

RESOLUTION NO. 2019-___

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY AUTHORIZING AND APPROVING A LEASE PURCHASE AGREEMENT FOR CERTAIN COUNTY-OWNED PROPERTY AND, IN CONNECTION THEREWITH, A SITE LEASE, AN INDENTURE OF TRUST, AN AGREEMENT TO CONSTRUCT, A NOTICE OF SALE, AN OFFICIAL STATEMENT, AND RELATED DOCUMENTS AND TRANSACTIONS

WHEREAS, Archuleta County, Colorado (the “County”) is a duly and regularly created, organized and existing body corporate and politic of the State of Colorado (the “State”), existing as such under the Constitution and statutes of the State; and

WHEREAS, the County is authorized by Section 30-11-101, Colorado Revised Statutes, as amended (“C.R.S.”) to sell, convey, or exchange any real or personal property owned by the County and make such order respecting the same as may be deemed conducive to the interests of the inhabitants; and to lease any real or personal property, either as lessor or lessee, together with any facilities thereon, when deemed by the Board of County Commissioners of the County (the “Board”) to be in the best interest of the County and its inhabitants; and

WHEREAS, the Board is authorized by Section 30-11-104.1, C.R.S. to enter into lease purchase agreements in order to provide for financing of a public park, a public trail, a public golf course, or public open space, or a courthouse, jail or other county building or equipment; and

WHEREAS, the Board has determined it is in the best interests of the public health, safety and welfare of the County and its inhabitants to finance the construction of certain capital improvements to be used as its detention facilities (the “Project”); and

WHEREAS, in order to finance the construction of the Project, the County desires to lease certain property owned by the County (as defined in the Lease defined herein, the “Leased Property”) pursuant to that certain Site Lease, dated as of May 1, 2019 (the “Site Lease”), to UMB Bank, n.a., as trustee (the “Trustee”) under that certain Indenture of Trust, dated as of May 1, 2019 (the “Indenture”), to lease the Leased Property back from the Trustee pursuant to that certain Lease Purchase Agreement, dated as of May 1, 2019 (the “Lease”) and to construct the Project pursuant to that certain Agreement to Construct, dated as of May 1, 2019 (the “Agreement to Construct”) between the Trustee, as site lessee, and the County, as contractor; and

WHEREAS, the County desires, in connection therewith, to enter into the Site Lease, pursuant to which the County will lease the Leased Property to the Trustee, and to enter into the Lease, pursuant to which the County will lease, with an option to purchase, the Leased Property; and

WHEREAS, the Trustee would finance the acquisition of its leasehold interest in the Leased Property from the County and the construction of the Project from the proceeds of “Certificates of Participation (Justice Center Project), Series 2019, evidencing undivided interests in the right to receive certain revenues payable by Archuleta County, Colorado under a Lease Purchase Agreement dated as of May 1, 2019 between the County and UMB Bank, n.a.” (the “2019

Certificates”), which 2019 Certificates shall be executed and delivered pursuant to the Indenture; and

WHEREAS, the County shall construct the Project pursuant to the Agreement to Construct; and

WHEREAS, the Lease shall expire on December 31 of any County fiscal year (a “Fiscal Year”) if the County has, by such date, failed, for any reason, to appropriate sufficient amounts authorized and directed to be used to pay all Base Rentals (as defined in the Lease) scheduled to be paid and all Additional Rentals (as defined in the Lease) estimated to be payable in the next ensuing Fiscal Year, and in certain other circumstances set forth in the Lease, and the Lease shall not constitute a mandatory charge or requirement against the County in any ensuing budget year unless the County decides to renew the Lease by appropriating the necessary amounts; and

WHEREAS, the 2019 Certificates and any Additional Certificates (as defined in the Indenture) shall evidence assignments of proportionate undivided interests in certain revenues payable pursuant to the annually renewable Lease, shall be payable solely from the sources provided in the Lease, and shall not be construed or interpreted (a) to directly or indirectly obligate the County to make any payment in any Fiscal Year in excess of amounts appropriated for such Fiscal Year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the County within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; (c) as a delegation of governmental powers by the County; (d) as a loan or pledge of the credit or faith of the County or as creating any responsibility by the County for any debt or liability of any person, company or corporation within the meaning of Article XI, Section 1 of the Colorado Constitution; or (e) as a donation or grant by the County to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution; and

