

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO, AUTHORIZING THE ISSUANCE BY THE TOWN OF THE TOWN OF BASALT, COLORADO, REVENUE BOND (ROCKY MOUNTAIN INSTITUTE PROJECT), SERIES 2014, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$7,500,000; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; APPROVING THE FORMS AND AUTHORIZING THE EXECUTION AND DELIVERY BY THE TOWN OF THE BOND, A LOAN AGREEMENT AND A TAX REGULATORY AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY BY THE TOWN OF ANY AND ALL NECESSARY CLOSING DOCUMENTS; REPEALING ACTION HERETOFORE TAKEN IN CONFLICT HEREWITH; AND AUTHORIZING OFFICIALS OF THE TOWN TO DO ALL OTHER THINGS NECESSARY OR ADVISABLE TO COMPLETE THE TRANSACTION AUTHORIZED IN THIS ORDINANCE.

**ORDINANCE 39,  
Series of 2014**

**RECITALS**

1. The Town of Basalt, Colorado (the "Town") is a municipal corporation duly organized and operating as a home rule Town under Article XX of the Constitution of the State of Colorado (the "State") and the Home Rule Charter of the Town (as further defined herein, the "Charter").

2. The Charter, the County and Municipality Development Revenue Bond Act, Article 3 of Title 29, Colorado Revised Statutes, as amended (the "Act") and the Supplemental Public Securities Act, Article 57, Title 11, Sections 201, *et seq.*, Colorado Revised Statutes, as amended (the "Supplemental Act"), authorize the Town to finance, acquire, own, lease, improve, and dispose of properties to the end that such the Town may be able to promote industry and develop trade or other economic activity by inducing profit or nonprofit corporations to locate, expand, or remain in the State of Colorado (the "State").

3. The Town is empowered by the Charter, the Act and the Supplemental Act to issue revenue bonds for the purpose of financing, refinancing, acquiring, improving and equipping any project provided for in the Charter and the Act, including, administrative facilities, and to enter into financing agreements to provide revenues to pay such bonds and to secure such bonds.

4. Representatives of Rocky Mountain Institute, a Colorado nonprofit corporation ("RMI"), and RMI Innovation Center, LLC, a Colorado limited liability company ("Innovation Center" and, collectively with RMI, the "Borrowers"), have requested that the Town issue a revenue bond pursuant to the Act and the Supplemental Act and loan the proceeds of such bond to the Borrowers to: (a) finance a portion of the costs of the development, construction and equipping of a commercial innovation center constituting administrative facilities for the Borrowers, to be located within the boundaries of the Town (the "Project"); and (b) fund certain funds and accounts and/or pay certain costs of issuance of the Bond, as necessary.

5. RMI is a nonprofit corporation duly incorporated, operating and existing under the laws of the State of Colorado, and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and Innovation Center is a limited liability company duly organized, operating and existing under the laws of the State of Colorado, with RMI as its sole member.

6. The Town has considered the Borrowers' request and has determined to issue, sell and deliver a revenue bond pursuant to the Charter, the Act and the Supplemental Act designated as the "Town of Basalt, Colorado, Revenue Bond (Rocky Mountain Institute Project), Series 2014" (the "Bond") in a principal amount not to exceed \$7,500,000, for the purpose of financing the Project.

7. Pursuant to a Loan Agreement (the "Loan Agreement") by and among the Town, the Borrowers and UMB Bank, n.a., as initial purchaser of the Bond (the "Lender"), which Loan Agreement constitutes a financing agreement within the meaning of the Act, the Town agrees to lend the proceeds of the Bond to the Borrowers (the "Borrower Loan") and the Borrowers agree to (a) apply proceeds of the Loan to finance costs of the Project, to fund certain funds and accounts, if necessary, and to pay certain costs of issuance of the Bond, as necessary; (b) make payments sufficient to pay the principal of, and interest on, the Bond when due (whether at maturity, by redemption, acceleration or otherwise); and (c) observe the other covenants and agreements and make the other payments set forth in the Loan Agreement.

8. Pursuant to the terms of the Loan Agreement, the Town will assign to the Lender its interest in the Loan under the Loan Agreement (other than the Town's Reserved Town Rights (as defined in the Loan Agreement)).

9. There have been presented to the Town Council (the "Town Council") of the Town at this meeting the proposed drafts of: (i) the Tax Regulatory Agreement by and among the Town, the Borrowers and the Lender (the "Tax Regulatory Agreement"); and (ii) the Loan Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO:

Section 1. ***Ratification of Prior Action; Capitalized Terms.*** All action (not inconsistent with the provisions of this Ordinance) heretofore taken by the Town Council and other officials of the Town, relating to the issuance and sale of the Bond for the purposes herein set forth, is hereby ratified, approved and confirmed. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement.

Section 2. ***Findings.*** The Town Council does hereby determine, based upon representations of the Borrowers heretofore submitted to the Town, as follows:

(a) The Project constitutes a "project," as defined in the Act.

(b) The issuance of the Bond will effectuate the public purposes of the Town and carry out the purposes of the Act by, among other things, promoting industry and

developing trade or other economic activity by inducing profit or nonprofit corporations to locate, expand, or remain in the State of Colorado.

(c) The Town hereby elects to apply the provisions of the Supplemental Act to the Bond. Pursuant to Section 11-57-210 of the Supplemental Act, the Bond shall recite that it is issued under the authority of this Ordinance, the Charter, the Act and the Supplemental Act and that it is the intention of the Town that such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bond after their delivery for value. Pursuant to Section 11-57-208 of the Supplemental Act, the Borrower Loan payments pledged for the payment of the Bond, as credited to the Town, shall immediately be subject to the lien of such pledge without any physical delivery, filing or further act.

(d) The Bond is a special, limited obligation of the Town payable solely out of the income, revenues and receipts specifically pledged pursuant to the Loan Agreement. The Bond, and the interest thereon, shall never constitute the debt or indebtedness of the Town, within the meaning of any provision or limitation of the State Constitution or statutes, shall not constitute nor give rise to a pecuniary liability of the Town or a charge against its general credit or taxing power and shall not constitute a "multiple fiscal year direct or indirect debt or other financial obligation" of the Town under Article X, Section 20 of the State Constitution. Neither the Town, the State nor any other political subdivision shall be obligated to pay the principal of, or interest on, the Bond or other costs incident thereto. The Bond does not constitute a debt, loan, credit or pledge of the faith and credit or taxing power of the Town, the State or any other political subdivision thereof.

Section 3. *Approval and Authorization of Documents.* The Loan Agreement and the Tax Regulatory Agreement are hereby approved and authorized. The Mayor or any other member of the Town Council is hereby authorized and directed to execute, and the Town Clerk is hereby authorized and directed to affix the seal of the Town and to attest, in substantially the forms and content as presented to the Town on this date, such documents, but with such changes, modifications, additions and deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions and deletions from the forms thereof presented at this meeting.

Section 4. *Authorization to Issue and Sell the Bond.* The Town shall issue, sell and deliver the Bond, subject to the terms of the Loan Agreement and the Tax Regulatory Agreement. The Bond shall be in such principal amount, bear such date and interest rate and mature as set forth in the Bond and the Loan Agreement, provided, however, that the principal amount of the Bond issued under the Loan Agreement shall not exceed the maximum principal amount set forth herein. The Bond shall be payable at such place, be subject to redemption prior to maturity, carry such registration privileges, be executed and contain such terms, covenants and conditions and be in substantially the form, all as set forth herein and in the Bond and the Loan Agreement. The maximum net effective interest rate payable on the Bond shall not exceed \_\_\_% (such rate being hereinafter referred to as the "Maximum Rate") and the final maturity of the Bond shall not be after December 31, 2036.

Section 5. ***Determinations Required Under the Act.*** In connection with the issuance of the Bond and pursuant to Sections 29-3-113, 29-3-114 and 29-3-120 of the Act, the Town hereby makes the following determinations:

(a) that the amounts necessary in each year to pay the principal of and interest on the Bond are dependent upon the rate of interest on the Bond determined in accordance with the Loan Agreement, but in any event shall not exceed the maximum principal amount of the Bond plus interest at the Maximum Rate;

(b) that the terms of the Loan Agreement require that the Borrowers will cause to be maintained, or will maintain, the Project and will cause to be carried, or will carry, all proper insurance with respect thereto and require the payment of all applicable taxes with respect thereto, if any;

(c) in reliance upon information provided by the Borrowers in connection with the adoption of this Ordinance, that the amounts required to be paid by the Borrowers under the terms of the Loan Agreement will be adequate to retire the Bond; and

(d) that proceeds from the issuance and sale of the Bond will be drawn and paid as set forth in the Loan Agreement.

Section 6. ***Qualified Tax Exempt Obligation.*** The Town hereby designates the Bond as a qualified tax-exempt obligation meaning of Section 265(b)(3) of the Code (a "Qualified Tax-Exempt Obligation"). The Town currently expects that the aggregate face amount of all tax-exempt obligations issued by the Town, together with governmental entities which derive their issuing authority from the Town or are subject to substantial control by the Town, shall not be more than \$10,000,000 during calendar year 2014. The Town recognizes that such tax-exempt obligations include notes, leases, loans and warrants, as well as bonds. The Town further recognizes that any bank, thrift institution or other financial institution that owns the Bond will rely on the Town's designation of the Bond as a Qualified Tax-Exempt Obligation for the purpose of avoiding the loss of 100% of any otherwise available interest deduction attributable to such institution's tax-exempt holdings.

Section 7. ***Investments.*** To the extent the proceeds from the sale of the Bond or any special funds from the revenues from the Project are required to be invested and reinvested for any period of time, such investments shall only be in securities and other investments that are permitted under, and made and held in accordance with, the terms of the Charter, the Act, the Supplemental Act, the Loan Agreement and the related federal tax certificates from the Town and the Borrowers.

