

**THE CITY OF FRUITA, COLORADO**

**ORDINANCE NO. 2019-13**

**AN ORDINANCE OF THE CITY OF FRUITA, COLORADO, AUTHORIZING THE ISSUANCE OF THE CITY'S SALES AND USE TAX REVENUE REFUNDING AND IMPROVEMENT BONDS, SERIES 2019 IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$11,500,000; PROVIDING FOR THE FORM AND OTHER DETAILS IN CONNECTION WITH THE BONDS; FIXING THE MAXIMUM NET EFFECTIVE INTEREST RATES ON THE BONDS; PROVIDING FOR PAYMENT OF THE BONDS FROM A PLEDGE OF CERTAIN SALES AND USE TAX REVENUES; AUTHORIZING THE PAYMENT, DEFEASANCE AND REDEMPTION OF THE CITY'S OUTSTANDING SALES AND USE TAX REVENUE BONDS SERIES 2009A AND 2009B; AUTHORIZING, APPROVING AND DIRECTING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATING TO THE BONDS AND THE PAYMENT, DEFEASANCE AND REDEMPTION OF THE SERIES 2009A BONDS AND 2009B BONDS; CREATING CERTAIN FUNDS AND ACCOUNTS; RATIFYING ACTIONS PREVIOUSLY TAKEN IN CONNECTION WITH THE ISSUANCE OF THE BONDS; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO**

**WHEREAS**, the City of Fruita, Colorado (the "City") is a municipal corporation and body corporate and politic duly organized and operating as a home rule city under Article XX of the Constitution of the State of Colorado and the Charter of the City (the "Charter"); and

**WHEREAS**, Article X, Section 20 of the Constitution of the State of Colorado requires the City to have voter approval in advance for the creation of any multiple-fiscal year direct or indirect debt or other financial obligation whatsoever; and

**WHEREAS**, at the general election held on Tuesday, November 4, 2008 (the "Election"), in accordance with law and pursuant to due notice, a majority of the eligible electors of the City voting in said election approved the following ballot issue (the "Community Center Ballot Issue") authorizing the issuance of sales and use tax bonds for purpose of constructing, improving, equipping, operating and maintaining a community center (the "Project"), with such bonds to be paid from an increase in the sales and use tax of the City:

**"SHALL THE CITY OF FRUITA TAXES BE INCREASED \$1,760,400 (FIRST FULL FISCAL YEAR DOLLAR INCREASE) ANNUALLY AND SHALL THE CITY OF FRUITA DEBT BE INCREASED BY AN AMOUNT NOT TO EXCEED \$15,000,000, WITH A MAXIMUM REPAYMENT COST OF \$36,239,400; SUCH TAXES TO CONSIST OF ALL REVENUES GENERATED FROM A RATE INCREASE OF 1.0% IN THE CITY SALES AND USE TAX (WHICH REPRESENTS A ONE CENT INCREASE ON EACH DOLLAR) WHICH SHALL BE DEPOSITED INTO A CITY COMMUNITY CENTER FUND AND USED SOLELY FOR THE PURPOSE OF CONSTRUCTING, IMPROVING, EQUIPPING, OPERATING AND**

MAINTAINING A COMMUNITY CENTER AND PROVIDING FOR THE PAYMENT OF REVENUE BONDS ISSUED FOR SUCH PURPOSES; SUCH DEBT TO CONSIST OF REVENUE BONDS PAYABLE FROM THE CITY COMMUNITY CENTER FUND AND ISSUED FOR THE PURPOSE OF:

- CONSTRUCTING AND EQUIPPING A COMMUNITY CENTER, TO INCLUDE AMONG OTHER THINGS, AQUATICS FACILITIES, POOL PARTY ROOMS, A GYMNASIUM, A SENIOR MEETING ROOM, MULTI-USE MEETING ROOMS, A GROUP EXERCISE STUDIO, FITNESS/WELLNESS AREAS, CHILD CARE FACILITIES, LOCKER ROOMS, FAMILY CHANGING ROOMS, UPDATING OF THE EXISTING FRUITA OUTDOOR POOL, LOBBY SPACES, AND STAFF OFFICE SPACES

SUCH BONDS TO BE DATED AND SOLD AT SUCH TIME, AND AT SUCH PRICES (AT, ABOVE OR BELOW PAR) AND CONTAINING SUCH TERMS, NOT INCONSISTENT HEREWITH, AS THE CITY COUNCIL MAY DETERMINE; SUCH TAX RATE INCREASE TO COMMENCE JANUARY 1, 2009, AND BE REDUCED FROM A RATE OF 1.0% TO A RATE OF 0.4% ON JANUARY 1ST FOLLOWING THE DATE ON WHICH THE REVENUE BONDS APPROVED HEREBY ARE PAID IN FULL (BUT IN NO EVENT SHALL SUCH REDUCTION OCCUR LATER THAN JANUARY 1, 2039) TO CONTINUE TO PROVIDE FOR THE IMPROVEMENT, EQUIPPING, OPERATION AND MAINTENANCE OF THE COMMUNITY CENTER; AND SHALL THE TAX REVENUES DEPOSITED IN THE CITY COMMUNITY CENTER FUND AND ALL EARNINGS THEREON (REGARDLESS OF AMOUNT) CONSTITUTE A VOTER-APPROVED REVENUE CHANGE, AND AN EXCEPTION TO THE REVENUE AND SPENDING LIMITS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?"

; and

**WHEREAS**, following the approval of the Community Center Ballot Issue, the City Council duly passed and adopted Ordinance No. 2008-15, which ordinance amended the Fruita Municipal Code (the "Municipal Code") to implement provisions of the Community Center Ballot Issue; and

**WHEREAS**, pursuant to Section 8.24 of the Charter, the City Council may, by ordinance, refund any securities as provided by Colorado statute; and

**WHEREAS**, pursuant to Section 3.16.010 of the Municipal Code, there was established a "Community Center Fund" and all funds received, net of the costs of collection from the sales and use tax authorized by the Community Center Ballot Issue (the "Sales and Use Tax") are deposited into the Community Center Fund; and

**WHEREAS**, pursuant to Section 3.16.020 of the Municipal Code, tax revenues deposited into the Community Center Fund, together with all earning on such deposits, are to be used

solely for the purpose of constructing, improving, equipping, operating and maintaining a community center and providing for the payment of revenue bonds issued for such purposes; and

**WHEREAS**, pursuant to Section 3.16.030 of the Municipal Code, the Sales and Use Tax commenced on January 1, 2009, is to be reduced from a rate of 1.0% to a rate of 0.4% on January 1<sup>st</sup> following the date on which the revenue bonds approved pursuant the Community Center Ballot Issue, including refundings or refinancings thereof, including the Bonds (as defined herein), are paid in full; provided however, in no event shall such reduction occur later than January 1, 2039; and

**WHEREAS**, pursuant to Section 8.21 of the Charter, the City Council may, by ordinance, issue securities made payable from, among other things, the available proceeds of any sales or use tax; and

**WHEREAS**, pursuant to the authorization granted to the City at the Election, the City has issued its Sales and Use Tax Revenue Bonds, Series 2009A, in the aggregate principal amount of \$2,440,000, and which are currently outstanding in the aggregate principal amount of \$2,055,000 (the “Series 2009A Bonds”); and

**WHEREAS**, pursuant to the authorization granted to the City at the Election, the City has issued its Sales and Use Tax Revenue Bonds (Federally Taxable – Issuer Subsidy – Build America Bonds), Series 2009B, in the aggregate principal amount of \$10,125,000, and which are currently outstanding in the aggregate principal amount of \$10,125,000 (the “Series 2009B Bonds”); and

**WHEREAS**, the City Council has determined and hereby determines that it is advantageous to the City and in the best interests of the City and the residents and taxpayers thereof to issue the City’s Sales and Use Tax Revenue Refunding and Improvement Bonds, Series 2019, in the aggregate principal amount not to exceed \$11,500,000 (the “Bonds”), in order to provide funds to (i) provide additional funds for the Project, (ii) refinance at a lower interest rate on a current basis the Series 2009A Bonds, which are currently outstanding in the aggregate principal amount of \$2,055,000 (the “Series 2009A Refunded Bonds”) and the Series 2009B Bonds, which are currently outstanding in the aggregate principal amount of \$10,125,000 (the “Series 2009B Refunded Bonds” and, together with the Series 2009A Refunded Bonds, the “Refunded Bonds”); (iii) fund the 2019 Reserve Account for the Bonds; and (iv) pay costs of issuance relating to the Bonds; and

**WHEREAS**, the City Council has determined and hereby determines that it is advantageous to the City and in the best interests of the City and the residents and taxpayers thereof to issue the Bonds in order to provide certain improvements to the Community Center.

**WHEREAS**, Article X, Section 20 of the Constitution of the State of Colorado allows the City to refinance its bonded debt without voter approval if done at a lower interest rate; and

**WHEREAS**, the City Council has been presented with a proposal to purchase the Bonds from RBC Capital Markets, LLC (the “Underwriter”), and the City’s Finance Director together with Ehlers and Associates, Inc., the City’s financial advisor (the “Financial Advisor”), have reviewed such proposal and determined that the sale of the Bonds to the Underwriter, subject to

the delegated authority and the parameters set forth herein, is in the best interest of the City and the residents thereof; and

**WHEREAS**, the Bonds will be issued under and pursuant to the Constitution of the State of Colorado, the provisions of the Charter, and part 2 of article 57 of title 11, Colorado Revised Statutes (the “Supplemental Act”); and

**WHEREAS**, there have been made available for review in the City’s Finance Department (the “Finance Department”) proposed forms of (a) a Registration and Paying Agent Agreement (the “Paying Agent Agreement”), between the City and UMB Bank, n.a., Denver, Colorado, as paying agent, transfer agent and bond registrar (the “Paying Agent”) for the Bonds, (b) an Escrow Agreement (the “Escrow Agreement”), between the City and UMB Bank, n.a., Denver, Colorado, as escrow agent (the “Escrow Agent”), (c) a Bond Purchase Agreement between the City and the Underwriter and (d) a Continuing Disclosure Certificate (the “Continuing Disclosure Certificate”), to be executed by the City; and

**WHEREAS**, there has also been made available for review in the Finance Department a proposed form of a Preliminary Official Statement (the “Preliminary Official Statement”), prepared for use in connection with the offering and sale of the Bonds; and

**WHEREAS**, the City Council desires to authorize the issuance, sale and delivery of the Bonds in the manner hereinafter set forth, and to authorize, approve and direct the execution of the agreements and instruments described above to be executed by the City and the transactions evidenced thereby.

