

**Town of Basalt, Colorado
Ordinance No. 01
Series of 2016**

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTRACT TO BUY AND SELL REAL ESTATE BETWEEN THE ROARING FORK CONSERVANCY AND THE TOWN OF BASALT, COLORADO AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO

RECITALS:

A. There has been presented to the Town Council (the "Council") of the Town of Basalt (the "Town"), at this meeting a form of a Contract to Buy and Sell Real Estate (the "Contract"), between the Roaring Fork Conservancy and the Town.

B. The Town is interested in furthering the development of a River Center and additional park amenities adjacent to Old Pond and to this end entered into a Pre-Development agreement with the Roaring Fork Conservancy on August 29, 2014.

C. The Contract provides for the Roaring Fork Conservancy to sell and the Town to buy approximately 16,000 square feet of land in the property known as Lot 1, of the Basalt Riverfront Park Subdivision.

D. At a public meeting held on January 12, 2016, the Town Council considered approval of the Contract on first reading and scheduled a public hearing and second reading for the ordinance for January 26, 2016, for a meeting beginning no earlier than 6:00 pm at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado.

E. At a public hearing and second reading on January 26, 2016, the Town Council heard evidence and testimony as offered by the Town Staff and members of the public.

F. The Council desires to approve the form of the Contract and authorize the execution thereof.

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

1. The form of the Contract setting forth *inter alia* the terms, conditions and details of the proposed purchase and sale of approximately 16,000 square feet of

land is attached as **Exhibit A** is incorporated herein by reference and is hereby approved; and the Town shall enter into the Contract, and perform its obligations thereunder in substantially the forms presented at this meeting with only such changes as are not inconsistent herewith and as are expressly approved by the Town Attorney to effectuate the intentions of the parties or to comply with applicable law.

2. The Town Council hereby terminates the Declaration of Restrictive Covenant Concerning 22826 Two Rivers Road as recorded as Reception No. 9200207 in the Eagle County Records and the Right of First Refusal recorded as Reception No. 920208 in the Eagle County Records contingent upon the Town taking title to the Property.

3. The Town Council affirms that the Landscape and Improvements Easement Agreement recorded as Reception No. 920206 in the Eagle County Records and the Reciprocal Access Easement Agreement recorded as Reception No. 920205 were vacated by the First Amended Final Plat of Basalt Riverfront Park Subdivision recorded October 2, 2014, as Reception No. 201416919, and no further action is needed to terminate those agreements.

4. The Mayor of the Town is hereby authorized and directed to execute, and the Town Clerk or any deputy Town Clerk are authorized to authenticate and affix the seal of the Town to the Contract, and the Town Manager is further authorized to execute and authenticate such other documents, instruments or certificates as are deemed necessary or desirable in connection therewith. Such documents are to be executed in substantially the form hereinabove approved, provided that such documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. The execution of any instrument by said officials shall be conclusive evidence of the approval by the Town of such instrument in accordance with the terms of such instrument and this Ordinance.

5. The Town Manager is hereby authorized to execute such closing documents as are reasonably required or necessary and convenient to effectuate the purposes and intent of the Contract approved hereby.

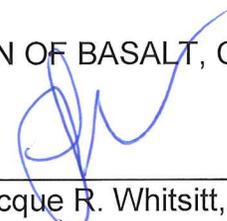
6. This Ordinance, after its passage and publication, shall be authenticated by the signature of the Mayor, by the signature of the Town Clerk, and by the Certificate of Publication. This Ordinance shall be effective 14 days after final publication.

7. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

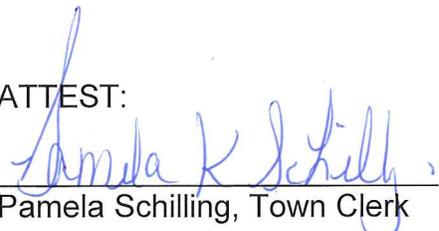
READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON January 26, 2016, by a vote of 7 to 0 on January 12, 2016.

READ ON SECOND READING AND ADOPTED, by a vote of 5 to 0 on January 26, 2016.

