



**VIRTUAL CITY COUNCIL AGENDA**  
**September 22, 2020 – 6:00 P.M.**  
[www.fountaincolorado.org](http://www.fountaincolorado.org)

**For the purpose of ceremonials and recognitions, City Council will conduct an informal meeting beginning at 5:30 P.M.**

- Proclamation Declaring September 20-26, 2020 as Small Business Week (Kimberly Bailey, Economic Development Director)
- Proclamation Declaring September 26th – October 4th, 2020 As “Creek Week”
- Proclamation Declaring October As National Arts Month
- Proclamation Declaring October 5, 2020 As World Habitat Day

**1) Call to Order**

**2) Pledge of Allegiance**

**3) Roll Call**

**4) (A) Presentations**

- EPA Brownfields Coalition Partners Public Forum Kick Off Presentation (Kimberly Bailey City of Fountain and Aaron Egbert City of Colorado Springs )
- Woodman Hall Presentation (FURA Chair Paul Aragon and Executive Director Bailey)

**4) (B) Board/Commission/Committee Appointment**

**5) City Council Agenda Requests and Announcements**

**6) Public to be Heard**

*Citizens may address the Council on items that are not on the agenda. Please sign up with the City Clerk prior to the meeting. Council may not be able to provide an immediate answer, but will direct staff to follow-up. Out of respect for the Council and others in attendance, please limit your comments to three (3) minutes or less.*

**7) Consent Agenda**

*All items listed under the Consent Agenda are considered to be routine and will be approved with one motion. There will be no separate discussion of these items unless a Council Member or citizen so requests, in which case the item may be removed from the Consent Agenda and considered separately, at the discretion of Council. (Est. time-3 min)*

**A. Approval Of The September 8, 2020 City Council Meeting Minutes**

**B.** Set a Public Hearing Date (October 27, 2020) and Radius for a Neighborhood Needs Survey for a Beer and Wine Liquor License for Arashi Sushi Hibachi & Grill, LLC. dba for Arashi Sushi Hibachi & Grill located at 8035 Fountain Mesa Road.

**8) Old Business**

**9) New Business**

**A.** Consideration of Items Removed From The Consent Agenda

**B.** Resolution No. 20-075, A Resolution Amending The Appropriation Of Fiscal Year (FY) 2020 Budgeted Funds (John Lewis, est. 10 min)

**C. First Reading** Of Ordinance 1749, An Ordinance Of The City Of Fountain, Colorado, Approving The Refinancing Of Its Utility Revenue Bonds, Series 2011, For The Purpose Of Decreasing Debt Service Expenses Over The Remaining Term Of The Bond Debt And For Paying The Costs Of The Refinancing; And Providing Details And Documents In Connection With The Bonds. (John Lewis, est. 10 min,)

**10) Correspondence, Comments and Ex-Officio Reports**

**11) Announcement of Executive Sessions**

**12) Adjourn**

**A (Administrative Action)**

**QJ (Quasi-Judicial Action)**

**L (Legislative Action)**

**NEXT REGULAR COUNCIL MEETING  
October 13, 2020**

**Instructions to join the virtual meeting are on our website:**

**[WWW.FOUNTAINCOLORADO.ORG](http://WWW.FOUNTAINCOLORADO.ORG)**



**PROCLAMATION**

**A PROCLAMATION DECLARING  
SMALL BUSINESS WEEK**

*September 20-26, 2020*

**WHEREAS**, the City of Fountain Colorado, celebrates our local small businesses and the contributions they make to our local economy and community; according to the United States Small Business Administration, there are 30.7 million small businesses in the United States, they represent 99.7 percent of all firms with paid employees in the United States,

**WHEREAS**, small businesses employ 47.3 percent of the employees in the private sector in the United States; and

**WHEREAS**, 94% of consumers in the United States value the contributions small businesses make in their community; and

**WHEREAS**, 96% of consumers who plan to shop on Small Business Saturday said the day inspires them to go to small, independently – owned retailers or restaurants that they have not been to before, or would not have otherwise tried; and

**WHEREAS**, 92% of companies planning promotions on Small Business Saturday said the day helps their business stand out during the busy holiday shopping season; and

**WHEREAS**, 59% of small business owners said local consumers contribute significantly to their sales each year; and

**WHEREAS**, Fountain Colorado supports our local businesses that create jobs, boost our local economy and preserve our communities; and

**NOW, THEREFORE**, the City of Fountain City Council hereby proclaims the week of September 20-26, 2020 as “Small Business Week”

Done this 22<sup>nd</sup> day of September 2020

**CITY OF FOUNTAIN, COLORADO**

ATTEST:

By \_\_\_\_\_  
Gabriel P. Ortega, Mayor

By \_\_\_\_\_  
Silvia Huffman, City Clerk



# BUY LOCAL

## SUPPORT YOUR COMMUNITY

There are **572,546** small businesses in Colorado. These small businesses employ about **1 million** Colorado residents.



Small businesses create  
**1.8 MILLION**  
jobs annually or 60% of new  
jobs in the U.S. in 2019



New businesses, or  
startups, generated  
**33,618**  
new jobs in Colorado in 2019



**ALMOST 20%**  
of small businesses are  
**FAMILY-OWNED**

## OUR CITY



There are almost 31 million small businesses in the United States. About 50% of all employment is through small business enterprises. When you buy local, you increase local employment, the buying power of local workers, tax revenue and government funds for long-term investments like infrastructure and education, and you help the environment by reducing transport costs. You also foster American entrepreneurship and innovation.

# FUEL THE GROWTH

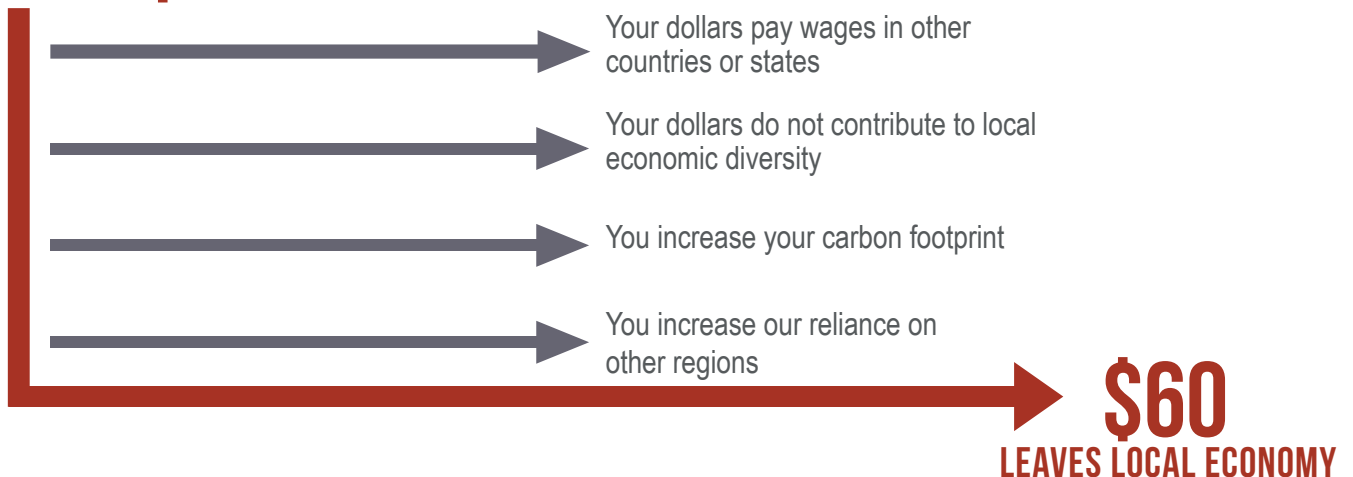
## WHEN YOU BUY \$100 LOCALLY...

**\$70** STAYS IN YOUR COMMUNITY



## WHEN YOU BUY \$100 NON-LOCALLY...

**ONLY \$40** STAYS IN YOUR COMMUNITY



Developed by the UCCS Economic Forum



Economic Forum

COLLEGE OF BUSINESS

UNIVERSITY OF COLORADO  
COLORADO SPRINGS



***PROCLAMATION DECLARING***

***SEPTEMBER 26<sup>th</sup> – October 4<sup>th</sup>, 2020***

***AS “CREEK WEEK”***

- WHEREAS,** the City of Fountain is fortunate to have extensive and diverse natural resources, such as forests, grasslands, riparian areas, lakes, creeks and a wide variety of open spaces; and
- WHEREAS,** the Fountain Creek watershed unique and is an important resource and asset to the residents and visitors of Fountain and the Pikes Peak Region; and
- WHEREAS,** the Fountain Creek Watershed Flood Control and Greenway District is partnering with the City of Colorado Springs, Colorado Springs Utilities, El Paso County, Pueblo County, the Cities of Manitou Springs, Fountain, and towns of Monument and Green Mountain Falls, along with numerous community organizations to coordinate the 7th Annual “Creek Week” cleanup, which will encourage the protection, restoration and maintenance of the Fountain Creek watershed; and
- WHEREAS,** this 9-day litter clean-up effort kicks off in Fountain Creek Regional Park on September 26<sup>th</sup> and runs through October 4<sup>th</sup>, 2019 throughout the watershed; and
- WHEREAS,** “Creek Week” programs and activities are designed to raise awareness about the littering issue within our watershed, to encourage organizations and individuals to collect litter and debris to make Fountain Creek and the watershed cleaner and safer; and
- WHEREAS,** businesses, churches, schools, non-profits, neighborhood associations, youth groups, service clubs and individuals are encouraged to form a "Creek Crew" to clean up at a “Creek Week” project site; and
- WHEREAS,** “Creek Week” litter removal activities will reduce pollution in our creeks and clogs in our waterways that can lead to flooding, provide for a safer drinking water supply, and enhance wildlife habitat and property values.

**NOW, THEREFORE,** the Council Members of the City of Fountain, Colorado hereby proclaim September 26<sup>th</sup> – October 4<sup>th</sup>, 2020, as “Creek Week” and encourage our citizens to help protect, restore and maintain our waterways by participating in “Creek Week” activities.

**DONE THIS** 22<sup>nd</sup> day of September, 2020 in Fountain, Colorado.

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Gabriel Ortega, Mayor

ATTEST:

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Silvia Huffman, City Clerk



## PROCLAMATION DECLARING OCTOBER AS NATIONAL ARTS MONTH

**Whereas,** the month of October has been recognized as National Arts and Humanities Month by thousands of arts and cultural organizations, communities, and states across the country, as well as by the White House and Congress for more than two decades:

**Whereas,** the arts and humanities embody much of the accumulated wisdom, intellect, and imagination of humankind;

**Whereas,** the arts and humanities enhance and enrich the lives of every American, including those of us living in the Pikes Peak region;

**Whereas,** the arts and humanities play a unique role in the lives of our families, our communities, and our country;

**Whereas,** the nonprofit arts industry also strengthens our national economy by generating \$166.3 billion in total economic activity annually (\$153.3 million in economic impact locally) and by supporting the full-time equivalent of 4.6 million jobs (5,070 jobs locally);

**NOW, THEREFORE, BE IT RESOLVED,** that we the City Council of the City of Fountain do hereby proclaim October as Arts Month in Colorado's Pikes Peak Region and call upon our citizens to celebrate and promote the arts and culture in Fountain Colorado and to specifically encourage the greater participation by those said citizens in taking action for the arts and humanities in their community.

DONE THIS 22<sup>nd</sup> day of September, 2020 in Fountain, Colorado.

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Gabriel Ortega, Mayor

ATTEST:

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Silvia Huffman, City Clerk



## PROCLAMATION

### A PROCLAMATION DECLARING

### OCTOBER 5, 2020 AS WORLD HABITAT DAY

**WHEREAS**, World Habitat Day was established by the United Nations General Assembly in 1985 to be the first Monday in October to recognize the concerns and conditions of adequate shelter for all humans, and to encourage grassroots action toward improving housing conditions worldwide; and

**WHEREAS**, During World Habitat Day, Habitat for Humanity draws attention to the important role decent housing plays in eliminating barriers to opportunity, success and health that might have been part of a family's life for years, if not generations; and

**WHEREAS**, Through the *Cost of Home* campaign, Habitat commits to mobilizing our partners, volunteers and community members across the U.S. to find the solutions and help create the policies that will improve home affordability for 10 million individuals; and

**WHEREAS**, Pikes Peak Habitat for Humanity has assisted 177 families achieve homeownership and maintain permanent, affordable housing in El Paso County;

**WHEREAS**, The purpose of this proclamation is to raise awareness, and to educate and mobilize individuals and communities to take action on the current local and global housing challenge.

**NOW THEREFORE**, the City of Fountain hereby proclaims October 5, 2020 World Habitat Day in El Paso County.

**NOW, THEREFORE, BE IT PROCLAIMED**, the City of Fountain hereby proclaims October 5, 2020 World Habitat Day.

Done this 22<sup>nd</sup> day of September 2020

CITY OF FOUNTAIN, COLORADO

ATTEST:

By \_\_\_\_\_

Gabriel P. Ortega, Mayor

By \_\_\_\_\_

Silvia Huffman, City Clerk





# Regular City Council Meeting

**Consent –7A**  
Council Meeting Minutes

*September 22, 2020*

### Summary Information

**Title:**  
**APPROVAL OF THE SEPTEMBER 8, 2020 CITY COUNCIL MEETING MINUTES**

Initiator : City Clerk Huffman	<input checked="" type="checkbox"/> Council Action
Presenter: City Clerk Huffman	<input type="checkbox"/> Council Information
Legal Review: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Report to Council

**Summary Overview and List of Attachments:**  
 The attached minutes were compiled as the result of the September 8, 2020 City Council Meeting Minutes

Attachments: Above Referenced Meeting Minutes

### Background Information

Strategic Plan Priority (if applicable):

- Transportation Infrastructure**
- Telecommunications Technology and Capabilities.**
- Distribution of Public Safety Resources**
- Improve the Availability of Venues Which Support Community Activities**

### Recommendation

Staff recommends approval.