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

**Section 1. Ratification of Prior Actions; Defined Terms.** All actions heretofore taken (not inconsistent with the provisions of the Charter, this Ordinance or the Supplemental Act) by the City Council or by the officers, employees and agents of the City directed toward the issuance of the Bonds for the purposes herein set forth are hereby ratified, approved and confirmed.

Defined terms used herein shall have the meanings ascribed to them herein or in the preambles to this Ordinance, and the following defined terms have the following meanings:

“*Bank*” means UMB Bank, n.a., in Denver, Colorado, or its successor, a national banking association duly organized and existing under the laws of the United States of America, being a member of the Federal Deposit Insurance Corporation, and having full and complete trust powers.

“*Beneficial Owner*” means any person for which a Participant acquires an interest in the Bonds.

“*Bond Account*” means the “City of Fruita, Colorado, Sales and Use Tax Revenue Refunding and Improvement Bonds, Series 2019, Bond Account” created in the Section 14 hereof entitled “Community Center Fund; Creation of Funds and Accounts.”

“*Bond Counsel*” means (a) as of the date of issuance of the Bonds, Kline Alvarado Veio, P.C., and (b) as of any other date, Kline Alvarado Veio, P.C. or such other attorneys selected by the City with nationally recognized expertise in the issuance of municipal bonds.

“*Bond Insurance Policy*” means the municipal bond insurance policy, if any, to be issued by the Bond Insurer guaranteeing the scheduled payment of principal of and interest on the Bonds.

“*Bond Insurer*” means the entity, if any, which is identified in the Sale Certificate or any successor thereto.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement between the City and the Underwriter concerning the purchase of the Bonds by the Underwriter.

“*Bonds*” means the Sales and Use Tax Revenue Refunding and Improvement Bonds, Series 2019, authorized hereby.

“*Business Day*” means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State are authorized or obligated by law or executive order to be closed for business.

“*Cede*” means Cede & Co., the nominee of DTC as record owner of the Bonds, or any successor nominee of OTC with respect to the Bonds.

“*Certified Public Accountant*” means an independent certified public accountant within the meaning of § 12-2-115, C.R.S. and any amendment thereto, licensed to practice in the State.

“*Charter*” means the home rule Charter of the City.

“*City*” means the City of Fruita, Colorado.

“*City Council*” means the City Council of the City.

“*Combined Maximum Annual Principal and Interest Requirements*” means an amount equal to the maximum amounts required to be paid in any single current or future calendar year as the principal of (including any mandatory sinking fund requirements) and interest on the Bonds, any outstanding Parity Lien Bonds and proposed Parity Lien Bonds, excluding any such bonds which have been defeased pursuant to the terms of the authorizing documents. For purposes of calculating the Combined Maximum Annual Principal and Interest Requirements in any calendar year in which any issue of Bonds and Parity Lien Bonds finally mature, there shall be subtracted from the final payment for said bonds any cash or the present value of any investments deposited in a reserve fund or account established pursuant to the authorizing documents which are properly allocable to said bonds.

“*Commitment*” means that certain offer, if any, to issue the Bond Insurance Policy issued by the Bond Insurer.

“*Community Center Fund*” means the Community Center Fund of the City established pursuant to the Community Center Ballot Issue and Section 3.16.020 of the Municipal Code.

“*Community Center Ballot Issue*” means the ballot issue approved by City voters on November 4, 2008, which ballot issue is set forth and defined as such in the preambles to this Ordinance.

“*Continuing Disclosure Certificate*” means the Continuing Disclosure Certificate of the City executed and delivered by the City in connection with the issuance of the Bonds to facilitate compliance with Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. § 240.15c2-12).

“*County*” means Mesa County, Colorado.

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

“*Dated Date*” means the date of delivery of the Bonds or such other date as established in the Sale Certificate.

“*Depository*” means any securities depository as the City may provide and appoint, in accordance with the guidelines of the federal Securities and Exchange Commission, which shall act as securities depository for the Bonds.

“*DTC*” means the Depository Trust Company, New York, New York, and its successors and assigns, which shall act as the initial securities depository of the Bonds.

“*DTC Blanket Letter of Representations*” means the agreement between the City and DTC whereby the City agrees to comply with DTC’s operational requirements.

“*Escrow Accounts*” means the “City of Fruita, Colorado, Sales and Use Tax Revenue Bonds, Series 2009A, Escrow Account” and the “City of Fruita, Colorado, Sales and Use Tax Revenue Bonds, Series 2009B, Escrow Account.”

“*Escrow Agent*” means the Bank.

“*Escrow Agreement*” means the Escrow Agreement by and among the City, the Escrow Agent, and the Refunded Bonds Paying Agent.

“*Event of Default*” means any of the events specified in the section hereof entitled “Events of Default.”

“*Federal Tax Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Federal Tax Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder and applicable to the Bonds or the use of proceeds thereof, unless the context clearly requires otherwise.

“*Federal Securities*” means bills, certificates of indebtedness, notes, bonds or similar securities which are direct non-callable obligations of the United States of America or which are

fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America.

“*Interest Payment Date*” means each April 1 and October 1, commencing October 1, 2019, or such other date or dates as established in the Sale Certificate.

“*Interest Sub-Account*” means the “2019 Interest Sub-Account,” a sub-account of the Bond Account established by the provisions hereof for the purpose of paying the interest on the Bonds and any Parity Lien Bonds.

“*Letter of Instructions*” means the Letter of Instructions, dated the date of issuance of the Bonds, delivered by Bond Counsel to the City, as it may be superseded or amended in accordance with its terms.

“*Municipal Code*” means the Fruita Municipal Code.

“*Official Statement*” means the final version of the Preliminary Official Statement.

“*Ordinance*” means this ordinance which authorizes the issuance of the Bonds, including any amendments properly made hereto.

“*Outstanding*” means, as of any date, all Bonds, except the following:

(a) any Bond cancelled by the City or the Paying Agent, or otherwise on the City’s behalf, at or before such dates;

(b) any Bond held by or on behalf of the City;

(c) any Bond for the payment or the redemption of which moneys or Federal Securities sufficient to meet all of the payment requirements of the principal of, interest on, and any premium due in connection with the redemption of such Bond to the date of maturity or any redemption date thereof, shall have theretofore been deposited in trust for such purpose in accordance with the section hereof entitled “Defeasance”; and

(d) any lost, apparently destroyed, or wrongfully taken Bond in lieu of or in substitution for which another bond or other security shall have been executed and delivered.

“*Owner*” or “*Owners*” means the Person or Persons in whose name or names a Bond is registered on the registration books maintained by the Paying Agent pursuant hereto.

“*Participant*” or “*Participants*” means any broker-dealer, bank, or other financial institution from time to time for which DTC or another Depository holds the Bonds.

“*Parity Lien Bonds*” means the any bonds or other obligations (which may or may not be multiple-fiscal year financial obligations), whether currently outstanding or permitted to be issued in the future pursuant to the section hereof entitled “Conditions to Issuance of Parity Lien Bonds,” with a lien that is equal and on a parity with the lien of the Bonds on the Pledged Revenues.

“*Parity Reserve Amount*” means, as of any date on which it is calculated with respect to any issue of Parity Lien Bonds, the least of (a) 10% of the principal amount of said Parity Lien Bonds, (b) the maximum annual debt service in any calendar year on said Parity Lien Bonds or (c) 125% of the average annual debt service on said Parity Lien Bonds; provided, however, that the Parity Reserve Amount may be reduced if, in the opinion of Bond Counsel, the funding or maintenance of it at the level otherwise determined pursuant to this definition will cause the reserve account for such Parity Lien Bonds to exceed the amount permitted by the Federal Tax Code to be invested in higher yielding investments as a reasonably required reserve amount and replacement fund.

“*Paying Agent*” means the Bank and its successors in interest or assigns approved by the City, which shall act as paying agent, bond registrar, and authenticating agent for the Bonds.

“*Paying Agent Agreement*” means an agreement between the City and the Paying Agent concerning the duties and obligations of the Paying Agent with respect to the Bonds.

“*Permitted Investments*” means any lawful investment permitted for the investment of funds of the City by the laws of the State.

“*Person*” means a corporation, firm, other body corporate, partnership, association or individual and also includes an executor, administrator, trustee, receiver or other representative appointed according to law.

“*Pledged Revenues*” means all of the City’s Sales and Use Tax revenues required to be deposited in the Community Center Fund and all moneys on deposit from time-to-time in the Community Center Fund.

“*Preliminary Official Statement*” means the Preliminary Official Statement concerning the Bonds and the City.

“*Principal Payment Date*” means October 1, commencing October 1, 2020, or other such date or dates established in the Sale Certificate.

“*Principal Sub-Account*” means the “2019 Project Sub-Account,” a sub-account of the Bond Account established by the provisions hereof for the purpose of paying the principal of and premium, if any, on the Bonds and any Parity Lien Bonds.

“*Project*” means any purpose for which proceeds of the Bonds may be expended under the Community Center Ballot Issue.

“*Project Account*” means the “2019 Project Account” created in Section 14 hereof entitled “Community Center Fund; Creation of Funds and Accounts.”

“*Project Costs*” means the City’s costs properly attributable to the Project or any part thereof, including without limitation: (a) the costs of labor and materials, machinery, furnishings, equipment, and the restoration of property damaged or destroyed in connection with construction work; (b) the costs of surveys, appraisals, plans, designs, specifications, and estimates; (c) the costs, fees, and expenses of printers, engineers, architects, financial consultants, legal advisors,



or other agents or employees; (d) the costs of issuing the Bonds; (e) the costs of demolition, removal, and relocation; and (f) all other lawful costs as determined by the City Council.

“*Pro Rata Portion*” means the dollar amount derived by dividing the amount of principal or interest to come due on the next Principal Payment Date or Interest Payment Date by the number of monthly credits required to be made prior to such payment date.

“*Rating Agency*” means Fitch Investors Service, Inc., Moody’s Investors Service, Inc. or Standard & Poor’s Ratings Services, a Division of The McGraw-Hill Companies, Inc.

“*Record Date*” means the fifteenth (15th) day of the calendar month next preceding each Interest Payment Date.

