

ORDINANCE NO. 2066

INTRODUCED BY: AMADOR, BENSON, BULLOCK, CARSON, DOUGLAS,
ELLIOTT, FORD, MCELDFOWNEY, TETER

AN ORDINANCE AUTHORIZING A FIRST AMENDMENT TO A PREVIOUSLY EXECUTED MASTER LEASE PURCHASE AGREEMENT AND PROVIDING OTHER MATTERS RELATING THERETO.

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, pursuant to the Charter, the City is also authorized to sell and dispose of real and personal property; and

WHEREAS, the City Council of the City (the "City Council") has previously sold and conveyed certain real property of the City and the improvements located thereon, generally known as Civic Center site (the "Leased Property") to the Commerce City Finance Authority (the "Authority") and then leased the Leased Property back from the Authority pursuant to a Master Lease Purchase Agreement dated as of May 1, 2006 (the "Lease") by and between the City and the Authority; and

WHEREAS, pursuant to Section 11.5 of the Lease, the Authority and U.S. Bank, National Association, acting as trustee under an Indenture of Trust between the Authority and the Trustee dated as of May 1, 2006 (the "Indenture"), shall release portions of the Leased Property identified in the Lease as Lot A and Lot B to the City, and shall execute all documents necessary or appropriate to convey the same to the City, free and clear of all restrictions and encumbrances imposed or created by the Lease or the Indenture, upon receipt by the Trustee of (a) a written request of the City Representative of such release, identifying which of Lot A or Lot B or both, are to be released; and (b) a certificate of the City Representative addressed to the Trustee and Ambac Assurance Corporation (the "Insurer") certifying that the fair value of the remaining Leased Property is a least equal to 90% in aggregate amount of Certificates outstanding; and

WHEREAS, the City Council has determined that it is in the best interest of the City and its inhabitants and taxpayers that portions of Lot A and Lot B be released back to the City; and

WHEREAS, the City Representative has presented the Trustee and the Insurer with the appropriate certificates and documents to effect such partial release; and

WHEREAS, pursuant to Section 9.04 of the Indenture, the Lease may be amended without consent of or notice to the Participants (as defined in the Indenture), in order to more

precisely identify the Leased Property, including the release of certain sites, buildings and equipment pursuant to Section 11.5 of the Lease; and

WHEREAS, the City Council has determined and hereby determines it is in the best interests of the City and its inhabitants that the City execute and deliver a First Amendment to Master Lease Purchase Agreement (the "First Amendment") in order to more precisely identify the Leased Property after the release of the portions of Lot A and Lot B; and

WHEREAS, capitalized terms not otherwise defined herein will have the meanings assigned to them in the Lease or the Indenture; and

WHEREAS, there is on file with the City the proposed forms of the First Amendment.

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

Section 1. Ratification and Approval of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this ordinance) by the City Council, the City Representative, or the officers or agents of the City Council or the City relating to the First Amendment, including the release of a portion of the Leased Property is hereby ratified, approved and confirmed.

Section 2. Finding of Best Interests. The City Council hereby finds and determines, pursuant to the Constitution, the laws of the State of Colorado and the Charter, that the release of a portion of the Leased Property is necessary, convenient and in furtherance of the City's purposes and are in the best interests of the inhabitants of the City, and the City Council hereby authorizes and approves the same.

Section 3. Approval of Documents. The First Amendment, in substantially the form presented to the City Council and on file with the City, is in all respects approved, authorized and confirmed, and the Mayor of the City is hereby authorized and directed for and on behalf of the City to execute and deliver the First Amendment in substantially the form and with substantially the same contents as presented to the City Council.

Section 4. Authorization to Execute Collateral Documents. The City Clerk or her designee is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this ordinance and to place the seal of the City on any document authorized and approved by this ordinance. The Mayor and City Clerk and other appropriate officials or employees of the City are hereby authorized 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 deem necessary or appropriate, in order to implement and carry out the transactions and other matters authorized by this ordinance, including but not limited to such documents, certificates and affidavits as may be necessary. The execution of any instrument by the aforementioned officers or members of the City Council shall be conclusive evidence of the approval by the City of such instrument in accordance with the terms hereof and thereof.

Section 5. Repealer. All ordinances, resolutions, bylaws, orders, and other instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaws, order, or other instrument, or part thereof, heretofore repealed.

Section 6. Severability. If any section, subsection, paragraph, clause or other provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs, clauses or provisions hereof.

Section 7. Statutes Superseded. Pursuant to Article XX of the Colorado Constitution and to the Charter, all statutes of the State which might otherwise apply in connection with the release of the portion of Leased Property are hereby superseded except to the extent specifically held to be applicable.

Section 8. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the City and members of the City Council, not inconsistent with the provisions of this Ordinance, relating to the First Amendment and the release of a portion of Leased Property, are hereby ratified, approved, and confirmed.

Section 9. Recording and Authentication. This Ordinance upon passage shall be numbered and filed by the City Clerk in the official records of the City, and authenticated as required by the Charter. Following its passage on first and second reading, it shall be published in a newspaper of general circulation in the City and posted in compliance with the requirements of the Charter. The Ordinance shall be published by title with a statement that this Ordinance is available for public inspection in the office of the City Clerk within ten (10) days, or as soon thereafter as possible, after first passage and before second passage and again within ten (10) days, or as soon thereafter as possible, after second and final passage, pursuant to Section 5.6 of the Charter.

Section 10. Effective Date. This Ordinance shall be effective five (5) days after both final posting and publication have been accomplished.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE
ORDERED THIS 20TH DAY OF JULY, 2015.

INTRODUCED, PASSED ON SECOND READING, APPROVED AND ORDERED
PUBLISHED BY TITLE THIS 17TH DAY OF AUGUST, 2015.

CITY OF COMMERCE CITY, COLORADO

Sean Ford, Mayor

(SEAL)

ATTEST:

Laura J. Bauer, MMC, City Clerk