TOWN OF BASALT, COLORADO

By: 
Jacque R. Whitsitt, Mayor

ATTEST:


Pamela Schilling, Town Clerk

Date of First Publication: Thursday, January 21, 2016
Date of Second Publication: Thursday, February 4, 2016
Effective Date: Thursday, February 18, 2016



Exhibit A

CONTRACT TO BUY AND SELL REAL ESTATE

1. **PARTIES AND PROPERTY.** The Town of Basalt, Colorado, a home rule municipality ("Buyer"), agrees to buy, and The Roaring Fork Conservancy, a Colorado nonprofit corporation ("Seller"), agrees to sell, on the terms and conditions set forth in this Contract, the following described real estate in the County of Eagle, Colorado, to wit:

Lot 1, Basalt Riverfront Park Subdivision, according to the Plat thereof recorded January 26, 2005 as Reception No. 904436 of the Eagle County Records ("Plat");

TOGETHER WITH all easements and other appurtenances thereto, all improvements thereon and all attached fixtures thereon, except as herein excluded (collectively the "Property").

2. **PURCHASE PRICE AND TERMS.** The purchase price shall be \$400,000.00, payable in U.S. dollars by Buyer at closing as follows:

a. **CASH AT CLOSING.** Purchase price and all closing costs to be paid by Buyer at closing in funds which comply with all applicable Colorado laws, which include cash, electronic transfer funds, certified check, savings and loan teller's check, and cashier's check ("Good Funds").

3. **TITLE COMMITMENT.** Within 10 days ("Title Deadline") of Mutual Execution of this Contract ("MEC"), Seller shall provide Buyer a Commitment for Title Insurance in an amount equal to the Purchase Price ("Title Commitment"). As soon as reasonably practicable after Closing, Seller will cause an Owner's Title Insurance Policy (the "Title Policy") to be issued in accordance with the Title Commitment and delivered to Buyer and Seller shall pay the basic premium thereon. Said Title Policy shall be an approved ALTA form policy and shall show title in the Buyer. Buyer shall not be relieved of Buyer's obligation to close the purchase of the Property by virtue of the existence of lien claims of mechanics and materialmen that Seller disputes in good faith and for the ultimate discharge of which Seller and the Title Company shall remain responsible and will insure over. The Title Policy to be delivered by Seller to Buyer following Closing shall include a deletion of standard preprinted exceptions Nos. 1, 2 and 3. Preprinted exception No. 4 shall be amended to except only for mechanic's liens created by Buyer. No water rights are being transferred hereunder and Preprinted Exception No. 5 will remain unchanged. Preprinted Exception No. 6 shall be amended to except for general taxes for the year of Closing and subsequent years. The Parties will sign any affidavit, indemnity or other agreement required by Title Company to insure against mechanic's liens or provide any of the additional coverage described in the preceding sentences.

4. **TITLE OBJECTIONS.** If title is unmerchantable or otherwise unacceptable to Buyer and written notice of such defects is given to Seller on or before 30 days of MEC, Seller shall have the option, in Seller's sole discretion, to: (i) cause such matters that are the subject of the notice of defects to be removed or remedied prior to Closing and, if necessary, to extend Closing from time to time as necessary to effectuate such removal or remedy or (ii) in the event of monetary claims or

liens, including mechanics liens, obtain an endorsement prior to Closing to the Title Commitment showing the matters that are the subject of the notice of defects to be insured over and Seller shall pay the full premium for such additional insurance or (iii) not remove or remedy the matters which are the subject of Buyer's notice of defects. Seller agrees to advise Buyer in writing within seven (7) days after receipt of any notice of title defects from Buyer as to which of the options set forth in the preceding sentence Seller has elected to follow. In the event Seller shall elect not to remedy or remove any of the matters which are the subject of Buyer's notice of defects, Buyer, as its sole remedy, shall have seven (7) days after receipt of Seller's notice thereof to advise Seller, in writing, as to whether Buyer will either waive the matters which are the subject of Buyer's notice of defects and close on the Property subject thereto or to terminate this Agreement and obtain a refund of all Earnest Money paid. Where Seller has elected to remedy or remove the matters which are the subject of Buyer's notice of defects but is unable to do so by Closing or any extension thereof, Buyer's sole remedy shall be to terminate this Agreement or to waive such matters and close on the purchase of the Property subject thereto. Seller shall have no obligation to remove or remedy any matters which are the subject of Buyer's notice of defects or to expend any monies should Seller elect to remove or remedy any matters which are the subject of Buyer's notice of defects. If Buyer shall fail to timely provide Seller with any notice of title defects within the time period set forth above, Buyer's acceptance and complete satisfaction with regard to the matters set forth in the Title Commitment shall conclusively be deemed given and Buyer shall have waived all further rights (except with respect to any updated Title Commitment as set forth below) to object to any matters set forth in the Title Commitment or that Seller's title to the Property may be unmerchantable. Mineral reservations or exceptions appearing in patents or other documents of record shall not be the subject of any objections to title on the part of Buyer so long as the company issuing the Title Commitment will at the expense of Buyer commit to affirmatively insure over such reservations. There are no water rights to be conveyed with the Property. To the extent any update of the Title Commitment is provided to Buyer and such updated Title Commitment shall disclose any matter of record not disclosed in the original Title Commitment, Buyer shall, within seven (7) days after receipt thereof or prior to Closing, whichever is sooner, have the right (which right, if not timely exercised, shall be deemed waived) to object thereto. Should Buyer timely make such objection, each of Seller and Buyer shall have the same rights set forth above as applied to the original Title Commitment with respect to the remedy or removal thereof. Nothing in this paragraph shall be construed to limit or restrict Buyer's rights pursuant to **paragraph 5** (Buyer's Due Diligence).

5. **BUYER'S DUE DILIGENCE.** Seller agrees to provide Buyer on or before the Title Deadline all instruments, documents, reports, engineering or technical data, maps, drawings, photographs, surveys, improvement location certificates, plats, appraisals, or other documents in existence and in Seller's knowledge, possession or under Seller's control, that are not of public record that may affect or concern the Property. Buyer shall have until 45 days after MEC (the "Due Diligence Period") to satisfy itself as to any matter concerning the Property except for issues related to title, the Plat or the Survey. Any objection to title to the Property, shall be made and resolved in accordance with **paragraph 4** above. Buyer, itself or through its designee(s), shall be entitled to, upon prior notice to Seller and if Seller elects, in the presence of a representative of Seller, enter the Property to conduct inspections of the Property at all reasonable times provided that: (i) Buyer shall indemnify and hold Seller absolutely blameless and harmless from and against any and all loss, injury, damage to person or property, claim, demand, liability or obligation of whatsoever nature resulting from, occasioned by or arising in connection with such investigations and (ii) all such investigations shall be at Buyer's sole cost and expense, shall be undertaken solely at the behest of Buyer as contract vendee, not at the behest of Seller as the owner of the Property and shall not give rise to any lien against the Property. If, within the Due Diligence Period, Buyer advises Seller, in

writing, that it no longer wishes to purchase the Property, for any reason or no reason at all, in Buyer's sole and absolute discretion, this Agreement shall terminate. If Buyer fails timely to give any such notice, then the provisions of this paragraph shall be deemed fully satisfied, and Buyer shall have no further right to terminate this Agreement on the grounds set forth in this paragraph.

6. **WATER RIGHTS.** The purchase price shall not include any water and water rights; ditches and ditch rights; structure rights, rights of way and easements for water right diversion and conveyance structures, including interests in water or ditch companies; and springs, wells and well permits which may be or may have been appurtenant to, adjudicated to, associated with or historically used on or in connection with the Property ("Water Rights").

7. **SELLER'S WARRANTIES.** Seller represents and warrants as of the date hereof and as of closing that the following facts and circumstances are true and correct. Such representations and warranties shall survive closing for a period of one year, and thereafter shall be deemed merged into the deed:

a. This Contract constitutes a legal and binding agreement of the Seller enforceable in accordance with its terms, and there exists no restriction on the right of Seller to transfer, sell, convey and assign the Property except as provided herein.

b. The execution of this Contract and the consummation of the transactions contemplated hereby do not constitute and will not result in any breach or default of the terms or conditions of any lien, license, lease, instrument, or other agreement to which the Property or the Seller is subject.

c. Seller has received no notice of and has no knowledge of any pending or threatened litigation, proceeding, or investigation by any governmental authority, special district, or any other person against or otherwise affecting the Property; and Seller does not know of any grounds for any such litigation, proceeding, or investigation.

d. Seller has not received notice of and does not know of any basis for any special assessment against the whole or any part of the Property other than as disclosed in writing to Buyer.

e. The Property has access to and from a public highway or road.

f. Seller has full power and authority to enter into this Contract and has taken all necessary action to consummate the transaction contemplated hereby.

g. To the best of Seller's knowledge and belief, the Property is not and will not be at the time of closing in violation of any federal, state or local law, ordinance or regulation or requirement, relating to environmental conditions on or under the Property.

h. Until closing, Seller shall be entitled to any reasonable use of the Property

which does not materially affect the usability of the Property to Purchaser.

8. **DATE OF CLOSING.** The date of closing shall be 50 days after MEC or by mutual agreement at an earlier date. The hour and place of closing shall be as designated by the closing agent.

9. **TRANSFER OF TITLE.** Subject to tender or payment at closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient general warranty deed to Buyer, on closing, conveying the Property free and clear of all taxes, except the general taxes for the year of closing. Title shall be conveyed free and clear of all liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not, except (i) those matters reflected by the Title Documents accepted by Buyer in accordance with **paragraph 4**, and (ii) subject to building and zoning regulations.

10. **PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid shall be paid at or before closing from the proceeds of this transaction or from any other source.

11. **CLOSING COSTS, DOCUMENTS AND SERVICES.** Buyer and Seller shall pay, in Good Funds, their respective closing costs and all other items required to be paid at closing, except as otherwise provided herein. Buyer and Seller shall sign and complete all customary or required documents at or before closing. Fees for real estate closing services shall not exceed \$500.00 and shall be paid at closing one-half by each party.

12. **TAX PRORATIONS.** Buyer is a governmental entity which does not pay real estate taxes. There shall be no proration of taxes, Seller will pay any real estate taxes owed by Seller, if any.

13. **POSSESSION.** Possession of the Property shall be delivered to Buyer at closing. If Seller, after closing, fails to deliver possession on the date herein specified, Seller shall be subject to eviction and shall be additionally liable to Buyer for payment of \$100.00 per day from the date of agreed possession until possession is delivered.

14. **CONDITION OF AND DAMAGE TO PROPERTY.** Except as otherwise provided in this Contract, the Property shall be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted. In the event the Property shall be damaged by fire or other casualty prior to time of closing, in an amount of not more than ten percent of the total purchase price, Seller shall be obligated to repair the same before the date of closing. In the event such damage is not repaired within said time or if the damages exceed such sum, this Contract may be terminated at the option of Buyer. Should Buyer elect to carry out this Contract despite such damage, Buyer shall be entitled to credit for all the insurance proceeds resulting from such damage to the Property, not exceeding, however, the total purchase price.

15. **TIME OF ESSENCE/REMEDIES.** Time is of the essence hereof. If any note or check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

a. **IF BUYER IS IN DEFAULT.** All payments and things of value received hereunder shall be forfeited by Buyer and retained on behalf of Seller and both parties shall thereafter be released from all obligations hereunder. It is agreed that such payments and things of value are LIQUIDATED DAMAGES and (except as provided in **subsection c**) are SELLER'S SOLE AND ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

b. **IF SELLER IS IN DEFAULT.** Buyer may elect to treat this Contract as cancelled, in which case all payments and things of value received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

c. **COSTS AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation arising out of this Contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

16. **FOREIGN WITHHOLDING.** Seller warrants it is not subject to withholding as defined under Internal Revenue Code Section 1445 (Foreign Person Transferor) and will execute an affidavit, at or prior to closing, to that effect.

17. **COUNTERPARTS.** This Contract may be executed in multiple counterparts, in writing or by legible facsimile copy, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same instrument. If this Contract is executed in facsimile counterparts, the parties agree to circulate promptly hard copies for physical signature to replace, upon full execution of the hard copies by the parties, the facsimile counterparts.

18. **REAL ESTATE BROKERS.** Each party represents to the other that such party has not enlisted the services of a real estate broker in this transaction. In the event any real estate broker shall make a claim for a commission with respect to this transaction, the party whom such real estate broker claims to have represented shall hold harmless and defend the other party from all costs and expenses associated with such claim.

19. **NOTICES.** Any and all notices required or permitted to be given by the terms of this Contract shall be effective: (a) on the date of delivery, if delivered personally; or (b) the day of deposit in the U.S. Mail as certified mail, postage prepaid, addressed as follows.