“*Refunded Bonds*” means the City’s Sales and Use Tax Revenue Bonds, Series 2009A, maturing on and after October 1, 2019 and currently outstanding in the aggregate principal amount of \$2,055,000, and (Federally Taxable – Issuer Subsidy – Build America Bonds), Series 2009B, maturing on and after October 1, 2029 and currently outstanding in the aggregate principal amount of \$10,125,000.

“*Reserve Account*” means a special account of the City designated as the “2019 Reserve Account” created in Section 14 hereof entitled “Community Center Fund; Creation of Funds and Accounts” for the purpose of paying, if necessary, the principal of, premium, if any, and interest on the Bonds.

“*Reserve Account Contract*” means a surety bond, insurance policy, letter of credit, investment agreement, investment contract or similar instrument.

“*Reserve Account Requirement*” means, as of any date on which it is calculated, the least of (a) 10% of the principal amount of the Outstanding Bonds, (b) the maximum annual debt service in any calendar year on the Outstanding Bonds, or (c) 125% of the average annual debt service on the Outstanding Bonds; provided, however, that the Reserve Account Requirement may be reduced if, in the opinion of Bond Counsel, the funding or maintenance of it at the level otherwise determined pursuant to this definition will adversely affect the exclusion from gross income tax for federal income tax purposes of interest on any of the Bonds. Such Reserve Account Requirement may be satisfied through a Reserve Account Contract.

“*Sale Certificate*” means the certificate executed by the Sale Delegate under the authority delegated pursuant to this Ordinance which sets forth the terms of the Bonds described in the section hereof entitled “Delegation and Parameters.”

“*Sale Delegate*” the City Manager of the City or the Finance Director of the City.

“*Sales and Use Tax*” means the one cent sales and use tax of the City and, on and after January 1, 2039, the four tenths of one cent sales and use tax of the City, as imposed by the City pursuant to the Community Center Ballot Issue and deposited into the Community Center Fund pursuant to Section 3.16.020 of the Municipal Code; provided further, the term “Sales and Use Tax” does not include any other of the City’s sales and use tax, or any other legally available excise tax, unless otherwise provided by the City Council.

“*Special Record Date*” means the record date for determining Bond ownership for purposes of paying defaulted interest, as such date may be determined pursuant to this Ordinance.

“*State*” means the State of Colorado.

“*Supplemental Act*” means the Supplemental Public Securities Act, constituting part 2 of article 57 of title 11, Colorado Revised Statutes, as amended.

“*Tax Certificate*” means the Tax Compliance Certificate or similar certificate or instrument executed and delivered by the City in connection with the issuance of the Bonds that describes the City’s expectations regarding the use and investment of proceeds of the Bonds and other moneys.

“*2009 Bond Ordinance*” means City Ordinance 2009-05, as amended by the City Ordinance 2009-24.

**Section 2. Issuance of the Bonds.** In order to provide funds for the purpose of (a) paying the Project Costs, (b) refinancing on a current basis the Series 2009A Bonds and the Series 2009B Bonds at lower interest rates, (c) funding the 2019 Reserve Account for the Bonds, and (d) paying costs of issuance of the Bonds, the City shall issue its “Sales and Use Tax Revenue Refunding and Improvement Bonds, Series 2019” in the aggregate principal amount not to exceed \$11,500,000 (the “Bonds”), as hereinafter set forth. The Bonds shall be issued as fully registered bonds without coupons in the denomination of \$5,000 or any integral multiple thereof.

The Bonds initially shall be issued in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”), as registered owner of the Bonds, and immobilized in the custody of DTC. A single certificate for each maturity date or for each interest rate for each maturity date of the Bonds will be issued and delivered to DTC. Beneficial owners of the Bonds will not receive physical delivery of Bond certificates, except in the event that replacements are issued therefor as provided in the Paying Agent Agreement, or except as further provided in the next paragraph of this Section. All subsequent transfers of ownership interests, after immobilization of the original Bond certificates as provided above, will be made by book entry only, and no investor or other party purchasing, selling or otherwise transferring Bonds is to receive, hold or deliver any Bond certificate as long as DTC or any successor depository holds the immobilized Bond certificates. The Mayor, the City Manager and the Finance Director are hereby authorized to take any and all actions as may be necessary and not inconsistent with this Ordinance in order to qualify the Bonds for DTC’s book entry system, including the execution of DTC’s Blanket Letter of Representations, and payments to DTC by the Paying Agent shall be made in accordance with such Letter of Representations.

**Section 3. Bond Details.**

(a) *Registered Form, Denominations, Dated Date and Numbering.* The Bonds shall be issued in fully registered form, shall be dated as of the Dated Date, and shall be registered in the names of the Persons identified in the registration books maintained by the Paying Agent pursuant hereto. The Bonds shall be issued in denominations of \$5,000

in principal amount or any integral multiple thereof. The Bonds shall be consecutively numbered, beginning with the number one, preceded by the letter “R.”

(b) *Maturity Dates, Principal Amounts and Interest Rates.* The Bonds shall mature on the Principal Payment Date of the years and in the principal amounts, and shall bear interest at the rates per annum (calculated based on a 360 day year of twelve 30 day months) set forth in the Sale Certificate.

(c) *Accrual and Dates of Payment of Interest.* Interest on the Bonds shall accrue at the rates set forth in the Sale Certificate from the later of the Dated Date or the latest Interest Payment Date (or in the case of defaulted interest, the latest date) to which interest has been paid in full and shall be payable on each Interest Payment Date.

(d) *Manner and Form of Payment.* Principal of each Bond shall be payable to the Owner thereof upon presentation and surrender of such Bond at the principal office of the Paying Agent in the city identified in the definition of Paying Agent in the Section hereof entitled “Definitions” or at such other office of the Paying Agent designated by the Paying Agent for such purpose. Interest on each Bond shall be payable by check, draft or wire transfer (if requested by any Owner) of the Paying Agent mailed or wired on each Interest Payment Date to the Owner thereof as of the close of business on the corresponding Record Date; provided that such interest payable to any Owner may be paid by any other means agreed to by such Owner and the Paying Agent that does not require the City to make moneys available to the Paying Agent earlier than otherwise required hereunder or increase the costs borne by the City hereunder. All payments of the principal of and interest on the Bonds shall be made in lawful money of the United States of America.

(e) *Book-Entry Registration.* Notwithstanding any other provision hereof, the Bonds shall be delivered only in book-entry form registered in the name of Cede & Co., as nominee of DTC, acting as securities depository of the Bonds and principal of and interest on the Bonds shall be paid by wire transfer to DTC; provided, however, if at any time the Paying Agent determines, and notifies the City of its determination, that DTC is no longer able to act as, or is no longer satisfactorily performing its duties as, securities depository for the Bonds, the Paying Agent may, at its discretion, either (i) designate a substitute securities depository for DTC and reregister the Bonds as directed by such substitute securities depository or (ii) terminate the book-entry registration system and reregister the Bonds in the names of the beneficial owners thereof provided to it by DTC. Neither the City nor the Paying Agent shall have any liability to DTC, Cede & Co., any substitute securities depository, any Person in whose name the Bonds are reregistered at the direction of any substitute securities depository, any beneficial owner of the Bonds or any other Person for (A) any determination made by the Paying Agent pursuant to the proviso at the end of the immediately preceding sentence, or (B) any action taken to implement such determination and the procedures related thereto that is taken pursuant to any direction of or in reliance on any information provided by DTC, Cede & Co., any substitute securities depository or any Person in whose name the Bonds are reregistered.

(f) *Final Determination of Bond Details.* The authority to determine other details of the Bonds is delegated to the Sale Delegate in the Section 4 hereof.

#### **Section 4. Delegation and Parameters.**

(a) *Delegation.* Pursuant to Section 11-57-205 of the Supplemental Act, the City Council hereby delegates to the Sale Delegate the authority to determine and set forth in the Sale Certificate: (i) the matters set forth in subsection (b) of this Section, subject to the applicable parameters set forth in subsection (c) of this Section; and (ii) any other matters that, in the judgment of the Sale Delegate, are necessary or convenient to be set forth in the Sale Certificate and are not inconsistent with the parameters set forth in subsection (c) of this Section.

(b) *Sale Certificate.* The Sale Certificate shall set forth the following matters and other matters permitted to be set forth therein pursuant to subsection (a) of this Section, but each such matter must fall within the applicable parameters set forth in subsection (c) of this Section: (i) the Dated Date of the Bonds; (ii) the Principal Payment Date; (iii) the Interest Payment Date; (iv) the aggregate principal amount of the Bonds; (v) the price at which the Bonds will be sold; (vi) the amount of principal of the Bonds maturing in any particular year and the rate of interest on the Bonds; (vii) the Bonds which may be redeemed at the option of the City, the dates upon which such optional redemption may occur, and the prices at which such Bonds may be optionally redeemed; and (viii) the principal amounts, if any, of Bonds subject to mandatory sinking fund redemption and the years in which such Bonds will be subject to such redemption.

(c) *Parameters.* The authority delegated to the Sale Delegate by this Section shall be subject to the following parameters: (i) in no event shall the Sale Delegate be authorized to execute the Sale Certificate after the date that is 180 days after the effective date of this Ordinance; (ii) the aggregate principal amount of the Bonds shall not exceed \$11,500,000; (iii) the final maturity of the Bonds shall be no later than October 1, 2039; and (iv) the maximum net effective interest rate on the Bonds as sold to the Underwriter shall not exceed 4.30%.

**Section 5. Redemption of the Bonds.** The Bonds or any part thereof may be callable for redemption, at the option of the City, prior to the final maturity thereof, at the price or prices (expressed as a percentage of the principal amount) and on the redemption date or dates as determined by the City Manager or the Finance Director in the Sale Certificate. The Bonds or any part thereof may be callable for mandatory sinking fund redemption at a price (expressed as a percentage of principal amount) of 100%, plus accrued interest to the redemption date, as determined by the City Manager or the Finance Director in the Sale Certificate.

If less than all of the Bonds within a maturity are to be redeemed on any prior redemption date, the Bonds to be redeemed shall be selected by lot prior to the date fixed for redemption, in such manner as the Paying Agent shall determine. The Bonds shall be redeemed only in integral multiples of \$5,000. In the event a Bond is of a denomination larger than \$5,000, a portion of such Bond may be redeemed, but only in the principal amount of \$5,000 or any integral multiple thereof. Such Bond shall be treated for the purpose of redemption as that number of Bonds which results from dividing the principal amount of such Bond by \$5,000. In the event a portion of any Bond is redeemed, the Paying Agent shall, without charge to the registered owner of such Bond, authenticate and deliver a replacement Bond or Bonds for the unredeemed portion thereof.