Section 8. ***Authority to Execute and Deliver Additional Documents.*** The members of the Town Council and the officials, employees and agents of the Town shall take all action in conformity with the Charter and the Act necessary or advisable to effectuate the issuance of the Bond and shall take all action necessary or advisable in conformity with the Charter and the Act to finance the Project and for carrying out, giving effect to and consummating the transactions contemplated by this Ordinance, the Loan Agreement and the Tax Regulatory Agreement, including the execution and delivery of appropriate closing documents. Specifically, but without

limitation, any member of the Town Council is hereby authorized by the Town Council to act on behalf of the Town with respect to any consent, approval, waiver, document amendment or modification or other action of the Town that is requested or required under the terms of the Loan Agreement and the Tax Regulatory Agreement, without any further action on the part of the Town Council.

Section 9. ***Bond is Special Limited Obligation.*** The Bond is a special, limited obligation of the Town payable solely out of the income, revenues and receipts specifically pledged pursuant to the Loan Agreement. The Bond, and the interest thereon, shall never constitute the debt or indebtedness of the Town, within the meaning of any provision or limitation of the State Constitution or statutes, shall not constitute nor give rise to a pecuniary liability of the Town or a charge against its general credit or taxing power and shall not constitute a “multiple fiscal year direct or indirect debt or other financial obligation” of the Town under Article X, Section 20 of the State Constitution. Neither the Town, the State nor any other political subdivision shall be obligated to pay the principal of, or interest on, the Bond or other costs incident thereto. The Bond does not constitute a debt, loan, credit or pledge of the faith and credit or taxing power of the Town, the State or any other political subdivision thereof.

Section 10. ***No Pecuniary Liability.*** Nothing contained in this Ordinance nor in the Bond, the Loan Agreement, the Tax Regulatory Agreement or any other instrument shall give rise to a pecuniary liability of, or a charge upon the general credit or taxing powers of, the Town, the State or any county, municipality or political subdivision of the State. The breach by any party of any agreement contained in this Ordinance, the Bond, the Loan Agreement, the Tax Regulatory Agreement or any other instrument shall not impose any pecuniary liability upon, or a charge upon the general credit or taxing powers of, the Town, the State or any county, municipality or political subdivision of the State, none of which has the power to pay out of its general fund, or otherwise contribute, any part of the cost of financing the Project, or the power to operate the Project as a business or in any manner.

Section 11. ***Limitation of Rights.*** Nothing expressed or mentioned in or to be implied from this Ordinance or the Bond is intended or shall be construed to give to any person, other than the Town, the Borrowers and the Lender, any legal or equitable right, remedy or claim under or with respect to this Ordinance or any covenants, conditions and provisions herein contained. This Ordinance and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the Town, the Borrowers and the Lender as herein provided.

Section 12. ***Immunity of Officers.*** No recourse for the payment of any part of the principal of, premium, if any, or interest on the Bond, for the satisfaction of any liability arising from, founded upon or existing by reason of the issue, purchase or ownership of the Bond, shall be had against any official, officer, member or agent of the Town, all such liability to be expressly released and waived as a condition of and as a part of the consideration for the issue, sale and purchase of the Bond.

Section 13. ***Bond Counsel.*** Kutak Rock LLP is hereby retained as the Town’s bond counsel in connection with the proposed issuance of the Bond.

Section 14. **Captions.** The captions or headings in this Ordinance are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Ordinance.

Section 15. **Bond Recital.** The Bond shall contain a recital that the Bond is issued pursuant to the Charter, the Act and the Supplemental Act, and such recital shall be conclusive evidence of its validity and of the regularity of its issuance.

Section 16. **Irrepealability.** After the Bond is issued, this Ordinance shall be and remain irrepealable until the Bond and the interest thereon shall have been fully paid, canceled and discharged.

Section 17. **Severability.** If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 18. **Inconsistent Actions Repealed.** All bylaws, orders and ordinances, or parts thereof, inconsistent herewith and with 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 ordinance or part thereof.

Section 19. **Public Hearing.** Pursuant to Section 147(f) of the Code, after a public hearing on the Bond and the Project on December \_\_, 2014 at \_\_\_\_\_, Basalt, Colorado, which hearing commenced at \_\_:\_\_ .m. or shortly thereafter, preceded by reasonable public notice published on November \_\_, 2014, in \_\_\_\_\_, and no one having appeared to speak for or against the Project to be financed with the proceeds of the Bond, the Town Council hereby approves the issuance of the Bond and the financing of the Project.

Section 20. **Effectiveness.** This Ordinance shall be effective 14 days after final publication of the Ordinance in accordance with the Charter.

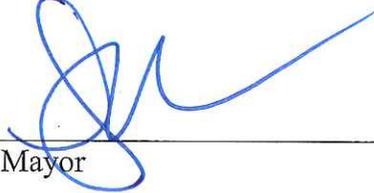
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READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON December 9, 2014 by a vote of 7 to 0 on November 18, 2014.

READ ON SECOND READING AND ADOPTED, by a vote of 7 to 0 on December 9, 2014.



TOWN OF BASALT, COLORADO

By:   
Mayor

ATTEST:

  
Town Clerk