

ORDINANCE NO. 2363

INTRODUCED BY: _____

AN EMERGENCY ORDINANCE AUTHORIZING THE LEASING OF CERTAIN EQUIPMENT AND THE EXECUTION AND DELIVERY BY THE CITY OF A LEASE PURCHASE AGREEMENT AND OTHER FINANCING DOCUMENTS IN CONNECTION THEREWITH; SETTING FORTH PARAMETERS AND RESTRICTIONS WITH RESPECT TO THE FINANCING; RATIFYING ACTION PREVIOUSLY TAKEN CONCERNING THE REFERENCED TRANSACTIONS; AND PROVIDING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

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

RECITALS.

The City of Commerce City, Colorado (the “City”) is a home rule municipality and political subdivision of the State of Colorado (the “State”) organized and existing under a home rule charter (the “Charter”) pursuant to Article XX of the Constitution of the State.

Pursuant to the Charter, the City is authorized to enter into long term installment purchase contracts and rental or leasehold agreements in order to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes.

For the purpose of financing the costs of acquiring certain equipment for public safety services (the “Leased Property”), the City has determined that it is in the best interest of the City and its residents and taxpayers to enter into an Equipment Lease Agreement (the “Lease”) with MOTOROLA SOLUTIONS INC. (the “Lessor”) in an amount not to exceed \$500,000, for the purpose of acquiring, constructing and installing such capital improvements (the “Project”).

Pursuant to the Lease, and subject to the right of the City to terminate the Lease and other limitations as therein provided, the City will pay certain rental payments (“Rent” as such terms are defined in the Lease) in consideration for the right of the City to use the Leased Property.

The City’s obligation under the Lease to pay Rent shall be from year to year only; shall constitute currently budgeted expenditures of the City; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional or statutory limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect. There has been presented to the City Council and is on file at the City offices a form of Lease. A copy of the Lease, in substantially the form to be executed by the City and the Lessor, is on file with the City.

Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes (the “Supplemental Act”), provides that a public entity, including the City, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act to the Lease and the financing.

Pursuant to Chapter 5, Section 5.4 of Commerce City Home Rule Charter, because of the urgent need for the financing of the Project and the limited availability of low interest loans, the Council has determined that an emergency exists and that adoption of this Ordinance as an emergency measure is immediately necessary for the immediate preservation of the public peace, health, safety and welfare.

RATIFICATION AND APPROVAL OF PRIOR ACTIONS.

All action heretofore taken not inconsistent with the provisions of this Ordinance by the Council, or the officers or agents of the Council or the City, relating to the Lease, or to the acquisition, installation or financing of the Project, is hereby ratified, approved and confirmed.

FINDING OF BEST INTEREST.

The Council hereby finds and determines, pursuant to the Act, the Charter, Constitution and laws of the State, that the acquisition, and installation of the Project and the financing of the costs thereof pursuant to the terms set forth in the Lease is necessary, convenient, and in furtherance of the purposes of the City and is in the best interests of the City and its citizens and inhabitants, and the Council hereby authorizes and approves the same.

SUPPLEMENTAL ACT; PARAMETERS.

The Council hereby elects to apply all of the provisions of the Supplemental Act to the Lease and in connection therewith delegates to the Mayor, the Mayor Pro Tem, the City Manager and the Chief Financial Officer of the City the independent authority to make any determination delegable pursuant to Section 11-57-205(1)(a-i) of the Supplemental Act in relation to the Lease, including without limitation the date of the Lease, the rental amount to be paid by the City pursuant to the Lease and the term of the Lease, subject to the following parameters and restrictions:

- (a) the Lease Term shall not extend beyond December 31, 2027;
- (b) the aggregate principal amount of the Lease shall not exceed \$500,000;
- (c) the interest rate shall not exceed 5.00%; and
- (d) the Lease shall be subject to prepayment at the option of the City as specified in the Lease.

APPROVAL OF DOCUMENTS.

