

ORDINANCE NO. 2111

INTRODUCED BY: AMADOR, BULLOCK, CARSON, DIAZ, DOUGLAS, ELLIOTT, FORD,
MCELDOWNEY, TETER

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

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

SECTION 1. RECITALS.

A. 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.

B. 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.

C. Pursuant to the Charter, the City is also authorized to sell and dispose of real and personal property.

D. For the purpose of financing the cost of certain public improvements of the City (the “Prior Project”), the City has previously executed and delivered:

- i. A Master Lease Purchase Agreement dated as of May 1, 2006 (the “Original Lease”), by and between the City as Lessee and the Commerce City Finance Authority as Lessor (the “Authority”); and a First Amendment to Master Lease Purchase Agreement dated as of August 15, 2015 (the “First Amendment”), by and between the City as Lessee and the Authority as Lessor (together, the Original Lease and the First Amendment are the “Prior Lease”); and

- ii. Special Warranty Deed dated as of May 23, 2006, conveying the City's Civic Center and site from the City to the Authority as security for the Original Lease (the "2006 Leased Property"); and
- iii. Special Warranty Deed dated as of August 15, 2015 conveying a portion of the 2006 Leased Property (the "Released Property") from the Authority to the City, pursuant to the terms and conditions of the Original Lease.

E. In connection with the Prior Project, there was also executed and delivered A Mortgage and Indenture of Trust dated as of May 1, 2006 (the "Original Indenture"), by and between the Authority and U.S. Bank National Association as Trustee (the "Prior Indenture").

F. Pursuant to the Prior Indenture, there were executed and delivered certain Certificates of Participation, Series 2006 in the original principal amount of \$30,900,000, of which \$29,385,000 is currently outstanding (the "2006 Certificates").

G. The Council has determined, and does hereby determine, that it is in the best interest of the City and its inhabitants that the City exercise its option to purchase all of the currently outstanding 2006 Certificates as provided in the Prior Lease to pay at maturity or refund and defease all of the outstanding 2006 Certificates (the "Refunding Project").

H. In connection with the Refunding Project, the remaining 2006 Leased Property that was not part of the Released Property will be released from the terms and provisions of the Prior Lease and the Prior Indenture will be conveyed by the Authority to the City.

I. The Council has determined, and now hereby determines, that it is in the best interest of the City and its inhabitants that the City lease the certain property to U.S. Bank National Association, as trustee (the "Trustee") under an Indenture of Trust (as hereinafter defined) pursuant to a Site Lease Agreement between the City, as lessor, and the Trustee, as lessee (the "Site Lease"), and lease back the Trustee's interest in such leased property pursuant to the terms of a Lease Purchase Agreement (the "Lease") between the Trustee, as lessor, and the City, as lessee.

J. Upon release of the remaining 2006 Leased Property, the City will own, in fee title, all of the 2006 Leased Property and the premises, buildings and improvements located thereon, including the Administration Building and any additional property of the City (as more particularly described in the Lease) (the "Leased Property").

K. The Trustee will execute and deliver an Indenture of Trust (the "Indenture") with the Trustee pursuant to which there is expected to be executed and delivered certain certificates of participation (the "Certificates") dated as of their date of delivery, that shall evidence proportionate interests in the right to receive certain Revenues (as defined in the Lease), shall be payable solely from the sources therein provided and shall not directly or indirectly obligate the City to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect.

L. There will be executed and distributed in connection with the sale of the Certificates an Official Statement (the “Official Statement”) in substantially the form of the Preliminary Official Statement (the “Preliminary Official Statement”) relating to the Certificates as approved by the Director of Finance of the City.

M. The City’s obligation under the Lease to pay Base Rentals and Additional Rentals (as each is defined in the Lease) shall be from year to year only; shall constitute a currently budgeted expenditure 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 direct or indirect City debt or other financial obligation of the City within the meaning of any constitutional, statutory or Charter 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.

N. The Supplemental Public Securities Act, part 2 of article 57 of title 11, 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 an issue of securities.

