

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2018

COUNCIL BILL NO. CB18-0736
Finance & Governance

A BILL

For an ordinance concerning the approval of Facilities Lease No. 2018A (Colorado Convention Center Expansion Project) between the City and County of Denver, as lessor, and the Denver Public Facilities Leasing Trust 2018A, as lessee, of certain real property constituting a portion of the existing Colorado Convention Center and an annually renewable Lease Purchase Agreement No. 2018A (Colorado Convention Center Expansion Project) between the Denver Public Facilities Leasing Trust 2018A, as lessor, and the City and County of Denver, as lessee, for such property; authorizing the execution of such documents and other agreements and documents related thereto; authorizing officials of the City and County of Denver to take all action necessary to carry out the transactions contemplated hereby; ratifying action previously taken; creating certain funds and accounts and making certain related appropriations; and providing other matters relating thereto.

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

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

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

WHEREAS, the City owns the Colorado Convention Center and the related land on which the Colorado Convention Center is located, including all of the buildings and related parking, paving, drainage and landscaping improvements located on such land; the City intends to expand and improve the existing Colorado Convention Center (the “Colorado Convention Center Expansion Project”) using various sources of financing, including lease purchase financing; in respect of this lease purchase financing transaction, the City’s ownership interest in portions of the rooftop of the existing Colorado Convention Center, the existing space and improvements currently located thereon and certain of the expanded and newly created third or rooftop expansion level and other improved spaces constituting portions of the Colorado Convention Center Expansion Project are to constitute the “Facilities” to be leased, including a license for all necessary access to the Facilities, by the City to the Trust as described and defined in the 2018A Facilities Lease described and defined herein, leased by the Trust to the City pursuant to the 2018A Lease described and defined herein;

1 **WHEREAS**, the City has determined to enter into the 2018A Facilities Lease described and defined
2 herein with the Denver Public Facilities Leasing Trust 2018A (the “Trust”), a trust to be created by the
3 Trustee, pursuant to the 2018A Indenture, each as described and defined herein, under which the City, as
4 lessor, will lease the Facilities to the Trust, as lessee;

5 **WHEREAS**, the City has determined and intends to enter into the 2018A Lease described and
6 defined herein with the Trust, under which the City, as lessee, agrees to lease, with an option to purchase,
7 the Facilities from the Trust, as lessor, the leasehold interest of the Trust in the Facilities created under the
8 2018A Facilities Lease, such leasehold interest constituting the Leased Property under the 2018A Lease;

9 **WHEREAS**, there have been filed on July 18, 2018, in the office of the City Clerk for the City and
10 County of Denver (the “Clerk”) the substantially final forms of the following:

11 (1) Facilities Lease No. 2018A (Colorado Convention Center Expansion Project) including
12 Exhibits A and B thereto to be dated its date of execution and delivery (the “2018A Facilities Lease”),
13 in Clerk’s Filing No. 2018-0339-001, between the City, as lessor, and the Trust, as lessee; and

14 (2) Lease Purchase Agreement No. 2018A (Colorado Convention Center Expansion Project)
15 including Exhibits A through F thereto to be dated its date of execution and delivery (the “2018A
16 Lease”), in Clerk’s Filing No. 2018-0339-002, between the Trust, as lessor, and the City, as lessee;
17 and

18 draft forms of the following:

19 (3) Declaration and Indenture of Trust (Denver Public Facilities Leasing Trust 2018A) to be
20 dated its date of execution and delivery (the “2018A Indenture”), in Clerk’s Filing No. 2018-0339-003,
21 entered into by ZB, National Association, dba Zions Bank, Denver, Colorado, as trustee (the
22 “Trustee”), pursuant to which the Trust will be created and under which Certificates of Participation,
23 Series 2018A (Colorado Convention Center Expansion Project) in the aggregate maximum principal
24 amount of \$129,000,000 (the “2018A Certificates”) evidencing proportionate interests in the Trust’s
25 rights to receive certain revenues, including Base Rentals, under the 2018A Lease, are to be
26 executed and delivered by the Trustee; and

27 (4) Preliminary Official Statement, in Clerk’s Filing No. 2018-0339-004 (the “Preliminary
28 Official Statement”), relating to the 2018A Lease, which shall also constitute the form of a related
29 final Official Statement (the “Official Statement”);

30 **WHEREAS**, the 2018A Certificates are to be sold pursuant to the 2018A Indenture, the Preliminary
31 Official Statement and a Certificate Purchase Agreement to be entered into between the Trust and the
32 purchasers of the 2018A Certificates as identified in the Preliminary Official Statement; and

33 **WHEREAS**, new Fund numbers are required to accept and appropriate the proceeds of the 2018A
34 Certificates requisitioned from time to time by the City from the Trustee pursuant to the terms of the 2018A
35 Lease and the 2018A Indenture to fund capital expenditures for the acquisition, construction, improvement
36 and equipping of portions of the Colorado Convention Center Expansion Project.

