

RESOLUTION NO. ~~14~~-2016

A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE BY MONTEZUMA COUNTY, COLORADO, OF ITS REVENUE BONDS (SOUTHWEST MEMORIAL HOSPITAL PROJECT), TAX-EXEMPT SERIES 2016A, AND ITS REVENUE BONDS (SOUTHWEST MEMORIAL HOSPITAL PROJECT), TAXABLE SERIES 2016B, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$40,000,000, AND THE LOAN OF THE PROCEEDS OF THE BONDS TO SOUTHWEST HEALTH SYSTEM, INC., FOR THE PURPOSE OF FINANCING AND REFINANCING VARIOUS IMPROVEMENTS AND EQUIPMENT COMPRISING SOUTHWEST MEMORIAL HOSPITAL LOCATED WITHIN THE COUNTY; AND APPROVING VARIOUS DOCUMENTS AND OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, Montezuma County (the "County") is a body politic and corporate and a political subdivision of the State of Colorado (the "State") duly organized and existing under the constitution and the laws of the State; and

WHEREAS, the County is empowered by the County and Municipality Development Revenue Bond Act (the "Development Revenue Bond Act"), being Part 1 of Article 3 of Title 29 of the Colorado Revised Statutes, as amended ("C.R.S."), to issue its bonds for the purpose of financing or refinancing any "project," as defined in the Development Revenue Bond Act; and

WHEREAS, Southwest Health System, Inc. (the "Borrower"), a Colorado nonprofit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Federal Tax Code"), operates the Southwest Memorial Hospital and appurtenant facilities (collectively the "Hospital Facilities") located within the County; and

WHEREAS, the Borrower has requested that the County issue its revenue bonds pursuant to the Development Revenue Bond Act for the purpose of (a) financing and refinancing various improvements and equipment comprising the Southwest Memorial Hospital, located within the County, and (b) paying the costs of issuing the bonds (collectively, the "Project"); and

WHEREAS, the Board of County Commissioners of the County (the "Board") has considered the request of the Borrower and has concluded that the financing of the Project promotes the public health, welfare, safety, convenience and prosperity of the County, and that the County should issue its revenue bonds to provide such financing, subject to the conditions set forth herein; and

WHEREAS, the County shall issue, sell and deliver its Revenue Bonds (Southwest Memorial Hospital Project), Tax-Exempt Series 2016A (the "Series 2016A Bonds"), and its Revenue Bonds (Southwest Memorial Hospital Project), (the "Series 2016B Bonds, and together with the Series 2016A Bonds, the "Bonds"), in an aggregate principal amount not to exceed \$40,000,000, pursuant to the terms of an Indenture of Trust between the County and Zions Bank, a division of ZB, National Association, as trustee (the "Trustee"), to be dated as of November 1, 2016 (the "Indenture"), and loan the proceeds thereof to the Borrower pursuant to a

Loan Agreement, to be dated as of November 1, 2016, between the County and the Borrower (the "Loan Agreement"), to finance the Project; and

WHEREAS, in order to comply with certain requirements of the Federal Tax Code, the County and the Borrower will enter into a Tax Regulatory Agreement and No-Arbitrage Certificate, to be dated as of the date of issuance of the Bonds (the "Tax Agreement"), stating the reasonable expectations of the County and the Borrower as of the date of issuance of the Series 2016A Bonds as to future events that are material for purposes of Sections 103 and 148 of the Federal Tax Code; and

WHEREAS, the Bonds will be privately placed with a limited number of commercial banks (collectively, the "Purchasers") pursuant to the terms of the Indenture and a Continuing Covenant Agreement, to be dated as of November 1, 2016 (the "Continuing Covenant Agreement"), between the Borrower and such Purchasers; and

WHEREAS, the Board has determined to apply all of the provisions of the Supplemental Public Securities Act (the "Supplemental Public Securities Act"), being Part 2 of Article 57 of Title 11, C.R.S., to the Bonds; and

WHEREAS, as permitted by the Supplemental Public Securities Act, the Board has elected to delegate to one or more authorized persons the authority to determine, among other things, certain provisions of the Bonds, all of which is to be set forth in a certificate executed by an authorized delegate in accordance with the provisions of this Resolution; and

WHEREAS, there have been presented to the Board at or prior to this meeting the proposed form of the Indenture (which includes the form of the Bonds), the Loan Agreement (which includes the form of the Promissory Note from the Borrower to the County in the principal amount of the Bonds, to be assigned by the County to the Trustee) and the Tax Agreement (collectively, the "County Documents");

