

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2023

COUNCIL BILL NO. CB23-0656
COMMITTEE OF REFERENCE:
Finance & Governance

5
6 **A BILL**

7 **For an ordinance concerning the approval of two alternate forms of an annually**
8 **renewable Fourth Amended and Restated Build to Suit Lease Purchase**
9 **Agreement No. 2023 in respect of the Wellington E. Webb Office Building**
10 **between Civic Center Office Building Inc., as landlord or lessor, and the City and**
11 **County of Denver, Colorado as tenant or lessee; authorizing the execution of a**
12 **Fourth Amended and Restated Build to Suit Lease Purchase Agreement No. 2023**
13 **and documents related thereto authorizing officials of the City and County of**
14 **Denver to take all actions necessary to carry out the transactions contemplated**
15 **hereby, including selection of one of the two alternate forms of lease purchase**
16 **agreements and related documents referenced above depending on future**
17 **market conditions; ratifying actions previously taken; providing other matters**
18 **relating thereto; and providing the effective date thereof.**

19 **WHEREAS**, the City and County of Denver, Colorado (the “City”), is a municipal corporation
20 duly organized and existing as a home-rule city under Article XX of the Colorado Constitution, and
21 under the Charter of the City (references to provisions therein being to the 1960 Compilation, as
22 amended), and is a political subdivision of the State of Colorado (the “State”); and

23 **WHEREAS**, subject to certain exceptions, all legislative powers possessed by the City,
24 conferred by Article XX of the State Constitution, or contained in the Charter, as either has from time
25 to time been amended, or otherwise existing by operation of law, are vested in the City Council of
26 the City (the “Council”); and

27 **WHEREAS**, the City is authorized, pursuant to Article XX of the State Constitution and the
28 Charter and its plenary grant of powers as a home rule city, to enter into lease purchase agreements
29 in order to lease and acquire land, buildings, equipment and other property for governmental
30 purposes and to purchase, receive, hold and enjoy or sell and dispose of, as lessor or as lessee,
31 real and personal property; and

32 **WHEREAS**, Civic Center Office Building Inc. (the “Corporation”), a Colorado nonprofit
33 corporation, as landlord or lessor, and the City, as tenant or lessee, have heretofore entered into an
34 Amended and Restated Build to Suit Lease Purchase Agreement dated as of July 15, 2000, on file
35 with the City Clerk for the City and County of Denver (the “Clerk”) in Clerk’s Filing No. 00-145-A (the
36 “2000 Lease”), which 2000 Lease was amended and restated by a Second Amended and Restated

1 Build to Suit Lease Purchase Agreement No. 2003C dated as of July 15, 2003, in Clerk's Filing No.
2 00-145-D (the "2003C Lease"), which 2003 Lease was amended and restated by a Third Amended
3 and Restated Build to Suit Lease Purchase Agreement No. 2008A dated as of October 1, 2008, in
4 Clerk's Filing No. 00-145-G (the "2008A Lease"); and

5 **WHEREAS**, the Corporation has determined that the original project (the "Original Project")
6 leased under the 2000 Lease, the 2003C Lease and 2008A Lease requires the acquisition,
7 construction, rehabilitation and equipping of certain improvements (the "Improvements Project") and
8 it is intended that such Improvements Project will be funded from the proceeds of either alternative
9 of the certificates described below; and

10 **WHEREAS**, the Corporation has further determined that it may be economically
11 advantageous to effect a certain refunding transaction in respect of a Second Amended and
12 Restated Mortgage and Indenture of Trust dated as of October 1, 2008 (the "2008A Indenture"), in
13 Clerk's Filing No. 00-145-H, between the Corporation and Zions Bancorporation, National
14 Association, as trustee thereunder, under which Certificates of Participation, Series 2008A (the
15 "2008A Certificates") evidencing proportionate interests in the Corporation's assignment to the
16 Trustee of its rights to receive certain revenues, including Base Rentals, under the 2008A Lease
17 were executed and delivered by the Trustee and, if market conditions are favorable, the Corporation
18 intends to provide the economic advantages of a refunding and improvements transaction to the
19 City through restructured Base Rentals under the Refunding and New Money 2023 Lease (as
20 defined below); and

