AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Resolution

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Please see attached Resolution

Fiscal Impact:

Submitted by: Liz Mense **Submitter's Email Address:** EMense@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:
ok db 1/31/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 1/31/2019 Certificate of Insurance Required

Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 1/31/2019

○ Consent Agenda ◉ Regular Agenda ○ Worksession Time Allotted: 5

Agenda Date: 2/5/2019

Revised April 2015

GUNNISON COUNTY, COLORADO

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE FINANCING OF A PORTION OF THE ACQUISITION PRICE OF CERTAIN REAL PROPERTY AND, IN CONNECTION THEREWITH, AUTHORIZING THE LEASING OF CERTAIN REAL PROPERTY AND THE EXECUTION AND DELIVERY BY THE COUNTY OF A SITE LEASE, A LEASE PURCHASE AGREEMENT, AND OTHER DOCUMENTS AND MATTERS RELATING TO CERTAIN CERTIFICATES OF PARTICIPATION, SERIES 2019; SETTING FORTH CERTAIN PARAMETERS AND RESTRICTIONS WITH RESPECT TO THE FINANCING; AUTHORIZING OFFICIALS OF THE COUNTY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; RATIFYING ACTIONS PREVIOUSLY TAKEN; AND PROVIDING FOR OTHER MATTERS RELATED THERETO.

WHEREAS, Gunnison County, Colorado (the "County"), is a duly organized and existing county, existing as such under and by virtue of the Constitution and laws of the State of Colorado; and

WHEREAS, the County has the power, pursuant to Sections 30-11-101(b) and (c) and 30-11-104.1, of the Colorado Revised Statutes, as amended, to lease, as lessor or as lessee, real property, and to enter into lease-purchase agreements for the purpose of financing real property be used for the County's governmental purposes; and

WHEREAS, the Board of County Commissioners of the County (the "Board") has determined and hereby determines that it is in the best interest of the County and its inhabitants to acquire certain real property (the "Site"), as further described in the Site Lease (hereinafter defined); and

WHEREAS, the Board has determined and hereby determines to finance a portion of the cost of acquiring the Site by entering into a lease purchase financing with Alpine Bank (the "Purchaser"); and

WHEREAS, the Board has determined and hereby determines that (i) the Site and any future improvements located thereon and (ii) an additional piece of real property currently owned by the County and used to house the Gunnison Valley Regional Housing Authority and the Gunnison-Crested Butte Tourism Association, will constitute the leased property (the "Leased Property") under the Lease, as further defined therein; and

WHEREAS, the Board hereby determines that in order to finance the acquisition of the Site it is in the best interest of the County and its inhabitants that (a) the County (in its name and/or the name of the Board) enter into a Site and Improvement Lease (the "Site Lease") with UMB Bank, n.a. (the "Trustee") under the Indenture (hereinafter defined) pursuant to which

the County will lease the Leased Property, and (b) the Trustee will lease the Leased Property back to the County (in its name and/or the name of the Board) pursuant to the terms of a Lease Purchase Agreement (the "Lease") between the Trustee, as lessor, and the County, as lessee; and

WHEREAS, pursuant to the Lease, and subject to the right of the County to terminate the Lease and other limitations as therein provided, the County will pay certain Base Rentals and Additional Rentals (as such terms are defined in the Lease) in consideration for the right of the County to use the Leased Property; and

WHEREAS, the County's obligation under the Lease to pay Base Rentals and Additional Rentals shall be from year to year only; shall constitute currently budgeted expenditures of the County; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or other indebtedness or multiple fiscal year financial obligation of the County within the meaning of any constitutional or statutory limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the County in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect; and

WHEREAS, the Trustee will enter into an Indenture of Trust (the "Indenture") pursuant to which there is expected to be executed and delivered certain certificates of participation (the "Certificates") dated as of their date of delivery that shall evidence proportionate interests in the right to receive certain Revenues (as defined in the Lease), which Certificates shall be payable solely from the sources therein provided and shall not directly or indirectly obligate the County to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect; and

WHEREAS, the net proceeds of the Certificates will finance a portion of the acquisition price of the Site and pay the costs of executing and delivering the Certificates; and

WHEREAS, it is expected that the Certificates will be purchased by the Purchaser; and

WHEREAS, Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S., as amended (the "Supplemental Act"), provides that a public entity, including the County, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act; and

WHEREAS, there have been presented to the Board and are recorded at the offices of the County Clerk and Recorder, the following: (i) the proposed form of the Site Lease; and (ii) the proposed form of the Lease; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.