### Proposed Motion

Motion to approve shall be included under the consent agenda.

**CITY COUNCIL MEETING**  
**September 8, 2020**

**1) Call to Order**

Mayor Ortega called the meeting to order at 6:00P.M. Due to Resolution 20-022, the Cities Declaration of Emergency effective March 17, 2020 related to the COVID-19 virus, the meeting was held with virtual access provided through GoTeamWebinar.

Instructions were given to the attendees on how to communicate with the council and the functions of the toolbar.

**2) Pledge of Allegiance**

The Pledge of Allegiance was recited.

**3) Roll Call**

Roll call found the following members present through GoToWebinar:

Mayor Ortega  
Mayor Pro Tem Lauer  
Council Member Thompson  
Council Member Gieck  
Council Member Applegate  
Council Member Estes  
Council Member Duncan

**4 (A) Presentations**

**4 (B) Board/Commission/Committee Appointments**

**5) City Council Agenda Requests and Announcements**

Mayor Ortega explained that the majority of the Council was attending in person with masks and social distancing. He stated that at this time the meetings will continue to be virtual and in person.

Council Member Thompson thanked Council Member Estes for arranging the lights for women's suffrage. She reminded everyone that voter registration is only available electronically after this week, and encouraged everyone to register online at [www.govotecolorado.gov](http://www.govotecolorado.gov).

Council Member Applegate announced that donations are being collected for the Alzheimer's Association. His spouse is collecting for that cause, if anyone would like to donate to contact him.

Council Member Estes shared that a COVID Response Team is available to citizens dealing with financial struggles, loss, or feeling isolated or anxious. The program is funded by FEMA through Aspen Pointe and they can be reached at [www.covidresponse@aspenspointe.org](mailto:www.covidresponse@aspenspointe.org). She also reminded everyone that September 17<sup>th</sup> is Constitution Day, the day the US Constitution was signed in 1887.

**6) Public to be Heard**

There were no requests for Public to be heard.

**7) Consent Agenda**

**A. Approval Of The August 25, 2020 City Council Meeting Minutes**

Council Member Applegate made a motion to approve the consent agenda, seconded by Council Member Estes. All members voted yes (7-0); the motion carried.

**8) Old Business**

There were no items for Old Business

**9) New Business**

**A. Consideration of Items Removed From The Consent Agenda**

There were no items removed.

**B. Resolution 20-073, A Contingent Resolution Approving An Agreement With The El Paso County Public Health For ADA And Parking Lot Improvements**

Deputy City Manager Evans explained that the Susan Wheelan, the El Paso County Health, Public Health Director, is attending the meeting virtually. He explained that the El Paso County Health Department is looking for a location to serve the citizens of this area. They have found a location that fits their needs in the current Becketts Event Center at the corner of Hwy 85 and Fontaine Blvd. It is approximately 30,000 sq. ft., in good condition, and an opportunity to be “move in ready”. The City would like to help this partnership using in-kind services with ADA requirements and parking lot improvements to include crack fill, and chip sealing. The sale of the property is contingent on the partnership with the city and committed city funds up to \$150,000. He also stated that Council Member Gieck has been an active participant as our liaison on the El Paso County Health Board. Staff recommends support in this project with a continued effort to get county services in our area.

Susan Wheelan gave some additional back ground information and the expected plans moving forward. She explained that the Corona Virus Aide Relief and Economic Security Act funding is allowing the purchase of a new building. There is currently a women, infant and children program in the city with limited services and no room for expansion. This would be an anchor program at the new facility with a supplemental program to include nutrition, immunizations, and community health. Some other possibilities would be Emergency Preparedness and Response with a shared hub for the Sheriff’s office and Fountain PD, and Care coordination for ages 0-21 to get them connected to services they need. She expressed the great opportunity to have a presence in our area and thanked the support and efforts of all involved to bring this opportunity to fruition.

Mayor Ortega thanked Ms. Wheelan and all the El Paso County Health Staff for getting us though this pandemic and all of the hours that have been committed to us. He is looking forward to the opportunities that will be available to the city the valley and southern Colorado.

Council Member Thompson inquired about a possible drive through at the Senior Center for flu shots. Ms. Wheelan expressed the need for innovations, and preventative immunizations. She would be open to those conversations of opportunity.

Council Member Gieck thanked all of the parties involved to put this project together. He wanted to add that it is very important and a great service for our community and that Commissioner Gonzalez was very supportive. He stated that transportation is still something that will need to be worked out. Deputy City Manager Evans added that he is gathering a group together to help solve the transportation issue and that a stop on our city transit route will be added at that location.

Mayor Ortega also thanked all of the parties involved to include Deputy City Manager Evans with his efforts in this project. Ms. Wheelan added that if it were not for Mr. Evans this deal would not be going through, that the City of Fountain has always been very supportive because of the leadership willing to take action with opportunities as they arise.

Resident Gordon Rick inquired if the Streets Department projects will have to be deferred or delayed due to this new project? Deputy City Manager Evens stated no, that this project will be completed on weekend hours and no funds will be taken from the street budget.

Council Member Duncan made a motion to approve, seconded by Gieck. All members voted yes (7-0); the motion carried.

**C. Resolution 20-074, A Resolution Authorizing The Approval Of A Quitclaim Deed Related To The El Paso County Hanson Trailhead Project, Transferring The City's Property Interest To El Paso County**

City Attorney Johnson explained that we were approached by El Paso County regarding a parcel of land that does not have clear ownership. El Paso County is preparing for work on the upcoming Hanson Trailhead Project and the city could be a possible stake holder where the Creek has shifted, creating a "phantom parcel". The City desires to assist El Paso County in this project by issuing a quitclaim deed transferring whatever property interest the City may have to El Paso County.

Council Member Applgate made a motion to approve, seconded by Estes. All members voted yes (7-0); the motion carried.

**D. Council Workshop for Electric Rate Study Review**

Utility Director Blankenship explained that a cost of service and rate design study had been compiled by JK Energy Consulting. The last one completed was in 2018 and is needed to cover the cost to service our customers. The desire and need to establish a second interconnection point to the Colorado Springs Utility Transmission System to alleviate a single point of failure associated with the transmission. He explained that this is not the only capital improvement need but is by far the most costly. Staff is proposing and recommending a rate increase effective January 1, 2021.

JK Energy Consulting representative, John Krajewski, explained that cities that are growing tend to have higher rate increases than a city that is not growing. A second transmission line enables growth in the future and is crucial now to keep power to the citizens.

Mr. Krajewski shared the results of the study to include the rate components; power costs versus internal costs, future project needs, projected financial results, system development charge, customer impact, and rate comparisons to surrounding entities. He noted that the City of Fountain is one of the lowest in the state of Colorado. The recommendations of the study are to:

- Implement rate increases of 4% for FY 2021 and FY 2022
- Increase System Development Charge from \$1,043 to \$1,250
- Decrease Line Extension Fee from \$727 to \$711
- Consider future rate changes as necessary
- Review rates on a regular basis, particularly if purchased power or transmission costs increase

Mayor Ortega acknowledged that the city is in need of some of these things for our system and creating a safety net for our power system that we have not had in the past.

Council Member Thompson inquired about the energy usage with more citizens working at home and the hotter days. Deputy Utility Director Christian explained that the current load growth is 2.9% annually and energy use went up by 22% in the months of March and April. We have hit a city record for demand and some of the transformers that are running at 85-90% capacity.

Customer Service Manager Armstrong explained the services are available to help citizens with their electric bills and that there have been approximately \$40,000.00 paid from those partnering agencies to City of Fountain residents.

Mr. Armstrong went over the electric rate study schedule and the dates and deadlines to meet publications for the increase in order to meet the January 1, 2020 deadline. Mr. Blankenship added that the schedule that has been provided is to make the increase effective the start of the year. The schedule is flexible so that everyone is educated on their decision.

Mayor Ortega explained that the council we will be open to hear the public, and we do not like increases but some time they are a necessity.

Council Member Gieck inquired about residents of the city that are not serviced by Fountain Utilities, and Deputy Utility Director Christian stated that the intent is to service all of those areas in the future.

## **10) Correspondence, Comments and Ex-Officio Reports**

Deputy City Manager Evans explained that there is one month left in the road construction season. There are large projects along Link Rd. still moving forward to include the lowering of the hill and that Old Pueblo Rd is scheduled to begin September 21, 2020.

Mayor Ortega reminded citizens that these projects have been in the planning and didn't just get scheduled. We do realize that school will be impacted but they are projects that need to be completed. Mr. Evans also thanked Council Member Gieck and the Mayor for the work on the El Paso County Health project.

Deputy Utility Director Christian stated that the ground breaking should begin in December for the new Jimmy Camp substation.

Customer Service Manager Armstrong encouraged citizens to contact him with questions on their utility bills, and for a list of the partnering agencies.

Mayor Ortega added that if citizens are able to donate to those services they can do so by contacting Customer Service.

Communications, Strategy and Military Partnerships Coordinator Trylch explained that project maps, traffic projects, hot topics, and additional information is available on our website.

Council Member Duncan stated Youth Council is scheduled to start on September 23<sup>rd</sup> at 6pm and a link will be provided for those that want to participate. COVID has allowed us to be creative and we will be glad we kept going. Applications are still being accepted if any student would like to participate, applications are available on the city website.

Council Member Gieck thanked everyone for their support for the El Paso County Health project.

Council Member Applegate thanked staff for the progress on the street improvements and staying on top of those projects.

Council Member Estes thanked the Streets Department for what they have been able to complete with a small amount of funding.

Mayor Pro Tem Lauer thanked all who participated in getting the County Services to our area, the road project work and to technology for the virtual meetings.

Council Member Thompson also thanked everyone for their work. She reminds everyone to slow down with the road construction. There was a death this week on the interstate and we currently have the highest death rate in the state..

Mayor Ortega agreed with the speeding traffic and that the police are out doing what they can. He wanted to recognize the Becketts for working with us to get County Health Services to our area. That the building was not up for sale and it was a collaborative effort.

Mr. Ortega shared a word of encouragement to stay away from social media and be kind to others.

**11) Announcement of Executive Sessions**

**12) Adjourn**

There being no further business Mayor Ortega declared the meeting adjourned at 7:33 P.M.

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Deputy City Clerk

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Mayor



# Regular City Council Meeting

**Consent –7B**  
*Set Public Hearing Date*

**September 22, 2020**

### Summary Information

**Title:**  
Set a Public Hearing Date (October 27, 2020) and Radius for a Neighborhood Needs Survey for a Beer and Wine Liquor License for Arashi Sushi Hibachi & Grill, LLC. dba for Arashi Sushi Hibachi & Grill located at 8035 Fountain Mesa Road.

Initiator : Deputy City Clerk Joney Carneal	<input checked="" type="checkbox"/> Council Action
Presenter: Silvia Huffman, City Clerk	<input type="checkbox"/> Council Information
Legal Review: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Report to Council

**Summary Overview and List of Attachments:**  
Arashi Sushi Hibachi & Grill, LLC has submitted an application for a Beer and Wine Liquor License on September 3, 2020. Pursuant to Colorado State Statues 12-47-301 “the reasonable requirements of the neighborhood and the desires of the adult inhabitants must be determined by the local authority prior to the approval of a new license”. Therefore, staff is recommending a one-quarter (1/4) mile radius for the neighborhood survey.

Attachments: None

### Background Information

### Recommendation

Staff is recommending a one-quarter (1/4) mile radius for the neighborhood survey and October 27, 2020 for the Public Hearing.

### Proposed Motion

N/A



# Regular City Council Meeting

## New Business –9A

Items removed from Consent Agenda

September 22, 2020

### Summary Information

Title:

CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT AGENDA

Initiator : City Clerk

Presenter: City Clerk

Legal Review:  Yes  No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

Any Items removed from the Consent agenda for further discussion shall be heard under this item

Previous Action by City Council:

Attachment:

### Background Information

Strategic Plan Priority (if applicable):

- Transportation Infrastructure
- Telecommunications Technology and Capabilities.
- Distribution of Public Safety Resources
- Improve the Availability of Venues Which Support Community Activities

### Recommendation

Staff recommendations

### Proposed Motion

"I move to approve "





# Regular City Council Meeting

## New Business –9B

Fiscal Year 2020 Appropriation

### September 22, 2020

### Summary Information

Title:

**RESOLUTION NO. 20-075, A RESOLUTION AMENDING THE APPROPRIATION OF FISCAL YEAR (FY) 2020 BUDGETED FUNDS**

Initiator : John Lewis, Finance Director

Council Action

Presenter: John Lewis, Finance Director

Council Information

Legal Review:  Yes  No

Report to Council

Summary Overview and List of Attachments:

The City Council adopted a budget for the FY 2020 on November 19, 2019. The 2020 budget was amended by Council on April 28, for certain carryforward capital items that had remained unspent or completed in 2019 and again on July 28, for certain items that had not been anticipated when the initial budget was appropriated. Since July 28, City personnel have been made aware of additional necessary expenditures that need to be made in 2020 and/or of additional revenue has been received with corresponding required expenditures. City staff is therefore recommending formal approval by City Council to amend the 2020 budget for those additional items.

