the support we are not talking about today includes the $200K grant we received from the Colorado Energy Office – in the hopes that we can create a ‘cookbook’ to help other communities replicate this in Colorado and elsewhere.

Travis Storin; the low cost capital is a critical success factor- for every loan 2/3 of the loan amount comes from a market driven source

Mike Beckstead; To summarize, there are some questions and concerns, some things in the AIS that we will want to clarify. But I believe we have the direction to bring this forward to Council on October 1st
Ken Summers; to do 15 years – we will need to make a policy exception and take on more risk I am trying to get a handle on year 11-15 – as opposed to years 1-10 and the impact

Mike Beckstead; the consumer is making the choice – we are just providing the alternatives to match the savings of the investment, the energy efficiency benefits and their cashflow

Meeting adjourned at 11:56 am
ECONOMIC HEALTH GOALS

- B.4 Support development of new and enhanced capital access tools
- B.6 Encourage Fort Collins residents to support local businesses

COUNCIL PRIORITIES

- Low income benefits
- Equity and inclusion
- Improve air quality

STRAATEGIC OBJECTIVES

Social Health
- 1.3 Accessibility for low- and moderate-income

Environmental Health
- 4.1 Climate Action
- 4.2 Air quality
- 4.3 Energy Policy

Alignment
Authorize 15-year capital agreements

- Ordinance No. 009 Authorizing a loan agreement with Vectra Bank Colorado to provide funding for the Epic Loan Program
- Ordinance No. 010 Authorizing a loan agreement with the Colorado Energy Office to provide funding for the Epic Loan Program
Epic Homes Capital History

- On-Bill Financing 1.0 from Utilities reserve funds (2013-2016)
- Council adoption of increase in program lending threshold (Sep. 2019)
- Electric Utility Enterprise Board adoption of up to 10-year capital agreement (Nov. 2019)

Today
- 15-year third-party capital to scale impact for owners and renters
Why 15-Year Loan Terms?

• Long-term loans account for:
  • 47% of on-bill loans
  • 60% of on-bill loan dollars
    • More comprehensive projects often use longer-term loans
• A low monthly payment often makes the difference between making efficiency upgrades or choosing minimum efficiency equipment
  • Average HVAC loan is $14,000
    • Loan with 15-year term = $109
    • Loan with 10-year term = $143
    • 30% lower payment with 15-year term
## Ordinance Overview

<table>
<thead>
<tr>
<th>Ordinance</th>
<th>Term</th>
<th>Rate</th>
<th>Amount</th>
<th>Additional Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado Energy Office</td>
<td>15-year</td>
<td>0%</td>
<td>$800,000</td>
<td>Principal due at end of 15-year period</td>
</tr>
<tr>
<td>Vectra Bank Colorado</td>
<td>17-year, inclusive of 2-year draw period</td>
<td>10-year US Treasury + 2.75%</td>
<td>Up to $2.5M</td>
<td>Rate set at time of loan closing; City may pre-pay in whole or part with no penalty starting in 2027</td>
</tr>
</tbody>
</table>

*As of Feb. 18, subject to change
## Capital Stack Summary

<table>
<thead>
<tr>
<th>Capital Type</th>
<th>Provider</th>
<th>Term</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internal &amp; Grant</td>
<td>Previously authorized Light &amp; Power reserves</td>
<td>Ongoing</td>
<td>0%</td>
<td>$1,600,000</td>
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<tr>
<td></td>
<td>Bloomberg Philanthropies</td>
<td>Grant</td>
<td>0%</td>
<td>$688,350</td>
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<tr>
<td></td>
<td>Colorado Energy Office – Grant</td>
<td>Grant</td>
<td>0%</td>
<td>$200,000</td>
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<tr>
<td></td>
<td><strong>Internal Subtotal</strong></td>
<td></td>
<td></td>
<td><strong>$2,488,350</strong></td>
</tr>
<tr>
<td>External Market</td>
<td>Colorado Energy Office – Loan</td>
<td>15 year</td>
<td>0%</td>
<td><strong>$800,000</strong></td>
</tr>
<tr>
<td></td>
<td>U.S. Bank</td>
<td>5 &amp; 10 year</td>
<td>76% of Prime (3.99% Currently)</td>
<td>Up to $2,500,000</td>
</tr>
<tr>
<td></td>
<td>Vectra Bank Colorado</td>
<td>15 year</td>
<td>10-year US Treasury + 2.75% (4.30% Currently)</td>
<td>Up to $2,500,000</td>
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<tr>
<td></td>
<td><strong>External Subtotal</strong></td>
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<td><strong>$5,800,000</strong></td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$8,288,350</strong></td>
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</table>
Thank you
ORDINANCE NO. 009
OF THE CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE
AUTHORIZING A LOAN AGREEMENT WITH VECTRA BANK COLORADO TO
PROVIDE FUNDING FOR THE EPIC LOAN PROGRAM

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 and qualified; and

WHEREAS, Section 19.3(b) of the Charter Article V (“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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the City has established a program (the “Epic 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”); and

WHEREAS, the Board has determined that in order to finance Epic Loans (the
“Project”), it is necessary and advisable and in the best interests of the Enterprise (i) to enter into
a loan agreement (the “Loan Agreement”) with ZB, N.A., dba Vectra Bank Colorado (the
“Bank”) pursuant to which the Bank shall loan the Enterprise an amount of not to exceed
$2,500,000 (the “Loan”) for such purposes, and (ii) to issue a promissory note (the “Note”) to the
Bank to evidence the Enterprise’s repayment obligations under the Loan Agreement; and

WHEREAS, 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”) and a Loan Agreement with U.S. Bank
National Association (the “2019 Loan Agreement”, together with the 2018 Bonds, the “Prior
Obligations”); and

WHEREAS, 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 on a
parity with the pledge of Net Pledged Revenues to the payment of the 2019 Loan Agreement; and

WHEREAS, pursuant to Enterprise Ordinance No. 003 adopted on April 3, 2018, the
Mayor of the City has been appointed President of the Enterprise (the “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; and

WHEREAS, there are attached hereto the forms of the Loan Agreement and the Note
(jointly, “the Financing Documents”); and

WHEREAS, 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.

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. 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;
(iv) The dates on which the principal of and interest on the Loan are paid; and
(v) The existence and amount of capitalized interest or reserve funds for the Loan, if any.

(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 $2,500,000; and
(iii) The final maturity of the Loan shall not be later December 31, 20__.

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 Financing Documents is payable solely from the Net Pledged Revenues and the Financing Documents do not constitute 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
collection, 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 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 inconsistcy.

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 adoption.
Introduced, considered favorably on first reading and ordered published this 20th day of March, 2020, and to be presented for final passage on the 7th day of April, 2020.

CITY OF FORT COLLINS, COLORADO,
ELECTRIC UTILITY ENTERPRISE

By:________________________________
  President

ATTEST:

________________________________
Secretary

Passed and adopted on final reading this 7th day of April, 2020.

CITY OF FORT COLLINS, COLORADO,
ELECTRIC UTILITY ENTERPRISE

By:________________________________
  President

ATTEST:

________________________________
Secretary
LOAN AGREEMENT

by and between

CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE

AND

ZB, N.A., DBA VECTRA BANK COLORADO

Relating to:

Not to exceed $2,500,000 2020 Taxable Subordinate Lien Revenue Note

Dated as of April __, 2020
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EXHIBIT A    FORM OF 2020 NOTE
EXHIBIT B    FORM OF ADVANCE REQUEST
LOAN AGREEMENT

THIS LOAN AGREEMENT (this “Agreement”) is made and entered into as of April __, 2020, 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 ZB, N.A., DBA VECTRA BANK COLORADO, a national banking association, in its capacity as lender (the “Bank”).

WITNESSETH:

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 and qualified; and

WHEREAS, Section 19.3(b) of the Charter Article V (“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; and

WHEREAS, 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 (“Section 26-392”); and

WHEREAS, pursuant to Section 19.3(b) and 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 revenue and refunding securities and other debt; and

WHEREAS, the Enterprise has established a program (the “Epic 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”); and

WHEREAS, the Board has determined that in order to finance Epic Loans (the “Project”), it is necessary and advisable and in the best interests of the Enterprise (i) to enter into this Agreement with the Bank pursuant to which the Bank shall loan the Enterprise an amount of not to exceed $2,500,000 (the “Loan”) for such purposes, and (ii) to issue a promissory note (the “Note”) to the Bank to evidence the Enterprise’s repayment obligations under this Agreement; and

WHEREAS, the Enterprise has previously issued its “City of Fort Collins, Colorado, Electric Utility Enterprise, Tax-Exempt Revenue Bonds, Series 2018A” (the “2018A Bonds”) and 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”) which are payable from a secured by a lien on the Net Pledged Revenues (as herein defined); and
WHEREAS, the Enterprise has previously issued in 2019 its “City of Fort Collins, Colorado, Electric Utility Enterprise, Taxable Subordinate Lien Revenue Note in an amount not to exceed $2,500,000 (the “2019 Note”) which is payable from a secured by a subordinate lien on the Net Pledged Revenues.

WHEREAS, except for the 2018 Bonds and the 2019 Note, neither the City nor the Enterprise has pledged or hypothecated the Gross Net Pledged Revenues (as herein defined) 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 on a parity with the 2019 Note; and

WHEREAS, the Bank is willing to enter into this Agreement and to make the Loan to the Enterprise pursuant to the terms and conditions stated below; and

WHEREAS, the Loan shall be payable from and secured by the Net Pledged Revenues on a parity basis with the 2019 Note as more fully set forth herein;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Words and terms defined in the recitals hereof, as hereby supplemented and amended, shall have the same meanings herein or therein assigned to them, unless the context or use indicates another meaning or intent, and except to the extent amended by the definitions hereinafter set forth. In addition, the following terms shall have the meanings set forth herein:

“2018 Bond Ordinance” means the ordinance of the Enterprise which provides for the issuance and delivery of the 2018A Bonds and 2018B Bonds.

“2018A Bonds” means the Enterprise’s Tax-Exempt Revenue Bonds, Series 2018A.

“2018B Bonds” means the Enterprise’s Taxable Revenue Bonds, Series 2018B.

“2019 Note” means the City of Fort Collins, Colorado, Electric Utility Enterprise not to exceed $2,500,000 2019 Taxable Subordinate Lien Revenue Note evidencing the Loan from the Enterprise, as maker, to US Bank, N.A. as payee.

“2020 Note” or “Note” means the City of Fort Collins, Colorado, Electric Utility Enterprise not to exceed $2,500,000 2020 Taxable Subordinate Lien Revenue Note evidencing the Loan from the Enterprise, as maker, to the Bank, as payee.

“Advance” means a disbursement of proceeds of the Unfunded Portion of the Loan pursuant to the terms hereof.
“Advance Maturity Date” means the second anniversary of the Closing Date.

“Advance Period” means the period commencing on the date of the Closing Date and terminating on the second anniversary of the Closing Date unless terminated or extended as provided herein.

“Advance Termination Date” means the earlier to occur of (a) the Full Funding Date; (b) the date which is the last day of the Advance Period or (c) a date determined by the Enterprise and provided in writing to the Bank.

“Authorized Person” means the President of the Enterprise or the Treasurer of the Enterprise and also means any other individual authorized by the President to act as an Authorized Person hereunder.

“Authorizing Ordinance” means the Ordinance adopted by the Board on April 7, 2020 authorizing the Enterprise to finance the Project, enter into the Loan and execute and deliver the Note, this Agreement, and the other Financing Documents.

“Bank” means ZB, N.A., dba Vectra Bank Colorado, a national banking association, in its capacity as lender of the Loan.

“Business Day” means any day of the week on which the Bank is conducting its banking operations nationally and on which day the Bank’s offices are open for business in Denver, Colorado.

“Capital Improvements” means the acquisition of land, easements, facilities, and equipment (other than ordinary repairs and replacements), and those property improvements or any combination of property improvements which will constitute enlargements, extensions or betterments to the System and will be incorporated into the System.

“Closing” means the date of the execution and delivery of the Note, this Agreement, and the other Financing Documents by the respective parties thereto.

“Closing Date” means date of the Closing for the Loan.

“Commitment Fee” has the meaning set forth in Section 2.01(d) hereof.

“C.R.S.” means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

“Debt” means, without duplication, all of the following obligations of the Enterprise for the payment of which the Enterprise has promised or is required to pay from the Net Pledged Revenues: (a) borrowed money of any kind; (b) obligations evidenced by bonds, debentures, notes or similar instruments; (c) obligations upon which interest charges are customarily paid; (d) obligations arising from guarantees made by the Enterprise; (e) obligations as an account party in respect of letters of credit and bankers’ acceptances or similar obligations issued in respect of the Enterprise; and (f) obligations evidenced by any interest rate exchange agreement; provided that notwithstanding the foregoing, the term “Debt” does not include obligations issued
for any purpose, the repayment of which is contingent upon the Enterprise’s annual determination to appropriate moneys therefore.

“Default Interest Rate” means a rate per annum equal to the lesser of the sum of the Wall Street Journal Prime Rate plus 4% or the Maximum Rate.

“Electronic Notification” means telecopy, facsimile transmissions, email transmissions or other similar electronic means of communication providing evidence of transmission.

“Event of Default” has the meaning set forth in Section 7.01 hereof.

“Financing Documents” means this Agreement, 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.

“Fiscal Year” means the 12 months commencing January 1 of any year and ending December 31 of such year.

“Full Funding Date” means the date on which, if at all, the aggregate amount of all Advances equals the Maximum Advance Amount.

“Gross Pledged Revenues” means all rates, fees, charges and revenues derived directly or indirectly by the City from the operation and use of and otherwise pertaining to the System, or any part thereof, whether resulting from Capital Improvements or otherwise, and includes all rates, fees, charges and revenues received by the City from the System, including without limitation:

(a) All rates, fees and other charges for the use of the System, or for any service rendered by the City or the Enterprise in the operation thereof, directly or indirectly, the availability of any such service, or the sale or other disposal of any commodities derived therefrom, including, without limitation, connection charges, but:

(i) Excluding any moneys borrowed and used for the acquisition of Capital Improvements or for the refunding of securities, and all income or other gain from any investment of such borrowed moneys; and

(ii) Excluding any moneys received as grants, appropriations or gifts from the Federal Government, the State, or other sources, the use of which is limited by the grantor or donor to the construction of Capital Improvements, except to the extent any such moneys shall be received as payments for the use of the System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom; and

(b) All income or other gain from any investment of Gross Pledged Revenues (including without limitation the income or gain from any investment of all Net Pledged Revenues, but excluding borrowed moneys and all income or other gain thereon in any project fund, construction fund, reserve fund, or any escrow fund for any Parity Bonds
payable from Net Pledged Revenues heretofore or hereafter issued and excluding any unrealized gains or losses on any investment of Gross Pledged Revenues); and

(c) All income and revenues derived from the operation of any other utility or other income-producing facilities added to the System and to which the pledge and lien herein provided are lawfully extended by the Board or by the qualified electors of the City; and

(d) All revenues which the Enterprise receives from the repayment of Epic Loans.

“Initial Advance” means the first Advance made by the Bank to the Enterprise pursuant to Section 2.06 hereof.

“Interest Payment Date” means the first Business Day of each month, commencing the first such day occurring after the Initial Advance continuing through and including the Maturity Date.

“Interest Rate” means fixed rate of interest equal to ___%.

“Light and Power Fund” means the special fund of that name heretofore created by the City pursuant to Section 8-77 of the Code of the City of Fort Collins.

“Loan” means the Loan Amount bearing interest pursuant to the terms of this Agreement.

“Loan Amount” means, with respect to the Loan, a maximum amount of Two Million Five Hundred Thousand and 00/100 U.S. Dollars ($2,500,000), 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.

“Material Adverse Effect” means a material adverse effect on (a) the business, property, liabilities (actual and contingent), operations or condition (financial or otherwise), results of operations, or prospects of the Enterprise taken as a whole, (b) the ability of the Enterprise to perform its obligation under this Agreement, or (c) the validity or enforceability of this Agreement or the rights or remedies of the Bank under this Agreement.

“Maturity Date” means April __, 2037.

“Maximum Advance Amount” means, with respect to the 2020 Note, $2,500,000.

“Maximum Rate” means 18% per annum.

“Net Pledged Revenues” means the Gross Pledged Revenues remaining after the payment of the Operation and Maintenance Expenses of the System.

“Operation and Maintenance Expenses” means such reasonable and necessary current expenses of the City, paid or accrued, of operating, maintaining and repairing the System.
including, except as limited by contract or otherwise limited by law, without limiting the generality of the foregoing:

(a) All payments made to the Platte River Power Authority, a wholesale electricity provider that acquires, constructs and operates generation capacity for the City, or its successor in function;

(b) Engineering, auditing, legal and other overhead expenses directly related and reasonably allocable to the administration, operation and maintenance of the System;

(c) Insurance and surety bond premiums appertaining to the System;

(d) The reasonable charges of any paying agent, registrar, transfer agent, depository or escrow agent appertaining to the System or any bonds or other securities issued therefor;

(e) Annual payments to pension, retirement, health and hospitalization funds appertaining to the System;

(f) Any taxes, assessments, franchise fees or other charges or payments in lieu of the foregoing;

(g) Ordinary and current rentals of equipment or other property;

(h) Contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to the System and the cost of materials and supplies used for current operation of the System;

(i) The costs incurred in the billing and collection of all or any part of the Gross Pledged Revenues; and

(j) Any costs of utility services furnished to the System by the City or otherwise.

