

**ORDINANCE NO. 2010-01**

**AN ORDINANCE OF THE CITY OF FRUITA, COLORADO, ACTING BY AND THROUGH ITS SEWER FUND ENTERPRISE, SUPPLEMENTING ORDINANCE NO. 2009-26 BY EXTENDING THE AUTHORITY FOR A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY TO FINANCE A NEW WASTEWATER TREATMENT FACILITY AND WASTEWATER CAPITAL IMPROVEMENTS.**

WHEREAS, pursuant to Ordinance No. 2009-26 duly passed and adopted on November 3, 2009 ("Ordinance No. 2009-26), the City Council authorized the execution and delivery of Financing Documents to finance the costs of a new wastewater treatment facility and certain wastewater capital improvements (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Section 1 of Ordinance No. 2009-26); and

WHEREAS, pursuant to Ordinance No. 2009-26, the Mayor (or in the Mayor's absence the Mayor Pro Tem) is delegated, for a period of ninety days following the date of adoption of Ordinance No. 2009-26, authority to determine, within parameters, certain financial terms relating to the Financing Documents; and

WHEREAS, since the date of adoption of Ordinance No. 2009-26, the Colorado Water Resources and Power Development Authority has advised the City that the loan will now require that the City comply with the requirements of the Davis Bacon Act, codified at 40 U.S.C. §§ 3140 through 3148; and

WHEREAS, the requirement of David Bacon Act compliance, among other things, has caused a delay in the anticipated schedule for the financing and it is necessary to extend the period for the delegated authority under Ordinance No. 2009-26; and

WHEREAS, the City is acting hereunder by and through its Sewer Fund Enterprise, which is a water activity enterprise under the provisions of Title 37, Article 45.1, C.R.S.; and

WHEREAS, updated forms of the Loan Agreement and the Bond, have been presented to the City and made available to the City Council; therefore,

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

**Section 1. Extension of Delegated Authority.** Pursuant to the delegation of authority permitted pursuant to the Laws, the Mayor (or in the Mayor's absence the Mayor Pro Tem) is hereby delegated for a period of one year following the date of adoption of this Ordinance, the authority to make the determinations permitted pursuant to Ordinance No. 2009-26 and to issue and deliver the Financing Documents. Such authority shall include, without limitation, the authority to determine the dates of the Financing Documents.

**Section 2. Reaffirmation of Ordinance No. 2009-26 and Direction to Take Action.** Ordinance No. 2009-26 is hereby reaffirmed. The Mayor (or in the Mayor's absence the Mayor Pro Tem) is hereby authorized and directed to execute the Loan Agreement and all documents and certificates necessary or desirable to effectuate the issuance of the Bond and the financing contemplated by Ordinance No. 2009-26.

**Section 3. 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 Bond for the purposes herein set forth in Ordinance No. 2009-26 are hereby ratified, approved and confirmed.

**Section 4. Ordinance Irrepealable.** After the Bond has been issued, this Ordinance and Ordinance No. 2009-26 shall constitute a contract between the Authority and the City, and shall be and remain irrepealable until the Bond and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

**Section 5. 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 6. Repealer.** All orders, bylaws, resolutions and ordinances 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 5th DAY OF JANUARY, 2010.**

ATTEST:

CITY OF FRUITA, COLORADO

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City Clerk

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H. Kenneth Henry, Mayor