

RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING A PRE-DEVELOPMENT AGREEMENT WITH THE ARTS CENTER AT WILLITS (TACAW)

**Town of Basalt, Colorado
Resolution No. 32
Series of 2015**

RECITALS

- A. The Basalt Town Council considered requests from The Arts Center at Willits during a Worksession on June 9, 2015 for the use of Town-owned property and funds from Town to construct a performing arts center.
- B. The Basalt Town Council desires to give TACAW the opportunity to construct such a facility on the Town Park - Arts Tract in the Willits Town Center PUD.
- C. The Parties desire to enter into a Pre-development in order to designate the TACAW as the exclusive developer of the Town Park - Arts Tract, to properly define and record the necessary improvements and financing needed to develop the Property as a performing arts facility for TACAW, and to identify issues related to development of the site.

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

Section 1. The Town Council approves a Pre-Development Agreement with The Arts Center at Willits.

Section 2. The Town Council directs Staff to coordinate with The Arts Center at Willits to perform the Town's responsibilities outlined in the Pre-development Agreement.

RESOLUTION NO. 32 SERIES OF 2015, IS HEREBY ADOPTED by a vote of 6 to 0, this 23rd day of June, 2015.

TOWN OF BASALT, COLORADO

ATTEST:

by

Jacque R. Whitsitt, Mayor

Pamela K Schilling, Town Clerk



Please return to:
TOWN OF BASALT
101 Midland Avenue
Basalt, CO 81621

PRE-DEVELOPMENT AGREEMENT
TOWN OF BASALT AND THE ARTS CENTER AT WILLITS (TACAW)

THIS PRE-DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the 23rd day of June, 2015 (the "Effective Date"), between the Town of Basalt, Colorado, a town of the State of Colorado (the "Town"), and The Arts Center at Willits (TACAW), a Colorado nonprofit corporation (the "Developer") (the Town and Developer are hereby collectively referred to as the "Parties").

RECITALS:

- A. The Town of Basalt owns an approximate .78 acre property designated as the "Town Park Arts Tract". The initial developers of the Willits Town Center PUD dedicated the tract to the Town for the purposes of a Town Park and Arts Center.
- B. The Willits Town Center development approvals established a real estate transfer assessment (RETA) whereby 50% of the funds are set aside to build, maintain and provide an endowment for an arts center or cultural center (the "Arts Center") to be located at the Town Park-Arts Center Tract at Willits Town Center (the portion of the RETA set aside for such purposes is herein referred to the "Willits Arts Center RETA").
- C. TACAW has now received 501(c)(3) status with the Internal Revenue Service and is registered with the state as a Colorado non-profit.
- D. The Willits Arts Center RETA now has approximately \$700,000 of restricted revenue. Expenditure of these funds for the allowed purposes requires appropriation by the Town Council.
- E. The Parties desire to enter into this Agreement in order to designate the Developer as the exclusive developer of the Town Park-Arts Parcel, to properly define and record the necessary improvements and financing needed to develop the Property as performing arts facility for TACAW, and to identify issues related to development of the site.

- F. The Willits Arts Center RETA now has approximately \$700,000 of restricted revenue and TACAW would like to access those funds to fund and build a performing arts center.
- G. The Development approvals also allow a park on the site.
- H. Parties desire to enter into this Agreement in order to designate the Developer as the exclusive developer of the "Town Park-Arts Center Tract" (Property), to properly define and record the necessary improvements and financing needed to develop the Property as a performing arts facility for TACAW, and to identify issues related to development of the site.
- I. The Parties desire to enter into this Agreement in order to designate the Developer as the exclusive developer of the Town portion of the Willits Town Center PUD ("Property"), to properly define and record the necessary improvements and financing needed to develop the Property as a performing arts facility by TACAW, and to identify issues related to development of the site.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Town and the Developer agree as follows:

