

RESOLUTION NO. 30

SERIES 1998

A RESOLUTION APPROVING A CONTRACT OF SALE WITH BRECKENRIDGE SANITATION DISTRICT

WHEREAS, the Town of Breckenridge desires to purchase certain real property from the Breckenridge Sanitation District; and

WHEREAS, a proposed Contract of Sale between the Town and Breckenridge Sanitation District has been prepared, a copy of which is marked Exhibit "A", attached hereto and incorporated herein by reference ("Agreement"); and

WHEREAS, the Town Council of the Town of Breckenridge has reviewed the proposed Agreement, and finds and determines that it would be in the best interests of the Town and its residents for the Town to enter into the proposed Agreement; and

WHEREAS, Rule 6.1(b) of the Council Procedures and Rules of Order provides that a Resolution may be used to approve a contract.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. The proposed Agreement with Breckenridge Sanitation District (Exhibit "A" hereto) is approved; and the Town Manager is hereby authorized, empowered and directed to execute such Agreement for and on behalf of the Town of Breckenridge.

Section 2. The Town Manger is hereby authorized, empowered and directed to take all necessary and appropriate action to close the purchase of the real property contemplated by the Agreement. In connection therewith, the Town Manager shall have full power and authority to do and perform all matters and things necessary to the purchase and acquisition of the property described in the Agreement, including but not limited to the following:

1. The making, execution and acknowledgment of settlement statements, closing agreements and other usual and customary closing documents;
2. The acceptance of delivery of the Deed to subject real property;
3. The recording of the Deed to the subject property with the Summit County Clerk and Recorder; and
4. The performance of all other things necessary to the acquisition of the subject property by the Town.


Section 3. This Resolution shall become effective upon its adoption.

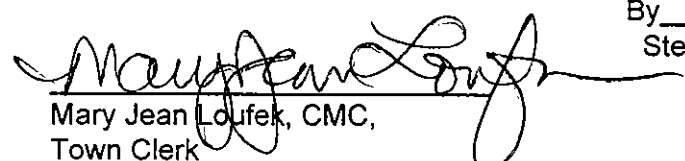
RESOLUTION APPROVED AND ADOPTED THIS 22ND DAY OF SEPTEMBER, 1998.

TOWN OF BRECKENRIDGE


ATTEST:

By


Stephen C. West, Mayor


Mary Jean Loufek, CMC,
Town Clerk

APPROVED IN FORM


Town Attorney

9/22/98
date

CONTRACT OF SALE

THIS CONTRACT OF SALE ("Contract"), dated September _____, 1998, is between BRECKENRIDGE SANITATION DISTRICT, a Colorado quasi-municipal corporation ("Seller") and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Buyer").

1. Sale and Purchase of Property. Seller hereby agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, the fee simple property described as:

A PARCEL OF LAND BEING A PART OF THE SWAN RIVER PLACER, U.S.M.S. 7083 AMENDED, SECTIONS 24 AND 25, TOWNSHIP 6 SOUTH, RANGE 77 WEST OF THE 6TH PRINCIPAL MERIDIAN, SUMMIT COUNTY, COLORADO. SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT CORNER 12 OF SAID PLACER; THENCE S 21°18'28" W, 902.67 FEET ON THE 12-13 LINE OF SAID PLACER; THENCE N 89°01'24" W, 711.85 FEET TO A POINT ON TIGER ROAD, SUMMIT COUNTY ROAD #6; THENCE ALONG SAID ROAD FOR THE FOLLOWING SEVEN (7) COURSES:

- 1). N 06°06'41" E, 216.73 FEET;
- 2). N 28°55'35" W, 255.31 FEET;
- 3). N 05°33'50" W, 300.44 FEET;
- 4). N 20°36'11" W, 228.98 FEET;
- 5). N 06°46'36" E, 234.09 FEET;
- 6). N 13°51'53" W, 221.78 FEET;
- 7). N 01°24'33" E, 158.09 FEET;

THENCE S 87°15'24" E, 1029.90 FEET TO A POINT ON THE 11-12 LINE OF SAID PLACER; THENCE S 19°38'59" E, 722.04 FEET ON SAID 11-12 LINE TO CORNER 12, THE POINT OF BEGINNING CONTAINING 1,575,106 SQUARE FEET OR 36.159 ACRES, MORE OR LESS.

