

LAND, WATERS, OR INTEREST IN LANDS OR WATERS PURCHASE OPTION

(REFERENCE: FSH 5409.12, CHAPTER 10)

VENDOR (NON-FEDERAL PARTY): Board of County Commissioners of Summit County, Colorado		
ACQUISITION AUTHORITY: Act of August 3, 1956	UNIT: White River NF	TRACT NUMBER: CDNST claims

THIS OPTION CONTRACT (hereafter "Option") is made by and between the following non-Federal party Board of County Commissioners of Summit County, Colorado, whose address is P.O. Box 68, Summit County Courthouse, Breckenridge, CO 80424, (hereafter "Vendor"), and the UNITED STATES OF AMERICA and its assigns, by and through the Secretary of Agriculture (hereafter "United States" or "Secretary"). The acquiring agency is the Forest Service. Reference herein to the Secretary incorporates and includes all Forest Service employees with delegated authority to act on behalf of the Secretary in realty transactions.

FOR AND IN CONSIDERATION OF One Dollar (\$1.00) paid by the United States to the Vendor, the receipt of which is hereby acknowledged, and for other good and valuable consideration, the Vendor agrees and offers to sell to the United States the lands or interests in lands herein described in accordance with the following terms and conditions:

I. The Property:

A. The Property, which is the subject of this Option (hereafter "Property"), is more fully described on Exhibit A, which is appended hereto. TOGETHER, with any and all associated improvements and appurtenances, including rights-of-way, waters, water rights, minerals, oil, gas, and geothermal resources.

B. If the acreage of the land herein described is to be ascertained by a cadastral survey, the Secretary may approve an existing cadastral survey of the Property if the cadastral survey is acceptable under Federal standards, or the Secretary may enter upon the Property to conduct a cadastral survey to be made by and at the expense of the United States. In states utilizing the public land survey system, all cadastral surveys shall be in accordance with the official records and methodologies of the Bureau of Land Management. For lands utilizing metes and bounds descriptions, all cadastral surveys shall be made to conform, as best possible, with all previous cadastral survey records both public and private. The Vendor and the United States may utilize a mutually acceptable survey done in conformity with accepted survey standards and state and local requirements.

II. Option and Purchase Price:

A. By law, the consideration for this Option is limited to one dollar (7 U.S.C. 428a (b)).

B. The purchase price for the Property is NINETY-FIVE THOUSAND AND NO/100 DOLLARS (\$95,000.00), such amount being payable to the Vendor at closing. When the services of an escrow agent are utilized for closing, the Vendor and the United States may, by mutual agreement, provide for other payment mechanisms in the closing instructions such as electronic funds transfer.

C. The purchase price for the Property is based on the following premises regarding the quantity of land to be conveyed (check a box):

- In gross, lump sum* – The purchase price is for the Property as described, and is not based on a per acre calculation. The purchase price will not be adjusted as a result of any subsequent survey.
- Per acre* – The purchase price is predicated on the value of the land per acre multiplied by the number of acres. For a purchase of the Property on a per acre basis, the Parties agree to adjust the purchase

price to conform with the final acreage as determined by survey provided that such adjustment in price is supported by an appraisal approved by the Forest Service.

D. The purchase price shall be supported by an appraisal prepared in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions. Except as may be specifically provided for herein, the Property shall not be subject to reappraisal due to the passage of time required to meet the substantive and procedural requirements set forth in this Option. Furthermore, an appraisal shall not be required if the Secretary determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data. See: 49 C.F.R. 24.102(c) (2).

III. Acceptance of the Vendor's Offer:

A. The Secretary, acting through the authorized representative of the Forest Service, shall have one year from the date the Vendor executes this Option to exercise it. The exercise of this Option shall be evidenced by the signature of an authorized representative at the indicated place below and dated within one year or such time as otherwise provided herein.

B. After the Secretary accepts the Vendor's offer by exercising this Option, the Option shall be delivered to the Vendor by first class mail or other delivery mechanism at the discretion of the Secretary.

C. The operative date for acceptance of the Vendor's offer by the Secretary shall be the date on which the Option is exercised, not the date of receipt of the Option by the Vendor. Delivery of the Option after one year from the date of the exercise of this Option shall not invalidate the contract.

IV. Congressional Oversight

A. If this acquisition is made under the authority of the Weeks Act of 1911 (as indicated at the top of this instrument), and if the amount of the purchase price is \$150,000 or more, this Option is subject to a 30-day Congressional oversight as required by section 17(b) of the National Forest Management Act (16 U.S.C. 521b), and the Secretary will provide notice of this proposed purchase for oversight within the option period. If the amount of the purchase price is \$250,000 or more, this Option will be subject to approval by the Under Secretary of Agriculture for Natural Resources and Environment in accordance with departmental policy and the Forest Service shall seek to secure such approval expeditiously.

B. In furtherance of any required oversight, the Vendor agrees to cooperate and provide any information required by the Under Secretary of Agriculture, and the appropriate committees of the Senate and the House of Representatives, including:

- (1) The location and size of the Property;
- (2) The purchase price and the criteria used in determining the purchase price;
- (3) The identity of the owners of the Property;
- (4) The assumption of relative costs between the Vendor and the Secretary;
- (5) The environmental condition of the Property.

C. If the 30-day oversight period is pending as of the one-year anniversary date of this Option, the Secretary shall have an additional 30 days to exercise this Option.