O. No member of the Council has any conflict of interest or is interested in any pecuniary manner in the transactions contemplated by this ordinance

P. There have been filed with the City Clerk proposed forms of: (i) the Site Lease; (ii) the Lease; (iii) the Indenture; (iv) a Continuing Disclosure Certificate dated as of the date of issuance of the Certificates (the “Continuing Disclosure Certificate”) to be delivered by the City; (v) the Preliminary Official Statement; and (vi) the Escrow Agreement, between the City and U.S. Bank National Association, as escrow agent (the “Escrow Agreement”) relating to the refunding and defeasance of the 2006 Certificates.

Q. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease and the Site Lease

SECTION 2. RATIFICATION AND APPROVAL OF PRIOR ACTIONS.

All action heretofore taken (not inconsistent with the provisions of this ordinance) by the Council or the officers, agents or employees of the Council or the City relating to the Site Lease, the Lease, the implementation of the Refunding Project, and the execution and delivery of the Certificates is hereby ratified, approved and confirmed.

SECTION 3. FINDING OF BEST INTERESTS.

The Council hereby finds and determines, pursuant to the Constitution, the laws of the State and the Charter, that the implementation of the Refunding Project, including the payment of the costs of issuance in connection therewith, and financing the costs thereof pursuant to the terms set forth in the Site Lease, the Lease, the Indenture and the Escrow Agreement are necessary, convenient and in furtherance of the City’s purposes and are in the best interests of the inhabitants of the City and that the fair value of the Leased Property does not

exceed its Purchase Option Price (as defined in the Lease), and the Council hereby authorizes and approves the same.

SECTION 4. SUPPLEMENTAL ACT ELECTION; PARAMETERS.

The Council hereby elects to apply all of the provisions of the Supplemental Act to the Lease, the Site Lease and the Certificates, and in connection therewith delegates to the Mayor, any other member of the Council, the City Manager and the Director of Finance the independent authority to make any determination delegable pursuant to Section 11-57-205(1)(a-i), Colorado Revised Statutes, in relation to the Lease and the Site Lease, and to execute a sale certificate (the "Sale Certificate") setting forth such determinations, including without limitation, the term of the Site Lease, the rental amount to be paid by the Trustee pursuant to the Site Lease, the term of the Lease and the rental amount to be paid by the City pursuant to the Lease, subject to the following parameters and restrictions:

- (a) the Site Lease Term shall end no later than December 31, 2047;
- (b) the Lease Term shall end no later than December 31, 2037;
- (c) the maximum annual repayment cost of Base Rentals payable by the City shall not exceed \$6,000,000, and the total repayment cost shall not exceed \$45,000,000;
- (d) the total aggregate principal amount of the Base Rentals payable by the City under the Lease with respect to the Certificates shall not exceed \$30,000,000;
- (e) the purchase price of the Certificates shall not be less than 98% of the aggregate principal amount; and
- (f) the maximum net effective interest rate on the interest component of the Base Rentals relating to the Certificates shall not exceed 4.00%.

Pursuant to Section 11-57-205 of the Supplemental Act, the Council hereby delegates to each of the Mayor, the City Manager or the Director of Finance the authority acknowledge any contract for the purchase of the Certificates between the Trustee and the Purchaser, and to execute any agreement or agreements in connection therewith. In addition, each of the Mayor, the City Manager or the Director of Finance is hereby authorized to independently determine if obtaining an insurance policy for all or a portion of the Certificates is in the best interests of the City, and if so, to select an insurer to issue an insurance policy, execute a commitment relating to the same and execute any related documents or agreements required by such commitment. Each of the Mayor, the City Manager or the Director of Finance is also hereby authorized to determine if funding a reserve fund or obtaining a reserve fund insurance policy for the Certificates is in the best interests of the City, and if so, to determine such amount and to select a surety provider to issue a reserve fund insurance policy and execute any related documents or agreements required by such commitment.

SECTION 5. APPROVAL OF DOCUMENTS.

