ORDINANCE NO. 12
SERIES 2015

AN ORDINANCE OF THE CITY OF GUNNISON, COLORADO, AUTHORIZING A BOND, EVIDENCED BY THE ISSUANCE OF A SALES AND USE TAX REVENUE REFUNDING BOND, FOR THE PURPOSE OF REFUNDING SERIES 2007 BONDS OF THE CITY AT A LOWER INTEREST RATE; PROVIDING FOR THE FORM AND DELIVERY OF THE BOND AND BOND REPAYMENT; AND MAKING COVENANTS AND APPROVING DOCUMENTS RELATING TO THE BOND.

WHEREAS, the City of Gunnison, Colorado, is a municipal corporation duly organized and operating as a home-rule city under Article XX of the Constitution of the State of Colorado and the Charter of the City (certain capitalized terms used in the preamble of this Ordinance are defined in Section 1 hereof); and

WHEREAS, pursuant to an election held on May 8, 2007, the majority of the voting electors of the City approved a Ballot Issue 1A authorizing revenue bonds in an amount not to exceed $9,500,000, with a maximum repayment cost of $19,500,000, payable from a twenty-five year sales and use tax imposed at a rate of 1%, which rate decreases to 0.25% on July 1, 2031; and

WHEREAS, pursuant to Ordinance No. 7, Series 2007, the City increased its sales and use tax from 3% to 4% and established the Park and Recreation Fund in accordance with Ballot Issue 1A; and

WHEREAS, on November 8, 2007 there were issued and delivered the City's Sales and Use Tax Revenue Bonds, Series 2007 in the original principal amount of $8,330,000, which bonds are currently outstanding in the aggregate principal amount of $6,765,000 and bear interest at rates ranging from 4.00% to 4.35% per annum; and

WHEREAS, Sections 8.5 and 8.8 of the Charter authorize the issuance of revenue bonds and refunding securities by ordinance of the City when the Council determines it to be to the best advantage of the City; and

WHEREAS, the earliest call date that the 2007 Bonds are subject to redemption at the option of the City is December 1, 2017; and

WHEREAS, UMB Bank, n.a. has presented a proposal to the City for the direct purchase of a bond, the proceeds of which will be used to refund the 2007 Bonds in advance of their Call Date, however, in order to increase the City's refunding savings, the proposal of UMB Bank, n.a. limits the length of the escrow account to be established for the payment of the 2007 Bonds by delaying the date for the funding and issuance of the Bond until the Delivery Date; and

WHEREAS, the City Council has determined that the direct placement of the Bond with the Bank is in the best interests of the City and desires to refund all of the 2007 Bonds maturing after the Delivery Date by issuance of the Bond pursuant to this Ordinance; and

WHEREAS, the Bond will be a revenue obligation of the City, payable solely from the same sources pledged to the 2007 Bonds with the exception of a reserve account (which is not required by the Bank proposal); and

WHEREAS, Article X, Section 20 of the Colorado Constitution provides that voter approval in advance is not required for refinancing outstanding obligations at a lower interest rate; and

WHEREAS, the net proceeds derived from the sale of the Bond, together with reserve account moneys pledged to the 2007 Bonds, shall be deposited into a special fund and trust account and used solely for the purpose of paying the principal of and interest on the 2007 Bonds until the Call Date; and

WHEREAS, there has been presented to the City and made available to the City Council, among other things, the forms of (a) the Direct Purchase Agreement, (b) the Escrow Agreement, and (c) the Paying Agent Agreement; and

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

WHEREAS, the City Council desires to authorize the issuance and delivery of the Bond;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS THAT:

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

"*2007 Bonds*" means the Sales and Use Tax Revenue Bond, Series 2007, authorized and issued pursuant to the 2007 Ordinance.

"*2007 Ordinance*" means Ordinance No. 9, Series 2007, passed and adopted on second and final reading October 9, 2007.

"*Act*" means Article 57 of Title 11, C.R.S.

"*Authorized Denomination*" means the outstanding principal amount of the Bond.

"*Ballot Issue 1A*" means Ballot Issue 1A approved by the voters pursuant to an election held on May 8, 2007.

"*Bank*" means UMB Bank, n.a., Denver, Colorado, with headquarters and its principal operations office in Kansas City, Missouri, or its successor, a national banking association duly organized and existing under the laws of the United States of America, being a member of the Federal Deposit Insurance Corporation, and having full and complete trust powers.

