

**RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO,
APPROVING A SETTLEMENT AGREEMENT RELATED TO THE CIVIL ACTION
THEODORE GUY V. THE TOWN OF BASALT, ET AL, DISTRICT COURT CASE NO.
2016CV30322.**

**Town of Basalt, Colorado
Resolution No. 31
Series of 2020**

RECITALS

- A. In 2016, the Town of Basalt was sued by Theodore Guy related to various claims involving the Colorado Open Meetings Law and the Colorado Open Records Act in the case captioned: *Theodore Guy, Plaintiff, v. Jacque Whitsitt, Town Council of the Town of Basalt, and Pam Schilling, Defendants*, Eagle County District Court, Case No. 2016CV30322, Div. 3, and Court of Appeals Case No. 19CA0125 (the “Ted Guy Lawsuit”).
- B. The Town Council wishes to approve a Settlement Agreement that will result in the final resolution of the Ted Guy Lawsuit and all related matters, as set forth in **Exhibit A**, and believes that doing so is in the best interests of the Town.

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

1. Recitals: Ratification of Action. The foregoing recitals are incorporated herein as findings of the Town Council. All actions heretofore taken, not inconsistent with the provisions of this Resolution, by the Town Council and the officers, agents, or employees of the Town Council or the Town relating to the subject matter of this Resolution, are hereby ratified, approved, and confirmed.
2. Settlement Agreement. The Town Council hereby approves the Settlement Agreement in substantially the same form as enclosed in **Exhibit A**, authorizes the Town Manager to sign the Settlement Agreement, and authorizes Town staff to take such other actions as are necessary to implement the terms of the Settlement Agreement.

READ AND ADOPTED by a vote of 7 to 0 this 11th day of August, 2020.

TOWN OF BASALT, COLORADO

By: *William G. Kane*
William G. Kane, Mayor

ATTEST:

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



FULL AND FINAL RELEASE AND SETTLEMENT AGREEMENT

THIS FULL AND FINAL RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is made this 11 day of ^{August} ~~July~~ 2020 by and between Theodore Guy ("Plaintiff") and the Town of Basalt, Colorado, a Colorado municipality, hereinafter referred to as the "Town."

WHEREAS, the parties desire to settle all claims asserted in the civil action entitled *Theodore Guy, Plaintiff, v. Jacque Whitsitt, Town Council of the Town of Basalt, and Pam Schilling, Defendants*, Eagle County District Court, Case No. 2016 CV 30322, Div. 3, Court of Appeals Case No. 19CA0125, and to enter into various agreements relating to this civil action and the matters giving rise thereto, in accordance with the provisions and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the promises and agreements herein contained, the sufficiency of which are hereby acknowledged, the parties hereby promise and agree as follows:

The Town agrees to pay the sum of one hundred fifteen thousand dollars (\$115,000) to Plaintiff's attorneys. Concurrent with payment, the Town agrees to provide to Plaintiff's attorney Steven D. Zansberg a complete copy of the transcript of the April 26, 2016 Basalt Town Council executive session.

Plaintiff hereby expressly releases and forever discharges Defendants, the Town, and the Town's past and present elected and appointed officers, officials, employees, agents, servants, and attorneys of and from any and all liability, claims, demands, rights, controversies, damages, compensations, costs, expenses, attorney fees, penalties, interest, and causes of actions of any kind whatsoever arising out of and in any way related to Plaintiff's claims under the Colorado Open Records Act (CORA), Colorado Open Meetings Law (COML) and all claims of Plaintiff which have been or could be asserted in the above-described lawsuit. This Agreement includes but is not limited to a release of all rights and claims under any federal statute and Constitution; any state statute and Constitution; any state tort claim and other legal or equitable claim; and any claim, cause of action, liability, attorney fees, costs, expenses, and/or damages which Plaintiff has or may assert against the Town, whether known or unknown.

