

ORDINANCE NO. 2044

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AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF COMMERCE CITY, COLORADO OF ITS SALES AND USE TAX REVENUE REFUNDING BONDS, SERIES 2015; AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, the City of Commerce City, Colorado (the “City”) is a home rule municipality and political subdivision of the State of Colorado (the “State”) organized and existing under a home rule charter (the “Charter”) pursuant to Article XX of the Constitution of the State; and

WHEREAS, Sections 14.4 and 14.5 of the Charter authorizes the City to issue revenue securities, without an election, for any public purpose payable in whole or in part from the available proceeds of a City sales and use tax; and

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

WHEREAS, pursuant to Article X, Section 20 of the State Constitution, the City Council submitted to the City’s electors at an election held on November 2, 2004 (the “Election”), the following question (the “Bond Question”):

SHALL CITY OF COMMERCE CITY DEBT BE INCREASED \$64,000,000 WITH A REPAYMENT COST OF \$163,000,000, WITHOUT ANY NEW TAXES OR TAX RATE INCREASES, BY THE ISSUANCE OF BONDS FOR THE FINANCING OF PUBLIC INFRASTRUCTURE IN CONNECTION WITH THE PROPERTY KNOWN AS THE PRAIRIE GATEWAY, INCLUDING,

- STREET IMPROVEMENTS, INCLUDING QUEBEC STREET BETWEEN HIGHWAY 2 AND INTERSTATE 270, THE COMMERCE CITY PORTION OF 56TH AVENUE BETWEEN QUEBEC AND YOSEMITE, AND NEW STREETS WITHIN PRAIRIE GATEWAY,

- WATER LINES, SEWER LINES, SIDEWALK, LANDSCAPING AND DRAINAGE IMPROVEMENTS,

- COMMUNITY PARK, OPEN SPACE, TRAILS AND ATHLETIC FIELDS,

AND ALL NECESSARY, INCIDENTAL, AND APPURTENANT FACILITIES, EQUIPMENT, LAND, PROPERTY RIGHTS AND COSTS, INCLUDING FINANCING COSTS AND RESERVES; SUCH BONDS TO BE PAYABLE FROM SALES AND USE TAXES AND OTHER REVENUES AS THE CITY MAY DETERMINE; SUCH BONDS TO

BE SOLD IN ONE SERIES OR MORE, FOR A PRICE ABOVE OR BELOW THE PRINCIPAL AMOUNT OF SUCH SERIES, ON TERMS AND CONDITIONS, AND WITH SUCH MATURITIES AS PERMITTED BY LAW AND AS THE CITY MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE BONDS PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF A PREMIUM OF NOT MORE THAN 3%; AND MAY THE PROCEEDS FROM SUCH BONDS AND ANY INVESTMENT INCOME BE COLLECTED AND SPENT WITHOUT LIMITATION OR CONDITION AS A VOTER APPROVED REVENUE CHANGE UNDER SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

; and

WHEREAS, the City has previously issued its Sales and Use Tax Revenue Bonds, Series 2005 (the “2005 Bonds”) and its Sales and Use Tax Revenue Bonds, Series 2006 (the “2006 Bonds” or, together with the 2005 Bonds, the “Prior Bonds”) pursuant to the Bond Question; and

WHEREAS, pursuant to Section 14.6 of the Charter, the City Council of the City (the “Council”) has the power to authorize, by ordinance, without an election, the issuance of refunding bonds or other like securities for the purpose of refunding and providing for the payment of the outstanding bonds or other like securities of the City as the same mature, or in advance of maturity by means of an escrow or otherwise; and

WHEREAS, pursuant to Section 14.6 of the Charter, any refunding bonds or other like securities issued for the purpose of refunding revenue bonds or other revenue securities shall be payable from the revenues of the system, utility, income-producing project or other capital improvement that was acquired, extended or improved with the proceeds of the original bond issue; and

WHEREAS, Article X, Section 20 of the Colorado Constitution permits the City to issue bonds without an election to refund outstanding bonds at a lower rate of interest; and

WHEREAS, the 2005 Bonds maturing on and after August 1, 2016, are subject to redemption at the option of the City on August 1, 2015, or on any date thereafter, at a redemption price equal to the principal amount so redeemed plus accrued interest to the redemption date; and

WHEREAS, the 2006 Bonds maturing on and after August 1, 2017, are subject to redemption at the option of the City on August 1, 2016, or on any date thereafter, at a redemption price equal to the principal amount so redeemed plus accrued interest to the redemption date; and

WHEREAS, the City has determined that it is in the best interest of the City and public interest and necessity to refund any portion of the 2005 Bonds and/or the 2006 Bonds as specified in the Sale Certificate (collectively, the “Refunded Bonds”) on such dates as are specified in the Sale Certificate; and

WHEREAS, in order to refund the Refunded Bonds, the City will issue its Sales and Use Tax Revenue Refunding Bonds, Series 2015 (the “Bonds”) in the aggregate principal amount approved in the Sale Certificate (defined below); and

WHEREAS, the issuance of the Bonds and undertaking the refunding of the Refunded Bonds (the “Refunding Project”) will result in a lower interest rate paid by the City; and

WHEREAS, the Bonds shall have an irrevocable and first lien, but not necessarily an exclusive such lien, on certain sales and use tax revenues of the City, as set forth herein, on a parity with the 2005 Bonds and 2006 Bonds which are not part of the Refunding Project; and

WHEREAS, the Council does hereby determine that the requirements for the issuance of additional parity securities set forth in Ordinance No. 1561 adopted by the Council on January 24, 2005, which authorized the 2005 Bonds, and Ordinance No. 1622 adopted by the City Council on February 21, 2006, which authorized the 2006 Bonds, will be satisfied prior to issuance of the Bonds; and

WHEREAS, the Council has determined that the Bonds shall be sold to the Purchaser in accordance with its proposal, and that such sale is to the best advantage of the City; and

WHEREAS there are on file with the City Clerk the forms of the following documents: (i) the form of the Escrow Agreement; (ii) the form of the Bond Purchase Agreement; (iii) the form of the Paying Agent Agreement; (iv) the form of a Preliminary Official Statement for the Bonds; and (v) the form of the Continuing Disclosure Certificate; and

WHEREAS no member of the Council has any conflict of interest or is interested in any pecuniary manner in the issuance of the Bonds.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO:

ARTICLE I. DEFINITIONS AND CONSTRUCTION

Section 1.01. Definitions. The meanings of certain terms are enumerated above in the recitals to this Ordinance. In addition, the following terms have the following respective meanings unless the context hereof clearly requires otherwise:

Bank: any depository permitted by the laws of the State to receive public funds for deposit.

Beneficial Owner: any Person for which a Participant acquires an interest in the Bonds.

Bond or Bonds: those securities issued hereunder and designated as the “City of Commerce City, Colorado, Sales and Use Tax Revenue Refunding Bonds, Series 2015.

Bond Counsel: any law firm of nationally recognized standing in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds.

Bond Year: for the purpose of this Ordinance, the twelve (12) months commencing on the first day of August of any calendar year and ending on the thirty-first day of July of the next succeeding calendar year.

Business Day: any day other than a Saturday, Sunday or other day on which banks in Denver, Colorado or New York, New York are required or authorized to be closed.

Cede: Cede & Co., the nominee of DTC as record owner of the Bonds, or any successor nominee of DTC with respect to the Bonds.

Charter: the City Charter of the City of Commerce City, Colorado.

City: the City of Commerce City, Colorado, and its successors.

City Clerk: the de jure or de facto City Clerk of the City or his or her successor in functions, if any.

City Council: the governing body of the City of Commerce City, Colorado.

City Sales and Use Tax Ordinance: the ordinances of the City, as amended to the date hereof, imposing an aggregate 4.5% municipal sales and use tax upon sales, or the consumption and use of, certain property and services, subject to certain exceptions and exemptions, and codified as Article V of Chapter 20 of the City’s Code of Ordinances.

Code: the Internal Revenue Code of 1986, as amended to the date of delivery of the Bonds, and the regulations promulgated thereunder.

Commercial Bank: a state or national bank or trust company which: (i) is a member of the Federal Deposit Insurance Corporation and the Federal Reserve System, (ii) has, or which the holding company thereof has, a capital and surplus of \$100,000,000 or more (in the case of a bank holding company, figured on a consolidated basis), and (iii) is located within the United States.

Continuing Disclosure Certificate: the certificate executed by officers of the City simultaneously with the delivery of the Bonds which enables the Purchaser to comply with Rule 15c2-12 promulgated by the Securities and Exchange Commission.

C.R.S.: the Colorado Revised Statutes, as amended to the date hereof.

Debt Service Fund: the special fund created in the 1995 Bond Ordinance and continued in Section 4.02 hereof.

Debt Service Requirements: the principal of, interest on, and any premiums due in connection with the redemption of, the Bonds, the Parity Securities and any other securities payable from the Pledged Revenues and heretofore or hereafter issued, if any, or such part of such securities as may be designated, as such principal, interest and premiums become due, whether at maturity or by mandatory sinking fund redemption.

DTC: the Depository Trust Company, New York, New York, and its successors and assigns, as securities depository for the Bonds.

Escrow Account: the account created pursuant to Section 4.01 hereof and maintained by the Escrow Bank pursuant to the Escrow Agreement.

Escrow Agreement: the Escrow Agreement dated as of its date, between the City and the Escrow Bank.

Escrow Bank: means U.S. Bank National Association, Denver, Colorado, or its successors and assigns, acting as Escrow Bank under the Escrow Agreement.

Event of Default: each of the events stated in Article IX hereof.

Federal Securities: bills, certificates of indebtedness, notes, bonds or similar securities which are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States of America or such Permitted Investments as are set forth in Section 1 of Appendix A hereto.

Finance Director: the duly appointed Finance Director of the City or his or her successor in functions.

Fiscal Year: the twelve (12) months commencing on the first day of January of any calendar year and ending on the thirty-first day of December of such calendar year or such other twelve (12) month period as may from time to time be designated by the City Council as the Fiscal Year of the City.

Independent Accountant: any certified public accountant, or any firm of such accountants, duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the City, who (a) is, in fact, independent and not under the domination of the City or the City Council, (b) does not have any substantial interest, direct or indirect, in any of the affairs of the City, and (c) is not connected with the City as a member, officer or employee of the City Council or the City, but who may be regularly retained to make annual or similar audits of any books or records of the City.

Insurance Policy: the municipal bond insurance policy issued by the Insurer, if any, insuring the payment when due of the principal of and interest on the Bonds as provided therein, if set forth in the Sale Certificate.

Insurer: the provider of the Insurance Policy, or any successor thereto, if set forth in the Sale Certificate.

Interest Payment Date: a date on which interest is due on any Bonds or Parity Securities.

Letter of Representations: the letter of representations from the City to DTC to induce DTC to accept the Bonds as eligible for deposit at DTC.

Mayor: the duly elected or appointed Mayor of the City or his or her successor in functions.