"*Bond Account*" means the "Park and Recreation Fund Bond Account" created in the section hereof entitled "Reaffirmation of Park and Recreation Fund; Establishment of Accounts."

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

"*Bond*" means the Sales and Use Tax Revenue Refunding Bond, Series 2015, dated as of the Delivery Date, 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.

"*Call Date*" means December 1, 2017.

"*Certified Public Accountant*" means an independent certified public accountant within the meaning of § 12-2-115, C.R.S. and any amendment thereto, licensed to practice in the State.

"*Charter*" means the home rule Charter for the City.

"*City*" means the City of Gunnison, Colorado.

"*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 Bond or the use of proceeds thereof, unless the context clearly requires otherwise.

"*County*" means Gunnison County, Colorado.

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

"*Delivery Date*" means March 1, 2017.

"*Direct Purchase Agreement*" means the Direct Purchase Agreement between the City and the Bank concerning the funding of the Bond by the Bank and the issuance and delivery of the Bond by the City.

"*Direct Purchase Certificate*" means the certificate executed by the Direct Purchase Delegate under the authority delegated pursuant to this Ordinance, including but not limited to the Sections hereof entitled "Bond Details" and "Redemption of the Bond Prior to Maturity."

"*Direct Purchase Delegate*" means the Mayor of the City, or the Mayor Pro Tem in the absence of the Mayor.

"*Enabling Laws*" means (i) the State Constitution, (ii) the Charter, (iii) the Act and (iv) all other applicable laws of the State enabling the actions taken or to be taken pursuant to this Ordinance.

"*Escrow Account*" means the trust account established and designated as such in the Section hereof entitled "Escrow Account; Payment of 2007 Bonds" to be maintained by the Escrow Agent in accordance with the Escrow Agreement and the provisions hereof.

"*Escrow Agent*" means the Bank.

"*Escrow Agreement*" means the agreement between the City and the Escrow Agent concerning the establishment of a trust account for the payment of the 2007 Bonds and the duties and obligations of the Bank with respect thereto.

"*Event of Default*" means any of the events specified in the section hereof entitled "Events of Default."

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

"*Interest Payment Date*" means each June 1 and December 1, commencing on December 1, 2017.

"*Interest Rate*" means from the Delivery Date to the Rate Reset Date, 2.75% per annum, and on and after the Rate Reset Date the Interest Reset Rate per annum.

"*Interest Reset Rate*" means a fixed rate per annum on the Rate Reset Date calculated as the lesser of (i) 5.50% or (ii) 0.65 multiplied by the sum of the 4-Year Treasury rate plus 180 Basis Points.

"*Interest Sub-Account*" means a sub-account of the Bond Account established by the provisions hereof for the purpose of paying the interest on the Bond.

"*Letter of Instructions*" means the Letter of Instructions, dated the date of issuance of the Bond, and delivered by Bond Counsel to the City, as it may be superseded or amended in accordance with its terms.

"*Maturity Date*" means December 1, 2031.

"*Ordinance*" means this ordinance which authorizes the issuance of the Bond, including any amendments properly made hereto.

"*Owner*" means the Bank as of the Delivery Date, and thereafter, the Person in whose name the Bond is registered on the registration book maintained by the Paying Agent pursuant to this Ordinance.

"*Park and Recreation Fund*" means the "Park and Recreation Fund" established by the Recreation Sales and Use Tax Ordinance and reaffirmed in this Ordinance.

"*Paying Agent*" means the Bank, which shall act as paying agent, bond registrar, and authenticating agent for the Bond.

"*Paying Agent Agreement*" means the Paying Agent Agreement between the City and the Bank.

"*Permitted Investments*" means any investment which is a lawful investment permitted for the investment of funds of the City by the Enabling Laws.

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

"*Pledged Revenues*" means all of the revenues required to be deposited in the Park and Recreation Fund pursuant to the Recreation Sales and Use Tax Ordinance and all moneys on deposit from time-to-time in the Park and Recreation Fund.

"*Principal Redemption Date*" means December 1 or such other date or dates of each year as established in the Direct Purchase Certificate.

"*Principal Sub-Account*" means a sub-account of the Bond Account established by the provisions hereof for the purpose of paying the principal of the Bond.

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

"*Rate Reset Date*" means December 1, 2027.

"*Record Date*" means the 15th day of the calendar month next preceding each Interest Payment Date.

"*Recreation Sales and Use Tax*" means the Recreation Sales and Use Tax required to be deposited into the Park and Recreation Fund pursuant to the Recreation Sales and Use Tax Ordinance.

"*Recreation Sales and Use Tax Ordinance*" means Ordinance No. 7, Series 2007, which was adopted by the City upon second reading on June 12, 2007, which ordinance imposes the Recreation Sales and Use Tax.

"*Refunded Bond Requirements*" means the principal and interest due in connection with the 2007 Bonds from the Delivery Date to the Call Date, including the redemption price for the 2007 Bonds on the Call Date.

"*Refunding Project*" means the refunding of the Series 2007 Bond and any other purpose for which proceeds of the Bond may be expended under the Enabling Laws, including, but not limited to, the payment of the costs of issuance of the Bond and the refunding, paying and discharging of the Refunded Bond Requirements.

"*State*" means the State of Colorado.

Section 2. **Authorization and Purpose of the Bond.** Pursuant to and in accordance with the Enabling Laws, the City hereby authorizes, approves and orders that there shall be issued the "City of Gunnison, Colorado, Sales and Use Tax Revenue Refunding Bond, Series 2017" for the purpose of providing funds for the Refunding Project.

Section 3. **Bond Details.**

(a) ***Registered Form, Denominations, Original Delivery Date and Numbering***. The Bond shall be issued as a single, fully registered bond, which shall be dated as of the Delivery Date and registered in the name of the Bank, or if later transferred pursuant to the Section hereof entitled "Registration, Transfer and Exchange of the Bond," in the name of the Person identified in the registration book of the City maintained by the Paying Agent. The Bond shall be issued in the Authorized Denomination. The Bond 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 City officials executing the same (whose manual signatures thereon shall constitute conclusive evidence of such approval). The Bond shall be numbered R-1, and if transferred thereafter numbered consecutively beginning with the number "2". The Bond shall recite that it is issued under the authority of Section 11-57-210, C.R.S.

(b) ***Maturity Dates, Principal Amounts and Interest Rates***. The Bond shall mature on the Maturity Date. The Bond shall bear per annum interest at the Interest Rate (calculated based on a 360-day year of twelve 30-day months) from the later of the Delivery Date or the latest Interest Payment Date to which interest has been paid in full and shall be payable on each Interest Payment Date.

(c) ***Manner and Form of Payment***. Principal of the Bond shall be payable in lawful money of the United States of America to the Owner upon prior redemption or on the Maturity Date, provided that, for the final payment of the principal of the Bond on the Maturity Date, the Bond certificate must be presented for final payment at the principal office of the Paying Agent. Prior to final payment of the principal of the Bond on the Maturity Date (which final payment requires presentation of the Bond certificate), the interest on and principal of the Bond are payable to the Owner at its address as it appears on the registration book maintained by or on behalf of the City by the Paying Agent.

Interest and principal payments (other than on the Maturity Date) shall be paid by check or draft of the Paying Agent mailed on or before each Interest Payment Date and Principal Redemption Date to the Owner. The Paying Agent may make payments of interest on the Bond by such alternative means as may be mutually agreed to between the Owner of the Bond and the Paying Agent. All payments of the principal of and interest on the Bond shall be made in lawful money of the United States of America.

(d) ***Delegation and Parameters.*** The City Council hereby delegates to the Direct Purchase Delegate, for a period of ninety days following the effective date of this Ordinance, the authority to determine and set forth in the Direct Purchase Certificate: (i) the aggregate principal amount of the Bond, which shall not exceed $6,000,000; and (ii) the principal amount of the Bond subject to mandatory sinking fund redemption on each Principal Redemption Date; provided further, the present value savings as a percentage of the aggregate principal amount of the 2007 Bonds shall be at least 3.00% computed based upon the arbitrage yield for the Bond to the Delivery Date, assuming semi-annual compounding.

Section 4. **Form of the Bond.** The Bond shall be in substantially the form set forth in Appendix A hereto, with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by the officials of the City executing the same (whose manual or facsimile signatures thereon shall constitute conclusive evidence of such approval). Although attached as an appendix for the convenience of the reader, Appendix A is an integral part of this Ordinance and is incorporated herein as if set forth in full in the body of this Ordinance.

