

**TOWN OF FRASER
RESOLUTION NO. 2018-05-02**

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE ATTACHED
AGREEMENT WITH GRAND COUNTY WATER AND SANITATION DISTRICT #1

THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF
FRASER, COLORADO THAT:

1. The Town Board of Fraser, Colorado hereby authorizes the Mayor to enter into a contract with the Grand County Water and Sanitation District #1

READ, PASSED ON ROLL CALL VOTE, AND ADOPTED BY THE BOARD OF TRUSTEES
THIS 2nd DAY OF MAY, 2018.

Votes in favor: ___
Votes opposed: ___
Abstained: ___
Absent: ___

BOARD OF TRUSTEES OF THE
TOWN OF FRASER, COLORADO

BY: _____
Mayor

ATTEST:

(S E A L)

Town Clerk

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the “Agreement”) is made as of this ____ day of _____, 2018 (the “Effective Date”), by and between Grand County Water and Sanitation District #1 (“GCWSD”) and the Town of Fraser (“Fraser”). GCWSD and Fraser may be individually referred to as a “Party” and collectively referred to as the “Parties.”

RECITALS

WHEREAS, GCWSD owns the GCWSD Water Storage Reservoirs Nos. 1 and 2 (the Water Storage Reservoirs”);

WHEREAS, the location of the Water Storage Reservoirs are depicted on the map attached hereto as Exhibit 1;

WHEREAS, GCWSD Water Storage Reservoir No. 1 has been conditionally decreed by the Water Division 5 Water Court in Case No. 02CW367 to store 158 acre-feet. GCWSD Water Storage Reservoir No. 2 was been conditionally decreed in the same case to store 80 acre-feet of water (the water right for GCWSD Water Storage Reservoir No. 2 is referred to herein as the “Water Right”);

WHEREAS, GCWSD Water Storage Reservoir No. 2 has been determined by the Colorado State Engineer’s Office to meet the criteria for a lined storage reservoir, in which 80 acre-feet of water can be stored and subsequently released for beneficial uses (the “Water Storage”); and

WHEREAS, GCWSD is willing to sell, and Fraser is willing to purchase, 25 acre-feet of the Water Right and 25 acre-feet of the Water Storage under the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements contained in this Agreement and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

AGREEMENT

1. **Water Right and Water Storage**. Subject to the terms and conditions of this Agreement, GCWSD agrees to sell, and Fraser agrees to purchase, 25 acre-feet of the Water Right and 25 acre-feet of the Water Storage as a singular property interest.

2. **Purchase Price**. The purchase price for the Water Right and Water Storage shall be \$25,000.00 per acre-foot for a total of Six Hundred and Twenty-Five Thousand Dollars (\$625,000.00). The purchase price shall be paid in full at Closing.

3. **Earnest Money.** Not later than five business days following the Effective Date, Fraser shall deposit with the Title Company of the Rockies as Escrow Holder, a cash earnest money deposit in the amount of \$10,000 (the "Earnest Money"). At the Closing, the Earnest Money shall be credited against the Purchase Price. In the event this transaction fails to close as a result of GCWSD's default, the failure of any condition precedent to Fraser's obligations, or any reason other than Fraser's default, the Earnest Money shall be returned to Fraser. In the event this transaction fails to close as a result of Fraser's default, Escrow Holder shall deliver the Earnest Money to GCWSD and retention of the Earnest Money by GCWSD shall be GCWSD's sole and exclusive remedy for Fraser's failure to close. The Earnest Money may also be distributed as more particularly described in paragraphs 5 and 6 below.

4. **Contingencies.** Neither GCWSD, nor Fraser shall be obligated to close under this Agreement unless the Operating Agreement described in paragraph 5 below is completed to the satisfaction of each of them. In addition, Fraser shall not be obligated to close under this Agreement unless the investigations conducted in the Due Diligence Period described in paragraph 6 below have been completed and are acceptable to Fraser.

5. **Operating Agreement.** On or before the date of Closing, the Parties shall use their best efforts to develop and mutually agree upon an Operating Agreement for the Grand County Water Storage Reservoirs Nos. 1 and 2 addressing operations, maintenance, repair, replacement, access, storage under other water rights, water rights applications and other relevant activities relating to the reservoirs. In the event the Parties are unable to reach a mutually acceptable agreement on the terms and conditions of an Operating Agreement prior to Closing, this Agreement may terminate at the option of either GCWSD or Fraser and, if so terminated, the Parties will have no further obligations hereunder and \$5,000 of the Earnest Money shall be paid to each of GCWSD and Fraser.

6. **Due Diligence Investigations.** The Parties agree that Fraser shall have a period of sixty days from the Effective Date to conduct such investigations and perform such due diligence on the Water Right and Water Storage as to the suitability of the Water Right and Water Storage for Fraser's use ("Due Diligence Period").

- a. GCWSD shall allow agents, employees, consultants, and representatives of reasonable access to the Water Storage Reservoirs, at reasonable times, to conduct investigations of the suitability of the Water Right and Water Storage for Fraser's purposes.
- b. Concurrently with the execution of this Agreement, GCWSD shall provide Fraser with copies of a TBD title commitment covering the property on which the Water Storage Reservoirs are located, including the point of diversion and outlet structures; court decrees; leases; water supply agreements; water court pleadings; correspondence with the State water officials regarding the lined status of GCWSD Water Storage Reservoir No. 2; and any other documents requested by Fraser that pertain to GCWSD's ownership or use of the Water Right and Water Storage.

- c. Fraser shall be responsible, at its sole expense and to its satisfaction, for determining whether GCWSD has acceptable title to the Water Right and Water Storage and whether the Water Right and Water Storage are suitable for Fraser's purposes. If Fraser determines, in its sole discretion, that GCWSD does not have acceptable title to the Water Right and Water Storage or that the Water Right is not suitable for Fraser's purposes, Fraser may give written notice to GCWSD of title defects and other concerns with the Water Right and Water Storage. GCWSD shall have twenty days in which to cure, in writing, such title defects or other concerns with the Water Right and Water Storage to the satisfaction of Fraser.
- d. If Fraser is not satisfied with GCWSD's attempt to cure the stated title defects or any other matter arising from its Due Diligence investigations of the Water Right and Water Storage, Fraser may terminate this Agreement, upon written notice to GCWSD, at any time within ten days after receipt of GCWSD attempt to cure. Upon termination, the Parties shall have no further obligations under this Agreement and the Earnest Money shall be returned to Fraser.
- e. Unless Fraser terminates this Agreement in accordance with this paragraph 6, Fraser agrees that it has had a full opportunity to do its own investigation of the Water Storage and Water Right and has formed its own opinion concerning the appropriateness of the Water Right and Water Storage for its purposes. It is agreed that Fraser is not relying on any representations or warranties other than those set forth in this Agreement and in the documents described above.

7. Representations and Warranties.

- a. Both GCWSD and Fraser represent and warrant that they have full power and authority to execute and perform this Agreement.
- b. Fraser represents all funds paid pursuant to this Agreement shall have been legally authorized and appropriated prior to such payments.
- c. GCWSD represents that it has marketable title to the Water Right and Water Storage free and clear of all encumbrances, which it shall convey to Fraser via Special Warranty Deed. GCWSD will not sell, transfer, convey, encumber, lease, assign or otherwise dispose of or abandon the Water Right and Water Storage (or any portion thereof) prior to Closing, except that it may convey 25 acre-feet of the Water Right and 25 acre-feet of the Water Storage to the Winter Park Water and Sanitation District.
- d. GCWSD makes no representations or warranties about the availability of water to be stored in priority pursuant to the Water Right. Fraser acknowledges and agrees that the Water Right is very junior in priority and that water may not be available for storage under the Water Right. GCWSD shall have no obligation to provide a substitute supply of water to Fraser from any sources other than water stored in priority under the Water Right. GCWSD understands that Fraser may

seek Water Court approval to store water in the Water Storage under water rights owned by Fraser other than the Water Right, and GCWSD agrees to reasonably cooperate and to support Fraser's effort to obtain such approvals.

8. **Closing.** Subject to the contingencies and conditions set out in this Agreement, Closing hereunder shall occur in Grand County, Colorado, at a reasonable time and place designated by the Parties within 30 days after the end of the Due Diligence Period (including GCWSD's right to cure). All costs of Closing, including, but not limited to, recording fees, closing agent fees, and escrow fees, shall be the responsibility of Fraser.

- a. At the Closing, Fraser shall provide GCWSD with payment by cashier's check or wire transfer, at GCWSD's option, of the total purchase price, after adjustments, if any, have been made for all debits, credits, and other necessary adjustments.
- b. At the Closing, GCWSD shall deliver to Fraser a Special Warranty Deed, substantially in the form of Exhibit 2 to this Agreement, conveying title to the Water Right and Water Storage to Fraser free and clear of all encumbrances except that it may convey 25 acre-feet of the Water Right and 25 acre-feet of the Water Storage to the Winter Park Water and Sanitation District; and provided, however, that the Water Right and Water Storage shall be conveyed as a singular property interest, which shall be held as such by Fraser. Fraser shall not, at any time after Closing, sell or purport to sell all or any portion of the Water Right and Water Storage as a separate property interest.
- c. At or before the Closing, both parties shall sign the Operating Agreement described in paragraph 5 above relating to operation of the GCWSD Water Storage Reservoir No. 2.

9. **Default, Opportunity to Cure, and Remedies.** If either Party believes that the other Party is in breach of any obligation under this Agreement, the Party alleging the breach shall give written notice to the other Party of the alleged breach. The Party receiving the notice shall have 30 days in which to cure the alleged breach.

- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to litigation or some other dispute resolution procedure.
- b. If, after such reasonable time (but not exceeding three months) to mediate the dispute, the Party alleging a breach is not satisfied, such Party may initiate a lawsuit in the District Court in and for Grand County.
- c. If either Party is in breach, the other Party's remedies shall be limited to termination of this Agreement and compensatory damages. Neither Party shall be

entitled to recover consequential damages, nor shall either Party be entitled to specific performance or injunctive relief.

- d. If either Party commences an action in District Court to enforce or interpret any portion of this Agreement, the prevailing Party in such action shall also be awarded its costs and reasonable attorney's fees, as determined by the court.

10. **Notices.** Any notice under this Agreement shall be in writing and shall be hand delivered, sent by a nationally recognized overnight delivery service, sent by electronic mail or sent by registered or certified mail, postage prepaid, return receipt requested. Either party may change its address by written notice to the other as provided for in this paragraph 10. Notice shall be effective upon delivery if the notice is provided by hand delivery and shall be effective upon receipt if given by overnight delivery or by certified or registered mail. Notice shall be provided as follows:

To GCWSD:

Bruce Hutchins, District Manager
Grand County Water and Sanitation District #1
P.O. Box 3077
50 Vasquez Road
Winter Park, CO 80482
bhutchins@gcwsd.com

To Fraser:

Jeff Durbin, Town Manager
Town of Fraser
P. O. Box 370
153 Fraser Avenue
Fraser, CO 80442-0370
jdurbin@town.fraser.co.us

11. General Provisions.

a. **Governing Law.** This Agreement shall be governed, construed, applied, and enforced in accordance with the laws of the State of Colorado.

b. **Benefit.** This Agreement shall inure to the benefit of and shall bind the heirs, administrators, personal representatives, executors, successors, and assigns of the respective parties hereto. This Agreement does not create any benefits or obligations for third parties.

