

BY AUTHORITY

1
2 ORDINANCE NO. _____
3 SERIES OF 2010

COUNCIL BILL NO. CB10-0821
COMMITTEE OF REFERENCE:
Government Affairs & Finance

A BILL

6 **For an ordinance authorizing the exercise of purchase options under existing**
7 **lease purchase agreements; authorizing the sale by the City and County of**
8 **Denver of certain real property described as the Wastewater Property and the**
9 **Roslyn Property and approval of an annually renewable Lease Purchase**
10 **Agreement No. 2010B (Wastewater/Roslyn Properties) between the**
11 **Wastewater/Roslyn Properties Leasing Trust 2010B, a trust to be created, as**
12 **lessor, and the City and County of Denver, as lessee; authorizing the**
13 **execution of Quitclaim Deeds in respect of the Wastewater Property and the**
14 **Roslyn Property, a Lease Purchase Agreement and other documents related**
15 **thereto; authorizing officials of the City and County of Denver to take all**
16 **action necessary to carry out the transactions contemplated hereby; ratifying**
17 **action previously taken; providing other matters relating thereto; and**
18 **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
25 time to time been amended, or otherwise existing by operation of law, are vested in the City
26 Council of 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
29 agreements in order to lease and acquire land, buildings, equipment and other property for
30 governmental purposes and to purchase, receive, hold and enjoy or sell and dispose of, as lessor
31 or as lessee, real and personal property; and

1 WHEREAS, the City, as lessee, has heretofore entered into the following Lease Purchase
2 Agreements:

3 (1) Lease Purchase Agreement (2000 West Third Avenue Property) dated as of
4 March 1, 2001 (the "2001A Lease"), between Denver Public Facilities Leasing Trust 2001A
5 (the "2001A Trust"), as landlord or lessor, and the City, as tenant or lessee; and

6 (2) Lease Purchase Agreement No. 2001B (5440 Roslyn/Fire Stations 1, 10 and
7 15/2001B Fire Trucks) dated as of October 15, 2001 (the "2001B Lease"), between Denver
8 Capital Leasing Corporation ("DCLC"), as lessor, and the City, as lessee; and

9 (3) Build to Suit Lease Purchase Agreement No. 2001C (African American
10 Research Library) dated as of November 1, 2001 (the "2001C Lease" and, collectively, with
11 the 2001A Lease and the 2001B Lease, the "2001 Leases"), between DCLC, as lessor, and
12 the City, as lessee; and

13 WHEREAS, the City was granted an option to purchase the "Leased Property" as defined
14 under each of the 2001 Leases (the "2001 Leased Property"), pursuant to the terms and conditions
15 stated in the 2001 Leases (the "2001 Purchase Options"); and

16 WHEREAS, certain of the 2001 Leased Property is generally described as the Wastewater
17 Property (site and building located thereon) and the Roslyn Property (site and multiple buildings
18 and other facilities located thereon), collectively referred to herein as the Wastewater/Roslyn
19 Properties; and

20 WHEREAS, pursuant to the 2010B Indenture, as hereinafter defined, a Trust to be
21 denominated the Wastewater/Roslyn Properties Leasing Trust 2010B (the "2010B Trust") is to be
22 created; and

1 WHEREAS, there have been filed on September 29, 2010, in the office of the City Clerk for
2 the City and County of Denver (the "Clerk") the substantially final forms of the following:

3 (1) Quitclaim Deed to be dated its date of execution and delivery (the
4 "Wastewater Property Quitclaim Deed"), in Clerk's Filing No. 10-1001, under which the City
5 shall convey the Wastewater Property to the Trust; and

6 (2) Quitclaim Deed to be dated its date of execution and delivery (the "Roslyn
7 Property Quitclaim Deed" and, collectively, with the Wastewater Property Quitclaim Deed,
8 the "Quitclaim Deeds"), in Clerk's Filing No. 10-1001-A, under which the City shall convey
9 the Roslyn Property to the Trust; and

10 (3) Lease Purchase Agreement No. 2010B (Wastewater/Roslyn Properties)
11 including Exhibits A through D thereto to be dated its date of execution and delivery (the
12 "2010B Lease"), in Clerk's Filing No. 10-1001-B, between the Trust, as lessor, and the City,
13 as lessee; and