1. **DEVELOPER OF RECORD.** The Town acknowledges that there are risks and costs of preliminary planning activities and other requirements associated with the preparation for a project plan under development. As an inducement to Developer to assume those costs and undertake those activities, as set forth herein, the Town agrees to designate the Developer as the Exclusive Developer of Record for the Property.
2. **OBLIGATION OF THE PARTIES TO PROCEED.** The obligations of the Parties to proceed beyond this Pre-development Agreement are dependent upon the Parties entering into a Final Development Agreement prior to the termination of this Agreement. Nothing contained herein shall (i) obligate the Town to create or approve the Development (ii) obligate the Town to create or approve a development plan for the Property, or (iii) obligate either party to enter into a Final Development Agreement.
3. **OBLIGATIONS OF THE PARTIES.** The parties agree that there are a number of elements that are required for the project to be completed:
 - A. The Town owns the Property which it intends to lease to the Developer through a future lease for a minimal rent to be signed by the Parties for the Property subject to the Developers compliance with the terms of this agreement.

- B. The Parties enter into this Agreement in order to designate the Developer as the exclusive developer until the deadline described in Paragraph 3C below, for the purpose of building and maintaining a performing arts center within the Property, and to set forth matters that need to be included in any Final Development Agreement.
- C. Deadline for Performance – TACAW commits to entering into a Final Development Agreement and Lease with the Town by March 31st of 2016. The Town Manager is given the ability to authorize another three month extension to the deadline if he finds that TACAW is making progress toward executing a Final Development Agreement, with any other additional extension requiring Town Council approval.
- D. Agreement on Site Grading. The parties agree that the site requires a considerable amount of fill to make it developable. TACAW shall be responsible for filling the property and making it a workable development site.
- E. Agreement on Site Work, Infrastructure, and Utilities. The Parties shall agree on how site work, utilities, street, sidewalk and similar improvements are to be addressed by the Final Development Plan. The Town understands that TACAW may request that the Town or the developer of Willits Town Center make off site improvements to enable the Performing Arts Center to be constructed. The Town agrees to give consideration to any such request, however nothing herein obligates the Town to make or fund such improvements.
- F. Parking. The Parties agree to work toward a solution for parking for the Performing Arts Center which may include offsite temporary, permanent or leased parking and pedestrian ways. While underground parking is not currently being contemplated, nothing herein restricts the parties from considering it.
- G. Park Improvements. The parties agree that the Willits Town Center development approvals allow for a park on the site. The Town deferred park improvements to be constructed by the Willits Developer on the site. The Town agrees to work with the developer of Willits Town Center to identify any obligations to build park improvements on the Property that could occur in conjunction with the construction of the Performing Arts Center.
- H. Agreement on Progress Schedule. The Parties shall agree on a progress schedule by which the development project will be undertaken and completed, including a mechanism by which the scheduled can be mutually revised.
- I. Zoning Changes and Town Planning Impacts. The Parties shall agree as to how any necessary zoning changes, affordable housing and town

planning impacts will be addressed. Nothing contained within this Agreement, nor any future agreement shall be deemed to bind the Town, acting in its governmental capacity, to make any such zoning changes. The parties agree that the process outlined for the "P" Public Zone District shall be used. The Town contemplates that a "P" Public Site Plan" will be reviewed by the P&Z and adopted by the Town Council providing conceptual approval with the final plan being reviewed by the P&Z. Alternatively, an amendment to the Willits Town Center could be considered by the Town which could provide an alternative process.