The Lease, in substantially the forms presented to this meeting of the Council, is in all respects approved, authorized and confirmed, and the City Manager and City Clerk are hereby authorized and directed, for and on behalf of the City, to execute and deliver the Lease and related documents (collectively, the “Financing Documents”) in substantially the forms on file with the City, with such changes thereto as are not inconsistent with the provisions of this Ordinance. The approval hereby given to the Financing Documents includes an approval of such additional details therein as may be necessary and appropriate for their completion, deletions therefrom and additions thereto as may be approved by bond counsel prior to the execution of the Financing Documents. The execution of any instrument by the appropriate officers of the City herein authorized shall be

conclusive evidence of the approval by the City of such instrument in accordance with the terms hereof.

AUTHORIZATION TO EXECUTE COLLATERAL DOCUMENTS AND TO PERFORM ADDITIONAL ACTS.

The City Manager, the City Clerk, and other appropriate officials or agents of the Council or the City, are hereby authorized and directed to execute and deliver for and on behalf of the City any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they may deem necessary or appropriate, in order to implement and carry out the transactions and other matters authorized by this Ordinance.

The execution of any instrument by the aforementioned officers or members of the Council shall be conclusive evidence of the approval by the City of such instrument in accordance with the terms hereof and thereof.

NO GENERAL OBLIGATION DEBT.

No provision of this Ordinance or the Financing Documents shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year direct or indirect City debt or other financial obligation whatsoever of the City within the meaning of any home rule charter, constitutional or statutory provision, nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the then current fiscal year. The City shall not have any obligation to make any payment with respect to the Lease except in connection with the payment of the Rent (as defined in the Lease) and certain other payments under the Lease, which payments may be terminated by the City in accordance with the provisions of the Lease. No provision of the Financing Documents shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the City within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. None of the Financing Documents shall directly or indirectly obligate the City to make any payments beyond those budgeted and appropriated for the City's then current fiscal year.

REASONABLENESS OF RENTALS.

The Council hereby determines and declares that the Rent, as provided in the Lease and as subject to the parameters set forth in Section 3 hereof, does not exceed a reasonable amount so as to place the City under an economic compulsion to renew the Lease or to exercise its option to prepay the Lease. The Council hereby determines and declares that the period during which the City has an option to prepay the Lease (i.e., the entire maximum term of the Lease) does not exceed the useful life of the Leased Property.

AUTHORIZED LESSEE REPRESENTATIVE.

The Council hereby authorizes the Mayor, the City Manager and the Chief Financial Officer to each act as Authorized Lessee Representative under the Lease, or such other person or persons who may be so designated in writing from time to time by the Council.

NO RECOURSE AGAINST OFFICERS AND AGENTS.

Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the 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 Rent. Such recourse shall not be available either directly or indirectly through the Council or the City, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise.

SEVERABILITY.

If any one or more sections, sentences, clauses or parts of this Ordinance shall for any reason be held invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, but shall be confined in its operation to the specific sections, sentences, clauses or parts of this Ordinance so held unconstitutional or invalid, and the inapplicability and invalidity of any section, sentence, clause or part of this Ordinance in any one or more instances shall not affect or prejudice in any way the applicability and validity of this Ordinance in any other instances.

REPEALER.

All bylaws, orders, and Ordinances of the City, or parts thereof, inconsistent with this Ordinance or with any of the Documents hereby approved, are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, or Ordinance of the City, or part thereof, heretofore repealed.

EMERGENCY DECLARATION.

By reason of the City's need to complete the Project to provide for the immediate preservation of public health, safety and welfare of its citizens, the further need to acquire financing to complete the Project with the limited availability of low interest financing, the Council declares that this Ordinance is an emergency ordinance, that this Ordinance is necessary for the immediate preservation of the public peace, health and safety, and that this Ordinance shall be in full force and effect immediately after its passage by an affirmative vote of seven (7) of the members of the Council.

EFFECTIVE DATE AND DISPOSITION.

After its passage by the approval of seven (7) members of the Council, this Ordinance shall be recorded, published and posted for informational purposes and authenticated by the signature of the Mayor and the City Clerk as required by the City Charter. This Ordinance shall become effective immediately after its adoption.

INTRODUCED AND PASSED AS AN EMERGENCY ORDINANCE AND PUBLIC NOTICE ORDERED THIS 6TH OF DECEMBER 2021.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

ATTEST

Dylan A. Gibson, City Clerk