Section 5. **Execution, Authentication and Delivery of the Bond.**

(a) ***Execution***. The Bond shall be executed in the name and on behalf of the City with the manual signature of the Mayor, shall bear a manual or facsimile of the seal of the

City and shall be attested by the manual signature of the City Clerk both of whom are hereby authorized and directed to prepare and execute the Bond in accordance with the requirements hereof. Should any officer whose manual signature appears on the Bond cease to be such officer before delivery of the Bond, such manual signature shall nevertheless be valid and sufficient for all purposes.

(b) ***Authentication***. When the Bond has been duly executed, the officers of the City are authorized to, and shall, deliver the Bond 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 the Bond has been properly authenticated hereunder.

(c) ***Delivery***. Upon the authentication of the Bond, the Bond shall be held in escrow prior to the Delivery Date and, upon receipt of the principal amount of the Bond from the Bank, the funding of the Escrow Account as required by the Section hereof entitled "Escrow Account; Payment of 2007 Bonds" and issuance of the approving opinion of Bond Counsel, the Bond shall be issued and delivered to the Bank on the Delivery Date in accordance with the directions of the Bank. Following the issuance and delivery of the Bond all moneys remaining on deposit in the reserve account established for the payment of the 2007 Bonds shall be released from the lien of the 2007 Ordinance and available for any lawful expenditure of the City.

Section 6. **Registration and Transfer of the Bond.**

(a) ***Registration***. The Paying Agent shall maintain the registration book in which the ownership and transfer of the Bond 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.

(b) ***Transfer***. The Bond may be transferred in whole, but not in part, at the principal operations office of the Paying Agent or at such other location designated by the Paying Agent for such purpose, for a like Bond in the Authorized Denomination and of the same Interest Rate, mandatory sinking fund redemption amounts and Maturity Date, 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. Upon surrender for transfer of the 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. The transferring Owner shall pay any reasonable costs of the City incurred in connection with the transfer of the Bond.

(c) ***Limitations on Transfer***. The City and Paying Agent shall not be required to transfer any Bond 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.

Section 7. **Replacement of Lost, Destroyed or Stolen Bond.** If the 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 City and 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.

Section 8. **Redemption of the Bond Prior to Maturity.**

(a) ***Optional Redemption***. The Bond shall be subject to redemption at the option of the City, in whole but not in part, commencing on June 1, 2020 and on any Business Day thereafter, at a redemption price equal to the principal amount thereof (with no redemption premium), plus accrued interest to the redemption date.

(b) ***Mandatory Sinking Fund Redemption***. The principal amount of the Bond shall be subject to mandatory sinking fund redemption on the Principal Redemption Date of the years and in the principal amounts specified in the Direct Purchase Certificate, at a redemption price equal to the principal amount thereof (with no redemption premium), plus accrued interest to the redemption date.

(c) ***Redemption Procedures***. Notice of any redemption of the Bond shall be given by the Paying Agent in the name of the City by sending a copy of such notice by first-class, postage prepaid mail, not less than 15 days prior to the redemption date, to the Owner of the Bond; provided however no notice shall be required for mandatory sinking fund redemption. Such notice may be conditional and state that such redemption is subject to the deposit of funds by the City with the Paying Agent.

Section 9. **Reaffirmation of Park and Recreation Fund; Establishment of Accounts.** There is hereby reaffirmed the Park and Recreation Fund established pursuant to the Recreation Sales and Use Tax Ordinance. Moneys deposited in the Park and Recreation Fund shall be appropriated and distributed in accordance with the Recreation Sales and Use Tax Ordinance and this Ordinance. There also is hereby established within the Park and Recreation Fund the Bond Account, which shall include the Interest Sub-Account and the Principal Sub-Account.

