

RESOLUTION NO. 75-2023

A RESOLUTION AUTHORIZING AN EQUIPMENT LEASE PURCHASE AGREEMENT, AN ESCROW AGREEMENT AND RELATED DOCUMENTS, AS NEEDED, WITH CLAYTON HOLDINGS, LLC; RATIFYING ACTION PREVIOUSLY TAKEN; AND PROVIDING OTHER MATTERS RELATING THERETO.

WHEREAS, Washington County, Colorado (the "County") is a duly and regularly created, organized and existing political subdivision and public body corporate and politic, existing as such under and by virtue of the Constitution and laws of the State of Colorado (the "State"); and

WHEREAS, the County has the authority pursuant to Section 30-11-104.1, Colorado Revised Statutes, to enter into lease purchase agreements to provide for the financing of a jail, courthouse or other county building or equipment used, or to be used, for governmental purposes; and

WHEREAS, for the purpose of financing the costs of acquiring certain equipment for County purposes (the "Leased Property"), the Board of County Commissioners of the County (the "Board") has determined that it is in the best interest of the County and its residents and taxpayers to enter into an Equipment Lease Purchase Agreement (the "Lease") with Clayton Holdings, LLC (the "Lessor") in an amount not to exceed \$1,500,000, for the purpose of providing certain energy equipment upgrades and other capital improvements (the "Project"); and

WHEREAS, pursuant to the terms of such Lease, the Lessor will advance funds for the Project to the County, and such funds related to such advance shall be held in an escrow account pursuant to the terms of an escrow deposit agreement between the County and UMB Bank, n.a. (the "Escrow Agent"), and such funds shall be released to the County upon submission of requisitions by the County in order to finance the Project; 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 rental payments ("Rental Payment" as such term is 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 Rental Payments 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, there has been presented to the Board and is on file at the County offices a form of Lease and a form of Escrow Agreement; and

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

NOW BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, COLORADO, THAT:

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 Lease, the Escrow Agreement, and the implementation of the Project, 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 under the terms and provisions set forth in the Lease is necessary, convenient and in furtherance of the County's purposes and is in the best interests of the County and its citizens and inhabitants, and the Board hereby authorizes and approves the same.

Section 3. Approval of Documents. The Lease and the Escrow Agreement, in substantially the forms filed with the Clerk of the Board, 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 Lease and the Escrow Agreement in substantially the forms and with substantially the same content as filed with the Clerk of 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 4. Authorization to Execute Collateral Documents. The County Clerk or any Deputy 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, County Clerk or any Deputy County Clerk, the County Administrator, 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, including but not limited to the execution of such other documents, certificates and affidavits as may be necessary. 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 5. No General Obligation Debt. No provision of this resolution, the Lease, or the Escrow Agreement 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 Lease except in connection with the payment of the Rental Payments (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 Escrow Agreement 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 Lease 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. The Lease shall not directly or indirectly obligate the County to make any payments beyond those budgeted and appropriated for the County's then current fiscal year.

Section 6. Reasonableness of Rentals. The Board hereby determines and declares that the Rental Payments due under the Lease 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 Lessor'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 Lessor's interest in the Leased Property (i.e., the entire maximum term of the Lease) does not exceed the useful life of the Leased Property.

Section 7. Supplemental Act; Parameters. The Board hereby elects to apply all of the Supplemental Act to the Lease and in connection therewith delegates to the Chair or the Finance Director of the County the independent authority to make any determination delegable pursuant to Section 11-57-205(1)(a-i), Colorado Revised Statutes, in relation to the Lease, subject to the following parameters and restrictions:

- (a) the Lease Term shall not extend beyond December 31, 2033;
- (b) the aggregate principal amount of the Rental Payments payable by the County pursuant to the Lease shall not exceed \$1,500,000;
- (c) the maximum interest rate on the interest component of the Rental Payments under the Lease shall not exceed 4.470%.

Section 8. 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 9. 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 by the County 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.

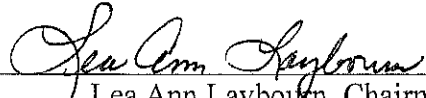
Section 10. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Board, or any officer or agent of the County acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the Rental Payments. 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 Lease and as a part of the consideration of their sale or purchase, the Lessor specifically waives any such recourse.

Section 11. Electronic Signatures. In the event the Chair, the Clerk, the County Administrator, or other employee or official of the County that is authorized or directed to execute any agreement, document, certificate, instrument or other paper in accordance with this Resolution (collectively, the "Authorized Documents") is not able to be physically present to manually sign any such Authorized Document, such individual or individuals are hereby authorized to execute Authorized Documents electronically via facsimile or email signature. Any electronic signature so affixed to any Authorized Document shall carry the full legal force and effect of any original, handwritten signature. This provision is made pursuant to Article 71.3 of Title 24, C.R.S., also known as the Uniform Electronic Transactions Act.

Section 12. Effective Date. This resolution shall be in full force and effect upon its passage and adoption.

ADOPTED AND APPROVED this 5th day of September, 2023.

**BOARD OF COUNTY COMMISSIONERS
WASHINGTON COUNTY, COLORADO**



Lea Ann Laybourn, Chairman

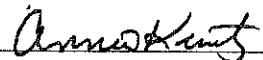


Kent Vance, Commissioner



Gisele Jefferson, Commissioner





Annie Kuntz, County Clerk and
Recorder

STATE OF COLORADO)
) SS.
 COUNTY OF WASHINGTON)

I, Annie Kuntz, the County Clerk and Recorder of the County of Washington (the "County") in the State of Colorado, do hereby certify that:

1. The foregoing pages are a true and correct copy of a resolution (the "Resolution") passed and adopted by the Board of County Commissioners (the "Board") of the County at a regular meeting held on September 5, 2023.

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

<u>Commissioner</u>	<u>Voting "Yes"</u>	<u>Voting "No"</u>	<u>Absent</u>	<u>Abstaining</u>
Lea Ann Laybourn	X			
Kent Vance	X			
Gisele Jefferson	X			

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 Recorder 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. Notice of the meeting of September 5, 2023, in the form attached hereto as Exhibit A was posted not less than twenty-four hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of said County affixed this 5th day of September,
2023.



Annie Kent

County Clerk and Recorder

Exhibit A
(Form of Notice of Meeting)

**WASHINGTON COUNTY BOARD OF COMMISSIONERS
MEETING AGENDA**

September 5th, 2023

Please remember to
Silence your cell phone

8:00 Invocation
Pledge of Allegiance
Work Session

8:01 Open Meeting

8:02 Public Comment/Work Session

Public Invited to be Heard (In order to address the Board, you must sign in on the sign-up sheet available at the podium. Please print your name and the topic you will be speaking about. Each individual is allowed, and must strictly adhere to, a three minute period of time in which to address the Board of County Commissioners on topics which are not on the Consent Agenda or not on the Board's regular agenda. All comments must be directed to the Board. Comments may only embody topics which have not been previously addressed to the Board by the speaker. The Chair may immediately refer any comment to staff for resolution or for scheduling of a work session. Personal attacks against Board members, Administrative staff or Employees will not be recognized. The Board will not accept comments regarding matters which fall outside its jurisdiction or are likely to be considered at a future public hearing, such as a land use hearing. In that event, the speaker will be asked to give his or her testimony at that hearing, either in person or in writing.)

8:03 Business Meeting Convenes

- Approve Consent Agenda
- 1. Schedule of bills
- 2. Nursing Home bills
- 3. Pioneer Haven bills
- 4. Minutes from Prior Meetings
 - a. August 30th, 2022

8:05 County Administrator – Misty Peterson

- 1. BP23-25 MOSSO
- 2. BP23-26 T-MOBILE
- 3. BP23-27 Wylie -
- 4. Capital Purchase-District 1
- 5. Capital Purchase-Courthouse
- 6. Public Road Easement-Willeke
- 7. CCI Designation Form
- 8. Closing Paperwork
- 9. Updates
- 10. Other Reports

8:45 Adjourn Meeting

10:00-4:00 Work Session

Next Scheduled Meeting September 12th, 2023
BOCC is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://us02web.zoom.us/j/85774090292?pwd=aDF0dmZOclhZYTJPUeVmdWE1MHk3QT09>

Meeting ID: 857 7409 0292
Passcode: 965368

Dial by your location
+1 719 359 4580 US
+1 669 444 9171 US