Maximum Annual Debt Service Requirements: as to the Outstanding Bonds or any issue of Parity Securities Outstanding or proposed to be issued, the largest amount of Debt Service Requirements (excluding any redemption premiums) coming due with respect to such Bonds or Parity Securities in any year from the year in which such amount is required to be determined through the final maturity of such Bonds or Parity Securities. For the purposes of this computation, variable rate bonds shall be assumed to bear interest at the highest of: (i) the actual rate of any outstanding variable rate bonds on the date of computation, or if the variable rate bonds are not yet outstanding, the initial rate (if established and binding), (ii) if the variable rate bonds have been outstanding for at least twelve months, the average rate over the twelve months immediately preceding the date of computation, or if no variable rate bonds are outstanding for such twelve months, the average rate borne by reference to an index comparable to that to be utilized in determining the interest rate for the variable rate bonds to be issued, or (iii) (a) if interest on the variable rate bonds is excludable from gross income under the applicable provisions of the Code, the most recently published "Revenue Bond Index" as published in *The Bond Buyer* (or if such Index is not published within 30 days prior to such determination, such index selected by the City and acceptable to the Insurer), or (b) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities.

1995 Bond Ordinance: The ordinance of the City dated as of August 3, 1995 authorizing the issuance of the City's Sales and Use Tax Revenue Bonds, Series 1995, none of which remain outstanding.

Ordinance: this Ordinance which authorizes the issuance of the Bonds.

Outstanding or outstanding: when used with reference to the Bonds, Parity Securities, or any other designated securities of the City and as of any particular date, all the Bonds, Parity Securities, or any such other securities payable in whole or in part from the Pledged Revenues in any manner theretofore and thereupon being executed and delivered, except the following:

(a) Any Bond, Parity Security, or other security cancelled by the City, by the Registrar, or otherwise on the City's behalf, at or before such date;

(b) Any Bond or Parity Security held by or on behalf of the City;

(c) Any Bond, Parity Security, or other security of the City for the payment or the redemption of which moneys or Federal Securities sufficient to meet all of the payment requirements of the principal of, the interest on, and any prior redemption premiums due in connection with such Bond, Parity Security, or other security to the date of maturity or any redemption date thereof, shall have theretofore been deposited in escrow or in trust with a Trust Bank for that purpose, as provided in and required by Article VIII hereof or a similar provision of the document authorizing the issuance thereof; and

(d) Any lost, apparently destroyed, or wrongfully taken Bond, Parity Security, or other security of the City in lieu of or in substitution for which another bond or other security shall have been executed and delivered pursuant to the document authorizing the issuance thereof.

Owner or Registered Owner: means any Person who is the registered owner of any Bond as shown on the registration books maintained by the Registrar on behalf of the City.

Parity Securities: bonds, securities, leases or other obligations payable from the Pledged Revenues equally or on a parity with the Bonds, including but not limited to the 2005 Bonds and the 2006 Bonds.

Participant: means any broker-dealer, bank, trust company, clearing corporation or other financial institution from time to time for which DTC or another securities depository holds the Bonds.

Paying Agent: U.S. Bank National Association, in Denver, Colorado or its successor, which shall perform the function of paying agent as set forth in this Ordinance.

Paying Agent Agreement: the Registrar and Paying Agent Agreement between the City and the Registrar and Paying Agent.

Permitted Investments: any investments or deposits permitted by the laws of the State for funds of the City, provided that, for so long as the Bonds are secured by the Insurance Policy, Permitted Investments shall be further limited to the Insurer's List of Permissible Investments set forth in Appendix A hereto.

Person: any natural person, firm, partnership, association, corporation, trust, public body, or other entity.

Pledged Revenues: all of the receipts collected by the City from the 3.5% Sales and Use Tax, net of costs of collection, plus all amounts on deposit in the Debt Service Fund and the Reserve Fund, but excluding:

(a) amounts derived from the "revenue sharing area" designated in that certain Intergovernmental Agreement dated February 7, 1989 between the City and the City of Brighton, Colorado;

(b) incremental increases in Sales and Use Taxes which are required to be paid into a special fund, or pledged to the payment of obligations, pursuant to (i) an urban

renewal plan as defined in Section 31-25-103(9), C.R.S., (ii) a plan of development as defined in Section 31-25-802 (6.6), C.R.S., or (iii) a value capture plan as defined in Section 43-4-508, C.R.S., or, in the case of (i), (ii) or (iii), any similar plan adopted by the City exercising its powers as a home rule city;

(c) proceeds of any increase in the rate of the Sales and Use Tax, or either the sales or use tax component thereof, which may be approved in the future, unless such proceeds are expressly pledged to the payment of the Bonds by the City Council.

Principal Corporate Trust Office: the principal corporate trust office of the Registrar and Paying Agent, currently located at U.S. Bank, 60 Livingston Avenue, 1st Floor, Bond Drop Window, St. Paul, MN, 55107, attn: Corporate Trust Services.

Purchase Contract: The Bond Purchase Agreement between the City and the Purchaser concerning the purchase of the Bonds.

Purchaser: Stifel, Nicolaus & Company, Incorporated, Denver, Colorado, the original purchaser of the Bonds, or its successor.

Rebate Fund: the fund by that name created in Section 4.05 hereof.

Record Date: the fifteenth day of the month prior to an Interest Payment Date (whether or not a Business Day).

Redemption Date: the date fixed for the redemption prior to their maturity of any Bonds or other designated securities payable from the Pledged Revenues in any notice of prior redemption authorized by the City, or otherwise fixed and designated by the City, and, with respect to the Refunded Bonds, the earliest date after the delivery of the Bonds on which the Refunded Bonds may be called for prior redemption as specified in the Sale Certificate.

Redemption Price: when used with respect to a Bond or other designated security payable from the Pledged Revenues, the principal amount thereof, plus the applicable premium, if any, payable upon the redemption thereof prior to the stated maturity date of such Bond or other security, plus accrued interest to and on a redemption date in the manner contemplated in accordance with the terms of the Bond or other security.

Refunded Bonds: any of the 2005 Bonds and/or the 2006 Bonds as designated in the Sale Certificate.

Refunding Project: the issuance of the Bonds for the purpose of defraying the costs of refunding the Refunded Bonds and payment of the costs of issuance of the Bonds.

Registrar: U.S. Bank National Association, Denver, Colorado, named in the Paying Agent Agreement as the paying agent, transfer agent and registrar of the Bonds, or any successor thereto.

Reserve Fund: the special fund created in the 1995 Bond Ordinance and continued in Section 4.03 hereof.

Sale Certificate: the certificate executed by the City Manager or the Finance Director dated on or before the date of delivery of the Bonds, setting forth: the maturities of the 2005 Bonds and/or the 2006 Bonds to be refunded; the dates on which the Refunded Bonds will be called for prior redemption; the purchase price of the Bonds; the rate(s) of interest on the Bonds; the dates on which the Bonds may be called for redemption and the redemption price therefor; the price at which the Bonds will be sold; the total principal amount of the Bonds; the amount of principal maturing on each date for the Bonds and the amount of capitalized interest and reserve fund, if any, on the Bonds; and whether the Bonds will be secured by a municipal bond insurance policy and the terms of any agreement with the provider of such policy, subject to the parameters and restrictions contained in this Ordinance.

Sales and Use Tax: collectively, the 3.5% Sales and Use Tax and the 1.0% Sales and Use Tax, imposed by the City Sales and Use Tax Ordinance, and any municipal sales or use tax which hereafter may be imposed by the City in addition thereto or in substitution therefor.

Security or securities: when used with reference to securities of the City, any bond or note issued by the City or any other evidence of the advancement of money to the City.

Special Record Date: a special date fixed by the Registrar for the payment of defaulted interest to be preceded by not more than fifteen and not less than ten days notice.

State: the State of Colorado.

Subordinate Bonds or Subordinate Securities: the 2014 Bonds and bonds or securities payable from the Pledged Revenues having a lien thereon subordinate or junior to the lien thereon of the Bonds.

Superior Bonds or Superior Securities: any bonds or securities payable from the Pledged Revenues having a lien thereon superior or senior to the lien thereon of the Bonds.

Supplemental Act: the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S.

Term Bonds: Bonds that are payable on or before their specified maturity dates from sinking fund payments established for that purpose and calculated to retire such Bonds on or before their specified maturity dates.

Trust Bank: a Commercial Bank which is authorized to exercise and is exercising trust powers.

1.0% Sales and Use Tax: the municipal sales and use tax imposed by the City Sales and Use Tax Ordinance beginning January 1, 2014, at a rate of 1.0% as approved by the voters of the City at the 2013 Election, no portion of which is Pledged Revenue with respect to the Bonds and Parity Securities.

3.5% Sales and Use Tax: the municipal sales and use tax imposed by the City Sales and Use Tax Ordinance at a rate of 3.5%, which does not include any portion of the 1.0% Sales and Use Tax approved at the 2013 Election.

2005 Bonds: the City's Sales and Use Tax Revenue Bonds, Series 2005, originally issued in the aggregate principal amount of \$17,500,000 and currently outstanding in the aggregate principal amount of \$14,530,000.

2006 Bonds: the City's Sales and Use Tax Revenue Bonds, Series 2006, originally issued in the aggregate principal amount of \$46,500,000 and currently outstanding in the principal amount of \$39,995,000.

2013 Election: the election held within the City on November 6, 2013.

2014 Bonds: the City's Sales and Use Tax Revenue Bonds, Series 2014, originally issued and currently outstanding in the aggregate principal amount of \$73,445,000, which 2014 Bonds have a first lien on revenues received from the 1.0% Sales and Use Tax authorized at an election held within the City in 2013, and are also be payable from a subordinate lien on the revenues received from 3.5% Sales and Use Tax which is in all respects subordinate to the pledge and lien thereon of the Bonds, the 2005 Bonds and the 2006 Bonds; and

Section 1.02. Construction. This Ordinance, except where the context by clear implication herein otherwise requires, shall be construed as follows:

(1) Words in the singular number include the plural, and words in the plural include the singular.

(2) Words in the masculine gender include the feminine and the neuter, words in the feminine gender include the masculine and the neuter, and when the sense so indicates words of the neuter gender refer to any gender.

(3) Articles, sections, subsections, paragraphs and subparagraphs mentioned by number, letter, or otherwise, correspond to the respective articles, sections, subsections, paragraphs and subparagraphs of this Ordinance so numbered or otherwise so designated.

(4) The titles and headlines applied to articles, sections and subsections of this Ordinance are inserted only as a matter of convenience and ease in reference and in no way define, or limit the scope or intent of, any provisions of this Ordinance.

ARTICLE II. SALE OF BONDS.

Section 2.01. Negotiated Sale. The City hereby determines that it is to the best advantage of the City to sell the Bonds to the Purchaser through a negotiated sale process. The Finance Director is hereby authorized and directed to take all action necessary for the delivery of the Bonds, including the approval and execution of the Purchase Contract.

Section 2.02. Official Statement. The action of the Finance Director in certifying to the Purchaser that the Preliminary Official Statement (the "Preliminary Official Statement") is in substantially "final" form for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, is hereby ratified and confirmed. The Finance Director and all other City employees

and representatives charged with responsibility for the sale of the Bonds are hereby authorized and directed to prepare a Final Official Statement, substantially in the form of the Preliminary Official Statement but including the offering price(s) of the Bonds, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, delivery date, ratings, and any other terms or provisions depending on such matters.

Section 2.03. Continuing Disclosure. The City hereby covenants that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Ordinance, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default; provided that the Registered Owners of the Bonds may take such actions as may be necessary or appropriate, including seeking a mandatory injunction or specific performance, to cause the City to comply with its obligations under this Section.

ARTICLE III. THE BONDS.