“Operation and Maintenance Expenses” does not include:

(a) Any allowance for depreciation;

(b) Any costs of reconstruction, improvement, extensions, or betterments, including without limitation any costs of Capital Improvements;

(c) Any accumulation of reserves for capital replacements;

(d) Any reserves for operation, maintenance, or repair of the System;

(e) Any allowance for the redemption of any bonds or other securities payable from the Net Pledged Revenues or the payment of any interest thereon;
(f) Any liabilities incurred in the acquisition of any properties comprising the System; and

(g) Any other ground of legal liability not based on contract.

“Parity Debt” means any obligations of the Enterprise payable from and with a lien on the Net Pledged Revenues on a parity basis with the 2019 Note and the 2020 Note.

“Permitted Investments” means any investment or deposit permissible under then applicable law for governmental entities such as the Enterprise.

“Person” means an individual, a corporation, a partnership, an association, a joint venture, a trust, an unincorporated organization or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Prime Rate” means a variable per annum rate of interest equal at all times to the rate of interest established and quoted by the Bank as its “Prime Rate,” “Base Rate” or “Reference Rate,” such rate to change contemporaneously with each change in such established and quoted rate, provided that it is understood that the Prime Rate shall not necessarily be representative of the rate of interest actually charged by the Bank on any loan or class of loans.

“Principal Payment Date” means the first Business Day of each month, commencing the first such day occurring after the conversion to a Term Loan pursuant to Section 2.07 hereof and continuing through and including the Maturity Date.

“Senior Debt” means the 2018A Bonds, the 2018B Bonds, and any obligations of the Enterprise payable from and with a lien on the Net Pledged Revenues on a basis superior to the 2020 Note.

“Supplemental Public Securities Act” means Title 11, Article 57, C.R.S.

“System” means the City’s electric distribution system that furnishes electricity and related services and excludes the City’s broadband system using fiber-optic technology. The System consists of all properties, real, personal, mixed and otherwise, now owned or hereafter acquired by the City, through purchase, construction and otherwise, and used in connection with such system of the City, and in any way pertaining thereto and consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the City, whether situated within or without the City boundaries, used in connection with such system of the City, and in any way appertaining thereto, including all present or future improvements, extensions, enlargements, betterments, replacements or additions thereof or thereto and administrative facilities.

“Unfunded Portion” means, as of any date, 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.

“Wall Street Journal Prime Rate” means the Wall Street Journal Prime Rate quoted by the Bank from the Wall Street Journal or any successor thereto.
ARTICLE II

LOAN

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 $2,500,000 subject to the terms and conditions of this Agreement. The Loan shall be evidenced by the 2020 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 $2,500,000 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 2020 Note. On the Closing Date, the Enterprise shall execute and deliver the 2020 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 2020 Note. Upon any transfer of the 2020 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) Commitment Fee. The Enterprise shall pay to the Bank a nonrefundable fee (the “Commitment Fee”), which shall be in the amount of 0.005% ($12,500) of the maximum aggregate principal amount of the Loan. 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.
Section 2.02. Interest Rate; Interest Payments; Principal Payments.

(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 actual interest due based on a 360-day year. Interest payments on the Loan shall be due on each Interest Payment Date and on the Maturity Date.

(b) **Default Interest Rate.** Immediately upon the occurrence of an Event of Default or upon the Maturity Date, interest shall begin to accrue on all principal amounts owing on the Loan at the Default Interest Rate for so long as such Event of Default continues and remains uncured or, if after the Maturity Date, for so long as amounts due on the Loan remain unpaid.

(c) **Principal Payments.** Repayment of principal amounts owing under the Loan shall occur on each Principal Payment Date.

(d) **Prepayment.** The Loan may not be prepaid in whole until April __, 2025. From April __, 2025 to April __, 2027; the Loan may be prepaid in whole at a prepayment price equal to the principal amount so prepaid, plus accrued interest to the prepayment date and a prepayment fee equal to 1% of the outstanding balance of the Loan. On and after April __, 2027; the Loan may be prepaid in whole at a prepayment price equal to the principal amount so prepaid, plus accrued interest without prepayment fee. Notwithstanding the foregoing, the Enterprise may repay the Loan in part without
penalty. All prepayments shall be made upon written notice to the Bank two Business Days in advance of such prepayment.

(e) **Obligations Unconditional.** The Enterprise’s obligation to repay the Loan hereunder and all of its other obligations under this Agreement shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which the Enterprise may have against the Bank or any other Person, including, without limitation, any defense based on the failure of any nonapplication or misapplication of the proceeds of the Loan hereunder, and irrespective of the legality, validity, regularity or enforceability of all or any of the Financing Documents, and notwithstanding any amendment or waiver of (other than an amendment or waiver signed by the Bank explicitly reciting the release or discharge of any such obligation), or any consent to, or departure from, all or any of the Financing Documents or any exchange, release, or nonperfection of any collateral securing the obligations of the Enterprise hereunder and any other circumstances or happening whatsoever, whether or not similar to any of the foregoing; provided, however, that nothing contained in this Section 2.02(e) shall abrogate or otherwise affect the rights of the Enterprise pursuant to Section 8.06 hereof.

(f) **Waivers, Etc.** To the full extent permitted by law: (i) the Enterprise hereby waives (A) presentment, demand, notice of demand, protest, notice of protest, notice of dishonor and notice of nonpayment; (B) to the extent the Bank is not in default hereunder, the right, if any, to the benefit of, or to direct application of, any security hypothecated to the Bank until all obligations of the Enterprise to the Bank hereunder, howsoever arising, have been paid; (C) the right to require the Bank to proceed against the Enterprise hereunder, or against any Person under any guaranty or similar arrangement, or under any agreement between the Bank and any Person or to pursue any other remedy in the Bank’s power; and (D) any defense arising out of the election by the Bank to foreclose on any security by one or more non-judicial or judicial sales; (ii) the Bank may exercise any other right or remedy, even though any such election operates to impair or extinguish the Enterprise’s right to repayment from, or any other right or remedy it may have against, any Person, or any security; and (iii) the Enterprise agrees that the Bank may proceed against the Enterprise or any Person directly and independently of any other, and that any forbearance, change of rate of interest, or acceptance, release or substitution of any security, guaranty, or loan or change of any term or condition thereunder or under any Financing Document (other than by mutual agreement between the Enterprise and the Bank) shall not in any way affect the liability of the Enterprise hereunder.

(g) **Manner of Payments.** All interest, fees, and other payments to be made hereunder by or on behalf of the Enterprise to the Bank shall be made, and shall not be considered made until received, in United States dollars in immediately available funds. The Enterprise shall make each payment hereunder in the manner and at the time necessary so that each such payment is received by the Bank not later than 12:00 p.m., Colorado time, on the day when due in lawful money of the United States of America in immediately available funds. Any payment received after 12:00 p.m., Colorado time,
shall be deemed made on the next succeeding Business Day. All payments made hereunder by or on behalf of the Enterprise to the Bank shall be applied to such amounts due hereunder and under the Financing Documents in the following order: first, to unpaid Commitment Fee, second, to accrued but unpaid interest, third, to principal and, fourth, to any other amounts due hereunder.

(h) Default Interest Rate; Calculation of Interest and Fees. All interest and fees due and payable under this Agreement shall be calculated on the basis of actual interest due based on a 360-day year. Any sum due to the Bank and not paid when due and any sum due to the Bank upon the occurrence or during the continuance of any Event of Default hereunder shall bear interest at the Default Interest Rate.

Section 2.03. Costs, Expenses and Taxes. The Enterprise agrees to pay all reasonable costs and expenses actually incurred by the Bank in connection with (a) the preparation, execution and delivery of this Agreement or any other documents, including the other Financing Documents, which may be delivered by any party in connection with this Agreement and the other Financing Document, and (b) the filing, recording, administration (other than normal, routine administration), enforcement, transfer, amendment, maintenance, renewal or cancellation of this Agreement and all amendments or modifications thereto (or supplements hereto), including, without limitation, the reasonable fees and out of pocket expenses of counsel for the Bank and independent public accountants and other outside experts retained by the Bank in connection with any of the foregoing; and. In addition, the Enterprise agrees to pay promptly all reasonable costs and expenses of the Bank, including, without limitation, the actual, reasonable fees and expenses of external counsel, for (i) any and all amounts which the Bank has paid relative to the Bank’s curing of any Event of Default under this Agreement or any of the Financing Documents; (ii) the enforcement of this Agreement or any of the Financing Documents; or (iii) any action or proceeding relating to a court order, injunction, or other process or decree restraining or seeking to restrain the Bank from paying any amount hereunder. Without prejudice to the survival of any other agreement of the Enterprise hereunder, the agreements and obligations contained in this Section 2.03 shall survive the payment in full of all amounts owing to the Bank hereunder.

Section 2.04. Pledge. The Enterprise hereby pledges, assigns and grants to the Bank a lien in the Net Pledged Revenues, which is subordinate to the lien which is pledged to secure the payment of Senior Debt but on a pari passu basis with the Parity Debt, to secure its obligations to the Bank hereunder and under the other Financing Documents. The lien of the Bank on the Net Pledged Revenues hereunder shall be subject to no other liens except those liens granted on the Net Pledged Revenues to any Senior Debt heretofore or hereafter issued in accordance with the terms hereof and the Subordinate Debt. The Enterprise represents and warrants that, except for the Senior Debt, the Net Pledged Revenues is not and shall not be subject to any other lien or encumbrance without the prior written consent of the Bank except as otherwise permitted pursuant to this Agreement.

Section 2.05. Conditions to Closing. The Closing on the Loan is conditioned upon the satisfaction of each of the following:
(a) all Financing Documents and other instruments applicable to the Loan are in form and content satisfactory to the Bank and have been duly executed and delivered in form and substance satisfactory to the Bank and shall have not been modified, amended or rescinded, shall be in full force and effect on and as of the Closing Date and executed original or certified copies of each thereof shall have been delivered to the Bank;

(b) the Bank has received a certified copy of the Authorizing Ordinance of the Enterprise, which shall be in form and content satisfactory to the Bank and authorize the Enterprise to finance the Project, obtain the Loan and perform all acts contemplated by this Agreement and all other Financing Documents; and a certified copy of all other ordinances, resolutions and proceedings taken by the Enterprise authorizing the Enterprise to finance the Project, obtain the Loan and the execution, delivery and performance of this Agreement and the other Financing Documents and the transactions contemplated hereunder and thereunder, together with such other certifications as to the specimen signatures of the officers of the Enterprise authorized to sign this Agreement and the other Financing Documents to be delivered by the Enterprise hereunder and as to other matters of fact as shall reasonably be requested by the Bank;

(c) the Enterprise has provided a certificate certifying that on the Closing Date each representation and warranty on the part of the Enterprise contained in this Agreement and in any other Financing Document is true and correct and no Event of Default, or event which would, with the passage of time or the giving of notice, constitute an Event of Default, has occurred and is continuing and no default exists under any other Financing Documents, or under any other agreements by and between the Enterprise and the Bank and certifying as to such other matters as the Bank might reasonably request;

(d) the Enterprise has provided a certificate certifying that the only Senior Debt outstanding as of the Closing Date is the 2018A Bonds and the 2018B Bonds and that no Parity Debt (other than the 2019 Note) is outstanding as of the Closing Date;

(e) the Bank shall have received the opinion of Butler Snow LLP to the effect that (i) the obligation of the Enterprise to pay the principal of and interest on the Loan constitutes a valid and binding special obligation of the Enterprise payable solely from the Net Pledged Revenues with a lien on the Net Pledged Revenues which is subordinate to the lien thereon of the Senior Debt, and (ii) this Agreement and the Note are valid and binding obligations of the Enterprise, enforceable against the Enterprise in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors’ rights generally, and by equitable principles, whether considered at law or in equity;

(f) all proceedings taken in connection with the transactions contemplated by this Agreement, and all instruments, authorizations and other documents applicable thereto, are satisfactory to the Bank and its counsel;

(g) no law, regulation, ruling or other action of the United States, the State of Colorado or any political subdivision or authority therein or thereof shall be in effect or
shall have occurred, the effect of which would be to prevent the Enterprise from fulfilling its obligations under this Agreement or the other Financing Documents;

(h) all Bank counsel fees and any other fees and expenses due and payable in connection with the execution and delivery of this Agreement shall have been paid by the Enterprise upon execution and delivery of this Agreement;

(i) the Bank shall have been provided with the opportunity to review all pertinent financial information regarding the Enterprise, agreements, documents, and any other material information relating to the Enterprise or the Net Pledged Revenues or any other component of the collateral securing the obligations of the Enterprise hereunder;

(j) all information provided by the Enterprise to the Bank is accurate in all respects;

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

(l) all other legal matters pertaining to the execution and delivery of this Agreement and the other Financing Documents shall be reasonably satisfactory to the Bank.

Section 2.06. Procedure for Requesting and Funding Advances.

(a) Conditions to Funding Advances. No Advance shall be requested by the Enterprise and the Bank shall have no obligation to honor an Advance Request except in accordance with the provisions and upon fulfillment of the terms and conditions set forth in this Agreement. The funding by the Bank of each Advance is conditioned upon the satisfaction of each of the following, each of which shall be satisfactory in all respects to the Bank:

(i) Advance Frequency. Advance Requests may only be made during the Advance Period and shall be submitted to the Bank no more than once in any calendar month, unless permitted more frequently by the Bank. Advances shall be made in amounts of $75,000 or more.

(ii) Representations and Warranties True; No Default. At the time any Advance is to be made and as a result thereof, immediately thereafter, all representations and warranties of the Enterprise set forth in Article IV are true and correct as though made on the date of such Advance Request and on the date when such Advance is funded and no Event of Default hereunder has occurred and is continuing and no litigation is then pending or threatened concerning the Enterprise’s authority to pledge the Net Pledged Revenues as provided herein, and the Enterprise shall deliver an executed certificate of an Authorized Person to such effect in connection with each Advance in substantially the form of Exhibit B.
(iii) **Payments Current.** The Enterprise shall be current on all of its obligations hereunder.

(iv) **Advance Request.** The Bank shall have received an Advance Request from the Enterprise, the form of which is attached hereto as Exhibit B (each, an “Advance Request”), signed by the Authorized Person of the Enterprise and containing the calculation of the amount of such Advance requested by the Enterprise.

(v) **Amount of Advance.** The amount of the requested Advance, when combined with the sum of all prior Advances made hereunder shall not exceed the Maximum Advance Amount for the Loan. From each Advance the Bank will transfer amounts as specified in each Advance Request.

(vi) **Material Adverse Changes.** Since December 31, 2018, there has been no change in the business, property, prospects, condition (financial or otherwise) or results of operations of the Enterprise which could reasonably be expected to have a Material Adverse Effect.

(vii) **Other Conditions Precedent to Funding Each Advance.** No Advance shall be requested or made after the Advance Termination Date.

(b) **Funding of Advances.** Provided that the conditions set forth in Section 2.06(a) above are satisfied, within 2 days of receipt by the Bank of an Advance Request signed by the Authorized Person, the Bank shall provide the amount of such Advance to the Enterprise at such depository as the Enterprise may direct.

**Section 2.07. Conversion to Amortizing 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 on the Advance Loan Maturity Date the Loan shall convert to a term loan (a “Term Loan”) that shall be payable in full by no later than the 17th anniversary of the Closing Date. The Term Loan shall bear interest at the Interest Rate.

**ARTICLE III**

**FUNDS AND ACCOUNTS**

**Section 3.01. Light and Power Fund.** So long as this Agreement is in effect, the entire Gross Pledged Revenues, upon their receipt from time to time by the Enterprise, shall be set aside and credited immediately to the Light and Power Fund. In each month, after making in full all deposits or payments required in connection with the Senior Debt, the Enterprise shall pay to the Bank from the Net Pledged Revenues remaining in the Light and Power Fund, the amounts due under this Agreement and the Note.
ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE ENTERPRISE

While any obligations hereunder or under any of the other Financing Documents are unpaid or outstanding, the Enterprise continuously represents and warrants to the Bank as follows:

Section 4.01. Due Organization. The Enterprise is an enterprise of the City duly organized and validly existing under Charter and Enterprise Ordinances.

Section 4.02. Power and Authorization. The Enterprise has all requisite power and authority to own and convey its properties and to carry on its business as now conducted and as contemplated to be conducted under the Financing Documents; to execute, deliver and to perform its obligations under this Agreement and the other Financing Documents; and to cause the execution, delivery and performance of the Financing Documents.

