

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2021

COUNCIL BILL NO. 21-1388
COMMITTEE OF REFERENCE:
4 BUSINESS, ARTS, WORKFORCE & AVIATION SERVICES

5 **A BILL**

6 **For an ordinance concerning the Airport Facilities of the City and County of**
7 **Denver; authorizing the incurrence of the Interim Note Subordinate**
8 **Obligation under the General Subordinate Bond Ordinance in a maximum**
9 **aggregate principal amount not to exceed \$700,000,000 in connection with**
10 **a note purchase agreement to be entered into for the purposes of defraying**
11 **the costs of certain approved projects, and providing other details in**
12 **connection therewith; providing the maximum rate and other terms and**
13 **other details of the Interim Note Subordinate Obligation, which shall be**
14 **evidenced by a note purchase agreement and a note; authorizing the**
15 **execution of certain related agreements; ratifying action previously taken;**
16 **providing for other related matters; and providing the effective date of this**
17 **ordinance.**

18 **PREFACE**

19 This ordinance (referred to herein as "this Supplemental Subordinate Ordinance") is
20 supplemental to, and is adopted for and on behalf of the Department in accordance with the
21 provisions of, the General Subordinate Bond Ordinance.

22 **DEFINITIONS**

23 All defined terms in this Supplemental Subordinate Ordinance have the meanings set
24 forth in the General Subordinate Bond Ordinance except as otherwise expressly provided
25 herein and in Section 102 of this Supplemental Subordinate Ordinance, except where the
26 context by clear implication otherwise requires.

27 **RECITALS**

28 (1) The City is a municipal corporation duly organized and existing as a home rule
29 city under Article XX, State Constitution, and under the Charter, and is a political subdivision of
30 the State.

1 (2) Subject to certain exceptions, all legislative powers possessed by the City,
2 conferred by Article XX, State Constitution, or contained in the Charter, as either has from time
3 to time been amended, or otherwise existing by operation of law, are vested in the City
4 Council.

5 (3) Pursuant to Article XX, State Constitution, the Charter, and the plenary grant of
6 powers as a home rule city, the City has acquired certain airport facilities constituting its Airport
7 System, the management, operation, and control of which is vested by the Charter in the
8 Department of Aviation. Pursuant to the Enterprise Ordinance, the City designated the
9 Department as an "enterprise" within the meaning of Section 20, Article X, State Constitution.
10 The Enterprise Ordinance provides that, the City owns the Department; the Manager of the
11 Department of Aviation is the governing body of the Department; and the Department has the
12 authority to issue its own bonds or other financial obligations in the name of the City, payable
13 solely from revenues derived or to be derived from the functions, services, benefits or facilities
14 of the Department or from any other available funds, as authorized by ordinance after approval
15 and authorization by the Manager.

16 (4) Pursuant to the 1984 General Bond Ordinance, there have been issued multiple
17 series of Senior Bonds and other Obligations in respect of the Airport System and such Senior
18 Bonds and Obligations are secured by an irrevocable and first lien (but not necessarily an
19 exclusive first lien) on the Net Revenues of the Airport System on a parity with the lien thereon
20 in favor of each other.

21 (5) After having received the requisite bond owner consents and satisfying all
22 applicable requirements, the City amended and restated the 1984 General Bond Ordinance in
23 its entirety pursuant to the provisions of the General Bond Ordinance and the City has issued
24 or incurred, as applicable, and will in the future issue or incur, as applicable, Senior Bonds and
25 Obligations under the General Bond Ordinance, in addition to the currently outstanding Senior
26 Bonds and Obligations.

27 (6) Pursuant to the General Bond Ordinance, the City may issue bonds or incur
28 other additional obligations payable from the Net Revenues of the Airport System and having a
29 lien thereon subordinate to the lien thereon of the Senior Bonds. The City adopted the 1997
30 Subordinate Bond Ordinance pursuant to which the City issued various Subordinate Bonds
31 which have been paid or defeased prior to the date hereof and which are no longer

1 outstanding. Pursuant to the 1997 Subordinate Bond Ordinance, the City incurred certain
2 Subordinate Hedge Facility Obligations which remain outstanding.

3 (7) The City amended and restated the 1997 Subordinate Bond Ordinance in its
4 entirety pursuant to the provisions of the General Subordinate Bond Ordinance and the City
5 has issued or incurred, as applicable, and will in the future issue or incur, as applicable,
6 Subordinate Bonds and Subordinate Obligations under the General Subordinate Bond
7 Ordinance.

8 (8) Pursuant to the General Bond Ordinance and the General Subordinate Bond
9 Ordinance, the City has adopted the General Junior Lien Bond Ordinance and, pursuant to the
10 General Junior Lien Bond Ordinance, the City has incurred the Hotel Junior Lien Obligation
11 and the Great Hall Junior Lien Obligation. The Great Hall Junior Lien Obligation is no longer
12 outstanding.

13 (9) The Council has also adopted in supplementation of the General Bond
14 Ordinance that certain Ordinance No. 0776, Series of 2018, providing for certain passenger
15 facility charges to be included in Gross Revenues commencing January 1, 2019.

