

ORDINANCE NO. 2109

INTRODUCED BY: AMADOR, BULLOCK, CARSON, DIAZ, DOUGLAS, ELLIOTT, FORD,
MCELDOWNEY, TETER

AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF COMMERCE CITY, COLORADO OF ITS SALES AND USE TAX REVENUE BONDS, SERIES 2016; 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 authorize 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, the City currently imposes a sales and use tax at the rate of 3.5% (the “3.5% Sales and Use Tax”); and

WHEREAS, the City has previously issued its Sales and Use Tax Revenue Refunding Bonds, Series 2015, in the original aggregate principal amount of \$52,645,000 (the “2015 Bonds” or the “Senior Securities”) which 2015 Bonds refunded all of the outstanding Sales and Use Tax Revenue Bonds, Series 2005 and Sales and Use Tax Revenue Bonds, Series 2006 (the “Original Senior Securities”), which are payable from and have an irrevocable lien on the 3.5% Sales and Use Tax; and

WHEREAS, the City, pursuant to the ordinances authorizing the issuance of the Original Senior Securities and the Senior Securities (collectively, the “Senior Bond Ordinances”), has heretofore pledged the proceeds from the imposition of the 3.5% Sales and Use Tax to the payment of the Outstanding Senior Securities; and

WHEREAS, subject to certain conditions specified in the Senior Bond Ordinances, the City is authorized to issue subordinate indebtedness payable out of and which has a lien on the 3.5% Sales and Use Tax which is subordinate in all respects to the pledge and lien thereon of the Senior Securities; 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 an election held within the City on November 6, 2013 (the “2013 Election”), the City is authorized to increase the rate of sales and use tax levied by the City by an additional 1.0% commencing January 1, 2014 (the “1.0% Sales and Use Tax”), and to issue debt in an amount not to exceed \$166,000,000, with a maximum repayment cost of not to exceed \$422,000,000, and a maximum annual repayment cost of \$15,000,000, with the proceeds

of such debt to be utilized and expended as provided in the following question approved at the 2013 Election (the "2013 Question"):

SHALL THE CITY OF COMMERCE CITY DEBT BE INCREASED BY UP TO \$166 MILLION, WITH A MAXIMUM REPAYMENT COST NOT TO EXCEED \$422 MILLION, AND SHALL CITY TAXES BE INCREASED BY UP TO \$15 MILLION ANNUALLY IN THE FIRST FULL FISCAL YEAR, AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER, BY INCREASING THE RATE OF SALES AND USE TAX LEVIED BY THE CITY BY ONE PERCENT (1.0%), WITH THE PROCEEDS OF SUCH DEBT AND SUCH TAXES TO BE USED FOR THE CONSTRUCTION, INSTALLATION, OPERATION AND MAINTENANCE OF PARKS, RECREATION, AND ROADWAY IMPROVEMENTS INCLUDING, BUT NOT LIMITED TO:

A NEW RECREATION CENTER WITH INDOOR LEISURE POOL IN THE NORTHERN AREA OF THE CITY;

MAJOR IMPROVEMENTS TO TOWER ROAD FROM 80TH TO 103RD AVENUES, INCLUDING WIDENING TO FOUR LANES;

A NEW SEASONAL OUTDOOR POOL IN THE SOUTHERN AREA OF THE CITY;

THREE NEW NEIGHBORHOOD PARKS LOCATED IN THE SUBDIVISIONS OF TURNBERRY, FRONTERRA AND THE VILLAGES OF BUFFALO RUN EAST;

ADDITIONS TO THE EXISTING SOUTHERN RECREATION CENTER, INCLUDING A NEW INDOOR THERAPY POOL;

SUCH INCREASE IN THE SALES AND USE TAX RATE TO BEGIN ON JANUARY 1, 2014; SUCH DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE CITY MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF PREMIUM OF NOT TO EXCEED 3.0%; SHALL THE CITY BE AUTHORIZED TO ISSUE DEBT TO REFUND THE DEBT AUTHORIZED IF AFTER THE ISSUANCE OF SUCH REFUNDING DEBT THE TOTAL OUTSTANDING PRINCIPAL AMOUNT OF ALL DEBT ISSUED PURSUANT TO THIS QUESTION DOES NOT EXCEED THE MAXIMUM PRINCIPAL AMOUNT AUTHORIZED AND IF ALL DEBT ISSUED PURSUANT TO THIS QUESTION IS ISSUED ON TERMS THAT DO NOT EXCEED THE REPAYMENT COSTS AUTHORIZED IN THIS QUESTION; AND SHALL THE REVENUES RAISED BY SUCH SALES AND USE TAX RATE INCREASE AND PROCEEDS OF SUCH DEBT, ANY

OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE CITY AS A VOTER-APPROVED REVENUE CHANGE PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

WHEREAS, the 2013 Question was approved by a majority of the registered electors of the City voting thereon at the 2013 Election; and

WHEREAS, the City has previously issued its Sales and Use Tax Revenue Bonds, Series 2014 (the “2014 Bonds” or the “Parity Securities”) pursuant to the 2013 Question and authorized by the 2013 Election; and

WHEREAS, the City, pursuant to the ordinance authorizing the issuance of the 2014 Bonds (the “Parity Bond Ordinance”), has heretofore pledged the proceeds from the imposition of the 1.0% Sales and Use Tax to the payment of the Parity Securities; and

WHEREAS, subject to certain conditions specified in the Parity Bond Ordinance, the City is authorized to issue parity indebtedness payable out of and which has a lien on the 1.0% Sales and Use Tax; and

WHEREAS, the City has not issued all of the debt authorized at the 2013 Election; and

WHEREAS, the City Council of the City (the “City Council”) has determined that it is the best interests of the City, and the inhabitants thereof, to finance a portion of the public infrastructure authorized in the 2013 Question by the issuance of the City of Commerce City, Colorado, Sales and Use Tax Bonds, Series 2016 (the “Bonds”) pursuant to the authority conferred at the 2013 Election; and

WHEREAS, the City Council has determined that the Bonds shall be payable from and constitute an irrevocable first lien, but not necessarily an exclusive first lien, on certain sales and use tax revenues of the City received from the 1.0% Sales and Use Tax authorized at the 2013 Election on a parity with the Parity Securities, and the Bonds shall also be payable from and constitute an irrevocable 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 Senior Securities; and

WHEREAS, there has been filed with the City Clerk of the City forms of (a) the Preliminary Official Statement for the Bonds (the “Preliminary Official Statement”), (b) the Purchase Contract (hereinafter defined), (c) the Paying Agent Agreement (hereinafter defined), and (d) the Continuing Disclosure Certificate; and

WHEREAS, it is necessary to provide for the form of the Bonds, the Bond details, the payment of the Bonds, and other provisions relating to the authorization, issuance, and sale of the Bonds; and

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

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO AS FOLLOWS:

SECTION 1. DEFINITIONS AND CONSTRUCTION.

- 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 Bonds, Series 2016.”

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 Fund: the special fund created in Section 4.02 hereof.

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

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 Requirements: the principal of, interest on, and any premiums due in connection with the redemption of, a designated series of securities 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.

Event of Default: each of the events stated in Section 9 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, and which are non-callable.

Finance Director: the duly appointed Director of the Department of Finance 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.

Fund: as used in this Ordinance, a segregated account 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.

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 designated series of securities Outstanding or proposed to be issued, the maximum amount of Debt Service Requirements (excluding any redemption premiums) coming due with respect to such designated series of securities in any year from the year in which such amount is required to be determined through the final maturity of such designated series of 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.

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

Original Senior Bonds: the 2005 Bonds and the 2006 Bonds.

Outstanding or outstanding: when used with reference to the Bonds, Senior Securities, Parity Securities, or any other designated securities of the City and as of any particular date, all the Bonds, Senior Securities, Parity Securities, or any such other designated securities theretofore executed, issued and delivered, except the following:

- (1) Any Bonds, Senior Securities, Parity Securities, or other security cancelled by the City, by the Registrar, or otherwise on the City's behalf, at or before such date;
- (2) Any Bonds, Senior Securities, Parity Securities held by or on behalf of the City;
- (3) Any Bonds, Senior Securities, Parity Securities, 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 Bonds, Senior Securities, Parity Securities, 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 Section 8 hereof or a similar provision of the document authorizing the issuance thereof; and
- (4) Any lost, apparently destroyed, or wrongfully taken Bonds, Senior Securities, Parity Securities, 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 Bond Ordinance: Ordinance No. 2002 adopted by the City Council on March 17, 2014, authorizing the issuance of the 2014 Bonds and any ordinance hereafter adopted by the City Council authorizing the issuance of Parity Securities.