Section 4.03. No Legal Bar. To the best of the Enterprise’s knowledge, the Enterprise is not in violation of any of the provisions of the laws of the State of Colorado or the United States of America or any of the provisions of any order of any court of the State of Colorado or the United States of America which would affect its existence, or its powers referred to in the preceding Section 4.02. The execution, delivery and performance by the Enterprise of this Agreement and of the other Financing Documents (a) will not violate any provision of any applicable law or regulation or of any order, writ, judgment or decree of any court, arbitrator or governmental authority; (b) will not violate any provisions of any document constituting, regulating or otherwise affecting the operations or activities of the Enterprise; and (c) will not violate any provision of, constitute a default under, or result in the creation, imposition or foreclosure of any lien, mortgage, pledge, charge, security interest or encumbrance of any kind other than liens created or imposed by the Financing Documents, on any of the revenues or other assets of the Enterprise which could have a material adverse effect on the assets, financial condition, business or operations of the Enterprise, on the Enterprise’s power to cause the Financing Documents to be executed and delivered, or its ability to pay in full in a timely fashion the obligations of the Enterprise under this Agreement or the other Financing Documents.

Section 4.04. Consents. The Enterprise has obtained all consents, permits, licenses and approvals of, and has made all registrations and declarations with any governmental authority or regulatory body required for the execution, delivery and performance by the Enterprise of this Agreement and the other Financing Documents.

Section 4.05. Litigation. Except as disclosed in writing to the Bank, there is no action, suit, inquiry or investigation or proceeding to which the Enterprise is a party, at law or in equity, before or by any court, arbitrator, governmental or other board, body or official which is pending or, to the best knowledge of the Enterprise, threatened in connection with any of the transactions contemplated by this Agreement or the Financing Documents or against or affecting the assets of the Enterprise, nor, to the best knowledge of the Enterprise, is there any basis therefor, wherein an unfavorable decision, ruling or finding (a) would adversely affect the validity or enforceability of, or the authority or ability of the Enterprise to perform its obligations under, the
Financing Documents; or (b) would, in the reasonable opinion of the Enterprise, have a materially adverse effect on the ability of the Enterprise to conduct its business as presently conducted or as proposed or contemplated to be conducted.

Section 4.06. Enforceability. This Agreement and each other Financing Document constitutes the legal, valid and binding special obligation of the Enterprise, enforceable against the Enterprise in accordance with its terms (except as such enforceability may be limited by bankruptcy, moratorium or other similar laws affecting creditors’ rights generally and provided that the application of equitable remedies is subject to the application of equitable principles).

Section 4.07. Changes in Law. To the best knowledge of the Enterprise, there is not pending any change of law which, if enacted or adopted could have a material adverse effect on the assets, financial condition, business or operations of the Enterprise, on the Enterprise’s power to enter into this Agreement or the other Financing Documents or its ability to pay in full in a timely fashion the obligations of the Enterprise under this Agreement or the other Financing Documents.

Section 4.08. Financial Information and Statements. The financial statements and other information previously provided to the Bank or provided to the Bank in the future are or will be complete and accurate and prepared in accordance with generally accepted accounting principles. There has been no material adverse change in the Enterprise’s financial condition since such information was provided to the Bank.

Section 4.09. Accuracy of Information. All information, certificates or statements given to the Bank pursuant to this Agreement and the other Financing Documents will be true and complete when given.

Section 4.10. Financing Documents. Each representation and warranty of the Enterprise contained in any Financing Document is true and correct as of the Closing Date.

Section 4.11. Regulations U and X. The Enterprise is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U or X issued by the Board of Governors of the Federal Reserve System); and no proceeds of the Loan will be or have been used to extend credit to others for the purpose of purchasing or carrying any margin stock.

Section 4.12. Default, Etc. The Enterprise is not in default in the performance, observance, or fulfillment of any of the obligations, covenants or conditions contained in any Financing Document or other ordinance, resolution, agreement or instrument to which it is a party which would have a material adverse effect on the ability of the Enterprise to perform its obligations hereunder or under the other Financing Documents, or which would affect the enforceability hereof or thereof.

Section 4.13. Sovereign Immunity. The Enterprise represents that, under Section 24-10-106, C.R.S., its governmental immunity is limited to claims for injury which lie in tort or could lie in tort. Under existing law, the Enterprise is not entitled to raise the defense of sovereign immunity in connection with any legal proceedings to enforce its contractual
obligations under the Financing Documents, or the transactions contemplated hereby or thereby including, without limitation, the payment of the principal of and interest on the Note.

Section 4.14. No Filings. No filings, recordings, registrations or other actions are necessary to create and perfect the pledges provided for herein; all obligations of the Enterprise hereunder are secured by the lien and pledge provided for herein; and the liens and pledges provided for herein constitute valid prior liens subject to no other liens.

Section 4.15. Outstanding Debt. Upon the execution and delivery of this Agreement, except for the Financing Documents and the 2018A Bonds and 2018B Bonds, 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.

ARTICLE V

COVENANTS OF THE ENTERPRISE

While any obligations hereunder or under any of the other Financing Documents are unpaid or outstanding, the Enterprise continuously warrants and agrees as follows:

Section 5.01. Performance of Covenants, Authority. The Enterprise covenants that it will faithfully perform and observe at all times any and all covenants, undertakings, stipulations, and provisions contained in the Authorizing Ordinance, this Agreement, the Note, the other Financing Documents and all its proceedings pertaining thereto as though such covenants, undertakings, stipulations, and provisions were set forth in full herein (for the purpose of this provision the Financing Documents shall be deemed to continue in full force and effect notwithstanding any earlier termination thereof so long as any obligation of the Enterprise under this Agreement shall be unpaid or unperformed). The Enterprise covenants that it is duly authorized under the constitution and laws of the State of Colorado, including, particularly and without limitation, the Charter and the Enterprise Ordinances, to obtain the Loan and to execute and deliver the Note, this Agreement, and the other Financing Documents, and that all action on its part for the execution and delivery of the Note, this Agreement, and the other Financing Documents has been duly and effectively taken and will be duly taken as provided herein, and that the Loan, the Note, this Agreement, and the other Financing Documents are and will be valid and enforceable obligations of the Enterprise according to the terms hereof and thereof.

Section 5.02. Contractual Obligations. The Enterprise shall perform all contractual obligations undertaken by it under any agreements relating to the Loan, the Gross Pledged Revenues, the Project, or the System, or any combination thereof.

Section 5.03. Further Assurances. At any and all times the Enterprise shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge, deliver and file or record all and every such further instruments, acts, deeds, conveyances, assignments, transfers, other documents and assurances as may be reasonably necessary or desirable for better assuring, conveying, granting, assigning and confirming all and singular the rights, the Net Pledged Revenues and other moneys and accounts hereby pledged or assigned, or intended so to be, or
which the Enterprise may hereafter become bound to pledge or to assign, or as may be reasonable and required to carry out the purposes of this Agreement and to comply with any instrument of the Enterprise amendatory thereof, or supplemental thereto. The Enterprise, acting by and through its officers, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Net Pledged Revenues and other moneys and accounts pledged hereunder and all the rights of the Bank hereunder against all claims and demands of all Persons whomsoever.

Section 5.04. Conditions Precedent. Upon the date of the execution and delivery of this Agreement, all conditions, acts and things required by the Federal or State Constitution, the Charter, the Supplemental Act, the Enterprise Ordinances, or any other applicable law to exist, to have happened and to have been performed precedent to the execution and delivery of this Agreement shall exist, have happened, and have been performed; and the Bonds, together with all other obligations of the Enterprise, shall not contravene any debt or other limitation prescribed by the State Constitution.

Section 5.05. Rules, Regulations and Other Details. The Enterprise shall observe and perform all of the terms and conditions contained in this Agreement, and shall comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to the System, the Enterprise, except for any period during which the same are being contested in good faith by proper legal proceedings.

Section 5.06. Payment of Governmental Charges. The Enterprise shall pay or cause to be paid all taxes and assessments or other governmental charges, if any, lawfully levied or assessed upon or in respect of the System, or upon any part thereof, or upon any portion of the Gross Pledged Revenues, when the same shall become due, and shall duly observe and comply with all valid requirements of any governmental authority relative to the System or any part thereof, except for any period during which the same are being contested in good faith by proper legal proceedings. The Enterprise shall not create or suffer to be created any lien upon the System, or any part thereof, or upon the Gross Pledged Revenues, except the pledge and lien created by for Senior Debt and Parity Debt and except as herein otherwise permitted. The Enterprise shall pay or cause to be discharged or shall make adequate provision to satisfy and to discharge, within 60 days after the same shall become payable, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the System, or any part thereof, or the Gross Pledged Revenues; but nothing herein requires the Enterprise to pay or cause to be discharged or to make provision for any such tax, assessment, lien or charge, so long as the validity thereof is contested in good faith and by appropriate legal proceedings.

Section 5.07. Protection of Security. The Enterprise and its officers, agents and employees shall not take any action in such manner or to such extent as might prejudice the security for the payment of the amounts due under this Agreement or the Note. No contract shall be entered into nor any other action taken by which the rights of the Bank might be prejudicially and materially impaired or diminished.
Section 5.08. Prompt Payment. The Enterprise shall promptly pay the amounts due under this Agreement or the Note at the places, on the dates and in the manner specified herein and in the Agreement or the Note according to the true intent and meaning hereof.

Section 5.09. Use of Funds and Accounts. The funds and accounts described herein shall be used solely and only for the purposes described herein.

Section 5.10. Other Liens. Other than the 2018A Bonds and 2018B Bonds, 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 5.11. Reasonable and Adequate Charges. The fees, rates and other charges due to the Enterprise for the use of or otherwise pertaining to and services rendered by the System to the Enterprise, to its inhabitants and to all other users within and without the boundaries of the Enterprise shall be reasonable and just, taking into account and consideration public interests and needs, the cost and value of the System, the Operation and Maintenance Expenses thereof, and the amounts necessary to meet the debt service requirements of all Senior Debt, Parity Debt, and any other securities payable from the Net Pledged Revenues, including, without limitation, reserves and any replacement accounts therefor.

Section 5.12. Adequacy and Applicability of Charges. There shall be charged against users of service pertaining to and users of the System, except as provided by Section 5.13 hereof, such fees, rates and other charges so that the Gross Pledged Revenues shall be adequate to meet the requirements of this Section. Such charges pertaining to the System shall be at least sufficient so that the Gross Pledged Revenues annually are sufficient to pay in each Fiscal Year:

(a) **Operation and Maintenance Expenses.** amount equal to the annual Operation and Maintenance Expenses for such Fiscal Year that are payable from the Gross Pledged Revenues

(b) **Principal and Interest.** An amount equal to 125% of the debt service requirements on the Senior Debt and any Parity Debt then outstanding in that Fiscal Year (excluding the reserves therefor), and

(c) **Deficiencies.** All sums, if any, due and owing to meet then existing deficiencies pertaining to any fund or account relating to the Gross Pledged Revenues or any securities payable therefrom.

Section 5.13. Limitations Upon Free Service. No free service or facilities shall be furnished by the System, except that the City shall not be required to pay for any use by the City of any facilities of the System for municipal purposes. If the City chooses, in its sole discretion, to pay for its use of the System, all the income so derived from the City shall be deemed to be income derived from the operation of the System, to be used and to be accounted for in the same manner as any other income derived from the operation of the System.
Section 5.14. **Collection of Charges.** The Enterprise shall cause all fees, rates and other charges pertaining to the System to be collected as soon as is reasonable, shall reasonably prescribe and enforce rules and regulations or impose contractual obligations for the payment of such charges, and for the use of the System, and shall provide methods of collection and penalties, to the end that the Gross Pledged Revenues shall be adequate to meet the requirements of this Agreement and the Note.

Section 5.15. **Maintenance of Records.** Proper books of record and account shall be kept by the Enterprise, separate and apart from all other records and accounts.

Section 5.16. **Accounting Principles.** System records and accounts, and audits thereof, shall be currently kept and made, as nearly as practicable, in accordance with the then generally accepted accounting principles, methods and terminology followed and construed for utility operations comparable to the System, except as may be otherwise provided herein or required by applicable law or regulation or by contractual obligation existing on the execution and delivery of this Agreement.

Section 5.17. **Laws, Permits and Obligations.** The Enterprise will comply in all material respects with all applicable laws, rules, regulations, orders and directions of any governmental authority and all agreements and obligations binding on the Enterprise, noncompliance with which would have a material adverse effect on the Enterprise, its financial condition, assets or ability to perform its obligations under the other Financing Documents; provided that the Enterprise may in good faith contest such laws, rules, regulations, orders and directions and the applicability thereof to the Enterprise to the extent that such action would not be likely to have a material adverse effect on the Enterprise’s ability to perform its obligations hereunder.

Section 5.18. **Bonding and Insurance.** The Enterprise shall carry general liability coverage, workers’ compensation, public liability, and such other forms of insurance on insurable Enterprise property upon the terms and conditions, and issued by recognized insurance companies, as in the judgment of the Enterprise would ordinarily be carried by entities having similar properties of equal value, such insurance being in such amounts as will protect the Enterprise and its operations.

Section 5.19. **Other Liabilities.** The Enterprise shall pay and discharge, when due, all of its liabilities, except when the payment thereof is being contested in good faith by appropriate procedures which will avoid financial liability and with adequate reserves provided therefor.

Section 5.20. **Proper Books and Records.** The Enterprise shall keep or cause to be kept adequate and proper records and books of account in which complete and correct entries shall be made with respect to the Enterprise, the Net Pledged Revenues and all of the funds and accounts established or maintained pursuant to any of the Financing Documents. The Enterprise shall (a) maintain accounting records in accordance with generally recognized and accepted principles of accounting consistently applied throughout the accounting periods involved; (b) provide the Bank with such information concerning the business affairs and financial condition (including insurance coverage) of Enterprise as the Bank may request; and (c) without request, provide the Bank with the information set forth below.
Section 5.21. Reporting Requirements.

(a) The Enterprise shall notify the Bank promptly of all interim litigation or administrative proceedings, threatened or pending, against the Enterprise which would, if adversely determined, in the Enterprise’s reasonable opinion, have a material effect on the Enterprise’s financial condition arising after the date hereof.

(b) The Enterprise shall provide the following to the Bank at the times and in the manner provided below:

(i) as soon as available, but not later than 210 days following the end of each Fiscal Year, the Enterprise shall furnish to the Bank its audited financial statements prepared in accordance with generally accepted accounting principles consistently applied, in reasonable detail and certified by a firm of independent certified public accountants selected by the Enterprise;

(ii) within 30 days of each calendar year’s quarter end, the Enterprise’s financial statements with respect to the collection of revenue of the EPIC Program; and

(iii) promptly upon request of the Bank, the Enterprise shall furnish to the Bank such other reports or information regarding the collateral securing the obligations of the Enterprise hereunder or the assets, financial condition, business or operations of the Enterprise, as the Bank may reasonably request.

(c) The Enterprise shall promptly notify the Bank of any Event of Default of which the Enterprise has knowledge, setting forth the details of such Event of Default and any action which the Enterprise proposes to take with respect thereto.

(d) The Enterprise shall notify the Bank as soon as possible after the Enterprise acquires knowledge of the occurrence of any event which, in the reasonable judgment of the Enterprise, is likely to have a material adverse effect on the financial condition of the Enterprise or affect the ability of the Enterprise to perform its obligations under this Agreement or under any other Financing Documents.

Section 5.22. Visitation and Examination. Unless otherwise prohibited by law, the Enterprise will permit any Person designated by the Bank to visit any of its offices to examine the Enterprise’s books and financial records, and make copies thereof or extracts therefrom, and to discuss its affairs, finances and accounts with its principal officers, all at such reasonable times and as often as the Bank may reasonably request.

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.
ARTICLE VI

INVESTMENTS

Section 6.01. Permitted Investments Only. All moneys held in the Light and Power Fund shall be invested in Permitted Investments only.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.01. Events of Default. The occurrence of any one or more of the following events or the existence of any one or more of the following conditions shall constitute an Event of Default under this Agreement (whatever the reason for such event or condition and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree, rule, regulation or order of any court or any administrative or governmental body):

(a) the Enterprise fails to pay the principal of or interest on the Note or any Parity Debt when due;

(b) the Enterprise fails to pay when due any other amounts due and payable to the Bank under this Agreement or any other Financing Documents;

(c) the Enterprise fails to observe or perform any other of the covenants, agreements or conditions on the part of the Enterprise in this Agreement, the Note, or the Authorizing Ordinance and the Enterprise fails to remedy the same within 30 days after the Bank has provided the Enterprise with notice thereof;

(d) any representation or warranty made by the Enterprise in this Agreement or in any other Financing Document or any certificate, instrument, financial or other statement furnished by the Enterprise to the Bank, proves to have been untrue or incomplete in any material respect when made or deemed made;

(e) the pledge of the collateral or any other security interest created hereunder fails to be fully enforceable with the priority required hereunder or thereunder;

(f) any judgment or court order for the payment of money exceeding any applicable insurance coverage by more than $100,000 in the aggregate is rendered against the Enterprise and the Enterprise fails to vacate, bond, stay, contest, pay or satisfy such judgment or court order for 60 days;

(g) the Enterprise shall initiate, acquiesce or consent to any proceedings to dissolve the Enterprise or to consolidate the Enterprise with other similar entities into a single entity or the Enterprise shall otherwise cease to exist;

(h) a change occurs in the financial or operating conditions of the Enterprise, or the occurrence of any other event that, in the Bank’s reasonable judgment, will have a materially adverse impact on the ability of the Enterprise to generate Net Pledged
Revenues sufficient to satisfy the Enterprise’s obligations under this Agreement or its other obligations, and the Enterprise fails to cure such condition within six months after receipt by the Enterprise of written notice thereof from the Bank;

(i) the Enterprise shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it or seeking to adjudicate it insolvent or a bankrupt or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts; or (B) seeking appointment of a receiver, trustee, custodian or other similar official for itself or for any substantial part of its property, or the Enterprise shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Enterprise any case, proceeding or other action of a nature referred to in clause (i) and the same shall remain undismissed; or (iii) there shall be commenced against the Enterprise any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its property which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal, within 60 days from the entry thereof; (iv) the Enterprise shall take action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above; or (v) the Enterprise shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(j) this Agreement or any other Financing Document, or any material provision hereof or thereof, (i) ceases to be valid and binding on the Enterprise or is declared null and void, or the validity or enforceability thereof is contested by the Enterprise (unless being contested by the Enterprise in good faith), or the Enterprise denies it has any or further liability under any such document to which it is a party; or (ii) any pledge or security interest created fails to be fully enforceable with the priority required hereunder or thereunder; and

(k) the Enterprise’s auditor delivers a qualified opinion with respect to the Enterprise’s status as an on-going concern.

