

**RESOLUTION SUBMITTING TO THE ELECTORS OF THE CITY OF
COMMERCE CITY AT THE REGULAR ELECTION TO BE HELD
NOVEMBER 5, 2013, THE QUESTION OF WHETHER THE DEBT AND SALES
AND USE TAX OF THE CITY OF COMMERCE CITY SHOULD BE
INCREASED IN THE AMOUNTS SET FORTH IN SUCH QUESTION AND
SETTING THE LANGUAGE THEREFOR**

NO. 2013-51

WHEREAS, the Council of the City of Commerce City (the “City”) has spent the last two years seeking input from residents, businesses, land owners and non-profits on how best to achieve the City’s vision of a “Quality Community for a Lifetime;”

WHEREAS, stakeholders confirmed that investing in our community, providing programs and services that address the growing population needs is the best way to achieve the City’s vision and build a better Commerce City;

WHEREAS, qualitative and quantitative data identifies the desire for improvements throughout the community to the City’s recreation, parks and roadways, including, among other improvements: construction of a new recreation center in the northern area of the City, major improvements to Tower Road, new neighborhood parks, new additions to the existing recreation center and a seasonal pool (the “Improvements”);

WHEREAS, the community has indicated its support for a 1% increase in the City sales and use tax rate for the purpose of funding the Improvements;

WHEREAS, the proceeds of the debt or taxes authorized at this election are not intended to be used for operation and maintenance of existing facilities or roadways;

WHEREAS, if the ballot issue set forth below is passed, the City shall substantially complete the authorized improvements on or before January 1, 2019 unless substantial completion of such improvements by the said date becomes impossible through no fault of the City;

WHEREAS, as defined in this resolution, “substantial completion of such improvements by the said date becomes impossible” shall be construed to mean the (1) occurrence of an event, or (2) failure of an occurrence which was assumed to be necessary for substantial completion of the authorized improvements;

WHEREAS, it is the intention of City Council that this resolution shall become enforceable as a contract between the City and all of its citizens. As a result, any Commerce City citizen shall have standing to enforce the provisions hereof and may seek temporary and permanent injunctive relief for enforcement without the necessity of proving immediate and irreparable harm; provided that nothing herein shall affect the validity of bonds which have been issued prior to any action being brought (including any refunding of such bonds regardless of when it occurs), the expenditure of the bond proceeds, or the validity of the 1% sales and use tax or the collection and expenditure of the revenues from such tax;

WHEREAS, should the ballot issue set forth below pass, the provisions of this resolution shall be adopted in the ordinance(s) for funding the approved projects;

WHEREAS, Section 20 of Article X of the Colorado Constitution (“TABOR”) requires voter approval for incurring debt, increasing any tax rate, and for spending certain moneys above limits established thereby;

WHEREAS, consequently, the City Council hereby finds and determines that the best interests of the City will be served by placing a question on the ballot to increase the City’s sales and use tax rate by one percent (1%) for the purpose of funding the Improvements;

WHEREAS, TABOR limits the election days the City may submit ballot questions to its electors;

WHEREAS, November 5, 2013, is the date of regular state-wide and municipal elections and is one of the election dates at which ballot issues and spending questions may, under TABOR, be submitted to the City’s electors;

WHEREAS, the City Council hereby determines that it is necessary to submit to the electors of the City at the November 5, 2013, election the question of authorizing the City to incur debt, increase taxes and spend the revenues thereof;

WHEREAS, the Clerk and Recorder of Adams County, Colorado (the “County Clerk”), will conduct the election as a coordinated, mail-ballot election (the “Coordinated Election”); and

WHEREAS, it is necessary to set the language for the ballot question and to set forth certain procedures concerning the conduct of the Coordinated Election.

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

1. All actions, not inconsistent with the provisions of this Resolution, heretofore taken by the City and its officers in advancement of the Coordinated Election, and the objects and purposes herein stated, are hereby ratified, approved and confirmed.
2. Unless defined otherwise herein, all terms used in this Resolution shall have the meanings set forth in the Uniform Election Code of 1992, Title 1, Articles 1 through 13, C.R.S., as amended.
3. The City Council hereby submits to the registered electors of the City the question set forth in Section 6 hereof.

