APPROPRIATION ORDINANCE NO.\_\_\_\_\_\_\_\_

**OF THE COUNTY OF JEFFERSON, ARKANSAS**

**(County Facilities Project)**

**THE COUNTY DESIRES TO ENTER INTO A LEASE-PURCHASE AGREEMENT WITH JEFFERSON COUNTY BUILDINGS, LLC IN SUBSTANTIALLY THAT FORM THAT IS ATTACHED HERETO EXHIBIT A PURSUANT TO WHICH FUNDS WILL BE RAISED THEREFROM IN ORDER FOR THE LESSOR TO FINANCE THE DEVELOPMENT AND CONSTRUCTION OF THE PROJECT**

The following Ordinance is adopted at a duly convened meeting of the Jefferson County, Arkansas Quorum Court as of July 7, 2020.

Whereas, the County is in need of the development of an office and clinic facility to serve as the (a) Jefferson County Health Unit, and related office facility, (b) center for veteran’s affairs, (c) offices and facilities to house the Jefferson County Coroner’s office and (d) other projects and infrastructure related thereto, all in accordance with those plans and specifications that are on file with the County Clerk and available for inspection by the public at any time (collectively, the “Project”); and

Whereas, the County desires to enter into a Lease-Purchase Agreement (the “Agreement”) with Jefferson County Buildings, LLC (together with its assigns, “Lessor”) in substantially that form that is attached hereto as **Exhibit A** pursuant to which funds will be raised therefrom in order for the Lessor to finance the development and construction of the Project; and

Whereas, the County desires to pledge and grant a security interest to Lessor in certain special revenues as more fully described below in order to secure and collateralize the County’s obligations as set forth in the Agreement; and

Whereas, this Ordinance and the Agreement are being executed in accordance with the provisions of and pursuant to Amendment 65 to the Constitution of the State of Arkansas, the Revenue Bond Act of 1987, as codified as Arkansas Code Annotated Sections 19-9-601 et seq. and the Local Government Capital Improvement Revenue Bond Act of 1985, as codified as Arkansas Code Annotated Sections 14-164-401 et seq. (the “Authorizing Legislation”);

NOW, THEREFORE, BE IT ORDAINED AND RESOLVED by the Quorum Court of the Jefferson County, Arkansas that:

