

**TOWN OF SUPERIOR
ORDINANCE NO. O-5
SERIES OF 2020**

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR AUTHORIZING THE TOWN TO ENTER INTO A FIRST AMENDMENT TO SITE AND IMPROVEMENT LEASE AGREEMENT AND A FIRST AMENDMENT TO LEASE PURCHASE AGREEMENT, AND RELATED DOCUMENTS, TO FINANCE THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF CERTAIN IMPROVEMENTS TO PROPERTY OWNED BY THE TOWN LOCATED AT 1500 COALTON ROAD; AUTHORIZING DOCUMENTS IN CONNECTION THEREWITH; SETTING FORTH PARAMETERS AND RESTRICTIONS; AND PROVIDING OTHER MATTERS RELATED THERETO.

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

WHEREAS, the Town is authorized by part 8 of Article 15 of title 31, Colorado Revised Statutes ("C.R.S."), to enter into rental or leasehold agreements in order to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes;

WHEREAS, the Town previously financed the costs of acquiring a parcel of land located at 1500 Coalton Road in the Town ("Parcel A") and the building (the "Building") located thereon (the "2019 Project") that will be used by the Town for certain governmental or proprietary purposes;

WHEREAS, to provide for the financing of the 2019 Project, the Town previously entered into a Site and Improvement Lease Agreement, dated November 18, 2019, between the Town, as lessor, and UMB Bank, n.a. (the "Trustee"), acting solely in its capacity of trustee, as lessee (the "Original Site Lease"), pursuant to which the Town leased certain property owned by the Town (and hereinafter defined as the Leased Property) to the Trustee, and a Lease Purchase Agreement, dated November 18, 2019, between the Trustee, as lessor, and the Town, as lessee (the "Original Lease"), pursuant to which the Trustee leased the Leased Property back to the Town;

WHEREAS, the Leased Property under the Original Site Lease and the Original Lease consists of (a) Parcel A and the Building located thereon, and (b) Town Hall, which is located at 124 East

Coal Creek Drive in the Town, and the parcel of land on which Town Hall is located (collectively, and as more particularly described in Exhibit A to the Original Site Lease and the Original Lease, the "Leased Property");

WHEREAS, contemporaneously with the execution and delivery of the Original Site Lease and the Original Lease, the Trustee executed and delivered an Indenture of Trust, dated November 18, 2019 (the "Original Indenture") pursuant to which there were executed and delivered certain Certificates of Participation, Series 2019 (the "2019 Certificates") that evidence proportionate interests in the right to receive Revenues under the Lease; and

WHEREAS, the 2019 Certificates were purchased by Zions Bancorporation, N.A. ("Zions"), and Zions is the sole owner of the outstanding 2019 Certificates;

WHEREAS, the net proceeds from the sale of the 2019 Certificates were used to reimburse the Town for the acquisition of the 2019 Project;

WHEREAS, the Board of Trustees of the Town (the "Board") has determined and now hereby determines that it is necessary, desirable and in the best interest of the Town to acquire, construct and install certain improvements to the Building, and to acquire certain furnishings and equipment to be located in the Building (collectively, the "2020 Project");

WHEREAS, the improvements to the Buildings and the fixtures attached to the Building will become part of the Leased Property, and any furnishings and equipment located in the Building will not become Leased Property;

WHEREAS, to provide for the financing of the 2020 Project, the Board has determined, and now hereby determines, that it is in the best interests of the Town to enter into (a) a First Amendment to Site and Improvement Lease Agreement, between the Town, as lessor, and the Trustee, as lessee (the "First Amendment to Site Lease" and together with the Original Site Lease, the "Site Lease"), and (b) a First Amendment to Lease Purchase Agreement, between the Trustee, as lessor, and the Town, as lessee (the "First Amendment to Lease" and together with the Original Lease, the "Lease");