The required 2020 expenditures that were not included in the 2020 adopted budget, for a variety of reasons, include: a donation from ColoTrust of \$5,000 for an ADA swing in Fountain Mesa Park and \$2, 950,000 for a high voltage cable and installation for the Jimmy Camp substation.

Staff is therefore recommending that the budgets of the General and Electric Funds be amended for those items listed in the attached line item summary (Exhibit A).

Previous Action by City Council:

The City Council adopted a budget for the FY 2020 on November 19, 2019 and adopted Resolutions No 20-030, and No 20-060 amending the 2020 budget on April 28 and July 28, respectively.

Attachment: Exhibit A

### Background Information

This Resolution amends the FY 2020 budget per City Financial Policies. This amendment will be included with the original 2020 budget to comply with State of Colorado requirements.

Exhibit A includes the detail of the request.

Strategic Plan Priority (if applicable):

- Transportation Infrastructure
- Telecommunications Technology and Capabilities.
- Distribution of Public Safety Resources
- Improve the Availability of Venues Which Support Community Activities

### Recommendation

Staff recommends that City Council approve Resolution No. 20-075

### Proposed Motion

"I move to approve Resolution No. 20-"



**RESOLUTION NO. 20-075**

**A RESOLUTION AMENDING THE APPROPRIATION OF FISCAL YEAR 2020  
BUDGETED FUNDS**

**WHEREAS**, the City Council adopted a budget for the fiscal year (FY) 2020 on November 19, 2019 and;

**WHEREAS**, the City Council adopted an initial budget supplemental for the fiscal year (FY) 2020 on April 28, 2020 and;

**WHEREAS**, the City Council adopted a second budget supplemental for the fiscal year (FY) 2020 on July 28, 2020 and;

**WHEREAS**, staff is recommending approval by City Council to amend expenditures for the additional necessary expenditures not initially budgeted for and summarized by fund as follows:

General Fund - \$5,000  
Electric Fund - \$2,950,000

**And WHEREAS**, the City Council wishes to make a supplemental appropriation pursuant to Section 9.11(a) of the City Charter, for the FY 2020 budget year and to direct the Finance Department to amend the FY 2020 budget accordingly;

NOW, THEREFORE, BE IT RESOLVED by the City Council:

Section 1. The FY 2020 budget appropriation is amended as shown in Exhibit A.

Section 2. That the fund balance reserve be appropriated as indicated in Exhibit A from monies available in each fund for the purpose set forth herein.

Section 3. That the Finance Department make the appropriate adjustments to the 2020 budget in the City's books and records.

Section 4. That a certified copy of this Resolution be filed with the Division of Local Government of the State of Colorado.

Section 5. This Resolution shall be in full force and effect after its approval by the City Council.

Done this 22nd day of September, 2020.

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Gabriel P. Ortega, Mayor

ATTEST:

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Silvia Huffman, City Clerk

**EXHIBIT A**

**3RD SUPPLEMENTAL REQUEST TO AMEND THE 2020 BUDGET**

<u>Account Number</u>	<u>Amount</u>	<u>Explanation</u>
<b><u>GENERAL FUND</u></b>		
<u>Revenue</u>		
100-0000-43670	5,000.00	Donation from ColoTrust for an ADA swing
Total Revenue	<u>5,000.00</u>	
<u>Expenditures</u>		
100-5510-59310	5,000.00	ADA swing at Fountain Mesa Park
Total Expenditures	5,000.00	
<b>TOTAL NET INCREASE (DECREASE) IN GENERAL FUND UNRESTRICTED RESERVES</b>	<b>-</b>	
<b><u>ELECTRIC FUND</u></b>		
<u>Expenditures</u>		
520-7117-59310	2,950,000.00	High voltage lines and installation to Jimmy Camp substation
Total Expenditures	2,950,000.00	
<b>TOTAL NET (DECREASE) IN ELECTRIC FUND UNRESTRICTED NET POSITION</b>	<b><u>(2,950,000.00)</u></b>	



# Regular City Council Meeting

## New Business –9C

Issuance of Water Bond

### September 22, 2020

#### Summary Information

Title:

**FIRST READING OF ORDINANCE 1749, AN ORDINANCE OF THE CITY OF FOUNTAIN, COLORADO, APPROVING THE REFINANCING OF ITS UTILITY REVENUE BONDS, SERIES 2011, FOR THE PURPOSE OF DECREASING DEBT SERVICE EXPENSES OVER THE REMAINING TERM OF THE BOND DEBT AND FOR PAYING THE COSTS OF THE REFINANCING; AND PROVIDING DETAILS AND DOCUMENTS IN CONNECTION WITH THE BONDS.**

Initiator : John Lewis, Finance Director

Presenter: John Lewis, Finance Director

Legal Review:  Yes  No

Council Action

Council Information

Report to Council

#### Summary Overview and List of Attachments:

This ordinance approves the issuance of City of Fountain Water Revenue Bonds, Series 2020 of a par value of up to \$8,500,000. The Bonds will be used to refinance the City’s Series 2011 Water Revenues Loan. The 2011 Loan has an outstanding principal balance of \$7,795,000. We have received the required prior written approval of the Colorado Water and Power Authority (the issuer of bonds that funded the 2011 Loan) to refund the Loan. Due to current market conditions, the City can refinance the refunded Loan on a taxable basis at a substantial cost savings to the Electric, Water and Wastewater Utility Enterprise.

Pursuant to Section 10.5 of the Charter, the City may issue revenue bonds payable solely from revenues derived from the operation of a project or improvements; and the City is authorized pursuant to Part 1 of Article 56 of Title 11, C.R.S. (the “Refunding Act”), to issue refunding bonds for the purpose, among others, of reducing the total interest payable over the life of such obligations or effecting other economies. It is estimated that the Series 2020 Bonds generate approximately 10% or more of net present value savings on debt service (inclusive of costs of issuance). We will not issue the Series 2020 Bonds unless we can demonstrate at least 3% new present value savings.

Attachment: Ordinance Number 1749

#### Background Information

SEE ATTACHED DRAFT BOND ORDINANCE AND DRAFT BOND PURCHASE AGREEMENT

Strategic Plan Priority (if applicable):

Transportation Infrastructure

Telecommunications Technology and Capabilities.

Distribution of Public Safety Resources

Improve the Availability of Venues Which Support Community Activities

#### Recommendation

Staff recommends that this Ordinance be approved

#### Proposed Motion

“I move to approve first reading of Ordinance 1749”

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**CERTIFIED RECORD**  
**OF**  
**PROCEEDINGS OF THE CITY COUNCIL**  
**OF THE CITY OF FOUNTAIN, COLORADO,**  
**ACTING BY AND THROUGH THE CITY OF FOUNTAIN**  
**ELECTRIC, WATER, AND WASTEWATER UTILITY ENTERPRISE**  
**RELATING TO AN ORDINANCE**  
**AUTHORIZING THE ISSUANCE OF UP TO:**  
  
**\$8,500,000**  
**TAXABLE WATER AND ELECTRIC REVENUE REFUNDING BONDS**  
**SERIES 2020**

*This cover page is not a part of the following Ordinance and is included solely for the convenience of the reader.*

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APPENDIX A FORM OF BOND



STATE OF COLORADO                    )  
   ) ss  
 COUNTY OF EL PASO                    )

I, Clerk to the City Council of City of Fountain, Colorado, acting by and through the City of Fountain Electric, Water and Wastewater Utility Enterprise (the “City”), do hereby certify that:

1. Attached is a true and correct copy of an ordinance (the “Ordinance”) adopted by the City Council (the “City Council”) at a regular meeting held on October [\_\_], 2020.

2. Notice of such meeting was posted in a public place within the boundaries of the City designated by the City Council for the posting of notices of meetings of the City Council no less than 24 hours prior to the holding of the meeting.

3. The Ordinance was duly moved, seconded and adopted at such meeting by the affirmative vote of a majority of the members of the City Council as follows:

<u>Council Member</u>	<u>Yes</u>	<u>No</u>	<u>Absent</u>	<u>Abstaining</u>
Gabriel Ortega, Mayor	_____	_____	_____	_____
Tamara Estes	_____	_____	_____	_____
Sharon Thompson	_____	_____	_____	_____
Detra Duncan	_____	_____	_____	_____
Sam Gieck	_____	_____	_____	_____
Greg Lauer	_____	_____	_____	_____
Richard Applegate	_____	_____	_____	_____

4. The Ordinance was duly approved by the City Council, signed by the Mayor, sealed with the City’s seal, attested by the City Clerk and recorded in the minutes of the City Council.

5. The meeting at which the Ordinance was adopted was noticed, and all proceedings relating to the adoption of the Ordinance were conducted in accordance with all applicable bylaws, rules, regulations and Ordinances of the City, in accordance with the normal procedures of the City relating to such matters, and in accordance with applicable constitutional provisions and statutes of the State of Colorado and all other applicable laws.

WITNESS my hand and the seal of the City this [\_\_] day of [\_\_\_\_\_], 2020.

[SEAL] \_\_\_\_\_  
 Clerk to the City Council

## **ORDINANCE NO. 1749**

AN ORDINANCE OF THE CITY OF FOUNTAIN, COLORADO, APPROVING THE ISSUANCE OF ITS TAXABLE WATER AND ELECTRIC REVENUE REFUNDING BONDS, SERIES 2020, FOR THE PURPOSE OF REFINANCING THE CITY'S REFUNDED LOAN WITH THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY, FUNDING THE RESERVE ACCOUNT OR PURCHASING A RESERVE ACCOUNT CONTRACT, AND PAYING THE COSTS OF ISSUANCE OF THE BONDS; AUTHORIZING THE FORMS OF SUCH BONDS AND OTHER DETAILS WITH RESPECT TO SUCH BONDS AND THE PAYMENT THEREOF; PROVIDING FOR PAYMENT OF THE BONDS FROM A PORTION OF THE REVENUES OF THE CITY'S ELECTRIC, WATER AND WASTEWATER UTILITY ENTERPRISE AND MAKING CERTAIN COVENANTS IN CONNECTION THEREWITH; AND PROVIDING DETAILS AND DOCUMENTS IN CONNECTION WITH THE BONDS.

WHEREAS, the City of Fountain, Colorado is a municipal corporation duly organized and operating as a home-rule city under Article XX of the State Constitution and the Charter of the City (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in the Section hereof entitled "Definitions"); and

WHEREAS, the City is the owner and operator of an electric and water system and is authorized to own and operate a wastewater system, which electric and water system has historically been operated on a self-supporting basis by the City, is considered to be a government-owned business and is generally known as the "City of Fountain Electric, Water and Wastewater Utility Enterprise"; and

WHEREAS, the City is acting hereunder by and through its "City of Fountain Electric, Water and Wastewater Utility Enterprise" (the "Electric, Water and Wastewater Utility Enterprise") under the Charter; and

WHEREAS, in calendar year 2019 the Electric, Water and Wastewater Utility Enterprise was, and in calendar year 2020 the Electric, Water and Wastewater Utility Enterprise continues to be operated as government-owned businesses authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all State and local governments combined, and the City Council hereby determines and reaffirms that the Electric, Water and Wastewater Utility Enterprise is an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the Colorado Water Resources and Power Development Authority (the "Authority") has previously issued its Water Resources Revenue Bonds (City of Fountain, Colorado Electric, Water and Wastewater Utility Enterprise Project), 2011 Series A, and, pursuant to a Loan Agreement (the "Refunded Loan Agreement"), dated as of May 1, 2011, with the City, loaned the proceeds of said bonds to the City; and

WHEREAS, the City, pursuant to the terms set forth in the Refunded Loan Agreement and in consideration of the loan made thereunder and to evidence the obligations of the City

under the Refunded Loan Agreement, issued that certain 2011 City Bond (the “2011 Authority Bond”), dated May 4, 2011, in the aggregate principal amount of \$9,350,000, and is currently outstanding in the aggregate principal amount of \$7,795,000 (the “Refunded Loan”) promising to pay the Authority the amounts provided in the Refunded Loan Agreement; and

WHEREAS, the Refunded Loan Agreement provides that, upon the prior written approval of the Authority (which approval has been obtained) the City may prepay the Refunded Loan by paying the principal amount outstanding of the Refunded Loan; and

WHEREAS, the City believes, due to current market conditions, it can refinance the Refunded Loan on a taxable basis at a substantial cost savings to the Electric, Water and Wastewater Utility Enterprise; and

WHEREAS, pursuant to Section 10.5 of the Charter, the City may issue revenue bonds payable solely from revenues derived from the operation of a project or improvements; and

WHEREAS, the City is authorized pursuant to Part 1 of Article 56 of Title 11, C.R.S. (the “Refunding Act”), to issue refunding bonds for the purpose, among others, of reducing the total interest payable over the life of such obligations or effecting other economies; and