Section 10. **Escrow Account; Payment of 2007 Bonds**. There is hereby established a special account designated as the "Gunnison 2007 Bonds Escrow Account," within which shall be deposited proceeds of the Bond and moneys from the reserve account established pursuant to the 2007 Ordinance in an amount sufficient, as verified by a Certified Public Accountant, to meet the defeasance requirements set forth in Section 19 of the 2007 Ordinance for payment of the Refunded Bond Requirements. The Escrow Account, which shall be maintained in accordance with the provisions hereof and of the Escrow Agreement, shall be maintained in an amount at the time of the initial deposits therein and at all times subsequently at least sufficient, together with the known minimum yield to be derived from the initial investment and any temporary reinvestment of the deposits therein or any part thereof in Federal Securities to pay the Refunded Bond Requirements. Except as may be otherwise provided in the Escrow Agreement, the City shall have no right or title to the moneys credited to or held in the Escrow Account, and such title shall be and is hereby transferred to the Bank in trust for the payment of the Refunded Bond Requirements pursuant to the Escrow Agreement. Moneys shall be withdrawn by the Bank from the Escrow Account in sufficient amounts and at such times to permit the payment without default of the Refunded Bond Requirements. If for any reason the amount in the Escrow Account shall at any time be insufficient for the purpose hereof, the City shall forthwith from the first moneys available therefor deposit in such account such additional moneys as shall be necessary to permit the payment in full of the Refunded Bond Requirements. Subject to the issuance of the Bond, the City does hereby declare its intent to exercise on behalf of and in the name of the City its option to redeem all of the Refunded Bonds on the Call Date.

Section 11. **Deposit of Pledged Revenues**. Immediately upon receipt of the Recreation Sales and Use Tax, all revenues from the Recreation Sales and Use Tax shall be deposited in the Park and Recreation Fund. The City shall make the following credits within the Park and Recreation Fund in the following order of priority:

First, to the credit of the Interest Sub-Account, the amounts required by the section hereof entitled "Bond Account;"

Second, to the credit of the Principal Sub-Account, the amounts required by the section hereof entitled "Bond Account;"

Third, to the credit of any other fund or account hereafter established for the payment of the principal of and interest on subordinate lien obligations as described in paragraph (c) of the section hereof entitled "Pledge and Lien for Payment of the Bond;" and

Fourth, to the credit of any other fund or account hereafter established by the City in accordance with the Recreation Sales and Use Tax Ordinance for the payment of any lawful expenditures.

Section 12. **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 and interest on the Bond. The Principal Sub-Account shall be used to pay the principal of the Bond, and the Interest Sub-Account shall be used to pay the interest on the Bond.

(b) ***Deposits to Interest Sub-Account.*** On or before the last day of each month, commencing in the month next succeeding the date of issuance of the Bond, the City shall credit to the Interest Sub-Account, from the Pledged Revenues and any interest income to be deposited in the Interest Sub-Account pursuant to the terms hereof, an amount equal to the Pro Rata Portion of the interest to come due on the Bond on the next succeeding Interest Payment Date. Notwithstanding, the City shall have credited to the Interest Sub-Account from the Pledged Revenues an amount sufficient to pay the interest on the Bond due on the next succeeding Interest Payment Date not less than one Business Day before such Interest Payment Date.

(c) ***Deposits to Principal Sub-Account.*** On or before the last day of each month, commencing in the month next succeeding the date of issuance of the Bond, the City shall credit to the Principal Sub-Account, from the Pledged Revenues and any interest income to be deposited in the Principal Sub-Account pursuant to the terms hereof, an amount equal to the Pro Rata Portion of the principal coming due on the Bond on the next succeeding Principal Payment Date. Notwithstanding, the City shall have credited to the Principal Sub-Account from the Pledged Revenues an amount sufficient to pay the principal coming due on the Bond on the next succeeding Principal Payment Date not less than one Business Day before such Principal Payment Date.

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

Section 13. **Pledge and Lien for Payment of the Bond.**

(a) ***Pledge of Revenues.*** The City hereby pledges for the payment of the principal of and interest on the Bond, and grants a first lien (but not necessarily an exclusive first lien) for such purpose on the Pledged Revenues. Pursuant to § 11-57-208, C.R.S., the Pledged Revenues, as received by the City or otherwise deposited to the Park and Recreation Fund, shall immediately be subject to the lien established herein without any physical delivery, filing or further act. The lien of such pledge shall be valid, binding and enforceable against all persons having claims for any kind in tort, contract, or otherwise against the City irrespective of whether such persons have notice of such lien.