Section 3.01. Authorization. In accordance with the Constitution of the State, the Charter, and all other laws of the State thereunto enabling, and pursuant to the provisions of this Ordinance, the City hereby authorizes, for the purpose of paying a portion of the costs of the Refunding Project, the issuance of its "Sales and Use Tax Revenue Refunding Bonds, Series 2015," in an aggregate principal amount not to exceed the amount provided in Section 3.02(2) of this Ordinance, to be payable and collectible, as to principal, prior redemption premium, if any, and interest, from Pledged Revenues.

Section 11-57-204 of the Supplemental Act provides that a public entity, including the City, may elect in an act of issuance to apply any or all of the provisions of the Supplemental Act to the Bonds. The City Council hereby elects to apply all of the provisions of the Supplemental Act to the Bonds. The Bonds are issued under the authority of the Supplemental Act and shall so recite as provided in Section 3.02(9) hereof. Pursuant to Section 11-57-210 of the Supplemental Act, such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bonds after their delivery for value.

Pursuant to Section 11-57-205 of the Supplemental Act, the City Council hereby delegates to the Mayor, the City Manager or the Finance Director, the authority to make determinations in relation to the Bonds contained in the Sale Certificate subject to the parameters and restrictions contained in Section 3.02(2) of this Ordinance.

Section 3.02. Bond Details.

(1) Generally. The Bonds shall be issued in fully registered form (i.e., registered as to payment of both principal and interest), initially registered in the name of Cede and Co., as nominee for DTC. The Bonds shall be issued in denominations of \$5,000 each or integral multiples thereof (provided that no Bond may be in a denomination which exceeds the principal coming due on its maturity date and no individual Bond will be issued for more than one maturity). The Bonds shall be numbered in such manner as the Registrar shall determine.

The Bonds shall be dated as of their date of delivery and shall bear interest from their date until maturity, payable semiannually on each February 1 and August 1, commencing

on the date provided in the Sale Certificate, except that any Bond which is reissued upon transfer, exchange or other replacement shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, or if no interest has been paid, from the date of the Bonds. The Bonds shall bear interest at the rates designated in the Sale Certificate (based on a 360-day year consisting of twelve 30-day months) and shall mature on the dates and in the amounts set forth in the Sale Certificate subject to the parameters and limitations in subsection (2) below.

If upon presentation at maturity or prior redemption, payment of any Bond is not made as herein provided, interest shall continue thereon at the interest rate therein designated until the principal thereof is paid in full.

The principal of, interest on and premium, if any, due in connection with the Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. The principal and premium are payable upon surrender and presentation of the Bond at the Principal Corporate Trust Office, or such other office of the Registrar as it shall designate by written notice to the City.

The payment of interest on each Bond shall be made to the Registered Owner of such Bond and shall be paid by the Registrar on behalf of the City by check, draft or wire of the Registrar sent to such Registered Owner on each Interest Payment Date (unless such date is not a Business Day, whereupon mailing shall occur on the next succeeding Business Day) at his address as it appears on the registration records of the Registrar maintained for such purpose. Interest on each Bond shall be payable to the Registered Owner thereof as shown on the registration records as of the Record Date, regardless of any transfer or exchange of a Bond subsequent to such Record Date and prior to such Interest Payment Date. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Registered Owner on such Record Date, and may be paid to the Registered Owner at his address as it appears on the registration records of the Registrar at the close of business on a Special Record Date.

The City and the Registrar may deem and treat the Registered Owner (whether or not the Bond shall be overdue) on the Record Date or Special Record Date as the absolute owner of the Bond for the purpose of receiving payment of or on account of the principal thereof, any redemption premium and interest due thereon, and on any other date for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

The Registrar shall evidence acceptance of the duties and obligations provided in this Ordinance by execution of the Paying Agent Agreement. The Bonds shall be subject to registration, transfer and exchange in the manner, and subject to the terms and conditions, set forth herein and in the Paying Agent Agreement.

(2) Delegation Parameters.

(a) The aggregate principal amount of the Bonds shall not exceed \$58,000,000;

(b) the maximum total repayment cost of the Bonds shall not exceed \$84,000,000;

(c) the maximum annual repayment cost of the Bonds shall not exceed \$4,000,000;

(d) the Bonds shall mature no later than August 1, 2036;

(e) the Bonds shall (a) not be subject to redemption prior to maturity at the option of the City, or, (b) subject to optional redemption at such time or times as set forth in the Sale Certificate, at a redemption price not to exceed 101%;

(f) the purchase price of the Bonds shall not be less than 98.0%;

(g) the maximum interest rate on the Bonds shall not exceed 5.00%;

(h) the total amount of debt service on the Bonds in any one year shall not exceed the debt service on the Refunded Bonds in that year; and

(i) the net present value savings based on the principal amount of the Refunded Bonds to be refunded shall be at least 3%.

(3) Redemption of the Bonds. Certain maturities of the Bonds as designated in the Sale Certificate may be subject to redemption prior to maturity at the option of the City at the times, in the amounts and at the prices provided in the Sale Certificate.

In the case of Bonds of a denomination larger than \$5,000, a portion of such Bond (\$5,000 or any integral multiple thereof) may be redeemed, in which case the Registrar shall, without charge to the Owner of such Bond, authenticate and issue a replacement Bond or Bonds for the unredeemed portion thereof.

The Term Bonds, if any, shall be subject to mandatory sinking fund redemption at the times, in the amounts and at the prices provided in the Sale Certificate.

On or before the thirtieth day prior to each sinking fund payment date, the Registrar shall proceed to call the Term Bonds (or any Term Bond or Term Bonds issued to replace such Term Bonds) for redemption from the sinking fund on the next August 1, and give notice of such call without other instruction or notice from the City.

Notwithstanding the provisions of this Section, any notice of redemption shall contain a statement that the redemption is conditioned upon the receipt by the Paying Agent of funds on or before the Redemption Date sufficient to pay the full redemption price of the Bonds so called for redemption, and that if such funds are not available, such redemption shall be cancelled by written notice to the Owners of the Bonds called for redemption in the same manner as the original redemption notice was mailed.

(4) Notice and Effect of Redemption. Notice of the call for redemption, identifying the Bonds or portions thereof to be redeemed, is to be given by the Registrar by mailing a copy of the redemption notice by first-class mail, not more than forty-five or less than thirty days prior to the Redemption Date, to the Registered Owners of Bonds to be redeemed at their addresses shown on the registration records. Failure to mail such notice to the 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. Any notice mailed as provided herein shall be conclusively presumed to have been duly given, whether or not the Owner actually receives the notice. Each notice of redemption shall specify the Redemption Date, the redemption price, the place or places of payment, that payment will be made upon presentation and surrender of the Bonds to be redeemed, that interest accrued to the Redemption Date will be paid as specified in said notice, and that from 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 series and numbers of the Bonds or portions thereof of such series to be redeemed.

Notwithstanding the provisions of this Section, any notice of optional redemption may contain a statement that the redemption is conditioned upon the receipt by the Paying Agent of funds on or before the date fixed for redemption sufficient to pay the redemption price of the Bonds so called for redemption, and that if such funds are not available, such redemption shall be cancelled by written notice to the Owners of the Bonds called for redemption in the same manner as the original redemption notice was mailed.

On or prior to the Redemption Date, the redemption price shall be deposited with the Registrar. The deposit of the redemption price shall cause interest on those Bonds to be called for redemption to stop accruing after the Redemption Date.

(5) Execution and Delivery. The Bonds shall be executed by and on behalf of the City with the manual or facsimile signature of the Mayor of the City, shall bear an impression or a facsimile of the seal of the City, shall be attested by the manual or facsimile signature of the City Clerk and shall be authenticated by the manual signature of the Registrar. Should any officer whose signature or facsimile signature appears on the Bonds cease to be such officer before delivery of the Bonds to the Purchaser or to any Owner, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes.

The Mayor and the City Clerk are hereby authorized and directed to prepare and to execute the Bonds as herein provided. When the Bonds have been duly executed and sold, the officers of the City are authorized to, and shall, deliver the Bonds to the Purchaser thereof on receipt of the agreed purchase price.

(6) Special Obligation Recitals in Bonds. Each Bond shall recite in substance that the Bond is payable solely from the Pledged Revenues, that the Bond does not constitute a general obligation debt of the City within the meaning of the Colorado Constitution or the Charter of the City, that the Bond is not payable in whole or in part from the proceeds of general property taxes and that the full faith and credit of the City is not pledged to pay the principal of or interest on such Bond.

(7) Uniform Commercial Code. The Owners of the Bonds shall possess all rights enjoyed by holders of investment securities under the provisions of the Uniform Commercial Code – Investment Securities.

(8) Authentication. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until a certificate of authentication of such Bond, substantially in the form set forth in the form of Bond herein, shall have been duly manually executed by the Registrar. The executed certificate of authentication on each Bond shall be conclusive evidence that it has been authenticated and delivered under this Ordinance.

(9) Form of Bond. Subject to the provisions of this Ordinance, each Bond shall be in substantially the following form, with such omissions, insertions, endorsements, and variations as to recitals of fact or other provisions as may be required by the circumstances and as may be required or permitted by this Ordinance, and as may be necessary or appropriate to carry out the purpose of this Ordinance and to conform to the rules and requirements of any governmental authority or to any custom, usage or requirement of law with respect thereto:

[Form of Bond]

Unless this bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Registered Owner hereof, Cede & Co., has an interest herein.

**UNITED STATES OF AMERICA
STATE OF COLORADO
COUNTY OF ADAMS**

**CITY OF COMMERCE CITY
SALES AND USE TAX REVENUE REFUNDING BOND
SERIES 2015**

No. R-_____ \$_____

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>DATED AS OF</u>	<u>CUSIP</u>
_____ %	August 1, 20_____	Date of Delivery	

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: _____ DOLLARS

The City of Commerce City, in the County of Adams, and the State of Colorado (the "City"), for value received, hereby acknowledges the City is indebted and promises to pay to the Registered Owner specified above, or registered assigns, solely from the special funds provided therefor, as set forth herein, the Principal Amount specified above, on the Maturity Date specified above, and interest thereon payable on February 1 and August 1 in each year commencing on _____ 1, 20[___], at the Interest Rate per annum specified above, until the Principal Amount is paid or payment has been provided therefor. This bond will bear interest payable to the Registered Owner at the Interest Rate specified above from the most recent Interest Payment Date to which interest has been paid or provided for, or, if no interest has been paid, from the date of this bond. This bond is one of an authorized series issued pursuant to an ordinance of the City Council of the City (the "City Council") adopted on March 2, 2015 (the "Bond Ordinance"). This Bond bears interest, matures, is payable, is subject to optional and to mandatory sinking fund redemption, and is transferable as provided in the Bond Ordinance and the Sale Certificate. To the extent not defined herein, terms used in this Bond shall have the same meanings as set forth in the Bond Ordinance.

This Bond is a special and limited obligation of the City payable solely out of and secured by an irrevocable assignment and pledge (but not necessarily an exclusive assignment

and pledge) of the Pledged Revenues, as more specifically provided in the Bond Ordinance. This Bond, including the interest thereon, does not constitute a debt or an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation of the State or the Charter. This Bond is not payable, in whole or in part, from the proceeds of ad valorem taxes of the City, and the full faith and credit of the City is not pledged for the payment of the principal of or interest on this Bond.

