

**ORDINANCE NO. 2009-05**

AN ORDINANCE OF THE CITY OF FRUITA, COLORADO, AUTHORIZING THE ISSUANCE OF THE CITY'S SALES AND USE TAX REVENUE BONDS, SERIES 2009, IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$15,000,000, FOR THE PURPOSES SET FORTH IN THE BALLOT ISSUE AUTHORIZING THE BONDS; PRESCRIBING THE FORM OF THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS FROM A PLEDGE OF CERTAIN SALES AND USE TAX REVENUES AND THE MONEYS ON DEPOSIT IN THE COMMUNITY CENTER FUND; AND PROVIDING OTHER DETAILS AND APPROVING OTHER DOCUMENTS IN CONNECTION WITH THE BONDS.

WHEREAS, the City of Fruita, Colorado, is a municipal corporation 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 (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Section 1 of this Ordinance); and

WHEREAS, Article X, Section 20 of the Colorado Constitution provides that voter approval in advance is required for any new tax, extension of an expiring tax or the creation of any direct or indirect debt or other multiple-fiscal year financial obligation whatsoever; and

WHEREAS, pursuant to an election held on November 4, 2008, the electors of the City voted in favor of the following ballot issue (the "Community Center Ballot Issue"):

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?

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 to implement to provisions of the Community Center Ballot Issue; 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 tax or use tax; and

WHEREAS, pursuant to section 3.16.020 of the Municipal Code, there was established the "Community Center Fund" and all funds received, net of the costs of collection, from 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 earnings 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 January 1, 2009, is to 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 pursuant to the Ballot Issue, including any refundings or refinancings thereof, are paid in full, provided however, in no event is such reduction to occur later than January 1, 2039; and.

WHEREAS, the City Council has heretofore determined and does hereby determine that it is necessary to provide for the improvements authorized in the Community Center Ballot Issue and that it is in the best interests of the City, and the residents thereof, to issue the City of Fruita, Colorado, Sales and Use Tax Revenue Bonds, Series 2009 for the purpose of funding the Project; and

WHEREAS, the City Council has been presented with a proposal, in the form of a draft bond purchase agreement, to purchase the Bonds from George K. Baum & Company upon the terms and conditions set forth in said agreement and, after consideration, has determined that the sale of the Bonds to George K. Baum & Company, subject to the delegated authority and Bond parameters set forth in the section hereof entitled "Delegation and Parameters", is in the best advantage of the City and the residents thereof; and

WHEREAS, none of the members of the City Council have any potential conflicting interests in connection with the authorization, issuance, or sale of the Bonds, or the use of the proceeds thereof; and

WHEREAS, there has been presented to the City, and made available to the members of the City Council, forms of the Preliminary Official Statement, the Bond Purchase Agreement and the Paying Agent Agreement (all as defined hereafter); and

WHEREAS, the City Council desires to authorize the sale and issuance of the Bonds and the execution of the foregoing documents; therefore

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

**Section 1. Definitions.** The following terms shall have the following meanings as used in this Ordinance:

*"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 "Community Center Bond Account" created in the section hereof entitled "Community Center Fund; Establishment of Accounts."

*"Bond Counsel"* means (a) as of the date of issuance of the Bonds, Kutak Rock LLP, and (b) as of any other date, Kutak Rock LLP 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 Bonds, Series 2009, 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 DTC 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 Undertaking*” means the Continuing Disclosure Undertaking 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.

“*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 June 1 and December 1, commencing December 1, 2009, or such other date or dates as established in the Sale Certificate.

“*Interest Sub-Account*” means 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 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 December 1, or such other date or dates of each year as established in the Sale Certificate.

*“Principal Sub-Account”* means 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 “2009 Project Account” created in the section hereof entitled “Community Center Fund; Establishment of 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.

*“Reserve Account”* means a special account of the City designated as the “2009 Reserve Account” created in the section hereof entitled “Community Center Fund; Establishment of 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.

“*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, in the absence of the City Manager, 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 the Municipal Code; provided further, the term “Sales and Use Tax” does not include any 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.

“*Underwriter*” means George K. Baum & Company, of Denver, Colorado, the original purchaser of the Bonds.