WHEREAS, the Board desires to authorize the issuance, sale, execution and delivery of the Bonds, authorize the forms, execution and delivery by the County of the County Documents and such other documents, certificates and instruments as may be necessary to effect the intent of this Resolution and authorize and approve various other matters in connection with the issuance and sale of the Bonds;

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

Section 1. Authorization. In accordance with the constitution and laws of the State, including, without limitation, the Development Revenue Bond Act, the Supplemental Public Securities Act and all other laws of the State thereunto enabling, the Bonds are hereby authorized to be issued by the County pursuant to the Indenture, the Bonds sold to the Purchasers pursuant to the Indenture and the Continuing Covenant Agreement and the proceeds derived from the sale of the Bonds loaned to the Borrower pursuant to the Loan Agreement, all for the purpose of funding the Project as further provided in the County Documents and the Continuing Covenant Agreement. The Board hereby elects to apply all of the provisions of the Supplemental Public Securities Act to the Bonds.

Section 2. Approval of the County Documents. The Indenture (which includes the forms of the Bonds), the Loan Agreement and the Tax Agreement, in substantially the forms presented to the Board at or prior to this meeting, are in all respects approved, but with such changes, modifications, additions or deletions as the Chairman of the Board, with the advice of counsel, deems necessary, desirable or appropriate and are not inconsistent with this Resolution or the Development Revenue Bond Act. The Chairman or Vice Chairman of the Board are hereby authorized and directed to execute and deliver, and the County Clerk and Recorder is hereby authorized and directed to attest and seal, the County Documents on behalf of the County. The execution of any document by an authorized member of the Board or officer of the County shall be conclusive proof of the approval by the Board of the terms thereof.

Section 3. Delegated Authority.

(a) ***Delegation.*** The Board hereby delegates to any member of the Board (each a "Board Delegate"), acting individually, for a period of one year following the effective date of this Resolution, the authority to make any determination delegable pursuant to the Supplemental Public Securities Act in connection with the Bonds, and to execute a certificate (the "Delegated Terms Certificate") setting forth such determinations, without any requirement that the Board approve such determinations, subject to the parameters set forth in subsection (b) of this Section, and any other matters that, in the judgment of the Board Delegate, are necessary or convenient to be set forth in the Delegated Terms Certificate and not inconsistent with this Resolution.

(b) ***Parameters.*** The authority delegated to the Board Delegate by this Section shall be subject to the following parameters:

- (i) the aggregate principal amount of the Bonds shall not exceed \$40,000,000;
- (ii) the Bonds shall mature not later than December 31, 2046; and
- (iii) the net effective interest rate of the Bonds shall not exceed 15.00%, which is the maximum net effective interest rate hereby authorized for the Bonds.

Section 4. Details of the Bonds. The Bonds shall have such terms and provisions, shall be in such form and shall be executed and delivered as provided in the Indenture and the Delegated Terms Certificate, the final forms of which, as approved and executed pursuant to the Sections hereof entitled "Approval of the County Documents" and "Delegated Authority," shall be deemed to be incorporated herein by reference.

Section 5. Limited Obligations. The Bonds shall be special limited obligations of the County payable solely from the receipts and revenues of the County derived under the Indenture and the Loan Agreement that are specifically pledged therefor. The Bonds shall never constitute a debt or indebtedness of the County, the State or any county, municipality or political subdivision of the State within the meaning of any provision or limitation of the constitution or statutes of the State or of any political subdivision of the State; and the Bonds shall neither constitute nor give rise to any pecuniary liability of or a charge against the general credit or

taxing powers of, the County, the State or any county, municipality or political subdivision of the State. The Bonds shall not constitute a "multiple fiscal year direct or indirect debt or other financial obligation" of the County within the meaning of Article X, Section 20 of the State constitution.

The creation, perfection, enforcement and priority of the pledge of revenues to secure or pay the Bonds shall be governed by the Supplemental Public Securities Act, this Resolution and the Indenture. The revenue pledged to the payment of the Bonds shall immediately be subject to the lien of such pledge without any physical delivery, filing or further act. The lien of such pledge on such pledged revenue shall have priority over any and all other obligations and liabilities of the County and shall be valid, binding and enforceable as against all persons having claims of any kind in tort, contract or otherwise against the County, irrespective of whether such persons have notice of such liens.

Section 6. Recital in Bonds. The Bonds shall contain a recital that such Bonds are issued pursuant to the Supplemental Public Securities Act, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

Section 7. Sale of Bonds. The private placement and sale of the Bonds to the Purchasers pursuant to the terms of the Indenture and the Continuing Covenant Agreement are in all respects approved, authorized and confirmed. The Bonds shall be executed, attested and sealed on behalf of the County and delivered to the Trustee for authentication and further delivery to the Purchasers pursuant to the Continuing Covenant Agreement upon satisfaction of the requirements of the Indenture.