The principal of the Bonds shall be payable at the principal office of the Paying Agent upon presentation and surrender of such Bonds. Except as otherwise provided in the Bond Ordinance, payment of interest on the Bonds shall be paid by check mailed on the Interest Payment Date to the Person appearing on the registration records of the City as the Registered Owner thereof as of the close of business of the Registrar on the Record Date to the address of such Owner as it appears on the registration records of the City.

Reference is made to the Bond Ordinance and to all ordinances supplemental thereto, with respect to the nature and extent of the security for the Bonds, rights, duties and obligations of the City, the rights of the Owners of the Bonds, the rights, duties and obligations of the Paying Agent and Registrar, the circumstances under which any Bond is no longer Outstanding, the ability to amend the Bond Ordinance, and to all the provisions of which the Registered Owner hereof by the acceptance of this Bond assents.

The Bonds of the series of which this is one are issued by the City, upon its behalf and upon the credit thereof, for the purpose of defraying wholly or in part any costs related to the Refunding Project (as defined in the Bond Ordinance), all under the authority of and in full conformity with the Constitution and laws of the State of Colorado, the Charter of the City, Title 11, Article 57, Part 2, C.R.S. and all other laws of the State of Colorado thereunto enabling, and pursuant to the Bond Ordinance duly adopted prior to the issuance of this Bond. Pursuant to Section 11-57-210, C.R.S., this 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 the requirements of law have been complied with by the proper officers of the City 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 Constitution or laws of the State of Colorado.

This bond shall not be valid or obligatory for any purpose until the Registrar shall have manually signed the certificate of authentication herein.

IN WITNESS WHEREOF, the City Council of the City of Commerce City, Colorado, has caused this bond to be executed in its name and on its behalf with the facsimile signature of the Mayor of the City, to be sealed with the facsimile seal of the City, and to be signed and attested with the facsimile signature of the City Clerk of the City.

(Manual or Facsimile Signature)

Mayor
City of Commerce City, Colorado

(MANUAL OR FACSIMILE SEAL)

Attest:

(Manual or Facsimile Signature)

City Clerk
City of Commerce City, Colorado

(End of Bond)

(Form of Registrar's Certificate of Authentication)

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

Date of authentication and registration: _____

This is one of the Bonds described in the within-mentioned Ordinance, and this bond has been duly registered on the registration books kept by the undersigned, as Registrar for such Bonds.

U.S. BANK NATIONAL ASSOCIATION
Denver, Colorado, as Registrar

By _____
Authorized Officer or Employee

(End of Form of Registrar's Certificate of Authentication)

(Form of Assignment)

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfer unto _____ the within bond and hereby irrevocably constitutes and appoints _____ attorney, to transfer the same on the records of the Registrar, with full power of substitution in the premises.

Dated: _

Signature Guaranteed:

Signature must be guaranteed by a
member of a Medallion Signature
Program.

Address of Transferee:

Social Security or other tax
identification number of transferee:

NOTE: The signature to this Assignment must correspond with the name as written on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

EXCHANGE OR TRANSFER FEES MAY BE CHARGED.

(End of Form of Assignment)

(Form of Prepayment Panel)

PREPAYMENT PANEL

The following installments of principal (or portion thereof) of this bond have been prepaid in accordance with the terms of the ordinance authorizing the issuance of this bond.

<u>Date of Prepayment</u>	<u>Principal Prepaid</u>	<u>Signature of Authorized Representative of the Depository</u>

(End of Form of Prepayment Panel)

(Form Statement of Insurance)

STATEMENT OF INSURANCE

[TO BE PROVIDED IF INSURANCE OBTAINED]

Section 3.03. Bonds Ratably Secured. The covenants and agreements herein set forth to be performed on behalf of the City shall be for the ratable benefit, protection and security of the Owners of any and all of the Bonds, all of which Bonds regardless of the time or times of their maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof, except as otherwise expressly provided in or pursuant to this Ordinance.

Section 3.04. Special Obligations. All of the Bonds, as to all Debt Service Requirements thereof, shall be payable and collectible solely out of the Pledged Revenues. The Registered Owner or Owners of any of the Bonds may not look to any general or other fund of the City for the payment of the Debt Service Requirements, except the herein designated special funds pledged therefor. The Bonds shall not constitute a general obligation or a debt of the City within the meaning of any constitutional or statutory provision or limitation of the State or the Charter. The Bonds and interest thereon shall not be considered or held to be general obligations of the City but shall constitute the special and limited obligations of the City. The Bonds are not payable in whole or in part from the proceeds of general property taxes, and the full faith and credit of the City is not pledged for payment of the Bonds.

Section 3.05. Registration, Transfer and Exchange of Bonds. The City will cause to be kept at the Principal Corporate Trust Office registration records in which, subject to such reasonable regulations as the Registrar may prescribe, the City shall provide for the registration of Bonds and the registration of transfers of Bonds entitled to be registered or transferred as herein provided.

Each of the Bonds may be transferred or exchanged by the Owner thereof upon surrender for transfer or exchange of such Bond at the Principal Corporate Trust Office, or any successor transfer agent, duly endorsed or accompanied by a written instrument of transfer or authorization for exchange in form satisfactory to the Registrar and executed by the Owner thereof or his or her attorney duly authorized in writing. Thereupon, the Registrar shall authenticate and deliver, in exchange for such transferred or exchanged Bond, a new fully registered Bond in the name of the transferee, or, if exchanged, the Owner and issued in a principal amount equal to the principal amount of the transferred or exchanged Bond, of the same maturity, and bearing interest at the same rate. The City or the Registrar may require that the cost, if any, of preparing each new Bond upon such exchange or transfer and any other expenses of the City or the Registrar, including counsel fees, and any tax or other governmental charge, incurred in connection therewith (except in the case of an exchange resulting from the redemption of the Bond exchanged) shall be paid by the Owner requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. If any requested transfer or exchange of a Bond shall necessitate the printing of additional Bonds, the Registrar may require that the cost of such printing be paid by the City. The City and the Registrar shall not be obligated to issue, exchange, authenticate or transfer any Bonds (a) during a period beginning on the Record Date before any Interest Payment Date or Redemption Date and ending on such Interest Payment Date or Redemption Date, or (b) during a period beginning on the fifteenth day before the mailing of notice of redemption of Bonds and ending on the date of such mailing.

Section 3.06. Issuance in Book-Entry Form. The Bonds shall be initially issued in the form of a single, certificated, fully registered Bond for each maturity. Upon initial issuance, the ownership of each such Bond shall be registered in the registration records kept by the Registrar in the name of Cede.

With respect to Bonds registered in the name of Cede or held by a securities depository, the City, the Registrar, and the Paying Agent shall have no responsibility or obligation to any Participant or Beneficial Owner including, without limitation, any responsibility or obligation with respect to: (i) the accuracy of the records of the depository or any Participant concerning any ownership interest in the Bonds; (ii) the delivery to any Participant, Beneficial Owner, or Person other than the Registered Owner, of any notice concerning the Bonds, including notice of redemption; (iii) the payment to any Participant, Beneficial Owner, or Person other than the Registered Owner, of the principal of, premium if any, and interest on the Bonds. The City, the Registrar, and the Paying Agent may treat the Registered Owner of a Bond as the absolute owner of such Bond for the purpose of payment of the principal of, premium if any, and interest with respect to such Bond, for purposes of giving notices of redemption and other matters with respect to such Bond, and for all other purposes whatsoever. The Paying Agent shall pay all principal of, premium if any, and interest on the Bonds only to or upon the order of the Registered Owners, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the payment of the same. No Person, other than a Registered Owner, shall receive a certificated Bond evidencing the obligations of the City pursuant to this Ordinance.

DTC may determine to discontinue providing its service as depository with respect to the Bonds at any time by giving notice to the City and discharging its responsibilities with respect thereto under applicable law. Additionally, the Finance Director may terminate the services of DTC if he determines, in his sole and absolute discretion, that DTC is unable to discharge its responsibilities with respect to the Bonds or that continuation of the system of book entry transfers through DTC is not in the best interests of the Beneficial Owners or the City. Such termination shall be effected by written notice of the same from the City to DTC and to the Registrar and Paying Agent. Upon the termination of the services of DTC, a substitute depository which is willing and able to undertake the system of book-entry transfers upon reasonable and customary terms may be engaged by the City or, if the Finance Director determines in his sole and absolute discretion that it is in the best interests of the Beneficial Owners or the City that the Beneficial Owners be able to obtain certificated Bonds, the Bonds shall no longer be restricted to being registered in the name of Cede or other nominee of a depository but shall be registered in whatever name or names the Beneficial Owners shall designate at that time, and fully registered Bond certificates shall be delivered to the Beneficial Owners.

Section 3.07. Provisions Relating to the Insurance Policy. To the extent that the Bonds are secured by an Insurance Policy, the following provisions shall apply notwithstanding anything to the contrary contained in this Ordinance: So long as the Insurer is not in default in its payment obligations under the Insurance Policy, the Insurer shall at all times be deemed the sole and exclusive Owner of the Outstanding Bonds for the purposes of all approvals, consents, waivers, institution of any action, and the direction of

all remedies pursuant to this Ordinance; provided, however, that the Insurer shall not be deemed to be the sole and exclusive Owner of the Outstanding Bonds with respect to any amendment or supplement to this Ordinance which seeks to amend or supplement this Ordinance for the purposes set forth in paragraphs (1) through (6) of Section 10.02 hereof, and provided, further, that the Insurer shall not have the right to direct or consent to City, Paying Agent or Owner action as provided herein, if:

- (a) the Insurer shall be in payment default under the Insurance Policy;
 - (b) any material provision of the Insurance Policy shall be held to be invalid by a final, non-appealable order of a court of competent jurisdiction, or the validity or enforceability thereof shall be contested by the Insurer; or
 - (c) a proceeding shall have been instituted in a court having jurisdiction in the premises seeking an order for relief, rehabilitation, reorganization, conservation, liquidation or dissolution in respect of the Insurer under Article 16 of the Insurance Law of the State of New York or any successor provision thereto and such proceeding is not terminated for a period of 90 consecutive days or such court enters an order granting the relief sought in such proceeding.
- (2) To the extent that the Insurer makes payment of any principal of or interest on a Bond, it shall be fully subrogated to all of the Owner's rights thereunder in accordance with the terms of the Insurance Policy to the extent of such payment, including the Owner's rights to payment thereof.
 - (3) In the event that the principal of or interest on a Bond shall be paid by the Insurer pursuant to the terms of the Insurance Policy: (i) such Bond shall continue to be "Outstanding" under this Ordinance, and (ii) the Insurer shall be fully subrogated to all of the rights of the Owner thereof in accordance with the terms and conditions of paragraph (2) of this Section and the Insurance Policy.
 - (4) This Ordinance shall not be discharged unless and until all amounts due to the Insurer have been paid in full or duly provided for.
 - (5) The rights granted under this Ordinance to the Insurer to request, consent to or direct any action are rights granted to the Insurer in consideration of its issuance of the Insurance Policy. Any exercise by the Insurer of such rights is merely an exercise of the Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit of or on behalf of the Owners, nor does such action evidence any position of the Insurer, positive or negative, as to whether Owner consent is required in addition to consent of the Insurer.
 - (6) No contract shall be entered into nor any action taken by the City or the Paying Agent pursuant to which the rights of the Insurer or security for or sources of payment of the Bonds under this Ordinance may be impaired or prejudiced except upon obtaining the prior written consent of the Insurer.

ARTICLE IV. SPECIAL FUNDS.