Parity Securities: the 2014 Bonds and any bonds, securities, leases or other obligations hereafter issued payable from all or a portion of the Pledged Revenues and having a lien on the 1.0% Sales and Use Tax revenues and the 3.5% Sales and Use Taxes revenues which is equal to or on a parity with the Bonds.

Participant: 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 dated as of the date of delivery of the Bonds, 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.

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 Sales and Use Tax in the amount of 4.5% (net of costs of collection, enforcement and administration of the Sales and Use Tax by the City) plus all amounts on deposit in the Bond Fund and the 2016 Reserve Fund, plus any additional revenues legally available to the City which the City Council, in its discretion and without further consideration from any Owner, may hereafter pledge to the payment of the Bonds, but excluding:

- (1) 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;
- (2) 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 (6.4), 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;
- (3) proceeds of any increase in the rate of the Sales and Use Tax in excess of 4.5%, 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;

- (4) any amounts determined, pursuant to the Sales and Use Tax Ordinance, and other applicable law, to be subject to valid claims for refunds; and
- (5) amounts in or required to be paid into the Rebate Fund or any similar account for Parity Securities.

Project: the acquisition and construction of certain public infrastructure as more fully set forth in the 2013 Question.

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.

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

Record Date: the fifteenth day of the calendar month immediately preceding each 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.

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.

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 Insurance Policy: any bond insurance policy, surety bond, letter or line of credit or similar instrument which is utilized in lieu of cash or Permitted Investments in the 2016 Reserve Fund.

Reserve Fund Requirement: if so required and specified in the Sale Certificate, is an amount equal to the least of (i) 10% of the stated principal amount of the Bonds, unless original issue discount or premium on such Bonds exceeds 2%, then 10% of the issue price of the Bonds, (ii) 100% of the Maximum Annual Debt Service Requirements on the

Bonds, or (iii) 125% of the average annual Debt Service Requirements on the Bonds, or such other amount as is set forth in the Sale Certificate.

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 those determinations that may be delegated to such officials pursuant to Section 11-57-205(1), C.R.S., 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.

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.

Senior Bond Ordinances: collectively, Ordinance No. 1561 adopted by the City Council on January 24, 2005, authorizing the issuance of the 2005 Bonds, Ordinance No. 1622 adopted by the City Council on February 21, 2006, authorizing the issuance of the 2006 Bonds, Ordinance No. 2044 adopted by the City Council on March 2, 2015, authorizing the issuance of the 2015 Bonds, and any ordinance hereafter adopted by the City Council authorizing the issuance of Senior Securities.

Senior Securities: the 2015 Bonds, and any bonds, securities, leases or other obligations hereafter issued payable from a pledge of the 3.5% Sales and Use Tax equally or on a parity with the 2015 Bonds.

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

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

Surety Provider: the entity issuing a Reserve Fund Insurance Policy to secure the Bonds, if any.

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.

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 which were refunded in full by the 2015 Bonds.

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 which were refunded in full by the 2015 Bonds.

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 in the aggregate principal amount of \$73,445,000 and currently outstanding in the aggregate principal amount of \$72,120,000.

2015 Bonds: the City's Sales and Use Tax Revenue Refunding Bonds, Series 2015, originally issued in the aggregate principal amount of \$52,645,000 and currently outstanding in the aggregate principal amount of \$50,615,000.

2016 Reserve Fund: the "City of Commerce City, Colorado, Sales and Use Tax Revenue Bonds, Series 2016, Reserve Fund" if any, created in Section 4.03 hereof for the purpose of further securing the payment of the principal of and interest on the Bonds. The 2016 Reserve Fund shall secure only the payment of the Bonds and shall not secure the payment of any Parity Securities.

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.

SECTION 2. SALE OF BONDS.

- 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.
- 2.02. OFFICIAL STATEMENT. The action of the Finance Director in certifying to the Purchaser that 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.
- 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.

SECTION 3. THE BONDS.

- 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 Project, the issuance of its “Sales and Use Tax Revenue Bonds, Series 2016,” 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 each of the City Manager or the Finance Director the independent authority to sign a contract for the purchase of the Bonds or to accept a binding bid for the Bonds and to execute any agreement or agreements in connection therewith, and the City Council hereby further delegates to each of the City Manager or the Finance Director the authority to independently make any determination delegable pursuant to Section 11-57-205(1)(a-i) of the Supplemental Act, in relation to the Bonds, and to execute the Sale Certificate setting forth such determinations, subject to the parameters and restrictions contained in Section 3.02(2) of this Ordinance.