As to Buyer: Town Manager
Town of Basalt, Colorado
101 Midland Avenue
Basalt, Colorado 81621

With copy to: Thomas Fenton Smith
Austin, Peirce & Smith, P.C.
600 E. Hopkins Ave.
Aspen, CO 81611

As to Seller: Director
Roaring Fork Conservancy
201 Basalt Center Circle
Basalt, Colorado 81621

With copy to:

Personal delivery shall be deemed to have occurred when any notice is delivered to the offices of the party for whom the delivery is intended or to such address as the parties may from time to time designate in writing with notice as provided herein and may be evidenced by an affidavit of delivery.

20. **MODIFICATION OF CONTRACT; PRIOR AGREEMENTS.** No waiver, amendment or modification of this Contract or any covenant, condition, undertaking or limitation herein contained shall be valid unless in writing and duly executed by the party charged therewith. All prior agreements, written or oral, of the parties are hereby terminated and of no further force or effect and are replaced by this Agreement.

21. **APPLICABLE LAW.** The law applicable to this Contract and its interpretation shall be that of the State of Colorado (regardless of its choice of law provisions), and any litigation arising out of or concerning this Contract shall be commenced and maintained in Eagle County, Colorado. The parties hereby submit to the personal jurisdiction of the Eagle County, Colorado, District Court in connection therewith.

22. **NON-RESIDENT WITHHOLDING REQUIREMENTS.** Seller has been advised that, pursuant to Colorado law, the title insurance company or other entity responsible for handling the closing of the purchase and sale of the Property may be required to withhold Colorado state income tax equal to the lesser of two percent of the sales price or the net proceeds derived from the sale of the Property. This law is applicable to all Colorado non-resident sellers.

23. **NO ASSIGNMENT.** Buyer shall have no right to assign all or any part of its interest in this Contract.

24. **FURTHER ASSURANCES.** The parties agree to execute, acknowledge, deliver, file and record or cause to be executed, acknowledged, delivered or filed and recorded such further instruments and documents and such certificates and to do all things and acts as the other party may reasonably require in order to carry out the intentions of this Contract and the transaction contemplated hereby.

25. **CONSTRUCTION.** No provision of this Contract shall be construed against or interpreted to the disadvantage of any party by reason of such party's having or being deemed to have requested, drafted or acquired or structured such provision. Both parties acknowledge they had the benefit of counsel in reviewing this Contract prior to their execution of this Contract, and it is the intention of the parties that the party who employed the scrivener to prepare this Contract shall not be prejudiced by virtue of such act.

26. **NON-BUSINESS DAYS.** If the closing date or any period of time set forth in this Contract falls on or expires on a holiday, a weekend or other non-business day, that period of time shall be extended to the next business day.

27. **NO WAIVER.** No waiver of any term, provision or condition of this Contract in any one or more instances shall be deemed to be or shall be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Contract.

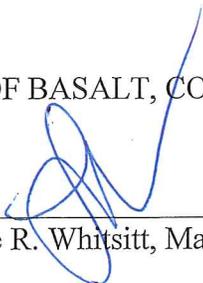
28. **HEADINGS.** Section headings are inserted only for convenient reference and do not define, limit or prescribe the scope of this Contract or any exhibit attached hereto.

29. **ATTORNEY FEES.** Buyer and Seller shall each bear the cost of their own legal counsel except as provided in this section. In the event of any dispute arising between the parties, which dispute is associated with this Contract, the substantially prevailing party shall be awarded its attorney fees and costs.

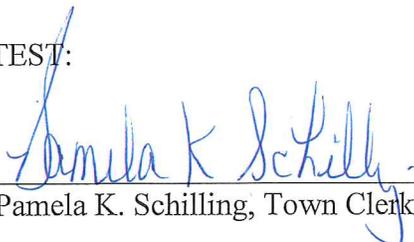
IN WITNESS WHEREOF, the parties have executed this Contract on the dates set forth below.

BUYER:

TOWN OF BASALT, COLORADO

By: 
Jacque R. Whitsitt, Mayor

ATTEST:

By: 
Pamela K. Schilling, Town Clerk

Date of Buyer's signature: 02/08, 2016



SELLER:

ROARING FORK CONSERVANCY,
a Colorado nonprofit corporation

By: _____
Pat McMahon

Date of Seller's Signature: _____, 2016