Plaintiff acknowledges that a portion of the consideration for this Release and Agreement is being given for the full and final release of any and all unknown losses, claims, injuries, costs, attorney fees, expenses, and damages which either may have occurred in the past and are not yet to be known, or which may occur in the future and are not presently known arising out of the matters which are the subject of the above-described lawsuit, and Plaintiff agrees to voluntarily and knowingly assume the risk of any mistake of fact, either mutual or unilateral, with respect to said losses, claims, injuries, costs, attorney fees, expenses, and damages.

Plaintiff acknowledges and agrees that he or his attorneys are solely responsible for all tax payments, if any, which may arise from the above-described payment and that except for the above-described payment the parties are to pay their own costs, expenses, and attorney fees.

The parties expressly understand and agree that the recitals and mutual obligations of the parties as herein expressed are in full accord and satisfaction of any disputed matters and claims which either party has or could have made against the other and that all recitals and mutual obligations of the parties as herein expressed are not to be construed in any way as an admission of liability on the part of the either party against the other. The parties further understand and agree that all agreements and understandings between the parties are embodied and expressed herein and that the terms of this Agreement are contractual and not mere recitals.

Plaintiff hereby warrants that he has not assigned or conveyed to any third party any claims against the Town, and he further agrees to indemnify, defend, and hold the Town harmless of and from any further claims made against the Town by any party acting as an assignee or conveyee of Plaintiff.

This Agreement shall be and become binding upon, and inure to the benefit of, the parties hereto, their, heirs, successors and personal representatives. This Agreement shall be construed and interpreted according to the laws of the State of Colorado.

Contemporaneously with the execution of this Agreement, Plaintiff agrees that he will direct his attorneys to execute and agree to the filing in the Eagle County District Court of a Stipulation for Dismissal with Prejudice and a proposed Order for Dismissal with Prejudice of the above-described lawsuit.


This Agreement contains the entire agreement of the parties concerning the subject matter hereof, and it may not be changed orally. Plaintiff acknowledges that no Town Council Member or other officer, employee, representative, or agent of the Town has the power to amend, modify, alter or change this Agreement, and the parties agree that this instrument may only be modified by an instrument in writing executed by both parties and approved by the Town Council prior to such execution.

If any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Further, in the event of any such holding of invalidity, illegality, or unenforceability, the parties agree to take such action(s) as may be necessary to achieve to the greatest degree possible the intent of the affected provision of this Agreement.

By his signature below, Plaintiff acknowledges that he has consulted with his attorneys and that he has fully and carefully read this Agreement and understands the contents thereof and has signed the same as his own free and voluntary act.

The parties acknowledge and agree that the terms of this Agreement are subject to the approval of the Town Council.

IN WITNESS WHEREOF, Plaintiff Theodore Guy has executed this Agreement this 27 day of July 2020 as his own free and voluntary act.


Theodore Guy

ACKNOWLEDGEMENT

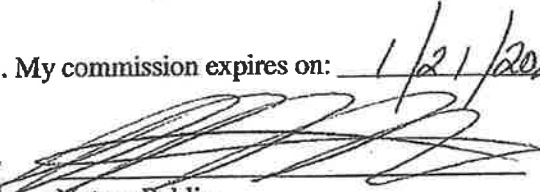
STATE OF COLORADO)
) ss.
COUNTY OF Eagle)

The above and foregoing signature of Theodore Guy was acknowledged before me this 27 day of July 2020.

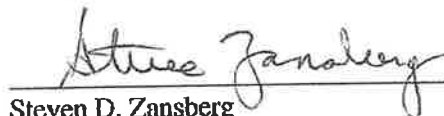
Witness my hand and official seal. My commission expires on: 1/21/2022

(SEAL)





Notary Public

APPROVED AS TO FORM AND CONTENT:


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Attorney for Theodore Guy

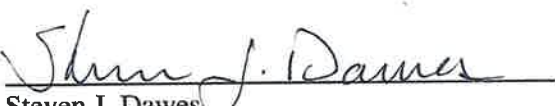
TOWN OF BASALT, COLORADO

By: 
Ryan Mahoney, Town Manager

ATTEST:


Pam Schilling, Town Clerk

APPROVED AS TO FORM AND CONTENT:


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