**Section 6. Notice and Effect of Redemption.** Notice of any redemption of the Bonds shall be given by the Paying Agent in the name of the City by sending a copy of the redemption notice by first class mail or by electronic means to the registered owners of the Bonds to be redeemed at the address of each such registered owner shown on the registration books maintained by the Paying Agent pursuant to the Paying Agent Agreement, not more than sixty (60) nor less than thirty (30) days prior to the redemption date. Failure to send notice to the registered owner of any Bond designated for redemption, or any defect in any notice given, shall not affect the validity of any proceedings for the redemption of the Bonds as to which no such failure shall have occurred. Any notice sent as provided herein shall be conclusively presumed to have been duly given, whether or not the registered owner actually receives the notice. Each notice of redemption shall specify the date fixed for redemption, the redemption price, the place or places of payment, that payment will be made upon presentation and surrender of the Bonds to be redeemed (unless only a portion of the Bond is being redeemed pursuant to mandatory sinking fund redemption), that interest accrued to the date fixed for redemption will be paid as specified in said notice, and that on and after said date interest thereon will cease to accrue. If less than all the outstanding Bonds are to be redeemed, the notice of redemption shall specify the numbers of the Bonds (or portions of Bonds issued in a principal amount in excess of \$5,000) to be redeemed.

On or prior to the date fixed for redemption, funds sufficient to pay the Bonds or portions of the Bonds called for redemption, together with the premium, if any, and the accrued interest to the redemption date, are to be deposited with the Paying Agent. The giving of notice and the deposit of funds for redemption shall cause interest on any Bond or portion thereof called for redemption to cease to accrue from and after the date fixed for redemption.

**Section 7. Execution of the Bonds.** The Bonds shall be executed in the name of the City, shall be signed by the manual or facsimile signature of the Mayor or the Mayor Pro Tem, shall bear the impression or the facsimile of the seal of the City, shall be attested and subscribed by the manual or facsimile signature of the City Clerk or the Deputy City Clerk, and shall be authenticated by the manual signature of the Paying Agent in the manner set forth in the Paying Agent Agreement. The Mayor or the Mayor Pro Tem and the City Clerk or the Deputy City Clerk, respectively, by the execution of a certificate relating to the Bonds, shall adopt or approve the facsimiles appearing on the Bonds. The Bonds bearing the signatures of the officers in office at the time of the signing thereof shall be the valid and binding obligations of the City, notwithstanding that before the delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices.

Title to any Bond is fully negotiable. The registered owners of the Bonds shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code of the State of Colorado.

**Section 8. Determination of Net Effective Interest Rate.** The maximum net effective interest rate established by this Ordinance with respect to the portion of the Bonds that are issued pursuant to the ballot issue approved at the election held on November 4, 2008 is hereby found and determined not to exceed the parameters authorized by the eligible electors of the City voting at the election held on November 4, 2008, and the maximum net effective interest rate established by this Ordinance for that portion of the Bonds that are being issued to refund the

Refunded Bonds is hereby found and determined to be less than the net effective interest rate on each series of the Refunded Bonds, and the aggregate principal of and interest due on the Bonds is not greater than the aggregate principal of and interest due on the Refunded Bonds.

**Section 9. Form of Bonds.** The Bonds shall recite that they are issued pursuant to the Constitution of the State of Colorado, the Charter and the Supplemental Act. The Mayor or the Mayor Pro Tem and the City Clerk or the Deputy City Clerk shall prepare, execute and issue to the Underwriter, the Bonds in substantially the following form:

(Form of Bond)

UNITED STATES OF AMERICA

STATE OF COLORADO

COUNTY OF MESA

CITY OF FRUITA, COLORADO  
SALES AND USE TAX REVENUE  
REFUNDING AND IMPROVEMENT BOND  
SERIES 2019

No. R- \$ \_\_\_\_\_

INTEREST  
RATE:

MATURITY  
DATE:

DATE OF  
ORIGINAL ISSUE:

CUSIP:

%

October 1, [2039]

[July \_\_, 2019]

REGISTERED OWNER:

PRINCIPAL SUM:

DOLLARS

KNOW ALL PERSONS BY THESE PRESENTS, that the City of Fruita, Colorado (the “City”), for value received, promises to pay to the Registered Owner (named above) or registered assigns, in the manner hereinafter provided, the Principal Sum (stated above) on the Maturity Date (stated above) or on the date of prior redemption, together with interest on said Principal Sum at the Interest Rate (stated above) per annum, semiannually on April 1 and October 1 of each year, commencing \_\_\_\_\_\*, until the Principal Sum of this Bond shall be paid in full. Interest on this Bond shall be calculated on the basis of a 360 day year consisting of twelve 30 day months. The principal of, premium, if any, and interest on this Bond are payable in any coin or currency which on the date of payment is legal tender for the payment of debts due to the United States of America without deduction for exchange or collection charges. The principal of and premium, if any, on this Bond are payable to the Registered Owner, upon surrender hereof, at the principal operations office of UMB, n.a., in Kansas City, Missouri, or its successor, as paying agent, transfer agent and bond registrar (the “Paying Agent”). Interest on this Bond shall be paid by the Paying Agent on behalf of the City by check or draft mailed to the Registered Owner at the address of such Registered Owner as it appears on the registration books of the Paying Agent or by wire transfer, all in the manner set forth in the hereinafter described Paying Agent Agreement. In the event that the date upon which any payment of interest on or principal of this Bond shall be due is not a Business Day (as defined in the Paying Agent Agreement) then such interest or principal (or both, as the case may be) shall be payable on the next succeeding Business Day without additional interest.

This Bond has been issued pursuant to, under the authority of, and in full conformity with, the Constitution of the State of Colorado, the Charter of the City (the “Charter”), and the Supplemental Public Securities Act, part 2 of article 57 of title 11, Colorado Revised Statutes,

\* To be determined by City Manager or Finance Director.

and pursuant to an ordinance (the “Ordinance”) adopted by the City Council of the City. The above recital shall be conclusive evidence of the validity and the regularity of the issuance of this Bond after its delivery for value. It is hereby certified, recited and warranted that all of the requirements of law have been fully complied with by the proper officers of the City in issuing this Bond.

This Bond is one of a series of special, limited obligations of the City, denominated as “City of Fruita, Colorado, Sales and Use Tax Revenue Refunding and Improvement Bonds, Series 2019” and issued in the aggregate principal amount of \$\_\_\_\_\_ \* (the “Bonds”). The Bonds are being issued by the City for the purpose of designing, acquiring, constructing, remodeling, furnishing and equipping certain recreational facilities owned by the City, and refunding, on a current basis, certain sales and use tax revenue bonds of the City.

The Bonds which mature on or before October 1, \_\_\_\_\* are not subject to redemption prior to their respective maturity dates. The Bonds maturing on or after October 1, \_\_\_\_\* are callable for redemption at the option of the City, in whole or in part, and if in part in such order of maturity as the City shall determine and by lot within any maturity in such manner as the Paying Agent shall determine, on October 1, \_\_\_\_\*, and on any date thereafter, at the redemption price (expressed as a percentage of principal amount) of \_\_\_\_%\*, plus accrued interest to the redemption date.

The Bonds maturing on October 1, \_\_\_\_\*, are subject to mandatory sinking fund redemption, prior to maturity, in part, by lot in such manner as the Paying Agent shall determine, at a price (expressed as a percentage of principal amount) of 100%, plus accrued interest to the date of redemption, without premium, on the following dates and in the following principal amounts:

<b>Sinking Fund Redemption Date * (October 1)</b>	<b>Principal Amount*</b>
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<p style="text-align: center;">**</p> <p style="text-align: center;">_____</p>	
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\_\_\_\_\_  
\*\*Maturity.

The portion of any Bond to be redeemed shall be in the principal amount of \$5,000 or any integral multiple thereof. In selecting Bonds for redemption, the Paying Agent shall treat each Bond as representing that number of Bonds which is obtained by dividing the principal amount of that Bond by \$5,000. Upon the giving of notice of redemption in the manner set forth in the Ordinance, and a deposit by the City with the Paying Agent of an amount sufficient to pay the applicable redemption price and the accrued interest to the redemption date, interest on any Bond so called for redemption shall cease to accrue from and after the date fixed for redemption.

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\* To be determined by City Manager or Finance Director.



The Bonds are issuable solely in the form of fully registered bonds in the denomination of \$5,000 or any integral multiple thereof.

This Bond is transferable by the Registered Owner hereof, or by the attorney of such Registered Owner duly authorized in writing, at the principal operations office of the Paying Agent, but only in the manner, subject to the limitations and upon payment of the transfer fee or charges provided in the Registration and Paying Agent Agreement (the "Paying Agent Agreement") between the City and the Paying Agent, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds of the same series and maturity and of authorized denomination or denominations, for the same aggregate principal amount and bearing interest at the rate per annum set forth in this Bond, will be issued to the transferee in exchange therefor.

The City and the Paying Agent may deem and treat the Registered Owner hereof (whether or not any payment of principal or interest on this Bond shall be overdue) as the absolute owner of this Bond for the purpose of receiving payment of or on account of the principal hereof and premium, if any, and interest due hereon and for all other purposes, and neither the City nor the Paying Agent shall be affected by any notice to the contrary.

The City and the Paying Agent shall not be required (a) to issue, register, transfer or exchange any Bond during a period beginning at the opening of business on the first day of the calendar month during which any interest payment date occurs or on any date of selection of Bonds to be redeemed, and ending at the close of business on the interest payment date or date on which the applicable notice of redemption is given, or (b) to register, transfer or exchange any Bond selected or called for redemption in whole or in part.

It is hereby certified and recited that all the requirements of law, including the provisions and limitations of the Constitution of the State of Colorado, the Charter and the Supplemental Public Securities Act, have been fully complied with by the proper City officials in the issuance of this Bond, that the total indebtedness of the City, including that of this Bond, does not exceed any limit of indebtedness prescribed by the Charter or by the Constitution of the State of Colorado.

For the payment of this Bond and the interest hereon, the City pledges the exercise of all its lawful corporate powers.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the proceedings of the City authorizing the issuance of the Bonds until the Certificate of Authentication hereon shall be signed by the Paying Agent.