WHEREAS, the 2019 Certificates will be offered for sale pursuant to a Preliminary Official Statement (as defined herein) and an Official Statement (as defined herein) and will be sold by competitive sale pursuant to the terms of a Notice of Sale (the “Notice of Sale”); and

WHEREAS, in order to implement the transactions described above, the Board desires (a) to authorize and approve the execution and delivery by the County of, and the performance by the County of its obligations under the Site Lease, the Lease, the Agreement to Construct, the Notice of Sale and certain other documents described herein, (b) to authorize, and approve the use in the offering and sale of the 2019 Certificates of, the Preliminary Official Statement and the Official Statement, (c) to authorize the execution of the Official Statement, (d) to approve the Indenture and the 2019 Certificates and (e) to authorize, approve, ratify, make findings and take other actions with respect to the foregoing and related matters;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY, COLORADO:

Section 1. The Board hereby approves the following documents, copies of which have been, or will be in a timely manner, made available to the Board, authorizes the Chairman of the Board, any Commissioner of the Board and all other appropriate officers and employees of the County to execute and deliver, and to affix the seal of the County to, such documents in the

respective forms made available to the Board, with such changes therein, not inconsistent herewith, as are approved by the persons executing the same (whose signature thereon shall constitute conclusive evidence of such approval) and authorizes and directs the performance by the County of its obligations under such documents in the form in which they are executed and delivered:

(a) the Lease; provided that the Base Rentals payable by the County pursuant to the Lease shall not exceed \$880,000 per year and the Scheduled Lease Term (as defined in the Lease) shall not extend beyond December 31, 2044;

(b) the Agreement to Construct; provided that the Fixed Price (as defined in the Agreement to Construct) payable by the Trustee to the County pursuant to the Agreement to Construct shall not be less than \$13,000,000;

(c) the Notice of Sale relating to the 2019 Certificates and the sale of the 2019 Certificates to an underwriter (the "Underwriter"); and

(d) the Continuing Disclosure Undertaking of the County (the "Continuing Disclosure Undertaking") dated as of the date of delivery of the 2019 Certificates.

Section 2. The Board hereby approves the Indenture, a copy of which has been made available to the Board, with such changes therein, not inconsistent herewith, as are approved by the persons executing the 2019 Certificates (whose signature thereon shall constitute conclusive evidence of such approval); provided that: the aggregate principal amount of the 2019 Certificates authorized thereby shall not exceed \$13,950,000, with a coupon interest not to exceed 5.00% and the final maturity of the 2019 Certificates authorized thereby shall be not later than December 31, 2044.

Section 3. The Board hereby acknowledges and approves the assignment and delivery by the Trustee pursuant to the Indenture of interests in rights to receive certain revenues payable under the Lease. The Board hereby approves the 2019 Certificates, authorizes the preparation of the 2019 Certificates in a form not inconsistent with the Indenture or this Resolution and authorizes the Chairman of the Board to authenticate, and to affix the seal of the County to, the 2019 Certificates.

Section 4. The Board hereby: ratifies the preparation of and approves the Preliminary Official Statement relating to the 2019 Certificates (the "Preliminary Official Statement"); ratifies and approves the use of the Preliminary Official Statement in connection with the offering and sale of the 2019 Certificates; authorizes and approves the execution and delivery by the Chairman of the Board of a certificate that shall "deem final" the Preliminary Official Statement for purposes of Rule 15c2-12 under the Securities Act of 1934; authorizes the preparation of a final Official Statement (the "Official Statement") in substantially the form of the Preliminary Official Statement, with such changes therein, not inconsistent herewith, as are approved by the Chairman of the Board; authorizes the use of the Official Statement in connection with the sale of the 2019 Certificates; and authorizes the Chairman of the Board to execute the Official Statement.

Section 5. The Board hereby adopts, as if set forth in full herein, all the representations, covenants, agreements, findings, determinations and statements of or by the County set forth in the documents described in Section 1 hereof, in the Preliminary Official Statement and in the Official Statement.

Section 6. The officers, employees and agents of the County are authorized and directed to take all action necessary or appropriate to carry out the provisions of this Resolution and the documents referred to herein and to carry out the transactions described herein or in such documents, including, without limitation, the execution and delivery of such certificates as may reasonably be required by the Underwriter, relating, among other matters, to the tenure and identity of the officials of the County, the receipt of the purchase price for the 2019 Certificates, the absence of litigation, pending or threatened, expectations and covenants relating to the exclusion from gross income for federal income tax purposes of the portion of Base Rentals which is designated in the Lease and paid as interest on the 2019 Certificates, the sale and delivery of the 2019 Certificates, and the investment of the proceeds of the 2019 Certificates.