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

Section 1. Recitals Incorporated. The foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Board.

Section 2. Ratification and Approval of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Board or the officers, agents or employees of the County relating to the Site Lease, the Lease, the acquisition of the Site, and the sale, execution and delivery of the Certificates is hereby ratified, approved and confirmed.

Section 3. Finding of Best Interests. The Board hereby finds and determines pursuant to the Constitution and laws of the State of Colorado that the acquisition of the Site and the financing of a portion of the costs thereof, including the costs of executing and delivering the Certificates, pursuant to the terms set forth in the Site Lease and the Lease, is in the best interest of the County and serves a valid public purpose and the Board hereby authorizes and approves the same.

Section 4. Supplemental Act; Parameters. The Board hereby elects to apply all of the provisions of the Supplemental Act to the Site Lease and the Lease and in connection therewith delegates to each of the Chair of the Board and the County Manager the independent authority to make any determination delegable pursuant to Section 11-57-205(1)(a-i) C.R.S., as amended, in relation to the Site Lease and the Lease, and to execute a sale certificate (the "Sale Certificate") setting forth such determinations, including without limitation, the term of the Site Lease, the rental amount to be paid by the Trustee pursuant to the Site Lease, the term of the Lease, and the rental amount to be paid by the County pursuant to the Lease, subject to the following parameters and restrictions:

(a) the term of the Site Lease shall not extend beyond December 31, 2054;

(b) the aggregate principal amount of the Base Rentals payable by the County pursuant to the Lease shall not exceed $1,500,000;

(c) the Lease Term shall not extend beyond December 31, 2039;

(d) the maximum interest rate on the interest component of the Base Rentals relating to the Certificates shall not exceed 4.25% per annum, provided that such interest rate may be increased upon an occurrence of an event of default or an event of taxability as further set forth in the Lease; and

(e) the purchase price of the Certificates shall not be less than 99% of the principal amount of the Certificates.

Pursuant to Section 11-57-205 of the Supplemental Act, the Board hereby delegates to each of the Chair of the Board and the County Manager the independent authority to to sign a contract for the purchase of the Certificates or to accept a binding bid for the Certificates and to execute any agreement or agreements in connection therewith.

The delegation set forth in this Section 4 shall be effective for one year following the date hereof.

The Board hereby agrees and acknowledges that the net proceeds of the Certificates will be used to finance a portion of the costs of acquiring the Site and to pay the costs of executing and delivering the Certificates. The Board hereby further acknowledges that the Certificates may be issued in one or more series, including both tax-exempt Certificates and taxable Certificates, subject to the parameters set forth above.

Section 5. Approval of Documents. The Site Lease and the Lease, in substantially the forms presented to the Board and on file with the County, are in all respects approved, authorized and confirmed, and the Chair of the Board is hereby authorized and directed for and on behalf of the County to execute and deliver the Site Lease and the Lease, in substantially the forms and with substantially the same contents as presented to the Board, provided that such documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Resolution.

Section 6. Authorization to Execute Collateral Documents. The County Clerk and Recorder (the "County Clerk") is hereby authorized and directed to attest all signatures and acts of any official of the County in connection with the matters authorized by this Resolution and to place the seal of the County on any document authorized and approved by this Resolution. The Chair of the Board, the County Clerk, the County Manager, and other employees and officials of the County are hereby authorized and directed to execute and deliver for and on behalf of the County any and all additional certificates, documents and other papers, and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Resolution. The approval hereby given to the various documents referred to above includes an approval of such additional details therein as may be necessary and appropriate for their completion, deletions therefrom and additions thereto as may be approved by the County Manager prior to the execution of the documents. The execution of any instrument by the appropriate officers of the County herein authorized shall be conclusive evidence of the approval by the County of such instrument in accordance with the terms hereof.