16 (10) None of the Net Revenues of the Airport System have been pledged to any
17 outstanding bonds or other obligations, except in respect of the Senior Bonds (and certain
18 Obligations relating thereto), the Subordinate Bonds (and certain Subordinate Credit Facility
19 Obligations relating thereto), certain Subordinate Hedge Facility Obligations incurred under the
20 1997 Subordinate Bond Ordinance, and the Hotel Junior Lien Obligation incurred under the
21 General Junior Lien Bond Ordinance.

22 (11) On or about the date hereof, the City expects to adopt a Subordinate
23 Supplemental Ordinance authorizing the issuance of Subordinate Bonds in the maximum
24 aggregate principal amount of \$35,000,000 to refund certain outstanding Senior Bonds.

25 (12) As contemplated by the Enterprise Ordinance, the Manager of the Department
26 has executed the Interim Note Manager's Resolution approving, authorizing and requesting the
27 incurrence by the City, for and on behalf of the Department, of the Interim Note Subordinate
28 Obligation as set forth herein, for the purposes of (i) defraying the costs of the Approved
29 Projects and (ii) paying certain Costs relating to the incurrence of the Interim Note Subordinate

1 Obligation, which includes the issuance of the Interim Note and the execution and delivery of
2 the Note Purchase Agreement.

3 (13) The Interim Note Purchaser has agreed to enter into the Note Purchase
4 Agreement under which the Interim Note Purchaser will purchase the Interim Note in
5 accordance with the terms of the Note Purchase Agreement, which note shall not exceed the
6 maximum aggregate principal amount of \$700,000,000.

7 (14) The obligation of the City, for and on behalf of the Department, to make the
8 principal of and interest payments on the Interim Note shall constitute the Interim Note
9 Subordinate Obligation and is herein designated a Subordinate Contract Obligation for
10 purposes of the General Subordinate Bond Ordinance.

11 (15) The Council has determined and does hereby declare:

12 A. The procedures and requirements of Article V, Chapter 20 of the Revised
13 Municipal Code of the City and County of Denver have been completely and timely met
14 in respect of the issuance of the Interim Note in connection with the Note Purchase
15 Agreement;

16 B. The Interim Note Subordinate Obligation is to be incurred pursuant to the
17 Interim Note Manager's Resolution and the provisions of the General Subordinate Bond
18 Ordinance (as supplemented hereby);

19 C. The Interim Note Subordinate Obligation constitutes a Subordinate
20 Contract Obligation, and the Approved Projects constitute Subordinate Bond
21 Improvement Projects; and

22 D. All acts, conditions and things required by law and by the General
23 Subordinate Bond Ordinance to exist, have happened and have been performed as a
24 condition to the incurrence of the Interim Note Subordinate Obligation, do or will exist,
25 and have been or will have been performed in regular and due time, forms and manner
26 as required by law.

27 (16) There have been filed with the City's Clerk and Recorder:

1 and any project designated as an Approved Project by the Treasurer constitute
2 Subordinate Bond Improvement Projects.

3 (4) "Enterprise Ordinance" means Ordinance No. 755, Series of 1993.

4 (5) "General Bond Ordinance" means the 1984 General Bond
5 Ordinance, as amended and restated in its entirety pursuant to the provisions of
6 Ordinance No. 0777, Series of 2018, cited as the "2018 Amended and Restated
7 Airport System General Bond Ordinance," as amended and supplemented from
8 time to time by any Supplemental Ordinance.

9 (6) "General Junior Lien Bond Ordinance" means Ordinance No. 17-
10 0972, Series of 2017, cited as the "Airport System General Junior Lien Bond
11 Ordinance," as amended and supplemented from time to time.

12 (7) "General Subordinate Bond Ordinance" means the 1997
13 Subordinate Bond Ordinance as amended and restated in its entirety pursuant to
14 the provisions of Ordinance No. 302, Series of 2013, as amended and
15 supplemented from time to time.

16 (8) "Great Hall Junior Lien Obligation" means the Junior Lien
17 Obligation (as defined in the General Junior Lien Bond Ordinance) incurred
18 pursuant to the General Junior Lien Bond Ordinance and Ordinance No. 17-
19 0973, Series of 2017.

20 (9) "Hotel Junior Lien Obligation" has the meaning set forth in the
21 General Junior Lien Bond Ordinance.

22 (10) "Interim Note" means the note governed by this Supplemental
23 Subordinate Ordinance. The form of the Interim Note is attached to the Note
24 Purchase Agreement.

25 (11) "Interim Note Cost of Issuance Account" has the meaning ascribed
26 to it in Section 401A of this Supplemental Subordinate Ordinance.

27 (12) "Interim Note Interest Subaccount" has the meaning ascribed to it in
28 Section 303 of this Supplemental Subordinate Ordinance.

1 (13) "Interim Note Manager's Resolution " means the resolution of the
2 Manager approving, authorizing and requesting the incurrence by the City, for
3 and on behalf of the Department, of the Interim Note Subordinate Obligation.