(b) ***Superior and Parity Liens Prohibited.*** The City shall not, without the prior written consent of the Owner, pledge or create any other lien on the revenues and moneys pledged pursuant to paragraph (a) of this Section that is superior to or on a parity with the pledge thereof or lien thereon pursuant to such paragraph.

(c) ***Subordinate Liens Permitted.*** Nothing herein shall prohibit the City from issuing subordinate lien obligations and pledging or creating a lien on the revenues and moneys pledged and the lien created pursuant to paragraph (a) of this section that is subordinate to the pledge thereof or lien thereon pursuant to such paragraph, provided that no Event of Default shall have occurred and be continuing.

(d) ***No Prohibition on Additional Security***. Nothing herein shall prohibit the City from depositing any legally available moneys that are not Pledged Revenues into any account of the Park and Recreation Fund (and thereby subjecting the moneys so deposited to the pledge made and lien granted in paragraph (a) of this section). Provided however, such legally available revenues shall not be considered Pledged Revenues.

(e) ***Bond is Special, Limited Obligations of the City***. The Bond is special, limited obligations of the City payable solely from the Park and Recreation Fund and secured solely by the sources provided in this Ordinance. The Bond shall not constitute a debt of the City within the meaning of the Charter or any constitutional limitation.

Section 14. **Additional General Covenants.** In addition to the other covenants of the City contained herein, the City hereby further covenants for the benefit of Owner that:

(a) ***Maintenance of Recreation Sales and Use Tax***. The City will not reduce the percentage of the Recreation Sales and Use Tax deposited to the Park and Recreation Fund pursuant to the Recreation Sales and Use Tax Ordinance, will not reduce the rate of the Recreation Sales and Use Tax, and will not materially alter, exempt or modify the transactions, properties or items subject to the Recreation Sales and Use Tax or any other sales and use tax of the City without the prior written consent of the Owner.

(b) ***Efficient Collection and Enforcement***. The City will manage the collection and enforcement of the Recreation Sales and Use Tax in the most efficient and economical manner practicable.

(c) ***Inspection of Records***. The City will keep or cause to be kept such books and records showing the proceeds of the Recreation Sales and Use Tax, in which complete entries shall be made in accordance with generally accepted accounting principles, as applicable to governmental entities, and the Owner shall have the right at all reasonable times to inspect all non-confidential records, accounts, actions and data of the City relating to the Recreation Sales and Use Tax and the Park and Recreation Fund.

(d) ***Annual Audit***. The City will cause an annual audit to be made of the books relating to the Recreation Sales and Use Tax each year by a Certified Public Accountant and shall, within two hundred and ten days following the end of each fiscal year, furnish a copy thereof to the Owner. The annual audit of the City's general purpose financial statements shall be deemed to satisfy this covenant.

Section 15. **Covenants Regarding Exclusion of Interest on Bond from Gross Income for Federal Income Tax Purposes.** For purposes of ensuring that the interest on the Bond is and remains excluded from gross income for federal income tax purposes, the City hereby covenants that:

(a) ***Prohibited Actions***. The City will not use or permit the use of any proceeds of the Bond or any other funds of the City from whatever source derived, directly or indirectly, to acquire any securities or obligations and shall not take or permit to be taken any other action or actions, which would cause any Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code, or would otherwise cause the interest on any Bond to be includible in gross income for federal income tax purposes.

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

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

(d) ***Bank Qualification.*** The City hereby designates the Bond as qualified tax-exempt obligations within the meaning of Section 265(b)(3) of the Code. The City covenants that the aggregate face amount of all tax-exempt obligations issued by the City, together with governmental entities which derive their issuing authority from the City or are subject to substantial control by the City, shall not be more than $10,000,000 during calendar year 2017. The City recognizes that such tax-exempt obligations include notes, leases, loans and warrants, as well as bonds.

Section 16. **Defeasance.** The Bond shall not be deemed to be outstanding hereunder if it shall have been paid and cancelled or if Federal Securities shall have been deposited in trust for the payment thereof (whether upon or prior to the Maturity Date, but if the 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 the maturing principal of and interest to be earned on the Federal Securities.