**Section 2. Authorization and Purpose of the Bonds.** Pursuant to and in accordance with the Community Center Ballot Issue, the City hereby authorizes, approves and orders that there shall be issued the “City of Fruita, Colorado, Sales and Use Tax Revenue Bonds, Series 2009” in the aggregate principal amount not to exceed \$15,000,000 for the purpose of paying Project Costs.

**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 hereof entitled "Delegation and Parameters."

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

(a) **Delegation.** 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 \$15,000,000; (iii) the final maturity of the Bonds shall be no later than the date that is 30 years after the date of issuance of the Bonds; and (iv) the maximum net effective interest rate on the Bonds as sold to the Purchaser shall not exceed 7.0%.

#### **Section 5. Redemption of Bonds Prior to Maturity.**

(a) **Optional Redemption.** The Bonds shall be subject to redemption at the option of the City, in whole or in part, and if in part in such order of maturities as the City shall determine and by lot within a maturity on such dates as set forth in the Sale Certificate.

(b) **Mandatory Sinking Fund Redemption.** All or any principal amount of the Bonds may be subject to mandatory sinking fund redemption by lot on the Principal Payment Date of the years and in the principal amounts specified in the Sale Certificate, at a redemption price equal to the principal amount thereof (with no redemption premium), plus accrued interest to the redemption date.

At its option, to be exercised on or before the forty fifth day next preceding each sinking fund redemption date, the City may (i) deliver to the Paying Agent for cancellation any Bonds with the same maturity date as the Bonds subject to such sinking fund redemption; and (ii) receive a credit in respect of its sinking fund redemption obligation for any Bonds with the same maturity date as the Bonds subject to such

sinking fund redemption which prior to such date have been redeemed (otherwise than through the operation of the sinking fund) and cancelled by the Paying Agent and not theretofore applied as a credit against any sinking fund redemption obligation. Each Bond so delivered or previously redeemed shall be credited by the Paying Agent at the principal amount thereof to the obligation of the City on such sinking fund redemption date, and the principal amount of Bonds to be redeemed by operation of such sinking fund on such date shall be accordingly reduced.

(c) **Redemption Procedures.** Notice of any redemption of Bonds shall be given by the Paying Agent in the name of the City by sending a copy of such notice by first class, postage prepaid mail, not less than 30 days prior to the redemption date, to the Owner of each Bond being redeemed. Such notice shall specify the number or numbers of the Bonds so to be redeemed (if redemption shall be in part) and the redemption date. If any Bond shall have been duly called for redemption and if, on or before the redemption date, there shall have been deposited with the Paying Agent in accordance with this Ordinance funds sufficient to pay the redemption price of such Bond on the redemption date, then such Bond shall become due and payable at such redemption date, and from and after such date interest will cease to accrue thereon. Failure to deliver any redemption notice or any defect in any redemption notice shall not affect the validity of the proceeding for the redemption of Bonds with respect to which such failure or defect did not occur. Any Bond redeemed prior to its maturity by prior redemption or otherwise shall not be reissued and shall be cancelled.

**Section 6. Form of the Bonds.** The Bonds shall be in substantially the form set forth in Appendix A hereto, with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by the officials of the City executing the same (whose manual or facsimile signatures thereon shall constitute conclusive evidence of such approval). Although attached as an appendix for the convenience of the reader, Appendix A is an integral part of this Ordinance and is incorporated herein as if set forth in full in the body of this Ordinance.

**Section 7. Execution of the Bonds.** The Bonds shall be executed in the name and on behalf of the City with the manual or facsimile signature of the Mayor, shall bear a manual or facsimile of the seal of the City and shall be attested by the manual or facsimile signature of the City Clerk both of whom are hereby authorized and directed to prepare and execute the Bonds in accordance with the requirements hereof. Should any officer whose manual or facsimile signature appears on the Bonds cease to be such officer before delivery of any Bond, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes. When the Bonds have been duly executed, the officers of the City are authorized to, and shall, deliver the Bonds to the Paying Agent for authentication. No Bond shall be secured by or entitled to the benefit of this Ordinance, or shall be valid or obligatory for any purpose, unless the certificate of authentication of the Paying Agent has been manually executed by an authorized signatory of the Paying Agent. The executed certificate of authentication of the Paying Agent upon any Bond shall be conclusive evidence, and the only competent evidence, that such Bond has been properly authenticated hereunder.