1. Project Approval. The Project is hereby approved and the following matters are hereby acknowledged and approved:
   1. Execution and delivery of the Agreement subject to any final modifications thereto that are not materially inconsistent with the provisions of this Ordinance as approved by the County Judge;
   2. Construction and development of the Project in substantial compliance with those design specifications that have been previously submitted to the County and are on file with the County Clerk for inspection by the public at any time; and
   3. Execution of any and all other documents in furtherance of the goals and intentions of this Ordinance and the Agreement.
2. Designated Signatory; General Financing Terms. Gerald Robinson, County Judge, be and hereby is authorized and empowered to execute and deliver the Agreement and all other agreements related thereto on behalf of the County, and Shawndra Taggart, County Clerk, is hereby authorized and empowered to attest the County Judge’s signatures on such documents, so long as the maximum principal balance set forth within the Agreement does not exceed $14,000,000, the non-default interest rate set forth within the Agreement does not exceed 5.25% per annum, and the term over which the principal and interest set forth within the Agreement shall be repaid does not exceed 32 years. It is recognized, agreed and understood that proceeds derived from the execution of the Agreement will be utilized (a) to fund the engineering, development and construction of the Project along with related furnishings, fixtures and equipment, all of which is more fully described in the Agreement, and (b) to pay costs of issuance.
3. Authority to Execute Additional Documents. The County Judge on behalf of the County is authorized to execute any and all other documents necessary to fulfill the goals and intentions of this Ordinance or which may be reasonably requested by Lessor including, without limitation, the Project Disbursement Agreement, an Incumbency Certificate, and IRS Form 8038-G.
4. Authority to Execute Participation Documents. It is recognized, agreed and understood (a) that the underwriter of the Project financing contemplates or otherwise reserves the right to issue certificates of participation to third-party purchasers in and to all Pledged Revenues and remedies contained and identified within the Agreement; (b) that the Lessor contemplates or reserves the right to irrevocably and unconditionally assign all of its rights under the Agreement to a third-party trustee (“Trustee”) for the benefit of purchasers of undivided interests in and to the rights and remedies derived from the Agreement; (c) that the County will be directed to fund all payments owed pursuant to the Agreement to the Trustee pursuant to the provisions of a Trust Indenture in substantially that form that is contemporaneously presented to the County for review and available for public inspection in the office of the County Clerk (“Trust Indenture”); (d) that the Trustee, thereafter, will distribute all such payments to third-party participants in accordance with their equity ownership percentages as maintained on the books and records of the Trustee; (e) that the owner of the Lessor will assign its membership interests in Lessor upon substantial completion of all Projects to a trustee, trustee, municipal building/public benefits corporation or other entity designated and approved by the Trustee (the “Membership Interest Assignment”); and (f) that if the Trustee requires the Membership Interest Assignment be directed to a municipal building/public benefits corporation, the County or its designee may be required to accept assignment of the Lessor membership interests.
5. Disclosure Documents. In connection with the foregoing, the Project underwriter has prepared a preliminary disclosure statement for submittal to third-party purchasers in substantially that form that is contemporaneously herewith presented to the County for review and available for public inspection the office of the County Clerk (the “Disclosure Document”), and the County authorizes the use of its name as the obligor and sponsor in the issuance of the certificates of participation described therein. In lieu of the foregoing, the underwriter of the Project financing reserves the right in its reasonable discretion to privately place the Agreement and all cash flow and remedies realize thereunder with a single institutional investor absent the need to retain a Trustee, execute a Trust Indenture, and prepare and disseminate a Disclosure Document.
6. Authority to Execute Trust Documents. The County Judge on behalf of the County is authorized to execute, to the extent applicable, the Trust Indenture, and any and all other documents referenced therein or pertaining thereto, and the County hereby acknowledges as accurate and materially true and correct all of the statements and disclosures included within the Disclosure Document.
7. Useful Life Designation. The Quorum Court hereby finds and declares that the period of usefulness of the Project after the completion of construction thereof will be more than 35 years, which is longer than the term of the Agreement.
8. Funding Through Collection of Fees. The County’s financial obligations under the Agreement shall solely and exclusively be funded through (a) the collection of (i) all fines, forfeitures, and costs, (ii) all jail fees, and (iii) all officer fees collected by County as more fully identified within the County’s annual financial audit for the year ended December 31, 2018 as prepared by the Legislative Joint Auditing Committee, Arkansas Legislative Audit, along with the collection of all rents and revenues of every nature derived from the operation, administration and/or leasing of the Project and other lawfully available funds (the "Pledged Revenues"); (b) the Disbursement Account and all funds and proceeds held therein; (c) the Pledged Revenue Account (as defined below); and (d) all additions, attachments, accessions and substitutions thereto or applicable thereto (clauses “a” through “d” above, collectively, the “Collateral”).
9. Grant of Security Interest in Collateral; Authority. The County does hereby authorize and approve the pledging and granting of a security interest in and to the Pledged Revenues and the Collateral to and in favor of Lessor and its assignee and, in furtherance thereof, the County does hereby grant and convey to Lessor and Lessor’s successors and assigns forever, a lien on and security interest in and to, and a pledge of, the Pledge Revenues and the Collateral in order to secure and collateralize repayment of all financial and other obligations that are more fully set forth within the Agreement.
10. Special Funds; No Pledging of Taxes or Assessments. The Pledged Revenues are derived from special funds and sources that do not constitute and are not comprised of assessments for local improvements and taxes. Except for the pledging and granting of a security interest in the Pledged Revenues, the Disbursement Account and the Pledged Revenue Account by the County to and in favor of Lessor, and the use of the Pledged Revenues to fund the obligations set forth in this Agreement, the County shall possess no further financial obligation of any nature under and with respect to the Agreement. **It is expressly agreed and understood that neither the full faith and credit of the County, or the State of Arkansas, nor any other political subdivision or entity of the foregoing is pledged to the repayment of the financial obligations as set forth in the Agreement.**
11. Covenant to Maintain Collection Rates. The County covenants and agrees that, so long as it possesses financial obligations outstanding under the Agreement, it shall never reduce the rates underlying and comprising the Pledged Revenues. The adoption and enforcement of said rates are hereby ratified, confirmed and continued.
12. Continuous Operations of Project. The County covenants and agrees that it shall continuously operate the Project for the benefit of the County’s residents as contemplated as of the date hereof.
13. Construction Fund; Disbursements. Proceeds realized from the County’s execution of the Agreement are authorized to be initially deposited into the Disbursement Account (as defined in the Agreement) to be held and maintained by a third-party financial institution. Construction draws therefrom are authorized to be withdrawn upon the presentation of requisition requests, current invoices, mechanics and materialmen’s lien waivers, and those other conditions precedent to a release of construction funds as that disbursement agreement associated with the administration of the construction funds might specify as set forth in the Agreement and the Disbursement Agreement.
14. Pledged Revenue Account. Proceeds realized from the collection of the Pledged Revenues shall be deposited by the County in a Special Fund earmarked to the payment of the indebtedness approved by this Ordinance (the “Pledged Revenue Account”). The County agrees that it shall always maintain an accounting of the receipt of Pledged Revenues and the expenditures thereof, and that an audit of such receipts and expenditures will be performed on an annual basis by the Legislative Audit of the State of Arkansas. The County agrees that the Pledged Revenues maintained in the General Fund of the County shall be utilized first to repay the principal of, premium, if any, and interest on the indebtedness approved hereby, and after payment of such indebtedness, the County may use such Pledged Revenues for other municipal purposes. The County agrees that its General Fund shall be maintained in a depository institution designated by the County from time to time, so long as said institution is insured by the FDIC or any successor entity.
15. Additional Parity Indebtedness Issuance. The County will not enter into, execute and/or issue subsequent lease purchase agreements, bonds, notes or other evidences of indebtedness (collectively, “Additional Parity Indebtedness”) that will enjoy and realize, *pari passu*, a parity first lien on Pledged Revenues that is shared with the Lessor unless no Event of Default Account (as defined in the Agreement) has occurred and is continuing under and pursuant to the Agreement, and the annual Pledged Revenues for the County’s fiscal year immediately preceding the issuance of such Additional Parity Indebtedness are not less than 1.5 times the maximum annual Lease Payments under the Agreement plus the maximum annual debt service of the proposed Additional Parity Indebtedness, as evidenced by a certificate issued by the County’s external accountant.

