



Town of Superior Town Council
Special Meeting
Agenda
Wednesday, November 19, 2025
2:00 p.m.
Virtual Meeting

The Council meeting will be held online. Members of the public may [participate in the meeting via Zoom](#) or [view the meeting on YouTube](#) (closed captioning available). The recording of the Council meeting will be made available on [YouTube](#) and at [SuperiorColorado.gov](#) after the meeting.

1. Call to Order Special Meeting of Town Council (2:00 p.m.)
2. Preliminary Matters (2:00 p.m.)
 - a. Roll Call
 - b. Approval of Agenda
3. Consideration of Resolution of the Town Council of the Town of Superior approving a Tolling Agreement with the Rock Creek Homeowners Association (2:05 p.m.)
4. Adjournment (3:00 p.m.)



Item Number 3

Information for Special Meeting of the Superior Town Council

Agenda Item Name: Adoption of a Resolution of the Town Council of the Town of Superior approving a Tolling Agreement with the Rock Creek Homeowners Association

Meeting Date: November 19, 2025

Presented by: Nicholas Hartman, Town Attorney
Matt Magley, Town Manager

Presented for: Action

BACKGROUND

Attached is a tolling agreement with the Rock Creek HOA. The HOA has concerns that the two-year statute of limitation deadline for the HOA to file a complaint against the Town regarding fence maintenance is December 1, 2025, based on the Town providing notice to the HOA that it would no longer maintain the fences in December 2023. The agreement will allow the Town and HOA Board to continue to discuss the fence maintenance issue without concern of the upcoming perceived deadline by the HOA to file a complaint. The alternative is that the HOA files a complaint now so as to preserve its right to seek relief in court.

ATTACHMENTS

- Resolution
- Agreement

Town of Superior
Resolution Number R-92
Series 2025

**A Resolution of the Town Council of the Town of Superior approving
a Tolling Agreement with the Rock Creek Homeowners Association**

**Now, therefore, be it resolved by the Town Council of the
Town of Superior, Colorado, as follows:**

Section 1. The Tolling Agreement between the Town of Superior and the Rock Creek Homeowners Association is hereby approved in the form attached hereto. Upon such approval, the Mayor is authorized to execute the Tolling Agreement on behalf of the Town.

Adopted this 19 day of November, 2025.

Mark Lacis, Mayor

Attest:

Kerstin Schlueter, Deputy Town Clerk

TOLLING AGREEMENT

THIS TOLLING AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2025 (the "Effective Date"), by and between the Town of Superior, a Colorado municipal corporation with an address of 124 East Coal Creek Drive, Superior, CO 80027 (the "Town"), and the Rock Creek Homeowners Association, a _____ with an address of _____ ("Rock Creek") (each a "Party" and collectively the "Parties").

WHEREAS, Rock Creek and the Town are currently engaged in a dispute over the maintenance, repair and replacement of certain fences located within the Rock Creek Ranch Subdivision.

WHEREAS, the Parties wish to engage in negotiations to resolve and settle the dispute between them;

WHEREAS, the time required to investigate, exchange and evaluate information as well as the nature and extent of the issues involved will require additional time, and the Parties do not wish to commence litigation precipitously given that a negotiated resolution is possible without having to file and incur the expenses associated with a lawsuit; and

WHEREAS, the Parties wish to undertake negotiations within the period provided by this Agreement without altering the claims or defenses available to either Party.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. TOLLING OF STATUTE OF LIMITATIONS FOR POTENTIAL CLAIMS

A. *Tolling Period.* The period commencing on November 19, 2025 and ending upon the termination of this Agreement (the "Tolling Period") shall not be included in computing the running of any statute of limitations or statute of repose applicable to, or potentially applicable to, any action brought by either Party in any way relating to or arising from any claim related to the maintenance, repair and replacement of certain fences located within the Rock Creek Ranch Subdivision, or for any claim related to or arising from the Intergovernmental Agreement entered into between the Town and the Superior Metropolitan Districts Nos. 2 and 3, dated June 12, 2003 (the "Dissolution IGA").

B. *Term and Termination.* This Agreement shall commence on the Effective Date and terminate on December 1, 2026; provided, however, that either Party may terminate this Agreement upon 14 days' advance written notice.

C. *Effect of Tolling Period.* Any defenses of laches, estoppel, waiver, or other equitable defenses based upon the running or expiration of any statute of limitations or statute of repose shall not include the Tolling Period. Accordingly, the Town shall not assert, plead or raise against Rock Creek any affirmative defense including without limitation laches, estoppel, waiver or other equitable defenses that counts the passage of time during the Tolling Period in any action brought by Rock Creek related to or arising from the maintenance, repair and replacement of certain fences located within the Rock Creek Ranch Subdivision or the Dissolution IGA.

D. *No Admission.* This Agreement does not constitute an admission or acknowledgement of any fact, conclusion of law, or waiver of liability by either Party. This Agreement does not constitute an admission or acknowledgement on the part of either Party that any statute of limitations, or defense concerning the timeliness of commencing a civil action, is applicable to any claims either may have. The Parties reserve all rights and defenses which they may have, except as otherwise set forth in this Agreement, to contest or defend any claim or action either Party may assert or initiate, including without limitation the defense of statutes of limitations or repose for periods of time excluded from the Tolling Period.

E. *Prospective Effect.* This Agreement is prospective and is not intended to revive any claim, cause of action or defense which, as of the Effective Date, may be barred due to the passage of time.

II. MISCELLANEOUS

A. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

B. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. *Integration.* This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

E. *Notice.* Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent prepaid, first-class United States mail to the Party at the address set forth on the first page of this Agreement.

F. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

H. *Assignment.* Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. *Governmental Immunity.* The Town and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado

Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. *Rights and Remedies.* The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law.

K. *Electronic Signatures.* The Parties intend that this Agreement be governed by the Uniform Electronic Transactions Act, C.R.S. § 24-71.3-101, *et seq.*

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

TOWN OF SUPERIOR, COLORADO

Mark Lacis, Mayor

**ROCK CREEK HOMEOWNERS
ASSOCIATION, INC.**

By: _____