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:

A Resolution of the Board of County Commissioners of Gunnison County, Colorado Authorizing the Execution and Delivery of a Ground and Improvement Lease Agreement, a Lease Purchase Agreement, an Escrow Agreement, a Continuing Disclosure Certificate, an Official Statement, and

Fiscal Impact:

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

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, it has been determined this refunding of the 2010 Bonds will result in savings over the payback term. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 12/6/2019

County Attorney Review: (●) Required ( ) Not Required

Comments:

Reveiwed by: GUNCOUNTY1\mhoyt Discharge Date: 12/5/2019 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 12/6/2019

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: 10 minutes

Agenda Date: 12/10/2019

Revised April 2015

GUNNISON COUNTY, COLORADO
RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO AUTHORIZING THE EXECUTION AND DELIVERY OF A GROUND AND IMPROVEMENT LEASE AGREEMENT, A LEASE PURCHASE AGREEMENT, AN ESCROW AGREEMENT, A CONTINUING DISCLOSURE CERTIFICATE, AN OFFICIAL STATEMENT, AND CERTAIN RELATED DOCUMENTS BY THE COUNTY; APPROVING THE FORMS OF RELATED DOCUMENTS; AND PROVIDING FOR OTHER MATTERS RELATING 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 and personal property, together with any facilities thereon, and to enter into lease-purchase agreements for the purpose of financing County buildings or equipment used or to be used for governmental purposes; and

WHEREAS, the County owns, in fee title, certain real property and the improvements constructed thereon more particularly described in the hereinafter defined Ground Lease (collectively, the "Leased Property"); and

WHEREAS, the Board of County Commissioners of the County (the "Board") has determined, and now hereby determines, that it is in the best interest of the County and its inhabitants that the Board, on behalf of the County, as lessor, subject to the termination of the similar lease relating to the 2010B Certificates (as defined in the hereinafter defined Lease), lease the Leased Property to Zions Bancorporation, National Association (the "Trustee"), solely in its capacity as trustee under the Indenture described herein, as lessee, pursuant to a Ground and Improvement Lease Agreement (the "Ground Lease"), and, subject to the termination of the similar lease relating to the 2010B Certificates, simultaneously sublease the Leased Property back from the Trustee pursuant to the terms of a Lease Purchase Agreement (the "Lease") between the Trustee, as lessor, and the Board, on behalf of 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 a 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 any 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 the Trustee will execute and deliver one or more series of certificates of participation, dated as of their date of delivery, in an aggregate principal amount not to exceed $13,200,000 (the "Certificates"); and

WHEREAS, the net proceeds of the Certificates will be used to refund the 2010B Certificates and pay certain costs of executing and delivering the Certificates (collectively, the "Project"); and

WHEREAS, the Certificates represent assignments of the right to receive certain Revenues (as defined in the Lease), 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, there are on file at the County offices the proposed form of the following: (a) the Ground Lease; (b) the Lease; (c) an Escrow Agreement among the Board, the County, and the Trustee, as escrow bank (the "Escrow Agreement"), relating to the refunding of the 2010B Certificates; (d) the Continuing Disclosure Certificate (the "Disclosure Certificate") with respect to the Certificates; and (e) the Preliminary Official Statement (the "Preliminary Official Statement") with respect to the Certificates; and

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

WHEREAS, Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2 of the Colorado Revised Statutes, 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.

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

Section 1. Ratification and Approval of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this resolution) by the Board or the officers or agents of the Board or the County relating to the Ground Lease, the Lease, or the Project is hereby ratified, approved and confirmed. The designation of the Preliminary Official Statement by the County Manager as a "nearly final Official Statement" for purposes of Rule 15c2-12 of the U.S. Securities and Exchange Commission is hereby ratified, approved and confirmed.

Section 2. Finding of Best Interests. The Board hereby finds and determines, pursuant to the Constitution and laws of the State of Colorado, that the Project and the financing

of the costs thereof pursuant to the terms set forth in the Ground Lease and the Lease is necessary, convenient, and in furtherance of the County's purposes and is in the best interests of the inhabitants of the County and the Board hereby authorizes and approves the same.

Section 3. Supplemental Act; Parameters. The Board hereby elects to apply all of the Supplemental Act to the Ground Lease and the Lease and in connection therewith delegates to each of the Chair of the Board (the "Chair") and the County Manager the authority to make any determination delegable pursuant to Section 11-57-205(1)(a-i) of the Colorado Revised Statutes, as amended, in relation to the Ground Lease and the Lease, and to execute a sale certificate (the "Sale Certificate") setting forth such determinations, including, without limitation, the term of the Ground Lease, the rental amount to be paid by the County pursuant to the Lease, and the term of the Lease, subject to the following parameters and restrictions: (a) the term of the Ground Lease shall not extend beyond December 31, 2049; (b) the aggregate principal amount of the Base Rentals payable by the County pursuant to the Lease shall not exceed $13,200,000; (c) the maximum amount of Base Rentals payable by the County in any fiscal year shall not exceed $1,050,000; (d) the Lease Term shall not extend beyond December 31, 2039; and (e) the maximum net effective interest rate on the interest component of the Base Rentals relating to the Certificates shall not exceed 5.00%.

