

**TOWN OF BASALT, COLORADO
ORDINANCE No.22
SERIES OF 2013**

**AN ORDINANCE AUTHORIZING THE EXTENSION AND AMENDMENT OF AN
OPTION CONTRACT TO BUY AND SELL REAL ESTATE BETWEEN THE
ROCKY MOUNTAIN INSTITUTE AND THE TOWN OF BASALT, COLORADO.**

RECITALS

A. By Ordinance No. 22, Series of 2010, the Basalt Town Council approved an Option Contract to buy and sell real estate between the Rocky Mountain Institute (the "Buyer") and the Town of Basalt ("the Option Contract"). The Property that is the subject of the Option Contract consisted of approximated .55 acres described in Exhibit A of the Option Contract.

B. The option period identified in the Option Contract expires January 11, 2014.

C. The Option Contract, Paragraph 3, authorizes the option period to be extended by mutual agreement of the parties.

D. By Resolution No. 45, Series of 2013, the Town Council approved a Predevelopment Agreement with the Buyer.

E. The predevelopment agreement, Paragraph A.3.C, states that the Town agrees to consider extending the option period by ordinance by one year, to January 11, 2015, and addresses additional extensions.

F. The predevelopment agreement, Paragraph A.3.D states that the Council will consider a buy back contract or reverter if the Buyer has closed on the property but has not started construction by December 31, 2015 and the Town desires to incorporate the Town's objective of this provision into the Option Contract with appropriate safeguards to each party.

G. The predevelopment agreement Paragraph A.3.E states that the Town Staff will prepare an ordinance to amend the option contract to revise the Property boundary for the Council's consideration.

H. The predevelopment agreement Paragraph A.4.J states that RMI may notify the Town that it does not intend to exercise the Option.

I. It is appropriate to extend the option period and make the changes described above because Rocky Mountain Institute requires more time for the land use application process and additional fundraising and the Town and Rocky Mountain Institute believe the changes are necessary for the transaction to proceed.

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

1. The Option Contract to Buy and Sell Real Estate between Rocky Mountain Institute, Buyer, and the Town of Basalt, Colorado, Seller, dated January 11, 2011, is hereby extended for one year to January 11, 2015. The Town Manager is hereby given the authority to authorize another six-month extension if he finds that the Buyer is making progress toward receiving Final Plan approval, with any additional extensions requiring Town Council approval.

2. The boundaries of the Property are hereby expanded to .87 acres as shown in the revised **Exhibit A**, for the same terms as the original agreement. **Exhibit A** showing the amended land area of approximately .87 acres is hereby added to the Option Contract replacing **Exhibit A** in the 2011 Option Contract. The final subdivision plat will reflect the final agreed upon boundaries of the parcel to be acquired by the Buyer as determined through the land use process. Paragraph 6 is amended to read as follows:

6. **PURCHASE PRICE AND TERMS.** The purchase price shall be \$600,000.00 for the Property described in the revised Exhibit A, payable in U.S. Dollars by BUYER.

3. In order for the Buyer to meet its construction schedule, Paragraph 19 of the Option Contract is hereby amended as follows:

19. Seller agrees to demolish all buildings currently on the Property and remove all demolition debris no later than 21 days of RMI's initial submission of the building permit.

4. The Option Contract is hereby amended to add a new Paragraph 37 to read as follows:

37. **SUBDIVISION OF PROPERTY.** The Town will be responsible for processing the subdivision of the Property to accommodate the final agreed upon boundaries of the Property in the timeframe for Closing established in Paragraph 14.

5. The Option Contract is hereby amended to add a new Paragraph 38 to read as follows:

38. **POSSIBILITY OF REVERTER**. Unless further extended by agreement of the parties, which extension shall not be unreasonably withheld by the Town, title to the Property shall revert to the Town if 1) RMI has not been issued a building permit for the construction of improvements to the Property in accordance with the Town's land use approvals by December 31, 2015, or 2) RMI does not keep such building permit in effect at all times until a final certificate of occupancy is issued by the Town. In the event of such reverter the Town shall reimburse RMI for all money paid by RMI to the Town for the acquisition of the Property, including the down payment and all payments of principal and interest paid to the Town pursuant to the promissory note given by RMI to the Town at the time of RMI's acquisition of the Property.