WHEREAS, the Original Indenture provides that Additional Certificates (as defined in the Original Indenture) may be

executed and delivered with the prior written consent of Zions, as the sole owner of the outstanding 2019 Certificates, to provide moneys to finance, among other things, the costs of making improvements for or to the Leased Property as the Town may deem necessary or desirable;

WHEREAS, contemporaneously with the execution and delivery of the First Amendment to Site Lease and the First Amendment to Lease, the Trustee will execute and deliver a First Supplement to Indenture of Trust (the "First Supplemental Indenture" and together with the Original Indenture, the "Indenture") pursuant to which there will be executed and delivered certain Certificates of Participation, Series 2020 (the "2020 Certificates") that will be Additional Certificates under the Indenture;

WHEREAS, the 2020 Certificates shall be dated as of their date of delivery, shall evidence proportionate interests in the right to receive Revenues under the Lease, will be ratably secured with all Outstanding 2019 Certificates and ranked pari passu with all Outstanding 2019 Certificates and with any Additional Certificates that may be executed and delivered in the future, if any, shall be payable solely from the sources therein provided, and shall not directly or indirectly obligate the Town to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect;

WHEREAS, Zions is expected to purchase the 2020 Certificates, and the net proceeds from the sale of the 2020 Certificates will be used to finance the 2020 Project;

WHEREAS, pursuant to the Lease, and subject to the right of the Town to terminate the Lease and other limitations as therein provided, the Town will pay certain Base Rentals and Additional Rentals (as such terms are defined in the Lease) in consideration for the right of the Town to use the Leased Property;

WHEREAS, the Town's obligation under the Lease to pay Base Rentals and Additional Rentals shall be from year to year only; shall constitute currently budgeted expenditures of the Town; 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 Town within the meaning of any constitutional, statutory limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial

obligation, nor a mandatory payment obligation of the Town in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect;

WHEREAS, the Original Site Lease and the Original Lease provide that they may only be amended, changed, modified or altered with the prior written consent of the Town and the Trustee and in accordance with the provisions of the Indenture, and that so long as Zions is the registered owner of the outstanding 2019 Certificates, that the Original Site Lease and the Original Lease may not be materially amended, changed, modified or altered without the prior written consent of Zions, which consent shall not be unreasonably withheld;

WHEREAS, the Indenture provides that the Town and the Trustee may amend the Original Site Lease and the Original Lease to, among other matters, make additions to the Leased Property, amend the schedule of Base Rentals and make all other amendments necessary for the execution and delivery of Additional Certificates in accordance with the provisions of the Indenture;

WHEREAS, the Indenture provides that the Trustee may, with the written consent of the Town and upon written notice to Zions as the purchaser of the 2019 Certificates, enter into such indenture or agreement supplemental thereto to, among other purposes, authorize the execution and delivery of Additional Certificates for the purposes and under the conditions set forth in the Indenture;

WHEREAS, Zions, as the sole owner of the outstanding 2019 Certificates, has consented to the execution and delivery of the 2020 Certificates as Additional Certificates under the Indenture, and the amendments to the Site Lease, the Lease and the Indenture set forth in the First Amendment to Site Lease, the First Amendment to Lease, and the First Supplemental Indenture;

WHEREAS, Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S., as amended (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;

WHEREAS, there has been presented to the Board the proposed forms of (a) the First Amendment to Site Lease, (b) the First

Amendment to Lease, and (c) the First Supplemental Indenture; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:

Section 1. Recitals Incorporated. The foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Board.

Section 2. Ratification and Approval of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Board or the officers, agents or employees of the Town relating to the Site Lease, the Lease, the financing, construction, acquisition and installation of the 2020 Project, and the sale, execution and delivery of the 2020 Certificates is hereby ratified, approved and confirmed.

Section 3. Finding of Best Interests. The Board hereby finds and determines, pursuant to the Constitution and the laws of the State, that the acquisition, construction and installation of the 2020 Project and the financing or refinancing of the costs thereof pursuant to the terms set forth in the Site Lease (as amended by the First Amendment to Site Lease), the Lease (as amended by the First Amendment to Lease) and the Indenture (as amended by the First Supplemental Indenture), including paying the costs of the lease financing incurred in connection therewith, are necessary, convenient, and in furtherance of the Town's public purposes and are in the best interests of the Town and the Board hereby authorizes and approves the same.

