

BY AUTHORITY

ORDINANCE NO. _____

COUNCIL BILL NO. CB14-1043

SERIES OF 2014

COMMITTEE OF REFERENCE:

FINANCE AND SERVICES

A BILL

For an ordinance concerning the Airport System of the City and County of Denver; authorizing the City and County of Denver, Colorado, for and on behalf of its Department of Aviation, to enter into an Installment Purchase Agreement and to incur a loan from Banc of America Public Capital Corp in a maximum principal amount of \$ 1,809,843.91 for the purpose of acquiring, installing and financing equipment for the Airport System; authorizing the repayment of such loan; ratifying action previously taken; and providing for other matters relating thereto.

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

(2) WHEREAS, pursuant to Article XX, State Constitution, the Charter of the City and the plenary grant of powers as a home-rule city, the City has acquired certain airport facilities constituting its airport system (the "Airport System"), the management, operation and control of which is vested by the Charter of the City in the Department of Aviation of the City (the "Department"); and

(3) WHEREAS, by Ordinance No. 755, Series of 1993 (the "Enterprise Ordinance"), the City designated the Department as an "enterprise" within the meaning of Section 20, Article X, State Constitution; and

(4) WHEREAS, the Enterprise Ordinance provides that, the City owns the Department; the Manager of the Department (the "Manager") is the governing body of the Department; and the Department has the authority to issue its own bonds or other financial obligations in the name of the City, payable solely from revenues derived or to be derived from the functions, services, benefits or facilities of the Department or from any other available funds, as authorized by ordinance after approval and authorization by the Manager; and

1 (5) WHEREAS, the City, for and on behalf of the Department, and Banc of America
2 Public Capital Corp are to enter into an Installment Purchase Agreement (the "Installment
3 Purchase Agreement"), which, together with the Exhibits thereto, will evidence a loan thereunder to
4 the City (the "Loan"); and

5 (6) WHEREAS, as contemplated by the Enterprise Ordinance, the Manager has
6 executed a resolution (the "Manager's Resolution") requesting the City, for and on behalf of its
7 Department, to enter into the Contracts as defined in Section 101B hereof and to undertake the
8 Loan; and

9 (7) WHEREAS, the Council has determined and does hereby declare:

10 A. The Contracts and the Loan shall be entered into pursuant to the Manager's
11 Resolution; and

12 B. All acts, conditions and things required by law to exist, have happened and
13 have been performed as a condition to the foregoing, do or will exist, have happened or will
14 happen, and have been or will be performed in regular and due time, form and manner as
15 required by law.

16 (8) WHEREAS, prior to the enactment hereof there will have been filed with the City's
17 Clerk and Recorder:

18 A. The Manager's Resolution, City Clerk File No. 2014-0997-A;

19 B. The Installment Purchase Agreement, City Clerk File No. 2014-0997-B; and

20 C. The Escrow Agreement, City Clerk File No. 2014-0997-C.

21 NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY
22 OF DENVER:

23 **ARTICLE I**
24 **DEFINITIONS, RATIFICATION, EFFECTIVE DATE AND DELEGATED POWERS**

25 Section 101. Meanings and Construction.

26 Definitions. For all purposes of this Ordinance and of any other document relating hereto,
27 except where the context by clear implication otherwise requires:

1 A. "Capital Fund" shall mean the special and separate account designated as the
2 "City and County of Denver, Airport System Capital Improvement and Replacement Fund"
3 created by Section 502 of the General Bond Ordinance.

4 B. "Contracts" shall mean (1) that certain Installment Purchase Agreement
5 between the City, for and on behalf of its Department, and the Lender, as authorized by this
6 Ordinance, and all related exhibits, amendments thereof and supplements thereto,
7 including, Exhibits A through E that, among other things, describe the equipment being
8 acquired, installed and financed for the Airport System under the Loan and set forth the
9 payment schedule of the Loan and (2) the Escrow Agreement.

10 C. "Escrow Agreement" shall mean the Escrow Agreement among the City, for
11 and on behalf of its Department of Aviation, US Bank National Association, as Escrow
12 Agent, and the Lender providing the terms under which the Department and the City may
13 draw upon the Loan.