4 (14) "Interim Note Paying Agent/Registrar" means, with respect to the
5 Interim Note, Zions Bancorporation, National Association, and includes any
6 successor thereof.

7 (15) "Interim Note Paying Agent/Registrar Agreement" means, with
8 respect to the Interim Note, the agreement executed by the City, for and on
9 behalf of the Department, and the Interim Note Paying Agent/Registrar in
10 substantially the form filed with the Clerk, with such revisions thereto as are
11 permitted by this Supplemental Subordinate Ordinance, and any subsequent
12 Interim Note Paying Agent/Registrar Agreement executed by the Interim Note
13 Paying Agent/Registrar and the City, for and on behalf of the Department, as
14 provided herein, as the same may be amended, modified or restated in
15 accordance with the terms hereof.

16 (16) "Interim Note Principal Subaccount" has the meaning ascribed to it
17 in Section 303 of this Supplemental Subordinate Ordinance.

18 (17) "Interim Note Project Account" has the meaning ascribed to it in
19 Section 401B of this Supplemental Subordinate Ordinance.

20 (18) "Interim Note Purchaser" means Bank of America, N.A., its
21 successor and assigns and, with respect to a substitute Note Purchase
22 Agreement with City, for and on behalf of the Department, the other party thereto.

23 (19) "Interim Note Rebate Fund" has the meaning ascribed to it in
24 Section 501B of this Supplemental Subordinate Ordinance.

25 (20) "Interim Note Subordinate Obligation" means the City's obligation,
26 for and on behalf of the Department, to make payments to the Interim Note
27 Purchaser that constitute Subordinate Note Obligations.

1 (21) "Maximum Rate" means the lesser of (i) twelve percent (12%) per
2 annum and (ii) the maximum non-usurious lawful rate of interest permitted by
3 law.

4 (22) "Note Purchase Agreement" means the Note Purchase Agreement
5 between the City, for and on behalf of the Department, and the Interim Note
6 Purchaser, in substantially the form filed with the Clerk, with such revisions
7 thereto as are permitted by this Supplemental Ordinance, as the same may be
8 amended, modified or restated in accordance with the terms hereof.

9 (23) "Purchaser Obligations" has the meaning set forth in the Note
10 Purchase Agreement.

11 (24) "Subordinate Note Obligations" means the obligation of the City to
12 pay principal of and interest on the Interim Note.

13 (25) "Subordinate Bonds" mean the following series of bonds: (i) the
14 (i) the "City and County of Denver, Colorado, for and on behalf of its Department
15 of Aviation, Airport System Subordinate Revenue Bonds, Series 2013A and
16 Airport System Subordinate Revenue Bonds, Series 2013B" as authorized by the
17 General Subordinate Bond Ordinance and Ordinance No. 301, Series of 2013;
18 (ii) the "City and County of Denver, Colorado, for and on behalf of its Department
19 of Aviation, Airport System Subordinate Revenue Bonds, Series 2015A" as
20 authorized by the General Subordinate Bond Ordinance and Ordinance No. 15-
21 756, Series of 2015; (iii) the "City and County of Denver, Colorado, for and on
22 behalf of its Department of Aviation, Airport System Subordinate Revenue
23 Bonds, Series 2018A and Airport System Subordinate Revenue Bonds, Series
24 2018B" as authorized by the General Subordinate Bond Ordinance and
25 Ordinance No. 775, Series of 2018; (iv) the "City and County of Denver,
26 Colorado, for and on behalf of its Department of Aviation, Airport System
27 Subordinate Revenue Bonds, Series 2019A and Airport System Subordinate
28 Revenue Bonds, Series 2019B" as authorized by the General Subordinate Bond
29 Ordinance and Ordinance No. 0543, Series of 2019; and (v) any future
30 Subordinate Bonds issued by the City, for and on behalf of the Department.

1 **Section 103. Ratification.** All action heretofore taken (not inconsistent with the
2 provisions of this Supplemental Subordinate Ordinance) by the Council, the Manager, the
3 Treasurer, and the other officers of the City relating to:

4 A. Approved Projects. The Approved Projects; and

5 B. Interim Note Subordinate Obligation. The incurrence of the Interim Note
6 Subordinate Obligation, including the execution and delivery of the Note Purchase
7 Agreement and the issuance of the Interim Note;

8 be, and the same hereby is, authorized, ratified, approved, and confirmed.

9 **Section 104. Ordinance an Irrepealable Contract.** This Supplemental Subordinate
10 Ordinance and the General Subordinate Bond Ordinance shall constitute an irrevocable
11 contract between the City, for and on behalf of the Department, and the Interim Note
12 Purchaser, except as otherwise provided herein and in the General Subordinate Bond
13 Ordinance.

14 **Section 105. Repealer.** All ordinances, resolutions, bylaws, orders, and other
15 instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of
16 such inconsistency; but nothing herein shall be construed to repeal any provision of the
17 General Subordinate Bond Ordinance, it being intended that any inconsistent provision therein
18 shall remain applicable to any other Subordinate Obligations incurred and Subordinate Bonds
19 issued hereafter under the General Subordinate Bond Ordinance. This repealer shall not be
20 construed to revive any ordinance, resolution, bylaw, order, or other instrument, or part thereof,
21 heretofore repealed.