Pursuant to Section 11-57-205 of the Supplemental Act, (a) each of the City Manager or the Finance Director are hereby independently authorized to determine if obtaining municipal bond insurance for all or a portion of the Bonds is in the best interests of the City, and if so, to select an Insurer to issue an Insurance Policy, execute a commitment relating to the same and execute any related documents or agreements required by such commitment, and (b) each of the City Manager or the Finance Director are hereby independently authorized to determine if obtaining a Reserve Fund Insurance Policy for all or a portion of the Reserve Fund Requirement is in the best interests of the City, and if so, to select a Surety Provider to issue a Reserve Fund Insurance Policy and execute any related documents or agreements required by such commitment. If it is determined that the Bonds will be sold without municipal bond insurance, all references herein to the Insurer and the Insurance Policy shall be of no force and effect.

The delegation set forth in this Section 3.01 shall be effective for one year after adoption of this Ordinance.

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, 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 bearing the same interest rate). 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 such payment shall occur on the next succeeding Business Day) at his or her 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 or her address as it appears on the registration records of the Registrar at the close of business on a Special Record Date. The Registrar may make payments of interest on any Bond by such alternative means as may be mutually agreed to between the Owner of such Bond and the Registrar; provided, however, that the City shall not be required to make funds available to the Registrar prior to the payment dates stated in this Ordinance and the Sale Certificate. All such payments shall be made in lawful money of the United States of America without deduction for the services of the Paying Agent or Registrar.

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. The Bonds shall mature, bear interest from their dated date to maturity, and be sold, all as provided in the Sale Certificate, provided that:
- (a) The aggregate principal amount of the Bonds shall not exceed \$66,000,000;
 - (b) the maximum total repayment cost of the Bonds shall not exceed \$119,015,055;
 - (c) the maximum annual repayment cost of the Bonds shall not exceed \$5,775,715;
 - (d) the Bonds shall mature no later than August 1, 2048;
 - (e) the Bonds shall be subject to redemption prior to maturity not later than August 1, 2026 and shall have an optional redemption premium of not more than 1%;
 - (f) the purchase price of the Bonds shall not be less than 100%; and
 - (g) the maximum interest rate on the Bonds shall not exceed 4.75%.
- (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.

At its option, to be exercised on or before the sixtieth day next preceding each such sinking fund redemption date, the City may (a) deliver to the Registrar for cancellation Term Bonds subject to mandatory sinking fund redemption on such date in an aggregate principal amount desired or (b) receive a credit in respect of its sinking fund redemption obligation for any Term Bonds of the same maturity subject to mandatory sinking fund redemption on such date, which prior to said date have been redeemed (otherwise than through the operation of the sinking fund) and canceled by the Registrar and not theretofore applied as a credit against

any sinking fund redemption obligation. Each Term Bond so delivered or previously redeemed will be credited by the Registrar at the principal amount thereof on the obligation of the City on such sinking fund redemption date and the principal amount of Term Bonds to be redeemed by operation of such sinking fund on such date will be accordingly reduced. The City will on or before the sixtieth day next preceding each sinking fund redemption date furnish the Registrar with its certificate indicating whether or not and to what extent the provisions of (a) and (b) of the preceding sentence are to be availed with respect to such sinking fund payment. Failure of the City to deliver such certificate shall not affect the Registrar's duty to give notice of sinking fund redemption as provided in this subsection (3).

- (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.

In addition to the foregoing notice, further notice may be given by the Registrar in order to comply with the requirements of any depository holding the Bonds but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed.

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 form set forth in **Exhibit A**, 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 or the Sale Certificate, 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.
- 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.

- 3.04. PLEDGE; SPECIAL OBLIGATIONS. The City hereby irrevocably pledges the Pledged Revenues to the payment of the Debt Service Requirements on the Bonds. All of the Bonds, as to all Debt Service Requirements thereof, shall be payable solely out of the Pledged Revenues. The Bonds shall be payable out of and shall constitute an irrevocable first lien, but not necessarily an exclusive such lien, on the revenues received from the 1.0% Sales and Use Tax on a parity with the Parity Securities and on moneys on deposit or credited to the Bond Fund and the 2016 Reserve Fund. The Bonds shall also be payable out of and shall constitute an irrevocable subordinate lien on the revenues received from the 3.5% Sales and Use Tax which lien is in all respects subordinate to the pledge and lien thereon of the Senior Securities at any time Outstanding in accordance with the terms and provisions of the Senior Bond Ordinances. No portion of the revenues received from the 1.0% Sales and Use Tax shall be applied to the payment of the Senior Securities.