6. The Option Contract will be amended to add a new Paragraph 39 to read as follows:

39. **TERMINATION BY BUYER**. Regardless of the language of Paragraph 3, anytime before exercising the Option, the Buyer may decide not to pursue the purchase of the Property and so notify the Seller in writing, at which time the Seller is no longer bound by the terms of this Option Contract and may offer the Property to other parties.

7. The First Option Right to Purchase Property and Right of First Refusal shall be amended as shown in **Exhibit B** replacing Exhibit E of the Option Contract.

8. The Town Manager is hereby authorized to execute an amendment to the Option Contract containing the extension and the amendments contained herein and any other changes necessary to reflect the provisions included in this Ordinance.

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

READ ON FIRST READING, ORDERED PUBLISHED, AND SET FOR PUBLIC HEARING ON December 10, 2013, by a vote of 6 to 0 on November 12, 2013.


READ ON SECOND READING AND PUBLIC HEARING, AND ADOPTED
by a vote of 6 to 0, on December 10, 2013.



TOWN OF BASALT, COLORADO

By 
Jacque Whitsitt, Mayor

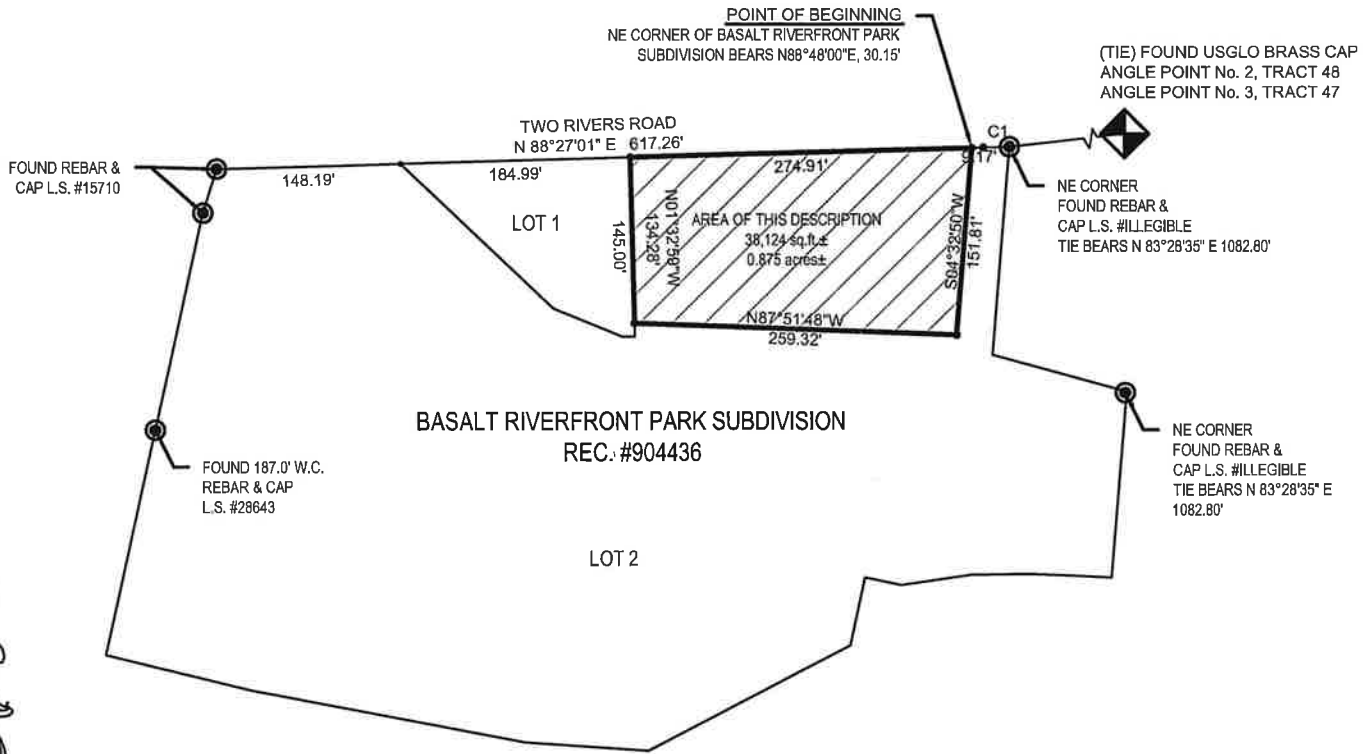
ATTEST:

By 
Pamela K. Schilling, Town Clerk

First Publication: Thursday November 21, 2013
Final Publication: Thursday, December 19, 2013
Effective Date: Thursday, January 2, 2014