Section 7.02. Remedies. Upon the occurrence and during the continuance of any Event of Default, the Loan shall bear interest at the Default Interest Rate. Upon the occurrence and during the continuance of any Event of Default, the Bank, at its option, may take any action or remedy available under the other Financing Documents or any other document, or at law or in equity. Notwithstanding anything to the contrary herein, acceleration of the Loan shall not be an available remedy for the occurrence or continuance of an Event of Default. In exercising any remedy hereunder, the Bank shall give notice to all Notice Parties.

Section 7.03. Notice to Bank of Default. Notwithstanding any cure period described above, the Enterprise will immediately notify the Bank in writing when the Enterprise obtains knowledge of the occurrence of any Event of Default or any event which would, with the passage of time or the giving of notice, constitute an Event of Default.
Section 7.04. Additional Bank Rights. Upon the occurrence of an Event of Default the Bank may at any time take such other steps to protect or preserve the Bank’s interest in the Net Pledged Revenues.

Section 7.05. Delay or Omission No Waiver. No delay or omission of the Bank to exercise any right or power accruing upon any default shall exhaust or impair any such right or power or shall be construed to be a waiver of any such default, or acquiescence therein; and every power and remedy given by this Agreement may be exercised from time to time and as often as may be deemed expedient.

Section 7.06. No Waiver of One Default to Affect Another; All Remedies Cumulative. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other then existing Event of Default or shall impair any rights or remedies consequent thereon. All rights and remedies of the Bank provided herein shall be cumulative and the exercise of any such right or remedy shall not affect or impair the exercise of any other right or remedy.

Section 7.07. Other Remedies. Nothing in this Article VII is intended to restrict the Bank’s rights under any of the Financing Documents or at law or in equity, and the Bank may exercise all such rights and remedies as and when they are available.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Loan Agreement and Relationship to Other Documents. The warranties, covenants and other obligations of the Enterprise (and the rights and remedies of the Bank) that are outlined in this Agreement and the other Financing Documents are intended to supplement each other. In the event of any inconsistencies in any of the terms in the Financing Documents, all terms will be cumulative so as to give the Bank the most favorable rights set forth in the conflicting documents, except that if there is a direct conflict between any preprinted terms and specifically negotiated terms (whether included in an addendum or otherwise), the specifically negotiated terms will control.

Section 8.02. Assignments, Participations, etc. by the Bank. The Bank may not assign or transfer this Agreement or the Note or participate any of the Bank’s interests in the Agreement or the Note without the Enterprise’s prior written consent. Any such assignment without the Enterprise’s prior written consent shall be deemed null and void and of no effect.

Section 8.03. Notice of Claims Against Bank; Limitation of Certain Damages. In order to allow the Bank to mitigate any damages to the Enterprise from the Bank’s alleged breach of its duties under the Financing Documents or any other duty, if any, to the Enterprise, the Enterprise agrees to give the Bank written notice no later than 30 days after the Enterprise knows of any claim or defense it has against the Bank, whether in tort or contract, relating to any action or inaction by the Bank under the Financing Documents, or the transactions related thereto, or of any defense to payment of the obligations of the Enterprise hereunder for any reason. The requirement of providing timely notice to the Bank represents the parties’ agreed to
standard of performance regarding the duty of the Bank to mitigate damages related to claims against the Bank. Notwithstanding any claim that the Enterprise may have against the Bank, and regardless of any notice the Enterprise may have given the Bank, the Bank will not be liable to the Enterprise for indirect, consequential and/or special damages arising therefrom, except those damages arising from the Bank’s willful misconduct, negligence or bad faith. Failure by the Enterprise to give notice to the Bank shall not waive any claims of the Enterprise but such failure shall relieve the Bank of any duty to mitigate damages prior to receiving notice.

**Section 8.04. 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:**
  
  ZB, N.A., dba Vectra Bank Colorado  
  2000 S. Colorado Boulevard  
  Suite 2-1200  
  Denver, CO 80222  
  Attention: Conrad Freeman  
  Email: cfreeman@vectrabank.com  
  Telephone: (720) 947-8802

**Section 8.05. Payments.** Payments due on the Loan shall be made in lawful money of the United States. All payments may be applied by the Bank to principal, interest and other amounts due under the Note and this Agreement pursuant to the terms of this Agreement.

**Section 8.06. Applicable Law and Jurisdiction; Interpretation; Severability.** This Agreement and all other Financing Documents will be 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 Agreement will not affect any other provision. TO THE EXTENT PERMITTED BY LAW, THE ENTERPRISE AND THE BANK HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION OF ANY STATE COURT SITUATED IN LARIMER COUNTY, COLORADO, AND WAIVE ANY OBJECTIONS BASED ON FORUM NON CONVENIENS, WITH REGARD TO ANY ACTIONS, CLAIMS, DISPUTES OR
Section 8.07. Copies; Entire Agreement; Modification. The Enterprise hereby acknowledges the receipt of a copy of this Agreement and all other Financing Documents.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING, EXPRESSING CONSIDERATION AND SIGNED BY THE PARTIES ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. THE TERMS OF THIS AGREEMENT MAY ONLY BE CHANGED BY ANOTHER WRITTEN AGREEMENT. THIS NOTICE SHALL ALSO BE EFFECTIVE WITH RESPECT TO ALL OTHER CREDIT AGREEMENTS NOW IN EFFECT BETWEEN THE ENTERPRISE AND THE BANK. A MODIFICATION OF ANY OTHER CREDIT AGREEMENT NOW IN EFFECT BETWEEN THE ENTERPRISE AND THE BANK, WHICH OCCURS AFTER RECEIPT BY THE ENTERPRISE OF THIS NOTICE, MAY BE MADE ONLY BY ANOTHER WRITTEN INSTRUMENT. ORAL OR IMPLIED MODIFICATIONS TO ANY SUCH CREDIT AGREEMENT IS NOT ENFORCEABLE AND SHOULD NOT BE RELIED UPON.

Section 8.08. Waiver of Jury Trial; Class Action Waiver. As permitted by applicable law, each party waives their respective rights to a trial before a jury in connection with any Dispute (as "Dispute" is hereinafter defined), and Disputes shall be resolved by a judge sitting without a jury. If a court determines that this provision is not enforceable for any reason and at any time prior to trial of the Dispute, but not later than 30 days after entry of the order determining this provision is unenforceable, any party shall be entitled to move the court for an order compelling arbitration and staying or dismissing such litigation pending arbitration ("Arbitration Order"). To the extent permitted by applicable law, each party also waives the right to litigate in court or an arbitration proceeding any Dispute as a class action, either as a member of a class or as a representative, or to act as a private attorney general.

Section 8.09. Attachments. All documents attached hereto, including any appendices, schedules, riders and exhibits to this Agreement, are hereby expressly incorporated by reference.

Section 8.10. No Recourse Against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Public Securities Act, if a member of the Board, or any officer or agent of the Enterprise, acts in good faith in the performance of his duties as a member, officer, or agent of the Board or the Enterprise and in no other capacity, no civil recourse shall be available against such member, officer or agent for payment of the principal of and 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 delivery of the Note evidencing the Loan and as a part of the consideration for such transfer, the Bank and any Person purchasing or accepting the transfer of the obligation representing the Loan specifically waives any such recourse.

**Section 8.11. Conclusive Recital.** Pursuant to Section 11-57-210 of the Supplemental Public Securities Act, this Agreement is entered into pursuant to certain provisions of the Supplemental Public Securities Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of this Agreement after delivery for value.

**Section 8.12. Limitation of Actions.** Pursuant to Section 11-57-212 of the Supplemental Public Securities Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of the Loan shall be commenced more than 30 days after the authorization of the Loan.

**Section 8.13. Pledge of Revenues.** The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Loan provided herein shall be governed by Section 11-57-208 of the Supplemental Public Securities Act, this Agreement, the Note, and the Authorizing Ordinance. The amounts pledged to the payment of the Loan 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 a first priority. 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 8.14. No Liability.** The Bank, including its agents, employees, officers, directors and controlling Persons, shall not have any liability to the Enterprise, and the Enterprise assumes all risk, responsibility and liability for (a) the form, sufficiency, correctness, validity, genuineness, falsification and legal effect of any demands and other documents, instruments and other papers relating to the Loan even if such documents, should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (b) the general and particular conditions stipulated therein; (c) the good faith acts of any Person whosoever in connection therewith; (d) failure of any Person (other than the Bank, subject to the terms and conditions hereof) to comply with the terms of the Loan; (e) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telex, telegraph, wireless or otherwise, whether or not they be in code; (f) errors in translation or errors in interpretation of technical terms; (g) for any other consequences arising from causes beyond the Bank’s control; or (h) any use of which may be made of the proceeds of the Loan, except to the extent of any direct, as opposed to indirect, consequential, or special damages suffered by the Enterprise which direct damages are proven by the Enterprise to be caused by the Bank’s willful or grossly negligent failure to make lawful payment under the Loan.

**Section 8.15. No Waiver; Modifications in Writing.** No failure or delay on the part of the Bank in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to the Bank at law or in equity or otherwise. No amendment, modification, supplement, termination or waiver of or to any provision of this
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. Any
amendment, modification or supplement of or to any provision of this Agreement, and any
consent to any departure by the Enterprise from the terms of any provision of this Agreement,
shall be effective only in the specific instance and for the specific purpose for which made or
given. No notice to or demand on the Enterprise in any case shall entitle the Enterprise to any
other or further notice or demand in similar or other circumstances or constitute a waiver of the
right of the Bank to any other or further action in any circumstances without notice or demand.

Section 8.16. Document Imaging. The Bank shall be entitled, in its sole discretion, to
image all or any selection of the Financing Documents, other instruments, documents, items and
records governing, arising from or relating to the Loan, and may destroy or archive the paper
originals. The Enterprise hereby waives any right to insist that the Bank produce paper originals;
agrees that such images shall be accorded the same force and effect as the paper originals; and
further agrees that the Bank is entitled to use such images in lieu of destroyed or archived
originals for any purpose, including as admissible evidence in any demand, presentment or
proceedings.

Section 8.17. Payment on Non-Business Days. Whenever any payment hereunder shall
be stated to be due on a day which is not a Business Day, such payment may be made on the next
succeeding Business Day.

Section 8.18. Execution in Counterparts; Electronic Storage. This Agreement may
be executed in counterparts, each of which when so executed and delivered shall be deemed to
be an original and all of which counterparts, taken together, shall constitute but one and the same
Agreement. The parties hereto agree that the transactions described herein may be conducted
and related documents may be stored by electronic means. Copies, telecopies, facsimiles,
electronic files and other reproductions of original executed documents shall be deemed to be
authentic and valid counterparts of such original documents for all purposes, including the filing
of any claim, action or suit in the appropriate court of law.

Section 8.19. Severability. Any provision of this Agreement which is prohibited,
enforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to
the extent of such prohibition, unenforceability or nonauthorization without invalidating the
remaining provisions hereof or affecting the validity, enforceability or legality of such provision
in any other jurisdiction.

Section 8.20. Headings. Article and Section headings used in this Agreement are for
convenience of reference only and shall not affect the construction of this Agreement.

Section 8.21. Waiver of Rules of Construction. The Enterprise hereby waives any and
all provisions of law to the effect that an ambiguity in a contract or agreement should be
interpreted against the party responsible for its drafting.

Section 8.22. Integration. This Agreement is intended to be the final agreement
between the parties hereto relating to the subject matter hereof and this Agreement and any
agreement, document or instrument attached hereto or referred to herein shall supersede all oral negotiations and prior writings with respect to the subject matter hereof.

Section 8.23. Patriot Act Notice. The Bank hereby notifies the Enterprise that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the Enterprise, which information includes the name and address of the Enterprise and other information that will allow the Bank to identify the Enterprise in accordance with the Patriot Act. The Enterprise hereby agrees that it shall promptly provide such information upon request by the Bank.

Section 8.24. Termination of Agreement. At such time as all amounts due to the Bank have been duly paid, or provided for, this Agreement shall terminate.
IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth above.

ZB, 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

[SEAL]

Attest:

By ______________________________________
   Secretary

[Signature Page to Loan Agreement]
EXHIBIT A
FORM OF 2020 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

2020 TAXABLE SUBORDINATE LIEN REVENUE NOTE

IN THE AGGREGATE PRINCIPAL AMOUNT OF
NOT TO EXCEED $2,500,000

Advances Not to Exceed US $2,500,000__________, 2020

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 ZB, 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 ___________________ 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 TWO MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (US $2,500,000) (this “Note”) pursuant to the terms of the Loan Agreement dated of even date herewith by and between Maker and Payee (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 appraisement, 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
EXHIBIT B

FORM OF ADVANCE REQUEST

City of Fort Collins, Colorado, Electric Utility Enterprise
Loan Agreement

The undersigned certifies that he/she is an Authorized Person under that certain Loan Agreement dated as of April __, 2020 (the “Agreement”) by and between City of Fort Collins, Colorado, Electric Utility Enterprise and ZB, N.A., dba Vectra Bank Colorado (the “Bank”). All capitalized terms used in this Advance Request (“Advance Request”) shall have the respective meanings assigned in the Agreement.

The undersigned Authorized Person hereby makes a request to the Bank for an Advance on the Loan, and in support thereof states:

(i) The amount of the Advance so requested is $___________.

(ii) Upon the funding of such Advance, the sum of all Advances will not exceed the Maximum Advance Amount of the Loan.

(iii) At the time the requested Advance is to be made and as a result thereof, immediately thereafter, all representations and warranties of the Enterprise set forth in Article IV of the Loan Agreement are true and correct as though made on the date hereof and will be true and correct as though made on the Advance Date and no Event of Default shall have occurred and be continuing on the date hereof and on the Advance Date and no litigation is currently pending or threatened concerning the Enterprise’s authority to pledge the Net Pledged Revenues as provided in the Loan Agreement.

(iv) 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.

(v) The requested Advance shall be made by the Bank by ACH batch transfer to the Enterprise in accordance with the instructions set forth below:

[Insert wire instructions]

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of ________, 20__.

CITY OF FORT COLLINS, COLORADO,
ELECTRIC UTILITY ENTERPRISE

By _____________________________
Authorized Person
ORDINANCE NO. 010
OF THE CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE
AUTHORIZING A LOAN AGREEMENT WITH THE COLORADO ENERGY OFFICE TO
PROVIDE FUNDING FOR THE EPIC LOAN PROGRAM

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 and qualified; and

WHEREAS, Section 19.3(b) of the Charter Article V (“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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the City has established a program (the “Epic 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”); and

WHEREAS, the Board has determined that in order to finance Epic Loans (the
“Project”), it is necessary and advisable and in the best interests of the Enterprise (i) to enter into
a loan agreement (the “Loan Agreement”) the State of Colorado acting by and through the
Colorado Energy Office (the “CEO”) pursuant to which the CEO shall loan the Enterprise
$800,000 (the “Loan”) for such purposes, and (ii) to issue a promissory note (the “Note”) to the
CEO to evidence the Enterprise’s repayment obligations under the Loan Agreement; and

WHEREAS, the Loan shall accrue interest at 0% interest and shall be repaid in one
principal payment of $800,000 on April 20, 2035; and

WHEREAS, the Enterprise has previously incurred the following financial obligations
which are payable from and secured by a lien on the Enterprise’s “Net Pledged Revenues” (as
defined in Exhibit “A” of the Loan Agreement): (i) its “City of Fort Collins, Colorado, Electric
Utility Enterprise, Tax-Exempt Revenue Bonds, Series 2018A” and its “City of Fort Collins,
Colorado, Electric Utility Enterprise, Taxable Revenue Bonds, Series 2018B,” both approved in
Enterprise Ordinance No. 003 (jointly, the “2018 Bonds”), (ii) a loan agreement with U.S. Bank
National Association approved in Enterprise Ordinance No. 007 as amended in Enterprise
Ordinance No. 008 (the “2019 Loan Agreement”), and (iii) a loan agreement with Vectra Bank
Colorado approved in Enterprise Ordinance No. 009 (the “2020 Loan Agreement”); and
WHEREAS, the 2018 Bonds, the 2019 Loan Agreement and the 2020 Loan Agreement shall be collectively referred to herein as the “Prior Obligations”; and

WHEREAS, except for the Prior Obligations, neither the City nor the Enterprise has pledged or hypothecated the Enterprise’s “Gross Pledged Revenues” (as defined in Exhibit “A” of 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 Prior Obligations; and

WHEREAS, pursuant to Enterprise Ordinance No. 003, the Mayor of the City has been appointed President of the Enterprise (the “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; and

WHEREAS, there are attached hereto as Exhibit “A” and incorporated herein by reference the forms of the Loan Agreement and the Note (jointly, “the “Financing Documents”).

