

Town of Basalt, Colorado
Ordinance No. 16
Series of 2019

AN ORDINANCE AUTHORIZING THE FINANCING OF A VOLUNTARY REFUND OF OVERCOLLECTED REVENUES FROM THE TOWN'S GENERAL OPERATING MILL LEVY FOR FISCAL YEARS 2016 TO 2019 AND IN CONNECTION THEREWITH AUTHORIZING THE SALE AND SUBSEQUENT LEASING OF CERTAIN TOWN PROPERTY AND THE EXECUTION AND DELIVERY BY THE TOWN OF A DEED, A LEASE PURCHASE AGREEMENT, AND OTHER DOCUMENTS RELATED TO THE FINANCING.

WHEREAS, the Town of Basalt (the "Town") is a municipal corporation and political subdivision of the State of Colorado (the "State") duly organized and existing under the Town's Charter adopted pursuant to Article XX of the Constitution of the State; and

WHEREAS, the members of the Town Council of the Town (the "Council") have been duly elected or appointed and qualified; and

WHEREAS, pursuant to Section 1.4 of the Charter and Article XX of the Colorado Constitution, the Town is authorized to sell or convey real property owned by the Town; and

WHEREAS, the Council has determined to voluntarily refund to taxpayers amounts (the "Refund Amount") which may have been collected in violation of Article X, Section 20 of the Colorado Constitution ("TABOR") and rather than subject the Town to potential TABOR lawsuits; and

WHEREAS, the Town does not have sufficient available funds to pay the Refund Amount; and

WHEREAS, Section 10.7 of the Town Charter authorizes the Town to execute and deliver certificates of participation, representing undivided interests in rights to receive principal and interest components of rental payments by the Town under any lease from an owner of real or personal property to the Town; and

WHEREAS, the Council has determined that it is in the best interests of the Town and its inhabitants to execute a lease purchase agreement and cause to be issued certificate of participation to finance the Refund Amount; and

WHEREAS, the Town owns the Leased Property as defined below; and

WHEREAS, the Council hereby determines that it is in the best interest of the Town and its inhabitants that the Town transfer and convey the Leased Property to UMB Bank, n.a. (as trustee (the "Trustee") under an Indenture Trust (the "Indenture")) pursuant to a deed or deeds prepared for such purpose (collectively, the "Deed") and lease back the Leased Property pursuant to the terms of a Lease Purchase Agreement (the "Lease") between the Trustee, as lessor, and the Town, as lessee; and

WHEREAS, pursuant to the Lease, and subject to the right of the Town to terminate the Lease and other limitations as therein provided, the Town will pay certain Base Rentals and

Additional Rentals (as such terms are defined in the Lease) in consideration for the right of the Town to use the Leased Property; and

WHEREAS, the Town's obligation under the Lease to pay Base Rentals and Additional Rentals will be from year to year only; will constitute currently budgeted expenditures of the Town; will not constitute a mandatory charge or requirement in any ensuing budget year; and will not constitute a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory or Charter limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the Town in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect; and

WHEREAS, pursuant to the Indenture there will be issued certificates of participation (the "Certificates") dated as of their date of delivery that will evidence proportionate interests in the right to receive certain Revenues (as defined in the Lease), will be payable solely from the sources therein provided, and will not directly or indirectly obligate the Town to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect; and

WHEREAS, the net proceeds of the Certificates are expected to be used to provide funds in an amount sufficient to finance the Refund Amount and pay the costs of issuance of the Certificates; and

WHEREAS, there is on file at the offices of the Town Clerk the following: (i) the proposed form of the Lease; (ii) the proposed form of the Indenture; and (iii) the proposed form of the Deed; and

WHEREAS, Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes (the "Supplemental Act"), provides that a public entity, including the Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act; and

WHEREAS, no member of the Council has any conflict of interest or is interested in any pecuniary manner in the transactions contemplated by this ordinance.

