

## **ORDINANCE NO. 19-70**

**AN ORDINANCE AUTHORIZING THE CITY OF OLATHE, KANSAS, TO ISSUE TAXABLE INDUSTRIAL REVENUE BONDS (FREMATO USA, INC. – WAREHOUSE PROJECT), SERIES 2019, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$15,850,000, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COST OF ACQUIRING, PURCHASING, CONSTRUCTING, INSTALLING AND EQUIPPING AN INDUSTRIAL PROJECT, INCLUDING LAND, BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES, MACHINERY AND EQUIPMENT; AUTHORIZING THE ISSUER TO ENTER INTO CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE AMENDMENT OF CERTAIN DOCUMENTS RELATED TO CERTAIN OUTSTANDING BONDS AND THE ISSUANCE OF THE SERIES 2019 BONDS.**

**WHEREAS**, the City of Olathe, Kansas (the “Issuer”), is authorized pursuant to the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the “Act”), to acquire, purchase, construct, install and equip certain commercial and industrial facilities, and to issue industrial revenue bonds for the purpose of paying the cost of such facilities, and to lease such facilities to private persons, firms or corporations; and

**WHEREAS**, on December 7, 2012, the City issued its Industrial Revenue Bonds (Accosys, Inc. Project), Series 2012, in the aggregate principal amount of \$7,000,000 (the “Series 2012 Bonds”) for the purpose of acquiring, constructing, improving, equipping and installing an industrial project located at 16355 S. Lone Elm Road in the City of Olathe, Kansas (the “Series 2012 Project”); and

**WHEREAS**, pursuant to that certain Assignment and Assumption Agreement dated as of February 1, 2016, between Accosys, Inc., a Delaware corporation (the “Assignor”), and Fremato USA, Inc., a Kansas corporation (the “Company”) and consented to by the Issuer and Trustee (as defined herein), the Assignor assigned to the Company all of its rights and interests under and pursuant to the Series 2012 Project and all documents relating to the Series 2012 Bonds; and

**WHEREAS**, on December 19, 2018, the City issued its Industrial Revenue Bonds (Fremato USA, Inc. Project), Series 2018, in the aggregate principal amount of \$8,000,000 (the “Series 2018 Bonds”) for the purpose of acquiring, constructing, improving, equipping and installing an office expansion generally located at 16355 S. Lone Elm Road in the City of Olathe, Kansas (the “Series 2018 Project”); and

**WHEREAS**, the governing body of the Issuer has heretofore and does now find and determine that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Taxable Industrial Revenue Bonds (Fremato USA, Inc. – Warehouse Project), Series 2019 (the “Series 2019 Bonds,” and together with the Series 2012 Bonds and the Series 2018 Bonds, the “Bonds”), in a principal amount not to exceed \$15,850,000, for the purpose of acquiring, purchasing, constructing, installing, furnishing, and equipping an industrial project, consisting of an approximately 250,000 square foot facility for the Company, including land, buildings, structures, improvements, fixtures, machinery and equipment (the “Series 2019 Project,” and together with the Series 2012 Project and the Series 2018 Project, the “Project”); and

**WHEREAS**, the Series 2019 Bonds will be issued under a Trust Indenture dated as of December 1, 2018 (the “Original Indenture”) by and between the Issuer and Commerce Trust Company, as Trustee (the “Trustee”), as amended and supplemented by that certain First Supplemental Trust Indenture dated as of November 1, 2019 (the “First Supplemental Indenture,” and together with the Original Indenture, the “Indenture”); and

**WHEREAS**, the Company will lease the Project to the Issuer pursuant to the Base Lease Agreement dated as of the date set forth therein (the “Base Lease Agreement”) between the Company and the Issuer; and

**WHEREAS**, simultaneously with the execution and delivery of the Indenture, the Issuer will enter into an Omnibus Amendment of Bond Documents relating to certain documents entered into in connection with the issuance of the Series 2012 Bonds and the Series 2018 Bonds (the “Omnibus Amendment”) and a First Supplemental Lease Agreement dated as of the date set forth therein (together with the Lease Agreement dated as of December 1, 2018 between the Issuer and the Company, the “Lease Agreement”), by and between the Issuer, as lessor, and the Company, as lessee, pursuant to which the Series 2019 Project will be acquired, constructed, furnished and equipped, and pursuant to which the Issuer will lease the Series 2019 Project to the Company, and the Company will agree to pay the rental payments due under the Lease Agreement sufficient to pay the principal of and premium, if any, and interest on, the Series 2019 Bonds; and

**WHEREAS**, the governing body of the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the Series 2019 Bonds that the Issuer enter into certain agreements, and that the Issuer take certain other actions and approve the execution of certain other documents as herein provided;

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS, AS FOLLOWS:**

**Section 1. Authorization for the Acquisition, Purchase, Construction, Installation and Equipping of the Series 2019 Project.** The Issuer is hereby authorized to provide for the acquisition, purchase, construction, installation, furnishing, and equipping of the Series 2019 Project, all in the manner and as more particularly described in the Indenture and the Lease.

