

**RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, IDENTIFYING
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. 23
Series of 2017**

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 Basalt Town Council approved Ordinance No. 14, Series of 2001 granting 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 anticipates providing a venue for film, music, education, culinary arts, performing arts and special events at the Arts Center.
- 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. 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.
- F. The Town approved Ordinance No. 10, Series of 2017 on second reading on June 13, 2017, authorizing a lease to be entered into between the Town and TACAW for the approximate 0.78 acre Arts Parcel (“Lease”).
- G. The Town desires to create 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.
- H. The Town has determined to transfer Arts RETA funds from the combined RETA Restricted Account to a liability account to be controlled by the Town until at least two years after the performing Arts Center is issued a certificate of occupancy, and then to consider allowing these and future Arts RETA funds to be transferred from the liability account to the “TACAW Endowment Fund” controlled by TACAW.
- I. The Basalt Town Council considered this resolution at a public meeting held on August 8, 2017. Throughout the meeting, evidence and testimony was offered by the TACAW, staff and members of the public.
- J. 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:

The Basalt Town Council incorporates the above recitals and all exhibits herein as references, as findings and determinations, and conclusively makes all of the findings of fact, determinations and conclusions contained herein.

Based on the evidence, testimony, exhibits, and comments from TACAW, the public, and Town Staff, the Basalt Town Council hereby approves the following.

1. TACAW Liability Account

- A. The Town Council hereby directs the Town Manager to establish a Liability

Account for the purpose of managing the Arts RETA funds which are eligible under this Resolution to be allocated for TACAW's use subject to the restrictions in this resolution to assist TACAW in the development and operation of its Arts Center.

- B. The TACAW Liability Account will be managed by the Town Finance Director.
- C. The Finance Director will not release funds from the Liability Account to TACAW unless:
 - 1. TACAW has submitted that year's budget approved and certified by the TACAW officials; and
 - 2. TACAW's managing director provides documentation that the requested funds are authorized under that budget.

2. Milestone-Driven Arts RETA Transfers to TACAW Liability Account

- A. For each one million dollars that TACAW demonstrates a binding pledge from a donor to construct the performing arts center, the Town will transfer \$100,000 of Arts RETA from the combined RETA Restricted Account to the TACAW Liability Account. A binding pledge means that the pledge would be considered binding in the State of Colorado. An illustrative example of how this would be applied is shown in **Exhibit A**. Town contributions to the TACAW Liability Account will be made for each million in pledges, and not for portions thereof. If subsequent to a transfer as provided herein, a binding pledge is unfulfilled or is withdrawn, the Town Finance Director shall withhold funds commensurate with the unfulfilled or withdrawn pledge.
- B. Upon TACAW obtaining a building permit and bank certification as described herein for the first phase of construction, the TACAW Liability Account will be eligible to receive an additional contribution from the Arts RETA. The contribution will be \$1,000,000 less all of the Arts RETA contributions made by the Town to TACAW since the inception of TACAW. This building permit milestone also requires bank certification that TACAW has sufficient funds (including any bank loan and donations in hand) to complete the construction of the first phase of the performing Arts Center to a level required for certificate of occupancy including the tenant finishes necessary to open the doors for performances. **Exhibit A** also shows an illustrative example of how the contribution would be calculated.
- C. After building permit and bank certification as outlined in Paragraph 2.B. above, TACAW will be eligible to draw up to 20% of the TACAW Liability Account

calculated by the Town Finance Director at the time of building permit issuance for operating and capital expenses from the Liability Account provided TACAW has satisfied the other requirements in this Resolution. The calculation will be made by the Finance Director one time and after the additional Town contribution in Paragraph 2B is made. By way of example and for illustrative purposes, if the TACAW Liability Account Balance is \$734,000 at the time of building permit issuance, then TACAW may draw a maximum of \$146,800 for operating and capital expenses until the time of issuance of the certificate of occupancy. The Town Council's purpose for providing this allowance is to provide TACAW with funds to start programming and scheduling events. However, it is acknowledged that TACAW has flexibility to spend the funds it determines necessary as long as the expenditures are authorized expenditures under the RETA Declaration and the expenditures satisfy the other requirements of this Resolution (by way of example, they are for TACAW budgeted expenses).

