

**RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, AMENDING
RESOLUTION NO. 23, SERIES OF 2017 REGARDING PERFORMANCE
STANDARDS AND REQUIREMENTS THAT THE ARTS CAMPUS AT WILLITS
(TACAW) MUST SATISFY IN ORDER TO OBTAIN ADDITIONAL FUNDING FROM
THE TOWN OF BASALT**

**Town of Basalt, Colorado
Resolution No. 24
Series of 2019**

RECITALS

- A. The Town of Basalt, Colorado ("Town") owns a parcel of land in the Willits Town Center PUD ("WTC") comprised of approximately 0.78 acres and designated as the "Town Park - Arts Tract" ("Arts Parcel") on the Plat of WTC. The initial developers of WTC dedicated the Arts Parcel to the Town for the purposes of a Town park and arts center.
- B. In 2001, the Town Council approved Ordinance No. 14, Series of 2001, which granted certain land use entitlements for the development of the WTC PUD. The WTC development approvals established a real estate transfer assessment ("RETA") whereby 50% of the RETA is set aside "to build, maintain and provide an endowment for an arts or cultural center" (the "Arts Center") to be located at the Arts Parcel (the portion of the RETA set aside for such purposes is herein referred to the "Arts RETA"). The Town Council is responsible for managing and administering the RETA, including the Arts RETA. Currently the RETA funds, including the Arts RETA are in a "combined RETA Restricted Account."
- C. The Arts Campus at Willits ("TACAW") is an Internal Revenue Code Section 501(c)(3) entity that is incorporated in the state of Colorado as a non-profit corporation. TACAW was created specifically for the purpose of creating, managing and supporting a multi-disciplinary arts campus at the center of the Roaring Fork Valley to provide diverse programming in the arts. TACAW has provided a venue for film, music, education, culinary arts, performing arts and special events through the "Temporary" space, and now wishes to do so at the to-be constructed Arts Center on the Arts Parcel.
- D. In 2016, the Town Council approved Resolution No. 41, Series of 2016, which outlined a process and framework for moving forward to complete the analysis necessary for the Council to decide whether it is appropriate to proceed with

supporting TACAW's building of a performing arts center in Willits Town Center.

- E. In 2017, the Town Council approved Ordinance No. 10, Series of 2017, which authorized a lease to be entered into between the Town and TACAW for the Arts Parcel ("Lease").
- F. Also in 2017, the Town Council approved Resolution No. 23, Series of 2017, which created a framework whereby more certainty is provided to TACAW, its potential donors, and Town residents and businesses as to how Arts RETA funds are to be transferred to and used by TACAW.
- G. TACAW wishes to commence construction of the Arts Center on the Arts Parcel and wishes to utilize a portion of the Arts RETA funds to finance such construction. The purpose of this Resolution is to amend Resolution No. 23, Series of 2017 to allow for such use of the Arts RETA funds and appropriate terms and conditions thereon.
- H. Rather than utilize a liability account contemplated by Resolution No. 23, Series of 2017, the Town wishes to make available for use for construction purposes the Arts RETA fund balance as of December 31, 2018 upon TACAW demonstrating certain financing benchmarks.
- I. The Town and TACAW share the goal of creating a vibrant and financially viable Arts Center at the Arts Parcel for the benefit of the properties within Sopris Meadows and WTC, and all of the Basalt and Roaring Fork Valley community including visitors and tourists.
- J. The Basalt Town Council considered this resolution at a public meeting held on July 9, 2019. Throughout the meeting, evidence and testimony was offered by the TACAW, staff and members of the public.
- K. The Basalt Town Council finds that the resolutions described herein to be consistent with the applicable provisions of the Town Code, the Arts RETA, the WTC PUD land use approvals and the Basalt Master Plan:

NOW, THEREFORE, BE IT RESOLVED by the Town Council of Basalt, Colorado, as follows:

1. Recitals. The foregoing recitals are incorporated herein as findings of Town Council.

2. Resolution No. 23, Series of 2017. The Town Council hereby makes the following amendments to the Resolution No. 23, Series of 2017:

a. Paragraphs 1 and 2 are repealed and replaced as follows:

1. Arts RETA Transfers to TACAW Construction Account

- A. The Town receives and holds funds generated from the Arts RETA in a restricted fund, which is called the “RETA Willits ARTS 50%” on Town financial statements and “RETA 1 – Willits Arts” on the Town’s Budget, and shall be referred to as “Arts RETA Restricted Account” herein.
- B. TACAW intends to commence construction on the Arts Center, and the Town agrees that use of the Arts RETA funds is appropriate for that purpose.
- C. As of December 31, 2018, the balance in the Arts RETA Restricted Account was \$942,179.57 (the “2018 Arts RETA Balance”).
- D. TACAW has a project budget to construct the Arts Center to a level required for certificate of occupancy, including the tenant finishes necessary to open the doors for performances, in the amount of approximately \$4.9 million (the “Construction Budget”). TACAW intends to fund the Construction Budget through donations, a construction loan with Alpine Bank, funds allocated for the Arts Parcel pursuant to the Development Agreement (recorded in the public records of Eagle County at Reception No. 201820322) (the “Development Agreement Funds”), and the Arts RETA funds.
- E. Upon TACAW demonstrating to the Town that TACAW has a building permit for the Arts Center and bank certification that TACAW has sufficient funds available or contractually secured for use for construction of the Arts Center equal to the Construction Budget (approximately \$4.9 million) minus the 2018 Arts RETA Balance (\$942,179.57), the Town agrees to contribute the 2018 Arts RETA Balance (\$942,179.57) toward the construction of the Arts Center by transferring such funds to a “Construction Account” with Alpine Bank.
- F. The Construction Account shall be created by Alpine Bank and subject to the following restrictions:

1. Use of funds in the Construction Account is restricted to hard construction costs of the Arts Center and may not be used for the general operations of TACAW (e.g. salaries, overhead).
 2. Prior to any withdrawal of funds from the Construction Account, Alpine Bank and the Town must approve a "draw" request submitted by TACAW to ensure that such funds are being used for reasonable hard construction costs.
 3. To reduce the cost of construction through the accrual of interest, the funds in the Construction Account may be used prior to TACAW drawing on its construction loan with Alpine Bank.
 4. If upon a certificate of occupancy being issued for the Arts Center there are any Arts RETA funds remaining in the Construction Account, such excess funds shall be transferred back to the Town to be placed in the Arts RETA Restricted Account.
- G. Except for the 2018 Arts RETA Balance, all other funds generated by the Arts RETA shall be managed in accordance with this Resolution and other applicable Town ordinances and resolutions.
- H. Prior to issuance of the certificate of occupancy for the Arts Center, TACAW and the Town staff shall meet to review the costs of construction of the Arts Center, TACAW's financial status moving forward, and related issues for the ongoing operations of the Arts Center by TACAW.
- I. The Town Council hereby directs the Town Manager and Finance Director, in consultation with the Town Attorney, to take such actions as are reasonably necessary to accomplish the intent of this Resolution.

2. TACAW Endowment Fund

- A. After two years following the issuance of the certificate of occupancy for the tenant finish permit which allows TACAW to hold performances in the facility, TACAW may request the Town Manager in writing to schedule a meeting before the Town Council for the purpose of the

Council determination of whether the Arts RETA funds collected from January 1, 2019 forward should be transferred under the terms of this Resolution to the TACAW Endowment Fund. The Town Manager is directed to place the item on an upcoming Council meeting agenda for such determination as described in Paragraph 3A below with adequate notice to TACAW of the meeting date. The Town Council in its sole discretion may decide to approve the transfer, approve the transfer with conditions, or deny the transfer. If the Council denies the transfer, TACAW must wait one-year before reapplying for the transfer unless the Town Council approves a shorter time frame at the time of its determination. The intent of this Resolution is that the funds be transferred to the TACAW Endowment Fund for TACAW's management if TACAW is demonstrating compliance with the reporting and other requirements established in this Resolution.

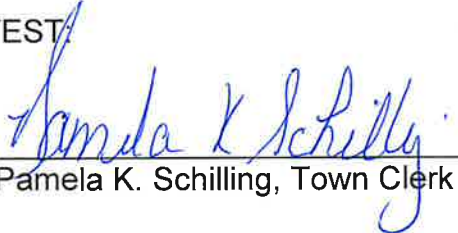
- b. Exhibits A and B and references thereto are hereby deleted.
 - c. All references to "Liability Account" are hereby repealed and replaced with "Construction Account."
 - d. All references to "combined RETA Restricted Account" are hereby amended to the Arts RETA Restricted Account.
 - e. Recital H is hereby deleted.
3. Transfer of Funds. Transfer of Funds pursuant to this Resolution and Resolution No. 23, Series of 2017 is contingent upon the Town Council's review and approval of a supplemental budget if such funds are requested in 2019. The Town Finance Director is requested to bring a supplemental budget amendment to the Town Council for approval and to include the funds in a 2020 budget if the funds are not requested in 2019.
4. Recording. This Resolution shall be recorded in the public records of Eagle County, Colorado.

READ AND ADOPTED on July 9, 2019 by a vote of 4 to 2.

TOWN OF BASALT, COLORADO

By: 
Jacquie R. Whitsitt, Mayor

ATTEST

By: 
Pamela K. Schilling, Town Clerk