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

Section 1. Recitals; Ratification and Approval of Prior Actions. The foregoing recitals are incorporated herein as findings of Council. All action heretofore taken (not inconsistent with the provisions of this ordinance) by the Council and the officers, agents or employees of the Council or the Town relating to the conveyance of the Leased Property to the Trustee, the Lease, and the voluntary refund of the Refund Amount is hereby ratified, approved and confirmed.

Section 2. Finding of Best Interests. The Council hereby finds and determines, pursuant to the Constitution, the laws of the State of Colorado and the Charter, that the financing of the Refund Amount by conveying and transferring the Leased Property to the Trustee and subsequently leasing the Leased Property from the Trustee pursuant to the terms set forth in the Lease are necessary, convenient, and in furtherance of the Town's purposes and are in the best interests of the inhabitants of the Town and the Council hereby authorizes and approves the same. For purposes of this ordinance, "Leased Property" means the Public Works Facility and

such other property owned by the Town which the Town Manager determines is necessary to effectuate the transaction authorized by this ordinance provided that the Town Manager determines that the purchase price received by the Town from the Trustee is adequate consideration for the sale of such property pursuant to Section 3(a) of this ordinance.

Section 3. Supplemental Act; Parameters. The Council hereby elects to apply all of the Supplemental Act to the Lease and in connection therewith delegates to the Mayor, the Town Manager or the Finance Director of the Town the independent authority to make any determination delegable pursuant to Section 11-57-205(1)(a-i), Colorado Revised Statutes, in relation to the Lease, and to execute a sale certificate setting forth such determinations, including without limitation, the purchase price for the Leased Property to be paid by the Trustee, the term of the Lease and the rental amount to be paid by the Town pursuant to the Lease, subject to the following parameters and restrictions:

- (a) the purchase price to be received by the Town from the Trustee in exchange for the Leased Property shall not be less than \$2,150,000;
- (b) the maximum annual repayment amount of Base Rentals payable by the Town pursuant to the Lease shall not exceed \$280,000;
- (c) the maximum total repayment amount of Base Rentals payable by the Town pursuant to the Lease shall not exceed \$2,800,000;
- (d) the Lease Term shall not exceed December 1, 2029; and
- (e) the Lease shall be subject to prepayment at the option of the Town, without penalty, no later than December 1, 2025.

Pursuant to Section 11-57-205 of the Supplemental Act, the Council hereby delegates to any of the Mayor, the Town Manager or the Finance Director the authority to accept a binding bid for the purchase of the Certificates and to execute any agreement or agreements in connection therewith.

Section 4. Approval of Documents. The Lease and the Deed in substantially the forms on file with the Town Clerk, are in all respects approved, authorized and confirmed, and the Mayor of the Town is hereby authorized and directed for and on behalf of the Town to execute and deliver the Lease and the Deed in substantially the forms and with substantially the same contents as on file with the Town Clerk, provided that such document may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this ordinance.

Section 5. Authorization to Execute Collateral Documents. The Town Clerk is hereby authorized and directed to attest all signatures and acts of any official of the Town in connection with the matters authorized by this ordinance and to place the seal of the Town on any document authorized and approved by this ordinance. The Mayor, the Town Manager, the Finance Director, the Town Attorney, and Town Clerk and other appropriate officials or employees of the Town are hereby authorized to execute and deliver for and on behalf of the Town any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they deem necessary or appropriate, in order to implement and carry out the transactions and other matters authorized by this ordinance. The execution of any instrument by the

above-mentioned officers or members of the Council shall be conclusive evidence of the approval by the Town of such instrument in accordance with the terms hereof and thereof.

Section 6. No General Obligation Debt. No provision of this ordinance, the Lease, or the Indenture shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory or home rule charter provision, nor a mandatory charge or requirement against the Town in any ensuing fiscal year beyond the then current fiscal year. The Town shall have no obligation to make any payment with respect to the Certificates except in connection with the payment of the Base Rentals (as defined in the Lease) and certain other payments under the Lease, which payments may be terminated by the Town in accordance with the provisions of the Lease. Neither the Lease nor the Certificates shall constitute a mandatory charge or requirement of the Town in any ensuing fiscal year beyond the then current fiscal year or constitute or give rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory or Charter debt limitation and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation whatsoever. No provision of the Lease or the Certificates shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the Town within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. Neither the Lease nor the Certificates shall directly or indirectly obligate the Town to make any payments beyond those budgeted and appropriated for the Town's then current fiscal year.