WHEREAS, to finance the estimated costs of refunding the Refunded Loan plus reserves and costs of issuance related thereto, the City Council has determined to issue its Taxable Water and Electric Revenue Refunding Bonds, Series 2020, dated their date of delivery, in the total principal amount of not to exceed \$8,500,000 (the “Bonds”), subject to certain terms of the Bonds to be set forth in the Sale Certificate, as more particularly set forth herein; and

WHEREAS, the Bonds shall constitute a special revenue obligation of the City that is generally payable from the income for the services furnished by or the use of the System (defined in the Section hereof entitled “Definitions”), less reasonable and necessary current expenses of the City of operating, maintaining and repairing the System, on parity with the City’s previously issued Authority Bonds and Prior Bonds, as described below, and after consideration, the City Council has determined that the issuance of the Bonds is to the best advantage of the City; and

WHEREAS, in connection with a Loan Agreement, dated as of March 1, 2013, by and between the City and the Authority (the “2013 Authority Loan Agreement”), the City has previously issued that certain City Bond, dated March 14, 2013, originally issued to the Authority in the aggregate principal amount of \$11,615,000, and currently outstanding in the aggregate principal amount of \$10,435,000 (the “2013 Authority Bond”); and

WHEREAS, in connection with a Loan Agreement, dated as of October 1, 2014, by and between the City and the Authority (the “2014 Authority Loan Agreement” and together with the the 2013 Authority Loan Agreement, the “Authority Loan Agreements”), the City has previously issued that certain City Bond, dated November 25, 2014, originally issued to the Authority in the aggregate principal amount of \$16,900,000, and currently outstanding in the aggregate principal amount of \$15,560,000 (the “2014 Authority Bond” and together with the 2013 Authority Bond, the “Authority Bonds”); and

WHEREAS, the City previously issued its Water Revenue Bonds, Series 2015 (the “Series 2015 Bonds”), originally issued in the aggregate principal of \$3,965,000 and currently outstanding in the aggregate principal amount of \$3,715,000; and

WHEREAS, the City previously issued its Water Revenue Refunding Bonds, Series 2016 (the “Series 2016 Bonds”), originally issued in the aggregate principal of \$7,150,000 and currently outstanding in the aggregate principal amount of \$6,405,000; and

WHEREAS, the City previously issued its Water and Electric Revenue Bonds, Series 2019 (the “Series 2019 Bonds” and together with the Series 2015 Bonds and the Series 2016 Bonds, the “Prior Bonds”), originally issued in the aggregate principal of \$19,000,000 and currently outstanding in the aggregate principal amount of \$19,000,000; and

WHEREAS, the Bonds will be issued on parity with the Authority Bonds and the Prior Bonds as an Additional Parity Obligation (defined in the Section hereof entitled “Definitions”); and

WHEREAS, the City is authorized under the Authority Loan Agreements and the Prior Bond Ordinances to issue Additional Parity Obligations with a lien on the Net Revenues (defined in the Section hereof entitled “Definitions”) and payable from the Net Revenues, which are on a parity with the lien of the Authority Bonds and the Prior Bonds, so long as the City satisfies certain revenue tests and other requirements, all as set forth herein, or, alternatively, without compliance with such revenue tests and other requirements, provided that the debt service payments on such refunding obligations do not exceed the debt service payments on the refunded obligations on any interest payment date during any calendar year; and

WHEREAS, the debt service payments on the Bonds are anticipated to not exceed the debt service payments on the Refunded Loan during any calendar year; and

WHEREAS, the Bonds will not be payable from any tax and, pursuant to applicable laws of the State, voter approval is not required for the issuance of revenue bonds by the City, acting by and through its Electric, Water and Wastewater Utility Enterprise; and

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

WHEREAS, the City Council has been presented with a proposal from Piper Sandler & Co., to underwrite the Bonds upon specified terms and conditions in a Bond Purchase Agreement (the “Bond Purchase Agreement”), the final terms and conditions of which are to be set forth in the Sale Certificate, and, after consideration, the City Council has determined that the negotiated sale of the Bonds, subject to the parameters set forth herein is to the best advantage of the City; and

WHEREAS, there has been presented to the City and available to the City Council, among other things, (a) the Preliminary Official Statement, (b) the Paying Agent Agreement, (c) the Bond Purchase Agreement and (d) the Continuing Disclosure Undertaking; and

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

WHEREAS, pursuant to the Charter, the Act, the Refunding Act, and by this Ordinance, the City authorizes the issuance of the Bonds, and delegates to the Mayor, for a period not to exceed one year from the effective date of this Ordinance, the authority to approve, among other things, the principal amount of the Bonds maturing in any particular year, the rate of interest on the Bonds, and the identity of the Bond Insurer, if any, in accordance with the provisions of this Ordinance.

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

**Section 1. Definitions.** The following terms (in addition to those defined above) shall have the following meanings as used in this Ordinance:

“*Act*” means the Title 11, Article 57, Part 2, C.R.S., and all other laws of the State establishing the power of the City to complete the financing contemplated by this Ordinance.

“*Additional Parity Obligations*” means any additional obligations with a lien on the Net Revenues and payable from the Net Revenues that are on parity with the lien of the Authority Bonds and the Prior Bonds, and after issuance of the Bonds, the Bonds.

“*Authority*” means the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State with corporate succession duly created and validly existing under and by virtue of Section 37-95-101, et seq., C.R.S.

“*Authority Bonds*” means the 2013 Authority Bond and the 2014 Authority Bond.

“*Authority Loan Agreements*” means the 2013 Authority Loan Agreement, and the 2014 Authority Loan Agreement, by and between the City and the Authority, pursuant to which the Authority agreed to loan the proceeds of its water resources revenue bonds to the City for various purposes.

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

“*Bond Account*” means the “Taxable Water and Electric Revenue Refunding Bonds, Series 2020, Bond Account” created in the Section hereof entitled “Reaffirmation of Funds and Accounts; Creation of Accounts” and as more particularly described in the Section hereof entitled “Bond Account.”

“*Bond Counsel*” means (a) as of the date of issuance of the Bonds, Kutak Rock LLP, of Denver, Colorado, and (b) as of any other date, Kutak Rock LLP or such other attorneys selected by the City with nationally recognized expertise in the issuance of municipal bonds.

“*Bond Insurance Policy*” means the municipal bond insurance policy, if any, issued by the Bond Insurer insuring the payment when due of the principal of, premium, if any, and interest on all or any portion of the Bonds, as provided therein.

“*Bond Insurer*” means the entity, if any, identified in the Sale Certificate as the issuer of the Bond Insurance Policy, or any successor thereto.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement, by and between the City and the Original Purchaser.

“*Bonds*” means the “City of Fountain, Taxable Water and Electric Revenue Refunding Bonds, Series 2020” authorized hereby.

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

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

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

“*City*” means the City of Fountain, Colorado, acting by and through its Electric, Water and Wastewater Utility Enterprise.

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

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

“*Commitment*” means, collectively, those certain offers, if any, to issue the Bond Insurance Policy, designated as the Commitment, issued by the Bond Insurer.

“*Continuing Disclosure Undertaking*” means the undertaking to facilitate compliance with Rule 15c2-12 under the Securities Exchange Act of 1934 in substantially the form appended to the Preliminary Official Statement.

“*Cost of Issuance Account*” means the “Taxable Water and Electric Revenue Refunding Bonds, Series 2020, Cost of Issuance Account” created in the Section hereof entitled “Reaffirmation of Funds and Accounts; Creation of Accounts” and as more particularly described in the Section hereof entitled “Cost of Issuance Account.”

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

“*Dated Date*” means the date of delivery of the Bonds.

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

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

“*Electric, Water and Wastewater Utility Enterprise*” means the utility activity business owned by the City generally known as the “City of Fountain Electric, Water and Wastewater Utility Enterprise,” which is a government-owned business that receives under 10% of its annual revenues in grants from all State and local governments combined.

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

“*Federal Securities*” means bills, certificates of indebtedness, notes, bonds or similar securities which are direct non-callable obligations of the United States of America or which are fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America.

“*Insured Bonds*” means those Bonds, if any, insured by a Bond Insurance Policy, as set forth in the Sale Certificate pursuant to the Section hereof entitled “Delegation and Parameters.”

“*Interest Payment Date*” means the annual or semiannual dates set forth in the Sale Certificate for payment of interest on the Bonds.

“*Moody’s*” means Moody’s Investor Service, New York, New York.

“*Net Revenues*” means the Revenues after deducting Operation and Maintenance Expenses; provided that such Net Revenues available for debt service will be limited to 50% of tap fee revenue.

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

“*Operation and Maintenance Expenses*” means all reasonable and necessary current expenses of the City, paid or accrued, for operating, maintaining, and repairing the System, including without limitation legal and overhead expenses directly related to the administration of the System, insurance premiums, audits, charges of depository banks and paying agents, professional services, salaries and administrative expenses, labor, and the cost of materials and supplies for current operation; provided however, that there shall be excluded from Operation and Maintenance Expenses any allowance for depreciation, payments in lieu of taxes or franchise fees, legal liabilities not based on contract, expenses incurred in connection with capital improvements, payments due in connection with any bonds or other obligations issued to provide capital improvements, and charges for the accumulation of reserves.

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

“*Original Purchaser*” means Piper Sandler & Co., Denver, Colorado.

“*Outstanding*” means as of any date, all Bonds or Parity Lien Obligations, as the context requires, except the following:

(a) any Bond or Parity Lien Obligation cancelled by the City or the applicable paying agent, or otherwise on the City’s behalf, at or before such date;

(b) any Bond or Parity Lien Obligation for the payment or the redemption of which moneys or Federal Securities sufficient to meet all of the payment requirements of the principal of, interest on, and any premium due in connection with the redemption of such Bond or Parity Lien Obligation to the date of maturity or any redemption date thereof, shall have theretofore been deposited in trust for such purpose; and

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

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

“*Parity Lien Obligations*” means the Authority Bonds, the Prior Bonds, and any other bonds or other obligations permitted to be issued pursuant to the Section hereof entitled “Additional Senior, Parity, and Subordinate Lien Obligations,” with a lien on the Net Revenues and payable from the Net Revenues, which are on a parity with the lien of the Bonds.

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

“*Paying Agent*” means UMB Bank, n.a., which shall act as paying agent, bond registrar, and authenticating agent for the Bonds.

“*Permitted Investments*” means any investment lawfully permitted by applicable State law, as such definition may be further restricted in accordance with the requirements of a Bond Insurer, if any, as set forth in the Sale Certificate.

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

“*Preliminary Official Statement*” means the Preliminary Official Statement concerning the Bonds and used in the offer and sale of the Bonds.



“*Principal Payment Date*” means the annual or semiannual dates set forth in the Sale Certificate for payment of the principal of the Bonds.

“*Prior Bond Ordinances*” means the Series 2015 Bond Ordinance, the Series 2016 Bond Ordinance and the 2019 Bond Ordinance, pursuant to which the Prior Bonds were issued.

“*Prior Bonds*” means the Series 2015 Bonds, the Series 2016 Bonds and the Series 2019 Bonds.

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

“*Rate Covenant*” means the requirements set forth in the paragraph entitled “Rate Covenant” in the Section entitled “Additional General Covenants and Representations.”

“*Record Date*” means with respect to each Interest Payment Date, (a) if the Interest Payment Date is the first day of the month, the fifteenth day of the month immediately preceding the month (whether or not such day is a Business Day) in which such Interest Payment Date occurs; or (b) if the Interest Payment Date is the fifteenth day of the month, the first day of the month (whether or not such day is a Business Day) in which such Interest Payment Date occurs.

“*Refunded Loan*” means the 2011 Authority Bond.

“*Refunded Loan Agreement*” means the 2011 Authority Loan Agreement.

“*Refunding Act*” means Part 1 of Article 56 of Title 11, C.R.S.

“*Reserve Account*” means the “Taxable Water and Electric Revenue Refunding Bonds, Series 2020, Reserve Account” created in the Section hereof entitled “Reaffirmation of Funds and Accounts; Creation of Accounts” and as more particularly described in the Section hereof entitled “Reserve Account.”

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

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

“*Revenues*” means all income and revenues directly or indirectly derived by the City from the operation and use of the System, or any part thereof, including without limitation, any

rates, fees, plant investment fees, standby charges, availability fees, tolls, and charges for the services furnished by, or the use of, the System, and all income attributable to any past or future dispositions of property or rights or related contracts, settlements, or judgments held or obtained in connection with the System or its operations, and including investment income accruing from moneys held to the credit of the Utility Fund.

“*Sale Certificate*” means the certificate executed by the Sale Delegate in connection with the issuance of the Bonds, under the authority delegated pursuant to this Ordinance, including but not limited to the Sections hereof titled “Bond Details,” “Delegations and Parameters” and “Approval of Official Statement and Miscellaneous Documents” which set forth, among other things, the aggregate principal amount of the Bonds, the prices at which the Bonds will be sold, interest rates and annual maturing principal for the Bonds, the dates on which the Bonds may be redeemed and the redemption prices therefore, and the identity of the Bond Insurer, if any, provisions required by the Bond Insurer, including terms of the Commitment.

“*Sale Delegate*” means the Mayor of the City or the Mayor Pro Tem in the absence of the Mayor.

“*Series 2015 Bond Ordinance*” means Ordinance No. 1661, adopted by the City Council on October 27, 2015, pursuant to which the Series 2015 Bonds were issued.

“*Series 2015 Bonds*” means the City’s Water Revenue Bonds, Series 2015, originally issued in the aggregate principal of \$3,965,000 and currently outstanding in the aggregate principal amount of \$3,625,000 pursuant to the Series 2015 Bond Ordinance.