## **Section 8. Registration, Transfer and Exchange of the Bonds.**

(a) **Registration.** The Paying Agent shall maintain registration books in which the ownership, transfer and exchange of Bonds shall be recorded. The person in whose name any Bond shall be registered on such registration books shall be deemed to be the absolute owner thereof for all purposes, whether or not payment on any Bond shall be overdue, and neither the City nor the Paying Agent shall be affected by any notice or other information to the contrary.

(b) **Transfer and Exchange.** The Bonds may be transferred or exchanged, at the principal office of the Paying Agent at the location identified in the definition of Paying Agent in the section hereof entitled "Definitions," for a like aggregate principal amount of Bonds of other authorized denominations of the same maturity and interest rate, upon payment by the transferee of a transfer fee, any tax or governmental charge required to be paid with respect to such transfer or exchange and any cost of printing bonds in connection therewith. Upon surrender for transfer of any Bond, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his or her attorney duly authorized in writing, the City shall execute and the Paying Agent shall authenticate and deliver in the name of the transferee a new Bond. Notwithstanding any other provision hereof, the Paying Agent shall not be required to transfer any Bond (i) which is scheduled to be redeemed in whole or in part between the Business Day immediately preceding the mailing of the notice of redemption and the redemption date, or (ii) between the Record Date for any Interest Payment Date and such Interest Payment Date.

**Section 9. Replacement of Lost, Destroyed or Stolen Bonds.** If any Bond shall become lost, apparently destroyed, stolen or wrongfully taken, it may be replaced in the form and tenor of the lost, destroyed, stolen or taken bond and the City shall execute and the Paying Agent shall authenticate and deliver a replacement Bond upon the Owner furnishing, to the satisfaction of the Paying Agent: (a) proof of ownership (which shall be shown by the registration books of the Paying Agent), (b) proof of loss, destruction or theft, (c) an indemnity to the City and the Paying Agent with respect to the Bond lost, destroyed or taken, and (d) payment of the cost of preparing and executing the new bond or bonds.

**Section 10. Community Center Fund; Establishment of Accounts.** Moneys deposited in the Community Center Fund shall be appropriated and distributed in accordance with the Community Center Ballot Issue and section 3.16.020 of the Municipal Code. There also are hereby established within the Community Center Fund the following accounts: (a) the Bond Account, which shall include the Interest Sub-Account and the Principal Sub-Account; (b) the Reserve Account; and (c) the Project Account.

**Section 11. Application of Proceeds of the Bonds; Funding of Reserve Account.** Upon payment to the City of the purchase price of the Bonds in accordance with the Bond Purchase Agreement, the proceeds received by the City from the sale of the Bonds shall be applied as a supplemental appropriation of the City as follows: (a) accrued interest on the Bonds from the dated date thereof to the date of issuance shall be deposited into the Interest

Sub-Account; (b) to the Reserve Account, an amount equal to the Reserve Account Requirement; and (c) all remaining proceeds shall be deposited into the Project Account.

**Section 12. Deposit of Pledged Revenues.** 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. The City shall make credits to 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 hereof entitled "Conditions to Issuance of Parity Lien Bonds", 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 hereafter established for the payment of the principal on Parity Lien Bonds issued in accordance with the Section hereof entitled "Conditions to Issuance of Parity Lien Bonds", 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 hereof entitled "Conditions to Issuance of Parity Lien Bonds", 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 hereof entitled "Pledge and Lien for Payment of Bonds," 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 13. Bond Account.**

(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 the Interest Sub-Account shall be used to pay the interest on the 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 Regarding Exclusion of Interest on Bonds from Gross Income for Federal Income Tax Purposes." 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 14. 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, there 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 Regarding Exclusion of Interest on Bonds from Gross Income for Federal Income Tax Purposes." 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.