The County may issue Additional Parity Indebtedness that is secured by a lien on the Pledged Revenues that is subordinate to the liens granted on Pledged Revenues as set forth herein or within any Additional Parity Indebtedness upon the written consent of Lessor, which consent shall not be unreasonably withheld.

1. Prohibition Against Private Business Use. The County shall assure that (i) not in excess of 10% of the proceeds of the Agreement is used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Agreement during the term thereof is, under the terms of the Agreement or any underlying arrangement, directly or indirectly secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the County, in respect of property or borrowed moneys used or to be used for a Private Business Use; and (ii) that, in the event that both (A) in excess of 5% of the proceeds of the Agreement are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Agreement during the term thereof is, under the terms of the Agreement or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the County, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of proceeds of the Agreement used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Improvements. The County shall assure that not in excess of 5% of the proceeds of the Agreement are used, directly or indirectly, to make or finance a loan to persons other than state or local governmental units. As used in this Section, "Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.
2. Non-Arbitrage. The County covenants that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable under the Agreement to be subject to federal income taxation. Without limiting the generality of the foregoing, the County covenants that no monies held in any fund in connection with the Agreement will be used directly or indirectly in such manner as to cause the agreement to be treated as an “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code.
3. Ordinance Constitutes Contract. The terms of this Ordinance shall constitute a contract among the County and the Lessor and its assignees and no modifications or amendments of this Ordinance or the Agreement shall occur absent the express prior written consent of the Lessor or its assignee.
4. Severability. The provisions of this Ordinance are hereby declared to be separable, and if any provision shall for any reason be held illegal or invalid, it shall not affect the validity of the remainder of this Ordinance. All Ordinances and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

This Ordinance was adopted at a duly convened meeting of the Quorum Court of the County of Jefferson, Arkansas as of the date referenced above.

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Gerald Robinson, County Judge

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Shawndra Taggart, County Clerk

Approved as to Form:

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Terry Wynne, County Attorney

**COUNTY CLERK CERTIFICATION**

I, duly serving County Clerk of Jefferson County, Arkansas, do hereby certify and attest that the following Ordinance was duly adopted at a meeting of the County and continues to remain in full force and effect and unmodified by any amendments thereto.

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Shawndra Taggart, County Clerk

Justices of the Peace

in Favor of Ordinance:

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Justices of the Peace Voting Against

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Justices of the Peace Members Abstaining or Not Present:

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