“*Series 2016 Bond Ordinance*” means Ordinance No. 1674, adopted by the City Council on June 14, 2016, pursuant to which the Series 2016 Bonds were issued.

“*Series 2016 Bonds*” means the City’s Water Revenue Refunding Bonds, Series 2016, originally issued in the aggregate principal of \$7,150,000 and currently outstanding in the aggregate principal amount of \$6,170,000 pursuant to the Series 2016 Bond Ordinance.

“*Series 2019 Bond Ordinance*” means Ordinance No. 1731 and Emergency Ordinance No. 1737 adopted by the City Council on June 11, 2019 and July 25, 2019, respectively, pursuant to which the Series 2019 Bonds were issued.

“*Series 2019 Bonds*” means the City’s Water and Electric Revenue Bonds, Series 2019, originally issued in the aggregate principal of \$19,000,000 and currently outstanding in the aggregate principal amount of \$19,000,000 pursuant to the Series 2019 Bond Ordinance.

“*State*” means the State of Colorado.

“*Subordinate Lien Obligations*” means any bonds or other obligations permitted to be issued pursuant to the Section hereof entitled “Additional Senior, Parity, and Subordinate Lien Obligations,” with a lien on the Net Revenues and payable from the Net Revenues, which are subordinate to the lien of the Bonds and the Parity Lien Obligations.

“*Swap Agreement*” means any interest rate exchange agreement, which is subject to the terms and conditions contained in the paragraph entitled, “Swap Agreements” in the Section hereof entitled “Additional General Covenants and Representations.”

“*System*” means the property and facilities comprising the electric and water (but not wastewater) system of the City at the time of delivery hereof, including real and personal property and any easements, and also any and all additions and betterments thereto and improvements and extensions hereafter constructed or acquired by the City and used in connection with the electric and water (but not wastewater) facilities of the City.

“*S&P*” means Standard & Poor’s Rating Services, a business of Standard & Poor’s Financial Services LLC, a part of McGraw Hill Financial, New York, New York.

“*Utility Fund*” means the City’s Utility Fund, which is used to account for all aspects of the operation of the City electric and water (but not wastewater) system including source of supply, operations and maintenance, customer service, administrative expenses, debt service, and capital outlay, and into which the Revenues are deposited.

“*2011 Authority Bond*” means that certain City Bond, dated May 4, 2011, originally issued to the Authority in the aggregate principal amount of \$9,350,000, and currently outstanding in the aggregate principal amount of \$7,795,000.

“*2011 Authority Loan Agreement*” means the Loan Agreement, dated as of May 1, 2011, by and between the City and the Authority, pursuant to which the 2011 Authority Bond was issued.

“*2013 Authority Bond*” means that certain City Bond, dated March 14, 2013, originally issued to the Authority in the aggregate principal amount of \$11,615,000, and currently outstanding in the aggregate principal amount of \$9,915,000.

“*2013 Authority Loan Agreement*” means the Loan Agreement, dated as of March 1, 2013, by and between the City and the Authority, pursuant to which the 2013 Authority Bond was issued.

“*2014 Authority Bond*” means that certain City Bond, dated November 25, 2014, originally issued to the Authority in the aggregate principal amount of \$16,900,000, and currently outstanding in the aggregate principal amount of \$14,640,000.

“*2014 Authority Loan Agreement*” means the Loan Agreement, dated as of October 1, 2014, by and between the City and the Authority, pursuant to which the 2014 Authority Bond was issued.

**Section 2. Certification of City’s Authority to Issue Bonds as Additional Lien Obligations under the Authority Loan Agreements and the Prior Bond Ordinances.** The City is authorized under the Authority Loan Agreements and the Prior Bond Ordinances to issue Additional Parity Obligations with a lien on the Net Revenues and payable from the Net Revenues, which are on a parity with the lien of the Authority Bonds and the Prior Bonds so long

as the City certifies to the Authority that the Net Revenues for any twelve (12) consecutive months out of the eighteen (18) months preceding the month in which such Additional Parity Obligations are to be issued is at least equal to the sum (a) of 110% of the maximum annual debt service of all Parity Lien Obligations outstanding during such twelve (12) month period and such proposed Additional Parity Obligations to be issued, and (b) 100% of maximum annual debt service of all other indebtedness secured by and payable from the Net Revenues; provided, however, that no more than fifty percent (50%) of the water and electric rates, fees and charges for the products and services provided by the System, which are derived from connection fees shall be included in Revenues for the purpose of such test. The City is authorized to refund any outstanding Parity Lien Obligations, without compliance with the Authority Loan Agreements and the Prior Bond Ordinance, provided that the debt service payments on such refunding obligations do not exceed the debt service payments on the refunded obligations during any calendar year. The City hereby certifies that the debt service on the Bonds will not exceed the debt service payments, during any calendar year, on the Refunded Loan.

In addition, the City is authorized to issue additional bonds so long as (1) no event of default (or any event which, once all notice or grace periods have passed, would constitute an event of default) under the Authority Loan Agreements exists unless such event of default shall be cured upon such issuance and (2) unless the debt service reserve fund is fully funded at the debt service reserve requirement (including the proposed issue) upon the issuance of such additional bonds, in either case unless permitted by the bond insurer in connection with the Authority Loan Agreements. No event of default exists under the Authority Loan Agreements and the debt service reserve funds under the Authority Loan Agreements are fully funded at their respective debt service reserve requirements, so the City is authorized to issue additional bonds hereunder.

**Section 3. Authorization and Purpose of Bonds.** Pursuant to and in accordance with the State Constitution, the Charter, the Act, the Refunding Act, the Authority Loan Agreements, and the Prior Bond Ordinances, there shall be issued by the City, acting by and through its Electric, Water and Wastewater Utility Enterprise, the “Taxable Water and Electric Revenue Refunding Bonds, Series 2020” in the aggregate principal amount not to exceed \$8,500,000 for the purpose of (a) refunding the Refunded Loan, (b) funding the Reserve Account or purchasing a Reserve Account Contract, and (c) paying the costs of issuance of the Bonds (including the premium for the Bond Insurance Policy, if any). All City officials and employees are hereby directed to take such actions as are necessary and appropriate to fulfill the obligations of the City under this Ordinance. The City shall deliver the Bonds in substantially the forms presented on final reading of this Ordinance with only such changes as are not inconsistent herewith; 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 accomplishment of the refunding of the Refunded Loan is hereby authorized, approved, and ordered.

**Section 4. Pledge for Payment of the Bonds.**

(a) ***Pledge of Net Revenues.*** The principal of, premium, if any, and interest on the Bonds and Parity Lien Obligations at any time Outstanding shall be payable solely from the Net Revenues. The City irrevocably pledges and grants a lien (but not an

exclusive lien) on the Net Revenues for the payment of the Bonds. The Owners of the Bonds may not look to any general or other fund of the City for the payment of the principal of or interest on the Bonds, except the funds and accounts pledged thereto pursuant to authority of this Ordinance, and the Bonds shall not constitute a debt or an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation; nor shall they be considered or held to be a general obligation of the City.

(b) ***No Prohibition on Additional Security.*** Nothing herein shall prohibit the City from applying any legally available revenues that are not Net Revenues to the payment of the Bonds (and thereby subjecting the moneys so deposited to the pledge made and lien granted in paragraph (a) hereof).

(c) ***Perfection of Security Interest.*** The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Bonds as provided herein shall be governed by the Act. 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 be on parity with any or all other Additional Parity Obligations of the City. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the City irrespective of whether such persons have notice of such liens.

## **Section 5. Bond Details.**

(a) ***Registered Form, Denominations, Original Dated Date and Numbering.*** The Bonds shall be issued as fully registered bonds in denominations of \$5,000 or any integral multiple thereof, shall be dated as of the Dated Date, shall be consecutively numbered in the manner determined by the Paying Agent and shall be registered in the names of the Persons identified in the registration books of the City maintained by the Paying Agent.

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

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

(d) ***Manner and Form of Payment.*** Principal of and the final installment of interest on each Bond shall be payable to the Owner thereof upon presentation and surrender of such bond at the principal operations office of the Paying Agent or at such

other location as identified by the Paying Agent. Interest (other than the final installment of interest) on each Bond shall be payable by check or draft of the Paying Agent mailed on the Interest Payment Date to the Owner thereof as of the Record Date. All payments of the principal of and interest on the Bonds shall be made in lawful money of the United States of America.

(e) ***Book-Entry Registration.*** The Bonds shall be initially issued in the form of a single, certificated, fully registered Bond for each maturity. Upon initial issuance, the ownership of each such Bond shall be registered in the registration books kept by the Paying Agent in the name of Cede, and principal of and interest on the Bonds shall be paid to DTC in accordance with the DTC Blanket Letter of Representations; provided, however, if at any time the Paying Agent determines, and notifies the City of its determination, that DTC is no longer able to act as, or is no longer satisfactorily performing its duties as, securities depository for the Bonds, the City may, at its sole and absolute discretion, either (i) designate a substitute securities depository for DTC and reregister the Bonds as directed by such substitute securities depository or (ii) terminate the book-entry registration system and reregister the Bonds in the names of the Beneficial Owners thereof. Neither the City nor the Paying Agent shall have any liability to DTC, Cede, any substitute securities depository, any Beneficial Owner, any Person in whose name the Bonds are reregistered at the direction of any substitute securities depository, or any other Person for any action taken to implement the City's discretionary determination set forth above that is taken pursuant to any direction of or in reliance on any information provided by DTC, Cede, any substitute securities depository, any Beneficial Owner, or any Person in whose name the Bonds are reregistered.

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

## **Section 6. Delegation and Parameters.**

(a) ***Delegation.*** The City Council hereby delegates to the Sale Delegate the authority to determine and set forth in the Sale Certificate: (i) the matters set forth in paragraph (b) hereof, subject to the applicable parameters set forth in paragraph (c) hereof; and (ii) any other matters that, in the judgment of the Sale Delegate, are necessary or convenient to be set forth in the Sale Certificate and are not inconsistent with the parameters set forth in paragraph (c) hereof.

(b) ***Sale Certificate.*** The Sale Certificate for the Bonds shall set forth the following matters and other matters permitted to be set forth therein pursuant to paragraph (a) hereof, but each such matter must fall within the applicable parameters set forth in paragraph (c) hereof:

- (i) the Dated Date of the Bonds;
- (ii) the Principal Payment Date;

- (iii) the Interest Payment Date(s);
- (iv) the aggregate principal amount of the Bonds;
- (v) the price at which the Bonds will be sold;
- (vi) the amount of principal of the Bonds maturing in any particular year and the respective interest rates borne by the Bonds;
- (vii) the Bonds which may be redeemed at the option of the City, the dates upon which such optional redemption may occur, and the prices at which such Bonds may be optionally redeemed;
- (viii) the principal amounts, if any, of Bonds subject to mandatory sinking fund redemption, and the years in which such Bonds will be subject to such redemption;
- (ix) the identity of the Original Purchaser;
- (x) the identity of Bond Insurer, if any;
- (xi) the Bonds, if any, constituting Insured Bonds; and
- (xii) the definition of “Permitted Investments,” to the extent required to cause the issuance of the Bond Insurance Policy.

(c) **Parameters.** The authority delegated to the Sale Delegate by this Section shall be subject to the following parameters:

- (i) in no event shall the Sale Delegate be authorized to execute the Sale Certificate after the date that is one year after the date of adoption of this Ordinance;
- (ii) the aggregate principal amount of the Bonds shall not exceed \$8,500,000;
- (iii) the final maturity of each series of Bonds shall be no later than December 1, 2041; and
- (iii) the net effective interest rate on each series of Bonds shall not exceed the net effective interest rate on the Refunded Loan.

**Section 7. Form of the Bonds.** The Bonds shall be in substantially the form set forth in Appendix A hereto, with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by the officials of the City executing the same (whose manual or facsimile signatures thereon shall constitute conclusive evidence of such approval). Each Bond shall recite that it is issued under the authority of the Act. Such recital shall conclusively impart full

compliance with all provisions and limitations of such laws, and such Bond issued containing such recital shall be incontestable for any cause whatsoever after its delivery for value. Although attached as an appendix for the convenience of the reader, Appendix A is an integral part of this Ordinance and is incorporated herein as if set forth in full in the body of this Ordinance.

### **Section 8. Execution, Authentication and Delivery of the Bonds.**

(a) **Execution.** The Bonds shall be executed in the name and on behalf of the City with the manual or facsimile signature of the Mayor, shall bear a manual or facsimile of the seal of the City and shall be attested by the manual or facsimile signature of the City Clerk both of whom are hereby authorized and directed to prepare and execute the Bonds in accordance with the requirements hereof. Should any officer whose manual or facsimile signature appears on the Bonds cease to be such officer before delivery of any Bond, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes.

(b) **Authentication.** When the Bonds have been duly executed, the officers of the City are authorized to, and shall, deliver the Bonds to the Paying Agent for authentication. No Bond shall be secured by or entitled to the benefit of this Ordinance, or shall be valid or obligatory for any purpose, unless the certificate of authentication of the Paying Agent has been manually executed by an authorized signatory of the Paying Agent. The executed certificate of authentication of the Paying Agent upon any Bond shall be conclusive evidence, and the only competent evidence, that such Bond has been properly authenticated hereunder.