22 **Section 106. Severability.** If any section, subsection, paragraph, clause, or other
23 provision of this Supplemental Subordinate Ordinance shall for any reason be held to be
24 invalid or unenforceable, the invalidity or unenforceability of such section, subsection,
25 paragraph, clause, or other provision shall not affect any of the remaining provisions of this
26 Supplemental Subordinate Ordinance.

27 **Section 107. Effective Date.** This Supplemental Subordinate Ordinance shall take
28 effect immediately upon its final passage and publication.

1 provisions of which are hereby elected, to the extent not inconsistent herewith), and the
2 General Subordinate Bond Ordinance; and the City hereby determines that each and every
3 matter and thing as to which provision is made herein is necessary in order to carry out and to
4 effect the purposes hereof.

5 **Section 202.** Necessity and Approval of Interim Note Subordinate Obligation, Note
6 Purchase Agreement, Interim Note, and Approved Projects. The Council hereby determines
7 and declares that the Interim Note Subordinate Obligation (including the Note Purchase
8 Agreement and the Interim Note) and the Approved Projects are necessary and in the best
9 interests of the City and its residents.

10 **Section 203.** Terms of Interim Note Subordinate Obligation. The Interim Note
11 Subordinate Obligation shall be evidenced by the Note Purchase Agreement and the Interim
12 Note issued thereunder and shall be subject to the terms hereof and of the Note Purchase
13 Agreement. The Interim Note Purchaser shall have the rights as provided for herein and in the
14 Note Purchase Agreement.

15 **Section 204.** Interim Note Subordinate Obligation. The obligation of the City, for and on
16 behalf of the Department, to pay the principal of and interest on the Interim Note, which
17 obligation is referred to herein as the Subordinate Note Obligations, shall constitute the Interim
18 Note Subordinate Obligation authorized to be incurred hereunder and a Subordinate Contract
19 Obligation for purposes of the General Subordinate Bond Ordinance. The validity and
20 enforceability of the Interim Note Subordinate Obligation shall be approved as to validity by
21 Hogan Lovells US LLP, Denver, Colorado, as bond counsel.

22 **ARTICLE III**
23 **AUTHORIZATION, TERMS, AND INCURRENCE OF INTERIM NOTE SUBORDINATE**
24 **OBLIGATION**

25 **Section 301.** Authorization of Interim Note Subordinate Obligation. There is hereby
26 authorized to be incurred by the City, for and on behalf of the Department, for the purpose of
27 defraying the Cost of the Approved Projects, the Interim Note Subordinate Obligation in the
28 maximum aggregate principal amount not to exceed \$700,000,000, payable solely out of the
29 Net Revenues of the Airport System and certain funds and accounts to the extent provided in
30 the General Subordinate Bond Ordinance and this Supplemental Subordinate Ordinance.

1 **Section 302. Details of Interim Note.**

2 A. Interim Note. The Interim Note shall be designated "Airport System
3 Interim Note Subordinate Obligation, Tax-Exempt Series A" (or such other appropriate
4 designation or designations as shall be determined by the Treasurer). The interest on
5 the Interim Note shall be excludable from the gross income of the owners thereof for
6 federal income tax purposes, except to the extent such interest is treated as an item of
7 tax preference for purposes of the alternative minimum tax provisions of the Tax Code.
8 Subject to the limitation contained herein, the Interim Note herein authorized shall be
9 dated as of its date of issuance, as determined by the Treasurer and shall bear interest
10 at such rate or rates, not exceeding the Maximum Rate, and in the manner set forth in
11 the Note Purchase Agreement. The Interim Note authorized herein shall mature and
12 become due and payable on or before December 31, 2022.

13 The Interim Note issued hereunder shall be subject to redemption or the prepayment
14 thereof prior to maturity as provided in the Note Purchase Agreement and the form of
15 Interim Note set forth as an exhibit to the Note Purchase Agreement.

16 At the direction of the Treasurer, the number of the Interim Note may be prefixed or
17 suffixed with a distinct letter or letters as determined by the Treasurer. The Interim Note
18 shall be registered with the Interim Note Paying Agent/Registrar and shall be issued in
19 certificated form.

20 Principal of and interest, if any, on the Interim Note shall be payable on the dates and in
21 the amounts in accordance with the terms of the Note Purchase Agreement.

22 The Interim Note is authorized to be issued, sold, and delivered to the Interim Note
23 Purchaser, in denominations as set forth in the Note Purchase Agreement.

24 Provided the Subordinate Debt Service Requirements of the Interim Note satisfy the
25 definition of a Balloon Maturity contained in the General Subordinate Bond Ordinance,
26 such requirements of the Interim Note are hereby authorized to be treated as Balloon
27 Maturities at the election of the Treasurer for such purposes.