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 hereby approved. The Enterprise shall enter 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. 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. Pledge of Revenues. 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 subject to. 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 3. Limited Obligation; Special Obligation. The Loan evidenced by the Financing Documents is payable solely from the Net Pledged Revenues of the Enterprise and the
Financing Documents do not constitute a debt within the meaning of any constitutional, charter or statutory limitation or provision.

Section 4. **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 CEO as evidence of such designation. The President may designate additional authorized Persons.

Section 5. **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 CEO.

Section 6. **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 Financing Documents, or actions to be taken in respect thereof, are hereby ratified, approved, and confirmed.

Section 7. **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 8. **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 9. **Ordinance Irrepealable.** After the Financing Documents are executed and delivered, this Ordinance shall constitute an irrevocable contract between the Enterprise and the CEO 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 10. **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.
Introduced, considered favorably on first reading and ordered published this 20th day of March, 2020, and to be presented for final passage on the 7th day of April, 2020.

CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE

By:________________________________ 
President

ATTEST:

________________________________
Secretary

Passed and adopted on final reading this 7th day of April, 2020.

CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE

By:________________________________ 
President

ATTEST:

________________________________
Secretary
LOAN AGREEMENT

Between

STATE OF COLORADO
COLORADO ENERGY OFFICE

And

CITY OF FORT COLLINS, COLORADO, ELECTRIC UTILITY ENTERPRISE

Summary

Maximum Amount: $800,000

Agreement Identification:
Contract Encumbrance #: ______
Contract Management System #: ______ (State of Colorado’s contract tracking #)

Project Information:
Project/Award Number: ______
Project Name: On-Bill Financing ("Epic Loan") Capitalization Program
Performance Period: ______
Brief Description of Project / Assistance: The loan will be issued to the City of Fort Collins, Colorado, Electric Utility Enterprise to administer the Epic Loan program, which enables utility customers to borrow funds to install energy efficiency and renewable energy improvements on their properties and pay it back through a charge on their monthly utility bill.

Program & Funding Information:
Program Name
Funding source:
Catalog of Federal Domestic Assistance (CFDA) Number (if federal funds):
Funding Account Codes: ______
1. PARTIES

This Loan Agreement (hereinafter called "Loan Agreement") is entered into 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 (hereinafter called "Borrower"), and the STATE OF COLORADO acting by and through the Colorado Energy Office (hereinafter called the "State" or "CEO").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Loan Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Borrower for any performance hereunder except for payment not to exceed the Loan Funds specified in Section IV. of Exhibit A. The State shall not be liable to pay or reimburse Borrower for costs or expenses incurred, or be bound by any provision hereof, prior to the Effective Date or after termination of the Loan Agreement.

3. RECITALS

A. Authority, Appropriation, and Approval
   Authority to enter into this Loan Agreement exists in CRS §24-38.5-101, et seq. and funds have been budgeted, appropriated and otherwise made available pursuant to the U.S. Department of Energy (DOE) Award No. DE-EE0007470, CFDA No. 81.041 and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration
   The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Loan Agreement.

C. Purpose
   The purpose of this Loan Agreement is described in Exhibit A.
D. References
All references in this Loan Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS
The following terms as used herein shall be construed and interpreted as follows:

A. Budget
“Budget” means the budget for the Project and/or Work described in Exhibit A.

B. Evaluation
“Evaluation” means the process of examining Loan Agreement’s Work and rating it based on criteria established in §8 and Exhibit A.

C. Event of Default
“Event of Default” shall exist when any one or more of the following events occur(s) and is occurring after notice to Borrower of such non-performance and lapse of the cure period pursuant to §14(B):
   i. Borrower fails to pay any portion of the Indebtedness when due or payable.
   ii. Borrower fails to perform or observe any of the covenants or agreements contained in the Loan Agreement or any related document.
   iii. Borrower fails to meet target dates.
   iv. There is a default or event of default, however defined, under the Deed (if any) or under any other document or instrument now or hereafter securing the Indebtedness.
   v. Borrower shall be generally unable to pay its debts as they become due, or shall make an assignment for the benefit of creditors; or the Borrower shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such a receiver, trustee or similar officer shall be appointed without the application or consent of the State, and such appointment shall continue undischarged for a period of ninety (90) days; or the Borrower shall institute (by petition, application, answer or otherwise) any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution, liquidation or similar proceedings under the laws of any jurisdiction; or any such proceeding shall be instituted against the Borrower; or the Borrower shall terminate or dissolve.
   vi. Any representation of the Borrower made herein or made by the Borrower or any employee of the Borrower in any submission or document delivered by or on behalf of the Borrower in connection with the Indebtedness shall prove to be materially untrue.

D. Exhibits and other Attachments
The following are attached hereto and incorporated by reference herein:
   i. Exhibit A (Statement of Project)
   ii. Exhibit B (DOE Award Terms and Conditions)
   iii. Exhibit C (Federal Provisions)
   iv. Exhibit D (Promissory Note)

E. Goods
“Goods” means tangible materials acquired, produced, or delivered by Borrower either separately or in conjunction with the Services Borrower renders under this Loan Agreement.

F. Indebtedness
“Indebtedness” means the indebtedness evidenced by the Note and any other amounts for which Borrower becomes responsible under this Loan Agreement and any related document.

G. Loan Agreement
“Loan Agreement” means this agreement, its terms and conditions, attached exhibits, documents incorporated by reference pursuant to the terms of this Loan Agreement, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

H. Loan Funds
“Loan Funds” means available funds payable by the State to Borrower pursuant to this Loan Agreement.

I. Note
“Note” means the fully executed promissory note attached as Exhibit D.

J. Party or Parties
“Party” means the State or Borrower and “Parties” means both the State and Borrower.

K. Project
“Project” means the overall project described in Exhibit A including, without limitation, the Work and the Services.

L. Program
“Program” means the program specified on the first page of this Loan Agreement that provides the funding for this Loan Agreement.

M. Review
“Review” means examining Borrower’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in §8 and Exhibit A.

N. Services
“Services” means the required services to be performed by Borrower pursuant to this Loan Agreement.

O. Subcontractor
“Subcontractor” means third-parties, if any, engaged by Borrower to carry out specific vendor related services.

P. Subject Property
“Subject Property” means the real property, if any, for which Loan Funds are used to acquire, construct, rehabilitate, or clear or demolish existing structures.

Q. Work
“Work” means the tasks and activities Borrower is required to perform to fulfill its obligations under this Loan Agreement.

R. Work Product
“Work Product” means the tangible or intangible results of Borrower’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. LOAN AGREEMENT TERM.

A. Loan Agreement Commencement.
Unless otherwise permitted in §2 above, the Parties respective performances under this Loan Agreement shall commence on the Effective Date. This Loan Agreement shall terminate upon full repayment of the Note and any other amounts due under this Loan Agreement or as otherwise provided in this Loan Agreement.

B. Term-Work Completion.
Borrower shall complete all Work as provided in Exhibit A. The State shall not be liable to compensate Borrower for any Work performed prior to the Effective Date or after completion of construction as outlined in Exhibit B.

C. Two Month Extension
The State, at its sole discretion upon written notice to Borrower as provided in §16, may unilaterally extend the term of this Loan Agreement for a period not to exceed two months if the Parties are negotiating a replacement Loan Agreement (and not merely seeking a term extension) at or near the end of any initial term or any extension thereof. The provisions of this Loan Agreement in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two month extension. The two-month extension shall immediately terminate when and if a replacement Loan Agreement is approved and signed by the Colorado State Controller.

6. STATEMENT OF PROJECT

A. Completion of Project
Borrower shall complete the Project and other Borrower obligations as provided in this Loan Agreement and Exhibit A.
B. Goods and Services  
Borrower shall procure Goods and Services necessary to complete the Work. Such procurement shall not increase the maximum amount payable by the State.

C. Employees  
All persons employed by Borrower shall be considered Borrower’s employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Loan Agreement.

7. PAYMENTS TO BORROWER  
The State shall, in accordance with the provisions of this §7, pay Borrower in the following amounts and using the methods set forth below:

A. Maximum Amount  
The maximum amount payable under this Loan Agreement to Borrower by the State is $800,000.00 (Eight hundred thousand dollars), as determined by the State from available funds. Borrower agrees to provide any additional funds required for the successful completion of the Work. Payments to Borrower are limited to the unpaid obligated balance of the Loan Funds as set forth in Exhibit A.

B. Payment  
  i. Payments  
  Any payment allowed under this Loan Agreement or in Exhibit A shall comply with State Fiscal Rules and be made in accordance with the provisions of this Loan Agreement. Borrower shall initiate a payment of loan proceeds by submitting an invoice to the State in the form and manner set forth and approved by the State.

  ii. Available Funds-Contingency-Termination  
  The State is prohibited by law from making fiscal commitments beyond the term of the State’s current fiscal year. Therefore, Borrower’s compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Loan Agreement in whole or in part, the State’s performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Loan Agreement shall be made only from available funds encumbered for this Loan Agreement and the State’s liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not fully appropriated, or otherwise become unavailable for this Loan Agreement, the State may immediately terminate this Loan Agreement in whole or in part to the extent of funding reduction without further liability in accordance with the provisions herein.

  iii. Erroneous Payments  
  At the State’s sole discretion, payments made to Borrower in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Borrower, may be recovered from Borrower by deduction from subsequent payments under this Loan Agreement or other agreements between the State and Borrower or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

  iv. Retroactive Payments  
  As specified in Exhibit B, the State may, in its discretion, pay Borrower for costs or expenses incurred or performance by the Borrower prior to the Effective Date, only if (1) the Loan Funds involve federal funding and (2) federal laws, rules and regulations applicable to the Work provide for such retroactive payments to the Borrower. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Loan Agreement or such Exhibit. Borrower shall initiate any payment request by submitting an invoice to the State in the form and manner set forth and approved by the State.

C. Use of Funds  
Loan Funds shall be used only for eligible costs identified herein and Exhibit A.

D. Borrower’s Repayment Obligation  
The Borrower’s obligation to repay the $800,000 loan to the CEO shall be as provided in Exhibit A and Exhibit D.
8. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

A. Performance, Progress, Personnel, and Funds

State shall submit a report to the Borrower upon expiration or sooner termination of this Loan Agreement, containing an Evaluation and Review of Borrower’s performance and the final status of Borrower’s obligations hereunder. In addition, Borrower shall comply with all reporting requirements, if any, set forth in Exhibit B.

B. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Loan Agreement or which may affect Borrower’s ability to perform its obligations hereunder, Borrower shall notify the State of such action and deliver copies of such pleadings to the State’s principal representative as identified herein. If the State’s principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CEO.

C. Noncompliance

Borrower’s failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Loan Agreement.

D. Subcontracts

Copies of any and all subcontracts entered into by Borrower to perform its obligations hereunder shall be submitted to the State or its principal representative. Any and all subcontracts entered into by Borrower related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subcontracts be governed by the laws of the State of Colorado.

9. BORROWER RECORDS

Borrower shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

Borrower shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Borrower shall maintain such records (the “Record Retention Period”) until the last to occur of the following:

(i) a period of three years after the date this Loan Agreement is completed or terminated, or final payment is made hereunder, whichever is later, or

(ii) for such further period as may be necessary to resolve any pending matters, or

(iii) if an audit is occurring, or Borrower has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved.

B. Inspection

Borrower shall permit the State, the federal government (if Loan Funds include federal funds) and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Borrower’s records related to this Loan Agreement during the Record Retention Period for a period of three years following termination of this Loan Agreement or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Borrower’s performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Loan Agreement, including any extension. If the Work fails to conform to the requirements of this Loan Agreement, the State may require Borrower promptly to bring the Work into conformity with Loan Agreement requirements, at Borrower’s sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Borrower to take necessary action to ensure that future performance conforms to Loan Agreement requirements and exercise the remedies available under this Loan Agreement, at law or in equity in lieu of or in conjunction with such corrective measures.
C. Monitoring
   i. **Borrower.** Borrower shall permit the State, the federal government (if Loan Funds include federal funds), and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Borrower pursuant to the terms of this Loan Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Borrower’s performance hereunder.
   
   ii. **Subcontractor.** Borrower shall monitor its Subcontractors, if any, during the term of this Loan Agreement. Results of such monitoring shall be documented by Borrower and maintained on file.

D. Final Audit Report
   Borrower shall provide a copy of its audit report(s) to CEO as specified in Exhibit A.

10. CONFIDENTIAL INFORMATION-STATE RECORDS
   Borrower shall comply with the provisions of this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.
   
   A. Confidentiality
      Borrower shall keep all State records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Borrower shall be immediately forwarded to the State’s principal representative. Except as otherwise provided in this Loan Agreement, Borrower shall keep all tenant, patient and offender information confidential.
   
   B. Notification
      Borrower shall notify its agent, employees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.
   
   C. Use, Security, and Retention
      Confidential information of any kind shall not be distributed or sold to any third party or used by Borrower or its agents in any way, except as authorized by this Loan Agreement or approved in writing by the State. Borrower shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Borrower or its agents, except as permitted in this Loan Agreement or approved in writing by the State.
   
   D. Disclosure-Liability
      Disclosure of State records or other confidential information by Borrower for any reason may be cause for legal action by third parties against Borrower, the State or their respective agents. Borrower shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Borrower, or its employees, agents, or assignees pursuant to this §10.

11. CONFLICTS OF INTEREST
   Borrower shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Borrower’s obligations hereunder. Borrower acknowledges that with respect to this Loan Agreement, even the appearance of a conflict of interest is harmful to the State’s interests. Absent the State’s prior written approval, Borrower shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Borrower’s obligations to the State hereunder. If a conflict or appearance exists, or if Borrower is uncertain whether a conflict or the appearance of a conflict of interest exists, Borrower shall submit to the State a disclosure statement setting forth the relevant details for the State’s consideration. Failure to promptly submit a disclosure statement or to follow the State’s direction in regard to the apparent conflict constitutes a breach of this Loan Agreement.
12. REPRESENTATIONS AND WARRANTIES

Borrower makes the following specific representations and warranties, each of which was relied on by the State in entering into this Loan Agreement.

A. Standard and Manner of Performance
   Borrower shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Loan Agreement.

B. Legal Authority – Borrower and Borrower’s Signatory
   Borrower warrants that it possesses the legal authority to enter into this Loan Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Loan Agreement, or any part thereof, and to bind Borrower to its terms. If requested by the State, Borrower shall provide the State with proof of Borrower’s authority to enter into this Loan Agreement within 15 days of receiving such request.

C. Licenses, Permits, etc.
   Borrower represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Borrower warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Loan Agreement, without reimbursement by the State or other adjustment in Loan Funds. Additionally, all employees and agents of Borrower performing Services under this Loan Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. Borrower, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Borrower to properly perform the terms of this Loan Agreement shall be deemed to be a material breach by Borrower and constitute grounds for termination of this Loan Agreement.

D. Exclusion, Debarment and/or Suspension
   Borrower represents and warrants that Borrower, its employees, or authorized Subcontractors, are not presently excluded from participation, debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or otherwise ineligible to participate in a federal payment program by any federal or State of Colorado department or agency. If Borrower or any of its respective Subcontractors or their employees or authorized agents, is excluded from participation, or becomes otherwise ineligible to participate in any such program during the term of this Loan Agreement, Borrower will notify the State in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to Borrower, the State, in its sole discretion, reserves the right to immediately cease contracting with Borrower and terminate this Loan Agreement without penalty.

13. INSURANCE

Borrower shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Loan Agreement. All insurance policies required by this Loan Agreement shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Workers’ Compensation
   Workers’ compensation insurance as required by State statute, and employer’s liability insurance covering all Borrower and Subcontractor employees acting within the course and scope of their employment.

B. General Liability
   Commercial General Liability Insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
   i. $1,000,000 each occurrence;
   ii. $1,000,000 general aggregate;
   iii. $1,000,000 products and completed operations aggregate; and
iv. $50,000 any one fire.
Notwithstanding the foregoing, the Borrower can be self-insured for all or part of these coverages.

C. Professional Liability Insurance
This section ☐ shall [☒] shall not apply to this Loan Agreement.
Borrower and Subcontractors shall maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of $1,000,000 per occurrence and $3,000,000 in the aggregate, written on an occurrence form, which policy provides coverage for its work undertaken pursuant to this Loan Agreement. If a policy written on an occurrence form is not commercially available, the claims-made policy shall remain in effect for the duration of this Loan Agreement and for at least two years beyond the completion and acceptance of the work under this Loan Agreement, or, alternatively, a two year extended reporting period must be purchased. The Borrower or Subcontractor shall be responsible for all claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from such party's performance of professional services under this Loan Agreement, a subcontract.