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.

- 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.

- 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 bearing interest at the same interest rate. 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 4. SPECIAL FUNDS.

- 4.01. DISPOSITION OF BOND PROCEEDS AND OTHER REVENUES; SECURITY FOR BONDS. The Pledged Revenues shall be deposited by the City in the funds described in this Section 4, to be accounted for in the manner and priority set forth in this Section 4. The 1.0% Sales and Use Tax revenues shall be accounted for separately from the 3.5% Sales and Use Tax revenues and shall be applied by the City solely in accordance with the authorization received by the City at the 2013 Election and the 2013 Question.

The Bonds shall be issued and sold for the purposes of paying a portion of the costs of the 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 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 Section 4.

The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Bonds as provided herein shall be governed by § 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 or entities having claims of any kind in tort, contract, or otherwise against the City irrespective of whether such persons or entities have notice of such liens.

- 4.02. BOND FUND. The City hereby creates a special fund designated as the City of Commerce City, Colorado, Sales and Use Tax Revenue Bonds, Series 2016, Bond Fund (the "Bond Fund").

There shall be credited or deposited to the Bond Fund from the 1.0% Sales and Use Tax, when and as received by the City, the following amounts:

- (1) Interest Payments. Commencing with the month immediately succeeding the delivery of the Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor from whatever source, to pay the next installment of interest due on the Bonds then Outstanding and the Parity Securities.

- (2) Principal Payments. Commencing with the month immediately succeeding the delivery of the Bonds, or commencing one year next prior to the first principal payment date of the Bonds, whichever commencement date is later, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor from whatever source, to pay the next installment of principal (whether at maturity or on a mandatory Redemption Date) due on the Bonds then Outstanding and the Parity Securities.

To the extent that there are not sufficient revenues from the 1.0% Sales and Use Tax to make such credits or deposits to the Bond Fund in any month as set forth above, revenues received by the City from the 3.5% Sales and Use Tax shall be used to make such credit or deposit in accordance with Section 4.06 hereof.

The moneys credited to the Bond Fund shall be used solely to promptly pay when due the Debt Service Requirements of the Bonds and the Parity Securities then Outstanding which are secured by moneys on deposit in the Bond Fund, except as otherwise provided in this Ordinance. Parity Securities hereafter issued may be secured by amounts on deposit in the Bond Fund or may be secured by a separate bond fund, all as provided in the ordinance or other instrument authorizing the issuance of such Parity Securities.

The Bond 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 Bond 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 Bond Fund which are available for the payment of Debt Service Requirements. Nothing herein prevents the accumulation of amounts required to be paid into the Bond 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 Bond Fund and available for the payment of Debt Service Requirements on the Bonds.

- 4.03. 2016 RESERVE FUND. The City hereby creates a special fund designated as the "City of Commerce City, Colorado, Sales and Use Tax Revenue Bonds, Series 2016, Reserve Fund" (the "2016 Reserve Fund"). The 2016 Reserve Fund shall secure only the payment of the Debt Service Requirements on the Bonds. Any Reserve Fund Requirement for the 2016 Reserve Fund, shall be set forth in the Sale Certificate. Such Reserve Fund Requirement may be zero.

If at any time the City shall for any reason fail to pay into the Bond Fund the full amount required by Section 4.02 hereof, then the City shall pay into the Bond Fund at such time from the 2016 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 2016 Reserve Fund at the minimum amount required to be maintained therein, the money so used shall be replaced and transferred to the 2016 Reserve Fund from the first 1.0% Sales and Use Taxes thereafter received and not required to be otherwise applied by Section 4.02 hereof, and then from available 3.5% Sales and Use Taxes as provided in

Section 4.06 hereof. In the event that such 1.0% Sales and Use Taxes and 3.5% Sales and Use Taxes are insufficient during a given Fiscal Year to reaccumulate the 2016 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 2016 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 2016 Reserve Fund and any lesser sum deposited therein.

Except as otherwise provided herein, the 2016 Reserve Fund shall be accumulated and maintained as a continuing reserve to be used only to prevent deficiencies in the payment of the Debt Service Requirements on the Bonds. The 2016 Reserve Fund shall not secure the payment of additional Parity Securities, although such Parity Securities may be secured by a separate reserve account or reserve fund, as set forth in the documents authorizing such Parity Securities.