Section 4.01. Disposition of Bond Proceeds and other Revenues; Security For Bonds. The proceeds from the sale of the Bonds and the Pledged Revenues shall be deposited by the City in the funds described in this Article IV, to be accounted for in the manner and priority set forth in this Article IV. The Bonds shall be issued and sold for the purposes of paying a portion of the costs of the Refunding Project. All Bond proceeds shall be deposited to such funds or accounts as the Finance Director determines and applied, together with any other available moneys, to pay the costs of the Refunding Project and any other costs incidental to the issuance of the Bonds.

Neither the Purchaser nor any subsequent Owner of any Bonds shall in any manner be responsible for the application or disposal by the City or by any of its officers, agents or employees of the moneys derived from the sale of the Bonds or of any other moneys designated in this Article IV.

The Pledged Revenues are hereby assigned and pledged to secure the payment of the Debt Service Requirements of the Bonds. This assignment and pledge shall be valid and binding from and after the date of the first delivery of the Bonds, and the moneys, as received by the City, and hereby assigned and pledged, shall immediately be subject to the lien of this assignment and pledge without any physical delivery thereof, any filing, or further act, and the lien of this assignment and pledge and the obligation to perform the contractual provisions hereby made shall have priority over any or all other obligations and liabilities of the City (except as herein otherwise expressly provided), and the lien of this assignment and pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the City (except as herein otherwise expressly provided), irrespective of whether such parties have notice thereof.

When the Bonds have been duly executed by appropriate City officers and authenticated by the Registrar, the City shall cause the Bonds to be delivered to the Purchaser on receipt of the agreed purchase price. The Bonds shall be delivered in such denominations as the Purchaser shall direct.

The proceeds of the sale of the Bonds shall be deposited promptly by the City and shall be accounted for in the following manner and are hereby pledged therefor, but the Purchaser or any subsequent Owner in no manner shall be responsible for the application or disposal by the City or any of its officers of any of the funds derived from the sale of the Bonds:

a) First, there shall be credited to the “City of Commerce City, Colorado, Sales and Use Tax Revenue Refunding Bonds, Series 2015 Escrow Account” (the “Escrow Account”), which is hereby created, an amount which shall be sufficient, together with other City funds available for such purpose, to establish any initial cash balance remaining uninvested and to buy Federal Securities to effect the Refunding Project.

b) Second, the balance of the proceeds shall be deposited with the Paying Agent to be applied for the purpose of paying, together with any other money available therefor, costs of issuance of the Bonds.

Section 4.02. Debt Service Fund. The City hereby continues a special fund established in the 1995 Bond Ordinance designated as the City of Commerce City, Colorado, Sales and Use Tax Revenue Bonds, Debt Service Fund (the "Debt Service Fund"). The City shall deposit forthwith upon receipt of the proceeds of the Bonds, interest accrued thereon from their date of issue to the date of delivery thereof to the Purchaser, to apply to the payment of interest on the Bonds as the same becomes due after their delivery.

(1) Interest Payments. Monthly, not later than the 25th day of the month preceding each month in any Bond Year, an amount in approximately equal monthly installments necessary, together with any moneys therein and available therefor, to pay 1/6 of the next maturing installment of interest on the Outstanding Bonds and additional Parity Securities.

(2) Principal Payments. Monthly, not later than the 25th day of the month preceding each month in any Bond Year, an amount in approximately equal monthly installments necessary, together with any moneys therein and available therefor, to pay 1/12 of any installment of principal of the Outstanding Bonds and additional Parity Securities payable in the Bond Year during which such payment occurs.

The moneys credited to the Debt Service Fund shall be used solely to promptly pay when due the Debt Service Requirements of the Bonds and any other Parity Securities then Outstanding, except as otherwise provided in this Ordinance. Investment or interest income of the Debt Service Fund shall remain therein for payment of the Bonds.

The Debt Service Fund (i) is established primarily to achieve a proper matching of revenues and debt service within each year and (ii) will be depleted at least once a year except for a reasonable carry-over amount (not to exceed the greater of (a) one year's earnings on the Debt Service Fund or (b) one-twelfth of annual debt service).

The City shall be entitled to credits against such payments for any sums on hand in the Debt Service Fund which are available for the payment of Debt Service Requirements, including investment income from the Debt Service Fund and the Reserve Fund. Nothing herein prevents the accumulation of amounts required to be paid into the Debt Service Fund at a faster rate than that required in this Section, in which case no further payments need be made as long as and to the extent that the amounts so accumulated are on deposit in the Debt Service Fund and available for the payment of Debt Service Requirements.

Section 4.03. Reserve Fund. For so long as the 2005 Bonds and the 2006 Bonds are Outstanding, the City hereby continues a special fund established in the 1995 Bond Ordinance designated as the City of Commerce City, Colorado, Sales and Use Tax Revenue Bonds, Reserve Fund (the "Reserve Fund"). *At the time of issuance of the Bonds, no funds shall be required to be on deposit in the Reserve Fund.*

No later than the last day of February in each year, the Finance Director shall calculate the coverage of the Pledged Revenues received over the Debt Service Requirements paid in the preceding Fiscal Year. Such calculation shall again be performed, using audited financial information, on the earliest practicable date after audited financial results are available for each such Fiscal Year. All such calculations shall be filed with the City Clerk promptly upon

completion. In the event that, according to either such calculation, the Pledged Revenues received in any Fiscal Year are less than four times the Debt Service Requirements paid in such Fiscal Year with respect to the Bonds and all Parity Securities Outstanding, the City shall, immediately upon the filing thereof, commence funding the Reserve Fund monthly so that no later than twenty-four (24) months after the date of such filing, the amount accumulated in the Reserve Fund is equal to the Maximum Annual Debt Service Requirements of the Bonds and any Outstanding Parity Securities. The City may cease funding the Reserve Fund and will be entitled to withdraw any moneys deposited therein if the calculation performed using audited financial information shows four or more times coverage was in fact attained. The moneys in the Reserve Fund shall be maintained as a continuing reserve to be used, except as hereinafter provided in this Section 4.03 and Section 4.04 and Article VIII hereof, only to prevent deficiencies in payment of the Debt Service Requirements of the Bonds and any Parity Securities then Outstanding, resulting from failure to deposit into the Debt Service Fund sufficient funds to pay such Debt Service Requirements as the same accrue.

If at any time the City shall for any reason fail to pay into the Debt Service Fund the full amount required by Section 4.02 hereof, then the City shall pay into the Debt Service Fund at such time from the Reserve Fund an amount equal to the difference between that paid from the Pledged Revenues and the full amount so stipulated. For the purpose of maintaining the Reserve Fund at the minimum amount required to be maintained therein, the money so used shall be replaced and transferred to the Reserve Fund from the first Pledged Revenues thereafter received and not required to be otherwise applied by Section 4.02 hereof. In the event that said first Pledged Revenues are insufficient during a given Fiscal Year to reaccumulate the Reserve Fund to the minimum amount required to be maintained therein, then during the month of December of said Fiscal Year, the City shall, to the extent such funds have been appropriated by the City Council and may lawfully be so applied, transfer to the Reserve Fund, from legally available funds other than the Pledged Revenues, a sum equal to the difference between the minimum amount required to be maintained in the Reserve Fund and any lesser sum deposited therein.

At such time as the 2005 Bonds and the 2006 Bonds are no longer Outstanding, the Reserve Fund shall not be required to be funded. A separate and distinct Reserve Fund for any future Parity Securities may be funded as required in any Ordinance authorizing such Parity Securities.

Section 4.04. Termination of Deposits; Use of Moneys in Debt Service Fund and Reserve Fund. No payment need be made into the Debt Service Fund or the Reserve Fund if the amount in such funds totals a sum at least equal to all Debt Service Requirements of the Outstanding Bonds and any Outstanding Parity Securities to their respective maturities or to any redemption date or redemption dates as of which the City shall have exercised or shall have obligated itself to exercise its option to redeem, prior to their respective maturities, any Bonds and any Parity Securities then Outstanding and thereafter maturing, both accrued and not accrued (provided that, solely for the purpose of this Section, there shall be deemed to be a credit to the Reserve Fund of moneys, Federal Securities and bank deposits, or any combinations thereof, accounted for in any other account or accounts of the City and restricted solely for the purpose of paying the Debt Service Requirements). In such case, moneys in the Debt Service Fund and the Reserve Fund (except for any known interest or other gain to accrue from any investment or

deposit of moneys pursuant to Section 5.02 hereof from the time of any such investment or deposit to the time or respective times the proceeds of any such investment or deposit shall be needed for such payment, at least equal to such Debt Service Requirements) shall be used together with any such gain from such investments and deposits solely to pay such Debt Service Requirements as the same become due. Any moneys in excess thereof in the Debt Service Fund and the Reserve Fund and any other moneys derived from the Pledged Revenues may be used in any lawful manner determined by the City.

The moneys in the Debt Service Fund and the Reserve Fund shall be used solely and only for the purpose of paying the Debt Service Requirements of the Bonds and any other Parity Securities authorized and outstanding from time to time; but any moneys at any time in excess of the minimum amount required to be maintained in the Reserve Fund may be withdrawn therefrom, and transferred from time to time to the Debt Service Fund and distributed in the same manner as other moneys in the Debt Service Fund.

Section 4.05. Rebate Fund. After the payments required by Sections 4.02 and 4.03 have been made and concurrently with any payments required to be made with respect to any rebate funds established for any Parity Securities, there shall be deposited into a special and separate fund hereby created and to be known as the “City of Commerce City, Colorado, Sales and Use Tax Revenue Bonds, Rebate Fund” moneys in the amounts and at the times specified in the Tax Certificate so as to enable the City to comply with Section 7.14 hereof. Amounts on deposit in the Rebate Fund shall not be subject to the lien and pledge of this Ordinance to the extent that such amounts are required to be paid to the United States Treasury. The City shall cause amounts on deposit in the Rebate Fund to be forwarded to the United States Treasury (at the address provided in the Tax Certificate) at the times and in the amounts set forth therein.

Upon receipt by the City of an opinion of Bond Counsel to the effect that the amount in the Rebate Fund is in excess of the amount required to be contained therein, such excess moneys may be used by the City for any lawful purpose.

Section 4.06. Payment of Additional Subordinate Securities. Subsequent to provision in full for the payments and fund maintenance transfers required by the foregoing provisions of this Article IV, any Pledged Revenues remaining in any month after the payments and accumulations required hereby have been made may be used by the City for the payment of Debt Service Requirements of additional Subordinate Securities payable from the Pledged Revenues and hereafter authorized to be issued in accordance with this Ordinance and any other provisions herein supplemental thereto, including reasonable reserves for such Subordinate Securities, as the same accrue; but the lien of such Subordinate Securities on the Pledged Revenues and the pledge thereof for the payment of such Subordinate Securities shall be subordinate to the lien and pledge of the Bonds and any Parity Securities as herein provided.

Section 4.07. Use of Remaining Revenues. After the above-required payments have been made in each month, and there shall have been credited to the Debt Service Fund and the Reserve Fund for the payment of the Bonds and any other securities payable from the Pledged Revenues all amounts required to be deposited therein, then any remaining Pledged Revenues may be used by the City in any manner authorized by law for said funds.