- D. 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 should be transferred under the terms of this Resolution to the TACAW Endowment Trust. 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.
- E. The TACAW Liability Account shall terminate after the Council's approval to release all remaining funds to the TACAW Endowment Fund and the Finance Director transfers such funds.

3. Establishment of TACAW Endowment Fund and Transfer of Arts RETA Funds to that Fund

- A. The Town Finance Director shall release any remaining Arts RETA funds in the combined RETA Restricted Account that the Town holds and any remaining

balance in the TACAW Liability Account to a TACAW Endowment Fund after all of the following have occurred:

1. TACAW has established the TACAW Endowment Fund account and the documents have been approved by the Town Attorney as provided in Paragraph 3B below;
 2. TACAW has requested the release of eligible funds to the TACAW Endowment Fund; and
 3. The Town Council has made a determination that TACAW has had a certificate of occupancy for two years, the TACAW board has been performing as required in this Resolution, and that further Town management of the liability account is unnecessary.
- B. The TACAW Endowment Fund documents shall be reviewed and approved by the Town Attorney and the Fund shall be fully established before the Town consents to the release of funds from the Town to the TACAW Endowment Fund. The TACAW Endowment Fund documents will provide that the Arts RETA funds deposited into the Fund shall be managed by the TACAW Board or a finance committee appointed by such Board with the express purpose of preserving principal, and not earning income. Any money in the Fund may be invested in the same manner as moneys of a municipality as set forth in Section 31-20-303, C.R.S.
- C. After the initial distribution of the then-current balance of the remaining Arts RETA funds to the TACAW Endowment Fund, any new Arts RETA funds received by the Town will be distributed to the TACAW Endowment Fund subject to the requirements in Section 4 hereof.
- D. The TACAW Endowment Fund documents shall specify, TACAW will draw no more than 10% of the Fund balance in the first year after its inception and of the Fund Balance as of December 31st of the preceding year for each year thereafter. Provided, however, in extraordinary circumstances, as approved by the TACAW Board and the Town Council, TACAW may draw more than 10% of the Fund balance.
- E. TACAW will not draw from the Fund in a given fiscal year if the Fund Balance is less than \$200,000 as of December 31st of the preceding year; however, in extraordinary circumstances, as approved by the TACAW Board and the Town Council, TACAW may be provided a waiver from this requirement.
- F. TACAW shall be permitted to make withdrawals directly from the TACAW Endowment Fund for the authorized activities. Nothing herein restricts TACAW

from having other accounts or allowing others to contribute to the Fund provided that the amounts in the Fund are used for authorized activities.

4. Town Management of Arts RETA

- A. The Town will continue to collect the Arts RETA funds in accordance with the Declaration of Restrictive Covenant Concerning the Arts RETA.
- B. The Town will only transfer or pay Arts RETA funds to TACAW, the TACAW Liability Account or the TACAW Endowment Fund, as applicable, amounts which it has actually received and which are held by the Town of Basalt.
- C. The Town will release Arts RETA funds to the TACAW Endowment Fund at least twice each calendar year at approximately six-month intervals provided the requirements outlined in this Resolution are satisfied.
- D. Beginning after the fifth year following the issuance of the Certificate of Occupancy for the first phase of construction, TACAW shall demonstrate to the Town Finance Director that the greater of 3% of TACAW's total annual budgeted revenues or \$50,000 each year is placed in a building capital budget line item. TACAW may use those funds as needed for replacement, repair and maintenance of the Arts Center and grounds.
- E. The Town is not required to release Arts RETA funds to or from the TACAW Liability Account or to the TACAW Endowment Fund, as applicable, in the event of the following:
 - 1. Failure by TACAW to submit all required reports as provided in Paragraph 5B. 1 through 10 of this Resolution;
 - 2. The independent auditor required under Paragraph No. 5 (B) 2 issues an Adverse Opinion or a Disclaimer of Opinion of the TACAW financial records.
 - 3. TACAW is in violation of the terms of its Lease;
 - 4. TACAW is in violation of its land use approvals;
 - 5. Any officer of TACAW or staff member is under investigation for malfeasance or a determination of malfeasance has been made by a court of competent jurisdiction;
 - 6. TACAW defaults on any loan as to which a lien is placed on the Arts Center; or
 - 7. TACAW has not set up a building capital budget line item as required by Paragraph 4D above (if then applicable).

