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TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **CONTRACT**

NAME OF AGENCY OR CONTRACTOR: UNITED STATES OF AMERICA, ACTING THROUGH THE U.S. ATTORNEY FOR THE DISTRICT OF COLORADO

STREET ADDRESS/PARCEL NAME/SUBDIVISION: FORECLOSURE OF EPA LIEN ON 543 LAWRENCE AVENUE – PARCEL # 2945-221-00-190 IN MESA COUNTY AND ASSIGNMENT OF CERTIFICATE OF PURCHASE TO THE CITY

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 2000

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

AGREEMENT TO ASSIGN

THIS AGREEMENT is made this 7th day of July, 2000, between the United States of America, acting through the U.S. Attorney for the District of Colorado ("U.S." or "Assignor") and the City of Grand Junction, Colorado ("City" or "Assignee").

Recitals

- A. In order to protect the environment and the residents of Grand Junction, Colorado, the U.S. Environmental Protection Agency ("EPA") made expenditures to identify, treat and remove various hazardous and other regulated materials from the property of a dissolved Colorado corporation, Layton Brothers Drum Company. Said property may have been operated as an industrial concern by, or controlled by, several other entities at various times, including Rocky Mountain Drum Company and Hansen Brothers Drum Company. EPA's efforts and expenditures were authorized by the Comprehensive Environmental Response, Compensation, and Liability Act, and other authority. As a mechanism to allow the United States to recoup its expenditures, the EPA is entitled to a lien.
- B. EPA has recorded its lien, dated April 19, 1994, with the Mesa County Clerk and Recorder in Book 2065, at Page 452, and has recorded a correction of said lien in Book 2504 at Page 470 (collectively, "EPA Lien"). The EPA lien was reduced to judgment in the amount of \$816,479.60 on September 9, 1999 ("Judgment").
- C. The affected property consists of a parcel of land more particularly described upon Exhibit A, which is attached hereto and incorporated herein by this reference, and identified by the Mesa County Assessor as Tax Parcel Number 2945-221-00-190 (the "Property").
- D. Pursuant to Colorado's recording notice and real property statutes, the EPA lien is recorded after, and is therefore junior to, a judgment lien in favor of Gay Johnson's, Inc., in the original amount of \$23,935.03, recorded in Book 1828 at Page 553, and extended by Court Order recorded in Book 2307 at Page 681.
- E. The EPA has referred the collection of its Judgment, including the liquidation of its lien, to the U.S. Attorney for the District of Colorado.
- F. The City has adopted various regional planning documents, including road plans. The City has analyzed its future traffic needs. Based on such plans and needs, the City has determined that it is in the public interest of the citizens of Grand Junction to acquire the Property for use as a roadway,

and for other public purposes.

- G. The City acknowledges that the Gay Johnson's lien was recorded before the EPA lien. The City seeks to obtain fee simple title to the Property, subject to the Gay Johnson's lien.
- H. The United States is willing to transfer and assign its interest in the Property, by the means described below, to the City for less than the judgment amount of \$816,479.60 for two reasons: absent payment by the City, the judgment might remain uncollected indefinitely; and, federal policy promotes such re-use of the Property by a local government.


THE PARTIES AGREE AS FOLLOWS:

- 1. The recitals are a substantive part of this Agreement.
- 2. Within ten days of execution hereof, the City shall deposit \$195,000 (one hundred ninety-five thousand dollars) into a mutually agreed escrow account administered by Western Colorado Title Company ("Escrow Agent") with the funds to be deposited in an interest-bearing account in a bank located in Mesa County.
- 3. Upon confirmation of the deposit of funds as described in paragraph 2 above, the United States shall file a complaint for judicial foreclosure of the EPA Lien on the Property in Mesa County District Court and shall proceed to litigate the foreclosure action in the manner it deems appropriate in its sole discretion.
- 4. Contingent upon entry of a judgment of foreclosure and the issuance of a Certificate of Purchase to the United States, and contingent upon no party curing or redeeming the Property from foreclosure, the United States shall assign to the City its Certificate of Purchase. In consideration for this assignment, the City shall direct the Escrow Agent to pay the \$195,000 and all accrued interest thereon to the United States at such address as the United States may direct.
- 5. The City expressly acknowledges that the title it acquires pursuant to this agreement shall be subject to Gay Johnson's lien.
- 6. The City shall reimburse the United States for all of its reasonable costs associated with the foreclosure proceedings, including without limitation title guarantee fees, filing fees, and fees for service of process, up to a maximum of \$1,000.00.

7. Should the United States be unable to foreclose upon the Property for any reason, the United States shall inform the City and this Agreement shall thereafter be of no further force and effect and all funds previously deposited by the City with the Escrow Agent, together with all accrued interest thereon, shall be forthwith returned to the City.
8. This Agreement may be modified only by a writing signed by all parties hereto.

UNITED STATES OF AMERICA
THOMAS L. STRICKLAND
United States Attorney

Date: June 29, 2000

By: 
LISA A. CHRISTIAN
Assistant United States Attorney
1961 Stout Street, 11th Floor
Denver, Colorado 80294

CITY OF GRAND JUNCTION

Date: 7/6/00


By: 
DAN E. WILSON
CITY ATTORNEY
250 N. 5th Street
Grand Junction, Colorado 81501

Exhibit A

A parcel of land located in the SE1/4 SE1/4 of Section 15, Township 1 South, Range 1 West and the NE1/4 NE1/4 of Section 22, Township 1 South, Range 1 West of the Ute Meridian, and being more particularly described as follows:

Beginning at a point which is South 234.00 feet from the Northeast corner of said Section 22;

thence along the East line of said Section 22, South 1,086.65 feet to the Southeast corner of the NE1/4 NE1/4 of said Section 22;

thence North 89°58' West 445.00 feet;

thence North 792.39 feet;

thence West 50.00 feet;

thence North 158.0 feet;

thence East 50.00 feet;

thence North 370.00 feet to the North line of said Section 22;

thence East 245.00 feet along said North line to a point 200.00 feet West of said Northeast corner of Section 22;

thence South 40°31' East 307.82 feet to the Point of Beginning;

EXCEPT the South 50 feet for roadway purposes;

TOGETHER WITH that property conveyed in Warranty Deed recorded August 12, 1968, in Book 925 at Page 747.