**STATEMENT OF INSURANCE**

[To be provided by Bond Insurer, if any]

**ASSIGNMENT**

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_

**(Please print or typewrite name and address of Transferee)**  
**(Tax Identification or Social Security No. \_\_\_\_\_)**

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

**NOTICE:** The signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed:

\_\_\_\_\_  
Signature(s) must be guaranteed by a national bank or trust company or by a brokerage firm having a membership in one of the major stock exchanges.

**TRANSFER FEE MAY BE REQUIRED**

[End Form of Bond]

**Section 10. Execution and Delivery of the Bonds.** The Bonds, when executed as provided by this Ordinance, shall be delivered by any one of the officers of the City to the Underwriter, upon payment to the City of the purchase price therefor in accordance with the Bond Purchase Agreement accepted by the City. The proceeds derived from the sale of the Bonds shall be used exclusively for the purposes stated herein; provided, however, that any portion of the proceeds of the Bonds may be temporarily invested pending such use in securities or obligations which are lawful investments for the City, with such temporary investment to be made consistent with the covenant hereinafter made concerning arbitrage bonds and the exclusion of interest on the Bonds from gross income for purposes of federal income taxation. Neither the Underwriter nor any registered owner of any Bond shall be in any way responsible for application of the proceeds of the Bonds by the City or any of its officials.

**Section 11. Execution and Delivery of Paying Agent Agreement.** The Mayor or the Mayor Pro Tem is hereby authorized to execute and deliver, for and on behalf of the City, the Paying Agent Agreement in substantially the form available for review in the Finance Department at the time of this meeting, but with such modifications thereof as are consistent with the terms and provisions of this Ordinance and which the Mayor or the Mayor Pro Tem shall approve, the execution of the Paying Agent Agreement by the Mayor or the Mayor Pro Tem being conclusive evidence of the approval on behalf of the City of the terms and provisions thereof.

**Section 12. Execution and Delivery of Escrow Agreement.** The Mayor or the Mayor Pro Tem is hereby authorized to execute and deliver, for and on behalf of the City, the Escrow Agreement in substantially the form available for review in the Finance Department at the time of this meeting, but with such modifications thereof as are consistent with the terms and provisions of this Ordinance and which the Mayor or the Mayor Pro Tem shall approve, the execution of the Escrow Agreement by the Mayor or the Mayor Pro Tem being conclusive evidence of the approval on behalf of the City of any modifications thereof. The deposit and investment of Bond proceeds and other moneys in accordance with the Escrow Agreement, and the refunding, on a current basis, of the Refunded Bonds as set forth in the Escrow Agreement, are hereby authorized and directed.

The City hereby authorizes and directs the redemption of the Refunded Bonds on the date, in the amounts and at the price set forth in the Escrow Agreement, and, in order to cause the Refunded Bonds to be redeemed in the manner set forth in the Escrow Agreement, the Bank, as paying agent for the Refunded Bonds, is hereby authorized and directed to give notice of redemption of each series of the Refunded Bonds at the time and in the manner required by each of the ordinances authorizing the issuance of the Refunded Bonds.

**Section 13. Execution and Delivery of Continuing Disclosure Certificate.** The Mayor or the Mayor Pro Tem is hereby authorized to execute and deliver, for and on behalf of the City, the Continuing Disclosure Certificate in substantially the form available for review in the Finance Department at the time of this meeting, but with such modifications thereof as are consistent with the terms and provisions of this Ordinance and which the Mayor or the Mayor Pro Tem shall approve, the execution of the Continuing Disclosure Certificate by the Mayor or the Mayor Pro Tem being conclusive evidence of the approval on behalf of the City of the terms and provisions thereof.

**Section 14. Community Center Fund; Creation of Funds and Accounts.**

(a) *Money in Community Center Fund.* Moneys deposited in the Community Center Fund as set forth in Section 15 below shall be appropriated and distributed in accordance with the Community Center Ballot Issue and Section 3.16.020 of the Municipal Code.

(b) *Community Center Accounts.* There is hereby created and established within the Community Center Fund the following funds and accounts, which funds and accounts shall be maintained as designated in this Ordinance, as follows:

- (i) the Bond Account;
- (ii) the Project Account; and
- (iii) the Reserve Account.

(c) *Escrow Accounts.* There is hereby created and established with the Escrow Agent, pursuant to the Escrow Agreement, the Escrow Accounts, to be maintained by the Escrow Agent in accordance with the terms of the Escrow Agreement.

**Section 15. Initial Credits of Bond Proceeds; Deposits to Community Center Fund.**

The proceeds of the Bonds shall be disbursed and credited as provided in the Sale Certificate. All revenues from the Sales and Use Tax shall continue to be deposited in the Community Center Fund in accordance with Section 3.16.020 of the Municipal Code. From such moneys, the City shall make credits to the accounts and sub-accounts in the Community Center Fund in the following order of priority:

FIRST, to the credit of the Interest Sub-Account, the amounts required by the section hereof entitled “Bond Account”, and to the credit of any other bond account hereafter established for the payment of the interest on Parity Lien Bonds issued in accordance with the Section 22 hereof, provided that separate bond accounts shall have claims to the Pledged Revenues equal to and on a parity with those of the other such accounts;

SECOND, to the credit of the Principal Sub-Account, the amounts required by the section hereof entitled “Bond Account”, and to the credit of any other bond account thereafter established for the payment of the principal on Parity Lien Bonds issued in accordance with the Section 22 hereof, provided that separate bond accounts shall have claims to the Pledged Revenues equal to and on a parity with those of the other such accounts;

THIRD, to the credit of the Reserve Account, the amounts required by the section hereof entitled “Reserve Account” and to the credit of any other account hereafter established as a reserve account for Parity Lien Bonds issued in accordance with the Section 22 hereof, provided that separate reserve accounts shall have claims to the Pledged Revenues equal to and on a parity with those of the other such accounts”;

FOURTH, to the credit of any other fund or account hereafter established for the payment of the principal of, premium if any, and interest on subordinate lien obligations as described in

paragraph (c) of the Section 22 hereof, including any sinking fund, reserve fund, or similar fund or account established therefor, the amounts required by the ordinance or other enactment authorizing issuance of said subordinate lien obligations; and

FIFTH, for any other purposes permitted under the Municipal Code for the Community Center Fund.

**Section 16. Establishment of Bond Account.** The City hereby establishes the Bond Account as a separate account within the Community Center Fund.

(a) Use of Moneys in Bond Account. Moneys deposited in the Bond Account shall be used solely for the purpose of paying the principal of, premium if any, and interest on the Bonds. The Principal Sub-Account shall be used to pay the principal of and premium, if any, on the Bonds and Parity Lien Bonds, and the Interest Sub-Account shall be used to pay the interest on the Bonds and Parity Lien Bonds.

(b) Deposits to Interest Sub-Account. On or before the last day of each month, commencing in the month next succeeding the date of issuance of the Bonds, the City shall credit to the Interest Sub-Account, from the Pledged Revenues and any interest income to be deposited in the Interest Sub-Account pursuant to the terms hereof, an amount equal to the Pro Rata Portion of the interest to come due on the Bonds on the next succeeding Interest Payment Date.

(c) Deposits to Principal Sub-Account. On or before the last day of each month, commencing in the month next succeeding the date of issuance of the Bonds, the City shall credit to the Principal Sub-Account, from the Pledged Revenues and any interest income to be deposited in the Principal Sub-Account pursuant to the terms hereof, an amount equal to the Pro Rata Portion of the principal coming due on the Bonds on the next succeeding Principal Payment Date

(d) Investments. Moneys deposited in the Bond Account may be invested or deposited in securities or obligations that are Permitted Investments. The investment of moneys deposited in the Bond Account shall, however, be subject to the covenants and provisions of the section hereof entitled "Covenants Concerning Compliance with the Code." Except to the extent otherwise required by such section, all interest income from the investment or reinvestment of moneys deposited in any sub-account of the Bond Account shall remain in and become part of such sub-account.

**Section 17. Project Account.** The City has established the Project Account as a separate account within the Community Center Fund. The City shall deposit in the Project Account, upon the issuance, sale and delivery of the Bonds, the proceeds of the sale of the Bonds except (a) the sum representing accrued interest, if any, with respect to the Bonds, which shall be applied as provided in Section 15 hereof, and (b) the sum required to be deposited in the Escrow Account from the proceeds of the Bonds. Moneys in the Project Account are to be used and paid out from time to time solely for the purpose of paying the costs associated with the Project, the costs incurred in connection with the issuance of the Bonds and, if necessary, to pay interest on the Bonds. All income derived from the investment and reinvestment of the moneys in the Project Account shall be deposited in the Project Account to be utilized for the purposes for which the Project Account is established.

## **Section 18. Reserve Account**

(a) *Use of Moneys in Reserve Account.* Moneys in the Reserve Account shall be used, if necessary, only to prevent a default in the payment of the principal of, premium if any, and interest on the Bonds when due. Moneys on deposit in the Reserve Account, proceeds of the liquidation of Permitted Investments on deposit in the Reserve Account or moneys available from a Reserve Account Contract shall be transferred to the Bond Account on any date on which a payment of principal of, premium, if any, or interest on the Bonds is due to the extent the amount on deposit in the Bond Account is insufficient to make such payment.

(b) *Funding and Maintenance of Reserve Account Requirement.* The Reserve Account Requirement shall be funded and maintained by any one of or any combination of (i) cash; (ii) Permitted Investments; and (iii) with the prior written consent of the Bond Insurer, if any, a Reserve Account Contract which provides for payments when and as required for purposes of the Reserve Account. The Reserve Account Contract must be issued by an obligor whose obligations such as the Reserve Account Contract are either (A) rated by a Rating Agency as investment grade, or (B) if a rating has been obtained on the Bonds, whose obligations are rated by each Rating Agency that then maintains a rating on the Bonds in a category ( or comparable classification) equal to or higher than the category, if any, in which the Bonds are rated, or will not impact the rating on the Bonds; provided however, if the Reserve Account Contract is issued by the Bond Insurer, then no rating standard shall apply to the obligor for such Reserve Account Contract.

(c) *Valuation of Deposits.* Cash shall satisfy the Reserve Account Requirement by the amount of cash on deposit. Permitted Investments shall satisfy the Reserve Account Requirement by the value of such investments. The value of each Permitted Investment on deposit in the Reserve Account shall be its purchase price from the date of purchase and thereafter its fair market value determined as of each calculation date required pursuant to paragraph (d) of this Section. A Reserve Account Contract shall satisfy the Reserve Account Requirement by the amount payable to the City pursuant to such contract.

