

RESOLUTION NO. 18-18

A Resolution Authorizing the City Manager to Execute a Contract with Sunshine Polishing Technology Inc. for the Sale and Purchase of Real Property in the City of Grand Junction, Colorado and for the Offering of an Economic Incentive

Recitals:

In 2017 the City Council entered into an agreement concerning the sale of real property in the Jarvis Subdivision (now known as the Riverfront at Dos Rios) in Grand Junction. Through the course of concerted effort by Sunshine and the City it was determined that Lot 5 of the subdivision, the parcel identified by Sunshine for the location of its company to Grand Junction, would not meet the needs of Sunshine.

Rather than abandoning the project, Sunshine and the City committed to resolve the problems with the property/the location for Sunshine's new business and now propose that Sunshine locate on Lot 12, Filing 3 of the subdivision. In addition to authorizing the conveyance of Lot 12, this resolution authorizes the re-purchase of Lot 5 and the City's financial participation in making Lot 12 developable for Sunshine.

The attached contract has been drafted, negotiated and agreed to in discussions with Sunshine and her attorney and the City Manager and City Attorney.

The Sunshine project is important to the City because it represents the first development/reuse of the long vacant Riverfront at Dos Rios property and with the development by Sunshine additional opportunities for new and different use(s) and/or further redevelopment of the area are likely.

For these and other reasons the City Council has considered the terms of the proposed sale, re-purchase and incentive award all in accordance with the attached agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION COLORADO, THAT:

1. The City Manager is authorized and directed to execute the contract, in the form of an offer to buy and sell real property as described in the agreement all located in the Jarvis Subdivision (now known as the Riverfront at Dos Rios) located in Grand Junction, Colorado; and,
2. All actions heretofore taken by the City Manager and City Attorney and other officers, employees and agents of the City relating to the purchase and sale of the property and the offering of incentive funding, which are consistent with the provisions of the contract and this Resolution are hereby ratified, approved and confirmed.

PASSED AND APPROVED this 21st day of March 2018.



Bennett Boeschenstein
Mayor Pro Tem



ATTEST:



Wanda Winkelmann
City Clerk

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

For valuable consideration, the sufficiency of which is acknowledged, Sunshine Polishing Technology, Inc. (SPI) and the City of Grand Junction (City), hereby enter into this Settlement Agreement (Agreement), effective as of the date set forth below. The City and SPI are collectively referred to as the Parties.

1. Nature of Dispute. In 2017 SPI purchased a parcel of real property, Lot 5 of the Jarvis Subdivision, Mesa County, Colorado, from the City. Subsequent to the conveyance of the deed SPI discovered the presence of buried solid waste on Lot 5, and that the property had historically been used as solid waste disposal facility (the Dispute). SPI tendered a demand to the City pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-109, and the Parties have engaged in settlement negotiations to resolve the dispute.

2. Settlement Performances. The Parties agree to the following which will resolve all claims in this matter:

a. On or before March 23, 2018, SPI will convey to the City, without liens or encumbrances, title to Lot 5 of the Jarvis Subdivision, Filing One, County of Mesa and State of Colorado, via quit claim deed in the form attached. The City agrees to accept title to Lot 5. Contemporaneously, the City will convey to SPI, without liens or encumbrances, title to Lot 12 and with the warranty that the grantor has: i) performed certain subsurface investigation(s) and remediation on the property; and ii) provided the reports of all of those investigations to SPI. SPI agrees to accept title to Lot 12 of the Jarvis Subdivision, Filing Three, County of Mesa and State of Colorado, via special warranty deed in the form attached. The two conveyances are referred to herein as the Closing.

b. At the Closing, the City shall pay SPI the sum of FIFTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$57,500.00), which shall be paid in good funds which are available for immediate withdrawal (i.e. wire transfer).

c. Subsequent to the Closing, the City shall be solely responsible for all environmental remediation, response costs, or environmental obligations or liabilities, including fines or penalties, if any, associated with any solid waste, hazardous waste, or environmental contamination found on or within Lot 5. Subsequent to the Closing SPI shall be solely responsible for all environmental remediation, response costs, or environmental obligations or liabilities, including fines or penalties, if any, associated with any solid waste, hazardous waste, or environmental contamination found on or within Lot 12.

d. No later than May 15, 2018 the City shall have completed the installation of sanitary sewer and domestic water pipelines to the boundary of Lot 12, and within

that time the City shall design and install improvements to the storm-water discharge on Lot 12 so that the storm water is conveyed from Lot 12 via a multi-purpose easement. SPI agrees to grant any easement(s) reasonably necessary for the design and construction of the water, sewer and storm water improvements. Any reconfiguration of the boundaries, easements, or dimensions of Lot 12 shall only be done with the advance written consent of SPI. The City agrees that SPI will not be required to install water quality or storm water detention areas within Lot 12.