Section 7. No General Obligation Debt. No provision of this Resolution, the Site Lease, the Lease, the Indenture, or the Certificates shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the County within the meaning of any constitutional, or statutory, nor a mandatory charge or requirement against the County in any ensuing fiscal year beyond the then current fiscal year. The County shall have no obligation to make any payment with respect to the Certificates except in connection with the payment of the Base Rentals and certain other payments under the Lease, which payments may be terminated by the County in accordance with the provisions of the Lease. Neither the Lease nor the Certificates shall constitute a mandatory charge or requirement of the County in any ensuing fiscal year beyond the then current fiscal year or constitute or give rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the County within the meaning of any constitutional, or statutory debt limitation and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation whatsoever. No provision of the Site Lease, the Lease or the Certificates shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the County within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. Neither the Lease nor the Certificates shall directly or indirectly obligate the

County to make any payments beyond those budgeted and appropriated for the County's then current fiscal year.

Section 8. Reasonableness of Rentals. The Board hereby determines and declares that the Base Rentals due under the Lease, in the maximum amounts authorized pursuant to Section 4 hereof, constitute the fair rental value of the Leased Property and do not exceed a reasonable amount so as to place the County under an economic compulsion to renew the Lease or to exercise its option to purchase the Trustee's interest in the Leased Property pursuant to the Lease. The Board hereby determines and declares that the period during which the County has an option to purchase the Trustee's leasehold interest in the Leased Property (i.e., the entire maximum term of the Lease) does not exceed the useful life of the Leased Property. The Board hereby further determines that the amount of rental payments to be received by the County from the Trustee pursuant to the Site Lease is reasonable consideration for the leasing of the Leased Property to the Trustee for the term of the Site Lease as provided therein.

Section 9. Bank Qualification. The County hereby designates the payments required under the Lease relating to the Certificates as "qualified tax-exempt obligations for purposes of Section 265(b)(3) of the Internal Revenue Code, as amended.

Section 10. Reimbursement of Prior Expenditures. The County may incur expenses related to the acquisition of the Site prior to the execution and delivery of the Certificates. This resolution is intended to be a declaration of "official intent," as described in Treasury Regulation §1.150-2, that permits any expenditures related to the acquisition of the Site incurred prior to the execution and delivery of the Certificates to be reimbursed with the proceeds of the Certificates.

Section 11. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Board, or any officer or agent of the County acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Certificates. Such recourse shall not be available either directly or indirectly through the Board or the County, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Certificates and as a part of the consideration of their sale or purchase, any person purchasing or selling such Certificate specifically waives any such recourse.

Section 12. Repealer. All bylaws, orders, and resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revise any bylaw, order, or resolution, or part thereof, heretofore repealed.

Section 13. Severability. If any section, subsection, paragraph, clause or other provision of this Resolution for any reason is held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or other provision shall not affect any of the remaining provisions of this Resolution, the intent being that the same are severable.

Section 14. Effective Date. This resolution shall be in full force and take effect immediately upon its passage and approval.

PASSED, ADOPTED AND APPROVED this February 5, 2019.

_____

Chair of the Board of
County Commissioners

(SEAL)

Attest:

_____

County Clerk

STATE OF COLORADO)
) SS. CERTIFICATE OF COUNTY CLERK
COUNTY OF GUNNISON)

I, Kathy Simillion, the Clerk and Recorder of Gunnison County, Colorado (the "County"), do hereby certify as follows:

1. The foregoing pages are a true and correct copy of a resolution (the "Resolution") passed and adopted by the Board of County Commissioners of the County (the "Board") at a regular meeting held on February 5, 2019.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the regular meeting of February 5, 2019, by an affirmative vote of a majority of the members of the Board as follows:

Name	"Yes"	"No"	Absent	Abstain
Jonathan Houck, Chair				
John Messner				
Roland Mason				

3. The members of the Board were present at such meeting and voted on the passage of such Resolution as set forth above.

4. The Resolution was approved and authenticated by the signature of the Chair of the Board, sealed with the County seal, attested by the County Clerk and recorded in the minutes of the Board.

5. There are no bylaws, rules or regulations of the Board which might prohibit the adoption of said Resolution.

6. Attached hereto as Exhibit A is a copy of the notice of the regular meeting on February 5, 2019, which notice was posted at least 24 hours before such meeting as provided by law.

[The remainder of this page intentionally left blank.]

WITNESS my hand and the seal of the County affixed this 5th day of February, 2019.

(SEAL)

_____

Clerk and Recorder
Gunnison County, Colorado

EXHIBIT A

(Attach copy of notice given prior to the February 5, 2019 meeting)