The Reserve Fund Requirement shall be funded and maintained by any one of or any combination of: (i) cash; (ii) Permitted Investments; and (iii) a Reserve Fund Insurance Policy which provides for payments when and as required for purposes of the 2016 Reserve Fund.

In lieu of all or a portion of the moneys required to be deposited in the 2016 Reserve Fund by this Ordinance and the Sale Certificate, the City may at any time or from time to time deposit a Reserve Fund Insurance Policy in the 2016 Reserve Fund in full or partial satisfaction of the Reserve Fund Requirement. Any such Reserve Fund Insurance Policy shall be payable on any date on which moneys will be required to be withdrawn from the 2016 Reserve Fund as provided herein. Upon deposit of any Reserve Fund Insurance Policy in the 2016 Reserve Fund, the City may transfer moneys equal to the amount payable under such Reserve Fund Insurance Policy from the 2016 Reserve Fund and apply such moneys to any lawful purpose.

All cash and investments in the 2016 Reserve Fund shall be transferred to the Bond Fund for payment of principal and interest on the Bonds before any drawing may be made on any Reserve Fund Insurance Policy credited to the 2016 Reserve Fund in lieu of cash. Payment of any policy costs shall be made prior to replenishment of any such cash amounts. Draws on all Reserve Fund Insurance Policies on which there is available coverage shall be made on a pro-rata basis (calculated by reference to the coverage then available thereunder) after applying all available cash and investments in the 2016 Reserve Fund. Payment of policy costs shall be made on a pro-rata basis prior to replenishment of any cash drawn from the 2016 Reserve Fund.

Any moneys at any time in excess of the minimum amount required to be maintained in the 2016 Reserve Fund may be withdrawn therefrom, and transferred from time to time to the Bond Fund and distributed in the same manner as other moneys in the Bond Fund.

- 4.04. TERMINATION OF DEPOSITS; USE OF MONEYS IN BOND FUND AND 2016 RESERVE FUND. No payment need be made into the Bond Fund or the 2016 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 which are payable from the Bond Fund 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 such 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 2016 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 on the Bonds). In such case, moneys in the Bond Fund and the 2016 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 on the Bonds) 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 Bond Fund and the 2016 Reserve Fund and any other moneys derived from the Pledged Revenues may be used in any lawful manner determined by the City.

- 4.05. REBATE FUND. After the payments required by Sections 4.02 and 4.03 have been made, 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, Series 2016, Rebate Fund” (the “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.

- 4.06. INSUFFICIENCY OF 1.0% SALES AND USE TAX REVENUES; APPLICATION OF 3.5% SALES AND USE TAX REVENUES. To the extent that there are not sufficient revenues from the 1.0% Sales and Use Tax in any month to make any of the payments or deposits required to be made as set forth in this Section 4, the City shall make such payments or deposits, in the order of priority set forth above, from revenues received by the City from the 3.5% Sales and Use Tax that are remaining in such month after the payments or accumulations required by Sections 4.02, 4.03 and 4.05 of the Senior Bond Ordinances have been made or provided for.
- 4.06. PAYMENT OF ADDITIONAL PARITY SECURITIES. Concurrently with the payments required by Sections 4.02, 4.03 and 4.05, Pledged Revenues received by the City may be used by the City for the payment of principal of and interest on Parity 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 securities, as the same accrue. Payments for bond funds or accounts, reserve funds or accounts and rebate funds or accounts for Parity Securities shall be made concurrently with the payments required by Sections 4.02, 4.03 and 4.05.

- 4.08. PAYMENT OF ADDITIONAL SUBORDINATE SECURITIES. Subsequent to provision in full for the payments and fund maintenance transfers required by the foregoing provisions of this Section 4, 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 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 Senior Securities, the Bonds and any Parity Securities as herein provided.
- 4.09. USE OF REMAINING REVENUES. After the above-required payments have been made in each month, and there shall have been credited to the Bond Fund and the 2016 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.
- 4.10. BUDGET AND APPROPRIATION OF FUNDS. The sums provided to make the payments specified in this Section 4 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.

SECTION 5. GENERAL ADMINISTRATION OF FUNDS.

- 5.01. PLACES AND TIMES OF DEPOSITS. The Bond Fund and the 2016 Reserve Fund (and any accounts therein) and the Rebate 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.

