

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT TO RE-FINANCE CERTAIN ENERGY-EFFICIENCY EQUIPMENT AND SYSTEMS, AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION

NO. 2013-25

WHEREAS, the City of Commerce City, a home rule municipality and political subdivision of the State of Colorado, is authorized by State law to purchase, acquire and lease personal property for the benefit of the City and its inhabitants and to enter into contracts with respect thereto;

WHEREAS, the City previously purchased, acquired and leased certain equipment and systems constituting personal property necessary for the City to perform essential governmental functions (the "Equipment");

WHEREAS, the City desires to refinance the Equipment and therefore proposes to enter into that certain Equipment Lease/Purchase Agreement (the "Agreement") with All American Investment Group, LLC (or one of its affiliates) ("Lessor"), the forms of which has been presented to the City Council at this meeting; and

WHEREAS, the City Council deems it for the benefit of the City and for the efficient and effective administration of the City to enter into the Agreement and the documentation related to the financing of the Equipment on the terms and conditions therein provided.

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

1. Approval of Documents.
 - a. The form, terms and provisions of the Agreement are hereby approved in substantially the forms presented at this meeting, with such minor insertions, omissions and changes as approved by the City Attorney, the execution of such documents being conclusive evidence of such approval.
 - b. The Mayor is hereby authorized and directed to execute the Agreement and any related exhibits attached thereto, and the City Clerk is hereby authorized and directed to attest the Agreement and any related exhibits attached thereto and to affix the seal of the City to the Agreement.

2. Other Actions Authorized. The officers and employees of the City shall take all action necessary or reasonably required by the parties to the Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Acceptance Certificate contemplated in the Agreement, including appropriate arbitration certifications) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement.
3. No General Liability. Nothing contained in this Resolution, the Agreement or any other instrument shall be construed with respect to the City as incurring a pecuniary liability or charge upon the general credit of the City or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the City or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are special limited obligations of the City as provided in the Agreement.
4. Section 265(b)(3) Designation. The City hereby designates the Agreement as a “qualified tax-exempt obligation” for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. The City further represents that it reasonably anticipates that it and other entities it controls will not issue tax-exempt obligations (including the Agreement) that exceed the aggregate principal amount of Ten Million Dollars (\$10,000,000.00) during the calendar year in which the Agreement is executed and delivered.
5. Appointment of Authorized City Representatives. The City Manager or designee is hereby designated to act as authorized representative of the City for purposes of the Agreement until such time as the City Council shall designate any other or different authorized representative for purposes of the Agreement and each Lease Schedule.
6. Severability. 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.
7. Repealer. All bylaws, orders and resolutions or parts thereof inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

RESOLVED AND PASSED THIS 15TH DAY OF APRIL, 2013.

CITY OF COMMERCE CITY

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk