

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2013

COUNCIL BILL NO. CB13-0341
COMMITTEE OF REFERENCE:
4 Business, Workforce & Sustainability

5 **A BILL**

6 **For an ordinance creating and establishing the Bluebird Business**
7 **Improvement District, appointing initial members of the Board of Directors of**
8 **the District, and approving the Initial Operating Plan and preliminary 2013**
9 **Budget therefore.**

10
11 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

12 **WHEREAS**, the City Council of the City and County of Denver, Colorado (the “City”) has
13 received a petition for the organization of the Bluebird Business Improvement District within the
14 City (the “District”); and

15 **WHEREAS**, based upon the petition for organization (the “Petition”) and other evidence
16 presented to the City Council, the Petition has been signed in conformity with the Business
17 Improvement District Act, Sections 31-25-1201, et seq., C.R.S. (as may be amended, the “Act”),
18 the signatures on the Petition are genuine, and the signatures of parties thereon represent the
19 persons who own real or personal property in the service area of the proposed District having a
20 valuation for assessment of not less than fifty percent of the valuation for assessment of all real
21 and personal property in the service area of the proposed District and who own at least fifty
22 percent of the acreage in the proposed District; and

23 **WHEREAS**, the Petition sets forth, among other things:

24 (a) The name of the proposed District, which is to wit: “Bluebird Business Improvement
25 District”;

26 (b) A general description of the boundaries and service area of the proposed District,
27 which is to wit: the area generally described as the area located along Colfax Avenue between St.
28 Paul Street to the west, Colorado Boulevard to the east, 16th Avenue to the north and 14th Avenue
29 to the south. A map of the proposed District service area boundary is filed in the office of the Clerk
30 and Recorder, Ex-Officio Clerk of the City and County of Denver at City Clerk’s Filing No. 2013-
31 0421-A, all of which is located in the City and consists of approximately 11.3 total acres, more or
32 less (the “Service Area”). The boundaries of the District include all properties within the Service
33 Area that are classified as “commercial property,” as defined in Section 31-25-1203(2), C.R.S., as
34 may be amended. As of the present time, the proposed District’s boundaries are coterminous with
35 the Service Area depicted on the map filed at City Clerk Filing No. 2013-0421-A;

1 (c) A general description of the types of services or improvements or both to be provided
2 by the proposed District;

3 (d) The names of three persons to represent the petitioners, who have the power to
4 enter into agreements relating to the organization of the District;

5 (e) A request that the City Council appoint the initial members of the Board of Directors
6 of the proposed District pursuant to Section 31-25-1209(1)(b), C.R.S., as may be amended;

7 (f) A request that the City Council consider the proposed District's initial operating plan
8 and 2013 budget for approval in accordance with Section 31-25-1211, C.R.S., as may be
9 amended;

10 (g) A request that the City Council approve the organization of the proposed District; and

11 **WHEREAS**, the City Council has determined that it appears that the allegations of the
12 Petition are true; and

13 **WHEREAS**, the City Council has determined that the types of services or improvements or
14 both to be provided by the proposed District are of the type that best satisfy the purposes of the
15 Act; and

16 **WHEREAS**, the Petition was filed with a cash deposit in such amount determined sufficient
17 to cover all municipal expenses associated with these proceedings in case the organization of the
18 proposed District is not effected; and

19 **WHEREAS**, the Service Area of the proposed District is located entirely within the City; and

20 **WHEREAS**, the Service Area of the proposed District is not located within any other existing
21 business improvement district; and

22 **WHEREAS**, a legal description of the Service Area of the proposed District is filed in the
23 office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver at City Clerk's
24 Filing No. 2013-0421-B, a map of the boundaries of the Service Area of the proposed District is
25 filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver at
26 City Clerk's Filing No. 2013-0421-A, and a map of the current boundaries of the proposed District
27 is filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver at
28 City Clerk's Filing No. 2013-0421-A, and said clerk filings are incorporated herein by reference.