Section 17. **Events of Default.** Each of the following events constitutes an Event of Default:

(a) ***Nonpayment of Principal or Interest.*** Failure to make any payment of principal of or interest on the Bond when due hereunder;

(b) ***Breach or Nonperformance of Duties.*** Breach by the City of any material covenant set forth herein or failure by the City to perform any material duty imposed on it hereunder and continuation of such breach or failure for a period of thirty days after receipt by the City Attorney of the City of written notice thereof from the Paying Agent or from the Owner; or

(c) ***Appointment of Receiver.*** An order or decree is entered by a court of competent jurisdiction appointing a receiver for all or any portion of the revenues and moneys pledged for the payment of the Bond pursuant hereto is entered with the consent or acquiescence of the City or is entered without the consent or acquiescence of the City but is not vacated, discharged or stayed within thirty days after it is entered.

Section 18. **Remedies for Events of Default.**

(a) ***Remedies.*** Upon the occurrence and continuance of any Event of Default, the Owner, or a trustee therefor, may protect and enforce its rights by proper legal or equitable remedy deemed most effectual including, without limitation, mandamus, specific performance of any covenants, injunctive relief, or requiring the City Council to act as if it were the trustee of an express trust, or any combination of such remedies; provided however, that acceleration of any payments due with respect to the Bond shall not be a remedy available to the Owner.

(b) ***Failure to Pursue Remedies Not a Release; Rights Cumulative.*** The failure of the Owner to proceed in any manner herein provided shall not relieve the City of any liability for failure to perform or carry out its duties hereunder. Each right or privilege of the Owner (or trustee therefor) is in addition and is cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of the Owner shall not be deemed a waiver of any other right or privilege thereof.

Section 19. **Amendment of Ordinance.** The City may not amend or supplement this Ordinance without the prior written consent of the Owner.

Section 20. **Findings and Determinations.** Having been fully informed of and having considered all the pertinent facts and circumstances, the Council does hereby find, determine, and declare: the issuance of the Bond and all procedures undertaken incident thereto are in full compliance and conformity with all applicable requirements, provisions and limitations prescribed by the Enabling Laws; the repayment of the Bond will remain within the parameters established pursuant to Ballot Issue 1A; all provisions of the Act shall be applied to the issuance of the Bond; and it is to the best advantage of the City and its residents that the Bond be authorized, issued and delivered as provided in this Ordinance.

Section 21. **Approval of Direct Purchase Agreement and Miscellaneous Documents.** The City Council hereby ratifies and approves the Direct Purchase Agreement in substantially the form thereof presented to the City and made available to the City Council at the meeting at which this Ordinance is adopted, with such changes therein, if any, not inconsistent herewith, as are approved by the City. The City authorizes and approves the execution of the Paying Agent Agreement and the Escrow Agreement, which shall be in substantially the forms presented to the City and made available to the City Council at this meeting and shall be completed in accordance with the terms of this Ordinance (which, once executed, shall constitute conclusive evidence of approval of the City Council). The Mayor, the City Clerk and all other officers of the City are hereby authorized and directed to execute all documents and certificates necessary or desirable to effectuate the issuance of the Bond and the transactions contemplated hereby.

Section 22. **Ratification of Prior Actions.** All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or by the officers and employees of the City directed toward the issuance of the Bond for the purposes herein set forth are hereby ratified, approved and confirmed

Section 23. **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 24. **Headings**. The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

Section 25. **Ordinance Irrepealable**. After the Bond has been issued, this Ordinance shall constitute a contract between the Owner and the City, and shall be and remain irrepealable until the Bond and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

Section 26. **Severability.** It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

Section 27. **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 28. **Effective Date; Recording and Authentication**. This Ordinance shall be in full force and effect upon adoption. 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.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 8th day of September, 2015, on first reading, and introduced, read, passed, and adopted on second and final reading this 15th day of September, 2015.

Richard Hugan
Mayor

SEAL:

ATTEST:

Gail A Davidson
City Clerk

Published By Title in the
Gunnison Country Times
Newspaper, September 10, 2015

R-____ **$_____**

APPENDIX A
FORM OF THE BOND
UNITED STATES OF AMERICA
CITY OF GUNNISON, COLORADO
SALES AND USE TAX REVENUE REFUNDING BOND
SERIES 2017

Maturity Date:	**Delivery Date:**
December 1, 2031	_____

REGISTERED OWNER:

PRINCIPAL SUM: DOLLARS

THE CITY OF GUNNISON, a duly organized and validly existing home-rule municipality and political subdivision of the State of Colorado (the "City"), for value received, hereby promises to pay, solely out of the special accounts hereinafter designated but not otherwise, to the registered owner named above, or registered assigns, on the Maturity Date specified above or on mandatory sinking fund redemption dates, the principal amount specified above. In like manner the City promises to pay interest semiannually at the Interest Rate per annum specified in City Ordinance No. 12, Series 2015 (the "Ordinance") on the unpaid principal amount (computed on the basis of a 360 day year of twelve 30 day months) from the Interest Payment Date next preceding the date of registration and authentication of this Bond, except that interest paid on the first Interest Payment Date shall be computed from the Delivery Date. Capitalized terms used in this Bond have the meaning set forth in the Ordinance.

As provided in the Ordinance, the Interest Payment Date is June 1 and December 1 of each year, commencing December 1, 2017, and the Interest Rate is 2.75% per annum from the Delivery Date to the Rate Reset Date and, on the Rate Reset Date, resets at the Interest Reset Rate per annum from the Rate Reset Date to the Maturity Date or the date of optional prior redemption, if any.

The final installment of the principal of and interest on this Bond is payable upon presentation and surrender of this Bond at the principal operations office of UMB Bank, n.a., as Paying Agent (the "Paying Agent"). Prior to the final installment of principal and interest on this Bond, this Bond is payable by check or draft of the Paying Agent mailed on the Principal Redemption Date or the Interest Payment Date to the registered owner hereof whose name shall appear on the registration books of the City maintained by the Paying Agent. The Paying Agent may make payments of interest on this Bond by such alternative means as may be mutually agreed to between the registered owner of this Bond and the Paying Agent, as provided in the Ordinance.

The principal amount of this Bond is subject to mandatory sinking fund redemption on each Principal Redemption Date, as provided in the schedule attached hereto as Exhibit A.

This Bond shall be subject to redemption at the option of the City, in whole but not in part, commencing on December 1, 2020 and on any Business Day thereafter, at a redemption price equal to the principal amount thereof (with no redemption premium), plus accrued interest to the redemption date.

The Paying Agent shall maintain the registration book in which the ownership and transfer of this Bond shall be recorded. The person in whose name this Bond is 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 at the principal operations office of the Paying Agent in Kansas City, Missouri, or at such other location as identified by the Paying Agent, for a like Bond in the Authorized Denomination and of the same Interest Rate, mandatory sinking fund redemption amounts and Maturity Date, upon

payment by the transferee of a transfer fee, any tax or governmental charge required to be paid with respect to such transfer and any cost of the City in connection therewith.

The Bond is special, limited obligations of the City payable solely from and secured solely by the sources provided in the Ordinance and shall not constitute a debt of the City within the meaning of the City Charter or any constitutional limitation. Pursuant to the Ordinance the City pledged for the payment of the principal of and interest on this Bond, and granted a lien for such purpose, on (i) the Recreation Sales and Use Tax and (ii) on all moneys on deposit from time to time in the Park and Recreation Fund. The City is authorized to pledge and grant a lien, on a parity with the lien for the payment of this Bond, on the Pledged Revenues identified above, for the payment of other bonds or obligations upon satisfaction of certain conditions set forth in the Ordinance.

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.

It is hereby certified that all conditions, acts and things required by the City Charter, and the constitution and laws of the State of Colorado, and the ordinances of the City, to exist, to happen and to be performed, precedent to and in the issuance of this Bond, exist, have happened and have been performed, and that this Bond does not exceed any limitations prescribed by said City Charter, Constitution or laws of the State of Colorado, or the ordinances of the City. It is hereby recited that this Bond is issued under the authority of Section 11-57-210, C.R.S.

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 and funds have been received for the Refunding Project as set forth in the Ordinance.

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

[SEAL]

GUNNISON, COLORADO

By ____(Manual Signature)_____
Mayor

ATTEST:

By __(Manual Signature)
City Clerk

CERTIFICATE OF AUTHENTICATION

This is the Bond described in the within-mentioned Ordinance.

UMB Bank, n.a., Kansas City, Missouri, as Paying Agent

By _____
Authorized Representative

Date of Authentication:_____

CERTIFICATE OF TRANSFER

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

Dated: _____

_____

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

TRANSFER FEE MAY BE REQUIRED