Section 7. Upon the recommendation of the County's Municipal Advisor, based upon market conditions and the rating on the 2019 Certificates, one or more bond insurers may be requested to submit bids to issue the bond insurance policy in connection with the 2019 Certificates to reduce the amount of the Base Rentals due in connection with the Lease. In the event that the Chairman of the Board determines, based upon information provided by the Municipal Advisor, that the savings to be realized by the County as a result of the issuance of the bond insurance policy, the Chairman of the Board shall be authorized to accept the commitment issued by the bond insurer, including any agreements in the best interests of the County in connection with the issuance of a surety reserve securing the 2019 Certificates. If the 2019 Certificates are issued insured by a bond insurance policy, the officers and employees of the County are hereby authorized and directed to take all actions necessary to cause the bond insurer selected to issue the bond insurance policy in accordance with the commitment, including without limitation, payment of the premium due in connection therewith and entering into any authorizing agreements.

Section 8. The Board hereby determines and declares that the Base Rentals represent the fair value of the use of the Leased Property, and that the Purchase Option Price (as defined in the Lease) represents the fair purchase price of the Leased Property. The Board hereby determines and declares that the Base Rentals do not exceed a reasonable amount so as to place the County under an economic or practical compulsion to appropriate moneys to make payments under the Lease or to exercise its option to purchase the Leased Property pursuant to the Lease. In making such determinations, the Board has given consideration to the current market value of the Leased Property, the cost of acquiring, constructing or equipping property similar to the Leased Property, the uses and purposes for which the Leased Property is being and will be employed by the County, the benefit to the citizens and residents of the County by reason of the use of the Leased Property pursuant to the terms and provisions of the Lease, the option of the County to purchase the Leased Property, and the expected eventual vesting of full title to the Leased Property in the County. The Board hereby determines and declares that the leasing of the Leased Property pursuant to the Lease will result in facilities of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition of the Leased Property were performed by the County other than pursuant to the Lease. The Board hereby determines and declares that the duration of the Lease, including all optional renewal terms, authorized under this Resolution, does not exceed the weighted average useful life of the Leased Property.

Section 9. All actions previously taken by the Board and the officers, employees and agents of the County directed toward the transactions described herein or in the documents referred to herein are hereby ratified, approved and confirmed.

Section 10. All bylaws, orders, resolutions, and other instruments, or parts thereof that are in conflict with this Resolution are hereby repealed only to the extent of such conflict. This repealer shall not be construed to revive any bylaw, order, resolution, or other instrument, or part thereof, heretofore repealed.

Section 11. If any section, paragraph, clause or provision of this Resolution or any of the documents referred to herein (other than provisions as to the payment of Base Rentals and Additional Rentals by the County during the Lease Term (as defined in the Lease), including the requirement that the obligations of the County to pay Base Rentals and Additional Rentals under the Lease are conditioned upon the prior appropriation by the County of amounts for such purposes in accordance with the requirements of the laws of the State, provisions for the quiet enjoyment of the Leased Property by the County during the Lease Term and provisions for the transfer of the Leased Property to the County or its designee) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 12. The Board hereby elects to apply all provisions of Part 2 of Article 57, Title 11, C.R.S. (the “Supplemental Public Securities Act”) to the 2019 Certificates. The 2019 Certificates shall recite that they are issued under the authority of the Supplemental Public Securities Act and this Resolution. The final terms of the 2019 Certificates shall be approved by a certificate executed by the Finance Director of the County, the County Administrator or any authorized member of the Board determining any details necessary or appropriate in connection with the issuance of the 2019 Certificates in order to effectuate or clarify the provisions of this Resolution and consummate the transactions contemplated hereby.

Section 13. This Resolution shall be in full force and effect upon its passage and adoption.

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This Resolution is adopted this ____ day of April, 2019, in Archuleta County, Colorado.

BOARD OF COUNTY COMMISSIONERS OF
ARCHULETA COUNTY, COLORADO

[SEAL]

Chairman of the Board

ATTEST:

Archuleta County Clerk and Recorder

Commissioners voting aye in favor of this Resolution were:

_____, _____ and
_____.

Commissioners voting no against this Resolution were:

_____, _____ and
_____.