Section 4. Supplemental Act; Parameters. The Board hereby elects to apply all of the provisions of the Supplemental Act to the Site Lease and the Lease, except that it shall not apply Section 11-57-211 thereof. In connection therewith the Board hereby delegates to each of the Mayor, the Town Manager or the Finance Director the independent authority to make any determination delegable pursuant to §11-57-205(1)(a-i) C.R.S., as amended, in relation to the First Amendment to Site Lease and the First Amendment to Lease, and to execute a sale certificate (the "Sale Certificate") setting forth such determinations, including without limitation, the term of the Site Lease (as amended by the First Amendment to Site Lease), the additional

rental amount to be paid by the Trustee pursuant to the First Amendment to Site Lease, the term of the Lease (as amended by the First Amendment to Lease), and the additional rental amount to be paid by the Town pursuant to the First Amendment to Lease, subject to the following parameters and restrictions:

- a. The additional consideration to be paid by the Trustee to the Town pursuant to the First Amendment to Site Lease shall not be less than \$2,000,000;
- b. the term of the Site Lease shall not extend beyond December 31, 2039;
- c. the maximum annual amount of the Base Rentals payable by the Town pursuant to the First Amendment to Lease that is attributable to the principal of and interest on the 2020 Certificates shall not exceed \$300,000;
- d. the maximum aggregate principal amount of the Base Rentals payable by the Town pursuant to the First Amendment to Lease that is attributable to the principal of the 2020 Certificates shall not exceed \$3,000,000;
- e. the term of the Lease shall not extend beyond December 31, 2034;
- f. the maximum interest rate on the interest component of the Base Rentals relating to the 2020 Certificates shall not exceed 2.54% per annum; and
- g. the purchase price of the 2020 Certificates shall not be less than 100% of the principal amount of the 2020 Certificates.

Pursuant to §11-57-205 of the Supplemental Act, the Board hereby delegates to each of the Mayor, the Town Manager or the Finance Director the independent authority to select the purchaser of the 2020 Certificates, to sign a contract for the purchase of the 2020 Certificates or to accept a binding bid for the 2020 Certificates and to execute any agreement or agreements in connection therewith.

The delegation set forth in this Section 4 shall be effective for one year following the date hereof.

Section 5. Approval of Documents. The First Amendment to Site Lease and the First Amendment to Lease, in substantially the forms presented to the Board, are in all respects approved, authorized and confirmed, and the Mayor of the Town is hereby authorized and directed for and on behalf of the Town to execute and deliver the First Amendment to Site Lease and the First Amendment to Lease, in substantially the forms and with substantially the same contents as presented to 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 Ordinance and to comply with the terms of the Sale Certificate. The execution of the First Amendment to Site Lease and the First Amendment to Lease by the Mayor shall be conclusive evidence of the approval by the Board of such documents in accordance with the terms hereof.

The Board hereby consents to the amendment of the Indenture in substantially the form set forth in the First Supplemental Indenture, provided the First Supplemental Indenture may be completed, corrected, or revised as deemed necessary by the Trustee in order to comply with the terms of the Sale Certificate and to carry out the purposes of this Ordinance. The Mayor, the Town Manager or the Finance Director are hereby authorized to execute a written consent to the execution and delivery of the First Supplemental Indenture.

Section 6. Authorization to Execute Collateral Documents. The Town Clerk is hereby authorized and directed to attest all signatures and acts of any official of the Town in connection with the matters authorized by this Ordinance and is hereby authorized to place the seal of the Town on any document authorized and approved by this Ordinance. The Mayor, the Town Clerk, the Town Manager, the Finance Director and other employees and officials of the Town are hereby authorized and directed to execute and deliver for and on behalf of the Town any and all additional certificates, documents and other papers, and to perform all other acts that they may 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 appropriate officers of the Town herein authorized shall be conclusive

evidence of the approval by the Board of such document or instrument in accordance with the terms hereof.