(c) **Delivery.** Upon the authentication of the Bonds, the Paying Agent shall deliver the same to DTC in accordance with the provisions of the DTC Blanket Letter of Representations. Upon receipt of the purchase price of the Bonds, the issuance of the approving opinion of Bond Counsel, and the satisfaction of other conditions established pursuant to the Bond Purchase Agreement, DTC shall be directed to release the Bonds to the Beneficial Owners.

### **Section 9. Registration, Transfer and Exchange of the Bonds.**

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

(b) **Transfer and Exchange.** The Bonds may be transferred or exchanged, at the principal operations office of the Paying Agent or at such other location as identified by the Paying Agent for a like aggregate principal amount of Bonds of other authorized denominations of the same maturity and interest rate, upon payment by the transferee of a transfer fee, any tax or governmental charge required to be paid with respect to such



transfer or exchange and any cost of printing bonds in connection therewith. Upon surrender for transfer of any Bond, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his or her attorney duly authorized in writing, the City shall execute and the Paying Agent shall authenticate and deliver in the name of the transferee a new Bond

(c) ***Limitations on Transfer.*** The City and Paying Agent shall not be required to issue or transfer any Bonds: (i) during a period beginning at the close of business on the Record Date and ending at the opening of business on the first Business Day following the ensuing interest payment date or (ii) during the period beginning at the opening of business on a date 45 days prior to the date of any redemption of Bonds and ending at the opening of business on the first Business Day following the day on which the applicable notice of redemption is mailed. The Paying Agent shall not be required to transfer any Bonds selected or called for redemption.

**Section 10. Replacement of Lost, Destroyed or Stolen Bonds.** If any Bond shall become lost, apparently destroyed, stolen or wrongfully taken, it may be replaced in the form and tenor of the lost, destroyed, stolen or taken Bond and the City shall execute and the Paying Agent shall authenticate and deliver a replacement Bond upon the Owner furnishing, to the satisfaction of the Paying Agent: (a) proof of ownership (which shall be shown by the registration books of the Paying Agent); (b) proof of loss, destruction or theft; (c) an indemnity to the City and the Paying Agent with respect to the Bond lost, destroyed or taken; and (d) payment of the cost of preparing and executing the new Bond or Bonds.

### **Section 11. Redemption of Bonds Prior to Maturity.**

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

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

At its option, to be exercised on or before the 45th day next preceding each sinking fund redemption date, the City may (i) deliver to the Paying Agent for cancellation any Bonds with the same maturity date as the Bonds subject to such sinking fund redemption and (ii) receive a credit in respect of its sinking fund redemption obligation for any Bonds with the same maturity date as the Bonds subject to such sinking fund redemption which prior to such date have been redeemed (otherwise than through the operation of the sinking fund) and cancelled by the Paying Agent and not theretofore applied as a credit against any sinking fund redemption obligation. Each Bond so delivered or previously redeemed shall be credited by the Paying Agent at the

principal amount thereof to the obligation of the City on such sinking fund redemption date, and the principal amount of Bonds to be redeemed by operation of such sinking fund on such date shall be accordingly reduced.

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

## **Section 12. Reaffirmation of Funds and Accounts; Creation of Accounts.**

(a) **Reaffirmation of Existing Funds and Accounts.** There is hereby reaffirmed the following existing fund of the City: the Utility Fund.

(b) **Creation of Accounts in Utility Fund.** There are hereby created and established within the Utility Fund, in addition to other accounts which are established in said fund, the Bond Account, the Reserve Account, and the Cost of Issuance Account. In accordance with generally accepted accounting principles, for the purpose of accounting for the moneys provided for in this Ordinance the Finance Director may create offsetting revenue and expense accounts not inconsistent with the provisions hereof, all as may be determined by the Finance Director.

**Section 13. Application of Bond Proceeds.** Upon payment to the City of the purchase price of the Bonds by the Original Purchaser, the proceeds received by the City from the sale of the Bonds shall be applied as a supplemental appropriation of the City for the payment of the costs of issuance of the Bonds and as follows:

(a) To the Reserve Account, the amount necessary to fund the Reserve Account or purchase a Reserve Account Contract in the amount of the Reserve Account Requirement allocable to the Bonds;

(b) To the Bond Account, the accrued interest on the Bonds from the Dated Date to the date of issuance and capitalized interest on the Bonds, if any;

(c) To the Authority, the amount necessary to prepay the Refunded Loan; and

(d) To the Cost of Issuance Account, the amount necessary to pay the costs of issuance of the Bonds.

**Section 14. Reserved.**

**Section 15. Deposit of Revenues.** The City shall deposit to the Utility Fund all Revenues immediately upon receipt. The City shall pay from the Utility Fund all Operation and Maintenance Expenses as they become due and payable; provided that such Net Revenues available for debt service will be limited to 50% of tap fee revenue. After such payments, the City shall apply the Net Revenues in the following order of priority:

FIRST, on a pro rata basis, to the credit of the Bond Account, the amounts required by the Section hereof entitled "Bond Account," and to the credit of any other account established for the payment of the principal of, premium if any, and interest on Parity Lien Obligations, the amounts required by the instruments authorizing or controlling the payment of such Parity Lien Obligations;

SECOND, to the credit of the Reserve Account, the amounts required by the Section hereof entitled "Reserve Account" and to the credit of any other account established as a reserve account securing the payment of the principal of, premium if any, and interest on Parity Lien Obligations, the amounts required by the instruments authorizing or controlling the payment of such Parity Lien Obligations;

THIRD, to the credit of any other fund or account hereafter established for the payment of the principal of, premium if any, and interest on any Subordinate Lien Obligations secured by the Net Revenues, including any sinking fund, reserve fund, or similar fund or account established therefor, the amounts required by the ordinance or other enactment authorizing issuance of said Subordinate Lien Obligations; and

FOURTH, to the credit of any other fund or account as may be designated by the City, to be used for any lawful purpose, any moneys remaining in the Utility Fund after the payments and accumulations set forth in FIRST through THIRD hereof.

**Section 16. Bond Account.**

(a) ***Use of Moneys in Bond Account.*** Moneys deposited in the Bond Account shall be used solely for the purpose of paying the principal of, premium, if any, and interest on the Bonds.

(b) ***Deposits to Bond Account.*** On or before the last day of each month, commencing in the month next succeeding the date of issuance of the Bonds, the City shall deposit to the Bond Account from the Net Revenues, an amount equal to the Pro Rata Portion of the interest and principal to come due on the Bonds on the next succeeding Interest Payment Date and Principal Payment Date, respectively. All deposits to the Bond Account shall first be allocated to the payment of interest to come due on the Bonds.

## **Section 17. Reserve Account.**

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

(b) ***Funding and Maintenance of Reserve Account Requirement.*** The Reserve Account Requirement for the Bonds shall be funded and maintained by any one of or any combination of (i) cash; (ii) Permitted Investments; and (iii) a Reserve Account Contract which provides for payments when and as required for purposes of the applicable reserve account and is issued by an obligor whose obligations such as the Reserve Account Contract are either (A) rated by a rating agency as investment grade or (B) if a rating has been obtained on such Bonds whose obligations are rated by each rating agency that then maintains a rating on the Bonds in a category (or comparable classification) equal to or higher than the category, if any, in which the Bonds are rated. To the extent that the Reserve Account Requirement for any series of Bonds is funded from Permitted Investments, such investments shall have an aggregate weighted term to maturity not greater than five years.

(c) ***Valuation of Deposits.*** Cash shall satisfy the Reserve Account Requirement for the Bonds by the amount of cash on deposit. Permitted Investments shall satisfy the Reserve Account Requirement for the Bonds by the value of such investments. The value of each Permitted Investment on deposit in the Reserve Account shall be (i) its purchase price from the date of purchase until the first date thereafter on which the Reserve Account Requirement is calculated pursuant to paragraph (d) hereof and (ii) following each date on which the Reserve Account Requirement is calculated pursuant to paragraph (d) hereof until the next date on which the Reserve Account Requirement is so calculated, its fair market value determined as of such calculation date. A Reserve Account Contract shall satisfy the Reserve Account Requirement for the Bonds by the amount payable to the City pursuant to such contract.

(d) ***Calculation of Reserve Account Requirement and Transfers Resulting from Calculation.*** The Reserve Account Requirement for the Bonds shall be calculated as of (i) the date of issuance of the Bonds and (ii) not less than every five years. If at any time the calculated amount of the Reserve Account is less than the Reserve Account Requirement or transfers are made from the Reserve Account as provided in paragraph (a) hereof, then the City shall deposit to the Reserve Account from the Net Revenues, amounts sufficient to bring the amounts deposited in the Reserve Account to the Reserve Account Requirement for the Bonds. If at any time the calculated amounts of the Reserve Account are more than the Reserve Account Requirement for the Bonds, then the City shall transfer from the Reserve Account to the Bond Account any amounts that are in excess of the Reserve Account Requirement for the Bonds. Such deposits

shall be made as soon as possible after such use or calculation, but in accordance with and subject to the limitations of the Section hereof entitled "Deposit of Revenues."

(e) ***Transfer of Interest Income to Bond Account.*** Interest income from the investment or reinvestment of moneys deposited in the Reserve Account shall be transferred to the Bond Account.

**Section 18. Cost of Issuance Account.** All costs and expenses incurred in connection with the issuance and payment of the Bonds shall be paid from the proceeds of the Bonds deposited in the Cost of Issuance Account. After payment of costs of issuance of the Bonds, any amounts remaining in the Cost of Issuance Account are to be deposited in the Bond Account for use in accordance with the Section hereof entitled "Bond Account."

**Section 19. Investments.** Moneys deposited in the Bond Account, and any moneys held by the Paying Agent with respect to the Bonds, shall be invested in Permitted Investments. Unless otherwise provided herein, all interest income from the investment or reinvestment of moneys credited to any account or subaccount established herein shall remain in and become part of such account or subaccount.

**Section 20. Conditions to Issuance of Additional Senior, Parity, and Subordinate Lien Obligations.**

(a) ***Senior Lien Obligations.*** The City covenants that it will not issue any obligations payable from the Net Revenues that are superior to the lien of the Bonds or any Parity Lien Obligations on the Net Revenues.

(b) ***Parity Lien Obligations.*** In addition, the City covenants that it will not issue any Additional Parity Obligations with a lien on the Net Revenues and payable from the Net Revenues which is on a parity with the lien of the Bonds and the Parity Lien Obligations, unless the City certifies that Net Revenues for any 12 consecutive months out of the 18 months preceding the month in which such Additional Parity Obligations are to be issued is at least equal to the sum (a) of 110% of the maximum annual debt service of (i) the Bonds, (ii) all Parity Lien Obligations outstanding during such 12 month period, and (iii) such proposed Additional Parity Obligations to be issued, and (b) 100% of maximum annual debt service of all other indebtedness secured by and payable from the Net Revenues; provided, however, that no more than 50% of the water and electric rates, fees and charges for the products and services provided by the System, which are derived from connection fees shall be included in Revenues for the purposes of this Section. Net Revenues for the purpose of the preceding sentence may be adjusted to reflect any rate increases adopted prior to the issuance of such Additional Parity Obligations. Notwithstanding the foregoing, the City may issue Additional Parity Obligations to refund the Bonds or outstanding Parity Lien Obligations without compliance with the requirements stated above, provided that the debt service payments on such refunding obligations do not exceed the debt service payments on the refunded obligations during any calendar year.

(c) **Subordinate Lien Obligations.** In addition, the City covenants that it will not issue any obligations payable from the Net Revenues that are subordinate to the lien of the Bonds and the Parity Lien Obligations on the Net Revenues unless the City certifies that for any 12 consecutive months out of the 18 months preceding the month in which such obligations are to be issued Net Revenues were at least 100% of the maximum annual debt service on all indebtedness outstanding during such period which is payable from Net Revenues.

**Section 21. Additional General Covenants and Representations.** In addition to the other covenants of the City contained herein, the City hereby further covenants and represents for the benefit of Owners of the Bonds that:

(a) **Rate Covenant.** The City shall establish and collect rates and charges for the use or the sale of the products and services of the System, which together with other moneys available therefor, are expected to produce Revenues for each calendar year which will be at least sufficient for such calendar year to pay the sum of:

(i) all amounts estimated to be required to pay Operation and Maintenance Expenses during such calendar year;

(ii) a sum equal to 110% of the debt service due on the Bonds for such calendar year and debt service coming due during such calendar year on any indebtedness payable on the Parity Lien Obligations, in each case computed as of the beginning of such calendar year;

(iii) the amount, if any, to be paid during such calendar year into any debt service reserve account;

(iv) a sum equal to the debt service on any subordinated debt for such calendar year computed as of the beginning of such calendar year; and

(v) amounts necessary to pay and discharge all charges and liens payable out of the Revenues during such calendar year;

Provided, however, that no more than 50% of the water and electric rates, fees and charges for the products and services provided by the System, which are derived from connection fees shall be included in Revenues for the purposes of this Rate Covenant.

(b) **Rate Study.** In the event that the Revenues collected during a fiscal year are not sufficient to meet the requirements set forth in the Rate Covenant contained in paragraph (a) hereof, the City shall, within 90 days of the end of such fiscal year, cause an independent firm of accountants or consulting engineers, to prepare a rate study for the purpose of recommending a schedule of rates, fees and charges for the use of the System which in the opinion of the firm conducting the study will be sufficient to provide Revenues to be collected in the next succeeding fiscal year which will provide compliance with the Rate Covenant described in paragraph (a) above. The City shall within six months of receipt of such study, adopt rates, fees and charges for the use of the

System, based upon the recommendations contained in such study, which provide compliance with said Rate Covenant.

