

**TOWN OF SUPERIOR  
ORDINANCE NO. O-3  
SERIES 2015**

**AN ORDINANCE OF THE TOWN OF SUPERIOR, COLORADO,  
AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN  
AGREEMENT AND RELATED DOCUMENTS IN ORDER TO  
REFINANCE THE TOWN'S OUTSTANDING OPEN SPACE SALES AND  
USE TAX REVENUE BONDS, SERIES 2006, TO AFFECT INTEREST  
RATE SAVINGS**

**WHEREAS**, the Town is a statutory town and political subdivision of the State of Colorado, duly organized and operating under the Constitution and laws of the State of Colorado;

**WHEREAS**, the Town is authorized by Title 29, Article 2, Part 1, C.R.S., to (i) adopt a municipal sales or use tax, or both, by ordinance, subject to the requirement that such tax be approved at an election, and (ii) if such sales or use tax, or both, has been pledged solely for capital improvement purposes and contains a provision for the creation of a sales and use tax capital improvement fund, the Town may, in anticipation of the collection of sales or use tax revenues, issue revenue bonds payable solely from the fund for capital improvement purposes;

**WHEREAS**, at an election of the Town, duly called and held on November 6, 2001 (the "2001 Election"), in accordance with law and pursuant to due notice, a majority of those qualified to vote and voting at the 2001 Election voted in favor of the imposition of a 0.3% sales and use tax increase for open space purposes;

**WHEREAS**, pursuant to the 2001 Election, the Town adopted Ordinance No. O-26, Series 2001, which provided for the 0.3% sales and use tax approved at the 2001 Election (the "Open Space Sales and Use Tax"), and provided for the use of the proceeds thereof as provided in the 2001 Election;

**WHEREAS**, at an election of the Town, duly called and held on November 1, 2005 (the "2005 Election"), a majority of those qualified to vote and voting at the 2005 Election voted in favor of the issuance of indebtedness to be payable from the Open Space Sales and Use Tax;

**WHEREAS**, pursuant to the authority conferred by the 2005 Election, the Town has previously issued its Open Space Sales and Use Tax Revenue Bonds, Series 2006, in the aggregate principal amount of \$6,675,000 (the "Prior Bonds") that are payable solely from the Open Space Sales and Use Tax;

**WHEREAS**, the Prior Bonds maturing on and after June 1, 2017, are subject to prior redemption, at the option of the Town, in whole or in integral multiples of \$5,000, in any order of maturity and in whole or partial maturities, on June 1, 2016, and on any date thereafter, upon payment of par and accrued interest, without redemption premium;

**WHEREAS**, the Board of Trustees of the Town (the “Board”) has determined, and hereby determines, that it is in the best interests of the Town and its citizens and taxpayers to refinance all of the currently outstanding Prior Bonds on the earliest applicable redemption date to affect an interest rate savings (the “Refunding Project”);

**WHEREAS**, pursuant to Article X, Section 20(4) of the Colorado Constitution, refunding bonds may be issued without an election if issued at a lower interest rate than the refunded bonds;

**WHEREAS**, to accomplish the Refunding Project, the Town requested and UMB Bank, n.a. (the “Lender”) has agreed to make a loan available to the Town in the maximum principal amount of \$3,550,000 (the “Loan”) on the terms and conditions set forth in a Loan Agreement between the Town and the Lender (the “Loan Agreement”), and the obligation to repay the Loan shall be evidenced by a bond (the “Bond”);

**WHEREAS**, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Loan Agreement;

**WHEREAS**, the Town’s authority to execute and deliver the Loan Agreement and the Bond (collectively, the “Financing Documents”) and perform its obligations thereunder and hereunder is authorized pursuant to Title 29, Article 2, Part 1, C.R.S.; Title 11, Article 57, Part 2, Colorado Revised Statutes (the “Supplemental Act”); and all other laws thereunto enabling;

**WHEREAS**, the Loan and the Bond shall constitute a special revenue obligation of the Town payable from and secured by the Pledged Revenues, subject to the limitations set forth in the Loan Agreement, and the Loan and the Bond shall not constitute a debt or an indebtedness of the Town within the meaning of any constitutional or statutory provision or limitation nor shall they be considered or held to be general obligations of the Town;

**WHEREAS**, after consideration, the Board has determined that entering into the Loan Agreement and the Note and implementing the Refunding Project is in the best interests of the Town and the residents thereof;

**WHEREAS**, there have been presented to this meeting of the Board the proposed form of the Loan Agreement, including the form of Bond attached thereto;

**WHEREAS**, none of the members of the Board have any potential conflicting interests in connection with the authorization, issuance, or execution of the Loan Agreement and the Bond, or the use of the proceeds of the Loan;

**WHEREAS**, the Board desires to authorize the Loan and the execution and delivery of the Financing Documents; and

**WHEREAS**, Section 11-57-204 of 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, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:**

**Section 1. Ratification and Approval of Prior Actions.** All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Board and by the officers, agents or employees of the Town directed toward entering into the Loan and implementing the Refunding Project, including without limitation the preparation of the request for proposal and the selection of the Lender, is hereby ratified, approved, and confirmed.