- F. The Town will release eligible RETA revenues to the TACAW Liability Account or TACAW Endowment Fund, as applicable, using the Town's accounts payable practices then in effect.
- G. If a Town Councilor, the Mayor or the Town Manager requests withholding the release of the funds due to non-compliance with the requirements set forth in this resolution, the Town Manager will place the item on the Town Council's agenda for a Town Council determination at a public hearing following notice to TACAW of the hearing not less than 15 days prior to the hearing unless the 15-day notice requirement is waived by TACAW. During the public hearing, TACAW may ask that the Town Council release the funds and present its rationale for why the request should be granted. Following such hearing, the Town Council, in its sole discretion, may decide whether to release the funds and/or to impose any conditions on the release of the funds.
- H. The Town will charge the Arts RETA fund for any Staff, attorney, and consultant time based on the Town's then current fee schedule for Staff time and direct charges from any consultant or attorney plus an administrative fee of 15% before transferring funds to the Liability Account or TACAW Fund as described herein.

5. Reports to the Town of Basalt

- A. TACAW shall submit quarterly reports as described in and required by the Lease until building permit.
- B. No later than June 1 of each year, TACAW shall submit the following reports to the Town.
 - 1. All reports which were required to be submitted to the Federal or State Governments, including annual Form 990 to the Internal Revenue Service, proof of good standing with the Colorado Secretary of State;
 - 2. Copy of the prior year's independent CPA audit which must be prepared by a licensed certified public accountant;
 - 3. List of all events or partnerships with the RE-1 School District, the Art Base, the Basalt Public Arts Commission, and Basalt Library for the prior year and as then scheduled for the coming year;
 - 4. Data on the events including the numbers of events, attendance numbers, revenues and expenses by types of events for each quarter in the reporting period;
 - 5. Documentation of all debt and Lease obligations in an amount of \$100,000 or greater entered into by TACAW in the prior year;
 - 6. For each reporting period, all contributions listed by any type of restriction

- (building construction, operations, special project, etc.) There shall be no requirement to disclose the names of any donors provided an individual tracking number is assigned;
7. At each reporting period before certificate of occupancy, provide an updated list of binding pledges and an ageing report. At a minimum, the following information must be provided for each identified pledge included in Paragraph 2B or for each pledge used as collateral for bank financing to construct phase one of the performing arts center: Name or tracking number; date of pledge; amount of pledge; and any limitation or restriction on that pledge;
 8. Yearly budget for the current year;
 9. Prior year's budget with actual expenses;
 10. Fund balance in the TACAW Endowment Fund account (after its establishment);
 11. Statement on compliance with required loan payments for which there is a lien on the Arts Center; and
 12. Any other report required by the Lease TACAW has with the Town on the Arts Parcel; the future land use approval ordinance; and within any other document approved by the Town Council by ordinance or resolution that outlines reporting requirements for TACAW.

TACAW is requested to make reasonable efforts to provide any other information requested by the Town Council.

- C. Following submittal of the Report, the Town Manager will coordinate a Council meeting date and time for TACAW to present a summary of the report with the terms of all of the agreements that TACAW has with the Town.
- D. The Town will make reasonable efforts to place the report on the Town webpage.