(d) *Calculation of Reserve Account Requirement and Transfers Resulting from Calculation.* The Reserve Account Requirement shall be calculated not less than annually. If at any time the calculated amount of the Reserve Account is less than the Reserve Account Requirement or transfers are made from the Reserve Account as provided in paragraph (a) hereof, then the City shall deposit to the Reserve Account from the Pledged Revenues, amounts sufficient to bring the amount deposited in the Reserve Account to the Reserve Account Requirement. If at any time the calculated amount of the Reserve Account is more than the Reserve Account Requirement, then the City shall transfer to the Bond Account such amount which is in excess of the Reserve Account Requirement. Such deposits shall be made as soon as possible after such use or calculation, but in accordance with and subject to the limitations of the section hereof entitled "Deposit of Pledged Revenues."

(e) *Transfer of Interest Income to Bond Account.* The investment of moneys deposited in the Reserve Account shall be subject to the covenants and provisions of the



section hereof entitled “Covenants Concerning Compliance with the Code.” Except to the extent otherwise required by such section, interest income from the investment or reinvestment of moneys deposited in the Reserve Account shall be transferred to the Bond Account.

(f) *Moral Obligation to Replenish Reserve Account.* If, at any time, the Reserve Account is not funded at the Reserve Account Requirement on a date which is 90 days prior to an Interest Payment Date or a Principal Payment Date, the City Manager shall prepare and submit to the City Council a request for an appropriation of a sufficient amount to replenish the Reserve Account to the Reserve Account Requirement. It is the present intention and expectation of the City Council to appropriate such funds as requested, within the limits of available funds and revenues, but this declaration of intent shall not be binding upon the City Council or any future City Council in any future fiscal year. The City Council may determine in its sole discretion, but shall never be required, to make the appropriations so requested. All sums appropriated by the City Council for such purpose shall be considered a loan of legally available moneys of the City to the Community Center Fund, may draw interest until repaid at rate determined by the City Council at the time the appropriation is made, and shall be deposited in the Reserve Account. The repayment obligation for any loan shall be subordinate to the payment of the Bonds, and shall be made in the order of priority established in the section hereof entitled “Deposit of Pledged Revenues”. While the City Council has agreed to consider replenishing the Reserve Account pursuant to the terms of this paragraph to provide additional assurance that the Reserve Account will annually be funded at the Reserve Account Requirement, the City Council’s decision not to so fund the Reserve Account shall not constitute an Event of Default hereunder. Nothing provided in this paragraph shall create or constitute a debt, liability or multiple fiscal year financial obligation of the City.

#### **Section 19. Reserved**

**Section 20. Establishment of Escrow Accounts with the Escrow Agent.** The City shall establish with the Escrow Agent, pursuant to the Escrow Agreement, the Escrow Accounts, to be used solely for the payment of the principal of, premium, if any, and interest on the Refunded Bonds in accordance with the terms and provisions of the Escrow Agreement. The City shall deposit with the Escrow Agent (i) in the Escrow Account for the benefit of the Series 2009A Bonds, upon the issuance, sale and delivery of the Bonds the amount set forth in the Escrow Agreement from the proceeds of the Bonds and Series 2009A Bond funds already on deposit with the Escrow Agent (in its capacity as Paying Agent for the Refunded Bonds), and any amount determined by the Finance Director, which amount is hereby appropriated from the Community Center Fund of the City, and (ii) in the Escrow Account for the benefit of the Series 2009B Bonds, the amount set forth in the Escrow Agreement from the proceeds of the Bonds and Series 2009B Bond funds already on deposit with the Escrow Agent (in its capacity as Paying Agent for the Refunded Bonds), and any amount determined by the Finance Director, which amount is hereby appropriated from the Community Center Fund of the City. Such amounts shall be sufficient to pay the principal of, premium and interest on the Refunded Bonds upon maturity or prior redemption, as set forth in the Escrow Agreement.

If, for any reason, at any time, the funds on hand in the Escrow Accounts shall be insufficient to meet such payments, as the same shall be about to become due and payable, the City shall forthwith deposit in the Escrow Accounts such additional funds as may be required fully to meet the amount about to become due and payable. The Escrow Agent is authorized from time to time to redeem at maturity all or a portion of the federal securities in the Escrow Accounts, in sufficient amounts so that the proceeds therefrom and the interest thereon, as the same accrues, will be sufficient to pay the principal of, premium, if any, and interest on the Refunded Bonds as hereinabove set forth.

**Section 21. Pledge and Lien for Payment of Bonds.**

(a) *Pledge of Revenues.* The City hereby pledges for the payment of the principal of, premium, if any, and interest on the Bonds and Parity Lien Bonds at any time Outstanding, and grants a first lien (but not necessarily an exclusive first lien) for such purpose on (i) the Sales and Use Tax and (ii) all moneys on deposit from time-to-time in the Community Center Fund.

(b) *Superior Liens Prohibited.* The City shall not pledge or create any other lien on the revenues and moneys pledged pursuant to paragraph (a) of this Section that is superior to the pledge thereof or lien thereon pursuant to such paragraphs.

(c) *Subordinate Liens Permitted.* Nothing herein shall prohibit the City from issuing subordinate lien obligations and pledging or creating a lien on the revenues and moneys pledged and the lien created pursuant to paragraph (a) of this Section that is subordinate to the pledge thereof or lien thereon pursuant to such paragraph, provided that no Event of Default shall have occurred and be continuing.

(d) *No Prohibition on Additional Security.* Nothing herein shall prohibit the City from depositing any legally available revenues from the Sales and Use Tax that are not Pledged Revenues or any other moneys into any account of the Community Center Fund pledged to the payment of the Bonds and Parity Lien Bonds (and thereby subjecting the moneys so deposited to the pledge made and lien granted in paragraph (a) of this Section).

(e) *Bonds are Special, Limited Obligations of the City.* The Bonds are special, limited obligations of the City payable solely from the Community Center Fund and secured solely by the sources provided in this Ordinance. The Bonds shall not constitute a debt of the City within the meaning of the Charter or any constitutional limitation.

**Section 22. Conditions to Issuance of Parity Lien Bonds.** The City shall not issue Parity Lien Bonds unless all of the following conditions are satisfied:

(a) *Historical Sales and Use Tax Test; Special Test for Refundings.* In the event that the Bonds do not utilize all of the outstanding authorization from the Election, for whatever reason, the City shall be permitted to issue the remaining unissued principal amount authorized by the Community Center Ballot Issue (in an amount up to \$2,335,000) upon compliance with the following: the City must obtain a written certification from a Certified Public Accountant that either: (i) the Sales and Use Tax for

any 24 consecutive months in the 36 months immediately preceding the month in which such certification is delivered (referred to in this paragraph as the “test period”) have been equal to at least 125% of the sum of the Combined Maximum Principal and Interest Requirements due or to become due on the Bonds, and the proposed Parity Lien Bonds during each calendar year following the date of issuance of the proposed Parity Lien Bonds; or (ii) the proceeds of the proposed Parity Lien Bonds will be used to refund the Bonds and the aggregate principal of and interest due on the proposed Parity Lien Bonds is not greater than the aggregate principal of and interest due on the bonds that will be refunded. For all other proposed Parity Lien Bonds, the City must obtain voter approval for the issuance of such proposed Parity Lien Bonds, and obtain a written certification from a Certified Public Accountant that either: (i) the Sales and Use Tax for any 24 consecutive months in the 36 months immediately preceding the month in which such certification is delivered (referred to in this paragraph as the “test period”) have been equal to at least 150% of the sum of the Combined Maximum Principal and Interest Requirements due or to become due on the Bonds, any outstanding Parity Lien Bonds, and the proposed Parity Lien Bonds during each calendar year following the date of issuance of the proposed Parity Lien Bonds; or (ii) the proceeds of the proposed Parity Lien Bonds will be used to refund the Bonds or outstanding Parity Lien Bonds and the aggregate principal of and interest due on the proposed Parity Lien Bonds is not greater than the aggregate principal of and interest due on the bonds that will be refunded.

(b) *Account Deposits.* The ordinance, indenture or other document providing for the issuance of the Parity Lien Bonds must provide for a reserve account, which is established in the amount calculated in a manner and on the same basis as the Reserve Account Requirement, and a bond account for the Parity Lien Bonds; such accounts must be established and maintained on substantially the same terms and contain substantially the same provisions as set forth in this Ordinance for the Reserve Account and the Bond Account, respectively.

(c) *No Event of Default.* The Mayor certifies in writing that no Event of Default has occurred and is continuing.

**Section 23. Additional Covenants.** In addition to the other covenants of the City contained herein, the City hereby further covenants for the benefit of Owners of the Bonds that:

(a) *Maintenance of Sales and Use Tax.* The City will not reduce the percentage of the Sales and Use Tax deposited to the Community Center Fund pursuant to the Community Center Ballot Issue, will not reduce the rate of the Sales and Use Tax, and will not alter, exempt or modify the transactions, properties or items subject to the Sales and Use Tax in any manner that the City expects will materially reduce the amounts available for deposit into the Community Center Fund. Notwithstanding the foregoing, nothing in this Ordinance shall prevent the City from adopting an ordinance or amending the Code to permit sales tax credits to retailers or vendors in connection with the collection by such retailers or vendors of a public improvement fee or similar fee or charge imposed by a covenant on the land on which the retailer or vendor conducts business in an amount equal to or greater than the amount of such sales to fund public

improvements benefiting new retail development, the construction of which shall commence after the date of this Ordinance.

(b) *Efficient Collection and Enforcement of the Sales and Use Tax.* The City will manage the collection and enforcement of the Sales and Use Tax in the most efficient and economical manner practicable.

(c) *Inspection of Records.* The City will keep or cause to be kept such books and records showing the proceeds of the Sales and Use Tax, in which complete entries shall be made in accordance with generally accepted accounting principles, as applicable to governmental entities, and the Owner of any Bond shall have the right at all reasonable times to inspect all non-confidential records, accounts, actions and data of the City relating to the Bonds, the Sales and Use Tax and the Community Center Fund.

(d) *Annual Audit.* The City will cause an annual audit to be made of the books relating to the Sales and Use Tax each year by a certified public or registered accountant and shall furnish a copy thereof to the Underwriter at its request and to any Owner who so requests and agrees to pay the cost of reproduction and mailing. The annual audit of the City's general purpose financial statements shall be deemed to satisfy this covenant.