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

31 **Section 1. Findings.** That upon consideration of a recommendation that an ordinance
32 be enacted creating the Bluebird Business Improvement District, the City Council finds:

33 (a) Petition Filing. That the proposed District was initiated by a Petition filed in the
34 Office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, on the 15th day

1 of May, 2013, City Clerk Filing No. 2013-0421, that the Petition was sufficient, that the allegations
2 in the Petition are true, that such Petition was determined to be in due and regular form and
3 properly executed, and that appropriate organizational fees have been paid by Petitioner;

4 (b) Public Hearing Set. That the City Council has heretofore fixed a place and time for a
5 hearing on the Petition, which hearing has been scheduled for June 24, 2013 at 5:30 p.m., in the
6 City Council Chambers, Room 450 of the City and County Building, 1437 Bannock Street, Denver,
7 Colorado, and such hearing date is not less than twenty (20) or more than forty (40) days after the
8 filing of the Petition;

9 (c) Notice of Hearing. That notice of such hearing has been duly published and the
10 proponents of the proposed District, on behalf of the City Clerk, have mailed notice of such hearing
11 to each property owner within the Service Area and boundaries of the proposed District, as
12 required by Section 31-25-1206, C.R.S., as may be amended, and affidavits of such mailing and
13 publication have been presented to the City Clerk;

14 (d) Operating Plan and Budget. That the 2013 Operating Plan and Budget (the
15 “Initial Operating Plan”), which document includes the District’s preliminary 2013 budget, is filed in
16 the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver at City
17 Clerk’s Filing No. 2013-0421-C, and the same, as amended, has been reviewed and approved by
18 the Manager of Public Works; and

19 (e) Necessity, No Overlap. That the proposed District is lawful and necessary, should
20 be created and established, and that the proposed District does not include territory that is within
21 any other business improvement district.

22 **Section 2. Creation**. The Bluebird Business Improvement District is hereby created,
23 organized and established for the purposes and shall have the powers set forth in the Act, except
24 as otherwise modified by this Ordinance. All services and improvements provided by the District
25 shall be undertaken in conformance with the Act and the Initial Operating Plan, as the same may
26 be amended from time to time, and the annually approved Operating Plans and Budgets. Any
27 amendments to this Ordinance shall be approved by the City Council.

28 **Section 3. Boundaries**. The Service Area of the District is set forth is set forth in the
29 Clerk Filing No. 2013-0421-B and depicted in Clerk Filing No. 2013-0421-A. The District is located
30 entirely within the boundaries of the City and the Service Area is generally described as: the area
31 generally described as the area located along Colfax Avenue between St. Paul Street to the west,
32 Colorado Boulevard to the east, 16th Avenue to the north and 14th Avenue to the south, consisting
33 of approximately 11.3 acres, more or less. The boundaries of the District shall consist of all
34 “commercial property” now or hereafter located within the Service Area, as that term is defined at

1 Section 31-25-1203(2), C.R.S., as may be amended. As set forth in the Initial Operating Plan, the
2 District may provide services and improvements inside and outside of the Service Area.

3 **Section 4. Inclusion and Exclusion.** Inclusion and exclusion of property into or out of
4 the District shall be as provided for in the Act. Property located within the Service Area of the
5 District that satisfies the definition of “commercial property” as set forth at Section 31-25-1203(2),
6 C.R.S., as may be amended, shall automatically be included within the District’s boundaries as
7 provided in the Act and shall have all rights and obligations of other “commercial property” located
8 within the District on or after January 1 of the year following said change.

9 **Section 5. Legal Status, Name.** The District shall be a quasi-municipal corporation
10 and political subdivision of the State of Colorado with all powers and responsibilities thereof. The
11 District shall hereafter have the corporate name specified in the Petition: Bluebird Business
12 Improvement District.

13 **Section 6. Board of Directors, Appointed.** Pursuant to Section 31-25-1209(1)(b),
14 C.R.S., as may be amended, the Board of Directors of the District (the “Board”) shall consist of
15 seven (7) electors of the District, appointed by the Mayor and confirmed by City Council resolution.
16 Each member of the Board shall be an “elector” of the District, as that term is defined in Section
17 31-25-1203(4)(a), as may be amended. The initial terms of office of each Board member shall be
18 staggered so that the initial terms of three (3) Board members expire on May 6, 2014 and the initial
19 terms of the remaining four (4) Board members expire on May 3, 2016. After such initial terms,
20 each member of the Board shall serve for a term of four (4) years and the respective terms of each
21 Board member shall expire on the first Tuesday succeeding the first Monday of May in each even-
22 numbered year after such four (4) year term is completed. The initial members of the Board are
23 appointed and confirmed, and their respective initial terms of office shall expire on the indicated
24 dates (and shall take office upon qualification, including by taking the Oath of Office):

- 25 (a) Don Novak (May, 2016)
- 26 (b) Tom Secrist (May, 2014)
- 27 (c) Sean Mandel (May, 2016)
- 28 (d) Tyler Carlson (May, 2016)
- 29 (e) Master Sung Hwan “Tiger” Kim (May, 2016)
- 30 (f) Richard “Buzz” Geller (May, 2014)
- 31 (g) Drew Gottlieb (May, 2014)