28 B. Interim Note and Proceeds. Subject to applicable terms, limitations, and
29 procedures contained herein and in the Note Purchase Agreement, the Interim Note

1 shall be issued and the proceeds shall be delivered in accordance with the terms hereof
2 and the terms of the Note Purchase Agreement. Upon compliance with the provisions
3 herein and in the Note Purchase Agreement, the Interim Note shall be completed and
4 delivered by the Interim Note Paying Agent/Registrar in accordance with written
5 instructions of the Treasurer and in the manner specified below. The instructions shall
6 include instructions regarding the disposition of the proceeds of the Interim Note,
7 subject to Section 401 hereof, and a request that the Interim Note Paying
8 Agent/Registrar authenticate such Interim Note by countersignature of its authorized
9 officer or employee and deliver them to the Interim Note Purchaser upon receipt of such
10 proceeds. Furthermore, the Mayor, Auditor, Clerk, Treasurer and Manager and other
11 officers and employees of the City is each hereby authorized and directed to furnish and
12 execute such documents relating to the City, for and on behalf of the Department, and
13 its financial affairs as may be necessary for the issuance of the Interim Note to the
14 Interim Note Purchaser in accordance with this Supplemental Subordinate Ordinance
15 and the Note Purchase Agreement.

16 C. Fees/Costs; Physical Form; Transfers. While the Interim Note remains
17 Outstanding, the City, for and on behalf of the Department, agrees to pay all applicable
18 fees and costs that constitute Purchaser Obligations (other than Subordinate Note
19 Obligations) from available monies in the Capital Fund. The Capital Fund shall be
20 funded as provided in the General Bond Ordinance. The Interim Note shall be issued in
21 physical, certificated definitive form. The Interim Note Purchaser shall not transfer or
22 assign either of the Interim Note except in accordance with the Note Purchase
23 Agreement.

24 **Section 303.** Payment of Interim Note. The Subordinate Note Obligations and any
25 other amounts which constitute Purchaser Obligations shall be payable in lawful money of the
26 United States of America. Subordinate Note Obligations and any other amounts which
27 constitute Purchaser Obligations shall be payable to the Interim Note Purchaser by wire
28 transfer as designated by the Interim Note Purchaser or as otherwise provided in the Note
29 Purchase Agreement. The City hereby establishes and creates a subaccount within the
30 Principal Account of the Subordinate Bond Fund established and created under Section 502 of
31 the General Subordinate Bond Ordinance out of which the principal of the Interim Note shall be
32 paid, which subaccount shall be designated as the "Interim Note Principal Subaccount". The

1 City hereby establishes and creates a subaccount within the Interest Account of the
2 Subordinate Bond Fund established and created under Section 502 of the General
3 Subordinate Bond Ordinance out of which the interest on the Interim Note shall be paid, which
4 subaccount shall be designated as the "Interim Note Interest Subaccount". Any other amounts
5 which constitute Purchaser Obligations (other than Subordinate Note Obligations) shall be
6 payable from the Capital Fund. The Subordinate Note Obligations are payable solely out of
7 Net Revenues and (i) proceeds of Refunding Bonds or Subordinate Refunding Bonds
8 deposited to the Interim Note Principal Subaccount and Interim Note Interest Subaccount,
9 (ii) moneys held in the Interim Note Project Account and not otherwise encumbered for the
10 payment of Costs of Approved Projects, and (iii) other legally available funds as shall be
11 determined by the City and paid into the Interim Note Principal Subaccount and Interim Note
12 Interest Subaccount no later than the day immediately preceding the maturity date of the
13 Interim Note, all with the priority and otherwise as provided in the General Subordinate Bond
14 Ordinance. The Net Revenues and such other funds and accounts are thereby and hereby
15 pledged to that extent to the payment of Subordinate Note Obligations, as therein and herein
16 provided, the lien on Net Revenues being subordinate only to the lien thereon in favor of
17 Senior Bonds and Obligations. For the avoidance of doubt, the Interim Note Principal
18 Subaccount and Interim Note Interest Subaccount are not funded by the accumulation and
19 application of Net Revenues as provided in Sections 502A and 502B of the General
20 Subordinate Bond Ordinance.

21 **Section 304. Execution, Recordation and Authentication.** The Interim Note shall be
22 signed by the Mayor and countersigned by the Auditor, both of which signatures may be by
23 facsimile, and the Interim Note shall bear the official seal of the City or a facsimile thereof
24 attested by the manual or facsimile signature of the Clerk. A record thereof shall be made by
25 the Auditor, in such record to show the date of issue, date of payment, and date and amount of
26 interest payments as the same shall accrue. The Interim Note shall have been approved by
27 the Manager and shall be authenticated by the Interim Note Paying Agent/Registrar.

28 By authenticating the Interim Note, the Interim Note Paying Agent/Registrar shall be
29 deemed to have assented to the provisions of the General Subordinate Bond Ordinance, as
30 supplemented by this Supplemental Subordinate Ordinance. If the Interim Note Paying
31 Agent/Registrar, or its duly appointed successor pursuant to this section, shall resign, or if the
32 City shall reasonably determine that such Interim Note Paying Agent/Registrar has become

1 incapable of fulfilling its duties hereunder, the City may, upon notice mailed to Interim Note
2 Purchaser at the address last shown on the registration books, appoint a successor Interim
3 Note Paying Agent/Registrar.