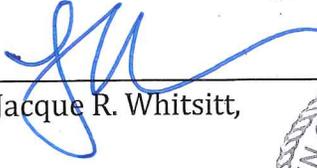
- J. Financial, Tax and Incentive Impacts. The Parties shall work diligently to define any financial, tax and incentive impacts of the project. This includes the potential establishment of districts that would provide funding to meet site work, infrastructure and utility requirements of the project.
 - K. Funding through the Willits Arts RETA. The Town agrees to process a supplemental budget to provide start-up funds to TACAW for up to \$130,000 in 2015 using the Willits Arts RETA funds as shown in Exhibit A. TACAW may make a proposal for 2016 funding during the Town's 2016 budget process. The Final Development agreement shall address how additional Willits Arts RETA funds would be provided to TACAW. TACAW may request advance funds and the Town Manager may consider advancing the request. TACAW shall submit monthly reports explaining how funds are being utilized and progress made.
 - L. Other Matters. The Final Development Agreement shall also address any other matters that the Parties deem appropriate.
 - M. Terms and Conditions related to the Final Development Agreement. The Parties desire to agree upon the terms and conditions of all the items listed in this Paragraph 3, and identify any additional items as they may arise, at the earliest possible time during the development plan approval process so mutual expectations are met in a satisfactory manner.
4. **MISCELLANEOUS.**
- A. Financial liability. The Town shall not be liable for any expenses or debt associated with or incurred by the development or marketing of, or future management of the facility (ies).
 - B. Costs. Each party shall be solely responsible for all costs and expenses incurred by such party in connection with the matter contemplated by this Agreement. The Town shall be responsible only for the costs approved by the Town Council through this or subsequent agreement.

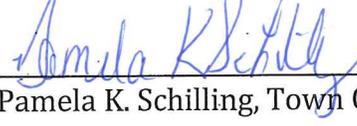
- C. Financial Investigation. The Developer agrees to provide information for a financial analysis of the Development Project to be completed by the Town's Financial Advisor. The financial analysis will examine the completeness and reasonableness of: 1) Project development costs, both onsite and offsite; 2) Project funding, including debt, donations / grants, and other anticipated sources; 3) Facility programming and associated revenues and expenditures; 4) All other facility operating expenses and required reserves; and 5) Incorporating points 1-4 above, the Project's prospective feasibility and self-sustainability. The Town will also engage an appraiser to determine the fair market value of the land conveyance to reflect the conveyance in its asset inventory. The costs of the Financial Investigation and appraisal will be paid for out of the Willits Arts RETA.
- D. Assignability. Neither party shall assign this Agreement without the written consent of the other party.
- E. Amendments. This Agreement may be supplemented or amended only by written instrument executed by the Parties affected by such supplement or amendment.
- F. Applicable Law. This Agreement shall be deemed to be entered into in the State of Colorado, and shall be enforceable under the laws of that state.
- G. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon the Parties.
- H. Non-liability of Town Officials and Employees. No member of the governing body, official, employee, or agent of the Town shall be personally liable to Developer, or any successor in the interest to Developer, pursuant to the provisions of this Agreement, nor for any default or breach of the Agreement by the Town.
- I. Not A Partnership. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Parties.
- J. Terms of Agreement and Termination. This Agreement shall remain in effect until the deadline provided in Paragraph 3C unless TACAW notifies the Town that it does not intend to proceed. However this Agreement may be terminated at any time by either party if such party is not satisfied, in its sole and absolute discretion, with the progress being made toward entering the agreements referenced in Paragraph 2 above upon a 60 day prior notice. In the event of termination, the parties shall be responsible for fulfilling all of their obligations through the final date of the Agreement

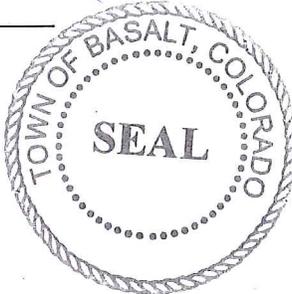
IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

TOWN OF BASALT, COLORADO

ATTEST:

By: 
Jacques R. Whitsitt,

By: 
Pamela K. Schilling, Town Clerk



DEVELOPER
THE ARTS CENTER AT WILLITS

By: _____
Julia Marshall, President

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 2015 by
Julia Marshall as President of The Arts Center at Willits.

Witness my hand and official seal.

My commission expires: _____

Notary Public