6. Release of Funds Back to Town of Basalt from either the Basalt Liability Account or TACAW Endowment Fund

- A. The Town will receive the Arts RETA funds from the TACAW Liability account or the TACAW Endowment Fund that were contributed by the Town and are at that time remaining in the applicable account and not then legally committed to be used for payment if one of the following occurs:
 1. TACAW terminates its legal status and is no longer in existence;
 2. TACAW fails to obtain a building permit within the deadlines established

- in the Lease and the deadline is not extended by the Town;
3. TACAW's Lease for a Performing Arts Center is legally terminated;
 4. TACAW fails to receive a Certificate of Occupancy within the deadline established in the Lease and the deadline is not extended by the Town;
 5. The TACAW Endowment Fund terminates for any reason;
 6. TACAW is using the Arts Center Parcel for some other use other than a Performing Arts Center without advance permission from the Town; or
 7. The TACAW Endowment Fund chooses to release funds to the Town for a specific purpose.

7. Amendment of Declaration of Restrictive Covenants.

The Town may at its sole discretion work with the current Developer of Willits Town Center to amend the Declaration of Restrictive Covenants signed by the Developer of Willits and recorded at Reception No. 763051 and the PUD if determined necessary to resolve any legal issues associated with the use of the RETA and to be more flexible with the use of the funds, and future use of the "Town Park Arts Center Tract".

8. Limitations of Resolution, Amendment and Refinement

This resolution does not appropriate funds, obligate the Town to approve a budget favorable to TACAW, grant a lease, or grant any land use approvals. Those actions have been or will be considered in accordance with the Town Charter and Municipal Code.

This resolution is approved by the Town Council to outline the framework for releasing RETA funds. There will be legal documents executed by the parties to establish the TACAW Endowment Fund.

9. Recordation.

This Resolution shall be recorded with the Offices of the Clerk and Recorder of Eagle County.

READ AND ADOPTED by a vote of 5 to 0 on August 8, 2017.

TOWN OF BASALT, COLORADO

By: _____

Jacque R. Whitsitt, Mayor

ATTEST:

By: *Pamela K Schilling*
Pamela K. Schilling, Clerk



Council Reso23 TACAW

Exhibit A

Illustration of Proposed, Milestone-Driven Arts RETA Transfers to TACAW Liability Account (LA)
(Actual dollar amounts will Vary)

<u>Year</u>	<u>Description</u>	<u>Illustrative WTC Arts RETA Transfer</u>	<u>Illustrative Liability Account Balance</u>
TBD	First \$1M in Binding Project Pledges (1)	100,000	100,000
TBD	Second \$1M in Binding Project Pledges	100,000	200,000
TBD	Third \$1M in Binding Project Pledges	100,000	300,000
TBD	Fourth \$1M in Binding Project Pledges	100,000	400,000
At Building Permit (2)	Proposed milestone calculation starts with:	1,000,000	
	less: Original Amt. in Res 41-2016	(230,000)	
	less: Amt in Ord. 12 of 2017	(36,000)	
	less: Previous Transfers to LA	(400,000)	
	equals: Net New Transfer to LA (3)	334,000	734,000
During Construction and before Occupancy	TACAW may draw up to 20% of LA Balance (measured at time of Building Permit) for TACAW Operating Expenses	Maximum Cumulative Draw:	(146,800)
		LA Balance:	587,200
Two Years after Certificate of Occupancy	Town may approve release of Liability Account to TACAW Endowment Fund	LA Balance:	Closed - \$0
	Town transfers to TACAW Liability Account all Arts RETA Funds carried forward (not previously provided to TACAW)		
Semi-Annually after Fund Account (Assuming no TACAW defaults on Responsibilities to Town)	Twice each year, Town transfer to Endowment Fund the Arts RETA revenues collected in prior 6 months. (e.g. February 1: July - December; August 1: January-June)		

(1) Written pledges, signed by donors and accepted in writing by TACAW - with TACAW providing whatever form of "consideration" is generally considered necessary for a donor pledge to be legally binding and enforceable in the State of Colorado. Based on TACAW's estimated project budget, we believe that a lender will require TACAW to secure roughly \$4 million in donations and binding pledges prior to approving a construction loan to fund the remainder of the project budget.