Section 4.08. Budget and Appropriation of Funds. The sums provided to make the payments specified in this Article IV are hereby appropriated for said purposes, and said amounts for each year shall be included in the annual budget and the appropriation ordinance or measures to be adopted or passed by the City Council in each year respectively while any of the Bonds, either as to principal or interest, are outstanding and unpaid. No provisions of any constitution, statute, charter, ordinance, resolution, or other order or measure enacted after the issuance of the Bonds shall in any manner be construed as limiting or impairing the obligation of the City to keep and perform the covenants contained in this Ordinance so long as any of the Bonds remain outstanding and unpaid.

ARTICLE V. GENERAL ADMINISTRATION OF FUNDS.

Section 5.01. Places and Times of Deposits. The Debt Service Fund and the Reserve Fund shall be maintained in a Bank as a book account or invested in Permitted Investments, kept separate and apart for accounting purposes from all other accounts or funds of the City as trust accounts solely for the purposes herein designated therefor; provided that there may be established separate accounts and subaccounts of any fund or account in more than one Bank. For purposes of investment of moneys, nothing herein prevents the combination of such accounts with any other Bank account or accounts or other funds of the City. Each periodic payment shall be credited to the proper book account not later than the date therefor designated, except that when any such date shall be a Saturday, a Sunday or a legal holiday, then such payment shall be made on or before the next preceding Business Day.

Section 5.02. Investment of Funds. Any moneys in any fund designated herein may be invested in Permitted Investments as provided by law. The obligations so purchased as an investment of moneys in each such fund shall be deemed to be part of such fund, and the interest accruing thereon or investment income realized therefrom shall be credited to each such fund. Any loss resulting from such investment shall be charged to the fund from which the investment was made. The City shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in any fund whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

Section 5.03. No Liability for Losses Incurred in Performing Terms of Ordinance. Neither the City nor any officer, employee or agent of the City shall be liable or responsible for any loss resulting from any investment or reinvestment made in accordance with this Ordinance.

ARTICLE VI. PRIORITIES; LIENS; ISSUANCE OF ADDITIONAL BONDS.

Section 6.01. First Lien on Pledged Revenues; Issuance of Parity Securities. The Bonds constitute an irrevocable and first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues.

Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the City of Parity Securities, payable from and constituting a lien upon the Pledged Revenues on a parity with the lien of the Bonds, provided, however, that before any such Parity Securities are authorized or actually issued, the following conditions must be satisfied:

(1) Absence of Payment Default. The City is current in all payments required to have been accumulated in the Debt Service Fund as required herein.

(2) Historic Revenues Test. The Pledged Revenues, as certified to the City by the Chief Financial Officer, actually received in the last complete Fiscal Year immediately preceding the date of the issuance of such proposed Parity Securities, shall have been sufficient to pay an amount at least equal to 190% of the sum derived by adding the following: (i) the Maximum Annual Debt Service for the Outstanding Bonds; (ii) the Maximum Annual Debt Service for all other Outstanding Parity Securities; and (iii) the Maximum Annual Debt Service for the Parity Securities proposed to be issued.

(3) Adjustment of Revenues. In determining compliance with the revenue test herein, the amount of the Pledged Revenues for the current and immediately preceding Fiscal Year may be increased by the amount of gain which is estimated by the Finance Director to result from any increase in the amount of the Pledged Revenues received or to be received during the Fiscal Year in question after giving effect to any ordinance providing for an increase in the Sales and Use Tax rates or providing for any other addition to the sources of Pledged Revenues, if such ordinance is effective and the referendum period therefor has expired prior to the issuance of the Parity Securities.

(4) Adequate Reserves. The proceedings under which any such Parity Securities are issued must provide for the deposit of moneys to the Reserve Fund from any source legally available to the City, and contain a covenant by the City to maintain the Reserve Fund in an amount at least equal to the Maximum Annual Debt Service Requirements of the Bonds and such additional Parity Securities; provided that such deposit need not be in excess of any amount which would result in the Bonds or any Parity Securities being considered "arbitrage bonds" within the meaning of the Code.

Section 6.02. Reduction of Annual Requirements. The aggregate Debt Service Requirements calculated in determining the respective Maximum Annual Debt Service for purposes of Section 6.01 hereof shall be reduced to the extent such Debt Service Requirements are scheduled to be paid from moneys or securities deposited in escrow in the manner contemplated by Article VIII hereof or from moneys actually on hand in the Debt Service Fund at the time of such calculation.

Section 6.03. Certification of Revenues. In the case of the computation of the revenues test provided in Section 6.01(2) and (3), the specified and required written certification by the Independent Accountant or the Finance Director that such annual revenues are sufficient to pay such amounts as provided in Section 6.01(2) and (3) hereof shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver Parity Securities.

Section 6.04. Subordinate Securities Permitted. Nothing herein prevents the City from issuing additional bonds or other additional securities for any lawful purpose payable from the Pledged Revenues and having a lien thereon subordinate, inferior and junior to the lien thereon of the Bonds.

Section 6.05. Superior Securities Prohibited. Nothing herein permits the City to issue additional bonds or other additional securities payable from the Pledged Revenues and having a lien thereon prior and superior to the lien thereon of the Bonds.

Section 6.06. Refunding Bonds.

(1) Generally. If at any time after the Bonds, or any part thereof, shall have been issued and remain outstanding, the City shall find it desirable to refund any outstanding obligations payable from the Pledged Revenues, said obligations, or any part thereof, may be refunded, subject to the provisions of this Section, if (a) the obligations to be refunded, at the time of their required surrender for payment, shall then mature or shall then be callable for prior redemption at the City's option upon proper call, or (b) the owners of the obligations to be refunded consent to such surrender and payment.

(2) Protection of Obligations Not Refunded. Any refunding obligations payable from the Pledged Revenues shall be issued with such details as the City Council may provide, so long as there is no impairment of any contractual obligation imposed upon the City by any proceedings authorizing the issuance of any unrefunded portion of such obligations; but so long as any Bonds are outstanding, refunding obligations payable from the Pledged Revenues may be issued on a parity with the unrefunded Bonds or Parity Securities only if:

(a) Prior Consent. The City first receives the consent of the owner or owners of the unrefunded Bonds or Parity Securities; or

(b) Requirements Not Increased. The refunding obligations do not increase, for any Fiscal Year prior to and including the last maturity date of any unrefunded Bonds, the aggregate principal and interest requirements evidenced by such refunded obligations and by any outstanding Parity Securities not refunded, and the lien of any refunding parity obligations on the Pledged Revenues is not raised to a higher priority than the lien thereon of any obligations thereby refunded; or

(c) Earnings Test. The refunding obligations are issued in compliance with Sections 6.01 through 6.03 hereof.

ARTICLE VII. COVENANTS.

The City hereby particularly represents, covenants and agrees with the Registered Owners of the Bonds that:

Section 7.01. Amendment of City Sales and Use Tax Ordinance; Continuance and Collection of Taxes. The City Sales and Use Tax Ordinance is now in full force and effect and has not been repealed.

If the City Sales and Use Tax Ordinance, or any modifying or supplemental ordinance not contravening the limitations of this Section, or any part of said ordinances, shall ever be held to be invalid or unenforceable, it shall be the duty of the City to adopt immediately another ordinance, to seek such voter approval, if any, as may then be required by law, or take

any action necessary to produce substantially the same Pledged Revenues as would be produced under the terms of the City Sales and Use Tax Ordinance as it exists at the time of the issuance of the Bonds. To the extent that any changes in the Sales and Use Tax or the City Sales and Use Tax Ordinance may lawfully be imposed on the City by the State, the City covenants to take such action as may be necessary or appropriate to produce substantially the same Pledged Revenues as would be produced under the terms of the City Sales and Use Tax Ordinance as it exists at the time of the issuance of the Bonds. To the extent that the Sales and Use Tax may lawfully be replaced or superseded by any other tax or revenue source (including, without limitation, any state collected, locally shared sales and/or use taxes), the revenues derived by the City from such replacement tax or revenue source shall become Pledged Revenues under this Ordinance.

The City shall take all reasonable action necessary to collect delinquent payments of the Sales and Use Tax or to cause such delinquent payments to be collected.

Section 7.02. Impairment of Contract. The City agrees that no law, ordinance or resolution of the City in any manner affecting the Sales and Use Tax, the Pledged Revenues, or the Bonds, or otherwise appertaining thereto, shall be repealed or otherwise directly or indirectly modified in such a manner as to materially adversely affect any Bonds Outstanding, unless the required consent of the Owners of at least sixty-six percent (66%) in aggregate principal amount of the then Outstanding Bonds affected is obtained, all as provided in Article X of this Ordinance.

Notwithstanding any other provision of this Section or this Ordinance, the City shall retain the right to make changes, without any consent of the Owners of the Bonds, in the City Sales and Use Tax Ordinance, or any ordinance supplemental thereto or in substitution therefor, concerning the use or proceeds of the Sales and Use Tax remaining after the current requirements of all ordinances authorizing bonds or other securities payable from the Sales and Use Tax, or any portion thereof, have been met; or concerning changes in applicability, exemptions, administration, collection or enforcement of the Sales and Use Tax, if such changes do not materially adversely affect the security for the Bonds; but the City shall not reduce the present rate of the Sales and Use Tax.

Section 7.03. Defense of Legality of Pledged Revenues. There is not pending or threatened any suit, action or proceeding against or affecting the City before or by any court, arbitrator, administrative agency or other governmental authority which affects the validity or legality of this Ordinance or materially affects the imposition and collection of the Sales and Use Tax, any of the City's obligations under this Ordinance or any of the transactions contemplated by this Ordinance.

The City shall, to the extent permitted by law, defend the validity and legality of the Sales and Use Tax and this Ordinance, and all amendments thereto against all claims, suits and proceedings which would diminish or impair the Pledged Revenues or any other security for the Bonds.

Except as specified in this Ordinance, the City has not assigned or pledged the Pledged Revenues in any manner which would diminish the security for payment of the Bonds.

Section 7.04. Performance of Duties. The City will faithfully and punctually perform, or cause to be performed, all duties with respect to the Pledged Revenues required by the Constitution and laws of the State and the Charter and the various ordinances and resolutions and contracts of the City, including, without limitation, the proper segregation of the proceeds of the Bonds and the Pledged Revenues and their application from time to time to the respective funds provided therefor.

Section 7.05. Costs of Bond Issue and of Performance. Except as otherwise specifically provided herein, all costs and expenses incurred in connection with the issuance of the Bonds, payment of the Debt Service Requirements, or with the City's performance of or compliance with any covenant or agreement contained in this Ordinance, shall be paid exclusively (but only from the appropriate special fund in the manner authorized herein) from the proceeds of the Bonds, or from the Pledged Revenues, or from other legally available moneys, and in no event shall any of such costs or expenses be required to be paid out of or charged to the general funds of the City.

Section 7.06. Contractual Obligations. The City will perform all contractual obligations undertaken by it under the Paying Agent Agreement, and any other agreements relating to the Bonds, this Ordinance or the Pledged Revenues. The Mayor and the City Clerk are hereby authorized to execute and deliver such agreements in connection with the issuance of the Bonds.

Section 7.07. Further Assurances. The City shall, so far as it may be authorized by law, execute, and file or record all further instruments, and make all further assurances as may be necessary or desirable or as may be reasonable and required to carry out the purposes of this Ordinance. The City, acting by and through its officers, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Pledged Revenues and other funds and accounts pledged hereunder and all the rights of every Owner of any of the Bonds against all claims and demands of all Persons.