EXHIBIT A: RMI PROPERTY DESCRIPTION

SHEET 1 OF 1



**DRAWING
SCALE**
1"=150'

CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	CHORD	BEARING	DELTA
C1	20.97'	1223.30'	10.49'	20.97'	S 88°56'29" W	0°58'56"

PROPERTY DESCRIPTION

A PARCEL OF LAND SITUATED IN SECTION 7, TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE 6TH P.M., COUNTY OF EAGLE, STATE OF COLORADO; SAID PARCEL OF LAND BEING ENTIRELY WITHIN LOT 2, BASALT RIVERFRONT PARK SUBDIVISION, ACCORDING TO THE FINAL PLAT THEREOF RECORDED JANUARY 26, 2005 UNDER RECEPTION NO. 904436 OF THE EAGLE COUNTY RECORDS; SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF TWO RIVERS ROAD, SAID POINT ALSO BEING A POINT ON THE NORTHERLY BOUNDARY LINE OF SAID LOT 2, WHENCE THE NORTHEAST CORNER OF SAID LOT 2 BEARS N.88°48'00"E., A DISTANCE OF 30.15 FEET (WITH ALL BEARINGS HEREIN BEING RELATIVE TO A BEARING OF N 69°21'11" W BETWEEN NGS STATIONS F-158 AND G-158, PER THE 1996 GREENHORNE AND O'MARA, INC. COUNTY OF EAGLE/TOWN OF BASALT CONTROL NETWORK PROJECT); THENCE S.04°32'50"W., A DISTANCE OF 151.81 FEET; THENCE N.87°51'48"W., A DISTANCE OF 259.32 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF LOT 1 OF SAID BASALT RIVERFRONT PARK SUBDIVISION; THENCE N.01°32'59"W., ALONG SAID EASTERLY BOUNDARY LINE A DISTANCE OF 134.28 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE LEAVING SAID EASTERLY BOUNDARY LINE N.88°27'01"E., ALONG THE NORTHERLY BOUNDARY LINE OF SAID LOT 2, A DISTANCE OF 274.91 FEET TO THE POINT OF BEGINNING.

CONTAINING 38,124 SQUARE FEET OR 0.875 ACRES, MORE OR LESS.

TOWN OF BASALT
COUNTY OF EAGLE
STATE OF COLORADO

**SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS**

502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311
sopris@sopriseng.com

Exhibit B
(Replacing Exhibit E of the Option Contract)

FIRST OPTION RIGHT TO PURCHASE PROPERTY and RIGHT OF FIRST REFUSAL

THIS FIRST OPTION RIGHT TO PURCHASE PROPERTY and RIGHT OF FIRST REFUSAL AGREEMENT dated _____, 2013, between Rocky Mountain Institute, a Colorado nonprofit corporation (the "Buyer" or "RMI"), and the Town of Basalt, Colorado, a Colorado statutory municipality (the "Seller" or "the Town").

RMI is the owner of certain property purchased from the Town, described in Exhibit A hereto, (the "Property").

RMI agrees to grant to the Town the right to purchase the Property on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) in hand paid by the Town to RMI and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. If, after the date of this Agreement but before December 31, 2015, RMI has not developed and desires to sell the Property, the Town shall have the first option to purchase the Property free and clear of any mortgage, loan, or deed of trust. The Town shall have twenty one (21) days from the receipt of written notice from RMI to decide if it shall exercise its option to the purchase the Property. If the Town exercises its option, it shall have thirty (30) days after exercise of its option to close on the purchase of the Property.

In the event that the Town exercises this option, the purchase price shall be the amount necessary to reimburse RMI for all money paid by RMI to the Town for the acquisition of the Property, including the down payment and all payments of principal and interest paid to the Town pursuant to the promissory note given by RMI to the Town at the time of RMI's acquisition of the Property.

The other terms of such conveyance shall be standard contract terms and those additional terms unrelated to purchase price which are necessary to restore the parties to the *status quo ante* the sale by the Town to RMI.

2. If the Town does not exercise its option within the 21-day period provided in paragraph 1 hereof, then the option shall terminate and RMI shall be free for a period of one year from the expiration of the 21-day period to sell or offer to sell the Property or such part thereof to third parties on terms not less favorable to RMI than those set forth in paragraph 1 and clear of this Right of First Refusal. In the event the Property or such part thereof is not sold to a third party within the one-year period, then any further offer to sell or purchase the Property or any part thereof must first be submitted to the Town in accordance with the provisions of paragraph 1.