**Section 2. Finding of Best Interests.** The Board hereby finds and determines, pursuant to the Constitution and the laws of the State of Colorado, that the implementation of the Refunding Project and financing the respective costs thereof pursuant to the terms set forth in the Financing Documents, together with other available moneys of the Town, are in the best interests of the residents of the Town, and the Board hereby authorizes and approves the same.

**Section 3. Supplemental Act; Parameters.** The Board hereby elects to apply all of the Supplemental Act to the Loan and the Bond and in connection therewith hereby delegates to the Mayor the authority to make any determination delegable pursuant to Section 11-57-205(1)(a-i) of the Supplemental Act, in relation to the Loan and the Bond, and to execute a Sale Certificate setting forth such determinations, without any requirement that the Board approve such determinations, subject to the following parameters and restrictions:

- (a) The Loan shall mature no later than June 1, 2026.
- (b) The principal amount of the Loan shall not exceed \$3,550,000.
- (c) The interest rate on the Loan shall be lower than the interest rate on the Prior Bonds.
- (d) The total repayment costs and maximum annual repayment costs authorized in the 2005 Election shall not be exceeded.

The delegation set forth in this Section 3 shall be effective for one year following the date of adoption of this Ordinance.

**Section 4. Approvals, Authorizations, and Amendments.**

(a) In accordance with the Constitution of the State of Colorado; the Supplemental Act; Title 29, Article 2, Part 1, C.R.S.; and all other laws of the State of Colorado thereunto enabling, the Town is hereby authorized to enter into the Loan and to execute and deliver the Financing Documents and the Bond for the purpose of: (i) paying the costs of the Refunding Project; and (ii) paying issuance and other costs in connection with the Loan and the transactions contemplated by this Ordinance and the Loan Agreement.

(b) The Loan shall constitute a special, limited obligation of the Town as provided in the Loan Agreement. Neither the Loan Agreement nor the Bond shall constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation; and

neither the Loan nor the Bond shall be considered or held to be a general obligation of the Town but rather shall constitute its special, limited obligation.

(c) The Board hereby authorizes the execution and delivery of the Financing Documents and the implementation of the Refunding Project in accordance therewith. The Financing Documents are incorporated herein by reference and are hereby approved. The Town shall enter into and perform its obligations under the Financing Documents in substantially the form of such documents presented at this meeting, provided that such Financing Documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance and to comply with the terms of the Sale Certificate. The Mayor is hereby authorized and directed to execute the Financing Documents and the Town Clerk is hereby authorized to attest the Financing Documents and affix the seal of the Town thereto, and the Mayor is further authorized to execute and the Town Clerk is further authorized to authenticate such other documents, instruments or certificates as are deemed necessary or desirable in order to secure the Loan and to implement the Refunding Project. The execution of any Financing Document by the Mayor shall be conclusive evidence of the approval by the Town of such documents or instruments in accordance with the terms hereof and thereof.

**Section 5. Authorization to Execute Collateral Documents.** The Mayor, the Town Manager and the Finance Director of the Town are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Ordinance, including without limiting the generality of the foregoing, executing, attesting, authenticating and delivering for and on behalf of the Town any and all necessary documents, instruments or certificates and performing all other acts that they deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Ordinance. The approval hereby given to the various documents referred to above includes an approval of such additional details therein as may be necessary and appropriate for their completion, deletions therefrom and additions thereto as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance and to comply with the terms of the Sale Certificate. The execution of any document or instrument by the Mayor, the Town Manager or the Finance Director shall be conclusive evidence of the approval by the Town of such document or instrument in accordance with the terms hereof and thereof.

**Section 6. Exercise of Option to Refund Prior Bonds.** The Board has elected and does hereby declare its intent to exercise on the behalf of and in the name of the Town its option to redeem the Prior Bonds on the Prior Bonds Redemption Date; but only in the event that the Loan is funded on the Advance Date.

**Section 7. Ordinance Irrepealable.** After the Loan has been funded, this Ordinance shall be and remain irrepealable until the Loan and the interest accruing thereon shall have been fully paid, satisfied and discharged, as herein and therein provided.

**Section 8. Repealer.** All acts, orders, bylaws and resolutions of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

**Section 9. Severability.** If any article, section, paragraph, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one or part or parts be declared unconstitutional or invalid.

**Section 10. Safety.** This Ordinance is deemed necessary for the protection of the health, welfare and safety of the community

**Section 11. Effective Date.** This Ordinance shall take effect thirty (30) days after its final passage and publication.

**INTRODUCED, READ, PASSED, ADOPTED AND ORDERED  
PUBLISHED this 9<sup>th</sup> day of March, 2015.**



*Clint Folsom*

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Clint Folsom, Mayor

*Phyllis L. Hardin*

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Phyllis L. Hardin, Town Clerk-Treasurer