Pursuant to Section 11-57-205 of the Supplemental Act, the Board hereby delegates to each of the Chair and the County Manager the authority 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. In addition, each of the Chair or the County Manager is hereby authorized to determine if obtaining an insurance policy for all or any portion of the Certificates is in the best interests of the County, and if so, to select an insurer to issue an insurance policy, execute a commitment relating to the same and execute any related documents or agreements required by such commitment. Each of the Chair or the County Manager is hereby authorized to determine if obtaining a reserve fund insurance policy for the Certificates is in the best interests of the County, and if so, to select a surety provider to issue a reserve fund insurance policy and execute any related documents or agreements required by such commitment.

Section 5. Approval of Documents. The Ground Lease, the Lease, the Escrow Agreement, and the Disclosure Certificate, in substantially the forms on file with the County, are in all respects approved, authorized and confirmed, and the Chair or the County Manager is hereby authorized and directed, for and on behalf of the County, to execute and deliver the Ground Lease, the Lease, the Escrow Agreement, and the Disclosure Certificate in substantially the forms on file with the County, 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. Approval of Official Statement. A final Official Statement, in substantially the form of the Preliminary Official Statement on file with the County, is in all respects approved and authorized. The Chair or the County Manager is hereby authorized and directed, for and on behalf of the County, to execute and deliver the final Official Statement in substantially the form and with substantially the same content as the Preliminary Official Statement on file with the County, with such changes as may be approved by the County

Manager. The distribution of the Preliminary Official Statement and the final Official Statement to all interested persons in connection with the sale of the Certificates is hereby ratified, approved and authorized.

Section 7. Authorization to Execute Collateral Documents. The County Clerk and Recorder (the "Clerk") or Deputy County Clerk and Recorder (the "Deputy Clerk) is each 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, the County Manager and the Clerk or Deputy Clerk and other appropriate officials or employees of the County are hereby authorized to execute and deliver, for and on behalf of the County, any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they 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 bond counsel prior to the execution of the documents. The execution of any instrument by the aforementioned officers or members of the Board shall be conclusive evidence of the approval by the County of such instrument in accordance with the terms hereof and thereof.

Section 8. No General Obligation Debt. No provision of this resolution, the Ground Lease, the Lease, the Indenture, the Certificates, the Preliminary Official Statement, or the final Official Statement 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 provision, 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 (as defined in the Lease) 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 County debt or other financial obligation whatsoever. No provision of the Ground 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 9. Reasonableness of Rentals. 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 compulsion to renew the Lease or to exercise its option to purchase the Trustee's leasehold 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 determines that the amount of rental payments to be received by the County from the Trustee pursuant to the Ground Lease, together with the leasing of the Leased Property back to the County pursuant to the Lease, is reasonable consideration for the leasing of the Leased Property to the Trustee for the term of the Ground Lease.

Section 10. 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 for their sale or purchase, any person purchasing or selling such Certificate specifically waives any such recourse.

Section 11. Repealer. All bylaws, orders, and resolutions of the County, or parts thereof, inconsistent with this resolution or with any of the documents hereby approved are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order or resolution of the County, or part thereof, heretofore repealed.

Section 12. Severability. If any section, subsection, paragraph, clause or provision of this resolution or the documents hereby authorized and approved (other than provisions as to the payment of Base Rentals during the Lease Term, provisions for the quiet enjoyment of the Leased Property by the County during the Lease Term and provisions for the conveyance of the Leased Property to the County under the conditions provided in the Lease) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this resolution or such documents, the intent being that the same are severable.

Section 13. Effective Date. This resolution shall be in full force and take effect immediately upon its passage and approval.

[The remainder of this page intentionally left blank.]

PASSED, ADOPTED AND APPROVED this December 10, 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 December 10, 2019.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the regular meeting of December 10, 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 December 10, 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 10th day of December, 2019.

(SEAL)

_____

Clerk and Recorder
Gunnison County, Colorado

EXHIBIT A

(Attach copy of notice given prior to the December 10, 2019 meeting)

Finance Office
Memorandum

To: Board of County Commissioners, Matthew Birnie

From: Linda Nienhueser

Date: December 6, 2019

Re: **Sales Tax Revenues and Commitments**

This fiscal impact note will accompany the other packet items related to the refunding of the 2010 Series Build America Bonds and related documents to be considered during the December 10, 2019 BOCC meeting.

I have reviewed the Sales Tax Fund as sales tax revenues will be used to cover the cost of this financing package during the term. I have a model that details the committed annual costs for payments that are required for more than one year, assuming annual appropriations are made in each budget during the term of those agreements.