**Section 24. Covenants Concerning Compliance with the Code.** The City covenants that it shall not use or permit the use of any proceeds of the Bonds (and amounts treated as proceeds of the Bonds for federal income tax purposes, including moneys reasonably expected to be used to pay the principal of, premium, if any, or interest on the Bonds) or any other funds of the City from whatever source derived, directly or indirectly, to acquire any securities or obligations, and shall not take or permit to be taken any other action or actions, which would cause any of the Bonds to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), or would otherwise cause interest on the Bonds not to be excludable from gross income for purposes of federal income taxation. The City covenants that it shall at all times do and perform all acts and things permitted by law and which are necessary or desirable in order to assure that interest paid by the City on the Bonds shall, for purposes of federal income taxation, be excludable from gross income under the Code or any other valid provision of law.

In particular, but without limitation, the City further represents, warrants and covenants to comply with the following restrictions of the Code, unless the City receives an opinion of nationally recognized municipal bond counsel substantially to the effect that noncompliance with such requirements will not adversely affect the exclusion from gross income, for purposes of federal income taxation, of interest on the Bonds:

(a) Facilities originally financed or refinanced with the proceeds of the Refunded Bonds, and gross proceeds of the Bonds, shall not be used in a manner which will cause the Bonds to be considered "private activity bonds" within the meaning of the Code.

(b) The Bonds are not and shall not become directly or indirectly "federally guaranteed." A Bond will be considered to be "federally guaranteed" if the payment of principal or interest with respect to such Bond is guaranteed (in whole or in part) by the

United States of America (or any agency or instrumentality thereof) or if 5% or more of the proceeds of the Bonds are used in making loans the payment of principal or interest with respect to which is guaranteed (in whole or in part) by the United States of America (or any agency or instrumentality thereof) or if invested (directly or indirectly) in federally insured deposits or accounts.

(c) The City shall timely file Internal Revenue Form 8038-G pursuant to Section 149(e) of the Code with respect to the issuance of the Bonds.

(d) The City shall not sell any other obligations within 15 days of the sale of the Bonds pursuant to the same plan of financing with the Bonds and payable from the same source of funds or having substantially the same claim to the same source of funds used to pay the Bonds.

(e) The City will comply with the Tax Certificate delivered by it on the date of issuance of the Bonds.

**Section 25. Official Statement.** The designation of the Preliminary Official Statement by the City Manager or the Finance Director as a “deemed final Official Statement” for purposes of Rule 15c2-12 of the Securities and Exchange Commission is hereby authorized and confirmed. A final Official Statement, in substantially the form of the Preliminary Official Statement on file with the City Clerk, is in all respects approved and authorized. The Mayor is hereby authorized and directed, for and on behalf of the City, to execute and deliver the final Official Statement in substantially the form and with substantially the same content as the Preliminary Official Statement on file with the City Clerk, with such changes as may be approved by the City Manager or the Finance Director. The distribution of the Preliminary Official Statement and the final Official Statement to all interested persons in connection with the sale of the Certificates is hereby ratified, approved and authorized.

**Section 26. Further Action.** The Mayor and all other members of the City Council and the City Manager, the Finance Director and all other officers and employees of the City are hereby authorized and directed to take all other action necessary or appropriate to effectuate the provisions of this Ordinance, and to comply with the requirements of law, including, without limiting the generality of the foregoing:

(a) The printing of the Bonds authorized herein;

(b) The execution of a Tax Compliance Certificate in connection with the issuance of the Bonds;

(c) The execution and delivery of other agreements, documents and certificates in connection with the purchase of securities and the investment of the proceeds of the Bonds, including, but not limited to, one or more guaranteed investment contracts, whether uncollateralized or collateralized with securities, or repurchase agreements for the purchase and repurchase of securities, that mature within or more than five years from the date of their purchase by the City;

(d) The execution of (i) such other certificates and documents as may reasonably be required by the Underwriter, or by bond counsel, in connection with the issuance of the Bonds, and (ii) a commitment from an insurance company offering to guaranty the payment of the principal of and interest on the Bonds when due; and

(e) The making of various statements, recitals, certifications and warranties provided in the form of the Bonds set forth in this Ordinance.

**Section 27. Defeasance.** When all principal of, premium, if any, and interest in connection with the Bonds have been duly paid, the pledge and lien and all obligations hereunder shall thereby be discharged, and the Bonds shall no longer be deemed to be outstanding within the meaning of this Ordinance. Payment of any Bond shall be deemed made when the City has placed in escrow and in trust with a commercial bank located within or without the State of Colorado, and exercising trust powers, cash or Defeasance Securities (as defined below) that are, at the time of investment, lawful investments for moneys of the City under the laws of the State of Colorado, in an amount sufficient (including the known minimum yield from such Defeasance Securities in which such amount may be initially invested) to meet all requirements of principal of, premium, if any, and interest on such Bond, as the same become due to the final maturity of such Bond or upon any prior redemption date as of which the City shall have exercised or shall have obligated itself to exercise its prior redemption option by a call of such Bond for payment. The Defeasance Securities shall become due at or prior to the respective times on which the proceeds thereof shall be needed in accordance with a schedule established and agreed upon between the City and such bank at the time of the creation of the escrow, or the Defeasance Securities shall be subject to redemption at the option of the holder thereof to assure such availability as so needed to meet such schedule. "Defeasance Securities" means direct noncallable obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligation or guarantee the full faith and credit of the United States of America has been pledged, Refcorp interest strips (only the interest component of Refcorp strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form are acceptable), CATS, TIGRS, STRPS, or defeased municipal bonds rated "AAA" by Standard & Poor's Ratings Services or "Aaa" by Moody's Investors Service (or any combination thereof).

**Section 28. Events of Default.** Each of the following events constitutes an Event of Default:

(a) *Nonpayment of Principal, Premium or Interest.* Failure to make any payment of principal of, premium, if any, or interest on the Bonds when due hereunder;

(b) *Breach or Nonperformance of Duties.* Breach by the City of any material covenant set forth herein or failure by the City to perform any material duty imposed on it hereunder and continuation of such breach or failure for a period of 60 days after receipt by the City Attorney of the City of written notice thereof from the Paying Agent or from the Owners of at least 10% in principal amount of the Outstanding Bonds, provided that such 60 day period shall be extended so long as the City has commenced and continues a good faith effort to remedy such breach or failure; or

(c) *Appointment of Receiver.* An order or decree is entered by a court of competent jurisdiction appointing a receiver for all or any portion of the revenues and moneys pledged for the payment of the Bonds pursuant hereto is entered with the consent or acquiescence of the City or is entered without the consent or acquiescence of the City but is not vacated, discharged or stayed within 30 days after it is entered.

**Section 29. Remedies for Events of Default.**

(a) *Remedies.* Upon the occurrence and continuance of any Event of Default, the Owners of not less than 25% in principal amount of the Bonds then Outstanding, including, without limitation, a trustee or trustees therefor, may proceed against the City to protect and to enforce the rights of any Owner of Bonds under this Ordinance by mandamus, injunction or by other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction: (i) for the payment of interest on any installment of principal of any Bond that was not paid when due at the interest rate borne by such bond, (ii) for the appointment of a receiver or an operating trustee, (iii) for the specific performance of any covenant contained herein, (iv) to enjoin any act that may be unlawful or in violation of any right of any Owner of any Bond, (v) to require the City to act as if it were the trustee of an express trust, (vi) for any other proper legal or equitable remedy as such Owner may deem most effectual to protect their rights, or (vii) any combination of such remedies or as otherwise may be authorized by any statute or other provision of law; provided, however, that acceleration of any amount not yet due on the Bonds according to their terms shall not be an available remedy. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of Bonds then Outstanding. Any receiver or operating trustee appointed in any proceedings to protect the rights of Owners of Bonds hereunder may collect, receive and apply all revenues and moneys pledged for the payment of the Bonds pursuant hereto arising after the appointment of such receiver or operating trustee in the same manner as the City itself might do. Anything in this Ordinance to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default, the Bond Insurer shall, so long as it is not in default under the terms of the Bond Insurance Policy, be entitled to control and direct the enforcement of all rights and remedies granted to the Owners under this Ordinance and pursuant to State law.

(b) *Failure to Pursue Remedies Not a Release; Rights Cumulative.* The failure of any Owner of any Bond then Outstanding to proceed in any manner herein provided shall not relieve the City of any liability for failure to perform or carry out its duties hereunder. Each right or privilege of any such Owner (or trustee therefor) is in addition and is cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any Owner shall not be deemed a waiver of any other right or privilege thereof. Each Owner of any Bond shall be entitled to all of the privileges, rights and remedies provided or permitted in this Ordinance and as otherwise provided or permitted by law or in equity.

(c) *Obligations of City and Paying Agent in Connection With Events of Default.* Upon the occurrence and continuation of any of Events of Default: (i) the City shall take all proper acts to protect and preserve the security for the payment of the Bonds

and to insure the payment of debt service on the Bonds promptly when due; (ii) the City and the Paying Agent shall give the Owners of the Bonds then Outstanding notice by electronic means or first class mail of (A) any default in the payment of, premium, if any, or interest on the Bonds immediately after discovery thereof, and (B) any other Event of Default within 30 days after discovery thereof. During the continuation of any Event of Default, except to the extent it may be unlawful to do so, all revenues and moneys pledged for the payment of the Bonds pursuant hereto shall be held for and applied to the debt service on all Bonds on an equitable and prorated basis. If the City fails or refuses to proceed as provided in this paragraph, the Owners of not less than 25% in principal amount of the Bonds then Outstanding, after demand in writing, may proceed to protect and to enforce the rights of the Owners of the Bonds as provided in this paragraph; and to that end any such rights of Owners of Bonds then Outstanding shall be subrogated to all rights of the City under any agreement or contract involving the revenues and moneys pledged for the payment of the Bonds pursuant hereto that was entered into prior to the effective date of this Ordinance or thereafter while any of the Bonds are Outstanding. Nothing herein requires the City to proceed as provided in this paragraph if it determines in good faith and without any abuse of its discretion that such action is likely to affect materially and prejudicially the Owners of the Bonds then Outstanding.