**Section 2. Authorization of and Security for the Series 2019 Bonds.** The Issuer is hereby authorized to issue and sell the Bonds in a principal amount not to exceed \$15,850,000 for the purpose of providing funds to pay the cost of acquiring, purchasing, constructing, installing, furnishing, and equipping the Series 2019 Project. The Series 2019 Bonds shall be issued and secured pursuant to the herein authorized Indenture and shall bear such date, shall mature at such time, shall be in such denominations, shall bear interest at such rates, shall be in such form, shall be subject to redemption and other terms and conditions, and shall be issued in such manner, subject to such provisions, covenants and agreements, as are set forth in the Indenture. The Series 2019 Bonds shall be payable solely out of the rents, revenues and receipts derived by the Issuer from the Series 2019 Project, and the Series 2019 Project and the net earnings derived by the Issuer from the Series 2019 Project shall be pledged and assigned to the Trustee as security for payment of the Series 2019 Bonds as provided in the Indenture.

**Section 3. Authorization of Documents.** The Issuer is hereby authorized to enter into the following documents, in substantially the forms presented to and reviewed by the governing body of the Issuer (copies of which documents, upon execution thereof, shall be filed in the office of the Clerk of the Issuer), with such changes therein as shall be approved by the officers of the Issuer executing such documents (the “Bond Documents”), such officers’ signatures thereon being conclusive evidence of their approval thereof:

- (a) Omnibus Amendment of Bond Documents, between the Issuer, the Company (as Company), and the Company (as Bondowner), and consented to by the Trustee;
- (b) Base Lease Agreement, between the Company and the Issuer;

- (c) First Supplemental Trust Indenture, between the Issuer and the Trustee;
- (d) First Supplemental Lease Agreement, between the Issuer and the Company;
- (e) Bond Purchase Agreement dated the date set forth therein, among the Issuer, the Company and the Company, as Purchaser; and
- (f) Performance Agreement, between the Issuer and the Company.

**Section 4. Execution of Series 2019 Bond and Documents.** The Mayor of the Issuer is hereby authorized and directed to execute the Series 2019 Bonds and to deliver the Series 2019 Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the Issuer in the manner provided in the Indenture. The Mayor (or, in the Mayor's absence, the acting Mayor) of the Issuer is hereby authorized and directed to execute the Series 2019 Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the Issuer. The Clerk of the Issuer is hereby authorized and directed to attest to and affix the seal of the Issuer to the Series 2019 Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary.

**Section 5. Pledge of the Project and Net Lease Rentals.** The Issuer hereby pledges the Series 2019 Project and the net rentals generated under the Lease Agreement to the payment of the Series 2019 Bonds in accordance with K.S.A. 12-1744. The lien created by the pledge will be discharged when all of the Bonds are paid or deemed to have been paid under the Indenture

**Section 6. Further Authority.** The Issuer shall, and the officers, employees and agents of the Issuer and the Issuer's Bond Counsel, Gilmore & Bell, P.C. are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the Issuer with respect to the Bonds and the Bond Documents.

**Section 7. Effective Date.** This Ordinance shall take effect and be in force from and after its passage by the governing body, approval by the Mayor and publication of the Ordinance or a summary thereof in the official Issuer newspaper.

**PASSED** by the governing body of the City of Olathe, Kansas on November 5, 2019 and **APPROVED AND SIGNED** by the Mayor.

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Mayor

[SEAL]

ATTEST:

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Clerk

(Published in *The Gardner News* on November \_\_, 2019)

**SUMMARY OF ORDINANCE NO. 19-70**

On November 5, 2019, the governing body of the City of Olathe, Kansas passed an ordinance entitled:

**AN ORDINANCE AUTHORIZING THE CITY OF OLATHE, KANSAS, TO ISSUE TAXABLE INDUSTRIAL REVENUE BONDS (FREMATO USA, INC. – WAREHOUSE PROJECT), SERIES 2019, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$15,850,000, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COST OF ACQUIRING, PURCHASING, CONSTRUCTING, INSTALLING AND EQUIPPING AN INDUSTRIAL PROJECT, INCLUDING LAND, BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES, MACHINERY AND EQUIPMENT; AUTHORIZING THE ISSUER TO ENTER INTO CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE AMENDMENT OF CERTAIN DOCUMENTS RELATED TO CERTAIN OUTSTANDING BONDS AND THE ISSUANCE OF SAID SERIES 2019 BONDS.**

The Bonds approved by the Ordinance are being issued in the maximum principal amount of \$15,850,000, for the purpose of acquiring, constructing, furnishing and equipping an industrial project for Fremato USA, Inc., a Kansas corporation, and constitute limited obligations of the City payable solely from the sources and in the manner as provided in the Indenture, and shall be secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate (as defined in the Indenture) to the Trustee and in favor of the owners of the Series 2019 Bonds, as provided in the Indenture. The Ordinance also approved entering into certain documents amending certain provisions of documents entered into in connection with industrial revenue bonds previously issued by the City. In connection with the issuance of the Series 2019 Bonds, the Issuer approves a 10-year exemption from ad valorem property taxes for the project, subject to certain payments in lieu of taxes. A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, 100 E. Santa Fe. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at <http://www.olatheks.org/government/city-clerk/public-notice>.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED November 5, 2019.

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Ron Shaver, City Attorney