14 (4) Declaration and Indenture of Trust (Wastewater/Roslyn Properties Leasing
15 Trust 2010B) to be dated its date of execution and delivery (the "2010B Indenture"), in
16 Clerk's Filing No. 10-1001-C, entered into by Zions First National Bank, Denver, Colorado,
17 as trustee (the "Trustee"), under which (a) the Trust is to be created as described above and
18 (b) Certificates of Participation, Series 2010B (the "2010B Certificates"), in the aggregate
19 maximum principal amount of \$36,920,000 evidencing proportionate interests in the Trust's
20 rights to receive certain revenues, including Base Rentals, under the 2010B Lease are to be
21 executed and delivered by the Trustee; and

22 (5) Preliminary Official Statement, in Clerk's Filing No. 10-1001-D (the
23 "Preliminary Official Statement"), relating to the 2010B Lease, which shall also constitute the
24 form of a related final Official Statement (the "Official Statement"); and

1 WHEREAS, the City has determined that it is convenient and in the best interests of the City
2 that the City (a) exercise its 2001 Purchase Options, (b) upon the acquisition by the City of title to
3 the 2001 Leased Property, execute and deliver the Quitclaim Deeds in respect of the
4 Wastewater/Roslyn Properties and (c) enter into the 2010B Lease in order to lease the
5 Wastewater/Roslyn Properties (collectively the “2010B Leased Property”) from the Trust, for use by
6 the City; and

7 WHEREAS, none of the 2001 Leased Property, other than the Wastewater/Roslyn
8 Properties, shall constitute part of the 2010B Leased Property; and

9 WHEREAS, the 2010B Certificates are expected to be sold pursuant to the 2010B Indenture
10 and the Preliminary Official Statement.

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

12 **Section 1. *Ratification of Actions.*** All action heretofore taken, not inconsistent with the
13 provisions of this ordinance, by the City or its officers, directed toward the exercise of the City’s
14 2001 Purchase Options, the sale and conveyance of the Wastewater/Roslyn Properties and the
15 leasing by the City from the Trust of the Wastewater/Roslyn Properties pursuant to the 2010B
16 Lease are hereby ratified, approved and confirmed.

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

21 The Council hereby finds and determines, pursuant to the City’s home rule powers, that the
22 following actions are necessary, convenient and in furtherance of the governmental purposes of
23 the City and are in the best interests of the City and its residents:

- 24 (1) the exercise of the 2001 Purchase Options; and

1 (2) the conveyance by the City of its ownership interest in the Wastewater/Roslyn
2 Properties pursuant to the Quitclaim Deeds; and

3 (3) the leasing of the Wastewater/Roslyn Properties pursuant to the terms and
4 provisions of the 2010B Lease.

5 The Council hereby authorizes (1) the exercise of the City's 2001 Purchase Options, (2) the
6 conveyance of the Wastewater/Roslyn Properties to the Trust pursuant to the Quitclaim Deeds and
7 (3) the leasing of the Wastewater/Roslyn Properties from the Trust under and pursuant to the
8 terms and provisions of the 2010B Lease.

9 **Section 3. Approvals; Execution of Documents; Authorized Officers.** The
10 Wastewater Property Quitclaim Deed, the Roslyn Property Quitclaim Deed and the 2010B Lease in
11 substantially the forms as filed in Clerk's Filing No. 10-1001, Clerk's Filing No. 10-1001-A and Clerk's
12 Filing No. 10-1001-B, respectively, are in all respects approved. The Mayor is hereby authorized
13 and directed to execute and deliver, and the Clerk is hereby authorized and directed to affix the
14 seal of the City to, and attest, the Wastewater Property Quitclaim Deed, the Roslyn Property
15 Quitclaim Deed and the 2010B Lease, in substantially the forms as filed with the Clerk in Clerk's
16 Filing No. 10-1001, Clerk's Filing No. 10-1001-A and Clerk's Filing No. 10-1001-B, respectively.

17 **Section 4. No General Obligation or Other Indebtedness.** The obligation of the City to
18 make rental payments under the 2010B Lease is subject to annual appropriation by the Council
19 and constitutes an undertaking of the City to make current expenditures. No provision of this
20 ordinance, the 2010B Lease, the 2010B Indenture or the Series 2010B Certificates shall be
21 construed as constituting or giving rise to a general obligation or other indebtedness or a multiple
22 fiscal year direct or indirect debt or other financial obligation of the City within the meaning of any
23 home rule, constitutional or statutory debt limitation nor a mandatory charge or requirement against
24 the City in any ensuing fiscal year beyond the current fiscal year. The City may choose to not
25 renew, and thereby terminate its obligations under the 2010B Lease on an annual basis.