The Site Lease, the Lease, the Indenture, the Escrow Agreement, and the Continuing Disclosure Certificate are 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 such documents in substantially the forms and with substantially the same contents as the proposed forms of such documents on file with the City Clerk, with such changes as may hereafter be approved by the Mayor, the City Attorney, or the City Manager.

SECTION 6. OFFICIAL STATEMENT.

The designation of the Preliminary Official Statement by the Mayor or the City Manager as a “deemed final Official Statement” for purposes of Rule 15c2-12 of the Securities and Exchange Commission is hereby authorized and confirmed. A final Official Statement, in substantially the form of the Preliminary Official Statement, is in all respects approved and authorized. The Mayor is hereby authorized and directed to execute and deliver the final Official Statement, for and on behalf of the City, in substantially the form and with substantially the same content as the Preliminary Official Statement on file with the City Clerk. The distribution of the Preliminary Official Statement and the final Official Statement (in substantially the form of the Preliminary Official Statement) to prospective purchasers of the Certificates is hereby ratified, approved and authorized.

SECTION 7. AUTHORIZATION TO EXECUTE COLLATERAL DOCUMENTS.

The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City, if so required by any documents in connection with the matters authorized by this ordinance. The Mayor 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 the execution of such other certificates and affidavits as may be necessary. The appropriate officers of the City are authorized to execute on behalf of the City agreements concerning the deposit and investment of funds in connection with the transactions contemplated 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.

SECTION 8. NO GENERAL OBLIGATION DEBT.

No provision of this ordinance, the Lease, the Indenture, the Continuing Disclosure Certificate, the Certificates or the Official Statement shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional, statutory or Charter 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 Certificates except in connection with the payment of the Base Rentals and certain other payments under the Lease, which payments may be terminated by the City in accordance with

the provisions of the Lease. Neither the Lease nor the Certificates shall constitute a mandatory charge or requirement of the City in any ensuing fiscal year beyond the then current fiscal year or constitute or give rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional, statutory or Charter debt limitation and shall not constitute a multiple fiscal year direct or indirect City debt or other financial obligation whatsoever. No provision of the Lease or the Certificates 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 State Constitution. Neither the Lease nor the Certificates shall directly or indirectly obligate the City to make any payments beyond those budgeted and appropriated for the City's then current fiscal year.

SECTION 9. REASONABLENESS OF RENTALS.

The Council hereby determines and declares that the Base Rentals do 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 purchase the Leased Property pursuant to the Lease. The Council hereby determines and declares that the period during which the City has an option to purchase the Leased Property (i.e., the entire maximum term of the Lease) does not exceed the remaining useful life of the Leased Property.

SECTION 10. EXERCISE OF OPTION; DIRECTION TO TRUSTEE.

In order to effect the Refunding Project, the Council has elected and does hereby declare its intent to exercise on the behalf and in the name of the City its option to redeem the outstanding 2006 Certificates set forth in the Sale Certificate (the "Refunded Certificates") on the earliest applicable redemption date. The City hereby irrevocably instructs the Trustee to give notice of refunding and defeasance to the Owners of the Refunded Certificates as soon as practicable after the execution and delivery of the Certificates, in accordance with the provisions of the Indenture and the Escrow Agreement between the Authority and the Trustee, as escrow agent.

SECTION 11. 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 principal, interest or prior redemption premiums on the Certificates. 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. By the acceptance of the Certificates and as a part of the consideration of their sale or purchase, any person purchasing or selling such certificate specifically waives any such recourse.

SECTION 12. ORDINANCE IRREPEALABLE.

This Ordinance is, and shall constitute, a legislative measure of the City, and after any of the Certificates are executed and delivered, this Ordinance shall constitute an irrevocable contract between the City and the Owner or Owners of the Certificates; and this Ordinance, if any Certificates are in fact issued, shall be and shall remain irrepealable until the Certificates, as to all Base Rental payments, shall be fully paid, cancelled and discharged, as herein provided.

SECTION 13. LIMITATION OF ACTIONS.

Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings of the City in connection with the execution and delivery of the Certificates, including but not limited to the adoption of this Ordinance, shall be commenced more than thirty days after the authorization of the Certificates.

SECTION 14. 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 15. 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 16. 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 Certificates are hereby superseded except to the extent specifically held to be applicable.

SECTION 17. 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 18. EFFECTIVE DATE.

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

INTRODUCED, PASSED ON FIRST READING, APPROVED AND ORDERED PUBLISHED BY TITLE THIS 17TH DAY OF OCTOBER, 2016.

PASSED ON SECOND AND FINAL READING, APPROVED AND ORDERED PUBLISHED BY TITLE THIS 7TH DAY OF NOVEMBER, 2016.

CITY OF COMMERCE CITY,
COLORADO

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk

STATE OF COLORADO)
)
 COUNTY OF ADAMS) SS. CERTIFICATE OF CITY CLERK
)
 CITY OF COMMERCE CITY)

I, Laura J. Bauer, the duly appointed, qualified and acting City Clerk of the City of Commerce City, Colorado, do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the Council of the City of Commerce City, Colorado (the “City Council”), at regular meetings of the City Council held on October 17, 2016, and November 7, 2016. A quorum of the City Council was in attendance at each meeting.

2. That the passage of the Ordinance on first reading was duly moved and seconded at a regular meeting of the City Council on October 17, 2016, and the Ordinance was approved on first reading by a vote of a majority of the members of the City Council as follows:

<u>Council member</u>	<u>Voting Yes</u>	<u>Voting No</u>	<u>Absent</u>	<u>Abstaining</u>
Sean Ford, Mayor				
René Bullock, Mayor Pro Tem				
Andrew Amador, Ward I				
Rick Teter, Ward II				
Jadie Carson, Ward III				
Paolo Diaz, Ward IV				
Steve Douglas, At-Large				
Crystal Elliott, At-Large				
Jason McEldowney, At-Large				

3. That the passage of the Ordinance on second and final reading, which is no earlier than ten (10) days after the first reading, and no earlier than seven (7) days after first publication and posting, was duly moved and seconded at a regular meeting of the City Council on November 7, 2016 and the Ordinance was approved on second and final reading by a vote of a majority of the members of the Council as follows:

<u>Council member</u>	<u>Voting Yes</u>	<u>Voting No</u>	<u>Absent</u>	<u>Abstaining</u>
Sean Ford, Mayor				
René Bullock, Mayor Pro Tem				
Andrew Amador, Ward I				
Rick Teter, Ward II				
Jadie Carson, Ward III				
Paolo Diaz, Ward IV				
Steve Douglas, At-Large				
Crystal Elliott, At-Large				
Jason McElowney, At-Large				

4. That the Ordinance has been authenticated by the Mayor and sealed with the corporate seal of the City, attested by me as the City Clerk, and duly recorded in the official records of the City.

5. That notices of the meetings of October 17, 2016, and November 7, 2016, in the forms attached hereto as **Exhibit B**, were duly given to the Council members and were posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meetings as required by law.

6. That the full text of the Ordinance was posted in two (2) public places in the City as such places were designated by the Council after passage on first reading and before second reading and final passage.

7. That the Ordinance was published by title and with a statement that the Ordinance is on file in the City Clerk's office for public inspection, within ten (10) days, or as soon as possible, after first reading in the Denver-PostSentinel Express, newspapers of general circulation in the City on October 17, 2016. The Ordinance was published by title and with a statement that the Ordinance is on file in the City Clerk's office for public inspection, within ten (10) days, or as soon as possible, after second and final reading in the Denver-PostSentinel Express, a newspaper of general circulation in the City, on November 7, 2016. The affidavits of publication are attached hereto as **Exhibit C**.

WITNESS my hand and the seal of said City affixed this November __, 2016.

(SEAL)

City Clerk

EXHIBIT A

(Attach Affidavit of Publication)

EXHIBIT B

(Attach Notices of October [___], 2016 and November [___] Meetings)