#### **Section 15. Project Account.**

(a) **Use of Moneys in Project Account.** All moneys deposited in the Project Account shall be applied solely to the payment of the Project Costs. Upon the determination of the City Council that all Project Costs have been paid or are determinable, any balance remaining in the Project Account (less any amounts necessary to pay Project Costs not then due and owing) shall be transferred to the Bond Account.

(b) **Investments.** Moneys deposited in the Project Account may be invested or deposited in securities or obligations that are Permitted Investments. The investment of moneys deposited in the Project Account shall, however, be subject to the covenants and provisions of the section hereof entitled "Covenants Regarding Exclusion of Interest on Bonds from Gross Income for Federal Income Tax Purposes." Except to the extent otherwise required by such section, interest income from the investment or reinvestment of moneys deposited in the Project Account shall remain in and become part of the Project Account.

**Section 16. 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 17. 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 are not issued in the principal amount of \$15,000,000, for whatever reason, the City shall be permitted to issue the remaining unissued principal amount authorized by the Community Center Ballot Issue without meeting the condition set forth in this paragraph (a). For all other proposed Parity Lien Bonds, 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 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 18. Additional General 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.

(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 19. Covenants Regarding Exclusion of Interest on Bonds from Gross Income for Federal Income Tax Purposes.** For purposes of ensuring that the interest on the Bonds is and remains excluded from gross income for federal income tax purposes, the City hereby covenants that:

(a) ***Prohibited Actions.*** The City will not use or permit the use of any proceeds of 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 Bond to be an “arbitrage bond” within the meaning of Section 148 of the Federal Tax Code, or would otherwise cause the interest on any Bond to be includible in gross income for federal income tax purposes.

(b) ***Affirmative Actions.*** The City will at all times do and perform all acts permitted by law that are necessary in order to assure that interest paid by the City on the Bonds shall not be includible in gross income for federal income tax purposes under the Federal Tax Code or any other valid provision of law. In particular, but without limitation, the City represents, warrants and covenants to comply with the following rules unless it receives an opinion of Bond Counsel stating that such compliance is not necessary: (i) gross proceeds of the Bonds will not be used in a manner that will cause the Bonds to be considered “private activity bonds” within the meaning of the Federal Tax Code; (ii) the Bonds are not and will not become directly or indirectly “federally guaranteed”; and (iii) the City will timely file Internal Revenue Form 8038-G which shall contain the information required to be filed pursuant to Section 149(e) of the Federal Tax Code.

(c) ***Letter of Instructions.*** The City will comply with the Letter of Instructions delivered to it on the date of issuance of the Bonds, including but not limited by the provisions of the Letter of Instructions regarding the application and investment of Bond proceeds, the calculations, the deposits, the disbursements, the investments and the retention of records described in the Letter of Instructions; provided that, in the event the original Letter of Instructions is superseded or amended by a new Letter of Instructions drafted by, and accompanied by an opinion of Bond Counsel stating that the use of the new Letter of Instructions will not cause the interest on the Bonds to become includible in gross income for federal income tax purposes, the City will thereafter comply with the new Letter of Instructions.

(d) ***Designation of Bonds as Qualified Tax-Exempt Obligations.*** The City hereby designates the Bonds as qualified tax-exempt obligations within the meaning of Section 265(b)(3) of the Federal Tax Code. The City covenants that the aggregate face amount of all tax-exempt obligations issued by the City, together with governmental entities which derive their issuing authority from the City or are subject to substantial control by the City, shall not be more than \$30,000,000 during calendar year in which the Bonds are issued. The City recognizes that such tax-exempt obligations include notes, leases, loans, and warrants, as well as bonds.

**Section 20. Defeasance.** Any Bond shall not be deemed to be Outstanding hereunder if it shall have been paid and cancelled or if cash or Federal Securities shall have been deposited in trust for the payment thereof (whether upon or prior to the maturity of such Bond, but if such Bond is to be paid prior to maturity, the City shall have given the Paying Agent irrevocable directions to give notice of redemption as required by this Ordinance, or such notice shall have been given in accordance with this Ordinance). In computing the amount of the deposit

described above, the City may include interest to be earned on the Federal Securities. If less than all the Bonds are to be defeased pursuant to this section, the City, in its sole discretion, may select which of the Bonds shall be defeased. Notwithstanding anything herein to the contrary, in the event that the principal and/or interest due on the Bonds shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the City, and all covenants, agreements and other obligations of the City to the Owners shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such Owners.

**Section 21. 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 22. 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 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 23. 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 State or County 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 mail 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 24. Findings and Determinations.** Having been fully informed of and having considered all the pertinent facts and circumstances, the Council does hereby find, determine, and declare:

(a) voter approval of the Community Center Ballot Issue was obtained in accordance with all applicable provisions of law and, in accordance with the Community Center Ballot Issue (i) the principal amount of the Bonds will not exceed \$15,000,000, and (ii) the maximum repayment cost of the Bonds will not exceed \$36,239,400;

(b) voter approval of the Sales and Use Tax and the issuance of the Bonds was obtained in accordance with all applicable provisions of law;

(c) the City has entered into a DTC Letter of Representations governing the book-entry registration system for the Bonds;

(d) the issuance of the Bonds and all procedures undertaken incident thereto are in full compliance and conformity with all applicable requirements, provisions and limitations prescribed by the Charter and the Constitution of the State, and other applicable law relating to the issuance of the Bonds have been satisfied; and

(e) it is to the best advantage of the City and its residents that the Bonds be authorized, sold, issued and delivered at the time, in the manner and for the purposes provided in this Ordinance.

**Section 25. 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 26. Approval of Official Statement and Miscellaneous Documents.** The City Council hereby ratifies and approves the distribution and use of the Preliminary Official Statement; authorizes and directs the City staff to prepare a final Official Statement for use in connection with the sale of the Bonds in substantially the form thereof presented to the City Council at the meeting at which this Ordinance is adopted, with such changes therein, if any, not inconsistent herewith, as are approved by the City; authorizes and approves the execution of the DTC Blanket Letter of Representations, the Continuing Disclosure Undertaking, and the Bond Purchase Agreement. The Mayor is hereby authorized and directed to execute the final Official Statement and the Mayor, the City Clerk and all other officers of the City are hereby authorized and directed to execute all documents and certificates necessary or desirable to effectuate the issuance of the Bonds and the transactions contemplated hereby.

**Section 27. 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 28. Events Occurring on Days That Are Not Business Days.** Except as otherwise specifically provided herein with respect to a particular payment, event or action, if any payment to be made hereunder or any event or action to occur hereunder which, but for this section, is to be made or is to occur on a day that is not a Business Day shall instead be made or occur on the next succeeding day that is a Business Day.

**Section 29. Authorization of Bond Insurance.** The Underwriter may request, on behalf of the City, the submittal of bids to issue the Bond Insurance Policy. 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 2009*, 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 30. Limitation of Actions.** Pursuant to Section 8.18 of the Charter and Section 11-57-212, Colorado Revised Statutes, no action or proceeding concerning the issuance of the Bonds shall be maintained against the City unless commenced within 30 days after the date of passage of this Ordinance.

**Section 31. Headings.** The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

**Section 32. Ordinance Irrepealable.** After any of the Bonds have been issued, this Ordinance shall constitute a contract between the Owners and the City, and shall be and remain irrepealable until the Bonds and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

**Section 33. Severability.** It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

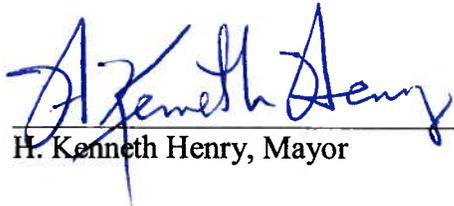
**Section 34. Repealer.** All orders, bylaws, ordinances, and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL  
THIS 7<sup>th</sup> DAY OF JULY, 2009.**

ATTEST:

CITY OF FRUITA, COLORADO

  
City Clerk

  
H. Kenneth Henry, Mayor

**APPENDIX A**

**FORM OF THE BOND**

EXCEPT AS OTHERWISE PROVIDED IN THE HEREINAFTER DEFINED ORDINANCE, THIS GLOBAL BOOK-ENTRY BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY (AS DEFINED HEREIN) OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.