Section 7. Reasonableness of Rentals. The Council hereby determines and declares that the Base Rentals due under the Lease, in the maximum amounts authorized pursuant to Section 3 hereof, constitute the fair rental value of the Leased Property and do not exceed a reasonable amount so as to place the Town under an economic compulsion to renew the Lease or to exercise its option to purchase the Leased Property pursuant to the Lease. The Council hereby determines and declares that the period during which the Town has an option to purchase the Leased Property (i.e., the entire maximum term of the Lease) does not exceed the useful life of the Leased Property.

Section 8. Town Representatives. The Council hereby authorizes each of the Mayor, the Town Manager and the Finance Director to act as Town Representatives under the Lease, or such other person or persons who may be so designated in writing from time to time by the Mayor, as further provided in the Lease.

Section 9. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Council, or any officer or agent of the Town acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Certificates. Such recourse shall not be available either directly or indirectly through the Council or the Town, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Certificates and as a part of the consideration of their sale or purchase, any person purchasing or selling such certificate specifically waives any such recourse.

Section 10. Retention of Bond Counsel. The Council hereby approves the retention of Butler Snow LLP to act as bond counsel with respect to the Lease and the Certificates pursuant to an engagement letter which is on file with the Town Clerk.

Section 11. Bank Qualification. The Town hereby determines that neither the Town nor any entity subordinate thereto reasonably anticipates issuing more than \$10,000,000 face

amount of tax-exempt governmental bonds or any other similar obligations during calendar year 2019, which obligations are taken into account in determining if the Town can designate the obligation to pay the Base Rentals under the Lease as a qualified tax-exempt obligation as provided in the following sentence. For the purpose of Section 265(b)(3)(B) of the Internal Revenue Code, the Town hereby designates the obligation to pay Base Rentals under the Lease as a qualified tax-exempt obligation.

Section 12. Repealer. All bylaws, orders, resolutions and ordinances of the Town, or parts thereof, inconsistent with this ordinance or with any of 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, resolution or ordinance of the Town, or part thereof, heretofore repealed. All rules of the Council, if any, which might prevent the final passage and adoption of this ordinance at this meeting of the Council are suspended.

Section 13. Severability. If any section, subsection, paragraph, clause or provision of this ordinance or the documents hereby authorized and approved (other than provisions as to the payment of Base Rentals by the Town during the Lease Term, provisions for the quiet enjoyment of the Leased Property by the Town during the Lease Term and provisions for the conveyance of the Leased Property to the Town under the conditions provided in the Lease) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance or such documents, the intent being that the same are severable.

Section 14. Charter Controls. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this ordinance and such statutes. Any such inconsistency or conflict is intended by the Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

Section 15. Effective Date. This Ordinance shall be effective fourteen (14) days after final publication. This Ordinance after being fully executed, shall be recorded in the office of the Eagle County Clerk and Recorder.

Section 16. Disposition of Ordinance. This Ordinance, as adopted by the Council, shall be numbered and recorded by the Town Clerk in the official records of the Town. The adoption and publication shall be authenticated by the signatures of the Mayor and Town Clerk, and by the certificate of publication.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON August 13, 2019, by a vote of 4 to 2 on July 23, 2019.

READ ON SECOND READING AND ADOPTED, by a vote of 5 to 0 on August 13, 2019.

TOWN OF BASALT, COLORADO

By: 
Jacques R. Whitsitt, Mayor



Town of Basalt, Colorado
Ordinance No. 16, Series of 2019

Attest:

By: 
Pamela Schilling, Town Clerk

First Publication: Thursday, August 1, 2019
Final Publication: Thursday, August 22, 2019
Effective Date: Thursday, September 5, 2019

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