(Such real property, together with any improvements thereon, is hereinafter called the "Property").

2. Purchase Price. The purchase price to be paid by the Buyer to the Seller for the Property is Two Hundred Forty Thousand Dollars (\$240,000.00) ("Purchase Price"), payable as follows:

A. One Thousand Dollars (\$1,000.00) in the form of Buyer's check payable to and to be held by Ten Mile Title, Inc. ("Closing Agent") as Earnest Money and part of the Purchase Price ("Earnest Money"); and

B. The balance in cash or certified funds at time of Closing.

3. Buyer's Right Of Entry And Inspection. During the term of this Contract the Buyer, its agents, employees, contractors and engineers, shall have the right from time to time to enter upon the Property at their risk for the purpose of inspecting the same and conducting surveys, engineering studies, borings, soil tests, investigations, feasibility studies and the like. Within a reasonable time after any such entry Buyer shall restore the Property to its condition prior to such entry. The Buyer agrees to indemnify and save the Seller harmless from all claims arising by reason of any such entry.

4. Closing. Closing shall occur on October 20, 1998 at 1:30 o'clock P.M. at the office of the Closing Agent at 518 South French Street, Breckenridge, Colorado, or at such earlier date and time or other location as the parties may agree upon. At Closing, Buyer shall pay the Purchase Price as provided in Paragraph 2, and the Seller shall execute and deliver to Buyer a general warranty deed conveying the Property free and clear of all taxes, and free and clear of all liens and encumbrances except: (i) those title exceptions accepted by Buyer pursuant to Paragraph 5 hereof; (ii) those rights, if any, of third parties in the Property not shown by the public records accepted by Buyer pursuant to Paragraph 6 hereof; (iii) inclusion of the Property within any special taxing district; and (iv) applicable building and zoning regulations.

5. Title Insurance: Title Review. Seller shall have no obligation to furnish to Buyer title insurance. Buyer shall obtain, at Buyer's expense, a current commitment for an owner's title insurance policy in an amount equal to the Purchase Price, on or before September 15, 1998. Buyer shall pay the title insurance premium at Closing.

Buyer shall give written notice to Seller within five (5) days after receipt of the title insurance commitment, or any endorsement thereto adding new title exceptions, of any title exceptions ("Exceptions") which are not acceptable to the Buyer. If Seller does not receive Buyer's notice by the date specified above, Buyer shall be deemed to have accepted the condition of title as disclosed by the title insurance commitment as satisfactory. If Seller does receive Buyer's notice by the date specified above, Seller shall have five (5) days to determine whether to cure or remove those Exceptions which Buyer has provided notice are not acceptable. Should the Seller elect not to cure or remove any Exceptions which Buyer has provided notice are not acceptable, the Seller shall give the Buyer written notice of such Exceptions within such five (5) day period, otherwise the Seller shall be deemed to have elected to cure or remove all of the Exceptions which Buyer has provided notice are unacceptable. If Seller elects not to cure or remove any Exceptions which Buyer has provided notice are unacceptable, Buyer shall then have until the time of Closing to terminate this Contract by delivery of written notice of termination to Seller. If Buyer does not deliver to Seller such notice of termination within such time period, Buyer shall be deemed to have accepted all of the Exceptions in the title insurance commitment including those Exceptions which Buyer has provided notice are unacceptable and Seller has elected not to cure or remove.

Should the Buyer elect to terminate this Contract, the Closing Agent shall promptly refund to Buyer the Earnest Money, and this Contract shall become null and void and each party shall be released from any further obligation to the other hereunder.