4 **Section 305. Note Form.** Subject to the provisions of this Supplemental Subordinate
5 Ordinance, the Interim Note shall be in substantially the form set forth in the exhibit to the Note
6 Purchase Agreement (provided that any of the text may, with appropriate reference, be printed
7 on the back of the Interim Note), with such omissions, insertions, endorsements, and variations
8 as to any recitals of fact or other provisions as may be required by the circumstances.

9 **Section 306. Substitution or Extension of Certain Agreements.** The Treasurer is
10 hereby authorized, without further approval of the Council, to (i) extend or otherwise modify the
11 terms of any Note Purchase Agreement, Interim Note Paying Agent/Registrar Agreement, the
12 Interim Note or other agreement approved hereby; and (ii) execute and deliver any additional
13 Interim Note and any additional agreements, including, but not limited to, one or more Note
14 Purchase Agreements or substitute Note Purchase Agreements, Interim Note Paying
15 Agent/Registrar Agreement, any other agreement approved hereby or required in connection
16 with the Interim Note Subordinate Obligation; provided that any such modified, extended,
17 additional, or substitute agreement (i) shall be entered into for and on behalf of the
18 Department, (ii) shall obligate only Airport System funds, (iii) shall be with existing parties or
19 parties selected in accordance with the Treasurer's established policies, and (iv) shall, in the
20 judgment of the Treasurer, be in commercially customary form. The effectiveness of any
21 execution, extension, modification or replacement of any agreement or instrument as
22 contemplated in this Section 306 shall be contingent upon the receipt by the Treasurer and
23 Interim Note Agent/Registrar of a Favorable Opinion of Bond Counsel with respect to such
24 proposed action.

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26

**ARTICLE IV
USE OF PROCEEDS**

27 **Section 401. Disposition of Proceeds.** The proceeds of the Interim Note, upon receipt
28 thereof, shall be deposited in the following accounts and applied for purposes thereof:

29 A. **Interim Note Cost of Issuance Account.** First, to the Project Fund to a
30 special and separate subaccount hereby created therein and designated as the "City
31 and County of Denver, Colorado, for and on behalf of its Department of Aviation, Interim

1 Note Cost of Issuance Account" (the " Interim Note Cost of Issuance Account"), such
2 amount as the Treasurer determines to be necessary for the payment of the Costs of
3 the incurrence of the Interim Note Subordinate Obligation, the issuance of the Interim
4 Note, and the execution and delivery of the Note Purchase Agreement.

5 B. Approved Project Account. Second, to the Project Fund in amounts
6 determined by the Treasurer for credit to the special and separate subaccount hereby
7 created therein and designated as the "City and County of Denver, Colorado, for and on
8 behalf of its Department of Aviation, Interim Note Project Account" (the "Interim Note
9 Project Account") for the payment of Costs of Approved Projects determined by Bond
10 Counsel to be eligible to be paid from proceeds of the Interim Note.

11 **Section 402. Other Transfers.** Notwithstanding the provisions of Section 401 hereof,
12 the Treasurer is authorized to supplement and amend the application of proceeds of the
13 Interim Note provided in Section 401 and create additional accounts and subaccounts all in a
14 manner consistent with the objectives of this Supplemental Subordinate Ordinance and not
15 inconsistent with the General Subordinate Bond Ordinance.

16 **ARTICLE V**
17 **MISCELLANEOUS**

18 **Section 501. Tax Covenants.** In furtherance of Section 1013 of the General
19 Subordinate Bond Ordinance, the City, for and on behalf of the Department, represents and
20 specifically agrees as follows:

21 A. General Covenants. (1) The City hereby covenants that it shall not
22 (i) make any use of the proceeds of the Interim Note, any funds reasonably expected to
23 be used to pay the principal of or interest on the Interim Note, or any other funds of the
24 City; or (ii) take (or omit to take) any other action with respect to the Interim Note, the
25 proceeds thereof, or otherwise, if such use, action or omission would, under the Tax
26 Code, cause the interest on the Interim Note to be included in gross income for federal
27 income tax purposes.

28 (2) In particular, without limitation, the City hereby covenants that it shall not
29 take (or omit to take) or permit or suffer any action to be taken if the result of the same

1 causes the Interim Note to be "arbitrage bonds" within the meaning of § 148 of the Tax
2 Code.

3 B. Rebate. (1) Except as otherwise expressly provided therein, the City shall
4 pay to the United States in accordance with the requirements of § 148(f) of the Tax
5 Code an amount equal to the sum of (i) the excess of the amount earned on all
6 nonpurpose investments allocable to the Interim Note (other than investments
7 attributable to such excess) over the amount that would have been earned if such
8 nonpurpose investments were invested at a rate equal to the yield on the Interim Note,
9 plus (ii) any income attributable to such excess.

