

**TOWN OF RICO
ORDINANCE NO. 2023-02**

AN ORDINANCE OF THE TOWN OF RICO, COLORADO, AUTHORIZING THE EXECUTION AND DELIVERY OF A SITE AND IMPROVEMENT LEASE, A LEASE PURCHASE AGREEMENT, AND OTHER DOCUMENTS INCIDENTAL THERETO, ALL FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING AND EQUIPPING A PUBLIC WORKS FACILITY LOCATED AT 101 PICKER STREET; AND AUTHORIZING AND APPROVING THE TAKING OF ALL OTHER ACTIONS NECESSARY OR APPROPRIATE FOR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE.

WHEREAS, the Town of Rico, Colorado (“Town”) is a Colorado home rule municipality organized pursuant to Article XX of the Colorado Constitution and with the authority of the Town of Rico Home Rule Charter (the “Charter”); and

WHEREAS, pursuant to Section 14.1 of the Charter, the Board of Trustees of the Town (the “Board”) is authorized to purchase, sell, exchange, receive a donation of, enter into a lease for greater than two years, or dispose of any interest in real property including easements by ordinance; and

WHEREAS, pursuant to Section 7.1(e) of the Charter, the Board is authorized to enter into lease purchase and installment purchase agreements as a means of acquiring any real or personal property for public purposes; and

WHEREAS, pursuant to such authority and for the purpose of financing the construction and equipping of a public works facility (the “Project”), the Board has determined and hereby determines that it is in the best interests of the Town and its citizens and inhabitants that the Town and Zions Bancorporation, N.A. d/b/a Vectra Bank Colorado (the “Bank”) enter into a Site Lease Agreement (the “Site Lease”) between the Bank and the Town for the purpose of leasing the Leased Property (as defined in the Site Lease) to the Bank, and concurrently thereof enter into a Lease Agreement (the “Lease”) for the purpose of subleasing the Leased Property back to the Town, all for the purpose of acquiring, improving and equipping the Project; and

WHEREAS, the Board has determined that: (i) it is necessary, desirable, appropriate and in the best interests of the Town and its citizens and inhabitants that the Town finance a portion of the cost of acquiring, constructing and equipping of the Project; and (ii) that the Lease and the Site Lease be entered into for such public purposes; and

WHEREAS, the Base Rentals (as defined in the Lease) and Additional Rentals (as defined in the Lease) payable by the Town under the Lease shall constitute currently budgeted and appropriated expenditures of the Town, and none of the Base Rentals, the Additional Rentals, or any provision of the Lease shall constitute or give rise to a multiple fiscal

year financial obligation, general obligation, bonded indebtedness or other indebtedness of the Town nor a mandatory charge or requirement against the Town in any ensuing fiscal year beyond the then current fiscal year, nor shall the Lease directly or indirectly obligate the Town to make any payments beyond those appropriated for the Town's then current fiscal year; and

WHEREAS, with respect to the transactions contemplated by this ordinance, the Town's obligations under the Lease and the Site Lease do not create any additional obligations on the part of the Town other than as provided for in the Lease and the Site Lease; and

WHEREAS, there have been presented to the Board and are on file at the Town offices the following: (i) the Site Lease, in the proposed form attached hereto as **Exhibit A**; and (ii) the Lease, in the proposed form attached hereto as **Exhibit B**; 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 Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act.

NOW, THEREFORE, THE BOARD OF TRUSTEES OF THE TOWN OF ORDAINS THAT:

Section 1. All actions heretofore taken (not inconsistent with the provisions of this ordinance) by the Board or the officers of the Town, directed toward approval of the Lease and Site Lease by the Town and consummation of the transactions contemplated by this ordinance, are hereby ratified, approved and confirmed.

Section 2. The Board hereby finds and determines, pursuant to the Constitution and laws of the State, that leasing the Leased Property to the Bank under the terms and provisions set forth in the Site Lease and leasing the Leased Property from the Bank under the terms and provisions set forth in the Lease are necessary, convenient and in furtherance of the Town's purposes and are in the best interests of the inhabitants of the Town. The Board hereby authorizes and approves the financing of the Project and the leasing of the Leased Property to the Bank under the terms and provisions of the Site Lease and the subleasing of the Leased Property from the Bank under the terms and provisions of the Lease.

Section 3. The Lease and the Site Lease in substantially the forms presented to Board, with only such changes therein as are not inconsistent herewith, are in all respects authorized, approved and confirmed. The Mayor and the Town Clerk are hereby authorized and directed to execute and deliver the Lease and the Site Lease in substantially the forms and with substantially the same content as presented to the Board with only such changes therein as are not inconsistent herewith, for and on behalf of the Town.

Section 4. No provision of this ordinance, the Site Lease nor the Lease, nor any other document or transaction contemplated by this ordinance, shall constitute or give rise to a multiple fiscal year financial obligation, general obligation, bonded indebtedness or other indebtedness of the Town nor a mandatory charge or requirement against the Town in any ensuing fiscal year beyond the then current fiscal year, nor directly or indirectly obligate the Town to make any payments beyond those appropriated for the Town's then current fiscal year;

nor shall this ordinance, the Site Lease, the Lease, or any other document or transaction contemplated by this ordinance, be construed as creating bonded indebtedness of the Town within the meaning of Article VII of the Charter. The Town shall have no obligation to make any payments with respect to the transactions contemplated by this ordinance except the payment of the Base Rentals and Additional Rentals and certain other payments pursuant to the Lease, which payment obligations may be terminated by the Town in accordance with the provisions of the Lease. No provision of this ordinance, the Site Lease, the Lease, or any other document or transaction contemplated by this ordinance shall be construed or interpreted as creating an unlawful delegation of governmental powers or as a donation by or a lending of the credit of the Town within the meaning of Sections 1 or 2 of article XI of the Constitution of the State.

Section 5. The Board hereby finds, determines and declares, pursuant to the Charter and the Constitution and laws of the State, that (i) the lease of the Leased Property by the Town to the Bank under the terms and conditions provided for in the Site Lease, and (ii) the subleasing of the Leased Property by the Town from the Bank under the terms and conditions provided for in the Lease, are necessary, appropriate and in furtherance of the Town's governmental purposes and are in the best interests of the Town and its citizens and inhabitants. The Board further hereby finds, determines and declares, pursuant to the Charter and the Constitution and laws of the State, that: (i) the Base Rentals payable under the Lease during the Lease Term, as defined and provided in the Lease, represent fair value to the Town of its use of the Leased Property; (ii) the maximum term of the Lease does not exceed the useful life of the Leased Property; and (iii) the Option Price, as defined and provided in the Lease, represents the Town's estimate of a fair purchase price to the Town for the Leased Property at the time of exercise of the prepayment option. The Town hereby determines that the Base Rentals does not exceed a reasonable amount so as to place the Town under an economic compulsion to renew the Lease or to exercise its option to purchase the Leased Property thereunder. In making such determinations, the Board has given consideration to the estimated current value of the Leased Property, the uses and purposes for which the Leased Property will be employed by the Town, the benefit to the citizens and inhabitants of the Town by reason of the use and occupancy of the Leased Property pursuant to the terms and provisions of the Lease and the Site Lease, the Town's option to terminate the Site Lease and the expected eventual vesting of title to the Leased Property in the Town.

Section 6. The Board hereby elects to apply all of the provisions of the Supplemental Act to the Lease and in connection therewith delegates to the Town Manager of the Town the 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 aggregate principal amount of the Rent payable by the Town pursuant to the Lease shall not exceed \$600,000; (b) the Lease Term shall end no later than December 31, 2042; (c) the Lease shall be subject to optional prepayment at any time without a prepayment fee; (d) the maximum net effective interest rate on the Lease payments shall not exceed 8%; and (e) the Site Lease shall end no later than December 31, 2052.

Section 7. The Town hereby approves of actions taken or to be taken by appropriate officers of the Town to make or approve any alterations, changes or additions to the Site Lease and the Lease, as may be necessary or appropriate to correct errors or omissions

therein, to remove ambiguities therefrom, to conform the same to other provisions of said documents or instruments or to this ordinance, or any ordinance or resolution of the Board, or to the provisions of applicable law.

Section 8. The Mayor and other appropriate officers of the Town are hereby authorized to execute and deliver, for and on behalf of the Town, and the Town Clerk is authorized to attest and to place the seal of the Town on, the Site Lease, the Lease, any and all additional certificates, documents, instruments and other papers, and to perform all other acts they may deem necessary or appropriate, in order to implement and carry out the matters authorized or contemplated by this ordinance.

In the absence or disability of the Mayor, the Town Clerk or other Town officer, any agreement, document, certificate or other instrument authorized by this Ordinance, or necessary or appropriate to the transactions contemplated by this Ordinance, may be executed, attested, otherwise signed and delivered by the Mayor Pro Tem, the Town Manager or any deputy or assistant Town Clerk, or any deputy or assistant of such other Town officer, as the case may be.

The Board hereby initially and currently designates Chauncey McCarthy, Town Manager, as an Authorized Officer, as defined and as further provided in the Lease. The designation of Chauncey McCarthy as an Authorized Officer may hereafter be changed by motion of the Board.

Section 9. The Town hereby exercises its power as a home rule municipality, pursuant to Article XX of the Constitution of the State, to supersede any and all laws of the State and which may be in conflict herewith or with any provision of the Site Lease or the Lease.

Section 10. The Town hereby designates its obligations under the Lease as a qualified tax-exempt obligation for purposes of Section 265(b)(3)(B) of the Code. The Town does not expect to issue more than \$10,000,000 of tax-exempt obligations during calendar year 2023.


Section 11. All bylaws, orders, resolutions or ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 12. If any provision of this ordinance or of any of the documents or instruments authorized or approved hereby, other than the requirement of the Town to pay Base Rentals and Additional Rentals and the requirement of the Bank to provide quiet enjoyment of the Leased Property, as defined in the Lease, and to release the Site Lease and convey the Leased Property to the Town under the conditions set forth in the Site Lease and the Lease, should be held invalid, the invalidity of such provision shall not affect any of the other provisions of this ordinance or of such documents or instruments.

Section 13. This ordinance following first reading shall be published by title at least ten (10) days prior the Board meeting at which it will be considered for a second reading.

After introduction and adoption at second reading, the ordinance shall be published a second time by title and along with a statement indicating the effective date. Pursuant to Section 3.5(e) of the Charter, this ordinance shall take effect and be in force immediately upon final passage following the second reading.

THIS ORDINANCE WAS, FOLLOWING PUBLIC NOTICE, INTRODUCED, READ AND APPROVED ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY THIS 15TH DAY OF MARCH, 2023.



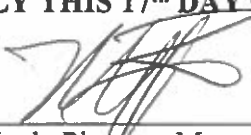
Nicole Pieterse, Mayor

ATTEST:



Anna Wolf, Town Clerk

THIS ORDINANCE WAS, FOLLOWING PUBLIC NOTICE, INTRODUCED, READ ON SECOND READING, PASSED AND ORDERED PUBLISHED BY TITLE ONLY TO BE EFFECTIVE IMMEDIATELY THIS 17TH DAY OF MAY, 2023.



Nicole Pieterse, Mayor

ATTEST:



Anna Wolf, Town Clerk

The Effective Date of this Ordinance is May 17, 2023