32 **Section 7. Board of Directors, Procedures.** In accordance with Section 31-25-
33 1209(1)(b), C.R.S., as may be amended, members of the Board shall serve at the pleasure of the
34 City. Meetings of the Board shall be subject to the Colorado Open Meetings Law, Sections 24-6-

1 401, *et seq.*, C.R.S., as may be amended. A majority of the Directors then-appointed shall
2 constitute a quorum and an affirmative vote of a majority of such quorum is required for District
3 action. Provided that a full Board of seven (7) Directors has been appointed, four (4) Directors
4 shall constitute a quorum and an affirmative vote of a majority of such quorum is required for
5 District action. The Board shall elect one of its members as President, one of its members as
6 Secretary and one of its members as Treasurer; the office of both Secretary and Treasurer may be
7 filled by one Director. Each remaining Director who is not otherwise elected to serve as President,
8 Secretary and Treasurer of the Board shall be elected to serve as an Assistant Secretary of the
9 Board. Within thirty (30) days after a vacancy occurs on the Board or upon the expiration of a
10 Board member's term of office, a successor shall be appointed by the Mayor and confirmed by City
11 Council resolution; any successor appointed to fill a vacancy on the Board shall be appointed to
12 serve for the remainder of the term of office of such vacant Board position or, if the vacancy
13 resulted from the expiration of a term of office, shall be appointed or reappointed to serve a new
14 four (4) year term of office.

15 **Section 8. Board of Directors.**

16 (a) Appointment, Oath. Within thirty (30) days of the effective date of this Ordinance, or
17 within thirty (30) days of each subsequent appointment to the Board by the City Council by
18 resolution, except for good cause shown, each member of the Board shall appear before an officer
19 authorized to administer oaths and take an oath that he or she will faithfully perform the duties of
20 his or her office as required by law and will support the constitution of the United States, the
21 constitution of the State of Colorado and the laws made pursuant thereto.

22 (b) Duties. The Board shall carry out the responsibilities required of such Board by
23 the Act and other applicable law. The District shall obtain the approval of the City's Manager of
24 Public Works or designee prior to the construction of District improvements in the public right-of-
25 way. The District shall comply with the applicable Rules and Regulations promulgated by the
26 City's Manager of Finance.

27 **Section 9. Initial Operating Plan and Budget.** The Initial Operating Plan, including the
28 District's preliminary 2013 Budget, as filed with the City Clerk in City Clerk's Filing No. 2013-0421-
29 C is hereby approved. The Board will formally adopt the District's 2013 Budget following the
30 effective date of this Ordinance, in compliance with the Colorado Local Government Budget Law,
31 Sections 29-1-101, *et seq.*, C.R.S., as may be amended. Once formally adopted by the Board, a
32 copy of the District's 2013 Budget will be provided to the City's Manager of Public Works and
33 Manager of Finance. The budgets for 2014 and each subsequent year shall be incorporated into
34 the District's annual Operating Plan submitted as provided in Section 11 hereof for review and

1 approval on or before September 30th of each year (commencing with September 30, 2013), as
2 required by Section 31-25-1211, C.R.S., as may be amended. The District is authorized to
3 proceed with an election on November 5, 2013 for any purposes authorized by applicable law.

4 **Section 10. Financial Powers, City Fees.**

5 (a) General. The District shall have all powers and authorities granted to business
6 improvement districts pursuant to the Act. Without limiting the foregoing, the District shall have the
7 power to levy taxes; fix, and from time to time increase or decrease, rates, tolls or charges; accept
8 grants, gifts and other revenue allowed by the Act; and to issue debt after providing notice to the
9 City's Manager of Finance and Manager of Public Works, and providing such Managers with any
10 reasonably requested documentation, subject to the limits on the same as set forth in its Operating
11 Plan (as may be amended or supplemented upon approval of the City Council), and electoral
12 authorization. The District shall obtain prior approval from the Manager of Public Works for the
13 installation and construction of any public improvements located in the public right-of-way. The
14 District shall pay an annual fee to the City as set forth in City policy unless otherwise waived by the
15 City's Manager of Finance.