In the event the Mayor, Town Clerk, Town Manager, Finance Director or other employee or official of the Town that is authorized or directed to execute any agreement, document, certificate, instrument or other paper in accordance with this Ordinance (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 7. No General Obligation Debt. No provision of this Ordinance, the Site Lease, the Lease, the Indenture, or the 2020 Certificates shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional or statutory provision, nor a mandatory charge or requirement against the Town in any ensuing fiscal year beyond the then current fiscal year. The Town shall have no obligation to make any payment with respect to the 2020 Certificates except in connection with the payment of the Base Rentals and certain other payments under the Lease, which payments may be terminated by the Town in accordance with the provisions of the Lease. Neither the Lease nor the 2020 Certificates shall constitute a mandatory charge or requirement of the Town 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 Town within the meaning of any constitutional or statutory debt limitation and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation whatsoever. No provision of the Site Lease, the Lease or the 2020 Certificates 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 Town within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. Neither the Lease nor the 2020 Certificates shall directly or indirectly obligate the Town to make any payments beyond those budgeted and appropriated for the Town's then current fiscal year.

Section 8. Adequate Consideration; Reasonableness of Rentals. The Board hereby determines and declares that the Base Rentals due under the Lease, as recalculated to reflect the execution and delivery of the First Amendment to Lease and the execution and delivery of the 2020 Certificates, in accordance with the parameters set forth in Section 4 hereof, constitute the fair rental value of the Leased Property and do 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 Trustee's leasehold interest in the Leased Property pursuant to the Lease. The Board hereby determines and declares that the period during which the Town has an option to purchase the Trustee's leasehold interest in the Leased Property (i.e., the entire maximum term of the Lease) does not exceed the useful life of the Leased Property.

The Board hereby further determines that the additional amount of rental payments to be received by the Town from the Trustee pursuant to the First Amendment to Site Lease, in the minimum amount set forth in Section 4(a) hereof, together with the rental amount received from the Trustee in connection with the execution and delivery of the Original Site Lease, is reasonable consideration for the leasing of the Leased Property to the Trustee for the term of the Site Lease as provided therein.

Section 9. Intent to Reimburse Expenditures. The Town intends to reimburse certain capital expenditures incurred by the Town in connection with the acquisition, construction and installation of the 2020 Project prior to the receipt of any proceeds of the 2020 Certificates. The Town shall not use reimbursed moneys for purposes prohibited by Treasury Regulation §1.150-2(h). This Section is intended to be a declaration of "official intent" to reimburse expenditures within the meaning of Treasury Regulation §1.150- 2.

Section 10 No Recourse against Officers and Agents. Pursuant to § 11-57-209 of the Supplemental Act, if a member of the Board, or any officer or agent of the Town acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the 2020 Certificates. Such recourse shall not be available either directly or indirectly through the Board or the Town, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the 2020 Certificates and as a part of the consideration of their sale or

purchase, any person purchasing or selling such 2020 Certificate specifically waives any such recourse.

Section 11. 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 12. 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 13. Safety. This Ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

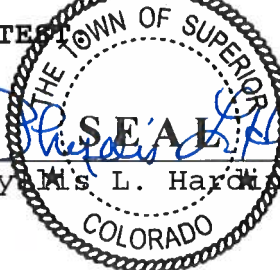
Section 14. Ordinance Irrepealable. After the 2020 Certificates are executed and delivered, this Ordinance shall be and remain irrepealable until the 2020 Certificates have been fully paid, satisfied and discharged, as provided in the Indenture.

Section 15. Effective Date. This Ordinance shall take effect thirty (30) days after its final publication.

INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED this 26th day of May, 2020.

Clint Folsom, Mayor

ATTEST



Phyllis L. Harlow, Town Clerk-Treasurer