21 **WHEREAS**, depending on market conditions, the Corporation and the City will elect to either
22 (1) fund only the Improvements Project through the execution and delivery of "Additional Certificates"
23 (as defined in the 2008A Indenture) (the "New Money Only Option") or (2) fund the Improvements
24 Project and refund the 2008A Certificates (the "Refunding and New Money Option"); and

25 **WHEREAS**, in order to provide for the restructuring of the Base Rentals due under the 2008A
26 Lease and other amendments to the 2008A Lease required to accomplish either the New Money
27 Only Option or the Refunding and New Money Option, it is necessary that the 2008A Lease be
28 amended and restated in one of the two forms of Fourth Amended and Restated Build to Suit Lease
29 Purchase Agreements No. 2023 described below; and

1 **WHEREAS**, in connection with the Refunding and New Money Option, there have been filed
2 on June 8, 2023 in the office of the Clerk the following in substantially final forms:

3 (1) Fourth Amended and Restated Build to Suit Lease Purchase Agreement
4 No. 2023 to be dated its date of execution and delivery, in Clerk's Filing No. 00-145-J
5 (the "Refunding and New Money 2023 Lease") between the Corporation, as landlord
6 or lessor, and the City, as tenant or lessee, in respect of the Leased Property, including
7 both the Original Project and the Improvements Project as defined in the Refunding
8 and New Money 2023 Lease; and

9 (2) Third Amended and Restated Mortgage and Indenture of Trust to be
10 dated its date of execution and delivery, in Clerk's Filing No. 00-145-K (the "Refunding
11 and New Money 2023 Indenture"), between the Corporation and Zions Bancorporation,
12 National Association (the "Trustee") under which Certificates of Participation, Series
13 2023 (the "Refunding and New Money 2023 Certificates") in the maximum aggregate
14 principal amount of \$300 million evidencing proportionate interests in the Trustee's
15 rights to receive certain revenues, including Base Rentals, under the Refunding and
16 New Money 2023 Lease may be executed and delivered by the Trustee; and

17 (3) Preliminary Official Statement expected to be dated July __, 2023 in
18 Clerk's Filing No. 00-145-L (the "Refunding and New Money Preliminary Official
19 Statement") relating to the Refunding and New Money 2023 Lease, which shall also
20 constitute the form of a related final Official Statement (the "Refunding and New Money
21 Official Statement") with the Continuing Disclosure Undertaking dated its date of
22 execution and delivery attached as Appendix F to the Preliminary Official Statement
23 (the "Refunding and New Money Continuing Disclosure Undertaking") to be executed
24 by the City pursuant to Rule 15c2-12 promulgated under the Securities Act of 1934
25 (the "Rule"); and

26 **WHEREAS**, in connection with the New Money Only Option, there have been filed on June
27 8, 2023 in the office of the Clerk the following in substantially final forms:

28 (1) Fourth Amended and Restated Build to Suit Lease Purchase Agreement
29 No. 2023 to be dated its date of execution and delivery, in Clerk's Filing No. 00-145-M
30 (the "New Money Only 2023 Lease") between the Corporation, as landlord or lessor,

1 and the City, as tenant or lessee, in respect of the Leased Property, including both the
2 Original Project and the Improvements Project, as defined in the New Money Only
3 2023 Lease; and

4 (2) Second Supplement and Amendment to Second Amended and Restated
5 Mortgage and Indenture of Trust to be dated its date of execution and delivery, in
6 Clerk's Filing No. 00-145-N (the "New Money Only Supplemented 2008A Indenture"),
7 between the Corporation and Zions Bancorporation, National Association (the
8 "Trustee") under which Certificates of Participation, Series 2023 (the "New Money Only
9 2023 Certificates") in the maximum aggregate principal amount of \$134.5 million
10 evidencing proportionate interests in the Trustee's rights to receive certain revenues,
11 including Base Rentals, under the New Money Only 2023 Lease may be executed and
12 delivered by the Trustee; and