- 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.
- 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.

SECTION 6. PRIORITIES; LIENS; ISSUANCE OF ADDITIONAL BONDS.

- 6.01. FIRST LIEN ON 1.0% SALES AND USE TAX REVENUE; ISSUANCE OF PARITY SECURITIES; ISSUANCE OF SENIOR SECURITIES. The Bonds constitute an irrevocable and first lien, but not necessarily an exclusive first lien, on the revenues received by the City from the 1.0% Sales and Use Tax and on moneys on deposit in the Bond Fund and the 2016 Reserve Fund, which lien on the 1.0% Sales and Use Tax will be on a parity with the Parity Securities. The Bonds constitute an irrevocable and subordinate lien on the revenues received by the City from the 3.5% Sales and Use Tax which lien is in all respects subordinate to the pledge and lien thereon of the Senior Securities.

The City shall be authorized to issue Parity Securities provided that the following conditions are satisfied:

- (1) Absence of Payment Default. The City is current in all payments required to have been accumulated in the Bond Fund and the 2016 Reserve Fund as required herein.
- (2) Historic Revenues Test. The Pledged Revenues, as certified by the Finance Director, for any 12 consecutive months out of the 18 months preceding the month in which such proposed Parity Securities are to be issued, shall have been sufficient to pay an amount at least equal to (A) 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 each series of Outstanding Parity Securities; (iii) the Maximum Annual Debt Service for each series of Outstanding Senior Securities; and (iv) the Maximum Annual Debt Service for the Parity Securities proposed to be issued, plus (B) one hundred percent (100%) of all policy costs attributable to any Insurance Policy and Reserve Fund Insurance Policy and other similar amounts then due and owing.
- (3) Adjustment of Revenues. In determining compliance with the historic revenue test, the amount of the Pledged Revenues for the applicable 12 month period 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 such applicable 12 month period after giving effect to any ordinance providing for an increase in the Sales and Use Taxes pledged to the payment of the Bonds, the Senior Securities or the Parity Securities proposed to be issued 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) The Parity Securities may be secured by a reserve fund or account, but Parity Securities may be issued without being secured by a reserve fund or account.
 - (5) Notwithstanding the foregoing or any provisions to the contrary contained herein, the City may issue Parity Securities to refund, in whole or in part, any Outstanding Bonds or Parity Securities without complying with Section 6.01(2) so long as: (a) the refunding Parity Securities do not increase, for any Fiscal Year in which any Bonds or Parity Securities will be Outstanding, the aggregate principal and interest requirements on the Bonds and Parity Securities; and (b) the lien of such refunding Parity Securities on the Pledged Revenues is not raised to a higher priority than the lien thereon of any obligations thereby refunded.
- 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 Section 8 hereof or from moneys actually on hand in the Bond Fund for the Bonds or bond funds or accounts for the Senior Securities and Outstanding Parity Securities at the time of such calculation.
- 6.03. CERTIFICATION OF REVENUES. In the case of the computation of the revenues test provided in Section 6.01(2), the written certification by the Finance Director that such annual revenues are sufficient to pay such amounts as provided in Section 6.01(2) hereof shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver Parity Securities.
- 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.
- 6.05. SUPERIOR SECURITIES. The City may issue additional bonds or other additional securities payable from the 3.5% Sales and Use Tax and having a lien thereon prior and superior to the lien thereon of the Bonds pursuant to the terms and provisions of the Senior Bond Ordinances. The City shall not issue additional bonds or other additional securities that have a lien on the 1.0% Sales and Use Tax that is prior and superior to the lien thereon of the Bonds.

SECTION 7. COVENANTS.

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

- 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.

- 7.02. IMPAIRMENT OF CONTRACT. 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 Section 10 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.

- 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 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.

- 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.
- 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 of the Bonds, 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.
- 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.
- 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.
- 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.

- 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.
- 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 materially 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.
- 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.
- 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.
- 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.
- 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 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 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 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 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.

SECTION 8. 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.

SECTION 9. DEFAULT PROVISIONS AND REMEDIES.

9.01. EVENTS OF DEFAULT. Each of the following events is hereby declared to be and to constitute an Event of Default, provided however, that in determining whether a payment default has occurred pursuant to paragraphs (1) or (2) of this Section, no effect shall be given to payments made under an Insurance Policy:

- (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.

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.

- 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.
- 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 10. AMENDMENT OF ORDINANCE.