6. Matters Not Shown by the Public Records. Within five (5) days after receipt of the title insurance commitment as provided in Paragraph 5 hereof, Seller shall deliver to Buyer true copies of all lease(s) and survey(s) in Seller's possession pertaining to the Property and shall disclose to Buyer all easements, liens or other title matters not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect the Property to determine if any third party(s) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition(s) disclosed by Seller or revealed by such inspection shall be signed by or on behalf of Buyer and given to Seller on or before five (5) days before Closing. If Seller does not receive Buyer's notice by said date, Buyer shall be deemed to have accepted title to the Property subject to such rights, if any, of third parties of which Buyer has actual knowledge.

7. 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 the time of closing, in an amount not more than 10% 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.

8. Costs. Buyer shall pay the cost of recording the deed conveying the Property to it; the cost of the title insurance premium; and the tax certificate. The transaction contemplated by this Contract is exempt from both the Town of Breckenridge Real Estate Transfer Tax and the State documentary fee. Each party shall pay one-half of the reasonable cost of closing services charged by Closing Agent. Otherwise, each party shall pay at Closing usual and customary closing costs.

9. Real Estate Taxes. The parties agree that the Property is not subject to real estate taxes for the year of Closing and that no tax proration shall be required.

10. Possession. Possession of the Property shall be delivered to Buyer at Closing.

11. Right of First Refusal. If, at any time within 21 years after the date of Closing, the Buyer receives an offer for the purchase (or the lease for greater than ten (10) years) of the Property, or any portion thereof (excluding an offer to exchange the subject property, or any portion thereof, with the United States government, or any agency or department thereof), Buyer agrees not to accept such offer or make any contract with respect to said property without first giving the Seller the right to reacquire said property by paying to the Buyer the Purchase Price which the Buyer paid to the Seller for the Property pursuant to this Contract (or a pro rata share, based on area, of the Purchase Price if said property is less than the entire Property), together with interest thereon at the rate of 5% per annum from the date of the Buyer's acquisition to the date of the Buyer's reconveyance to the Seller. The Buyer agrees to give to the Seller written notice of the terms and conditions of any such offer, and, if the Seller fails to enter into a bona fide contract upon the terms set forth above within twenty (20) days after the giving of such notice, then Buyer shall have the right, and shall be at liberty, to sell or lease said property to the party making the offer upon the terms and conditions of such offer. If, for any reason, said property is not sold or leased to the party making such offer upon the terms and conditions of such offer, notice of any subsequent bona fide offer, acceptable to Buyer, shall be given to Seller upon the same terms and conditions for acceptance or rejection as hereinabove provided. The provisions of this Paragraph 11 shall be incorporated into the deed conveying the Property to the Buyer pursuant to this Contract.

12. Real Estate Commission. The Seller and Buyer each warrant and represent to the other that they have not used the services of any broker, agent or finder who would be entitled to a commission on account of this Contract or the consummation of the transaction contemplated hereby, and agree to defend, indemnify and save the other harmless from any commission or fee which may be payable to any broker, agent or finder with whom the indemnifying party has dealt in connection with this Contract.

13. Warning Concerning Special Taxing Districts. **Special taxing districts may be subject to general obligation indebtedness that is paid by revenues produced from annual tax levies on the taxable property within such districts. Property owners in such districts may be placed at risk for increased mill levies and excessive tax burdens to support the servicing of such debt where circumstances arise resulting in the inability of such a district to discharge such indebtedness without such an increase in mill levies. Buyer should investigate the debt financing requirements of the authorized general obligation indebtedness of such districts, existing mill levies of such district servicing such indebtedness, and the potential for an increase in such mill levies.**

14. Buyer's Contingencies. The obligations of the Buyer hereunder are expressly contingent upon the following (any of which may be waived by the Buyer):

A. The Buyer's determination, through soil tests, environmental assessment, or such other means as Buyer shall, in its discretion, select that the Property is not contaminated by any hazardous waste, underground storage tank, petroleum, regulated substance or similar material.