37

1 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

2 **Section 1. Ratification of Actions.** All action heretofore taken, not inconsistent with the
3 provisions of this ordinance, by the City or its officers, directed toward the leasing by the Trust from the City
4 of the Facilities pursuant to the 2018A Facilities Lease and the leasing by the City from the Trust of the
5 leasehold interest in the Facilities pursuant to the 2018A Lease is hereby ratified, approved and confirmed.

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

10 The Council hereby finds and determines, pursuant to the City's home rule powers, that the following
11 actions are necessary, convenient and in furtherance of the governmental purposes of the City and are in
12 the best interests of the City and its residents:

- 13 (1) the leasing of the Facilities to the Trust pursuant to the 2018A Facilities Lease; and
- 14 (2) the leasing of the Facilities from the Trust pursuant to the terms and provisions of the
15 2018A Lease.

16 The Council hereby authorizes (1) the leasing of the Facilities to the Trust pursuant to the 2018A
17 Facilities Lease and (2) the leasing of the Leased Property (the leasehold interest of the Trust in the
18 Facilities) from the Trust under and pursuant to the terms and provisions of the 2018A Lease.

19 **Section 3. Approvals; Execution of Documents; Authorized Officers.** The 2018A Facilities
20 Lease and the 2018A Lease in substantially the forms as filed in Clerk's Filing No. 2018-0339-001 and
21 Clerk's Filing No. 2018-0339-002, respectively, are in all respects approved. The Mayor is hereby
22 authorized and directed to execute and deliver, and the Clerk is hereby authorized and directed to affix the
23 seal of the City to, and attest, the 2018A Facilities Lease and the 2018A Lease, in substantially the forms as
24 filed with the Clerk in Clerk's Filing No. 2018-0339-001 and Clerk's Filing No. 2018-0339-002, respectively.

25 **Section 4. No General Obligation or Other Indebtedness.** The obligation of the City to make
26 rental payments under the 2018A Lease is subject to annual appropriation by the Council and constitutes an
27 undertaking of the City to make current expenditures. No provision of this ordinance, the 2018A Facilities
28 Lease, the 2018A Lease, the 2018A Indenture or the Series 2018A Certificates shall be construed as
29 constituting or giving rise to a general obligation or other indebtedness or a multiple fiscal year direct or
30 indirect debt or other financial obligation of the City within the meaning of any home rule, constitutional or
31 statutory debt limitation nor a mandatory charge or requirement against the City in any ensuing fiscal year
32 beyond the current fiscal year. On an annual basis the City may choose to not renew, and thereby
33 terminate its obligations under, the 2018A Lease.

34 **Section 5. Reasonable Rentals.** The Council hereby determines and declares that the Base
35 Rentals due under the 2018A Lease do not exceed a reasonable amount so as to place the City under an
36 economic compulsion (1) to renew and therefore not to terminate the 2018A Lease or (2) to exercise its
37 option to purchase the leasehold interest of the Trust in the Facilities, pursuant to the 2018A Lease.

1 **Section 6. Consent to Sale of 2018A Certificates.** The Council hereby acknowledges and
2 consents to (1) the 2018A Indenture, (2) the execution and delivery by the Trustee of, the form of, and sale
3 of, the 2018A Certificates, all pursuant to the 2018A Indenture, in substantially the form of the 2018A
4 Indenture filed with the Clerk in Clerk's Filing No. 2018-0339-003 and (3) the distribution of the Preliminary
5 Official Statement, in substantially the form filed with the Clerk in Clerk's Filing No. 2018-0339-004, and the
6 Official Statement to prospective purchasers and the purchasers of the 2018A Certificates.

7 The information with respect to the City contained in the Official Statement is approved and
8 authorized. The distribution of the information contained in the Official Statement with respect to the City is
9 hereby approved. The Chief Financial Officer, as the Manager of Finance/*ex officio* Treasurer of the City
10 (the "Chief Financial Officer") is authorized to execute a "deemed final" certificate in respect of the
11 Preliminary Official Statement for the purpose of Rule 15c2-12 under the Securities and Exchange Act of
12 1934 and enter into the Continuing Disclosure Undertaking, the form of which is attached as Appendix E to
13 the Preliminary Official Statement.