(2) The building permit milestone will also include bank certification that TACAW has been fully approved for a construction loan adequate to fund the capital project (to a level required for certification of occupancy), together with donations in hand and to be collected during construction.

(3) The actual net new transfer to the Liability Account is dependent on the actual amount available in the Arts portion of the RETA Account. In this example, if the balance is less than \$334,000, the Town will transfer the amount available.

Town of Basalt - Proposed Town Investments of RETA Funds in TACAW

Illustration of Potential Arts RETA Cashflows: 2017 - 2023

Year		Town Arts RETA Fund*	TACAW Liability Account*	TACAW Endowment Fund*
2017	Cumulative Arts RETA revenues (50% of Willits RETA) collected through 2016	1,016,133		
	TACAW operating expenses approved in Resolution 41 of 2016	(230,000)		
	Actual / estimated Town Arts RETA-funded expenses through 2017	(185,577)		
	Estimated balance based on existing commitments	600,556		
	Additional funding of TACAW operating expenses - Ordinance No. 12, Series of 2C	(36,000)		
	Hypothetical transfer to TACAW Liability Account at first \$1M pledge milestone	(100,000)	100,000	
	Hypothetical Arts RETA revenues collected in 2017**	150,000		
	Estimated balances at year-end 2017	614,556	100,000	N/A
2018	Hypothetical transfer to TACAW Liability Account at second \$1M pledge milestone	(100,000)	100,000	
	Hypothetical Arts RETA revenues collected in 2018	125,000		
	Estimated balances at year-end 2018	639,556	200,000	N/A
2019	Hypothetical transfer to TACAW Liability Account at third \$1M pledge milestone	(100,000)	100,000	
	Hypothetical Arts RETA revenues collected in 2019	100,000		
	Estimated balances at year-end 2019	639,556	300,000	N/A
2020	Hypothetical transfer to TACAW Liability Account at fourth \$1M pledge milestone	(100,000)	100,000	
	Building permit milestone transfer to Liability Account (see page 1 for calc)	(334,000)	334,000	
	Hypothetical Arts RETA revenues collected in 2020	75,000		
	Estimated balances at year-end 2020	280,556	734,000	N/A
2021	TACAW draws 20% maximum of est. \$734,000 Liability Account for expenses		(146,800)	
	Hypothetical Arts RETA revenues collected in 2021	50,000		
	Estimated balances at year-end 2021	330,556	587,200	N/A
2022	2 year after CO milestone release of TACAW Liability Account to TACAW Endowment Fund		(587,200)	587,200
	2 year after CO milestone Town transfer of Arts RETA balance to Fund	(330,556)		330,556
	TACAW draws 10% (maximum) of Fund for expenses			(91,776)
	Hypothetical Arts RETA revenues collected in 2022	75,000		
	Estimated balances at year-end 2022	75,000	Closed - \$0	825,981
2023	Town transfer of Arts RETA collected in 2022 (transfer timing in 2022-23 TBD)	(75,000)		75,000
	TACAW draws 10% (maximum) of Fund for expenses			(90,098)
	Hypothetical Arts RETA revenues collected in 2023	100,000		
	Estimated balances at year-end 2023	100,000	Closed - \$0	810,883

* This analysis does not include estimated investment earnings on funds held by Town, Liability Account or TACAW Endowment Fund

** Annual Arts RETA revenues (50% of Willits RETA) have been variable in 2004 - 2016, and have averaged roughly \$78,000 per year.

