

**RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, AMENDING  
RESOLUTION NO. 23, SERIES OF 2017 AND RESOLUTION NO. 24, SERIES OF  
2019 REGARDING ALLOCATION OF REAL ESTATE TRANSFER ASSESSMENT  
FUNDS FOR USE BY THE ARTS CAMPUS AT WILLITS (TACAW) AND RELATED  
FUNDING MATTERS**

**Town of Basalt, Colorado  
Resolution No. 13  
Series of 2021**

**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.
- 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 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. In 2019, the Town Council approved Resolution No. 24, Series of 2019, which approved certain funding for TACAW including authorizing use of the Arts RETA funds to finance construction of the Arts Center on the Arts Parcel, creation of a construction account, and otherwise addressing the funding of construction of the Arts Center.
- H. TACAW has commenced construction of the Arts Center (aka “The Contemporary Center”), which is expected to be completed in the summer of 2021.
- I. TACAW wishes to utilize additional Arts RETA funds that are available for construction costs on the remainder of the Arts Center and also set forth a funding plan for future years.
- J. The purpose of this Resolution is to amend Resolution No. 23, Series of 2017 and Resolution No. 24, Series of 2019 (collectively, the “TACAW Funding Resolution”) to allow for such use of the Arts RETA funds and appropriate terms and conditions thereon, and address related funding matters.
- K. 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 (referred to as “Arts RETA Restricted Account” herein).
- L. As of January 1, 2021, the balance in the Arts RETA Restricted Account was \$528,198 (the “2021 Arts RETA Balance”).
- M. 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.

- N. The Basalt Town Council considered this Resolution at a public meeting held on March 9, 2021. Throughout the meeting, evidence and testimony was offered by the TACAW, staff and members of the public.
- O. 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. Amendments to TACAW Funding Resolution. Paragraphs 1, 2, and 3 of Resolution No. 23, Series of 2017, as amended by Resolution No 24, Series of 2019, are hereby amended with **bold, underlined** language added and ~~strikethrough~~ language deleted, as follows:
  1. **Arts RETA Transfers to TACAW Construction Account; Other Authorized Transfers.**
    - 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"). **As of January 1, 2021, the balance in the Arts RETA Restricted Account was \$528,198.00 (the "2021 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. **By approval of Resolution No. 13, Series of 2021, the Town authorizes the contribution of \$350,000.00 of the Arts RETA funds to the Construction Account with Alpine Bank (the "2021 Arts RETA Construction Contribution").**
- G. 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.
- H. **In addition, the Town agrees to contribute up to \$110,000 of the**

**Arts RETA Funds to TACAW in 2021 or 2022 for Arts Center start-up programming costs, including the grand opening of the Arts Center (the "Arts RETA Start-Up Contribution"), subject to paragraph 3 of Resolution No. 13, Series of 2021. The Town shall transfer such funds to TACAW's operating account upon TACAW demonstrating to the Town Manager, in the Town Manager's sole discretion, sufficient detail on proposed programming and start-up expenditures in support of the Arts Center in 2021 or 2022. Such contribution(s) are made in support of the construction of the Arts Center and ultimate provision of an Endowment for the Arts Center, consistent with the purposes of the Arts RETA.**

- I. Except for the 2018 Arts RETA Balance, **the 2021 Arts RETA Construction Contribution, and Arts RETA Start-Up Contribution,** all other funds generated by the Arts RETA shall be managed in accordance with this Resolution and other applicable Town ordinances and resolutions.
- J. 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.
- K. 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~~**Any time** 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 **and how** the **additional** Arts RETA funds ~~collected from January 1, 2019 forward~~ should be transferred under the terms of this Resolution, **and such other terms as Town Council may determine appropriate,** 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 **use in accordance with the terms of this Resolution and the implementing documents for the Endowment Fund** if TACAW is demonstrating compliance with the reporting and other requirements established in this Resolution.

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,~~ **and** the TACAW board has been performing as required in this Resolution, ~~and that further Town management of the liability account is unnecessary.~~

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**G. The TACAW Endowment Fund documents prepared pursuant to Paragraph 3B shall define the authorized activities contemplated by Paragraph 3F and the process for approval of expenditures for such activities, including that the draws of 10% of the Fund Balance authorized by Paragraph 3D can be used for programming, operations, and other expenses in support of the Arts Center.**

3. Transfer of Funds. The 2021 Arts RETA Construction Contribution was included

in the 2021 budget; however, the Arts RETA Start-Up Contribution was not and, thus, such transfer of the Arts RETA Start-Up Contribution pursuant to this Resolution and the TACAW Funding Resolution is contingent upon the Town Council's review and approval of a supplemental budget. 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 2021 budget.

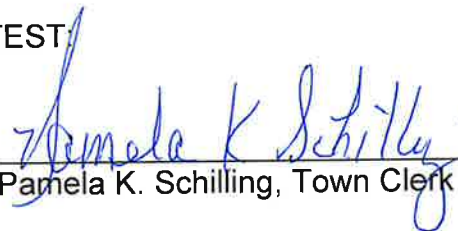
4. Implementation. The Town Council hereby authorizes, approves, and directs Town Staff to take such actions as are necessary to implement the terms of this Resolution.
5. Recording. This Resolution shall be recorded in the public records of Eagle County, Colorado.

READ AND ADOPTED on March 9, 2021 by a vote of 7 to 0.

TOWN OF BASALT, COLORADO

By:   
William G. Kane, Mayor

ATTEST:

By:   
Pamela K. Schilling, Town Clerk