(c) ***Efficient Operations.*** The City covenants and agrees (i) to maintain the System in good repair, working order and operating condition; (ii) at all times operate the properties of the System and any business in connection therewith in an efficient manner; (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to the System so that at all times the business carried on in connection therewith shall be properly and advantageously conducted; provided, however, this covenant shall not be construed as requiring the City to expend any funds which are derived from sources other than the Revenues and provided further that nothing herein shall be construed as preventing the City from doing so.

(d) ***Operations and Maintenance Reserve.*** In addition to the Reserve Account Requirement, the City shall maintain an operations and maintenance reserve in an amount equal to three months of operation and maintenance expenses excluding depreciation of the System as set forth in the annual budget for the current fiscal year. Said reserve may be in the form of unobligated fund balances or other unobligated cash or securities (i.e., capital reserves) or may be in a separate segregated fund and shall be maintained as a continuing reserve for payment of any lawful purpose relating to the System. If the operations and maintenance reserves fall below this requirement, the shortfall shall be made up in 24 substantially equal monthly installments beginning the second month after such shortfall or the date of delivery.

(e) ***Disposition of the System.*** Except for the disposal of assets of the System up to a cumulative amount of \$2,000,000, and except for the disposal of any portion of the System which the City determines is no longer necessary for the operation of the System, the City shall not sell, lease, abandon or otherwise dispose of all or substantially all of the System, or any other component of the System which provides revenues to provide for the payment of the Bonds or any Parity Lien Obligations, except in accordance with the Authority Loan Agreements and the Prior Bond Ordinances, and, in addition, shall not so sell, lease, abandon or otherwise dispose of the same unless the City shall determine that such sale, lease, abandonment or other disposition will not adversely affect the City's ability to meet its duties, covenants, obligations and agreements under the Ordinance, will not adversely affect the value of the Net Revenues as security for the payment of Bonds and interest thereon, and the City obtains the consent of Owners of not less than the majority in principal amount of the applicable Bonds then Outstanding to the sale, lease, abandonment, or disposition of the System.

(f) ***Billing and Enforcement.*** The City will promptly render bills for services furnished by or the use of the System, shall use all legal means to assure prompt payment thereof, shall take such action as may be necessary to make delinquent rates, fees, and charges of the System a lien upon the real property served, and to the extent permitted by law, shall discontinue service to any user who becomes delinquent in the payment of such

charges until the delinquency and all interest, costs, and expenses incident thereto have been paid in full.

(g) **Records; Accounts.** The City shall keep accurate records and accounts for the System (the “System Records”), separate and distinct from its other records and accounts (the “General Records”). Such System Records shall be maintained in accordance with GAAP and shall be audited annually by an independent accountant, which audit may be part of the annual audit of the General Records of the City. Such System Records and General Records shall be filed and recorded in the places, time, and manner provided by law and shall be on file in the office of the City Clerk for inspection.

(h) **Insurance.** The City shall maintain or cause to be maintained, in force, insurance policies with responsible insurers or self-insurance programs providing against risk of direct physical loss, damage or destruction of the System, at least to the extent that similar insurance is usually carried by utilities constructing, operating and maintaining facilities of the nature of the System, including liability coverage, all to the extent available at reasonable cost. Nothing herein shall be deemed to preclude the City from exerting against any party, a defense which may be available to the City, including, without limitation, a defense of sovereign immunity, a defense under and pursuant to the Colorado Governmental Immunity Act (Section 24-10-101, et seq., C.R.S.), or under the laws of the United States or other laws of the State.

(i) **Eminent Domain.** In the event of any loss or damage to the System or in the event part or all of the System is taken by the exercise of a power of eminent domain, the insurance proceeds or the condemnation award shall be used for restoring, replacing, or repairing the property lost, damaged, or taken, and the remainder thereof, if any, shall be considered as Revenues with respect to the System; provided however, that if the City Council determines that the operation of the System and the security for the Bonds will not be adversely affected thereby, the City Council may determine not to restore, replace, or repair the property lost, damaged, or taken and all of the insurance proceeds or condemnation award shall be considered as Revenues with respect to the System.

(j) **Enterprise Status.** The City Council hereby determines that the Electric, Water and Wastewater Utility Enterprise is an enterprise within the meaning of Article X, Section 20 of the State Constitution. The City has and will continue to maintain the System as an “enterprise” within the meaning Article X, Section 20 of the State Constitution.

(k) **No Legal or Equitable Action.** In accordance with Section 11-57-212, C.R.S., no legal or equitable action can be brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of the Bonds more than 30 days after the issuance or authorization of such securities, whichever occurs later.

(l) **Swap Agreements.** Any interest rate exchange agreement (“Swap Agreement”) entered into by the City secured by and payable from the Net Revenues shall meet the following conditions: (i) the Swap Agreement must be entered into to



manage interest costs related to, or a hedge against (a) assets then held, or (b) debt then outstanding, or (c) debt reasonably expected to be issued within the next 12 months, and (ii) the Swap Agreement shall not contain any leverage element or multiplier component greater than 1.0x unless there is a matching hedge arrangement which effectively off-sets the exposure from any such element or component. Any uninsured net settlement, breakage or other termination amount then in effect shall be subordinate to debt service on the Bonds and the Parity Lien Obligations. The City shall not terminate a Swap Agreement unless it demonstrates that prior to the payment of any such termination amount that such payment will not cause the City to be in default under any documents authorizing the issuance of the Bonds or the Parity Lien Obligations, including, but not limited to, any such monetary obligations thereunder. All counterparties or guarantors to any Swap Agreement must have a rating of at least “A-” and “A3” by S&P and Moody’s. If the counterparty or guarantor's rating falls below “A-” or “A3” by either S&P or Moody’s, the counterparty or guarantor shall execute a credit support annex to the Swap Agreement. If the counterparty or the guarantor’s long-term unsecured rating falls below “Baal” or “BBB+” by either Moody’s or S&P, a replacement counterparty or guarantor shall be required.

## **Section 22. Reserved.**

**Section 23. Authorization of Bond Insurance.** The Financial Advisor may request, on behalf of the City, the submittal of bids to issue the Bond Insurance Policy. In the event that the Sale Delegate determines, based in part upon information provided by the Financial Advisor, that the premium bid for issuance of the Bond Insurance Policy is less than the interest cost savings to be realized by the City as a result of the issuance of the Bond Insurance Policy, the City Council hereby delegates to the Sale Delegate the authority to execute the Commitment with the Bond Insurer designated by the Sale Delegate, provided that the Bond Insurer shall be listed in The Bond Buyer’s Municipal Marketplace Directory, published by Thomson Media. The officers of the City are also hereby authorized and directed to take all actions necessary to cause the Bond Insurer to issue the Bond Insurance Policy in accordance with the Commitment, including without limitation, payment of the premium due in connection therewith and entering into any authorizing agreement and undertaking any obligations not inconsistent herewith necessary to cause the issuance of the Bond Insurance Policy. The execution of the Commitment by the Sale Delegate or appropriate officer of the City is hereby ratified and approved. The Sale Delegate is also authorized to set forth in the Sale Certificate such terms not inconsistent with the terms hereof as may be required by the Bond Insurer to cause the issuance of the Bond Insurance Policy. The provisions set forth in the Sale Certificate, including but not limited to provisions required in connection with the issuance of the Bond Insurance Policy, are hereby incorporated by reference into this Ordinance.

**Section 24. Obligation to Provide Continuing Disclosure.** The City shall undertake for the benefit of the Owners of the Bonds, to provide continuing disclosure pursuant to the Continuing Disclosure Undertaking, a copy of which has been presented to and is hereby approved by the City Council. The City Council also hereby authorizes, designates and directs the Finance Director to prepare on the City’s behalf, subject to review and approval by any officer of the City Council, the filings required by the Continuing Disclosure Undertaking.

**Section 25. Defeasance.** Any Bond shall not be deemed to be Outstanding hereunder if it shall have been paid and cancelled or if cash or Federal Securities shall have been deposited in trust for the payment thereof (whether upon or prior to the maturity of such Bond, but if such Bond is to be paid prior to maturity, the City shall have given the Paying Agent irrevocable directions to give notice of redemption as required by this Ordinance, or such notice shall have been given in accordance with this Ordinance). In computing the amount of the deposit described above, the City may include interest to be earned on the Federal Securities. If less than all the Bonds are to be defeased pursuant to this Section, the City, in its sole discretion, may select which of the Bonds shall be defeased.

Notwithstanding anything herein to the contrary, in the event that the principal and/or interest and premium, if any, due on any Insured Bond shall be paid by the Bond Insurer for such Insured Bond pursuant to the related Bond Insurance Policy, such Insured Bond shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the City, and all covenants, agreements and other obligations of the City to the Owner of such Insured Bond shall continue to exist and shall run to the benefit of such Bond Insurer, and such Bond Insurer shall be subrogated to the rights of such Owner.

**Section 26. Events of Default.** Each of the following events constitutes an Event of Default:

(a) failure to make any payment of principal of, premium, if any, or interest on the Bonds when due hereunder;

(b) failure to make, or cause to be made, any required payments of principal of, redemption premium, if any, and interest on any Parity Lien Obligations;

(c) failure by the City to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Ordinance, other than as referred to in paragraph (a) hereof and other than a failure to comply with the provisions of the Section hereof entitled "Obligation to Provide Continuing Disclosure," which failure shall continue for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the City Attorney of the City by the Paying Agent, unless the Paying Agent shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period the Paying Agent may not unreasonably withhold its consent to an extension of such time up to 60 days from the delivery of the written notice referred to above if corrective action is instituted by the City within the applicable period and diligently pursued until the Event of Default is corrected; and

(d) a petition is filed by or against the City under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Ordinance or thereafter enacted, unless in the case of any such petition filed against the City such petition shall be dismissed within 30 days after such filing and such dismissal shall be final and not subject to appeal; or the City shall become insolvent or bankrupt or make an

assignment for the benefit of its creditors; or a custodian (including, without limitation, a receiver, liquidator or trustee of the City or any of its property) shall be appointed by court order to take possession of the City or its property or assets if such order remains in effect or such possession continues for more than 30 days.

**Section 27. Notice of Default.** The City shall give the Paying Agent prompt telephonic notice of the occurrence of any Event of Default referred to in paragraph (d) of the Section hereof entitled “Events of Default,” and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the City becomes aware of the existence thereof. Any telephonic notice pursuant to this Section shall be confirmed in writing by the end of the next Business Day.

**Section 28. Remedies for Events of Default.**

(a) **Remedies.** Whenever an Event of Default referred to the Section hereof entitled “Events of Default” shall have occurred and be continuing, the Owners of not less than 25% in principal amount of the applicable Bonds then Outstanding have the right to take any action permitted or required pursuant to the Ordinance and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the City hereunder, including, without limitation, to obtain ex parte the appointment of a receiver of the System.

(b) **Attorney’s Fees and Other Expenses.** The City shall on demand pay to the Owners the reasonable fees and expenses of attorneys and other reasonable fees and expenses (including without limitation the reasonably allocated costs of in-house counsel and legal staff) incurred by either of them in the collection of any sum due hereunder or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of the City.

(c) **Application of Moneys.** Any moneys collected by the Owners pursuant to paragraph (a) hereof shall be applied (i) first, to pay any attorney’s fees or other fees and expenses owed by the City pursuant to paragraph (b) hereof; (ii) second, pro rata, to pay interest due and payable on the Bonds or the Parity Lien Obligations; (iii) third, pro rata, to pay principal due and payable on the Bonds or the Parity Lien Obligations; (iv) fourth, to pay any other amounts due and payable hereunder; and (v) fifth, to pay interest and principal on the Bonds and the Parity Lien Obligations and other amounts payable hereunder as such amounts become due and payable.

(d) **Remedy Exclusive; Waiver; Notice.** No remedy herein conferred upon or reserved to the Owners is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Ordinance or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or

power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Owners to exercise any remedy reserved to it in this Section, it shall not be necessary to give any notice, other than such notice as may be required in this Section.

**Section 29. Execution of Documents.** The Mayor, the Mayor Pro Tem, the City Clerk and all other officers, officials and employees of the City are hereby authorized and directed to execute the Bonds and all documents and certificates necessary or desirable to effectuate the issuance of the Bonds contemplated by this Ordinance and as may be required in connection with the issuance of the Bonds. In addition, the City Manager, the Utility Director and the Finance Director are hereby designated as authorized officers to sign all other documents in connection with or furtherance of the foregoing documents.

**Section 30. Amendment of Ordinance.**

(a) *Amendments Permitted without Notice to or Consent of Owners.* The City may, without the consent of or notice to the Owners of the Bonds, adopt one or more ordinances amending or supplementing this Ordinance, which ordinances shall thereafter become a part hereof, for any one or more or all of the following purposes:

- (i) to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision of this Ordinance;
- (ii) to subject to this Ordinance additional revenues, properties or collateral;
- (iii) to facilitate the designation of a substitute securities depository or to terminate the book-entry registration system for the Bonds in accordance with the Section hereof entitled "Bond Details";
- (iv) to facilitate the issuance of Parity Lien Obligations permitted to be issued pursuant to the Section hereof entitled "Additional Senior, Parity, and Subordinate Lien Obligations";
- (v) to facilitate the funding of the Reserve Account or the substitution of one source of funding of the Reserve Account for another permitted source in accordance with the Section hereof entitled "Reserve Account"; or
- (vi) to make any other change that does not materially adversely affect the Owners of the Bonds or the Parity Lien Obligations.