e. The City will review and approve in accordance with the applicable City Zoning and Development Code and regulations (Code) a site plan for development of Lot 12 as in general conformity with the preliminary design attached as Exhibit 3 (the Site Plan). The Site Plan will provide for a warehouse/shop/storage space of approximately five thousand seven hundred (5,700) square feet; office space of not approximately three hundred twenty (320) square feet; a manager apartment of approximately one thousand three hundred twenty (1,320) square feet; a paved asphalt area around the buildings of approximately one (1) acre in area; landscaping; access and parking areas; and fencing. Approval of the Site Plan is anticipated by April 1, 2018 or within sixty (60) days of SPI submitting a complete Site Plan application in accordance with the Code.

f. Nothing in this Agreement shall be deemed to impair or alter any economic incentives provided to SPI by the Grand Junction Economic Partnership or any other agency(ies.)

g. All of the obligations of this Section Two shall survive the Closing and shall not be merged or abrogated by conveyance of the deeds.

3. General Release. SPI and the City each agree to release and forever discharge each other, and their respective officers, directors, shareholders, officials, employees, counsels, insurers, successors, and assigns from all claims, counterclaims, and defenses related, directly or indirectly to the Dispute, or from any other facts, transactions, or occurrences through the effective date of this Agreement, except as specifically provided otherwise in this Agreement. Subsequent to the effective date, no party shall attempt to prosecute or otherwise assert any of the claims which are discharged by operation of this Agreement. By way of example, this release encompasses tort, contractual, or equitable claims, counterclaims, or defenses for damages or other relief associated with the Dispute, including claims for breach of contract, promissory estoppel, negligence, contribution, or the like. This Agreement constitutes a full accord and satisfaction.

4. Understanding, Advice of Counsel. The Parties each acknowledge that they have read this Agreement, that they understand same, and that they have been fully and competently advised by their attorneys of the nature of the legal claims and defenses, and of the finality and related consequences of entering into this Agreement.

5. Integration; Modification. All promises and performances owed by the Parties are set forth in this Agreement, which is the sole and complete agreement of the Parties. No other promise, performance, representation, or obligation between the Parties is owing, nor shall any such obligation be binding unless it is reduced to writing and lawfully executed by all Parties as a modification to this Agreement.

6. Due Deliberation; Capacity. The Parties acknowledge that this Agreement has been executed after due deliberation, and not as a result of any undue influence or coercion. It is personally warranted by all signatories that at the time of signing this document he or she is not under the influence of any alcohol or medication, and that he or she is not suffering from any medical condition which would impair his or her judgment, or otherwise render this document unenforceable.

7. Remedies. This Agreement is a binding legal document which shall be enforced according to its terms, including by way of an action for specific performance, injunctive or declaratory relief, and/or a claim for damages for breach. In the event any judicial action is filed by any party to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and costs incurred in that action, in addition to any other relief specified herein. Regardless of any rule to the contrary, any party proving a violation of this Agreement shall be entitled to obtain injunctive or declaratory relief without the necessity of posting a bond to secure such relief.

8. Governing Law; Venue. This Agreement shall be construed pursuant to the laws of the State of Colorado, and the exclusive venue for any future dispute arising from this Agreement shall be the courts of Mesa County, Colorado.

9. Warranties and Authority. The Parties warrant that: a) they have not assigned or pledged the instruments or legal claims that are the subject of this Agreement; b) no third parties are subrogated to their rights in this matter; c) no other person or entity is otherwise legally entitled to enforce or prosecute any claims that are subject to release here; and d) that they execute after having obtained all lawful and necessary authority to act and bind each party to this Agreement.

10. Compromise of Disputed Claims. This Agreement is a compromise of claims which are disputed as to validity and amount; it shall not be regarded as an admission of fault or wrongdoing by any party.

11. Counterparts; Effective Date. This document may be executed in identical counterparts which, when combined, shall evidence the complete Agreement. Electronic or facsimile signatures shall have the same effect as original signatures. The effective date shall be the date of last signature.

12. Interpretation. This Agreement is the product of mutual bargaining and negotiation as to its terms. It shall be interpreted in accordance with its plain meaning, regardless of the extent to which either party contributed to the drafting.

13. Additional Documents. The Parties shall cooperate in executing any supplemental or additional documents which may be necessary to give effect to, or implement the terms of this Agreement.

APPROVED AND EFFECTIVE AS OF THE LAST DATE SET FORTH BELOW:

CITY OF GRAND JUNCTION

By: _____
Greg Caton, City Manager

Date

SUNSHINE POLISHING TECHNOLOGY, INC.