16 (b) Bonds. As used in this Section 10, the term "Bonds" means any bonds, notes,
17 debentures or other evidences of a borrowing that constitute multiple fiscal year obligations of the
18 District under Article X, Section 20 of the Colorado Constitution, as may be amended, provided,
19 however, that the definition of "Bonds" shall not include any multiple fiscal year obligations
20 established by intergovernmental agreement between the District and any other governmental or
21 quasi-governmental entity, including, without limitation, the City. Unless otherwise previous
22 approved in writing by the Manager of Finance, all Bonds issued by the District shall be subject to
23 the following restrictions:

24 (i) General obligation or revenue Bonds issued by the District shall mature not
25 more than thirty (30) years per series from the date of issuance with the first maturity being
26 not later than five (5) years from the date of issuance.

27 (ii) The maximum voted interest rate shall be eighteen percent (18%) and the
28 maximum discount shall be five percent (5%). The exact interest rates and discounts shall
29 be determined at the time that Bonds are issued. Such Bonds shall be structured to obtain
30 competitive interest rates for comparable bonds.

31 (iii) The Bonds generally will contain adequate call provisions to allow for the prior
32 redemption of refinancing of such Bonds.

33 (iv) No uninsured Bonds shall be issued that contain provisions permitting the
34 acceleration of the Bonds upon default unless approved in writing by the Manager of

1 Finance.

2 (v) At least thirty (30) days prior to the issuance of any Bonds, the District shall
3 deliver to the Manager of Finance a numerical plan for such Bond issuance that models the
4 assumed revenue for repayment of the debt as amortized in accordance with the terms of
5 the proposed financing documents. The Manager of Finance shall have the right to waive
6 this requirement or shorten the time frame required herein in the Manager of Finance's sole
7 discretion. Notwithstanding the foregoing, multiple fiscal year obligations incurred pursuant
8 to intergovernmental agreements shall be excluded from the requirements of this provision.

9 (vi) A certification as to the market reasonableness of the interest rate and terms
10 of Bonds sold shall be provided by an underwriter, investment banker or individual entity
11 listed as a "public finance advisor" (or other similar designation) in the Bond Buyer's
12 Municipal Market Place and which advises Colorado governmental entities on matters
13 relating to the issuance of securities by Colorado governmental entities, such as the pricing,
14 sale and marketing of such securities, and shall be delivered to the Manager of Finance
15 within five (5) business days of closing on any Bond issuance.

16 (vii) The District shall comply with all applicable Securities and Exchange
17 Commission and U.S. Treasury or Internal Revenue Service law and regulations and the
18 Colorado Constitution and other applicable Colorado securities laws or regulations
19 concerning the Bonds.

20 (viii) The District shall inform the Manager of Finance in writing within three (3) days
21 after a debt service payment date if such payment is not made in full by the District. To the
22 extent feasible, the District shall also provide written notice to the Manager of Finance of
23 any likely event of nonpayment in advance of such debt service payment date.

24 (ix) Notwithstanding anything contained herein to the contrary, no new money
25 obligations (e.g., Bonds and certified leases) shall be incurred by the District in the event
26 that the District has previously undertaken to do a refunding of outstanding obligations for
27 the purpose of avoiding a default without obtaining the prior written approval of the Manager
28 of Finance, after providing evidence satisfactory to the Manager of Finance either that: (1)
29 the District is then capable of discharging its Bonds they become due; or (2) such refunding
30 obligations themselves are no longer outstanding.

31 (x) Any Bonds issued by the District that are payable in whole or in part from ad
32 valorem property taxes ("Tax Supported Obligations") shall be issued only as limited tax
33 obligations subject to a debt service mill levy cap of fifteen (15.000) mills, as may be
34 adjusted pursuant to Section 10(b)(xi) below (the "Debt Service Cap") and subject to other

1 applicable Colorado law. Subject to certain adjustments authorized in Section 10(b)(xi), the
2 District shall not levy or promise to levy an ad valorem property tax for repayment of
3 outstanding Tax Supported Obligations in excess of the Debt Service Cap.

4 (xi) The Debt Service Cap may be adjusted to take into account legislative or
5 constitutionally imposed adjustments in assessed values or the method of their calculations
6 (as of January 1, 2013), so that, to the extent possible, the actual revenues generated by
7 the Debt Service Cap are neither enhanced nor diminished as a result of such changes.
8 Among other adjustments, a change in the ratio of actual valuation of assessable property
9 shall be deemed a change in the method of calculating assessed valuation. On or before
10 December 1 of the year before any fiscal year in which an adjustment is made to the Debt
11 Service Cap pursuant to this Section 10(b)(xi), the District shall provide the calculation of
12 any such adjustment to the Manager of Finance.

13 (xii) The District shall not pledge as security for any Bonds or other obligations any
14 land, improvements, revenue or funds to be transferred or pledged by the City.

15 (xiii) The District shall notify and receive the prior written approval of the Manager
16 of Finance before participating in or approving the creation of any corporate authority or
17 other entity to act on the District's behalf, or obtaining financing through such an entity. The
18 Manager of Finance may require documentation showing material compliance with all
19 provisions of this Section 10 before the District participates in or creates such corporate
20 authority or other entity, or obtains financing through such corporate authority or other
21 entity.

22 (xiv) No later than five (5) business days after the sale of any Bonds, the District
23 shall provide copies of final Bond documents, an opinion to the City from counsel opining
24 that the final Bond documents are in general conformance with the applicable provisions of
25 this Ordinance and all applicable Colorado and Federal laws and rules, and a certification
26 as described in Section 10(b)(vi), above. A bond legend shall be included stating that the
27 City has no responsibility for payment of any Bonds issued by the District.

28 **Section 11. Annual Filings.**

29 (a) Annual Operating Plan and Budget. The Board shall file its annual Operating
30 Plan and budgets, including any proposed amendments thereto, with the Manager of Finance and
31 with the City Clerk for Approval of the City Council as provided for in Section 31-25-1211, C.R.S.,
32 as may be amended.

33 (b) Annual Report. Except as may be otherwise be included in the District's annual
34 Operating Plan and Budget, as shall be submitted to the City in accordance with Section 31-25-

1 1211, C.R.S., as may be amended, the District shall provide to the City the following information and
2 documents on an annual basis, if such information differs from the information provided the previous
3 year: (a) annual construction schedules and work and capital improvement programs for one (1) year
4 and six (6) years to the Manager of Public Works; (b) annual audited financial statements of the
5 District, including percent of budget for operation and maintenance, to the Manager of Finance; (c)
6 names and terms of members of Boards of Directors and officers to both the Manager of Finance and
7 Manager of Public Works; (d) rules and regulations, if any, of the District regarding bidding, conflict of
8 interest, contracting, and other governance matters to the Manager of Public Works; (e) current
9 intergovernmental agreements, if amended, to both the Manager of Finance and Manager of Public
10 Works; (f) all current contracts for public services or construction, excepting District consultant
11 contracts, to the Manager of Public Works; (g) current documentation of credit enhancements to the
12 Manager of Finance; (h) District office contact information to both the Manager of Finance and
13 Manager of Public Works; and (i) any change in proposed development assumptions that negatively
14 and materially impacts the financial projections to both the Manager of Finance and Manager of
15 Public Works.

16 The following events shall be reported to the Manager of Finance within thirty (30) days of
17 such occurrence, to the extent that such information is known and available to the District: (i) a
18 negative change in any Bond rating or the failure of a credit facility; (ii) a change, if known, in any
19 development assumption that materially and negatively impacts the financing projections for any
20 series of issued Bonds; (iii) a change in the use of a particular property (i.e., from commercial to
21 residential use) that materially and negatively impacts the ability of the District to discharge its
22 outstanding indebtedness; or (iv) any bankruptcy related filing of the District.

23 **Section 12. Ratification of Past Actions.** The actions of the City Clerk and petitioners
24 involved in setting and providing public notice of the public hearing on the sufficiency of the
25 Petition, and in furtherance hereof, are hereby ratified and confirmed.

26 **Section 13. Repealer.** All acts, orders, resolutions, ordinances, or parts thereof, in
27 conflict with this Ordinance are hereby repealed, except that this Section 13 shall not be so
28 construed as to revive any act, order, resolution, ordinance, or part thereof, previously repealed.

29 **Section 14. Headers.** The headings on each section hereof are for convenience of
30 reference only and shall not be deemed to expand or limit the scope of any section.

31 **Section 15. Effective Date.** In accordance with Section 3.3.5(j) of the City's Home Rule
32 Charter, as may be amended, this Ordinance shall be effective as of June 24, 2013.

1 COMMITTEE APPROVAL DATE: June 5, 2013
2 MAYOR-COUNCIL DATE: (by Consent) June 11, 2013
3 PASSED BY THE COUNCIL: _____, 2013
4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____, 2013
6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2013; _____, 2013

10 PREPARED BY: Jennifer Welborn, Assistant City Attorney DATE: June 13, 2013

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

15 Douglas J. Friednash, City Attorney for the City and County of Denver

16 BY: _____, Assistant City Attorney DATE: _____, 2013