

ORDINANCE NO. 2130

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 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.**

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. The City Council has determined that the best interests of the City and the inhabitants thereof require the financing of the cost of the acquisition of 4A Equivalent Residential Units from South Adams County Water and Sanitation District (the “Project”).

E. The City Council has further determined that is in the best interests of the City and its inhabitants that, in order to finance the Project costs, the City lease the Municipal Service Center located at 8602 Rosemary Street, Commerce City, Colorado (the “Leased Property”) to a commercial bank or financial institution with trust powers as hereafter named in the Sale Certificate (defined below) to act 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.

F. The City owns the Leased Property in fee title.

G. The Trustee will execute and deliver an Indenture of Trust (the “Indenture”) 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.

H. 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.

I. The Certificates shall be privately placed with Wells Fargo Bank, National Association (the “Initial Purchaser”), which Initial Purchaser is (a) an “accredited investor,” as defined in Rule 501(A)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended ( an “Institutional Accredited Investor”) or (b) a “qualified institutional buyer,” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (a “Qualified Institutional Buyer”).

J. The net proceeds of the Certificates are expected to be used to finance the Project.

K. 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.

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

M. There have been filed with the City Clerk proposed forms of: (i) the Site Lease; (ii) the Lease; and (iii) the Indenture.

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

## **SECTION 2. RATIFICATION AND APPROVAL OF PRIOR ACTIONS.**

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

### **SECTION 3. 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 implementation of the 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 and the Indenture are necessary and convenient and in furtherance of the City's purposes and that the fair value of the Leased Property does not exceed its Purchase Option Price (as defined in the Lease), and the City 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 Site Lease, the 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 Site Lease and the 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 not extend beyond December 31, 2047;
- (b) the Lease Term shall not extend beyond December 31, 2037;
- (c) the maximum aggregate principal amount of the Certificates shall not exceed \$7,200,000;
- (d) the maximum rate on the interest component of the Base Rentals relating to the Certificates shall not exceed 18% per annum; and
- (e) the maximum annual amount of Base Rentals payable by the City pursuant to the Lease shall not exceed \$9,000,000 and the maximum total amount of Base Rentals payable by the City pursuant to the Lease shall not exceed \$30,000,000.

The delegation set forth in this Section 4 shall be effective for one year following the date hereof.

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 to acknowledge any contract for the purpose of the Certificates between the Trustee and the Purchaser, and to execute any agreement or agreements in connection therewith.

## **SECTION 5. APPROVAL OF DOCUMENTS.**

The Site Lease and the Lease are in all respects approved, authorized and confirmed, and the Mayor and the City Clerk are hereby authorized and directed, for and on behalf of the City, to execute and deliver such documents in substantially the form 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 Site Lease and the Lease 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 the Mayor or the City Manager prior to the execution of the same. 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.

The Council hereby agrees and acknowledges that the Trustee shall, for the benefit of the City, execute and deliver the Indenture, which is on file with the City, and that pursuant to the Indenture, the proceeds of the Certificates will be used to finance the costs of the Project and to pay other costs of issuance.

## **SECTION 6. 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 the City Clerk, and other appropriate officials, employees or agents of the City 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 City Council shall be conclusive evidence of the approval by the City Council of such instrument in accordance with the terms hereof and thereof.

## **SECTION 7. NO GENERAL OBLIGATION DEBT.**

No provision of this Ordinance, the Lease, the Indenture or the Certificates 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 8. 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 9. NO RECOURSE AGAINST OFFICERS AND AGENTS.**

Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the City 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 City Council or the City, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By acceptance of the Certificates and as part of the consideration for their sale or purchase, any person purchasing or selling such Certificate specifically waives any such recourse.

**SECTION 10. 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 11. 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 12. 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 13.           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 14.           STATUTES SUPERSEDED.**

Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this Ordinance are hereby superseded to the extent of any inconsistencies between the provisions of this Ordinance and such statutes. Any such inconsistency is intended by the City Council and shall be deemed made pursuant to the Charter.

**SECTION 15.           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 16.           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 17<sup>TH</sup> DAY OF JULY, 2017.

PASSED ON SECOND AND FINAL READING, APPROVED AND ORDERED PUBLISHED BY TITLE THIS 7<sup>TH</sup> DAY OF AUGUST, 2017.

CITY OF COMMERCE CITY, COLORADO

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Sean Ford, Mayor

ATTEST:

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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 July 17, 2017, and August 7, 2017. 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 July 17, 2017, 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 August 7, 2017 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 McElDowney, 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 July 17, 2017, and August 7, 2017, 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 Sentinel Express, newspapers of general circulation in the City on [\_\_\_\_], 2017. 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 Sentinel Express, a newspaper of general circulation in the City, on [\_\_\_\_], 2017. The affidavits of publication are attached hereto as **Exhibit C**.

WITNESS my hand and the seal of said City affixed this [\_\_\_\_\_], 2017.

(SEAL)

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City Clerk

EXHIBIT A

(Attach Affidavit of Publication)

## EXHIBIT B

(Attach Notices of July 17, 2017 and August 7, 2017 Meetings)