14 D. "General Bond Ordinance" shall mean the "1984 Airport System General Bond
15 Ordinance," as amended and supplemented from time to time.

16 E. "Lender" shall mean Banc of America Public Capital Corp and, for purposes of
17 determining the ownership of the Loan, shall include the Lender and its affiliates.

18 F. "Loan" shall mean the loan evidenced by the Contracts.

19 Section 102. Ratification. All action heretofore taken (not inconsistent with the provisions of
20 this Ordinance) by the Council and the officers of the City relating to the Contracts and the Loan
21 be, and the same hereby is, authorized, ratified, approved and confirmed.

22 Section 103. Severability. If any section, subsection, paragraph, clause, or other provision
23 of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or
24 unenforceability of such section, subsection, paragraph, clause or other provision shall not affect
25 any of the remaining provisions of this Ordinance.

26 Section 104. Effective Date. This Ordinance shall take effect immediately upon its final
27 passage and publication.

28 Section 105. Delegated Powers. The City's Mayor, Auditor, Clerk and Recorder, Manager,
29 Manager of Finance/*Ex-Officio* Treasurer and other officers and employees of the City are hereby

1 authorized and directed to take all action necessary or appropriate to effect the provisions of this
2 Ordinance, including without limitation:

3 A. Contracts. The execution and delivery of the Contracts, in substantially the
4 forms filed with the Clerk and Recorder, with such omissions, insertions, endorsements and
5 variations as to any recitals of fact or other provisions as may by the circumstances be
6 required or permitted hereby or by the Contracts, or may be consistent herewith or with the
7 Contracts; and

8 B. Schedules, Certificates, Opinions, and Other Agreements. The execution and
9 delivery of such additional schedules, certificates, opinions and other agreements as may
10 be required by the Contracts or as may otherwise be reasonably required by the Lender.

11 **ARTICLE II**
12 **COUNCIL'S DETERMINATIONS**

13 Section 201. Authority for this Ordinance. This Ordinance is adopted pursuant to the City's
14 powers as a home-rule city, organized and operating under the Charter and Article XX of the State
15 Constitution; and the City hereby determines that each and every matter and thing as to which
16 provision is made herein is necessary in order to carry out and to effect the purposes hereof.

17 **ARTICLE III**
18 **AUTHORIZATION AND TERMS**
19 **OF THE CONTRACTS AND THE LOAN**

20 Section 301. Authorization of the Contracts and the Loan. The City, for and on behalf of its
21 Department, is hereby authorized to enter into the Contracts and the Loan; provided, that (i) the
22 Loan and other amounts payable under the Contracts shall be payable solely from the Capital
23 Fund and such other legally available funds as the City may apply; (ii) the Loan shall be in a
24 maximum principal amount of \$1,809,843.91; and (iii) the Loan shall bear interest at a maximum
25 per annum rate of 1.1656%. Neither the Capital Fund nor any other revenues of the Airport
26 System or the City are pledged for the payment of the Loan or other amounts coming due under
27 the Contracts.

28 Section 302. Terms of the Contracts and the Loan. The terms of the Contracts and the
29 Loan shall otherwise be as provided therein.

1 Section 303. Payments. There is hereby authorized from the Airport Enterprise Fund
2 (Auditor's No. 73000) such expenditures as are necessary for the payment of the principal of and
3 interest on the Loan and any necessary services and charges related thereto, to be expended by
4 the Manager of Aviation or by duly authorized agents.

5

1 COMMITTEE APPROVAL DATE: December 4, 2014

2 MAYOR-COUNCIL DATE: December 9, 2014

3 PASSED BY THE COUNCIL _____ 2014

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____ 2014

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

9 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2014 AND _____ 2014

10 PREPARED BY: Kevin A. Cain, Assistant City Attorney, DATE: December 11, 2014

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 D. Scott Martinez, City Attorney

16 BY: _____, Assistant City Attorney

17 DATE: December 11, 2014