B. An appropriation being made by the Town Council of the Town of Breckenridge in an amount sufficient to allow the Buyer to complete the purchase of the Property in accordance with the terms of this Contract.

In the event Buyer shall give the Seller written notice of the nonfulfillment of either of such contingencies prior to Closing, this Contract shall terminate, in which event Buyer's Earnest Money shall be returned and each party shall be released from any further obligation hereunder.

15. Default Remedies. If any obligation is not performed as herein provided, there shall be the following remedies:

A. IF BUYER IS IN DEFAULT, then Buyer's Earnest Money 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 Earnest Money represents LIQUIDATED DAMAGES and (except as provided in Subparagraph (C)) are the SELLER'S SOLE AND ONLY REMEDY for the 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, (1) Buyer may elect to treat this Contract as terminated, in which case Buyer's Earnest Money shall be returned to Buyer and Buyer may recover such damages as may be proper, or (2) Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to an action for specific performance or damages, or both.

C. Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this Contract, the court shall award to the prevailing party all reasonable costs and expenses, including attorneys' fees.

16. Earnest Money Dispute. Notwithstanding any termination of this Contract, Buyer and Seller agree that, in the event of any controversy regarding the Earnest Money held by Closing Agent, unless mutual written instructions are received by the holder of the Earnest Money, Closing Agent shall not be required to take any action but may await any proceedings, or at Closing Agent's option and sole discretion, may interplead all parties and deposit the Earnest Money into a court of competent jurisdiction and shall recover court costs and reasonable attorney fees.

17. Notices. All notices required or provided in this Contract, if hand delivered, must be delivered during business hours on a business day and shall be deemed to have been given and received on the date hand delivered to the party receiving the same. If the United States mails are used, the notice shall be sent certified or registered mail, return receipt requested, postage prepaid, and shall be deemed to have been given and received on the third business day from the date deposited in the United States mail addressed as follows:

TO BUYER: Gary Martinez, Town Manager
Town of Breckenridge
P.O. Box 168
Breckenridge, CO 80424

WITH A COPY (WHICH SHALL NOT CONSTITUTE NOTICE)

TO: Timothy H. Berry, Esq.
Timothy H. Berry, P.C.
P. O. Box 2
Leadville, CO 80461

TO SELLER: Breckenridge Sanitation District
P.O. Box 1216
Breckenridge, CO 80424

WITH A COPY (WHICH SHALL NOT CONSTITUTE NOTICE)

TO: Eugene J. Riordan, Esq.
Vranesh and Raisch, LLC
P.O. Box 871
Boulder, CO 80306

Each party shall have the right to designate a different address for the receipt of notices other than that set forth above, provided the party's new address is contained in a written notice given to the other party.

18. Miscellaneous.

A. This Contract contains the final and entire agreement between the parties and neither they nor their agents shall be bound by any terms, conditions or representations not herein written.

B. Time shall be of the essence of this Contract.

C. Neither party shall have the right to assign this Contract, or any interest therein, without the express written consent of the other party.

D. All unperformed obligations and covenants shall survive the Closing and the execution and delivery of the deed to the Property.

IN WITNESS WHEREOF, the parties hereto have executed this Contract of Sale on the date first above written.

SELLER:

BRECKENRIDGE SANITATION DISTRICT, a
Colorado quasi-municipal corporation

By _____
President

ATTEST:

Its Secretary

BUYER:

TOWN OF BRECKENRIDGE,
a Colorado municipal corporation

By _____
Gary Martinez, Town Manager

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

Receipt For Earnest Money

The undersigned hereby acknowledges receipt of the Earnest Money described in Paragraph 2(A) of this Contract, and agrees on behalf of the Closing Agent that such funds shall be held in the Closing Agent's trust account on behalf of the Seller and Buyer.

Signed the ___ day of September, 1998.

TEN MILE TITLE, INC.

By _____

Title: _____