

RESOLUTION NO. 14-2023

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL INDENTURE OF TRUST, BETWEEN MONTEZUMA COUNTY, COLORADO AND ZIONS BANCORPORATION, NATIONAL ASSOCIATION, AS TRUSTEE, SUPPLEMENTING THE INDENTURE OF TRUST DATED AS OF NOVEMBER 1, 2016 WHICH SECURES THE MONTEZUMA COUNTY, COLORADO, REVENUE BONDS (SOUTHWEST MEMORIAL HOSPITAL PROJECT), TAX-EXEMPT SERIES 2016A, AND REVENUE BONDS (SOUTHWEST MEMORIAL HOSPITAL PROJECT), TAXABLE SERIES 2016B; 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 County previously issued its Revenue Bonds (Southwest Memorial Hospital Project) Tax-Exempt Series 2016A (the "2016A Bonds") and Revenue Bonds (Southwest Memorial Hospital Project) Taxable Series 2016B (the "2016B Bonds," and together with the 2016A Bonds, the "Bonds"), pursuant to the terms of an Indenture of Trust, dated as of November 1, 2016 (the "Original Indenture"), by and between the County and Zions Bank, a Division of ZB, National Association, as the trustee thereunder (the "Trustee"); and

WHEREAS, proceeds of the Bonds were loaned (the "Loan") to Southwest Health System, Inc., a Colorado nonprofit corporation (the "Borrower") upon the terms and conditions set forth in the Loan Agreement, dated as of November 1, 2016 (the "Loan Agreement"), by and between the County and the Borrower; and

WHEREAS, pursuant to a Continuing Covenant Agreement dated as of November 1, 2016, between the Borrower and a syndicate of commercial banks (collectively, the "Purchasers"), the Purchasers agreed to purchase the Bonds and fund advances to the Borrower for purposes of refinancing certain outstanding bonds of the County, financing additional improvements to the Hospital Facilities in order to provide more efficient patient care, and paying certain costs incurred in connection with the issuance of the Bonds; and

WHEREAS, as security for repayment of the Loan and the Bonds, the Borrower assigned to the Trustee for the Bonds its rights under the Project Funding Agreement dated as of November 1, 2016, by and between Montezuma County Hospital District, a quasi-municipal corporation and political subdivision duly organized and existing as a health service district under the constitution and laws of the State of Colorado (the “District”) and the Borrower (the “Original Project Funding Agreement”) to receive reimbursement of costs of the Project from the District through the annual appropriation of District Sales Tax Revenue; and

WHEREAS, the Purchasers are the current owners of 100% in aggregate principal amount of the Bonds; and

WHEREAS, the Borrower has requested the release of funds from the Debt Service Reserve Fund under the Original Indenture for deposit into a Funded Capital Improvement Account, and in connection therewith, the Purchasers will require monthly deposits to be made by the Borrower and the District into the Bond Fund; and

WHEREAS, Treasury Regulation §1.1001-3(e)(3)(ii) creates a “safe harbor” for deferrals of scheduled payments so long as the deferral does not exceed the lesser of (i) five years from the original due date of the first scheduled payment that is deferred, or (ii) 50 percent of the original term of the debt and the deferred payments are unconditionally payable at the end of the safe harbor period; and

WHEREAS, the deferral of scheduled payments will not exceed the lesser of the foregoing limitations; and

WHEREAS, the Borrower has requested that the County enter into a First Supplemental Indenture of Trust (the “First Supplemental Indenture”) between the County and the Trustee for the purpose of making certain modifications to the Original Indenture, including but not limited to (i) allowing for the release of funds in the Debt Service Reserve Fund for deposit into the Funded Capital Improvement Account, (ii) creating the Funded Capital Improvement Account to be used for Qualifying Expenditures (as defined therein), (iii) providing that amounts on deposit in the Bond Fund in excess of amounts due thereunder shall be transferred to the Funded Capital Improvement Account, and (iv) amending certain defined terms; and

WHEREAS, Section 8.02 of the Original Indenture permits the execution of a supplemental indenture for the purpose of modifying, altering, amending, adding to, or rescinding, in any particular, any of the terms or provisions contained in the Original Indenture or in any supplemental indenture with the consent of the Purchasers and the Borrower; and

WHEREAS, the Purchasers and the Borrower have acknowledged and consented to the First Supplemental Indenture, dated as of August 1, 2023, by and between the County and the Trustee (the “First Supplemental Indenture” and together with the Original Indenture, the “Indenture”); and

WHEREAS, there has been presented to the Board at or prior to this meeting the proposed form of the First Supplemental Indenture; and

WHEREAS, the Board of County Commissioners of the County (the "Board") has considered the request of the Borrower and desires to authorize the execution on behalf of the County of the First Supplemental Indenture in substantially the form presented at this meeting; and

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

Section 1. Approval of the First Supplemental Indenture. The First Supplemental Indenture in substantially the form presented to the Board at or prior to this meeting, is 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. 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 First Supplemental Indenture 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 2. 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 execution and delivery of the First Supplemental Indenture, and shall take all action necessary or desirable in conformity with the Development Revenue Bond Act to carry out, give effect to and consummate the transactions contemplated by this Resolution and the First Supplemental Indenture, 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 3. 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 4. Third Party Beneficiaries. With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from the Resolution or the First Supplemental Indenture 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 5. 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 execution and delivery of the First Supplemental Indenture are hereby ratified, approved and confirmed.

Section 6. 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 7. Resolution Irrepealable. After execution and delivery of the First Supplemental Indenture, this Resolution shall be and remain irrepealable until the Bonds and the interest thereon shall have been fully paid, canceled and discharged.

Section 8. 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 9. 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 10. Effective Date. This Resolution shall take effect immediately upon its adoption and approval.

[Execution page follows]

ADOPTED AND APPROVED this ^{18th RP} 11th day of July, 2023.

BOARD OF COUNTY COMMISSIONERS
MONTEZUMA COUNTY, COLORADO

Lynn Perrell

County Clerk and Recorder

Jim Cavallaro

County Commissioner

[Signature]

County Commissioner

[Signature]

County Commissioner

(SEAL)