**UNITED STATES OF AMERICA  
STATE OF COLORADO**

**CITY OF FRUITA, COLORADO  
SALES AND USE TAX REVENUE BONDS  
SERIES 2009**

R- \_\_\_\_\_ \$ \_\_\_\_\_

<b>Interest Rate</b>	<b>Maturity Date</b>	<b>Original Dated Date</b>	<b>CUSIP</b>
%	December 1, _____	_____, 2009	

REGISTERED OWNER:

PRINCIPAL SUM: \_\_\_\_\_ DOLLARS

CITY OF FRUITA, COLORADO, in the State of Colorado, a duly organized and validly existing home-rule City and political subdivision of the State of Colorado (the "City"), for value received, hereby promises to pay to the order of the registered owner named above or registered assigns, solely from the special funds as hereinafter set forth, on the maturity date stated above, the principal sum stated above, in lawful money of the United States of America, with interest thereon from the original dated date stated above, at the interest rate per annum stated above, payable on June 1 and December 1 of each year, commencing \_\_\_\_\_, 2009, the principal of and premium, if any, and the final installment of interest on this bond being payable to the registered owner hereof upon presentation and surrender of this bond at the principal operations office of UMB Bank, N.A., as Paying Agent (the "Paying Agent"), in Denver, Colorado, or at such other location as identified by the Paying Agent, and the interest hereon (other than the final installment of interest hereon) to be paid by check or draft of the Paying Agent mailed on the Interest Payment Date to the registered owner hereof as of the close of business on the fifteenth day (whether or not such day is a Business Day) of the calendar month next preceding the Interest Payment Date, except that so long as Cede & Co. is the registered owner of this bond, the principal of, premium, if any, and interest on this bond shall be paid by wire transfer to Cede & Co.

This bond is one of an issue of bonds of the City designated Sales and Use Tax Revenue Bonds, Series 2009, issued in the principal amount of \$\_\_\_\_\_ (the "Bonds"). The Bonds are being issued by the City for the purpose of constructing, replacing and relocating various public improvements of the City, pursuant to and in full conformity with the City Charter, the Constitution and laws of the State of Colorado, and an approving ordinance (the "Ordinance") duly adopted by the City prior to the issuance hereof.

[Redemption Provisions to be Inserted Here.]

At its option, to be exercised on or before the forty fifth day next preceding each sinking fund redemption date, the City may (a) deliver to the Paying Agent for cancellation any Bonds with the same maturity date as the Bonds subject to such sinking fund redemption and (b) receive a credit in respect of its sinking fund redemption obligation for any Bonds with the same maturity date as the Bonds subject to such sinking fund redemption which prior to such date have been redeemed (otherwise than through the operation of the sinking fund) and cancelled by the Paying Agent and not theretofore applied as a credit against any sinking fund redemption obligation. Each Bond so delivered or previously redeemed shall be credited by the Paying Agent at the principal amount thereof to the obligation of the City on such sinking fund redemption date, and the principal amount of Bonds to be redeemed by operation of such sinking fund on such date shall be accordingly reduced.

Notice of any redemption of Bonds shall be given by the Paying Agent in the name of the City by sending a copy of such notice by first-class, postage prepaid mail, not less than 30 days prior to the redemption date, to the Owner of each Bond being redeemed. Such notice shall specify the number or numbers of the Bonds so to be redeemed (if redemption shall be in part) and the redemption date. If any Bond shall have been duly called for redemption and if, on or before the redemption date, there shall have been deposited with the Paying Agent in accordance with this Ordinance funds sufficient to pay the redemption price of such Bond on the redemption date, then such Bond shall become due and payable at such redemption date, and from and after such date interest will cease to accrue thereon. Failure to deliver any redemption notice or any defect in any redemption notice shall not affect the validity of the proceeding for the redemption of Bonds with respect to which such failure or defect did not occur. Any Bond redeemed prior to its maturity by prior redemption or otherwise shall not be reissued and shall be cancelled.