- 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, 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 Securities or Subordinate Securities as permitted by Section 6 hereof.

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 Section 7 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 11. MISCELLANEOUS.

11.01. AUTHORIZATION OF DOCUMENTS. The form, terms and provisions of the Continuing Disclosure Certificate, the Paying Agent Agreement and the Purchase Contract are hereby approved, and the City shall enter into and perform its obligations thereunder in

substantially the forms of such documents on file with the City Clerk; and the officers of the City are hereby authorized and directed to execute and deliver such documents as required hereby. Such documents are to be executed in substantially the forms hereinabove approved, provided that such documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. The execution of any document or instrument by the appropriate officers of the City herein authorized shall be conclusive evidence of the approval by the City of such document or instrument in accordance with the terms hereof.

The City Manager and the Finance Director are each independently authorized to execute and deliver any documents necessary to obtain the Bond Insurance Policy and the Reserve Account Insurance Policy to secure the payment of the principal of and interest on the Bonds, if so determined in the Sale Certificate.

The officers of the City and members of the Board are authorized and directed to take any and all other actions necessary or appropriate to effectuate the provisions of this Ordinance, including but not limited to, the execution and delivery of the Continuing Disclosure Certificate, the Paying Agent Agreement, the Purchase Contract, and any and all necessary documents, instruments or certificates and performing all other acts that they deem necessary or appropriate.

- 11.02. REPLACEMENT OF REGISTRAR OR PAYING AGENT. The Registrar or Paying Agent may resign at any time upon 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.

- 11.03. 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.
- 11.04. 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.
- 11.05. 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.
- 11.05. 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 Surety Provider, 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 Surety Provider, the Paying Agent and the Registered Owners of the Bonds.
- 11.07. 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.
- 11.08. 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.
- 11.09. 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.

- 11.10. 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 application of the proceeds of the Bonds to the Project, are hereby ratified, approved, and confirmed.
- 11.11. 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.
- 11.12. 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 1st DAY OF AUGUST, 2016.

PASSED ON SECOND AND FINAL READING, APPROVED AND ORDERED
PUBLISHED BY TITLE THIS 15TH DAY OF AUGUST, 2016.

CITY OF COMMERCE CITY, COLORADO

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk

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

I, Laura J. 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 August 1, 2016, and Augusts 15, 2016. 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 August 1, 2016, 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				
Paolo Diaz, 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 August 15, 2016 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				
Paolo Diaz, Ward IV				
Steve Douglas, At-Large				
Crystal Elliott, At-Large				
Jason McEldowney, 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 August 1, 2016 and August 15, 2016, in the forms attached hereto as **Exhibit B**, 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 Denver Post, newspapers of general circulation in the City on August 4, 2016. 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 Denver Post, a newspaper of general circulation in the City, on August 23, 2016. The affidavits of publication are attached hereto as **Exhibit C**.

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.

8. IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this _____ day of August, 2016.

City Clerk

(SEAL)

EXHIBIT A

[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 BOND
SERIES 2016**

No. R-_____ \$_____

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>DATED AS OF</u>	<u>CUSIP</u>
_____ %	August 1, 20_____	_____, 2016	

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 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, 2016, 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 Council of the City (the “City Council”) adopted on August 15, 2016 (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 first lien, but not an exclusive first lien, on certain sales and use tax revenues of the City received from the 1.0% Sales and Use Tax authorized at the 2013 Election on a parity with the Parity Securities and from moneys on deposit or credited to the Bond Fund relating to the Bonds and the 2016 Reserve Fund, if any, relating to the Bonds. The Bonds are also payable out of and constitute an irrevocable lien on the revenues received from the 3.5% Sales and Use Tax which lien is in all respects subordinate to the pledge and lien thereon of the Senior Securities at any time outstanding. This Bond, including the interest thereon, does not constitute a debt or an indebtedness of the City within the meaning of any constitutional, home rule charter or statutory provision or limitation of the State of Colorado. 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, draft or wire 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, the ability to issue Parity Securities and Senior Securities, 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 for the purpose of defraying wholly or in part the costs of the Project, 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 authority conferred at the 2013 Election and 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.

CITY OF COMMERCE CITY, COLORADO

(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 Form 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)

[TO BE PROVIDED IF INSURANCE IS OBTAINED]

(End Form Statement of Insurance)

EXHIBIT B
(Attach Notice of Meetings)

EXHIBIT C

(Attach Affidavits of Publication)

30969326v2