13 (3) Preliminary Official Statement expected to be dated July __, 2023 in
14 Clerk's Filing No. 00-145-O (the "New Money Only Preliminary Official Statement")
15 relating to the New Money Only 2023 Lease, which shall also constitute the form of a
16 related final Official Statement (the "New Money Only Official Statement") with the
17 Continuing Disclosure Undertaking dated its date of execution and delivery attached
18 as Appendix F (the "New Money Only Continuing Disclosure Undertaking") to be
19 executed by the City pursuant to the Rule; and

20 **WHEREAS**, depending on whether the Manager of Finance selects the Refunding and New
21 Money Option or the New Money Only Option, either the Refunding and New Money 2023
22 Certificates or the New Money Only 2023 Certificates are expected to be sold on July __, 2023,
23 pursuant to either the Refunding and New Money 2023 Indenture or the New Money Only
24 Supplemented 2008A Indenture and either the Refunding and New Money Official Statement or the
25 New Money Only Official Statement, as applicable.

26 **NOW THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**
27 **DENVER:**

28 **Section 1. Ratification of Actions.** All action heretofore taken, not inconsistent with the
29 provisions of this ordinance, by the City or its officers, directed toward the leasing of the Leased
30 Property are hereby ratified, approved and confirmed.

1 **Section 2. Findings; Authorizations.** This ordinance is adopted pursuant to the City's
2 powers as a home rule city organized and operating under the Charter and Article XX of the State
3 Constitution; and the City hereby determines that each and every matter and thing as to which
4 provision is made herein is necessary in order to carry out and to effect the purposes hereof.

5 The Council hereby finds and determines, pursuant to the City's home rule powers, that
6 conveying the Improvements Project to the Corporation and the leasing of the Leased Property
7 (including the Original Project and the Improvements Project) from the Corporation under the terms
8 and provisions set forth in either the Refunding and New Money 2023 Lease or the New Money Only
9 2023 Lease is necessary, convenient, and in furtherance of the governmental purposes of the City
10 and are in the best interests of the City and its residents.

11 The Council hereby authorizes the conveyance of the Improvements Project to the
12 Corporation and the acquisition, construction, rehabilitation and equipping by the Corporation of the
13 Improvements Project and leasing of the Leased Property from the Corporation under and pursuant
14 to the terms and provisions of the Refunding and New Money 2023 Lease or the New Money Only
15 2023 Lease, as applicable.

16 **Section 3. Approvals; Execution of Documents; Authorized Officers.** The Refunding
17 and New Money 2023 Lease, the New Money Only 2023 Lease, the Refunding and New Money
18 Continuing Disclosure Certificate and the New Money Only Continuing Disclosure Certificate in the
19 forms substantially as filed in Clerk's Filing No. 00-145-J, Clerk's Filing No. 00-145-M, Clerk's Filing
20 No.00-145-L and Clerk's Filing No. 00-145-O, respectively, are in all respects approved. The Mayor
21 is hereby authorized and directed to execute and deliver, and the Clerk is hereby authorized and
22 directed to affix the seal of the City to, and attest, either the Refunding and New Money 2023 Lease
23 or the New Money Only 2023 Lease, as selected by the Manager of Finance pursuant to Section 8
24 in the form substantially as filed with the Clerk in Clerk's Filing No. 00-145-J or Clerk's Filing No. 00-
25 145-M. The Manager of Finance is hereby authorized and directed to execute and deliver either the
26 Refunding and New Money Continuing Disclosure Certificate or the New Money Only Continuing
27 Disclosure Certificate, as selected by the Manager of Finance pursuant to Section 8 in the form
28 substantially as filed with the Clerk in Clerk's Filing No. 00-145-L or Clerk's Filing No. 00-145-O.

29 **Section 4. No General Obligation or Other Indebtedness.** The obligation of the City to
30 make rental payments under either the Refunding and New Money 2023 Lease or the New Money

1 Only 2023 Lease is subject to annual appropriation by the Council and constitutes an undertaking of
2 the City to make current expenditures. No provision of this ordinance, the Refunding and New
3 Money 2023 Lease, the New Money Only 2023 Lease, the Refunding and New Money 2023
4 Indenture, the New Money Only Supplemented 2008A Indenture, the Refunding and New Money
5 2023 Certificates or the New Money Only 2023 Certificates shall be construed as constituting or
6 giving rise to a general obligation or other indebtedness or a multiple fiscal year direct or indirect
7 debt or other financial obligation of the City within the meaning of any home rule, constitutional or
8 statutory debt limitation nor a mandatory charge or requirement against the City in any ensuing fiscal
9 year beyond the current fiscal year. The City may choose to not renew, and thereby terminate its
10 obligations under either the Refunding and New Money 2023 Lease or the New Money Only 2023
11 Lease, as applicable, on an annual basis.

