

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2017

COUNCIL BILL NO. CB16-01342
COMMITTEE OF REFERENCE:
Finance & Governance

A BILL

For an ordinance concerning the Denver Union Station Project and in connection therewith authorizing a loan agreement among the City, Compass Bank, Compass Mortgage Corporation and U.S. Bank National Association to be repaid from a portion of the property and sales tax incremental revenues received by the City pursuant to the Denver Downtown Development Authority Plan of Development for Denver Union Station and other revenues received from certain metropolitan districts for the purpose of refinancing a portion of the outstanding debt of Denver Union Station Project Authority; authorizing the execution of certain agreements and providing other details in connection therewith; ratifying action previously taken relating thereto; providing other matters relating thereto; and providing the effective date thereof.

(1) WHEREAS, the City and County of Denver (the "City"), Colorado (the "State"), is a municipal corporation duly organized and existing as a home rule city under Article XX of the State Constitution and under the Charter of the City (the "Charter") and is a political subdivision of the State; and

(2) WHEREAS, all legislative powers possessed by the City, conferred by Article XX of the State Constitution, except as limited by the Charter, as from time to time amended, or otherwise existing by operation of law, are vested in the Council of the City and County of Denver (the "City Council"); and

(3) WHEREAS, pursuant to an election held on November 4, 2008 (the "Election") and Ordinance No. 400, Series of 2008, the City Council created the Denver Downtown Development Authority (the "DDA"); and

(4) WHEREAS, at the Election, a majority of electors of the DDA qualified to vote and voting thereon, approved the following ballot question:

Shall Denver Downtown Development Authority obligations be increased \$350,000,000 with a repayment cost of \$847,000,000 (maximum) for an approved plan of development, as amended or modified from time to time, such obligations may be incurred for the Authority by the City and County of Denver for the purpose of paying the costs of creating and implementing any plan of development, including operating, maintaining or otherwise providing systems, operations and administration for the purpose of carrying out the objects

1 and purposes for which the Authority was organized, together with all necessary, incidental
2 and appurtenant properties, capital improvements, facilities, equipment, personnel,
3 contractors, consultants and costs and all land, easements and appurtenances necessary
4 or appropriate in connection therewith, such obligations to bear interest at a net effective
5 interest rate not in excess of seven percent (7%) per annum, such interest to be payable at
6 such time or times and which may compound periodically as may be determined by the City
7 Council, such obligations to be incurred or delivered in one series or more at a price above,
8 below or equal to the principal amount of such obligations and on such terms and conditions
9 as the City Council may determine, including provisions for redemption of the obligations
10 prior to maturity with or without payment of premium, and which obligations may be
11 refinanced without additional voter approval, provided that after the issuance of such
12 refinancing obligations the total outstanding principal amount of all obligations issued
13 pursuant to this question does not exceed the maximum amount set forth above, and
14 provided further that all obligations issued pursuant to this question are issued on terms that
15 do not exceed the repayment costs authorized in this question; such obligations shall be
16 paid from any legally available moneys of the Authority or from revenues of the City legally
17 available for the Authority, including the revenues pledged or from taxes pledged pursuant
18 to Section 31-25-807(3)(b) Colorado Revised Statutes or both such revenues and taxes with
19 such limitations as may be determined by the Board of the Authority and the City Council,
20 and shall the proceeds of any such obligations and the proceeds of such taxes, any other
21 revenue used to pay such obligations, and investment income thereon be collected and
22 spent as a voter-approved revenue change, without regard to any spending, revenue-raising
23 or other limitation contained within Article X, Section 20 of the Colorado Constitution, or any
24 other law, and without limiting in any year the amount of other revenues that may be
25 collected and spent by the Authority and the City and County of Denver on behalf of the
26 Authority?; and

27 (5) WHEREAS, pursuant to Ordinance No. 723, Series of 2008, the City Council
28 approved the Denver Union Station Plan of Development dated November 25, 2008 (the “DUS
29 Plan”); and

30 (6) WHEREAS, the DUS Plan authorizes the use of property tax and sales tax increment
31 financing pursuant to C.R.S. § 31-25-807 to finance the costs of the Denver Union Station Project
32 (as defined in the DUS Plan); and

1 (7) WHEREAS pursuant to C.R.S. § 31-25-807 property tax and sales tax increment
2 revenues (“TIF Revenues”) are deposited to a special fund of the City (the “Special Fund”); and

3 (8) WHEREAS, pursuant to Ordinance No. 334, Series of 2008, the City Council
4 authorized the creation of the Denver Union Station Project Authority (“DUSPA”) for the purpose of
5 financing the Denver Union Station Project; and

6 (9) WHEREAS, DUSPA has financed the Denver Union Station Project by obtaining two
7 loans (the “DUSPA Loans”) pursuant to (a) a Loan Agreement dated as of July 23, 2010 (the
8 “TIFIA Loan Agreement”) pursuant to which the U.S. Department of Transportation, acting through
9 the Federal Highway Administrator (the “TIFIA Lender”) agreed to lend DUSPA up to \$145,600,000
10 and (b) a Loan Agreement dated as of July 23, 2010 (the “RRIF Loan Agreement”) pursuant to
11 which the U.S. Department of Transportation, acting through the Federal Railroad Administrator
12 (the “RRIF Lender”) agreed to lend DUSPA up to \$155,000,000; and

13 (10) WHEREAS, to provide a portion of the revenues for the repayment of the DUSPA
14 Loans, the City entered into the Denver Union Station Plan of Development Cooperation
15 Agreement dated as of May 5, 2009 (the “Cooperation Agreement”) with the DDA pursuant to
16 which the City agreed to pay TIF Revenues to the DDA and the DDA entered into the Denver
17 Union Station Tax Increment Pledge Agreement dated as of July 16, 2010 (the “Pledge
18 Agreement”) with DUSPA and Zions National Bank, acting as trustee (the “Trustee”) pursuant to
19 which the DDA agreed to pay TIF Revenues to the Trustee; and

20 (11) WHEREAS, to provide additional security for repayment of the DUSPA Loans, the
21 City entered into the Contingent Commitment and Services Agreement dated as of July 16, 2010
22 (the “Contingent Commitment Agreement”) with DUSPA and the Trustee; and

23 (12) WHEREAS, to provide a portion of the revenues for the repayment of the DUSPA
24 Loans, the Regional Transportation District (“RTD”) entered into the DUSPA/RTD Funding
25 Agreement dated as of February 1, 2010 (the “RTD Funding Agreement”) with DUSPA pursuant to
26 which RTD agreed to pay approximately \$12,000,000 annually; and

27 (13) WHEREAS, in order to pay the DUSPA Loans in full and achieve interest rate
28 savings, DUSPA operational savings and other economies (the “Refunding Project”), it has been
29 proposed that (a) RTD issue sales tax revenue bonds to refinance its obligations under the RTD
30 Funding Agreement and to pay a portion of the amounts outstanding pursuant to the DUSPA
31 Loans and (b) the City enter into a loan agreement (the “2017 Loan Agreement”) with Compass
32 Bank (“Compass”), Compass Mortgage Corporation (“CMC”) and U.S. Bank National Association

1 (“U.S. Bank” and together with Compass and CMC, the “Banks”) to pay the balance of the amounts
2 due pursuant to the DUSPA Loans; and

3 (14) WHEREAS, the loan to be made pursuant to the 2017 Loan Agreement will be
4 payable from the TIF Revenues and revenues received pursuant to a DUS Project Mill Levy
5 Pledge Agreement among the City, DUS Metropolitan District No.1, DUS Metropolitan District
6 No.2, DUS Metropolitan District No.3 and the Banks (the “Mill Levy Pledge Agreement”); and

7 (15) WHEREAS, as a result of the Refunding Project, it is necessary to amend the
8 Cooperation Agreement pursuant to an Amended and Restated Denver Union Station Plan Of
9 Development Cooperation Agreement between the City and the DDA (the “Amended Cooperation
10 Agreement”); and

11 (16) WHEREAS, as a result of the Refunding Project, the Pledge Agreement and the
12 Contingent Commitment Agreement will be terminated and DUSPA can be dissolved and wound
13 up; and

14 (17) WHEREAS, in order to achieve the lowest possible rate of interest on under the 2017
15 Loan Agreement, the City may wish to lock the interest rate prior to closing pursuant to a Rate
16 Lock and Indemnity Agreement with U.S. Bank or an Interest Rate Lock Agreement with CMC
17 (collectively, the “Rate Lock Agreements”); and

18 (18) WHEREAS, the forms of the 2017 Loan Agreement, the Mill Levy Pledge Agreement,
19 the Amended Cooperation Agreement and the Rate Lock Agreements (collectively, the
20 “Documents”) are on file with the Clerk and Recorder, ex-officio Clerk (the “Clerk”);,; and

21 (19) WHEREAS, pursuant to Section 20-92 of the City Code, the Manager of Finance,
22 Chief Financial Officer, *ex-officio* Treasurer (the “Treasurer”) has retained FirstSouthwest, a
23 division of Hilltop Securities Inc. as financial advisor to assist the City and communicated such
24 retention in writing to the President of the City Council, and the Clerk has read such
25 communication to the City Council; and

26 (20) WHEREAS, before undertaking any action that obligates or could obligate the City
27 financially with regard to the 2017 Loan Agreement, the Treasurer has or will provide the written
28 notification to the City Council required pursuant to Section 20-93 of the City Code, the Clerk has
29 or will read such notification to the City Council at its next regularly scheduled meeting, and the
30 Treasurer will not take any action obligating the City to enter into the 2017 Loan Agreement until at
31 least fifteen (15) days after such reading relating to such 2017 Loan Agreement; and

1 (21) WHEREAS, the City Council desires to authorize the Refunding Project and the
2 execution and delivery of the Documents; and

3 (22) WHEREAS, the City Council has determined and does hereby declare that it is
4 necessary and in the best interests of the City that the City undertake the financing of the
5 Refunding Project herein authorized and defray the costs thereof by entering into the 2017 Loan
6 Agreement and does hereby declare: and

7 A. The public interest, safety and welfare require entering into the 2017 Loan
8 Agreement;

9 B. All acts, conditions and things required by law to exist, to have happened and
10 to have been performed as a condition to entering into of the 2017 Loan Agreement do or will exist,
11 have happened or will happen and have been or will be performed in regular and due time, form
12 and manner as required by law; and

13 C. The procedures and requirements of Article V, Chapter 20 of the City Code
14 have been or will be completely and timely met in respect of selecting the Banks and Piper Jaffray
15 Inc. as placement agent to the City.

16 NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY
17 OF DENVER:

18 **Section 101. Authority for Ordinance.** This Ordinance is adopted pursuant to the City's
19 powers as a home rule city organized and operating under the Charter and Article XX of the State
20 Constitution, pursuant to the Election, pursuant to Title 31, Article 25, Part 8 of C.R.S. and
21 pursuant to the Title 11, Article 57, Part 2, C.R.S. (the "Supplemental Act"), the provisions of which
22 the City hereby elects; and the City hereby determines that each and every matter and thing as to
23 which provision is made herein is necessary in order to carry out and to effect the purposes hereof.

24 **Section 102. Approvals and Authorization.**

25 A. The Refunding Project is hereby approved. The Documents are hereby approved in
26 substantially the form filed with the Clerk, provided that such documents may be completed,
27 corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes
28 of this Ordinance. Piper Jaffray Inc. is hereby appointed as placement agent for the City in
29 connection with the 2017 Loan Agreement.

30 B. The Mayor, the Auditor of the City, the Clerk, the Treasurer, the Chief Financial
31 Officer and other officers and employees of the City are hereby independently authorized and
32 directed to take all action necessary or appropriate to effect the provisions of this Ordinance,

1 including without limiting the generality of the foregoing, executing, attesting, authenticating and
2 delivering for and on behalf of the Documents and such other agreements, instruments, certificates
3 and opinions as may be required to implement the transactions contemplated hereby, or as may
4 otherwise be reasonably required by Bond Counsel or the Banks.

5 C. The execution of any document or instrument by the appropriate officers of the City
6 herein authorized shall be conclusive evidence of the approval by the City of such document or
7 instrument in accordance with the terms hereof.

8 **Section 103. Special and Limited Obligations.** The City's obligations pursuant to
9 the 2017 Loan Agreement shall be payable solely from the Pledged Revenue (as defined in the
10 2017 Loan Agreement). Pursuant to C.R.S. §31-25-813, the 2017 Loan Agreement shall not
11 constitute an indebtedness of the City within the meaning of any constitutional, Charter or statutory
12 limitations. The full faith and credit of the City is not pledged for the payment of any amounts due
13 under 2017 Loan Agreement.

14 **Section 104. Delegation.** Pursuant to the Charter and Section 11-57-205 of the
15 Supplemental Act, the City Council hereby delegates to each of the Mayor or the Treasurer the
16 authority to independently make any determination delegable pursuant to Section 11-57-205(1) of
17 the Supplemental Act, in relation to the 2017 Loan Agreement, subject to the following parameters,
18 with such delegation to be effective for one year after adoption of this Ordinance:

19 (a) the principal amount of the 2017 Loan shall not exceed \$210,000,000;

20 (b) the interest rate on the 2017 Loan shall not exceed 3.91%; except upon the
21 occurrence of an Event of Default (as defined in the Loan Agreement) or Event of Taxability the
22 interest rate may increase, provided that in no event shall the interest rate exceed a maximum net
23 effective interest rate of 7% as authorized at the Election; and

24 (c) the final maturity of the 2017 Loan shall not exceed December 1, 2029.

25 **Section 105. Ratification.** All action heretofore taken (not inconsistent with the
26 provisions of this Ordinance) by the officers and employees of the City in respect of the 2017 Loan
27 and the Documents for that purpose is hereby ratified, approved, and confirmed.

28 **Section 106. Ordinance Irrepealable.** This Ordinance shall be and remain
29 irrepealable until the 2017 Loan Agreement shall be fully paid or discharged.

30 **Section 107. Severability.** If any provision of this Ordinance shall be held invalid or
31 unenforceable, such holding shall not affect any other provisions hereof.

1 **Section 108. Effective Date.** This Ordinance shall become effective immediately
2 upon its final passage and publication, as provided by the Charter.

3 **Section 109. Publication.** The bill for this Ordinance is hereby authorized and
4 directed to be published as provided in the Charter.

5 **Section 110. Recordation and Authentication.** This Ordinance shall be recorded
6 after its passage in a Book of Ordinances of the City, kept for that purpose, and authenticated by
7 the signature of the Mayor and attested and countersigned by the Clerk.

8
9 COMMITTEE APPROVAL DATE: January 3, 2017

10 MAYOR-COUNCIL DATE: N/A

11 PASSED BY THE COUNCIL: _____, 2017
12 _____ - PRESIDENT

13 APPROVED: _____ - MAYOR _____, 2017

14 ATTEST: _____ - CLERK AND RECORDER,
15 EX-OFFICIO CLERK OF THE
16 CITY AND COUNTY OF DENVER

17 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2017; _____, 2017

18 PREPARED BY: BUTLER SNOW LLP DATE: January 5, 2017

19 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
20 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
21 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
22 3.2.6 of the Charter.

23 Kristin M. Bronson City Attorney

24 BY: _____ pass _____, Assistant City Attorney DATE: _____, 2017