D. Crime Insurance
Crime insurance including employee dishonesty coverage with minimum limits as follows:
i. $1,000,000 each occurrence;
ii. $1,000,000 general aggregate.
Notwithstanding the foregoing, the Borrower can be self-insured for all or part of these coverages.

E. Miscellaneous Insurance Provisions
Certificates of Insurance and/or insurance policies required under this Loan Agreement shall be subject to the following stipulations and additional requirements:

i. Deductible. Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Borrower or its Subcontractors.

ii. In Force. If any of the said policies shall fail at any time to meet the requirements of the Loan Agreement as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Loan Agreement, the Borrower and its Subcontractor shall promptly obtain a new policy.

iii. Public Entities. If Borrower is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S. (the "GIA"), Borrower shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Borrower shall ensure that the Subcontractor maintains at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor’s obligations under the GIA.

iv. Additional Insured
The State shall be named as additional insured on all commercial general liability policies required of Borrower and Subcontractors.

v. Primacy of Coverage
Coverage required of Borrower and Subcontractors shall be primary over any insurance or self-insurance program carried by Borrower or the State.

vi. Cancellation
The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to the Borrower and Borrower shall forward such notice to the State in accordance with §16 (Notices and Representatives) within seven days of Borrower’s receipt of such notice.

vii. Subrogation Waiver
All insurance policies in any way related to this Loan Agreement and secured and maintained by Borrower or its Subcontractors as required by this Loan Agreement shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Borrower or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

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F. Certificates
Upon request by the State at any other time during the term of this Loan Agreement or subcontract, Borrower and Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH
A. Defined
In addition to any breaches specified in other sections of this Loan Agreement, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Borrower, or the appointment of a receiver or similar officer for Borrower or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period
In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Loan Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES
Except for the remedies listed in §15(C) which do not require a notice and cure period for Borrower’s breach and may be immediately exercised by the State, if Borrower is in breach under any provision of this Loan Agreement or if the State terminates this Loan Agreement pursuant to §15(B), the State shall have the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Loan Agreement following the notice and cure period set forth in §14(B), if applicable. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach
If Borrower fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Loan Agreement and in a timely manner, the State may notify Borrower of such non-performance in accordance with the provisions herein. If Borrower thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Loan Agreement or such part of this Loan Agreement as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Borrower shall continue performance of this Loan Agreement to the extent not terminated, if any.

i. Obligations and Rights
To the extent specified in any termination notice, Borrower shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subgrants/subcontracts with third parties. However, Borrower shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Loan’s terms. At the sole discretion of the State, Borrower shall assign to the State all of Borrower’s right, title, and interest under such terminated orders or subgrants/subcontracts. Upon termination, Borrower shall take timely, reasonable and necessary action to protect and preserve property in the possession of Borrower in which the State has an interest. All materials owned by the State in the possession of Borrower shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Borrower to the State and shall become the State’s property.

ii. Payments
The State shall reimburse Borrower only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Borrower was not in breach or that Borrower’s action or inaction was excusable, such termination shall be treated as a termination in the public
interest and the rights and obligations of the Parties shall be the same as if this Loan Agreement had been terminated in the public interest, as described herein.

iii. Damages and Withholding
Notwithstanding any other remedial action by the State, Borrower also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Loan Agreement by Borrower and the State may withhold any payment to Borrower for the purpose of mitigating the State’s damages, until such time as the exact amount of damages due to the State from Borrower is determined. The State may withhold any amount that may be due to Borrower as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. Borrower shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest
The State is entering into this Loan Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Loan Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Loan Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State’s obligations hereunder. This subsection shall not apply to a termination of this Loan Agreement by the State for cause or breach by Borrower, which shall be governed by §15(A) or as otherwise specifically provided for herein.

i. Method and Content
The State shall notify Borrower of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Loan Agreement.

ii. Obligations and Rights
Upon receipt of a termination notice, Borrower shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

iii. Payments
If this Loan Agreement is terminated by the State pursuant to this §15(B), Borrower shall be paid an amount which bears the same ratio to the total reimbursement under this Loan Agreement as the Services satisfactorily performed bear to the total Services covered by this Loan Agreement, less payments previously made. Additionally, if this Loan Agreement is less than 60% completed, the State may reimburse Borrower for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Loan) incurred by Borrower which are directly attributable to the uncompleted portion of Borrower’s obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Borrower hereunder.

C. Untimely Expenditure of Funds
The State will track administrative and reporting requirements as described in Exhibit A. If, at any time during the term of this Loan Agreement, State determines the Borrower is not meeting its administrative and reporting requirements, State may elect to take one or more of the following actions, which shall not be deemed a breach of its obligations hereunder:

i. Technical Assistance. State may elect to conduct on-site monitoring and work closely with Borrower until the Project is back on schedule. State shall provide prior written notice to Borrower if its elects to conduct on-site monitoring, which shall be conducted during normal business hours and shall not unduly disrupt Borrower’s business operations.

ii. Terminate Loan Agreement. The State, at its option, may terminate this entire Loan Agreement as to which there has been a failure to properly meet its administrative and reporting requirements, Borrower shall continue performance of this Loan Agreement to the extent not terminated, if any.

a) Method and Content.
The State shall notify Borrower of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Loan Agreement.

b) Obligations and Rights.
Upon receipt of a termination notice, Borrower shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).
c) Deobligation of Loan Funds; Repayment by Borrower of Received Funds.
If this Loan Agreement is terminated by the State pursuant to this §15(C)(ii), State shall de-obligate any remaining unexpended Loan Funds for the Project, as applicable, and shall provide notice to Borrower that such Project has failed to meet its administrative and reporting requirements and that as a result, Borrower is required to immediately return to the State any previously received Loan Funds for the Project.

D. Remedies Not Involving Termination
The State, at its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance
Suspend Borrower’s performance with respect to all or any portion of this Loan Agreement pending necessary corrective action as specified by the State without entitling Borrower to an adjustment in price/cost or performance schedule. Borrower shall promptly cease performance and incurring costs in accordance with the State’s directive and the State shall not be liable for costs incurred by Borrower after the suspension of performance under this provision.

ii. Withhold Payment
Withhold payment to Borrower until corrections in Borrower’s performance are satisfactorily made and completed.

iii. Deny Payment
Deny payment for those obligations not performed, that due to Borrower’s actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal
Demand removal of any of Borrower’s employees or agents from the Project whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Loan Agreement is deemed to be contrary to the public interest or not in the State’s best interest.

v. Intellectual Property
If Borrower infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Loan Agreement, Borrower shall, at the State’s option (a) obtain for the State or Borrower the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES and REPRESENTATIVES
Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party’s principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

| Will Toor, Executive Director |
| Colorado Energy Office |
| 1580 Logan Street, Suite 100 |
| Denver, Colorado 80203 |
| Email: will.toor@state.co.us |

B. Borrower:
17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

This section □ shall | ☒ shall not apply to this Loan Agreement.

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Borrower in the performance of its obligations under this Loan Agreement shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Borrower upon completion or termination hereof. The State’s exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Borrower shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Borrower's obligations hereunder without the prior written consent of the State.

18. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Borrower under this Loan Agreement is greater than $100,000, either on the Effective Date or at anytime thereafter, this §19 applies.

Borrower agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101, and §24-105-102 concerning the monitoring of vendor performance on state Loans and inclusion of Loan Agreement performance information in a statewide Contract Management System.

Borrower’s performance may be subject to Evaluation and Review in accordance with the terms and conditions of this Loan Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Borrower’s performance shall be part of the normal Loan Agreement administration process and Borrower’s performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost, and timeliness. Collection of information relevant to the performance of Borrower’s obligations under this Loan Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Borrower’s obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Loan Agreement term. Borrower shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Borrower demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Colorado Energy Office, and showing of good cause, may debar Borrower and prohibit Borrower from receiving future grants and bidding on future contracts. Borrower may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Borrower, by the Executive Director, upon a showing of good cause.

19. RESTRICTION ON PUBLIC BENEFITS

This section ☒ shall | □ shall not apply to this Loan Agreement.

Borrower must confirm that any individual natural person is lawfully present in the United States pursuant to 8 U.S.C. §§1101-1646 when such individual applies for public benefits provided under this Loan Agreement by requiring the applicant to execute a residency declaration as satisfactory to the State.
20. GENERAL PROVISIONS

A. Assignment and Subgrants
   Borrower’s rights and obligations hereunder are personal and may not be transferred, assigned or
   subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, or
   subgranting without such consent shall be void. All assignments, subgrants, or subcontracts approved by
   Borrower or the State are subject to all of the provisions hereof. Borrower shall be solely responsible for all
   aspects of subgranting and subcontracting arrangements and performance.

B. Binding Effect
   Except as otherwise provided in §21(A), all provisions herein contained, including the benefits and
   burdens, shall extend to and be binding upon the Parties’ respective heirs, legal representatives, successors,
   and assigns.

C. Captions
   The captions and headings in this Loan Agreement are for convenience of reference only, and shall not be
   used to interpret, define, or limit its provisions.

D. Counterparts
   This Loan Agreement may be executed in multiple identical original counterparts, all of which shall
   constitute one agreement.

E. Entire Understanding
   This Loan Agreement represents the complete integration of all understandings between the Parties and all
   prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous
   additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied
   herein.

F. Indemnification-General
   Borrower shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees
   and agents, against any and all claims, damages, liability and court awards including costs, expenses, and
   attorney fees and related costs, incurred as a result of any act or omission by Borrower, or its employees,
   agents, or assignees pursuant to the terms of this Loan Agreement; however, the provisions hereof shall not
   be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits,
   protection, or other provisions, of the GIA, or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as
   applicable, as now or hereafter amended.

G. Applicable Law
   At all times during the performance of this Loan Agreement, Borrower shall comply with all applicable
   Federal and State laws and their implementing regulations, currently in existence and as hereafter amended,
   Applicable Laws. Borrower also shall require compliance with such laws and regulations by subgrantees
   under subgrants permitted by this Loan Agreement.

H. RESERVED

I. Modification
   i. By the Parties
      Except as otherwise provided in this Loan Agreement, any modification to this Loan Agreement shall
      only be effective if agreed to in a written amendment by both Parties.
   ii. By Operation of Law
      This Loan Agreement is subject to such modifications as may be required by changes in Federal or
      Colorado State law, or their implementing regulations. Any such required modification automatically
      shall be incorporated into and be part of this Loan Agreement on the effective date of such change, as
      if fully set forth herein.

J. Order of Precedence
   The provisions of this Loan Agreement shall govern the relationship of the Parties. In the event of conflicts
   or inconsistencies between this Loan Agreement and its exhibits and attachments including, but not limited
   to, those provided by Borrower, such conflicts or inconsistencies shall be resolved by reference to the
   documents in the following order of priority:
      i. Exhibit B (DOE Award Terms and Conditions)
ii. Exhibit C (Federal Provisions)
iv. The provisions of the main body of this Loan Agreement
v. Exhibit A (Statement of Project)
vi. Exhibit D (Promissory Note)
vii. Any document incorporated by reference which is not included in any item listed in (i) through (vi) above

K. Severability
Provided this Loan Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

L. Survival of Certain Loan Agreement Terms
Notwithstanding anything herein to the contrary, provisions of this Loan Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Borrower fails to perform or comply as required.

M. Taxes
The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Borrower shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Borrower for them.

N. Third Party Beneficiaries
Enforcement of this Loan Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Loan Agreement are incidental to the Loan Agreement, and do not create any rights for such third parties.

O. Waiver
Waiver of any breach of a term, provision, or requirement of this Loan Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

P. CORA Disclosure
To the extent not prohibited by federal law, this Loan Agreement and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

S. Safeguarding PII
"PII" means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501, C.R.S. If Borrower or any of its Subcontractors will or may receive PII under this Loan Agreement, Borrower shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Borrower shall be a “Third-Party Service Provider” as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S.

Grantee shall comply with all applicable requirements of Exhibit C at all times during the term of this Grant.
21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)
These Special Provisions apply to all contracts except where noted in italics.

A. CONTROLLER'S APPROVAL. §24-30-202(1) C.R.S. This Loan Agreement shall not be valid until it has been approved by the Colorado State Controller or designee.

B. FUND AVAILABILITY. §24-30-202(5.5) C.R.S. Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY. Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Loan Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR. Borrower shall perform its duties hereunder as an independent contractor and not as an employee. Neither Borrower nor any agent or employee of Borrower shall be deemed to be an agent or employee of the State. Borrower shall not have authorization, express or implied, to bind the State to any agreement, liability, or understanding, except as expressly set forth herein. Borrower and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Borrower or any of its agents or employees. Borrower shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Loan Agreement. Borrower shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW. Borrower shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Loan Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Loan Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS. Any term included in this Loan Agreement that requires the State to indemnify or hold Borrower harmless; requires the State to agree to binding arbitration; limits Borrower's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Loan Agreement shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Loan Agreement that limits Borrower's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Loan
Agreement, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Loan Agreement.

H. SOFTWARE PIRACY PROHIBITION. State or other public funds payable under this Loan Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Borrower hereby certifies and warrants that, during the term of this Loan Agreement and any extensions, Borrower has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Borrower is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Loan Agreement including, without limitation, immediate termination of this Loan Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507 C.R.S. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Loan Agreement. Borrower has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Borrower’s services and Borrower shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202 (1) and 24-30-202.4 C.R.S. [Not Applicable to intergovernmental Loan Agreements] The State Controller may withhold payment under the State’s vendor offset intercept system for debts owed to State Agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in §39-21-101, et seq. C.R.S.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State’s discretion, payments made to Borrower in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Borrower by deduction from subsequent payments under this Loan Agreement, deduction from any payment due under any other contracts, grants or Loan Agreements between the State and Borrower, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §8-17.5-101 C.R.S. [Not Applicable to Loan Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Loan Agreements, or information technology services or products and services] Borrower certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Loan Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Loan Agreement, through participation in the E-Verify Program or the Department program established pursuant to §8-17.5-102(5)(c), C.R.S. Borrower shall not knowingly employ or contract with an illegal alien to perform work under this Loan Agreement or enter into a contract with a subcontractor that fails to certify to Borrower that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Loan Agreement. Borrower (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this Loan Agreement is being performed, (b) shall notify the subcontractor and the contracting State Agency within three days if Borrower has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Loan Agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of
receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5) C.R.S., by the Colorado Department of Labor and Employment. If Borrower participates in the Department program, Borrower shall deliver to the contracting State Agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Borrower has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Borrower fails to comply with any requirement of this provision or §8-17.5-101 et seq., C.R.S., the contracting State Agency, Institution of Higher Education or political subdivision may terminate this Loan Agreement for breach and, if so terminated, Borrower shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §24-76.5-101 C.R.S. Borrower, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Borrower (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of §24-76.5-101 et seq. C.R.S., and (c) has produced one form of identification required by §24-76.5-103 C.R.S. prior to the effective date of this Loan Agreement.
THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK
THE PARTIES HERETO HAVE EXECUTED THIS LOAN

* Persons signing for Borrower hereby swear and affirm that they are authorized to act on Borrower’s behalf and acknowledge that the State is relying on their representations to that effect.

BOSSHERWER
City of Fort Collins, Colorado, Electric Utility Enterprise

By: ____________________________________________
Wade Troxell

Title: President
Official Title of Authorized Individual

Attest:

________________________________________
Delynn Coldiron, Secretary

Date: _________________________________________

STATE OF COLORADO
Jared S. Polis, GOVERNOR
COLORADO ENERGY OFFICE

By: ____________________________________________
Will Toor, Executive Director

Date: _________________________________________

ALL LOANS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State loans. This Loan Agreement is not valid until signed and dated below by the State Controller or delegate. Borrower is not authorized to begin performance until such time. If Borrower begins performing prior thereto, the State of Colorado is not obligated to pay Borrower for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: ____________________________________________

Date: _________________________________________
EXHIBIT A, STATEMENT OF PROJECT

I. Project Description and Objective:
The Colorado Energy Office ("CEO") is providing an $800,000.00 loan to the City of Fort Collins, Colorado, Electric Utility Enterprise ("Enterprise") to capitalize an on-bill financing program ("Epic Loan"), which enables utility customers to borrow funds to install energy efficiency and renewable energy improvements on their residential properties and pay it back through a charge on their monthly utility bill. The program removes the upfront cost barrier for customers to pursue energy upgrades. The objective is for the Enterprise to scale the program and to provide more loans to a greater percentage of customers, particularly low- to moderate-income customers so they can make their homes more energy efficient and reduce their energy burden.

II. Borrower's Obligations
The Enterprise shall be responsible for administering and marketing the Epic Loan, maintaining properly segregated accounting records, and tracking each project and ensuring compliance with federal requirements including the National Environmental Policy Act (NEPA) and the National Historic Preservation Act. The Enterprise will also be responsible for providing reporting as outlined below in Section VI.

Borrower is also responsible for segregating, tracking and reporting program income as defined in 2 CFR § 200.80.