The Paying Agent shall maintain registration books in which the ownership, transfer and exchange of the Bonds shall be recorded. The person in whose name this bond shall be registered on such registration books shall be deemed to be the absolute owner hereof for all purposes, whether or not payment on this bond shall be overdue, and neither the City nor the Paying Agent shall be affected by any notice or other information to the contrary. This bond may be transferred or exchanged, at the principal operations office of the Paying Agent in Denver, Colorado, or at such other location as identified by the Paying Agent, for a like aggregate principal amount of the Bonds of other authorized denominations (\$5,000 or any integral multiple thereof) of the same maturity and interest rate, upon payment by the transferee of a transfer fee, any tax or governmental charge required to be paid with respect to such transfer or exchange and any cost of printing bonds in connection therewith.

The Bonds are special, limited obligations of the City payable solely from and secured solely by the sources provided in the Ordinance and shall not constitute a debt of the City within the meaning of the City Charter or any constitutional limitation. Pursuant to the Ordinance the City pledged for the payment of the principal of, premium, if any, and interest on the Bonds at any time outstanding, and granted a lien for such purpose on (i) the revenues from a City Sales and Use Tax, and (ii) all moneys on deposit from time-to-time in the City Community Center Fund (the "Pledged Revenues"). The City is authorized to pledge and grant a lien, on a parity with the lien for the payment of the Bonds, on the Pledged Revenues and the moneys on deposit in the Community Center Fund for the payment of other bonds or obligations upon satisfaction of certain conditions set forth in the Ordinance. This bond is issued under authority of the City Charter.

THE ORDINANCE CONSTITUTES THE CONTRACT BETWEEN THE REGISTERED OWNER OF THIS BOND AND THE CITY. THIS BOND IS ONLY EVIDENCE OF SUCH CONTRACT AND, AS SUCH, IS SUBJECT IN ALL RESPECTS TO THE TERMS OF THE ORDINANCE, WHICH SUPERSEDES ANY INCONSISTENT STATEMENT IN THIS BOND.

The City agrees with the owner of this bond and with each and every person who may become the owner hereof, that it will keep and perform all the covenants and agreements contained in the Ordinance.

The Ordinance may be amended or supplemented from time-to-time with or without the consent of the registered owners of the Bonds as provided in the Ordinance.

It is hereby certified that all conditions, acts and things required by the City Charter, and the constitution and laws of the State of Colorado, and the ordinances of the City, to exist, to happen and to be performed, precedent to and in the issuance of this bond, exist, have happened and have been performed, and that the Bonds do not exceed any limitations prescribed by said City Charter, Constitution or laws of the State of Colorado, or the ordinances of the City.

This bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the Paying Agent shall have signed the certificate of authentication hereon.

IN WITNESS WHEREOF, City of Fruita, Colorado, has caused this bond to be signed in the name and on behalf of the City with the manual or facsimile signature of the Mayor, to be sealed with the seal of the City or a facsimile thereof and to be attested by the manual or facsimile signature of the City Clerk.

[MANUAL OR FACSIMILE SEAL]

FRUITA, COLORADO

By (Manual or Facsimile Signature)  
Mayor

ATTEST:

By (Manual or Facsimile Signature)  
City Clerk

### CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Ordinance.

UMB Bank, N.A., as Paying Agent

By \_\_\_\_\_  
Authorized Representative

Date of Authentication: \_\_\_\_\_

### APPROVING LEGAL OPINION

Set forth below is a true copy of the approving legal opinion of Bond Counsel delivered on the date on which the Bonds were originally issued:

(Bond Counsel's approving opinion inserted in submargins)

I, the undersigned City Clerk of the City of Fruita, Colorado, do hereby certify that the foregoing approving opinion of Kutak Rock LLP, Denver, Colorado, is a true and complete copy of a manually executed and dated copy thereof on file in the official records of the City.

By \_\_\_\_\_  
City Clerk

**CERTIFICATE OF TRANSFER**

FOR VALUE RECEIVED, \_\_\_\_\_, the undersigned, hereby sells, assigns and transfers unto \_\_\_\_\_ (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.

**TRANSFER FEE MAY BE REQUIRED**