By: _____
Dominique Bastien, President

Date

- Attachment:
Exhibit 1 QCD SPI to CITY Lot 5
Exhibit 2 SWD City to SPI Lot 12
Exhibit 3—Lot 12 Preliminary Site Plan Drawings

-End of Agreement-

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

For valuable consideration, the sufficiency of which is acknowledged, Sunshine Polishing Technology, Inc. (SPI) and the City of Grand Junction (City), hereby enter into this Settlement Agreement (Agreement), effective as of the date set forth below. The City and SPI are collectively referred to as the Parties.

1. Nature of Dispute. In 2017 SPI purchased a parcel of real property, Lot 5 of the Jarvis Subdivision, Mesa County, Colorado, from the City. Subsequent to the conveyance of the deed SPI discovered the presence of buried solid waste on Lot 5, and that the property had historically been used as solid waste disposal facility (the Dispute). SPI tendered a demand to the City pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-109, and the Parties have engaged in settlement negotiations to resolve the dispute.

2. Settlement Performances. The Parties agree to the following which will resolve all claims in this matter:

a. On or before March 23, 2018, SPI will convey to the City, without liens or encumbrances, title to Lot 5 of the Jarvis Subdivision, Filing One, County of Mesa and State of Colorado, via quit claim deed in the form attached. The City agrees to accept title to Lot 5. Contemporaneously, the City will convey to SPI, without liens or encumbrances, title to Lot 12 and with the warranty that the grantor has: i) performed certain subsurface investigation(s) and remediation on the property; and ii) provided the reports of all of those investigations to SPI. SPI agrees to accept title to Lot 12 of the Jarvis Subdivision, Filing Three, County of Mesa and State of Colorado, via special warranty deed in the form attached. The two conveyances are referred to herein as the Closing.

b. At the Closing, the City shall pay SPI the sum of FIFTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$57,500.00), which shall be paid in good funds which are available for immediate withdrawal (i.e. wire transfer).

c. Subsequent to the Closing, the City shall be solely responsible for all environmental remediation, response costs, or environmental obligations or liabilities, including fines or penalties, if any, associated with any solid waste, hazardous waste, or environmental contamination found on or within Lot 5. Subsequent to the Closing SPI shall be solely responsible for all environmental remediation, response costs, or environmental obligations or liabilities, including fines or penalties, if any, associated with any solid waste, hazardous waste, or environmental contamination found on or within Lot 12.

d. No later than May 15, 2018 the City shall have completed the installation of sanitary sewer and domestic water pipelines to the boundary of Lot 12, and within

that time the City shall design and install improvements to the storm-water discharge on Lot 12 so that the storm water is conveyed from Lot 12 via a multi-purpose easement. SPI agrees to grant any easement(s) reasonably necessary for the design and construction of the water, sewer and storm water improvements. Any reconfiguration of the boundaries, easements, or dimensions of Lot 12 shall only be done with the advance written consent of SPI. The City agrees that SPI will not be required to install water quality or storm water detention areas within Lot 12.

e. The City will review and approve in accordance with the applicable City Zoning and Development Code and regulations (Code) a site plan for development of Lot 12 as in general conformity with the preliminary design attached as Exhibit 3 (the Site Plan). The Site Plan will provide for a warehouse/shop/storage space of approximately five thousand seven hundred (5,700) square feet; office space of not approximately three hundred twenty (320) square feet; a manager apartment of approximately one thousand three hundred twenty (1,320) square feet; a paved asphalt area around the buildings of approximately one (1) acre in area; landscaping; access and parking areas; and fencing. Approval of the Site Plan is anticipated by April 1, 2018 or within sixty (60) days of SPI submitting a complete Site Plan application in accordance with the Code.

f. Nothing in this Agreement shall be deemed to impair or alter any economic incentives provided to SPI by the Grand Junction Economic Partnership or any other agency(ies.)

g. All of the obligations of this Section Two shall survive the Closing and shall not be merged or abrogated by conveyance of the deeds.

3. General Release. SPI and the City each agree to release and forever discharge each other, and their respective officers, directors, shareholders, officials, employees, counsels, insurers, successors, and assigns from all claims, counterclaims, and defenses related, directly or indirectly to the Dispute, or from any other facts, transactions, or occurrences through the effective date of this Agreement, except as specifically provided otherwise in this Agreement. Subsequent to the effective date, no party shall attempt to prosecute or otherwise assert any of the claims which are discharged by operation of this Agreement. By way of example, this release encompasses tort, contractual, or equitable claims, counterclaims, or defenses for damages or other relief associated with the Dispute, including claims for breach of contract, promissory estoppel, negligence, contribution, or the like. This Agreement constitutes a full accord and satisfaction.