10 (2) The City shall maintain within the Airport System Fund a special and
11 separate account hereby created and to be known as the "City and County of Denver,
12 Colorado, for and on behalf of its Department of Aviation, Interim Note Rebate Fund"
13 (the "Interim Note Rebate Fund"). The City shall maintain within the Interim Note
14 Rebate Fund such subaccounts as may be necessary, and the City shall deposit to the
15 credit of, and make disbursements to the United States and otherwise from, the Note
16 Purchase Agreement Rebate Fund such amounts, at such times, as shall be necessary
17 hereunder.

18 (3) Any amounts so deposited to the credit of the Note Purchase Agreement
19 Rebate Fund shall be derived from the Net Revenues of the Airport System or from
20 such other legally available sources as the City may determine; provided, however, that
21 the accumulation and application of Net Revenues for such purpose shall be
22 subordinate in priority to payment of principal of and interest on, when due, the Interim
23 Note.

24 (4) Notwithstanding any provision of this Section 501B, if the Treasurer shall
25 obtain an opinion of an attorney or firm of attorneys whose experience in matters
26 relating to the issuance of obligations by states and their political subdivisions is
27 nationally recognized that any action required under this Section 501B is no longer
28 required or that some further action is required to maintain the exclusion from federal
29 income tax of interest on the Interim Note, the City may rely conclusively on such
30 opinion in complying with the requirements of this Section 501B, and the covenants
31 contained herein shall be deemed to be modified to that extent.

1 C. Tax Certificate. The Treasurer is hereby authorized to execute one or
2 more tax certificates on behalf of the City in implementation of the covenants and
3 agreements set forth in this Section 501, or to make any election permitted by the Tax
4 Code and determined by the Treasurer to be to the advantage of the City; and the
5 representations, agreements, and elections set forth therein shall be deemed the
6 representations, agreements, and elections of the City, as if the same were set forth
7 herein.

8 **Section 502.** Preservation of Enterprise Status. The City hereby covenants that it shall
9 not take (or omit to take) any action with respect to the Department that would cause the
10 Department to lose its status as an "enterprise" within the meaning of Section 20, Article X,
11 State Constitution.

12 **Section 503.** Applicability of General Subordinate Bond Ordinance. Except as
13 otherwise provided herein, the provisions of the General Subordinate Bond Ordinance govern
14 the Interim Note Subordinate Obligation, the Interim Note, the Approved Projects, and the Note
15 Purchase Agreement. The rights, undertakings, covenants, agreements, obligations,
16 warranties, and representations of the City with respect to Subordinate Obligations set forth in
17 the General Subordinate Bond Ordinance shall in respect of the Interim Note Subordinate
18 Obligation be deemed the rights, undertakings, covenants, agreements, obligations, warranties,
19 and representations of the City for and on behalf of the Department.

20
21
22 [BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

1 COMMITTEE APPROVAL DATE: November 17, 2021

2 MAYOR-COUNCIL DATE: November 23, 2021

3 PASSED BY THE COUNCIL _____ December 6, 2021

4 Steve Filmore - PRESIDENT

5 APPROVED: _____ - MAYOR _____

6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

10 PREPARED BY: HOGAN LOVELLS US LLP; DATE: November 24, 2021

11 REVIEWED BY: Kevin Cain, Assistant City Attorney; DATE: November 24, 2021

12 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office
13 of the City Attorney. We find no irregularity as to form, and have no legal objection to the
14 proposed ordinance. The proposed ordinance is submitted to the City Council for approval
15 pursuant to § 3.2.6 of the Charter.

16 Kristin M. Bronson, City Attorney

17 BY: Jonathan Griffin, Assistant City Attorney DATE: Nov 24, 2021

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2

EXHIBIT A

APPROVED PROJECTS

Annual Airfield Pavement Rehab	Annual program to repair/service airfield pavement for safe and efficient aircraft operations.
Runway Complexes Pavement & Lighting Rehab	Program to regularly rehabilitate runway complexes by fixing runways and upgrading lighting on a rotating basis.
Taxiway EE	Construct new Taxiway (TW) EE connecting TW L to TW P7 outside of Runway (RW) 17R approach, allowing unrestricted access to RW 17L and increasing safety and system efficiency.
CBRA (Phase 2)	Project that consolidates Transportation Security Administration (TSA) Checked Baggage Reconciliation Area (CBRA) screening rooms, provides additional conveyor and controls to facilitate carriers, and add capacity and flexibility to the existing Baggage Handling System (BHS).
Level 5.5 (Phase 2)	Construct two odd size checked bag inputs on the East and West sides that will balance functionality on the East and West sides of the terminal. In addition, in this area, create smoke control zones for safety and compliance.
Baggage Recap	The explosive detection system (bag screening) will be replaced and upgraded with newer and faster equipment, partially funded by the TSA.
Passenger Loading Bridge Replacement Program	Program to replace aging Passenger Loading Bridges (PLBs) that are nearing the end of their useful life.
Conveyance Replacement Program	Modernize/replace components of escalators, elevators and walkways throughout the airport not covered under other projects.
CUP Boiler Expansion Program	Replacement of aging boilers and pumps with more efficient and higher capacity boilers that will support capacity increase and provide reliability to the facility.
Concourse Sewer Repair	Replace aging infrastructure of the sewer system to help alleviate any sewer failures and protect the structure of the building.