Section 8. Determinations and Findings. The Board hereby makes the following determinations and findings, including those required by Sections 29-3-113, 29-3-114 and 29-3-120, C.R.S.:

(a) The County is authorized under the Development Revenue Bond Act to issue and sell the Bonds for the purpose, in the manner and upon the terms and conditions set forth in this Resolution and in the County Documents.

(b) The Loan Agreement, which constitutes a financing agreement within the meaning of the Development Revenue Bond Act, obligates the Borrower to pay the amount necessary in each year to pay the principal of and the interest on the Bonds.

(c) The Borrower has covenanted in the Loan Agreement to maintain, or cause to be maintained, the Hospital Facilities in good repair, and to carry, or cause to be carried, all proper insurance with respect thereto.

(d) The revenues and other amounts payable under the Loan Agreement are sufficient to pay, in addition to all other requirements of the Loan Agreement and this Resolution, all sums referred to in paragraphs (b) and (c) of this Section and all taxes, if any, or payments in lieu of taxes, if any, levied upon the Project.

(e) The issuance of the Bonds will effectuate the public purposes of the County and carry out the purposes of the Development Revenue Bond Act.

(f) After reasonable notice was given in accordance with applicable law, the Board held a public hearing with respect to the proposed issuance of the Bonds and the financing of the Project. For purposes of the public approval requirement of Section 147(f) of the Federal Tax Code, the financing of the Project and the issuance of the Bonds are hereby approved.

Section 9. Authority to Execute and Deliver Additional Documents. The officers, employees and agents of the County shall take all action in conformity with the Development Revenue Bond Act necessary or reasonably required to effectuate this Resolution and the issuance of the Bonds, and shall take all action necessary or desirable in conformity with the Development Revenue Bond Act to accomplish the financing of the Project and for carrying out, giving effect to and consummating the transactions contemplated by this Resolution and the County Documents, including, without limitation, the execution, delivery and filing of any documents, statements or reports with the Internal Revenue Service or with the Secretary of the United States Treasury or his or her delegate necessary to maintain the exclusion of interest on the Series 2016A Bonds from gross income for federal income tax purposes, and the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Bonds.

Section 10. No Recourse Against Officers and Agents. Pursuant to Section 11-57-209, C.R.S., 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 of, premium, if any, and interest on the Bonds. 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 Bonds or any interest therein and as a part of the consideration of their sale or purchase, any person purchasing or selling the Bonds or any interest therein specifically waives any such recourse.

Section 11. Third Party Beneficiaries. With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from the Resolution, the County Documents or the Bonds is intended or shall be construed to give to any person other than the County, the Trustee, the Borrower or the Purchasers any legal or equitable right, remedy or claim under or with respect to this Resolution or any covenants, conditions and provisions herein contained. This Resolution and all of the covenants, conditions and provisions hereof are intended to be for the sole and exclusive benefit of the County, the Trustee, the Borrower and the Purchasers as herein provided.

Section 12. Limitation on Actions. Pursuant to the Development Revenue Bond Act and the Supplemental Public Securities Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of the Bonds shall be commenced more than 30 days after the authorization of the Bonds.

Section 13. Ratification and Approval of Prior Actions. All actions, not inconsistent with the provisions of this Resolution, heretofore taken by the Board and the officers of the Board directed toward the issuance and sale of the Bonds are hereby ratified, approved and confirmed.

Section 14. Headings. The headings to the various sections and subsections of this Resolution have been inserted solely for the convenience of the reader, are not a part of this Resolution and shall not be used in any manner to interpret this Resolution.

Section 15. Resolution Irrepealable. After the Bonds are issued, this Resolution shall be and remain irrepealable until the Bonds and the interest thereon shall have been fully paid, canceled and discharged.

Section 16. Repealer. All resolutions, bylaws, orders and other instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any resolution, bylaw, order or other instrument, or part thereof, heretofore repealed.

Section 17. Severability. If any section, paragraph, clause or provision of this Resolution 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 18. Effective Date. This Resolution shall take effect immediately upon its adoption and approval.

[Execution page follows]

ADOPTED AND APPROVED this 7th day of November, 2016.

BOARD OF COUNTY COMMISSIONERS
MONTEZUMA COUNTY, COLORADO

Ken Persell

County Clerk and Recorder

Ken L. Smith

County Commissioner

James R. Lambert

County Commissioner

(SEAL)



County Commissioner