Section 7.08. Conditions Precedent. Upon the date of issuance of any of the Bonds, all conditions, acts and things required by the Constitution or laws of the United States, the Constitution or laws of the State, the Charter, or this Ordinance, to exist, to have happened, and to have been performed precedent to or in the issuance of the Bonds shall exist, have happened and have been performed, and the Bonds, together with all other obligations of the City, shall not contravene any debt or other limitation prescribed by the Constitution or laws of the United States, the Constitution or laws of the State, or the Charter.

Section 7.09. Records. The City will keep proper books of record and account, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the proceeds of the Sales and Use Tax and the funds established herein, and any Owner of any of the Bonds shall have the right at all reasonable times to inspect the same.

Section 7.10. Protection of Security. The City, its officers, agents and employees, shall not take any action in such manner or to such extent as might prejudice the security for the payment of the Debt Service Requirements of the Bonds and any other securities

payable from the Pledged Revenues according to the terms thereof. No contract shall be entered into nor any other action taken by which the rights of any Owner of any Bond or other security payable from Pledged Revenues might be prejudicially and materially impaired or diminished.

Section 7.11. Accumulation of Interest Claims. In order to prevent any accumulation of interest or claims for interest after maturity, the City shall not directly or indirectly extend or assent to the extension of the time for the payment of any interest or claim for interest on any of the Bonds or any other securities payable from Pledged Revenues; and the City shall not directly or indirectly be a party to or approve any arrangements for any such extension or for the purpose of keeping alive any of such coupons or other claims for interest. If the time for the payment for any such installment of interest is extended in contravention of the foregoing provisions, such installment or installments of interest after such extension or arrangement shall not be entitled in case of default hereunder to the benefit or the security of this Ordinance, except upon the prior payment in full of the principal of all of the Bonds and any such securities or interest the payment of which has not been extended.

Section 7.12. Prompt Payment of Bonds. The City shall promptly pay the Debt Service Requirements of every Bond at the places, on the dates, and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.

Section 7.13. Other Liens. Other than as provided herein, there are no other liens or encumbrances of any nature whatsoever on or against the Pledged Revenues.

Section 7.14. Tax Covenant. The City covenants for the benefit of the Owners of the Bonds that it will not take any action or omit to take any action with respect to the Bonds, the proceeds thereof, any other funds of the City or any facilities financed with the proceeds of the Bonds if such action or omission (i) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Tax Code, (ii) would cause interest on the Bonds to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Tax Code except to the extent such interest is required to be included in adjusted current earnings adjustment applicable to corporations under Section 56 of the Tax Code in calculating corporate alternative minimum taxable income, or (iii) would cause interest on the Bonds to lose its exclusion from Colorado taxable income or Colorado alternative minimum taxable income under present Colorado law. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds until the date on which all obligations of the City in fulfilling the above covenant under the Tax Code and Colorado law have been met.

Notwithstanding any provision of this Section, the City may rely conclusively on an opinion of Bond Counsel in complying, or in any deviation from complying, with the provisions hereof.

ARTICLE VIII. DEFEASANCE.

If, when the Bonds shall be paid in accordance with their terms (or payment of the Bonds has been provided for in the manner set forth in the following paragraph), then this Ordinance

and all rights granted hereunder shall thereupon cease, terminate and become void and be discharged and satisfied.

Payment of any Outstanding Bond shall prior to the maturity or Redemption Date thereof be deemed to have been provided for within the meaning and with the effect expressed in this Section if: (a) in case said Bond is to be redeemed on any date prior to its maturity, the City shall have given to the Paying Agent in form satisfactory to it irrevocable instructions to give on a date in accordance with the provisions of Section 3.02 hereof, notice of redemption of such Bond on said Redemption Date, such notice to be given in accordance with the provisions of Section 3.02 hereof; (b) there shall have been deposited with the Paying Agent or a Trust Bank either moneys in an amount which shall be sufficient, and/or Federal Securities which shall not contain provisions permitting the redemption thereof at the option of the issuer, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited with or held by the Paying Agent or Trust Bank at the same time, shall be sufficient to pay when due the Bond Requirements due and to become due on said Bond on and prior to the Redemption Date or maturity date thereof, as the case may be; and (c) in the event said Bond is not by its terms subject to redemption within the next sixty days, the City shall have given the Paying Agent in form satisfactory to it irrevocable instructions to give, as soon as practicable in the same manner as the notice of redemption is given pursuant to Section 3.02 hereof, a notice to the Owner of such Bond that the deposit required by (b) above has been made with the Paying Agent or Trust Bank and that payment of said Bond has been provided for in accordance with this Section and stating such maturity or Redemption Date upon which moneys are to be available for the payment of the Bond Requirements of said Bond. Neither such securities nor moneys deposited with the Paying Agent or Trust Bank pursuant to this Section or principal or interest payments on any such Federal Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the Bond Requirements of said Bond; provided any cash received from such principal or interest payments on such Federal Securities deposited with the Paying Agent or other Trust Bank, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities of the type described in (b) of this paragraph maturing at times and in amounts sufficient to pay when due the Bond Requirements to become due on said Bond on or prior to such Redemption Date or maturity date thereof, as the case may be. At such time as payment of a Bond has been provided for as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this Ordinance, except for the purpose of any payment from such moneys or securities deposited with the Paying Agent or other Trust Bank.

The release of the obligations of the City under this Section shall be without prejudice to the right of the Paying Agent to be paid reasonable compensation for all services rendered by it hereunder and all its reasonable expenses, charges and other disbursements incurred on or about the administration of and performance of its powers and duties hereunder.

Upon compliance with the foregoing provisions of this Section with respect to all Bonds then Outstanding, this Ordinance may be discharged in accordance with the provisions of this Section but the liability of the City in respect of the Bonds shall continue; provided that the Owners thereof shall thereafter be entitled to payment only out of the moneys or Federal Securities deposited with the Paying Agent or other Trust Bank as provided in this Section.

Notwithstanding anything herein to the contrary, in the event that the principal and/or interest due on the Bonds shall be paid by the Insurer pursuant to the 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 the assignment and pledge of the Pledged Revenues 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 Insurer, and the Insurer shall be subrogated to the rights of such Owners.

ARTICLE IX. DEFAULT PROVISIONS AND REMEDIES.

Section 9.01. Events of Default. Each of the following events is hereby declared to be and to constitute an Event of Default:

(1) Nonpayment of Principal. Payment of the principal of or the redemption premium due for any of the Bonds is not made when the same becomes due and payable, either at maturity or by proceedings for prior redemption or otherwise;

(2) Nonpayment of Interest. Payment of any installment of interest on the Bonds is not made when the same becomes due and payable;

(3) Incapable to Perform. The City for any reason is, or is rendered, incapable of fulfilling its obligations hereunder.

(4) Default of Any Provision. The City makes any default in the due and punctual performance of any of the representations, covenants, conditions, agreements and other provisions contained in the Bonds or in this Ordinance on its part to be performed, other than those provided in paragraphs (1), (2) and (3) of this Section 9.01 and other than the City's continuing disclosure covenant in Section 2.03 hereof, and if such default continues for sixty days after written notice, specifying such default and requiring the same to be remedied, is given to the City by Owners of at least twenty-five percent in aggregate principal amount of the Bonds then Outstanding; provided that if such default cannot be cured within such sixty days, and during that period corrective action has commenced to remedy such default and subsequently is diligently pursued to the completion of such performance, an Event of Default shall not be deemed to have occurred.

Section 9.02. Remedies for Defaults. Upon the happening and continuance of any of the Events of Default, as provided in Section 9.01 hereof, then and in every case the Owners of Bonds in a principal amount not less than twenty-five percent of the aggregate 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 or by other suit, action, or special proceedings in equity or at law, in any court of competent jurisdiction, either for the specific performance of any covenant or agreement contained herein or for any proper legal or equitable remedy as such Owners, trustee or trustees may deem most effectual to protect and to enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or in violation of any right of any Owner of any Bond, or to require the City to act as if it were the trustee of an express trust, or any combination of such remedies, or as otherwise may be authorized by any

statute or other provision of law. All such proceedings at law or in equity shall be instituted, had and maintained for the ratable benefit of all Owners of the Bonds. Notwithstanding anything else provided herein, the Owners shall have no right to accelerate the Bonds upon an Event of Default.

Section 9.03. Rights and Privileges Cumulative. The failure of any Owner of any Outstanding Bond to proceed in any manner herein provided shall not relieve the City, or any of its officers, agents or employees of any obligation to perform or carry out any duty, obligation or other commitment. Each right or privilege of any such Owner (or trustee thereof) 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.

Section 9.04. Duties upon Default. Upon the happening of any of the Events of Default as provided in Section 9.01 hereof, the City, in addition, will do and perform all proper acts on behalf of and for the Owners of the Outstanding Bonds to protect and to preserve the security created for the payment of the Bonds and to insure the payment of the Debt Service Requirements promptly as the same become due.

Section 9.05. Remedies of Insurer. Anything in this Ordinance to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default, the Insurer shall be deemed to be the Owner of the Bonds then Outstanding and shall be entitled to control and direct the enforcement of all rights and remedies granted to the Owners under this Ordinance. The Bonds shall be deemed to be Outstanding until all amounts due and owing to the Insurer have been paid. All proceedings shall be maintained for the benefit of the Insurer so long as it is not in default in its payment obligations under the Insurance Policy, and thereafter for the equal benefit of all Owners of the Bonds. The failure of the Insurer or any Owner of the Bonds to proceed does not relieve the City or any Person of any liability for failure to perform any duty hereunder. The foregoing rights are in addition to any other right available to the Insurer or Owners of Bonds, and the exercise of any right by any such Owner shall not be deemed a waiver of any other right.

ARTICLE X. AMENDMENT OF ORDINANCE.

Section 10.01. Amendments of Ordinance Not Requiring Consent of Owners of Bonds. The City may, without the consent of, or notice to, the Owners of the Bonds, and without the consent of but with notice to the Insurer, adopt such ordinances supplemental hereto (which amendments shall thereafter form a part hereof) for any one or more or all of the following purposes:

(1) To cure any ambiguity, or to cure, correct or supplement any defect or inconsistent provision contained in this Ordinance, or to make any provision with respect to matters arising under this Ordinance or for any other purpose if such provisions are necessary or desirable and do not materially and adversely affect the interests of the Owners of the Bonds; or

(2) To subject to this Ordinance additional revenues, properties or collateral; or

(3) To provide for the issuance of Parity or Subordinate Securities as permitted by Article VI hereof.

Section 10.02. Amendments of Ordinance Requiring Consent of Owners of Bonds. This Ordinance may be amended or modified by ordinance duly adopted by the City Council, without receipt by the City of any additional consideration but with the prior written consent of the Owners of at least sixty-six percent (66%) in aggregate principal amount of the Bonds and Parity Securities Outstanding at the time of the adoption of such amendatory ordinance or other instrument, including any outstanding refunding securities as may be issued for the purpose of refunding any of the Bonds; provided, however, that no such amendatory or modifying instrument shall permit the following without the consent of the Owners of one hundred percent (100%) in aggregate principal amount of the Bonds and Parity Securities Outstanding affected:

(1) Changing Payment. A change in the maturity or in the terms of redemption of the principal of any Outstanding Bond or any installment of interest thereon; or

(2) Reducing Return. A reduction in the principal amount of any Bond, the rate of interest thereon, or any prior redemption premium payable in connection therewith; or

(3) Prior Lien. The creation of a lien upon or a pledge of revenues ranking prior to the lien or to the pledge created by this Ordinance; or

(4) Modifying Amendment Terms. A reduction of the principal amount or percentage of Bonds which may be required herein for any amendment hereto; or

(5) Priorities Between Bonds. The establishment of priorities as between Bonds issued and Outstanding under the provisions of this Ordinance; or

(6) Partial Modification. Any modifications otherwise materially and prejudicially affecting the rights or privileges of the Owners of less than all of the Bonds then Outstanding.