12 **Section 5. Reasonable Base Rentals.** The Council hereby determines and declares that
13 the Base Rentals due under either the Refunding and New Money 2023 Lease or the New Money
14 Only 2023 Lease do not exceed a reasonable amount so as to place the City under an economic
15 compulsion to renew and therefore not to terminate either the Refunding and New Money 2023
16 Lease or the New Money Only 2023 Lease or to exercise its option to purchase the Leased Property,
17 pursuant to either the Refunding and New Money 2023 Lease or the New Money Only 2023 Lease,
18 as applicable.

19 **Section 6. Base Rentals Under Either Refunding and New Money 2023 Lease or the**
20 **New Money Only 2023 Lease for Fiscal Year 2023.** It is not currently necessary for the City
21 Council to appropriate additional moneys to pay any Base or Additional Rentals that may be due
22 under either the Refunding and New Money 2023 Lease or the New Money Only 2023 Lease in
23 fiscal year 2023. The Base Rentals and Additional Rentals for fiscal year 2023 have been
24 appropriated, however, final fiscal year 2023 rental expenses cannot be definitively calculated at
25 this time to determine whether further rentals appropriations will be required for the Base or
26 Additional Rentals Fund under either the Refunding and New Money 2023 Indenture or the New
27 Money Only Supplemented 2008A Indenture.

28 The Manager of Finance of the City is hereby authorized and directed to make such book and
29 record entries and to do such other things as may be necessary to accomplish the purposes of this
30 Section 6 and the Auditor of the City is hereby authorized and directed to perform any related auditing
31 requirements.

1 **Section 7. Consent to Sale of Refunding and New Money 2023 Certificates or New**

2 **Money Only 2023 Certificates and Use of the Refunding and New Money Official Statement or**

3 **New Money Only Official Statement.** The Council hereby acknowledges and consents to (1) the

4 Refunding and New Money 2023 Indenture, the New Money Only Supplemented 2008A Indenture,

5 the Refunding and New Money Continuing Disclosure Undertaking and the New Money Only

6 Continuing Disclosure Undertaking in substantially the forms of the Refunding and New Money

7 2023 Indenture filed with the Clerk in Clerk's Filing No. 00-145-K, the New Money Supplemented

8 2008A Indenture filed with the Clerk in Clerk's Filing No. 00-145-N, the Refunding and New Money

9 Only Continuing Disclosure Undertaking filed with the Clerk in Clerk's Filing No. 00-145-L and the

10 New Money Only Continuing Disclosure Undertaking filed with the Clerk in Clerk's Filing No. 00-

11 145-O, (2) the execution and delivery by the Trustee, and the sale, of the Refunding and New Money

12 2023 Certificates or the New Money Only 2023 Certificates, all pursuant to either the Refunding and

13 New Money 2023 Indenture or the New Money Supplemented 2008A Indenture, (3) the distribution

14 of the Refunding and New Money Preliminary Official Statement or the New Money Only Preliminary

15 Official Statement, in substantially the form of the Refunding and New Money Preliminary Official

16 Statement filed with the Clerk in Clerk's Filing No. 00-145-L or the New Money Only Preliminary

17 Official Statement filed with the Clerk in Clerk's Filing No. 00-145-O and the Refunding and New

18 Money Official Statement or the New Money Only Official Statement to prospective purchasers and

19 purchasers of either the Refunding and New Money 2023 Certificates or the New Money Only 2023

20 Certificates and (4) the execution and delivery of the Refunding and New Money Only Continuing

21 Disclosure Undertaking and the New Money Only Continuing Disclosure Undertaking.

22 The information with respect to the City contained in the Refunding and New Money Official

23 Statement and the New Money Only Official Statement is approved and authorized. The distribution

24 of the information contained in the Refunding and New Money Official Statement or the New Money