1 **Section 5. Reasonable Rentals.** The Council hereby determines and declares that the
2 Base Rentals due under the 2010B Lease do not exceed a reasonable amount so as to place the
3 City under an economic compulsion to renew and therefore not to terminate the 2010B Lease or to
4 exercise its option to purchase the ownership interest of the Trust in the Wastewater/Roslyn
5 Properties, pursuant to the 2010B Lease.

6 **Section 6. Consent to Sale of 2010B Certificates.** The Council hereby acknowledges
7 and consents to (1) the 2010B Indenture, (2) the execution and delivery by the Trustee of, the form
8 of, and sale of, the 2010B Certificates, all pursuant to the 2010B Indenture, in substantially the
9 form of the 2010B Indenture filed with the Clerk in Clerk's Filing No. 10-1001-C, and (3) the
10 distribution of the Preliminary Official Statement, in substantially the form filed with the Clerk in
11 Clerk's Filing No. 10-1001-D, and the Official Statement to prospective purchasers and the
12 purchasers of the 2010B Certificates.

13 The information with respect to the City contained in the Official Statement is approved and
14 authorized. The distribution of the information contained in the Official Statement with respect to
15 the City is hereby approved. The Manager of Finance is authorized to execute a "deemed final"
16 certificate in respect of the Preliminary Official Statement for the purpose of Rule 15c2-12 under
17 the Securities and Exchange Act of 1934 and enter into the Continuing Disclosure Undertaking, the
18 form of which is attached as Appendix E to the Preliminary Official Statement.

19 **Section 7. Additional Documents; Delegated Powers.** The Clerk is hereby authorized
20 and directed to attest all signatures and acts of any official of the City in connection with the
21 matters authorized by this ordinance. The Mayor, the Auditor, the Clerk, the Manager of Finance
22 and the Manager of Public Works and other officials and employees of the City are hereby
23 authorized to execute and deliver for and on behalf of the City any and all additional certificates,
24 documents and other papers and to perform all other acts that they may deem necessary or

1 appropriate in order to implement and carry out the transactions and other matters authorized by
2 this ordinance. Such necessary or appropriate actions include, without limitation,

3 (1) the execution and delivery by the Manager of Finance of a supplement to the
4 Base Rentals Schedule (Exhibit C) of the 2010B Lease prior to the recording of the 2010B
5 Lease in the real estate records, such supplement to evidence the actual Base Rentals due
6 under Lease Purchase Agreement No. 2010B, within the limitations set forth on the Base
7 Rentals Schedule in the form of the 2010B Lease filed with the Clerk in Clerk's Filing No.
8 10-1001-B, and

9 (2) the determination by the Manager of Finance of the dated date (which shall be
10 the delivery date) of the Quitclaim Deeds and the 2010B Lease, and

11 (3) the execution and delivery of such certificates and opinions as may be
12 reasonably required by the City's counsel, the Trustee or the underwriter for the 2010B
13 Certificates or relating to, among other things, the tenure and identity of the officials of the
14 City and the Council, the absence of pending litigation affecting the validity of the 2010B
15 Lease, federal and state securities laws, and expectations and covenants relating to the
16 excludability from gross income for federal income tax purposes of the portion of Base
17 Rentals under and as defined in the 2010B Lease designated in the 2010B Lease and paid
18 as interest under the 2010B Lease, all as contemplated by this ordinance and are not
19 inconsistent with this ordinance.

20 **Section 8. Severability.** If any section, paragraph, clause or provision of this ordinance
21 shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such
22 section, paragraph, clause or provision shall not affect any of the remaining provisions of this
23 ordinance.

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

1 **Section 10. Publications.** The bill for this ordinance and this ordinance are hereby
2 authorized and directed to be published as required by the Charter.

3 **Section 11. Recordation and Authentication.** The ordinance shall be recorded after its
4 passage in the ordinance record of the City, kept for that purpose, and authenticated by the
5 signature of the Mayor and attested and countersigned by the Clerk.

6 COMMITTEE APPROVAL DATE: September 23, 2010 by consent.

7 MAYOR-COUNCIL DATE: September 28, 2010

8 PASSED BY THE COUNCIL: _____, 2010

9 _____ - PRESIDENT

10 APPROVED: _____ - MAYOR _____, 2010

11 ATTEST: _____ - CLERK AND RECORDER,
12 EX-OFFICIO CLERK OF THE
13 CITY AND COUNTY OF DENVER

14 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2010; _____, 2010

15 PREPARED BY: PECK, SHAFFER & WILLIAMS LLP and GCR LLP; September 30, 2010

16 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
17 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
18 ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to
19 §3.2.6 of the Charter.

20 David R. Fine, City Attorney

21 BY: _____, Assistant City Attorney DATE: _____, 2010