4. The City Council hereby designates the City Clerk as the designated election official of the City for purposes of performing any and all acts required or permitted by law in connection with the Coordinated Election.
5. The City Council hereby authorizes the City to enter into one or more intergovernmental agreements with the County Clerk concerning the conduct of the Coordinated Election pursuant to C.R.S. § 1-7-116.
6. The City Council hereby certifies the following question in substantially the form hereinafter set forth to be submitted to the eligible electors of the City at the Coordinated Election:

BALLOT ISSUE _____

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

- A NEW RECREATION CENTER WITH INDOOR LEISURE POOL IN THE NORTHERN AREA OF THE CITY;
- MAJOR IMPROVEMENTS TO TOWER ROAD FROM 80TH TO 103RD AVENUES, INCLUDING WIDENING TO FOUR LANES;
- A NEW SEASONAL OUTDOOR POOL IN THE SOUTHERN AREA OF THE CITY;
- THREE NEW NEIGHBORHOOD PARKS LOCATED IN THE SUBDIVISIONS OF TURNBERRY, FRONTERRA AND THE VILLAGES OF BUFFALO RUN EAST;
- ADDITIONS TO THE EXISTING SOUTHERN RECREATION CENTER, INCLUDING A NEW INDOOR THERAPY POOL;

SUCH INCREASE IN THE SALES AND USE TAX RATE TO BEGIN ON JANUARY 1, 2014; SUCH DEBT TO BE SOLD IN ONE SERIES

OR MORE AT A PRICE ABOVE, BELOW OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE CITY MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF PREMIUM OF NOT TO EXCEED 3.0%; SHALL THE CITY BE AUTHORIZED TO ISSUE DEBT TO REFUND THE DEBT AUTHORIZED IF AFTER THE ISSUANCE OF SUCH REFUNDING DEBT THE TOTAL OUTSTANDING PRINCIPAL AMOUNT OF ALL DEBT ISSUED PURSUANT TO THIS QUESTION DOES NOT EXCEED THE MAXIMUM PRINCIPAL AMOUNT AUTHORIZED AND IF ALL DEBT ISSUED PURSUANT TO THIS QUESTION IS ISSUED ON TERMS THAT DO NOT EXCEED THE REPAYMENT COSTS AUTHORIZED IN THIS QUESTION; AND SHALL THE REVENUES RAISED BY SUCH SALES AND USE TAX RATE INCREASE AND PROCEEDS OF SUCH DEBT, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE CITY AS A VOTER-APPROVED REVENUE CHANGE PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

YES___ NO___

7. If a majority of the votes cast on the question to authorize the indebtedness and the increase in sales and use taxes to pay the principal of and premium, if any, and interest on such indebtedness submitted at the election shall be in favor of incurring indebtedness and increasing sales and use taxes as provided in such question, then the City, acting through the City Council, shall be authorized to proceed with the necessary action to incur indebtedness and increase sales and use taxes in accordance with such question.
8. Any authority to contract indebtedness or to increase sales and use taxes to pay such indebtedness, if conferred by the results of the election, shall be deemed and considered a continuing authority to contract the indebtedness and increase sales and use taxes so authorized at any one time, or from time to time, and neither the partial exercise of the authority so conferred, nor any lapse of time, shall be considered as exhausting or limiting the full authority so conferred.
9. If a majority of the votes cast on the question authorize the issuance of debt as described in the debt question set forth above, the City intends to issue such debt in the approximate aggregate principal amount of \$166 million to pay the costs of the Improvements, including the reimbursement of certain costs incurred by the City prior to the execution and delivery of such debt, upon terms acceptable to the City, as authorized in an ordinance to be hereafter adopted and to take all further action which is necessary or desirable in

connection therewith. The officers, employees and agents of the City shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated hereby and shall take all action necessary or desirable to finance the Improvements and to otherwise carry out the transactions contemplated by this Resolution. The City shall not use reimbursed moneys for purposes prohibited by Treasury Regulation §1.150-2(h). This Resolution is intended to be a declaration of “official intent” to reimburse expenditures within the meaning of Treasury Regulation §1.150-2.

10. Pursuant to Section 1-11-203.5, C.R.S., any election contest arising out of a ballot issue or ballot question election concerning the order of the ballot or the form or content of the ballot title shall be commenced by petition filed with the proper court within five (5) days after the title of the ballot issue or ballot question is set, and for contests concerning the order of a ballot, within five (5) days after the ballot order is set by the County Clerk and not thereafter.
11. The City Council, City Manager, City Attorney, Director of Finance, City Clerk and their designees are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Resolution.
12. All orders, bylaws and resolutions, or parts thereof, in conflict with this Resolution, are hereby repealed.
13. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

RESOLVED AND PASSED THIS 19TH DAY OF AUGUST, 2013.

CITY OF COMMERCE CITY

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk