

BY AUTHORITY

**ORDINANCE NO. _____
SERIES OF 2010**

**COUNCIL BILL NO. CB10-0725
COMMITTEE OF REFERENCE:
FINANCE**

A BILL

For an ordinance concerning the approval of Facilities Lease No. 2010A (Central Platte Campus Facilities) between the City and County of Denver, as lessor, and the Central Platte Campus Facilities Leasing Trust 2010, as lessee, for certain improvements to real property located at 1271 West Bayaud and annually renewable Lease Purchase Agreement No. 2010A (Central Platte Campus Facilities) between the Central Platte Campus Facilities Leasing Trust 2010, as lessor, and the City and County of Denver, as lessee, for such Facilities; authorizing the execution of such documents and related access easement and other agreements; 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; making an appropriation for the Base Rentals due in 2010 under such Lease Purchase Agreement No. 2010A; providing other matters relating thereto; and providing the effective date thereof.

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"); and

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"); and

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; and

1 WHEREAS, the City owns (1) certain land (the "Land") and recently constructed improvements
2 located at 1271 West Bayaud expected to provide for certain of the operations of the City's Department of
3 Public Works by the fall of 2010, and generally described as follows: (A) an enclosed garage facility for the
4 storage of vehicles and equipment and a covered (but not enclosed) facility for vehicle parking, (B) an
5 approximately 29,000 square foot administrative and warehousing facility and its associated parking lot for
6 street maintenance and solid waste operations, (C) an approximately 38,000 square foot fleet maintenance
7 center, with 18 service bays, to be used to perform vehicle service on the City's fleet, and (D) the remainder
8 of the related parking, paving, sidewalk, drainage and landscaping improvements (all of the improvements
9 on the Land, the "Central Platte Campus Facilities") and (2) certain land located along the southwesterly
10 boundary of the Land and constituting the service access road for the Central Platte Campus Facilities as
11 well as other City sites and facilities (the "Access Easement Site"); and

12 WHEREAS, the City, as lessor, has determined to enter into (1) Facilities Lease No. 2010A
13 described below, with the Central Platte Campus Facility Leasing Trust 2010, a Colorado trust (the "Trust"),
14 as lessee, under which the City shall lease the Central Platte Campus Facilities to the Trust and (2) the
15 2010A Access Easement Agreement described below with the Trust under which the City shall grant to the
16 Trust an access easement across, over and on the Access Easement Site; and

17 WHEREAS, the City has determined and intends to enter into Lease Purchase Agreement No.
18 2010A described below, with the Trust, under which the City, as lessee, agrees to lease, with an option to
19 purchase, the Central Platte Campus Facilities from the Trust, as lessor, the leasehold interest of the Trust
20 in the Central Platte Campus Facilities created under the 2010A Facilities Lease, such leasehold interest
21 constituting the Leased Property under Lease Purchase Agreement No. 2010A; and

22 WHEREAS, there have been filed on August 12, 2010, in the office of the City Clerk for the City and
23 County of Denver (the "Clerk") the substantially final forms of the following:

1 (1) Facilities Lease No. 2010A (Central Platte Campus Facilities) expected to be dated
2 August 27, 2010 (the "2010A Facilities Lease"), in Clerk's Filing No. 10-843, between the City, as
3 lessor, and the Trust, as lessee; and

4 (2) Access Easement Agreement No. 2010A (Central Platte Campus Facilities) expected
5 to be dated August 27, 2010 (the "2010A Access Easement Agreement"), in Clerk's Filing No. 10-
6 843-A, between the Trust and the City; and

7 (3) Lease Purchase Agreement No. 2010A (Central Platte Campus Facilities) including
8 Exhibits A through F thereto expected to be dated August 27, 2010 (the "2010A Lease"), in Clerk's
9 Filing No. 10-843-B, between the Trust, as lessor, and the City, as lessee; and

10 (4) Declaration and Indenture of Trust (Central Platte Campus Leasing Trust 2010)
11 expected to be dated August 27, 2010 (the "2010A Indenture"), in Clerk's Filing No. 10-843-C,
12 entered into by Zions First National Bank, Denver, Colorado, as trustee (the "Trustee"), pursuant to
13 which the Trust will be created and under which Certificates of Participation, Series 2010A, in the
14 aggregate maximum principal amount of \$23,300,000 (the "2010A Certificates") evidencing
15 proportionate interests in the Trust's rights to receive certain revenues, including Base Rentals,
16 under the 2010A Lease are to be executed and delivered by the Trustee; and

17 WHEREAS, the 2010A Certificates are to be sold pursuant to the 2010A Indenture contingent upon
18 approval of the Council of the 2010A Facilities Lease, the 2010A Access Easement Agreement and the
19 2010A Lease by this ordinance.

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

21 **Section 1. *Ratification of Actions.*** All action heretofore taken, not inconsistent with the
22 provisions of this ordinance, by the City or its officers, directed toward the acquisition, design, construction,
23 installation and equipping by the City of the Central Platte Campus Facilities, the leasing by the Trust from
24 the City of the Central Platte Campus Facilities pursuant to the 2010A Facilities Lease and the granting of

1 an access easement by the City to the Trust pursuant to the 2010A Access Easement Agreement and the
2 leasing by the City from the Trust of the leasehold interest in the Central Platte Campus Facilities pursuant
3 to the 2010A Lease are hereby ratified, approved and confirmed.

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

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

11 (1) the leasing of the Central Platte Campus Facilities to the Trust pursuant to the 2010A
12 Facilities Lease and the granting of an access easement across, over and on the Access Easement
13 Site to the Trust pursuant to the 2010A Access Easement Agreement; and

14 (2) the leasing of the Central Platte Campus Facilities pursuant to the terms and
15 provisions of the 2010A Lease.

16 The Council hereby authorizes (1) the leasing of the Central Platte Campus Facilities to the Trust
17 pursuant to the 2010A Facilities Lease and the granting to the Trust of an access easement across, over
18 and on the Access Easement Site pursuant to the 2010A Access Easement Agreement; and (2) the leasing
19 of the Leased Property (the leasehold interest of the Trust in the Central Platte Campus Facilities) from the
20 Trust under and pursuant to the terms and provisions of the 2010A Lease.

21 **Section 3. Approvals; Execution of Documents; Authorized Officers.** The 2010A Facilities
22 Lease, the 2010A Access Easement Agreement and the 2010A Lease in substantially the forms as filed in
23 Clerk's Filing No. 10-843, Clerk's Filing No. 10-843-A and Clerk's Filing No. 10-843-B, respectively, are in all
24 respects approved. The Mayor is hereby authorized and directed to execute and deliver, and the Clerk is

1 hereby authorized and directed to affix the seal of the City to, and attest, the 2010A Facilities Lease, the
2 2010A Access Easement Agreement and the 2010A Lease, in substantially the forms as filed with the Clerk
3 in Clerk's Filing No. 10-843, Clerk's Filing No. 10-843-A and Clerk's Filing No. 10-843-B, respectively.

4 **Section 4. No General Obligation or Other Indebtedness.** The obligation of the City to make
5 rental payments under the 2010A Lease is subject to annual appropriation by the Council and constitutes an
6 undertaking of the City to make current expenditures. No provision of this ordinance, the 2010A Facilities
7 Lease, the 2010A Access Easement Agreement, the 2010A Lease, the 2010A Indenture or the Series
8 2010A Certificates shall be construed as constituting or giving rise to a general obligation or other
9 indebtedness or a multiple fiscal year direct or indirect debt or other financial obligation of the City within the
10 meaning of any home rule, constitutional or statutory debt limitation nor a mandatory charge or requirement
11 against the City in any ensuing fiscal year beyond the current fiscal year. The City may choose to not
12 renew, and thereby terminate its obligations under the 2010A Lease on an annual basis.

13 **Section 5. Reasonable Rentals.** The Council hereby determines and declares that the Base
14 Rentals due under the 2010A Lease do not exceed a reasonable amount so as to place the City under an
15 economic compulsion to renew and therefore not to terminate the 2010A Lease or to exercise its option to
16 purchase the leasehold interest of the Trust in the Central Platte Campus Facilities, pursuant to the 2010A
17 Lease.

18 **Section 6. Consent to Sale of 2010A Certificates.** The Council hereby acknowledges and
19 consents to (1) the 2010A Indenture and (2) the execution and delivery by the Trustee of, the form of, and
20 private placement sale of, the 2010A Certificates, all pursuant to the 2010A Indenture, in substantially the
21 form of the 2010A Indenture filed with the Clerk in Clerk's Filing No. 10-843-C.

22 **Section 7. Additional Documents; Delegated Powers.** The Clerk is hereby authorized and
23 directed to attest all signatures and acts of any official of the City in connection with the matters authorized
24 by this ordinance. The Mayor, the Auditor, the Clerk, the Manager of Finance and the Manager of Public
25 Works and other officials and employees of the City are hereby authorized to execute and deliver for and on

1 behalf of the City any and all additional certificates, documents and other papers and to perform all other
2 acts that they may deem necessary or appropriate in order to implement and carry out the transactions and
3 other matters authorized by this ordinance. Such necessary or appropriate actions include, without
4 limitation,

5 (1) the execution and delivery by the Manager of Finance of a supplement to the Base
6 Rentals Schedule (Exhibit C) of the 2010A Lease prior to the recording of the 2010A Lease in the
7 real estate records, such supplement to evidence the actual Base Rentals due under Lease
8 Purchase Agreement No. 2010A through December 1, 2020, and the maximum Base Rentals due
9 under Lease Purchase Agreement No. 2010A for the period commencing December 2, 2020, and
10 ending on December 1, 2030, all within the limitations set forth on the Base Rentals Schedule in the
11 form of the 2010A Lease filed with the Clerk in Clerk's Filing No. 10-843-B, and

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

21 **Section 8. *Appropriation of 2010 Base Rentals.*** From the Capital Improvement Fund,
22 Accounting No. 31015 and the Fleet Internal Service Fund, Accounting No. 63001, out of moneys not
23 otherwise appropriated and in addition to any supplemental appropriations or rescissions, there is hereby
24 appropriated to the appropriation accounts hereinafter designated the amount of money following each such
25 designation, to be expended for the purposes and upon the authorizations in this Ordinance set forth:

<u>Accounting Number</u>	<u>Appropriation Account</u>	<u>Project Identification Number</u>	<u>Expending Authority</u>	<u>Amount</u>
33080	2540102	ZK300	Manager of Department of Finance	\$258,502.33

1 The Manager of Finance is hereby authorized and directed to make such book and record entries
2 and to do such other things as may be necessary to accomplish the purposes of this Ordinance.

3 **Section 9. Severability.** If any section, paragraph, clause or provision of this ordinance shall for
4 any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section,
5 paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

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

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

10 **Section 12. Recordation and Authentication.** The ordinance shall be recorded after its passage
11 in the ordinance record of the City, kept for that purpose, and authenticated by the signature of the Mayor
12 and attested and countersigned by the Clerk.

13

1 COMMITTEE APPROVAL DATE: April 21, 2010
2 MAYOR-COUNCIL DATE: April 27, 2010
3 PASSED BY THE COUNCIL: _____, 2010

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____, 2010

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

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

10 PREPARED BY: PECK, SHAFFER & WILLIAMS LLP; DATE: August 11, 2010

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

14 David R. Fine, City Attorney

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