25 Only Official Statement with respect to the City is hereby approved.

26 **Section 8. Delegated Powers; Additional Documents.** The Manager of Finance is

27 authorized to select either the Refunding and New Money Option or the New Money Only Option

28 depending on future market conditions. Further the Manager of Finance, the Manager of

29 Transportation and Infrastructure and the Manager of General Services are authorized to perform all

30 of the duties and undertake all of the responsibilities set forth as the duties and responsibilities of

31 such officials in the Refunding and New Money 2023 Lease, the New Money Only 2023 Lease, the

1 Refunding and New Money 2023 Indenture, the New Money Only Supplemented 2008A Indenture,
2 the Refunding and New Money Continuing Disclosure Agreement, the New Money Only Continuing
3 Disclosure Agreement, and any other document related to either the Refunding and New Money
4 2023 Lease or the New Money Only 2023 Lease depending upon whether the Refunding and New
5 Money Option or the New Money Only Option is selected by the Manager of Finance. The Clerk is
6 hereby authorized and directed to attest all signatures and acts of any official of the City in connection
7 with the matters authorized by this ordinance. The Mayor, the Auditor, the Clerk, the Manager of
8 Transportation and Infrastructure, the Manager of General Services and the Manager of Finance
9 and other officials and employees of the City are hereby authorized to execute and deliver for and
10 on behalf of the City any and all additional certificates, documents, easements, agreements and
11 other papers and to perform all other acts that they may deem necessary or appropriate in order to
12 implement and carry out the transactions and other matters authorized by this ordinance. Such
13 necessary or appropriate actions include, without limitation, the execution and delivery of such
14 certificates and opinions as may be reasonably required by the Trustee, the Corporation, the
15 underwriters for either the Refunding and New Money 2023 Certificates or the New Money Only
16 2023 Certificates, as applicable, or the City's counsel relating to, among other things, the tenure and
17 identity of the officials of the City and the Council, the absence of pending litigation affecting the
18 validity of either the Refunding and New Money 2023 Lease or the New Money Only 2023 Lease,
19 as applicable, federal and state securities laws, and expectations and covenants relating to the
20 excludability from gross income for federal and state income tax purposes of the portion of Base
21 Rentals (as defined in the Refunding and New Money 2023 Lease or the New Money Only 2023
22 Lease) designated in either the Refunding and New Money 2023 Lease or the New Money Only
23 2023 Lease, as applicable, and paid as interest, all as contemplated by this ordinance and are not
24 inconsistent with this ordinance.

25 **Section 9. Electronic Signatures.** Any of the agreements, instruments, certificates or
26 opinions authorized or required under this ordinance and requiring a signature may be signed
27 electronically by the City and any parties thereto in the manner specified by the City. The parties to
28 any such agreements, instruments, certificates or opinions shall not deny the legal effect or
29 enforceability of such agreements, instruments, certificates or opinions solely because they are in
30 electronic form, were signed electronically, or were formed using an electronic record.

Section 10. Severability. If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

Section 11. Effective Date. This ordinance shall take effect as provided in the Charter of the City.

Section 12. Publications. The bill for this ordinance and this ordinance are hereby authorized and directed to be published as required by the Charter.

Section 13. Recordation and Authentication. The ordinance shall be recorded after its passage in the ordinance record of the City, kept for that purpose, and authenticated by the signature of the Mayor and attested and countersigned by the Clerk.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK

1 COMMITTEE APPROVAL DATE: May 23, 2023
2 MAYOR-COUNCIL DATE: May 30, 2023 by Consent
3 PASSED BY THE COUNCIL: _____
4 _____ - 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: Sherman & Howard LLC DATE: June 8, 2023
11 REVIEWED BY: Laurie J. Heydman, Assistant City Attorney DATE: June 8, 2023
12
13 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the Office of the
14 City Attorney. We find no irregularity as to form and have no legal objection to the proposed
15 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
16 3.2.6 of the Charter.
17
18 Kerry Tipper, Denver City Attorney
19
20 BY: _____, Assistant City Attorney DATE: _____
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40