(b) *Amendments Requiring Notice to and Consent of Owners.* Except for amendments permitted by paragraph (a) hereof, this Ordinance may only be amended (i) by an ordinance of the City amending or supplementing this Ordinance (which, after the consents required therefor, shall become a part hereof); and (ii) with the written consent of the Owners of at least 66-2/3% in aggregate principal amount of the Bonds then Outstanding; provided that any amendment that makes any of the following changes

with respect to any Bond shall not be effective without the written consent of the Owner of such bond: (A) a change in the maturity of such bond; (B) a reduction of the interest rate on such bond; (C) a change in the terms of redemption of such bond; (D) a delay in the payment of principal of, premium, if any, or interest on such bond; (E) the creation of any pledge of or lien upon any revenues or moneys pledged for the payment of such bond hereunder that is superior to the pledge and lien for the payment of such bond hereunder; (F) a relaxation of the conditions to the issuance of Parity Lien Obligations or to the creation of any pledge of or lien upon any revenues or moneys pledged for the payment of such bond hereunder that is equal to or on a parity with the pledge and lien for the payment of such bond hereunder; (G) a reduction of the principal amount or percentage of Bonds whose consent is required for an amendment to this Ordinance; or (H) the establishment of a priority or preference for the payment of any amount due with respect to any other Bond over such Bond.

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

**Section 31. Application of Act.** Pursuant to the Act, the City Council elects to apply all of the provisions of the Act to the issuance of the Bonds. Pursuant to Section 11-57-210, C.R.S., the Bonds shall contain a recital that they are issued pursuant to certain provisions of the 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 11-57-212, C.R.S., no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of the Bonds shall be commenced more than 30 days after the authorization of such securities. Pursuant to Section 11-57-209, C.R.S., 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, interest or prior redemption premiums, if any, on the Bonds. Such recourse shall not be available either directly or indirectly through the City Council or the City, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty or otherwise. By the acceptance of the Bonds and as a part of the consideration of their sale or purchase, any Person purchasing or selling such Bond specifically waives any such recourse.

**Section 32. Provisions Relating to Bond Insurer.** Notwithstanding any other provision hereof, with respect to the Insured Bonds, if any: (a) the Bond Insurer for such Insured Bonds is an expressly intended third -party beneficiary hereof; and (b) unless and until such Bond Insurer has failed to make a payment due under the related Bond Insurance Policy, such Bond Insurer

shall be deemed to be the Owner of each Insured Bond insured by such Bond Insurance Policy for all purposes other than: (i) except as otherwise provided in such Bond Insurance Policy, the right to receive payments of principal of, premium, if any, and interest on such Insured Bonds; and (ii) the right to consent to an amendment to this Ordinance that changes any of the matters described in paragraph (b) of the Section hereof entitled “Amendment of Ordinance.”

**Section 33. Appointment and Duties of Paying Agent.** The Paying Agent is hereby appointed as paying agent, registrar and authenticating agent for the Bonds unless and until the City removes it as such and appoints a successor Paying Agent, in which event such successor shall automatically succeed to the duties of the Paying Agent hereunder and its predecessor shall immediately turn over all its records regarding the Bonds to such successor. The Paying Agent, by accepting its duties as such, agrees to perform all duties and to take all actions assigned to it hereunder in accordance with the terms hereof. The appointment and acceptance of the duties of Paying Agent hereunder may be affected through the execution of an agreement between the City and the Paying Agent.

**Section 34. Approval of Negotiated Sale of Bonds.** The Bonds shall be sold through a negotiated sale to the Original Purchaser.

**Section 35. Approval of Official Statement and Miscellaneous Documents.** The City Council hereby ratifies and approves the distribution and use of the Preliminary Official Statement; authorizes and directs the City staff to prepare a final Official Statement for use in connection with the sale of the Bonds; and for a period of one year following the adoption of this Ordinance, authorizes the Sale Delegate to execute the Sale Certificate, and authorizes and approves the execution of the Paying Agent Agreement, the Bond Purchase Agreement, the Continuing Disclosure Undertaking, and all documents and certificates necessary or desirable to effectuate the issuance of the Bonds and the transactions contemplated hereby; provided that the Preliminary Official Statement, the final Official Statement, the Paying Agent Agreement and the Continuing Disclosure Undertaking shall be in substantially the forms thereof presented at the meeting at which this Ordinance is adopted or as otherwise available to the City Council, with such changes therein, if any, not inconsistent herewith, as are approved by the City (which, once executed by the appropriate City official, shall constitute conclusive evidence of approval of the City). The Mayor is hereby authorized and directed to execute the final Official Statement and the Mayor, the City Clerk and all other officers of the City are hereby authorized and directed to execute all of the foregoing documents and certificates necessary or desirable to effectuate the issuance of the Bonds and the transactions contemplated hereby and execution by the parties thereto shall constitute the City Council’s approval of such documents and certificates in the form so executed.

**Section 36. Ratification of Prior Actions.** All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or by the officers and employees of the City directed toward the issuance of the Bonds for the purposes herein set forth are hereby ratified, approved and confirmed.

**Section 37. Events Occurring on Days That Are Not Business Days.** Except as otherwise specifically provided herein with respect to a particular payment, event or action, if any

payment to be made hereunder or any event or action to occur hereunder which, but for this Section, is to be made or is to occur on a day that is not a Business Day shall instead be made or occur on the next succeeding day that is a Business Day.

**Section 38. Captions.** The captions or headings in this Ordinance are for convenience only and shall not in any define, limit or describe the scope or intent of any provisions or sections of this Ordinance.

**Section 39. Ordinance Irrepealable.** After any of the Bonds have been issued, this Ordinance shall constitute a contract between the Owners and the City, and shall be and remain irrepealable until the Bonds and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

**Section 40. Severability.** In the event any provision of this Ordinance shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

**Section 41. Repealer.** All orders, bylaws, ordinances, and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

**Section 42. Effective Date; Recording and Authentication.** This Ordinance shall be in full force and effect five days after final publication, following final passage. This Ordinance shall be recorded in a book kept for that purpose, shall be authenticated by the signatures of the Mayor and the City Clerk, and shall be published in accordance with law.

[Remainder of Page Left Intentionally Blank]

Introduced, read by title and passed on first reading this 22<sup>nd</sup> day of September, 2020 by the City Council, City of Fountain, Colorado, signed by the Mayor, and ordered published by title with a summary written by the City Clerk, together with a statement that the Ordinance is available for public inspection and acquisition in the office of the City Clerk in the El Paso County Advertiser and News, a newspaper of general circulation in the City of Fountain.

[SEAL]

CITY OF FOUNTAIN, COLORADO

Attest:

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

By: \_\_\_\_\_  
Mayor

INTRODUCED, READ BY TITLE ONLY, AND PASSED ON SECOND AND FINAL READING on the [ ] day of October, 2020, and ORDERED PUBLISHED BY TITLE ONLY in the El Paso County Advertiser and News, a newspaper of general circulation in the City of Fountain, Colorado, in accordance with the City Charter.

[SEAL]

CITY OF FOUNTAIN, COLORADO

Attest:

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

By: \_\_\_\_\_  
Mayor



**APPENDIX A**

**FORM OF THE BOND**

**UNITED STATES OF AMERICA**

**CITY OF FOUNTAIN, COLORADO**

**acting by and through the**

**CITY OF FOUNTAIN ELECTRIC, WATER AND WASTEWATER UTILITY  
ENTERPRISE**

**TAXABLE WATER AND ELECTRIC REVENUE REFUNDING BOND  
SERIES 2020**

**INTEREST RATE:    MATURITY DATE:    ORIGINAL DATED DATE:    CUSIP:**

\_\_\_\_\_ %    \_\_\_\_\_    \_\_\_\_\_    **350683** \_\_\_\_\_

REGISTERED OWNER: CEDE & CO.

PRINCIPAL SUM:

DOLLARS

CITY OF FOUNTAIN, COLORADO, in the State of Colorado, a duly organized and validly existing City and political subdivision of the State of Colorado, acting by and through its City of Fountain, Electric, Water and Wastewater Utility Enterprise (the "City"), for value received, hereby promises to pay to the order of the registered owner named above or registered assigns, solely from the special funds as hereinafter set forth, on the maturity date stated above, the principal sum stated above, in lawful money of the United States of America, with interest thereon from the original dated date stated above, at the interest rate per annum stated above, payable on June 1 and December 1 of each year, commencing [June 1], 20[20][21], the principal of and premium, if any, and the final installment of interest on this bond being payable to the registered owner hereof upon presentation and surrender of this bond at the principal operations office of UMB Bank, n.a., as Paying Agent (the "Paying Agent"), in Kansas City, Missouri, or at such other location as identified by the Paying Agent, and the interest hereon (other than the final installment of interest hereon) to be paid by check or draft of the Paying Agent mailed on the Interest Payment Date to the registered owner hereof as of the close of business on the first day of the month (whether or not such day is a Business Day) in which such Interest Payment Date occurs, except that so long as Cede & Co. is the registered owner of this bond, the principal of, premium, if any, and interest on this Bond shall be paid by wire transfer to Cede & Co.

This Bond is one of an issue of Bonds of the City designated Taxable Water and Electric Revenue Refunding Bonds, Series 2020, issued in the principal amount of \$\_\_\_\_\_ (the "Bonds"). The Bonds are being issued by the City for the purpose of refunding the Refunded Loan (defined in the Ordinance), pursuant to and in full conformity with the Constitution, the laws of the State of Colorado and an ordinance (the "Ordinance") duly adopted

by the City prior to the issuance hereof. All capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Ordinance.

[INSERT REDEMPTION PROVISIONS]

At its option, to be exercised on or before the 45th day next preceding each sinking fund redemption date, the City may (i) deliver to the Paying Agent for cancellation any Bonds with the same maturity date as the Bonds subject to such sinking fund redemption and (ii) receive a credit in respect of its sinking fund redemption obligation for any Bonds with the same maturity date as the Bonds subject to such sinking fund redemption which prior to such date have been redeemed (otherwise than through the operation of the sinking fund) and cancelled by the Paying Agent and not theretofore applied as a credit against any sinking fund redemption obligation. Each Bond so delivered or previously redeemed shall be credited by the Paying Agent at the principal amount thereof to the obligation of the City on such sinking fund redemption date, and the principal amount of Bonds to be redeemed by operation of such sinking fund on such date shall be accordingly reduced.

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

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

The principal of and interest on this Bond are payable only out of: (a) a special account of the City designated as the Bond Account, into which the City covenants and agrees to deposit, from certain fees, charges and revenues derived from the operation of the water facilities comprising the City's Electric, Water and Wastewater Utility Enterprise after deduction of

operations and maintenance costs (the “Net Revenues”), amounts sufficient to pay the principal of and interest on the Bonds when the same become due and payable and (b) if necessary, a special account designated as the Reserve Account, all as more particularly set forth in the Ordinance. The Bonds of this issue constitute an irrevocable lien, but not necessarily an exclusive such lien, upon the Net Revenues on parity with the City’s outstanding Authority Bonds and Prior Bonds. The City is authorized to pledge and grant additional liens, on parity with the lien for the payment of the Bonds, the Authority Bonds and the Prior Bonds on the Net Revenues upon satisfaction of certain conditions set forth in the Ordinance.

This Bond is issued pursuant to and in accordance with the Constitution of the State of Colorado, Section 11-57-210, C.R.S., Part 1 of Article 56 of Title 11, C.R.S. and all other laws of the State of Colorado thereunto enabling. This Bond, including the interest hereon, is payable solely from and secured solely by the special funds provided in the Ordinance and shall not constitute a debt or an indebtedness of the City within the meaning of any constitutional or statutory limitation, nor shall this Bond be considered or held to be a general obligation of the City.

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

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

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

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

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

IN WITNESS WHEREOF, City of Fountain, Colorado, acting by and through its Electric, Water and Wastewater Utility Enterprise, has caused this Bond to be signed in the name and on behalf of the City with the manual or facsimile signature of the Mayor, to be sealed with the seal of the City or a facsimile thereof and to be attested by the manual or facsimile signature of the City Clerk.

[MANUAL OR FACSIMILE SEAL]

CITY OF FOUNTAIN, COLORADO

By (Manual or Facsimile Signature)  
Mayor

ATTEST:

By (Manual or Facsimile Signature)  
City Clerk

**CERTIFICATE OF AUTHENTICATION**

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

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

UMB Bank, n.a., as Paying Agent

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

[OPINION OF BOND COUNSEL TO BE INSERTED IN THIS PLACE]

[STATEMENT OF INSURANCE TO BE INSERTED IN THIS PLACE]

**CERTIFICATE OF TRANSFER**

FOR VALUE RECEIVED, \_\_\_\_\_, the undersigned, hereby sells, assigns and transfers unto \_\_\_\_\_ (Tax Identification or Social Security No. \_\_\_\_\_) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

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

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

Signature Guaranteed:

NOTICE: Signature must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

Transfer Fee May Be Required