c. **Assignment.** Neither Party shall assign their respective interest under this Agreement without the prior written consent of the other Party.

d. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties. No representations or warranties pertaining to this Agreement or any property affected by this Agreement have been made by or shall be binding on any of the Parties, except as expressly stated in this Agreement. This Agreement may be changed only by an agreement in writing signed by both Parties.

e. **Incorporation of Exhibits.** All attached exhibits to this Agreement are incorporated herein by reference.

f. **Effective Date.** This Agreement is effective upon the date first above written.

g. **Execution in Counterparts.** This Agreement may be executed by each party separately and, when each Party has executed a copy thereof, such copies taken together shall be

deemed to be a full and complete contract between the parties. Facsimile signatures shall constitute originals for all purposes.

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement as shown below their signatures.

**GRAND COUNTY WATER AND
SANITATION DISTRICT #1**

TOWN OF FRASER



Arthur Ferrari, Chairman

Philip Vandernail, Mayor

Date: 4/18/2018

Date: _____

Reservoir 2



Reservoir 1

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SPECIAL WARRANTY DEED

THIS DEED, dated this _____ day of _____, 2018, is from the **GRAND COUNTY WATER AND SANITATION DISTRICT # 1**, a Colorado special district, P.O. Box 3077, Winter Park, Colorado 80482 ("Grantor") to the **TOWN OF FRASER**, a Colorado statutory municipality, P. O. Box 370, Fraser, CO 80442-0370 ("Grantee").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor hereby grants, bargains, sells, conveys and assigns to Grantee, all of Grantor's right, title and interest in and to the following:

Twenty-five (25) acre-feet of the water and water right known as the GCWSD Water Storage Reservoir No. 2, consisting of a total of 80 acre-feet, which diverts water from the Fraser River and its tributaries at the point of diversion decreed by the District Court in and for Water Division 5, Case No. 02CW367, with an appropriation date of December 4, 2002 and an adjudication date of February 23, 2005, for municipal uses, irrigation, augmentation, piscatorial, aesthetic and recreation purposes. The GCWSD Water Storage Reservoir 2 may be filled and refilled so long as it is in priority for the purposes of replacing water applied to the beneficial uses described in the decree and to replace evaporative losses. The decreed point of diversion for the GCWSD Water Storage Reservoir 2, is located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, Township 1 South, Range 75 West, 6th P.M. at a point on the west bank of the Fraser River approximately 270 feet east of the west line of Section 28 and 195 feet south of the north line of Section 28. Grantor claims the right to divert water from the GCWSD Intake Structure to the GCWSD Water Storage Reservoir 2 at a maximum rate of 6.0 cfs total; and

Twenty-five (25) acre-feet of water storage capacity in GCWSD Water Storage Reservoir No. 2;

collectively referred to herein as the "Property;" provided, however, that the Property shall be deemed to be a singular property interest in water rights and water storage capacity and cannot be separated or hereafter separately conveyed by Grantee to a third-party.

Grantor covenants with Grantee, its successors and assigns, that Grantor is the lawful owner of and has good title to the Property assigned and conveyed herein, free and clear from all liens, encumbrances, assessments or adverse claims of any person claiming by, through or under Grantor, and that Grantor will warrant and forever defend the same against all persons claiming the same or any part thereof by, through or under Grantor.

To have and to hold the same unto Grantee, its successors and assigns forever.

**GRAND COUNTY WATER AND SANITATION
DISTRICT #1, a Colorado special district**

Arthur Ferrari, Chairman

COUNTY OF GRAND)
)
STATE OF COLORADO) ss.

The foregoing Special Warranty Deed was acknowledged before me this _____ day of _____, 2018, by Arthur Ferrari as the Chairman of the Board of Directors of the Grand County Water and Sanitation District #1.

Witness my hand and official seal.

(SEAL)

Notary Public

My commission expires: _____