4. Understanding, Advice of Counsel. The Parties each acknowledge that they have read this Agreement, that they understand same, and that they have been fully and competently advised by their attorneys of the nature of the legal claims and defenses, and of the finality and related consequences of entering into this Agreement.

5. Integration; Modification. All promises and performances owed by the Parties are set forth in this Agreement, which is the sole and complete agreement of the Parties. No other promise, performance, representation, or obligation between the Parties is owing, nor shall any such obligation be binding unless it is reduced to writing and lawfully executed by all Parties as a modification to this Agreement.
6. Due Deliberation; Capacity. The Parties acknowledge that this Agreement has been executed after due deliberation, and not as a result of any undue influence or coercion. It is personally warranted by all signatories that at the time of signing this document he or she is not under the influence of any alcohol or medication, and that he or she is not suffering from any medical condition which would impair his or her judgment, or otherwise render this document unenforceable.
7. Remedies. This Agreement is a binding legal document which shall be enforced according to its terms, including by way of an action for specific performance, injunctive or declaratory relief, and/or a claim for damages for breach. In the event any judicial action is filed by any party to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and costs incurred in that action, in addition to any other relief specified herein. Regardless of any rule to the contrary, any party proving a violation of this Agreement shall be entitled to obtain injunctive or declaratory relief without the necessity of posting a bond to secure such relief.
8. Governing Law; Venue. This Agreement shall be construed pursuant to the laws of the State of Colorado, and the exclusive venue for any future dispute arising from this Agreement shall be the courts of Mesa County, Colorado.
9. Warranties and Authority. The Parties warrant that: a) they have not assigned or pledged the instruments or legal claims that are the subject of this Agreement; b) no third parties are subrogated to their rights in this matter; c) no other person or entity is otherwise legally entitled to enforce or prosecute any claims that are subject to release here; and d) that they execute after having obtained all lawful and necessary authority to act and bind each party to this Agreement.
10. Compromise of Disputed Claims. This Agreement is a compromise of claims which are disputed as to validity and amount; it shall not be regarded as an admission of fault or wrongdoing by any party.
11. Counterparts; Effective Date. This document may be executed in identical counterparts which, when combined, shall evidence the complete Agreement. Electronic or facsimile signatures shall have the same effect as original signatures. The effective date shall be the date of last signature.

12. Interpretation. This Agreement is the product of mutual bargaining and negotiation as to its terms. It shall be interpreted in accordance with its plain meaning, regardless of the extent to which either party contributed to the drafting.

13. Additional Documents. The Parties shall cooperate in executing any supplemental or additional documents which may be necessary to give effect to, or implement the terms of this Agreement.

APPROVED AND EFFECTIVE AS OF THE LAST DATE SET FORTH BELOW:

CITY OF GRAND JUNCTION

By: 

Greg Cator, City Manager

3/23/2018
Date

SUNSHINE POLISHING TECHNOLOGY, INC.

By: 

Dominique Bastien, President

03/22/2018
Date

Attachment:
Exhibit 1 QCD SPI to CITY Lot 5
Exhibit 2 SWD City to SPI Lot 12
Exhibit 3—Lot 12 Preliminary Site Plan Drawings

-End of Agreement-

QUITCLAIM DEED

Sunshine Polishing Technology Inc., a Colorado Corporation, whose legal address is 265 Dillon Ridge Road, Suite C PMB 272, P.O. Box 402, Dillon, CO 80435, Grantor, for and in consideration of the sum of Ten and no/100 Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby quitclaims all of its right, title and interest, including all appurtenances, rights, privileges and immunities, to the City of Grand Junction, 250 North 5th Street, Grand Junction, CO 81501, Grantee, its successor and assigns forever, the following described real property situate in the City of Grand Junction, County of Mesa, State of Colorado, to wit:

Lot 5 of the Jarvis Subdivision Filing One as recorded in the Mesa County Clerk & Recorder's Office with Reception Number 2790938 in the City of Grand Junction, County of Mesa, State of Colorado.

To have and to hold said premises, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of Grantor, either in law or equity, to the benefit of Grantee its successor and assigns forever.

Executed this 22 day of MARCH, 2018.

Sunshine Polishing Technology Inc.,
A Colorado Corporation

DB

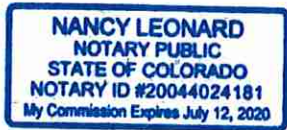
Dominique Bastien, President

State of Colorado)
)ss.
County of Mesa)

The foregoing Quitclaim Deed was acknowledged before me this 22 day of March 2018 by Dominique Bastien, President of Sunshine Polishing Technology Inc.

My commission expires 7-12-20.

Witness my hand and official seal.



Nancy Leonard

Notary Public