Refresh for Tech Infrastructure	The Technology Infrastructure program are projects setup to address all major and critical technology infrastructure. This infrastructure is the foundation to many services that DEN supplies to our guests, customers, and internal business units. Projects include upgrade or replace data center equipment, servers, storage, local network devices, phones, as well as fund cybersecurity initiatives.
Radio Encryption	Replace radio frequency distribution system, a system that handles critical calls, with a newer model to standardize the campus.
Gate Expansion Phase 1 (non-Great Hall Phase III)	Concourse expansion to accommodate future growth by adding additional gates.
Gate Expansion Phase 2, aka Concourse Renewal (non-Great Hall Phase III)	Program to modernize concourses, make facility adjustments and renew public spaces.
Great Hall Program (non-Great Hall Phase III)	Great Hall expansion and modernization to accommodate future growth.
Parking Garage Repairs	Program for the repair, maintenance and preservation of the parking structures, main terminal roadways, bridges and associated infrastructure.
Annual Roads Pavement Rehab	Annual program to repair service roads based on condition assessment. Pavement rehab projects include but are not limited to replacing concrete slabs, spall repairs, guardrail repair and asphalt overlays. Prioritization determined annually based on distress and other factors.
Concourse Fire Pumps	Replace fire pumps with new fire pumps. These are critical for Concourse Expansion and overall life safety of the complex.
Other Terminal Projects	Various other Terminal projects. E.g. Signage and Wayfinding, Utilities Infrastructure Update, Staff Support/Relocation, Building Repair/Replacement.

CITY AND COUNTY OF DENVER, COLORADO
 FOR AND ON BEHALF OF ITS DEPARTMENT OF AVIATION
 AIRPORT SYSTEM INTERIM NOTE
 SUBORDINATE OBLIGATION

TABLE OF CONTENTS

ARTICLE I DEFINITIONS, RATIFICATION, EFFECTIVE DATE, PUBLICATION AND AUTHENTICATION.....	5
Section 101. Supplemental Subordinate Ordinance.....	5
Section 102. Meanings and Construction.....	5
A. <u>General Subordinate Bond Ordinance Definitions</u>	5
B. <u>Additional Definitions</u>	5
Section 103. Ratification.....	9
A. <u>Approved Projects</u>	9
B. <u>Interim Note Subordinate Obligation</u>	9
Section 104. Ordinance an Irrepealable Contract.....	9
Section 105. Repealer.....	9
Section 106. Severability.....	9
Section 107. Effective Date.....	9
Section 108. Publications.....	10
Section 109. Recordation and Authentication.....	10
Section 110. Delegated Powers.....	10
A. <u>Basic Agreements</u>	10
B. <u>Certificates and Agreements</u>	10
C. <u>Costs</u>	10
ARTICLE II COUNCIL’S DETERMINATIONS, NECESSITY OF INTERIM NOTE SUBORDINATE OBLIGATION, NOTE PURCHASE AGREEMENT, INTERIM NOTE, APPROVED PROJECTS, TERMS OF INCURRENCE OF SUBORDINATE OBLIGATION.....	10
Section 201. Authority for this Ordinance.....	10
Section 202. Necessity and Approval of Interim Note Subordinate Obligation, Note Purchase Agreement, Interim Note, and Approved Projects.....	11
Section 203. Terms of Interim Note Subordinate Obligation.....	11
Section 204. Interim Note Subordinate Obligation.....	11
ARTICLE III AUTHORIZATION, TERMS, AND INCURRENCE OF INTERIM NOTE SUBORDINATE OBLIGATION.....	11
Section 301. Authorization of Interim Note Subordinate Obligation.....	11
Section 302. Details of Interim Note.....	12
A. <u>Interim Note</u>	12
B. <u>Interim Note and Proceeds</u>	12
C. <u>Fees/Costs; Physical Form; Transfers</u>	13
Section 303. Payment of Interim Note.....	13
Section 304. Execution, Recordation and Authentication.....	14
Section 305. Note Form.....	15
Section 306. Substitution or Extension of Certain Agreements.....	15

This Table of Contents is not a part of the Interim Note Supplemental Subordinate Bond Ordinance

ARTICLE IV USE OF PROCEEDS	15
Section 401. Disposition of Proceeds	15
A. <u>Interim Note Cost of Issuance Account</u>	15
B. <u>Approved Project Account</u>	16
Section 402. Other Transfers	16
ARTICLE V MISCELLANEOUS	16
Section 501. Tax Covenants	16
A. <u>General Covenants</u>	16
B. <u>Rebate</u>	17
C. <u>Tax Certificate</u>	18
Section 502. Preservation of Enterprise Status	18
Section 503. Applicability of General Subordinate Bond Ordinance.....	18