14 **Section 7. Additional Documents; Delegated Powers.** The Clerk is hereby authorized and
15 directed to attest all signatures and acts of any official of the City in connection with the matters authorized
16 by this ordinance. Within a reasonable time following the effective date of this Ordinance, the Mayor, the
17 Auditor, the Clerk, the Chief Financial Officer and other officials and employees of the City are hereby
18 authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents
19 and other papers and to perform all other acts that they may deem necessary or appropriate in order to
20 implement and carry out the transactions and other matters authorized by this ordinance. Such necessary
21 or appropriate actions include, without limitation,

22 (1) the execution and delivery by the Chief Financial Officer of a supplement to the Base
23 Rentals Schedule (Exhibit C) of the 2018A Lease prior to the recording of the 2018A Lease in the
24 real estate records, such supplement to evidence the actual Base Rentals due under Lease
25 Purchase Agreement No. 2018A (Colorado Convention Center Expansion Project), within the
26 limitations set forth on the Base Rentals Schedule in the form of the 2018A Lease filed with the Clerk
27 in Clerk's Filing No. 2018-0339-002, and

28 (2) the execution and delivery by the Chief Financial Officer of an amended Legal
29 Description (Exhibit A) to each of the 2018A Lease and the 2018A Facilities Lease upon substantial
30 completion of construction, such amendments to evidence the final legal description of the
31 completed leased property under the 2018A Lease and the filing of such amendments in the real
32 estate records, all within the limitations set forth in the form of the 2018A Lease filed with the Clerk in
33 Clerk's Filing No. 2018-0339-002, and

34 (3) the determination by the Chief Financial Officer of the dated date (which shall be the
35 delivery date) of the 2018A Facilities Lease and the 2018A Lease, and

36 (4) the execution and delivery of such certificates and opinions as may be reasonably
37 required by the City's counsel, the Trustee or the underwriters selected for the sale of the 2018A

Certificates or relating to, among other things, the tenure and identity of the officials of the City and the Council, the absence of pending litigation affecting the validity of the 2018A Facilities Lease and the 2018A Lease, federal and state securities laws, and expectations and covenants relating to the excludability from gross income for federal income tax purposes of the portion of Base Rentals under and as defined in the 2018A Lease designated in the 2018A Lease and paid as interest under the 2018A Lease, all as contemplated by this ordinance and are not inconsistent with this ordinance.

Section 8. Appropriations of Proceeds from 2018A Facilities Lease.

In order to provide for the receipt by the City of the rentals to be paid in advance under the 2018A Facilities Lease on its date of execution and delivery and from time to time by the process of the City’s requisition of moneys from the Trustee pursuant to the terms of the 2018A Lease and the 2018A Indenture, after the Trustee for the Trust has provided for the payment of the costs of execution and delivery of the 2018A Certificates as set forth in the 2018A Indenture, and use such proceeds to fund capital expenditures for the acquisition, construction, improvement and equipping of the Colorado Convention Center Expansion Project, it is necessary that a new Fund, with new Fund numbers, be established for the acceptance and appropriation of such 2018A Facilities Lease proceeds from time to time. A new Fund is hereby established in the Grant/Other Money Project Fund 38430, Accounting No. 38000, for the Colorado Convention Center Expansion Project and the “not to exceed” amount of money following each such designation to such new Fund is hereby appropriated, all as follows:

| <u>Accounting Number</u> Fund | <u>Appropriation Account</u> CCC10 | <u>Expending Authority</u> | <u>Not to Exceed Amount</u> |
|--------------------------------------|---|---------------------------------------|---------------------------------|
| 38430 | Convention Center Expansion Project | Executive Director of Public Works | \$129,000,000 |

The Chief Financial Officer is hereby authorized and directed to make such book and record entries and to do such other things as may be necessary to accomplish the purposes of this Ordinance.

Section 9. 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 10. Effective Date. This ordinance shall take effect as provided in the Charter of the City.

Section 11. Publications. The bill for this ordinance and this ordinance are hereby authorized and directed to be published as required by the Charter.

Section 12. 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.

1 COMMITTEE APPROVAL DATE: July 10, 2018

2 MAYOR-COUNCIL DATE: July 17, 2018

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: Becker Stowe Partners LLC DATE: July 19, 2018

11 REVIEWED BY: Laurie J. Heydman, Assistant City Attorney DATE: July 19, 2018

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

15 Kristin M. Bronson, Denver City Attorney

16 BY:  _____, Assistant City Attorney DATE: Jul 19, 2018