### **Section 30. Amendment of Ordinance.**

(a) *Amendments Permitted Without Notice to or Consent of Owners.* The City may, with prior written notice to the Bond Insurer, if any, and without the consent of or notice to the Owners of the Bonds, adopt one or more ordinances amending or supplementing this Ordinance (which ordinances shall thereafter become a part hereof) for any one or more or all of the following purposes: (i) to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision of this Ordinance; (ii) to subject to this Ordinance additional revenues, properties or collateral or provide for a pledge of City sales taxes as permitted by subsection (a) of the section hereof entitled “Additional General Covenants”; (iii) to facilitate the designation of a substitute securities depository or to terminate the book-entry registration system for the Bonds in accordance with the section hereof entitled “Bond Details”; (iv) to facilitate the issuance of Parity Lien Bonds permitted to be issued pursuant to the section hereof entitled “Conditions to Issuance of Parity Lien Bonds”; (v) to facilitate the funding of the Reserve Account or the substitution of one source of funding of the Reserve Account for another permitted source in accordance with the section hereof entitled “Reserve Account”; (vi) to maintain the then existing or to secure a higher rating of the Bonds by any nationally recognized securities rating agency; or (vii) to make any other change that does not materially adversely affect the Owners of the Bonds.

(b) *Amendments Requiring Notice to and Consent of Owners.* Except for amendments permitted by paragraph (a) of this Section, this Ordinance may only be amended (i) by an ordinance of the City amending or supplementing this Ordinance (which, after the consents required therefor, shall become a part hereof), and (ii) with the written consent of the Bond Insurer, if any, and the Owners of at least 66-2/3% in aggregate principal amount of the Bonds then Outstanding; provided that any amendment that makes any of the following changes with respect to any Bond shall not be effective



without the written consent of the Owner of such bond: (A) a change in the maturity of such bond; (B) a reduction of the interest rate on such bond; (C) a change in the terms of redemption of such bond; (D) a delay in the payment of principal of, premium, if any, or interest on such bond; (E) the creation of any pledge of or lien upon any revenues or moneys pledged for the payment of such bond hereunder that is superior to the pledge and lien for the payment of such bond hereunder; (F) a relaxation of the conditions to the issuance of Parity Lien Bonds or to the creation of any pledge of or lien upon any revenues or moneys pledged for the payment of such bond hereunder that is equal to or on a parity with the pledge and lien for the payment of such bond hereunder; (G) a reduction of the principal amount or percentage of Bonds whose consent is required for an amendment to this Ordinance; or (H) the establishment of a priority or preference for the payment of any amount due with respect to any other Bond over such bond.

(c) *Procedure for Notifying and Obtaining Consent of Owners.* Whenever the consent of an Owner or Owners of Bonds is required under paragraph (b) of this Section, the City shall by electronic means or by mail send a notice to such Owner or Owners at their addresses as set forth in the registration books maintained by the Paying Agent and to the Underwriter, which notice shall briefly describe the proposed amendment and state that a copy of the amendment is on file in the office of the City Clerk for inspection. Any consent of any Owner of any Bond obtained with respect to an amendment shall be in writing and shall be final and not subject to withdrawal, rescission or modification for a period of 60 days after it is delivered to the City unless another time period is stated for such purpose in the notice mailed pursuant to this paragraph.

(d) *Consent of the Bond Insurer in Addition to Consent of Owners.* The Bond Insurer's consent shall be required in addition to the consent of Owners, when required, for the following purposes: (i) execution and delivery of any supplemental Ordinance or any amendment, supplement or change to or modification of the Ordinance; (ii) removal of the Paying Agent and selection and appointment of a successor; and (iii) initiation or approval of any action not described in (i) or (ii) above which requires the consent of Owners.

**Section 31. Appointment and Duties of Paying Agent.** The Paying Agent is hereby appointed as paying agent, registrar and authenticating agent for the Bonds unless and until the City removes it as such and appoints a successor Paying Agent, in which event such successor shall automatically succeed to the duties of the Paying Agent hereunder and its predecessor shall immediately turn over all its records regarding the Bonds to such successor. The Paying Agent, by accepting its duties as such, agrees to perform all duties and to take all actions assigned to it hereunder in accordance with the terms hereof. The appointment and acceptance of the duties of Paying Agent hereunder shall be affected through the execution of an agreement by the Paying Agent.

**Section 32. Ratification of Prior Actions.** All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or by the officers and employees of the City directed toward the issuance of the Bonds for the purposes herein set forth are hereby ratified, approved and confirmed.

**Section 33. Authorization of Bond Insurance and Reserve Account Contract.** The Underwriter may request, on behalf of the City, the submittal of bids to issue the Bond Insurance Policy and Reserve Account Contract. In the event that the Sale Delegate determines, based in part upon information provided by the Underwriter, that the premium bid for issuance of the Bond Insurance Policy is less than the interest cost savings to be realized by the City as a result of the issuance of the Bond Insurance Policy, the City Council hereby delegates to the Sale Delegate the authority to execute the Commitment with the Bond Insurer designated by the Sale Delegate, provided that the Bond Insurer shall be listed in The Bond Buyer's Municipal Marketplace Directory-Spring 2019, published by Thomson Media. The officers of the City are also hereby authorized and directed to take all actions necessary to cause the Bond Insurer to issue the Bond Insurance Policy in accordance with the Commitment, including without limitation, payment of the premium due in connection therewith and entering into any authorizing agreement. The execution of the Commitment by the Sale Delegate or appropriate officer of the City is hereby ratified and approved.

**Section 34. Election to Apply Provisions of Supplemental Public Securities Act.** The City elects to apply all of the provisions of the Supplemental Act to the issuance of the Bonds.

**Section 35. Repealer.** All acts, orders, ordinances or resolutions, or parts thereof, by the City that are inconsistent or in conflict with this Ordinance, or any part thereof, are hereby repealed to the extent of such inconsistency or conflict, except that this repealer shall not be construed so as to revive any act, order, ordinance or resolution, or part thereof, heretofore repealed.

**Section 36. Ordinance to Constitute a Contract.** This Ordinance is, and shall constitute, a legislative measure of the City authorizing the issuance and sale of the Bonds, and after the Bonds hereby authorized are issued, sold and are outstanding, this Ordinance shall constitute a contract between the City and the registered owners of the Bonds, and shall be and remain irrevocable until the Bonds, any premium, and the interest accruing thereon shall have been fully paid, satisfied and discharged. This Ordinance may be amended with the consent of the insurance company, if any, that guarantees the payment of the principal of and interest on the Bonds when due (the "Insurer") and, if such amendment does not materially adversely affect the interests of the registered owners of the Bonds, without the consent of or notice to the registered owners of the Bonds; provided, however, that if the municipal bond insurance policy (the "Policy") issued by the Insurer and applicable to the Bonds is no longer in full force and effect or if the Insurer is in default under the Policy, this Ordinance may be amended without the consent of the Insurer and, if such amendment does not materially adversely affect the interests of the registered owners of the Bonds, without the consent of or notice to the registered owners of the Bonds.

**Section 37. Captions.** The captions set forth as part of this Ordinance are for convenience of reference only, and shall not be deemed or interpreted as defining, limiting or describing the scope or intent of any provision or section of this Ordinance.

**Section 38. Severability.** If any section, paragraph, sentence, clause or provision of this Ordinance is judicially adjudged invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining sections, paragraphs, sentences, clauses or provisions hereof, the intention being that the various sections, paragraphs, sentences, clauses or provisions hereof are

severable. The City Council hereby declares that it would have passed this Ordinance and each of the sections, paragraphs, sentences, clauses or provisions hereof irrespective of the fact that any section, paragraph, sentence, clause or provision would be declared invalid or unenforceable.

**Section 39. Fulfillment of Requirements.** The City Council hereby finds and determines that any provisions or limitations contained in the Charter with respect to the Bonds, and in any other applicable law imposed upon the issuance of bonds by the City or relating to the issuance of the Bonds, have been met.

**Section 40. Effective Date.** This Ordinance shall become effective thirty days following final passage. The City Clerk is hereby directed to provide for publication of this Ordinance in accordance with the requirements of the Charter prior to said effective date.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED  
THE 16<sup>th</sup> DAY OF APRIL, 2019.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED  
THE 7<sup>TH</sup> DAY OF MAY, 2019.

[SEAL]

CITY OF FRUITA, COLORADO

By \_\_\_\_\_  
Joel Kincaid, Mayor

ATTEST:

By \_\_\_\_\_  
Margaret Sell, City Clerk

APPROVED AS TO FORM:

By \_\_\_\_\_  
Paul F. Wisor, City Attorney

STATE OF COLORADO )  
 ) SS.  
 CITY OF FRUITA )

I, Margaret Sell, the City Clerk of the City of Fruita, Colorado (the “City”), do hereby certify that:

1. The foregoing pages are a true and correct copy of Ordinance No. 2019-13 (the “Ordinance”).
2. Copies of the Ordinance were made available to the City Council and to the public.
3. The Ordinance was proposed on at a regular meeting of the City Council on April 16, 2019 and a public hearing was requested and set for May 7, 2019.
4. Following the request for public hearing, the Ordinance was duly posted by title at City Hall, 325 Aspen Ave., Fruita, Colorado 81521, in the City, on April \_\_, 2019 and was published by title in the Daily Sentinel, a newspaper of general circulation published in the City in its issue of April \_\_, 2019, as evidenced by the certificate of the publisher attached hereto as Exhibit A. The posting and publication contained a summary of the subject matter of the Ordinance and contained a notice that copies of the Ordinance are available at the office of the City Clerk. Such posting and publication contained a notice of public hearing on the Ordinance, specifying the day, hour, and place of the public hearing.
5. The Ordinance was duly introduced, read by title, moved and seconded, and finally adopted and approved by the City Council at a regular meeting of the City Council at City Hall, 325 Aspen Ave., Fruita, Colorado 81521 the regular meeting place thereof, on Tuesday, the 7<sup>th</sup> day of May, 2019, by an affirmative vote of a majority of the membership of the entire City Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Lori Buck, Mayor Pro-Tem				
Kyle Harvey				
Dave Karisny				
Ken Kreie				
Karen Leonhart				
Amanda Ewing				

6. Prior to taking final action on the Ordinance, the City Council held a public hearing on the Ordinance.

7. The members of the City Council were present at such meetings and voted on the passage of such Ordinance as set forth above.

8. A true copy of the Ordinance has been authenticated by the Mayor of the Council and by myself as City Clerk of the City, sealed with the seal of the City, and numbered and recorded in the official records of the City.

9. Notices of the meetings of April 16, 2019 and May 7, 2019, in the form attached hereto as Exhibit B and Exhibit C, respectively, were posted at City Hall not less than twenty-four (24) hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of the City affixed this \_\_\_\_\_, 2019.

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City Clerk

(SEAL)