The City may also, without any consent of Bond Owners, amend the City Sales and Use Tax Ordinance to the extent permitted by Article VII hereof or in any other manner which does not materially and adversely affect the interests of the Owners of the Bonds.

Whenever the City Council proposes to amend or modify this Ordinance under the provisions of this Section, it shall give notice of the proposed amendment by certified mail, return receipt requested, to all Owners of the Bonds and Parity Securities. Such notice shall be mailed at least thirty days prior to the adoption of the proposed amendment, shall briefly set forth the nature of the proposed amendment and shall state that a copy of the proposed amendatory ordinance or other instrument is on file in the office of the City Clerk for public inspection.

Section 10.03. Amendments Requiring Consent of the Insurer. So long as the Insurer is not in payment default under the Insurance Policy, the consent of the Insurer to any waiver, modification or amendment described in Section 10.02 hereof requiring the consent of the Owners of not less than 66% in aggregate principal amount of the Outstanding Bonds and Parity Securities shall be obtained in substitution of the consent of the Owners of the Bonds then Outstanding, and the consent of such Owners shall not be required. The consent of both the Insurer and the Owners of the affected Bonds then Outstanding shall be required for any waiver, modification or amendment described in items (1) through (6) of Section 10.02 hereof.

ARTICLE XI. MISCELLANEOUS.

Section 11.01. Delegated Powers. The officers of the City are hereby authorized and directed to enter into such agreements and take all action necessary or appropriate to effectuate the provisions of this Ordinance and to comply with the requirements of law.

The form, terms and provisions of the Preliminary Official Statement, Registrar Agreement, Continuing Disclosure Certificate, and the Escrow Agreement are hereby approved, and the City shall enter into and perform its obligations under the Registrar Agreement, the Continuing Disclosure Certificate and the Escrow Agreement in substantially the forms of such documents filed with the City Clerk prior to this meeting; and the Mayor, City Clerk and Finance Director are hereby authorized and directed to execute and deliver such documents as required hereby.

Section 11.02. Replacement of Registrar or Paying Agent. The Registrar or Paying Agent may resign at any time on 30 days' prior written notice to the City and the Insurer. The City may remove the Registrar or Paying Agent upon 30 days' prior written notice to the Registrar and/or Paying Agent, as the case may be. The Registrar or Paying Agent may also be removed at any time at the request of the Insurer for any breach of the Registrar's or Paying Agent's duties set forth herein. No resignation or removal of the Registrar or Paying Agent shall take effect until a successor has been appointed; provided, that if no successor is appointed by the end of 90 days, the Paying Agent or Registrar may petition a court of competent jurisdiction to appoint a successor. If the Registrar or Paying Agent initially appointed shall resign, or if the City shall remove said Registrar or Paying Agent, the City may, upon notice mailed to each Registered Owner of any Bond, at the address last shown on the registration books, appoint a successor Registrar or Paying Agent, or both. Every such successor Registrar or Paying Agent shall be a Commercial Bank or shall be an officer of the City and shall be acceptable to the Insurer. It shall not be required that the same institution serve as both Registrar and Paying Agent hereunder, but the City shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder.

Any company or national banking association into which the Registrar or Paying Agent may be merged or converted or with which it may be consolidated or any company or national banking association resulting from any merger, conversion or consolidation to which it shall be a party or any company or national banking association to which the Registrar or Paying Agent may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible, shall be the successor to such Registrar or Paying Agent without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

Section 11.03. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Bonds as provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance. The revenues pledged for the payment of the Bonds, as received by or otherwise credited to the City, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the revenues pledged for payment of the Bonds and the obligation to perform the contractual provisions made herein shall have priority over any or all other obligations and liabilities of the City. The lien of such pledge shall be valid, binding, and enforceable as against all Persons having claims of any kind in tort, contract, or otherwise against the City irrespective of whether such Persons have notice of such liens.

Section 11.04. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the City Council, or any officer or agent of the City acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal of or interest on the Bonds. Such recourse shall not be available either directly or indirectly through the City Council or the City, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bonds and as a part of the consideration of their sale or purchase, any Person purchasing or selling such Bond specifically waives any such recourse.

Section 11.05. Creation and Maintenance of Escrow Account. The Escrow Account is created pursuant to the Escrow Agreement and shall be maintained in an amount at the time of those initial deposits therein and at all times subsequently at least sufficient, together with the known minimum yield to be derived from the initial investment and any temporary reinvestment of the deposits therein or any part thereof in Federal Securities to pay the principal of, redemption premium, if any, and interest on the Refunded Bonds on the Redemption Date.

Section 11.06. Use of Escrow Account. Moneys shall be withdrawn by the Escrow Bank from the Escrow Account in sufficient amounts and at such times to permit the payment without default of the principal of, redemption premium, if any, and interest on the Refunded Bonds on the Redemption date. Any moneys remaining in the Escrow Account after provision shall have been made for the payment in full of the Refunded Bonds shall be applied to any lawful purpose of the City as the Council may hereafter determine.

Section 11.07. Exercise of Option. The Council has elected and does hereby declare its intent to exercise on the behalf and in the name of the City its option to redeem the Refunded Bonds on the Redemption Date. Upon the issuance of the Bonds, the Council shall be obligated to exercise such option, which option shall be deemed to have been exercised when notice is duly given and completed as herein provided.

Section 11.08. Ordinance Irrepealable. This Ordinance is, and shall constitute, a legislative measure of the City, and after any of the Bonds are issued, this Ordinance shall constitute an irrevocable contract between the City and the Owner or Owners of the Bonds; and this Ordinance, if any Bonds are in fact issued, shall be and shall remain irrepealable until the Bonds, as to all Debt Service Requirements, shall be fully paid, cancelled and discharged, as herein provided.

Section 11.09. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings of the City in connection with the authorization or issuance of the Bonds, including but not limited to the adoption of this Ordinance, shall be commenced more than thirty days after the authorization of the Bonds.

Section 11.10. Interested Parties. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any Person, other than the City, the Insurer, the Paying Agent and the Registered Owners of the Bonds, any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Insurer, the Paying Agent and the Registered Owners of the Bonds.

Section 11.11. Repealer. All ordinances, resolutions, bylaws, orders, and other instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaws, order, or other instrument, or part thereof, heretofore repealed.

Section 11.12. Severability. If any section, subsection, paragraph, clause or other provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs, clauses or provisions hereof.

Section 11.13. Statutes Superseded. Pursuant to Article XX of the Colorado Constitution and to the Charter, all statutes of the State which might otherwise apply in connection with the Sales and Use Tax or the Bonds are hereby superseded except to the extent specifically held to be applicable.

Section 11.14. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the City and members of the City Council, not inconsistent with the provisions of this Ordinance, relating to the authorization, sale, issuance, and delivery of the Bonds, and the qualification of the Bonds for book-entry with DTC, are hereby ratified, approved, and confirmed.

Section 11.15. Recording and Authentication. This Ordinance upon passage shall be numbered and filed by the City Clerk in the official records of the City, and authenticated as required by the Charter. Following its passage on first and second reading, it shall be published in a newspaper of general circulation in the City and posted in compliance with the requirements of the Charter. The Ordinance shall be published by title with a statement that this Ordinance is available for public inspection in the office of the City Clerk within ten (10) days, or as soon thereafter as possible, after first passage and before second passage and again within ten (10) days, or as soon thereafter as possible, after second and final passage, pursuant to Section 5.6 of the Charter.

Section 11.16. Effective Date. This Ordinance shall be effective five (5) days after both final posting and publication have been accomplished.

INTRODUCED, PASSED ON FIRST READING, APPROVED AND ORDERED PUBLISHED BY TITLE this 2nd day of February, 2015.

PASSED ON SECOND AND FINAL READING, APPROVED AND ORDERED PUBLISHED BY TITLE this 2nd day of March, 2015.

CITY OF COMMERCE CITY, COLORADO

Sean Ford, Mayor

(SEAL)

ATTEST:

Laura J. Bauer, CMC, City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF COLORADO)
)
COUNTY OF ADAMS) SS.
)
CITY OF COMMERCE CITY)

I, Laura Bauer, the duly appointed, qualified and acting City Clerk of the City of Commerce City, Colorado (the “City”), do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the Council of the City of Commerce City, Colorado (the “City Council”), at regular meetings of the City Council held on February 2, 2015 and March 2, 2015. A quorum of the City Council was in attendance at each meeting.

2. That the passage of the Ordinance on first reading was duly moved and seconded at a regular meeting of the City Council on February 2, 2015, and the Ordinance was approved on first reading by a vote of a majority of the members of the City Council as follows:

<u>Council member</u>	<u>Voting Yes</u>	<u>Voting No</u>	<u>Absent</u>	<u>Abstaining</u>
Sean Ford, Mayor				
René Bullock, Mayor Pro Tem				
Andrew Amador, Ward I				
Rick Teter, Ward II				
Jadie Carson, Ward III				
Jim Benson, Ward IV				
Steve Douglas, At-Large				
Crystal Elliott, At-Large				
Jason McEldowney, At-Large				

3. That the passage of the Ordinance on second and final reading, which is no earlier than ten (10) days after the first reading, and no earlier than seven (7) days after first publication and posting, was duly moved and seconded at a regular meeting of the City Council on March 2, 2015 and the Ordinance was approved on second and final reading by a vote of a majority of the members of the Council as follows:

<u>Council member</u>	<u>Voting Yes</u>	<u>Voting No</u>	<u>Absent</u>	<u>Abstaining</u>
Sean Ford, Mayor				
René Bullock, Mayor Pro Tem				
Andrew Amador, Ward I				
Rick Teter, Ward II				
Jadie Carson, Ward III				
Jim Benson, Ward IV				
Steve Douglas, At-Large				
Crystal Elliott, At-Large				
Jason McElowney, At-Large				

4. That the Ordinance has been authenticated by the Mayor and sealed with the corporate seal of the City, attested by me as the City Clerk, and duly recorded in the official records of the City.

5. That notices of the meetings of February 2, 2015, and March 2, 2015, in the forms attached hereto as **Exhibit A**, were duly given to the Council members and were posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meetings as required by law.

6. That the Ordinance was published by title and with a statement that the Ordinance is on file in the City Clerk's office for public inspection, within ten (10) days, or as soon as possible, after first reading in the Sentinel Express, newspapers of general circulation in the City on February __, 2015. The Ordinance was published by title and with a statement that the Ordinance is on file in the City Clerk's office for public inspection, within ten (10) days, or as soon as possible, after second and final reading in the Sentinel Express, a newspaper of general circulation in the City, on March __, 2015. The affidavits of publication are attached hereto as **Exhibit B**.

7. That the full text of the Ordinance was posted in six (6) public places in the City as such places were designated by the Council after both first and second readings.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this
_____ day of March, 2015.

(SEAL)

City Clerk

EXHIBIT A

(Attach Notice of Meetings)

EXHIBIT B

(Attach Affidavits of Publication)

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