The Enterprise's payment obligations under the Note shall be payable and collectable solely from the Enterprise's "Net Pledged Revenues" (as defined below) which revenues are hereby so pledged, but this pledge is in all respects subordinate to the pledge and lien thereon of the "Senior Debt" (as defined below) at any time outstanding. The CEO may not look to any general or other fund of the Enterprise or of the City of Fort Collins (the "City") for the payment of such obligations owed under the Note.

Net Pledged Revenues means the "Gross Pledged Revenues" (as defined below) remaining after the payment of the "Operation and Maintenance Expenses" (as defined below) of the "System" (as defined below).

Gross Pledged Revenues means all rates, fees, charges and revenues derived directly or indirectly by the City from the operation and use of and otherwise pertaining to the System, or any part thereof, whether resulting from capital improvements or otherwise, and includes all rates, fees, charges and revenues received by the City from the System, including without limitation:

(a) All rates, fees and other charges for the use of the System, or for any service rendered by the City or the Enterprise in the operation thereof, directly or indirectly, the availability of any such service, or the sale or other disposal of any commodities derived therefrom, including, without limitation, connection charges, but:
(i) Excluding any moneys borrowed and used for the acquisition of capital improvements or for the refunding of securities, and all income or other gain from any investment of such borrowed moneys; and

(ii) Excluding any moneys received as grants, appropriations or gifts from the Federal Government, the State, or other sources, the use of which is limited by the grantor or donor to the construction of capital improvements, except to the extent any such moneys shall be received as payments for the use of the System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom; and

(b) All income or other gain from any investment of Gross Pledged Revenues (including without limitation the income or gain from any investment of all Net Pledged Revenues, but excluding borrowed moneys and all income or other gain thereon in any project fund, construction fund, reserve fund, or any escrow fund for any Senior Debt payable from Net Pledged Revenues heretofore or hereafter issued and excluding any unrealized gains or losses on any investment of Gross Pledged Revenues); and

(c) All income and revenues derived from the operation of any other utility or other income-producing facilities added to the System and to which the pledge and lien herein provided are lawfully extended by the Board or by the qualified electors of the City; and

(d) All revenues which the Enterprise receives from the repayment of Epic Loans.

*Operation and Maintenance Expenses* means such reasonable and necessary current expenses of the City, paid or accrued, of operating, maintaining and repairing the System including, except as limited by contract or otherwise limited by law, without limiting the generality of the foregoing:

(a) All payments made to the Platte River Power Authority, a wholesale electricity provider that acquires, constructs and operates generation capacity for the City, or its successor in function;

(b) Engineering, auditing, legal and other overhead expenses directly related and reasonably allocable to the administration, operation and maintenance of the System;

(c) Insurance and surety bond premiums appertaining to the System;

(d) The reasonable charges of any paying agent, registrar, transfer agent, depository or escrow agent appertaining to the System or any bonds or other securities issued therefor;

(e) Annual payments to pension, retirement, health and hospitalization funds appertaining to the System;

(f) Any taxes, assessments, franchise fees or other charges or payments in lieu of the foregoing;

(g) Ordinary and current rentals of equipment or other property;
(h) Contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to the System and the cost of materials and supplies used for current operation of the System;

(i) The costs incurred in the billing and collection of all or any part of the Gross Pledged Revenues; and

(j) Any costs of utility services furnished to the System by the City or otherwise.

Operation and Maintenance Expenses does not include:

(k) Any allowance for depreciation;

(l) Any costs of reconstruction, improvement, extensions, or betterments, including without limitation any costs of capital improvements;

(m) Any accumulation of reserves for capital replacements;

(n) Any reserves for operation, maintenance, or repair of the System;

(o) Any allowance for the redemption of any bonds or other securities payable from the Net Pledged Revenues or the payment of any interest thereon;

(p) Any liabilities incurred in the acquisition of any properties comprising the System; and

(q) Any other ground of legal liability not based on contract.

Senior Debt means collectively the following financial obligations of the Enterprise which are payable from and secured by a lien on the Net Pledged Revenues: (i) its “City of Fort Collins, Colorado, Electric Utility Enterprise, Tax-Exempt Revenue Bonds, Series 2018A” and its “City of Fort Collins, Colorado, Electric Utility Enterprise, Taxable Revenue Bonds, Series 2018B,” both approved in Enterprise Ordinance No. 003; (ii) its loan agreement with U.S. Bank National Association approved in Enterprise Ordinance No. 007 as amended in Enterprise Ordinance No. 008; and (iii) its loan agreement with Vectra Bank Colorado approved in Enterprise Ordinance No. 009.

System means the City’s electric distribution system that furnishes electricity and related services and excludes the City’s broadband system using fiber-optic technology. The System consists of all properties, real, personal, mixed and otherwise, now owned or hereafter acquired by the City, through purchase, construction and otherwise, and used in connection with such system of the City, and in any way pertaining thereto and consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the City, whether situated within or without the City boundaries, used in connection with such system of the City, and in any way appertaining thereto, including all present or future improvements, extensions, enlargements, betterments, replacements or additions thereof or thereto and administrative facilities.

III. CEO Responsibilities
The CEO will be responsible for transferring the $800,000.00 from its DOE State Energy Program (SEP) ARRA Repurposed Funds to Enterprise. CEO will work with Enterprise to ensure it establishes proper accounting and project tracking procedures to comply with federal requirements.

IV. Payment
Upon execution of this Agreement, CEO shall advance funds to Enterprise in the amount of $800,000.00. CEO has received an advance payment waiver pursuant to State of Colorado Fiscal Rule 2-2, Commitment Vouchers, Section 8.2, which allows waivers in the event that “advance payment is an industry standard and/or provides a benefit to the State at least equal to the cost and risk of the advance payment.”

V. Administrative Requirements

A. Accounting
1) At all times from the Effective Date of this Agreement until completion of the term, Enterprise shall maintain properly segregated books of State Funds, and other funds associated with the Work.
2) All receipts and expenditures associated with said Work shall be documented in a detailed and specific manner, and shall accord with the Work set forth herein.

B. Monitoring
1) The State shall monitor this Work on an as-needed basis. The State may choose to audit the business activities performed under this loan. Borrower shall maintain a complete file of all records, documents, communications, notes, and other written materials or electronic media, files or communications, which pertain in any manner to the operation of activities undertaken pursuant to an executed loan. Such books and records shall contain documentation of the participant’s pertinent activity under this loan in a form consistent with good accounting practice.

VI. Reporting

Unless otherwise provided in this Exhibit or the exhibits hereto, Enterprise shall be responsible for the following reporting requirements. Required reports shall be submitted to the CEO in accordance with the timelines specified below. The preparation of reports in a timely manner shall be the responsibility of the Enterprise and failure to comply may result in the delay of payment of funds and/or termination of this Loan Agreement.

A. Monthly Loan Report
Enterprise shall submit, on a monthly basis by the 7th business day of the month, a loan report that lists the total number of loans made to utility customers for energy improvements during the prior month. The report shall include each loan’s unique identifier, the closing date, the loan amount, a brief project description noting the approved energy measures that were installed, the interest rate, and the loan term. The report shall also include the borrower’s annual income, FICO score, and debt-
to-income ratio but exclude any personally identifiable information. The format of the report shall be agreed upon by both Parties.

B. Quarterly Financial Reports
Enterprise shall submit, on a quarterly basis, by the 15th business day of the month following the ending of each quarter based on State Fiscal Year (July 1 through June 30):

1) A loan report that records each loan and the original loan amount, the principal and interest payments made, the loan balance and the term. The report shall also note any late payments or defaults.

2) A program report that details the program income generated (including interest, fees, or other sources of income) and administrative expenses paid from program income. Program income may be used as additional capital or for administrative expenses of the Epic Loan program and shall be documented by the Enterprise. At the end of this Loan Agreement, any unexpended program income is due and payable to CEO.

The format of the reports shall be agreed upon by both Parties.

C. Annual Reports

1) Narrative progress report. Enterprise shall submit a written narrative progress report by July 30th of each year that includes a description of the work completed during the State’s Fiscal Year. The narrative shall analyze the performance of the on-bill financing program under this Loan and note whether the program met its annual and cumulative goals with regards to the number of loans and the target population reached. It shall also summarize the program activities conducted in the reporting period (such as marketing and outreach strategies), the results and energy savings achieved, highlight any significant outcomes or success stories, note any recurring or unanticipated challenges encountered, and actions taken to overcome these barriers or to address underperformance of the program, if applicable.

2) Federal requirements compliance. Enterprise shall maintain on an ongoing basis, a spreadsheet based on the template developed by CEO, including property address and estimated energy savings, to document that each project financed under this Loan Agreement complies with the flowdown requirements for State Energy Program ARRA Repurposed funds, specifically NEPA and the National Historic Preservation Act. Enterprise shall submit the spreadsheet to CEO each year by September 10th for the period covering September 1st to August 30th.

VII. TESTING AND ACCEPTANCE CRITERIA

The CEO shall evaluate this Project through review of Enterprise submitted Project reports. Reports considered not complete will be returned to Enterprise within one week. CEO Program Manager is responsible for reviewing each deliverable and determining if it is acceptable. The deliverables will be deemed acceptable if they are received on time and in the CEO and Enterprise agreed upon format. If a

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deliverable is not acceptable, CEO Program Manager will provide and document written instructions to Enterprise outlining the changes that need to be made to the deliverable and the timeline in which those changes need to be made. Enterprise will then be responsible for making any required changes in the timeframe outlined by CEO.
EXHIBIT B, DOE AWARD TERMS AND CONDITIONS

The Subrecipient agrees to apply the terms and conditions of this Department of Energy (DOE) Award, as applicable, including the Intellectual Property Provisions, (and subcontractors, as appropriate) as required by 2 CFR 200.101 and to require their strict compliance therewith. Further, the Subrecipient must apply the Award terms as required by 2 CFR 200.326 to all subrecipients (and subcontractors, as appropriate) and to require their strict compliance therewith.

The following are incorporated into this Award by reference:


c) National Policy Assurances to be incorporated as Award Terms in effect on date of award at [http://www.nsf.gov/awards/managing/rtc.jsp](http://www.nsf.gov/awards/managing/rtc.jsp).

A. COMPLIANCE WITH FEDERAL, STATE, AND MUNICIPAL LAW
Subrecipient is required to comply with applicable Federal, state, and local laws and regulations for all work performed under this Award. Subrecipient is required to obtain all necessary Federal, state, and local permits, authorizations, and approvals for all work performed under this Award.

B. INCONSISTENCY WITH FEDERAL LAW
Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the CEO for guidance.

C. FEDERAL STEWARDSHIP
The Office of Energy Efficiency and Renewable Energy ("EERE") will exercise Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

D. SITE VISITS
EERE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Subrecipient must provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

E. NEPA REQUIREMENTS

CEO must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of Federal funds. EERE has determined that activities that fall under the bounded categories are categorically excluded and require no further NEPA review, absent extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment, or any inconsistency with "integral elements" (as contained in 10 C.F.R. Part 1021, Appendix B) as they relate to a particular project. Subrecipient is thereby authorized to use current Program Year Federal funds for project activities that fall within the bounded categories subject to the conditions listed in paragraph b. "Conditions".

b. Conditions.

1) The activities must comply with the restrictions set forth for each of the bounded categories;
2) As set forth in Term 8 "Historic Preservation", the Subrecipient must comply with Section 106 of the National Historic Preservation Act (NHPA) consistent with DOE's 2009 letter of delegation of authority regarding the NHPA;
3) This authorization does not include activities where the following elements exist: extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment, or any inconsistency with the "integral elements" (as contained in 10 C.F.R. Part 1021, Appendix B) as they relate to a particular project;
4) Subrecipient must identify and promptly notify DOE of extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment, or any inconsistency with the "integral elements" (as contained in 10 C.F.R. Part 1021, Appendix B) as they relate to a particular project; and
5) Subrecipient must document in writing its review of projects to determine there are no extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment, or any inconsistency with the "integral elements" (as contained in 10 C.F.R. Part 1021, Appendix B) as they relate to a particular project and compliance with Section 106 of the National Historic Preservation Act (NHPA), as applicable;
6) Subrecipient must document that project activities do not occur in a floodplain or wetland. If the project activities do occur in a floodplain or wetland, (except those under Bounded Categories 1-7g as listed in the Program Year 2018 SEP Formula Guidance), those project activities are subject to additional NEPA review and approval by DOE.

c. Modifications/Activities Outside the Bounded Categories.

If the Subrecipient later intends to undertake activities/projects that do not fall within the bounded categories, those activities/projects are subject to additional NEPA review by DOE and are not authorized for Federal funding unless and until the contracting officer provides written authorization on those additions or modifications. Should the Subrecipient elect to undertake activities/projects prior to written authorization from the contracting officer, the Subrecipient does so at risk of not receiving Federal funding for those activities/projects, and such costs may not be recognized as allowable cost match.

E. HISTORIC PRESERVATION

Prior to the expenditure of Federal funds to alter any structure or site, the Subrecipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies.
to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the subrecipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: http://ncshpo.org/. THPO contact information is available at the following link: http://www.nathpo.org/map.html

Section 110(k) of the NHPA applies to DOE funded activities. Subrecipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Subrecipients should be aware that the CEO will consider the subrecipient in compliance with Section 106 of the NHPA only after the Subrecipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Subrecipient that it does not object to its Section 106 finding or determination. Subrecipients shall provide a copy of this concurrence to the CEO.

G. PERFORMANCE OF WORK IN UNITED STATES

a. Requirement.

All work performed under this Grant must be performed in the United States unless the contracting officer provides a waiver. This requirement does not apply to the purchase of supplies and equipment; however, the Subrecipient should make every effort to purchase supplies and equipment within the United States.

b. Failure to Comply.

If the Subrecipient fails to comply with the Performance of Work in the United States requirement, the CEO may deny reimbursement for the work conducted outside the United States and such costs may not be recognized as allowable Grantee cost share regardless if the work is performed by the Subrecipient, subrecipients, vendors or other project partners.

c. Waiver for Work Outside the U.S.

All work performed under this Grant must be performed in the United States. However, the Grantee may approve the Grantee to perform a portion of the work outside the United States under limited circumstances. Grantee must obtain a waiver from the contracting officer prior to conducting any work outside the U.S. To request a waiver, the Grantee must submit a written waiver request to the CE, which includes the following information:

- The rationale for performing the work outside the U.S.;
- A description of the work proposed to be performed outside the U.S.;
- Proposed budget of work to be performed; and
- The countries in which the work is proposed to be performed.
For the rationale, the Grantee must demonstrate to the satisfaction of the CEO that the performance of work outside the United States would further the purposes of the FOA that the Award was selected under and is in the economic interests of the United States. The CEO may require additional information before considering such request.

G. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS-SENSE OF CONGRESS
It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Award should be American-made.

H. REPORTING REQUIREMENTS
a. Requirements.

The reporting requirements for this Award are identified on the Federal Assistance Reporting Checklist, attached to this Award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the Award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

b. Dissemination of scientific/technical reports.

Scientific/technical reports submitted under this Award will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data or SBIR/STTR data. Citations for journal articles produced under the Award will appear on the DOE Energy Citations Database (www.osti.gov/energycitations).

c. Restrictions.

Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

I. LOBBYING
By accepting funds under this Grant, the Subrecipient agrees that none of the funds obligated on the Grant shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

J. PUBLICATIONS
a. Subrecipient is encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

b. An acknowledgment of Federal support and a disclaimer must appear in the publication of any
material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy, Office of Energy Efficiency and Renewable Energy (EERE) under Award Number DE-EE0007470."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

K. PROPERTY STANDARDS
The complete text of the Property Standards can be found at 2 CFR 200.310 through 200.316. Also see 2 CFR 910.360 for additional requirements for real property and equipment for For-Profit subrecipients.

L. INSURANCE COVERAGE
See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds. Also see 2 CFR 910.360(d) for additional requirements for real property and equipment for For-Profit subrecipients.

M. REAL PROPERTY
Subject to the conditions set forth in 2 CFR 200.311, title to real property acquired or improved under a Federal award will conditionally vest upon acquisition in the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.311 before disposing of the property.

Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity. The instructions must provide for one of the following alternatives: (a) retain title after compensating DOE as described in 2 CFR 200.311(c)(1); (b) Sell the property and compensate DOE as specified in 2 CFR 200.311(c)(2); or (c) transfer title to DOE or to a third party designated/approved by DOE as specified in 2 CFR 200.311(c)(3).

See 2 CFR 200.311 for additional requirements pertaining to real property acquired or improved under a Federal award. Also see 2 CFR 910.360 for additional requirements for real property for For-Profit subrecipients.

N. EQUIPMENT
Subject to the conditions provided in 2 CFR 200.313, title to equipment (property) acquired under a Federal award will conditionally vest upon acquisition with the non-Federal entity. The non-Federal
entity cannot encumber this property and must follow the requirements of 2 CFR 200.313 before disposing of the property.

A state must use equipment acquired under a Federal award by the state in accordance with state laws and procedures.

Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the originally authorized purpose, the equipment may be used by programs supported by DOE in the priority order specified in 2 CFR 200.313(c)(1)(i) and (ii).