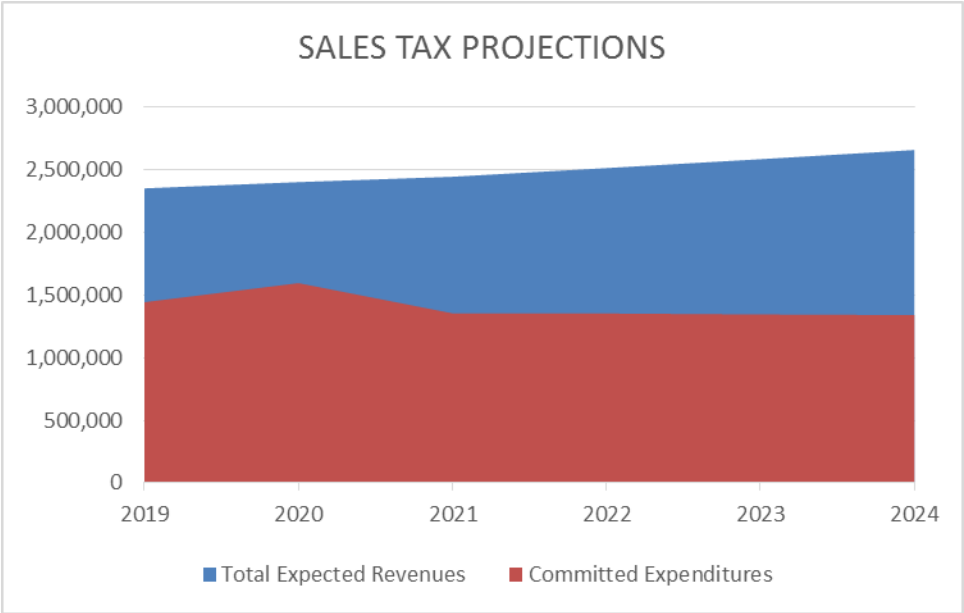
Those items are detailed here:

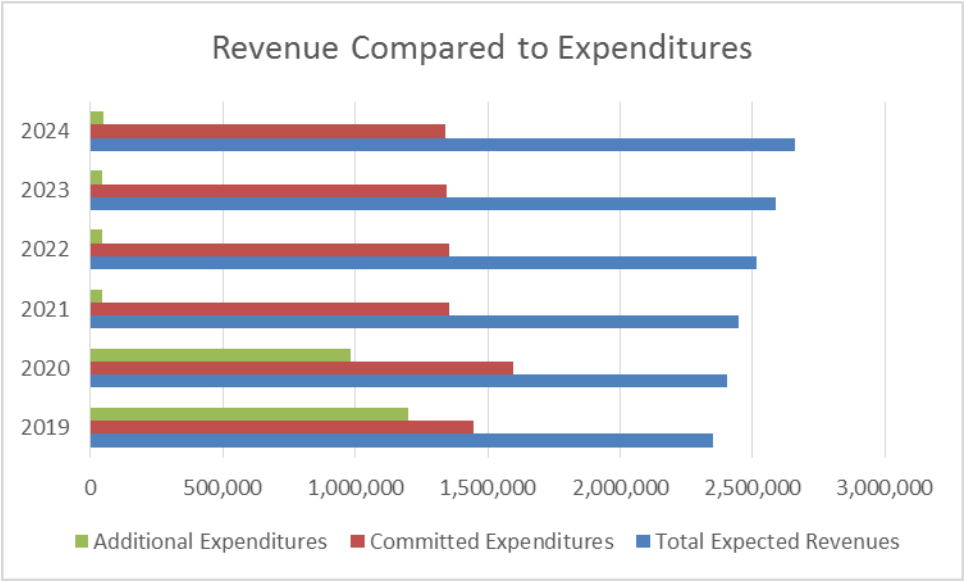
	2019	2020	2021	2022	2023	2024
Committed Annual Costs						
Sun Trust Facilities Energy Savings	113,386	113,386				
COP's 2010 Bonds;2020 Refunding	633,039	585,667	473,018	472,668	466,053	458,422
COP's 2013 Bonds	606,370	628,541	630,752	630,002	628,898	630,865
Whetstone Property	72,196	102,103	102,103	102,013	102,103	102,103
Sterling Energy Lease Purchase PI		149,263	149,263	149,263	149,263	149,263
Subtotal Committed Annual Costs	2,316,336	1,596,372	1,355,136	1,353,946	1,346,317	1,340,653

Included in the model are estimated revenues from sales tax collections with a 1.98% increase each year, along with other recurring

revenues from fines and earnings on investments. Other approved uses are also included in the model and in 2019 and 2020 additional approved uses result in decreases in available resources in the amount of $293,000 and $178,000 respectively. The charts that follow show in graphic form the total sales tax projections, the revenue compared to expenditures and the changes in available resources for the years 2019 to 2024.

If you have any questions, please let me know.
Thank you.




Revenue Compared to Expenditures
2024
2023
2022
2021
2020
2019
0
500,000
1,000,000
1,500,000
2,000,000
2,500,000
3,000,000
Additional Expenditures
Committed Expenditures
Total Expected Revenues

Available Resources
6,000,000
5,000,000
4,000,000
3,000,000
2,000,000
1,000,000
0
2019
2020
2021
2022
2023
2024
Estimated Beginning available resources
Estimated Ending available resources