3. If RMI develops the Property in accordance with the Town's land use approvals and thereafter receives from a third party a bona fide offer to purchase the Property or any part thereof which RMI desires to accept, RMI shall send the Town two copies of a contract for the sale of the property embodying the terms of the offer subject to the Town's Right of First Refusal, both copies of which shall have been duly executed by RMI, together with a written notification from RMI of RMI's intention to accept the offer embodied in the contract if the offer is not accepted by the Town. The Town shall have the right, within twenty-one (21) days of the receipt of the contract and the written notice, to purchase the Property or such part thereof on the terms and conditions set forth in the contract. In the event the Town elects to accept the offer embodied in the contract, the Town must do so by executing one copy of the contract and returning it to RMI within 21 days of receipt of such contract. If any consideration to be paid or given to RMI under the offer is in a form other than the United States funds (such as real property or personal property), the Town shall have the right to pay RMI in United States funds equivalent in value to such other property.

4. In any subsequent one-year period, before RMI may accept a bona fide offer to purchase the Property, it must first offer the Town the right to exercise its option to purchase the Property according to the terms and conditions set forth in paragraph 1. At any time after the Town declines to exercise its first right of refusal as set forth in paragraph 1, and RMI decides to accept an offer with terms less favorable to RMI than those contained in any contract previously submitted to the Town, (such less favorable terms being hereinafter referred to as a "New Offer"), then RMI shall, with respect to each such New Offer, before accepting the New Offer, offer to sell the Property or such thereof to the Town on the terms contained in the then current New Offer. The terms of the New Offer shall be embodied in a new contract for the sale of the property or such part thereof, which shall be submitted to the Town in accordance with the requirements of paragraph 1 above. If the Town shall not accept the New Offer within 21 days after the receipt of the new contract and one year from the expiration of the 21-day period to sell or offer to sell the Property or such part thereof to third parties on terms not less favorable to RMI than those contained in the New Offer free and clear of this Right of First Refusal; provided, however, that in the event the Property or such part thereof is not sold to a third party within the one-year period, then any further offers with respect to the Property or any part thereof must be submitted to the Town in accordance with the provisions of paragraph 1.

5. The right of first refusal contained in paragraphs 3 and 4 shall be subordinate and junior to the legal operation and effect of any present or future mortgage or deed of trust which is now or hereafter becomes a lien on the Property.

6. All of the provisions of this Agreement, including the benefits and burdens created thereby, shall run with land. This Agreement is made subject to any existing easements, reservations, restrictions or right of way. If any of the terms, covenants, conditions, easements, restrictions, uses, limitations or obligations created by this Agreement shall be unlawful or void for violation of: (i) the rule against perpetuities or some analogous statutory, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing like or similar time limits, such provision shall continue only for a period of the lives of Jacque Whitsitt and Martha C. Pickett, and their now living descendants, and the survivor of them, plus 21 years.

7. All notices pursuant to this Agreement shall be deemed given when personally delivered to the party to whom it is directed during business hours on a business day or in lieu of personal delivery on the second business day after the same deposited in the United States mail, postage prepaid, sent certified mail, return receipt requested, addressed as follows:

if to RMI: Martha C. Pickett
Executive Director
Rocky Mountain Institute
2317 Snowmass Creek Road
Snowmass, CO 81654

if to the Town: Michael Scanlon
Town Manager
101 Midland Avenue
Basalt, CO 81621

Either party may change its address for the purposes of this section by giving notice of the changed address to the other party in the manner provided for above.

IN WITNESS WHEREOF the parties executed this Agreement as of the date and year first above written.

BUYER:
Rocky Mountain Institute, a
Colorado nonprofit corporation

By: _____
Martha C. Pickett, Executive Director

SELLER:
TOWN OF BASALT, COLORADO

ATTEST:

Town Clerk, Pamela Schilling

By: _____
Jacque Whitsitt, Mayor

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The above and foregoing instrument was acknowledged before me _____,
20__ by Jacque Whitsitt as Mayor and Pamela Schilling as Town Clerk of the Town of
Basalt, Colorado.

Witness my hand and seal.
My commission expires:

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF PITKIN)

The above and foregoing instrument was acknowledged before me _____,
20__ by Martha C. Pickett, as Executive Director of Rocky Mountain Institute

Witness my hand and seal.
My commission expires:

Notary Public