Management requirements, including inventory and control systems, for equipment are provided in 2 CFR 200.313(d).

When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity.

Disposition will be made as follows: (a) items of equipment with a current fair market value of $5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to DOE; (b) Non-Federal entity may retain title or sell the equipment after compensating DOE as described in 2 CFR 200.313(e)(2); or (c) transfer title to DOE or to an eligible third party as specified in 2 CFR 200.313(e)(3).

See 2 CFR 200.313 for additional requirements pertaining to equipment acquired under a Federal award. Also see 2 CFR 910.360 for additional requirements for equipment for For-Profit subrecipients. See also 2 CFR 200.439 Equipment and other capital expenditures.

Q. SUPPLIES
See 2 CFR 200.314 for requirements pertaining to supplies acquired under a Federal award. See also 2 CFR 200.453 Materials and supplies costs, including costs of computing devices.

P. PROPERTY TRUST RELATIONSHIP
Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. See 2 CFR 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

Q. RECORD RETENTION
Consistent with 2 CFR 200.333 through 200.337, the Subrecipient is required to retain records relating to this Award.

R. AUDITS

The Subrecipient is required to provide any information, documents, site access, or other assistance requested by CEO, EERE, DOE or Federal auditing agencies (e.g., DOE Inspector General,
Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Subrecipient’s records relating to this Award.

Consistent with 2 CFR part 200 as amended by 2 CFR part 910, CEO may audit the Subrecipient’s financial records or administrative records relating to this Award at any time. Government-initiated audits are generally paid for by CEO.

CEO may conduct a final audit at the end of the project period (or the termination of the Award, if applicable). Upon completion of the audit, the Subrecipient is required to refund to CEO any payments for costs that were determined to be unallowable. If the audit has not been performed or completed prior to the closeout of the award, CEO retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

CEO will provide reasonable advance notice of audits and will minimize interference with ongoing work, to the maximum extent practicable.

b. Annual Independent Audits (Single Audit or Compliance Audit).

The Subrecipient is required to comply with the annual independent audit requirements in 2 CFR 200.500 through .521 for institutions of higher education, nonprofit organizations, and state and local governments (Single audit), and 2 CFR 910.500 through .521 for for-profit entities (Compliance audit). The annual independent audits are separate from Government-initiated audits discussed in paragraph A of this Term, and must be paid for by the Recipient. To minimize expense, the Subrecipient may have a compliance audit in conjunction with its annual audit of financial statements. The financial statement audit is not a substitute for the compliance audit. If the audit (Single audit or Compliance audit, depending on Subrecipient entity type) has not been performed or completed prior to the closeout of the award, CEO may impose one or more of the actions outlined in 2 CFR 200.338, Remedies for Noncompliance.

S. ALLOWABLE COSTS
CEO determines the allowability of costs through reference to 2 CFR part 200 as amended by 2 CFR part 910. All project costs must be allowable, allocable, and reasonable. The Subrecipient must document and maintain records of all project costs, including, but not limited to, the costs paid by Federal funds, costs claimed by its subrecipients and project costs that the Subrecipient claims as cost sharing, including in-kind contributions. The Subrecipient is responsible for maintaining records adequate to demonstrate that costs claimed have been incurred, are reasonable, allowable and allocable, and comply with the cost principles. Upon request, the Subrecipient is required to provide such records to CEO. Such records are subject to audit. Failure to provide contracting officer adequate supporting documentation may result in a determination by the contracting officer that those costs are unallowable.

The Subrecipient is required to obtain the prior written approval of the contracting officer for any foreign travel costs.

T. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS
Notwithstanding any other provisions of this Contract, the Government shall not be responsible for or have any obligation to the subrecipient for (i) Decontamination and/or Decommissioning (D&D) of
any of the subrecipient's facilities, or (ii) any costs which may be incurred by the subrecipient in connection with the D&D of any of its facilities due to the performance of the work under this Contract, whether said work was performed prior to or subsequent to the effective date of this Contract.

U. USE OF PROGRAM INCOME
If the Subrecipient earns program income during the project period as a result of this Grant, the subrecipient must add the program income to the funds committed to the Grant and used to further eligible project objectives.

V. NONDISCLOSURE AND CONFIDENTIALITY AGREEMENTS ASSURANCES
By entering into this agreement, the Subrecipient attests that it does not and will not require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

The Subrecipient further attests that it does not and will not use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:

i. ‘‘These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.’’

ii. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

iii. Notwithstanding provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

W. CONFERENCE SPENDING
The Subrecipient shall not expend any funds on a conference not directly and programmatically related to the purpose for which the grant or cooperative agreement was awarded that would defray the cost to the United States Government of a conference held by any Executive branch department, agency, board, commission, or office for which the cost to the United States Government would otherwise exceed $20,000, thereby circumventing the required notification by the head of any such Executive Branch department, agency, board, commission, or office to the Inspector General (or senior ethics official for any entity without an Inspector General), of the date, location, and number of employees attending such conference.

X. RECIPIENT INTEGRITY AND PERFORMANCE MATTERS

A. General Reporting Requirement

If the total value of your currently active Financial Assistance awards, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the subrecipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this term. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

B. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

i. Is in connection with the award or performance of a Financial Assistance, cooperative agreement, or procurement contract from the Federal Government;

ii. Reached its final disposition during the most recent five year period; and

iii. Is one of the following:

1. A criminal proceeding that resulted in a conviction, as defined in paragraph E of this award term and condition;
2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;
3. An administrative proceeding, as defined in paragraph E of this term, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or
4. Any other criminal, civil, or administrative proceeding if:
   a. It could have led to an outcome described in paragraph B.iii.1, 2, or 3 of this term;
   b. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
   c. The requirement in this term to disclose information about the proceeding does not conflict with applicable laws and regulations.
C. Reporting Procedures
Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph B of this term. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

D. Reporting Frequency
During any period of time when you are subject to the requirement in paragraph A of this term, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Subrecipients that have Federal contract, Financial Assistance awards, (including cooperative agreement awards) with a cumulative total value greater than $10,000,000, must disclose semiannually any information about the criminal, civil, and administrative proceedings.

E. Definitions
For purposes of this term:

i. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or Financial Assistance awards. It does not include audits, site visits, corrective plans, or inspection of deliverables.

ii. Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

iii. Total value of currently active Financial Assistance awards, cooperative agreements and procurement contracts includes—
   1. Only the Federal share of the funding under any Federal award with a subrecipient cost share or match; and
   2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.
EXHIBIT C, FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS.

1.1. The Loan Agreement to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Loan Agreement, or any attachments or exhibits incorporated into and made a part of the Loan Agreement, the provisions of these Federal Provisions shall control.

2. DEFINITIONS.

2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.

2.1.1. “Award” means an award of Federal financial assistance, and the Loan Agreement setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.

2.1.1.1. Awards may be in the form of:

2.1.1.1.1. Grants;
2.1.1.1.2. Contracts;
2.1.1.1.3. Cooperative Contracts, which do not include cooperative research and development Contracts (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
2.1.1.1.4. Loans;
2.1.1.1.5. Loan Guarantees;
2.1.1.1.6. Subsidies;
2.1.1.1.7. Insurance;
2.1.1.1.8. Food commodities;
2.1.1.1.9. Direct appropriations;
2.1.1.1.10. Assessed and voluntary contributions; and
2.1.1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.
2.1.1.1.12. Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.

2.1.2. Award does not include:

2.1.2.1. Technical assistance, which provides services in lieu of money;
2.1.2.2. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
2.1.2.3. Any award classified for security purposes; or
2.1.2.4. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

2.1.2. “Contractor” means the party or parties to a Loan Agreement funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

2.1.3. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: http://fedgov.dnb.com/webform.

2.1.4. “Entity” means all of the following as defined at 2 CFR part 25, subpart C;

2.1.4.1. A governmental organization, which is a State, local government, or Indian Tribe;
2.1.4.2. A foreign public entity;
2.1.4.3. A domestic or foreign non-profit organization;
2.1.4.4. A domestic or foreign for-profit organization; and
2.1.4.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.

2.1.5. “Executive” means an officer, managing partner or any other employee in a management position.

2.1.6. “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.

2.1.7. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR §200.37

2.1.8. “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”

2.1.9. “Federal Provisions” means these Federal Provisions subject to the Transparency Act and Uniform Guidance, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2.1.10. “Loan Agreement” means the Loan Agreement to which these Federal Provisions are attached and includes all Award types in §2.1.1.1 of this Exhibit.

2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.

2.1.12. “Prime Recipient” means a Colorado State agency or institution of higher education that receives an Award.

2.1.13. “Subaward” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR §200.38. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
2.1.14. "Subrecipient" means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term "Subrecipient" includes and may be referred to as Subgrantee. The term does not include an individual who is a beneficiary of a federal program.

2.1.15. "Subrecipient Parent DUNS Number" means the subrecipient parent organization's 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient's System for Award Management (SAM) profile, if applicable.

2.1.16. "System for Award Management (SAM)" means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at http://www.sam.gov.

2.1.17. "Total Compensation" means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year and includes the following:

2.1.17.1. Salary and bonus;

2.1.17.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

2.1.17.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

2.1.17.4. Change in present value of defined benefit and actuarial pension plans;

2.1.17.5. Above-market earnings on deferred compensation which is not tax-qualified;

2.1.17.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds $10,000.

2.1.18. "Transparency Act" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.

2.1.19. "Uniform Guidance" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

2.1.20. "Vendor" means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.
3. COMPLIANCE.

3.1. Contractor shall comply with all applicable provisions of the Transparency Act, all applicable provisions of the Uniform Guidance, and the regulations issued pursuant thereto, including but not limited to these Federal Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.

4.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.

4.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor’s information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor’s information.

5. TOTAL COMPENSATION.

5.1. Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

5.1.1. The total Federal funding authorized to date under the Award is $25,000 or more; and

5.1.2. In the preceding fiscal year, Contractor received:

5.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

5.1.2.2. $25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

5.1.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

6.1. Contractor shall report data elements to SAM and to the Prime Recipient as required in this Exhibit if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Loan Agreement price. The reporting requirements in this Exhibit are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Loan Agreement and shall become part of Contractor’s obligations under this Loan Agreement.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR REPORTING.
7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is $25,000 or more. If the initial Award is below $25,000 but subsequent Award modifications result in a total Award of $25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds $25,000. If the initial Award is $25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below $25,000, the Award shall continue to be subject to the reporting requirements.

7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

8.1. If Contractor is a Subrecipient, Contractor shall report as set forth below.

8.1.1. To SAM. A Subrecipient shall register in SAM and report the following data elements in SAM for each Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

8.1.1.1. Subrecipient DUNS Number;
8.1.1.2. Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
8.1.1.3. Subrecipient Parent DUNS Number;
8.1.1.4. Subrecipient’s address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
8.1.1.5. Subrecipient’s top 5 most highly compensated Executives if the criteria in §4 above are met; and
8.1.1.6. Subrecipient’s Total Compensation of Top 5 most highly compensated Executives if criteria in §4 above met.

8.1.2. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Loan Agreement, the following data elements:

8.1.2.1. Subrecipient’s DUNS Number as registered in SAM.
8.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

9. PROCUREMENT STANDARDS.

9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
9.2. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS

10.1. A Subrecipient shall permit Recipient and auditors to have access to Subrecipient’s records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

11. SINGLE AUDIT REQUIREMENTS

11.1. If a Subrecipient expends $750,000 or more in Federal Awards during the Subrecipient’s fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.

11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program’s statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.

11.1.2. Exemption. If a Subrecipient expends less than $750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.

11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.
12. LOAN AGREEMENT PROVISIONS FOR SUBRECIPIENT LOAN AGREEMENTS

12.1. If Contractor is a Subrecipient, then it shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Loan Agreement.


12.1.1.1. During the performance of this Loan Agreement, the contractor agrees as follows:

12.1.1.1.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

12.1.1.1.2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

12.1.1.1.3. Contractor will send to each labor union or representative of workers with which he has a collective bargaining Contract or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

12.1.1.1.4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

12.1.1.1.5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
12.1.1.6. In the event of Contractor's non-compliance with the nondiscrimination clauses of this Loan Agreement or with any of such rules, regulations, or orders, this Loan Agreement may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

12.1.1.7. Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

12.1.2. **Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

12.1.3. **Rights to Inventions Made Under a Contract or Contract.** If the Federal Award meets the definition of “funding Contract” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding Contract,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts,” and any implementing regulations issued by the awarding agency.
12.1.4. **Clean Air Act (42 U.S.C. 7401-7671q,) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

12.1.5. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.


13. **CERTIFICATIONS.**

13.1. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. **EXEMPTIONS.**

14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

14.2. A Contractor with gross income from all sources of less than $300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

14.3. There are no Transparency Act reporting requirements for Vendors.

15. **EVENT OF DEFAULT.**
15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Loan Agreement and the State of Colorado may terminate the Loan Agreement upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Loan Agreement, at law or in equity.
EXHIBIT D - Promissory Note

Principal Amount: $800,000.00

Borrower:
City of Fort Collins, Colorado,
Electric Utility Enterprise
P.O. Box 580
Fort Collins, CO 80522

Note Date:

Payee:
State of Colorado, acting by and
through the Colorado Energy Office
1580 Logan Street, Suite 100
Denver, CO 80203

Loan Rate: 0% Per Annum

FOR VALUE RECEIVED, City of Fort Collins, Colorado, Electric Utility Enterprise, (the "Borrower") promises to pay to the order of the State of Colorado acting by and through the Colorado Energy Office (the "Payee"), together with other amounts which may be due in accordance with the provisions of this Promissory Note (the "Note") the principal sum of Eight Hundred Thousand Dollars ($800,000.00), with interest on the outstanding principal balance at the rate of zero percent (0%) per annum from the date hereof until paid in full, plus any unexpended Program Income, as defined and set forth at 2 CFR § 200.80. The Borrower and Payee have entered into a Loan Agreement to which this Note is attached as Exhibit "D" (the "Loan Agreement").

Principal shall be paid in one payment of Eight Hundred Thousand Dollars ($800,000.00) on April 20, 2035. This payment of principal and Program Income shall be made at Payee’s office at the address shown above or at such other place as Payee shall designate to Borrower in writing. In the event this payment of principal is not paid when due, interest shall thereafter accrue on the full amount of such payment at the rate of 4.0% annum until paid in full, and all payments received shall be applied first to accrued interest and then to the retirement of principal. This Note may be prepaid in whole or in part at any time and from time to time without premium or penalty.

All amounts due under this Note shall be payable and collectible solely out of the “Net Pledged Revenues” (as defined in Exhibit “A” of the Loan Agreement), which revenues are hereby so pledged which pledge is in all respects subordinate to the pledge and lien thereon of the “Senior Debt” (as defined in Exhibit “A” of the Loan Agreement) at any time outstanding. The Payee 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 or special fund of the Borrower or of the City of Fort Collins (the “City”), but shall constitute a special obligation of the Borrower from the Net Pledged Revenues only. 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 Borrower to comply with the provisions of this Note. None of the covenants, agreements, representations and warranties contained in Loan Agreement or in this Note shall ever impose or shall be construed as imposing any liability, obligation or charge against the Borrower or the City (except against the Net Pledged Revenues), 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 of the Borrower, except for the Net Pledged Revenues. No property of the City or the Borrower, subject to such exception, shall be liable to be forfeited or taken in payment of such amounts.

Each maker, indorser, and guarantor, and any other person who is now or may hereafter become primarily or secondarily liable for the payment of this Note or any portion thereof (a) waives presentment, notice of dishonor, and protest, (b) agrees that the payee or other holder may release, agree not to sue, suspend its rights to enforce this Note against, or otherwise discharge or deal with any person against whom such maker, indorser, guarantor, or other person has a right of recourse, and may release, fail, or agree not to enforce or perfect its rights in or against, or otherwise deal with any collateral for the payment of this Note, or any portion thereof, and (c) if this Note or interest thereon is not paid when due or if suit is brought, agrees to pay upon demand all reasonable costs of collection including reasonable attorneys' fees incurred in connection with such proceedings, including the fees of counsel for attendance at meetings of creditors or other committees.

If the payment of principal, Program Income, or any other amount payable hereunder is not paid promptly when due, the Payee or other holder may declare the entire outstanding principal balance of the Note, any subsequently accrued interest, and all other amounts payable hereunder immediately due and payable, without notice or demand. Within 10 business days of an event set forth below, notice shall be given to Payee at Payee's office at the address shown above or at such other place as Payee shall designate to Borrower in writing: (i) if maker, indorser, or guarantor, or any other person who is now or may hereafter become primarily or secondarily liable for the payment of this Note or any portion thereof (a) commences (or takes any action for the purpose of commencing) any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, moratorium, or similar law or statute; or (b) commences a proceeding against any such person under any bankruptcy, reorganization, arrangement, readjustment of debt, moratorium, or similar law or statute, and relief is ordered against it.

This Note shall be governed in all respects by the laws of the State of Colorado. Exclusive venue shall be proper in the City and County of Denver.

City of Fort Collins, Colorado, Electric Utility Enterprise

By: ____________________________
(Signature)

______________________________
Wade Troxell, President

ATTEST:

______________________________
Delynn Coldiron, Secretary