D. In the event that any Senator or Member of Congress responds during the oversight period requesting more information or otherwise invokes Congressional oversight procedures concerning this proposed purchase, the period by which the Secretary may exercise this Option shall be extended for such reasonable period as to accommodate Congressional requests or procedures.

V. Rights of Entry of the United States

A. The authorized representative of the United States may enter the property for the purposes of conducting an appraisal and determining an agency approved value.

B. During the option period, and after the Option is accepted by the Secretary, officers and authorized agents of the United States shall have, at all necessary and reasonable times, the right to enter upon the Property for any purpose related to determining its suitability for purchase, including: inspection of the land and facilities by government and elected officials and consultants; further appraisal; survey; timber cruise; wildlife inventory; investigation for environmental contamination, including the right to take samples for off site examination and testing; and any other activity deemed necessary or desirable by the Secretary to facilitate the acquisition of the Property.

C. The Vendor shall be given reasonable advance notice of entry onto the Property. After such reasonable notice, it is the responsibility of the Vendor to notify any tenants on the Property of such entry.

VI. Management Responsibilities of the Vendor

A. The Vendor agrees not to do or authorize others to do any act by which the value or title to the Property may be diminished or encumbered. Specifically, unless provided in this Option, there shall be no extraction of oil, gas, minerals, or mineral materials, and no harvesting or cutting of timber, or any other removal of renewable or nonrenewable resources, or the removal or demolition of improvements.

B. In the event of any unauthorized violation of paragraph VI-A, the Secretary may void this Option, or may require an equitable adjustment of the purchase price including damages for any added administrative costs, or require other forms of restitution. The equitable adjustment may be based on a reappraisal of the property, a cruise of timber, or other method of ascertaining the remaining value of the property or the value of the resources removed or diminished.

VII. Liabilities and Risk of Loss

A. The risk of loss or damage to the Property occurring prior to the vesting of satisfactory title in the United States shall be borne by the Vendor. In the event of such a loss, the Secretary may, at his discretion, without liability, withdraw from the transaction, and terminate this contract after the Option has been exercised and prior to the vesting of satisfactory title in the United States.

B. In the event of loss or damage to the Property prior to the vesting of satisfactory title in the United States, the parties may mutually agree to adjust the purchase price and proceed with the transaction, based upon appraisal or other acceptable valuation methodologies.

C. The United States shall be liable for claims that may arise by reason of this instrument or any activity conducted pursuant to this instrument to the extent that such claims are cognizable under the provision of Federal Tort Claims Act (28 U.S.C. 2671-2680, as amended).

D. The United States shall not be liable to the Vendor for any loss, damages, lost rent, temporary taking, or other cause of action in the event that this Option is not exercised during the option period.

VIII. Title

A. The United States shall, at its cost, secure an abstract, certificate of title, or other evidence of title satisfactory to the Attorney General of the United States. (49 CFR 24.106; 40 U.S.C. 3111)

B. At closing, the title to the Property shall be approved by the Department of Agriculture, Office of the General Counsel, in conformity with the title standards and regulations of the Attorney General of the United States.

C. Prior to closing, any encumbrance, exception or other cloud on the title including encroachments shall be eliminated and quieted, unless deemed administratively acceptable by the Secretary pursuant to instructions given by the Office of the General Counsel.

D. The Vendor shall deliver, without cost to the United States, such documents in Vendor's possession as may be required, including any abstract or certificate of title relating to the land. Such documents shall be returned if the purchase is not consummated.

IX. Conveyance Instruments

A. The Vendor shall execute and deliver at closing a general warranty deed conveying the Property to the "United States of America, and its assigns."

B. The Vendor shall deliver, without cost to the United States, such other documents as may be required to convey good and merchantable title, including trust instruments, powers of attorney, corporate resolutions, and similar instruments.

C. Unless otherwise agreed to herein, the deed or deeds of conveyance shall be prepared by the Secretary, at the expense of the United States.

X. Reserved Rights

A. No rights shall be reserved in this conveyance unless specifically agreed upon in this instrument.

B. Reservations of any rights in the land shall be acceptable to the Secretary, and shall be subject to rules and regulations required for the protection of National Forest System lands and resources, including but not limited to, conditions, rules and regulations governing:

- (1) The exercise of reserved timber rights (Title 36, Code of Federal Regulations, section 251.14);
- (2) The exercise of reserved mineral rights (Title 36, Code of Federal Regulations, section 251.15);
- (3) Reserved occupancies (Title 36, Code of Federal Regulations, section 251.17);
- (4) Reserved rights-of-way (Title 36, Code of Federal Regulations, section 251.18);
- (5) Reserved water rights (Title 36, Code of Federal Regulations, section 251.19).

C. The following reservations shall be incorporated in the deed of conveyance: None

XI. Closing

A. After acceptance of this Option, the Secretary shall have reasonable time to close. A reasonable time shall include one year from the date of acceptance of this Option, with reasonable extension as may be necessary to complete necessary pre-closing activities and inspections including actions necessary to resolve clouds on the title, to conduct a cadastral survey, to conduct environmental analyses (including all appropriate inquiries required under sections 101(35)(B)(ii) and (iii) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601(35)(B)(ii) & (iii)), to survey and preserve cultural resources, and to remediate contamination.

B. It is agreed that, if the Vendor fails to do so, the United States may pay any taxes, which are in lien against the land and, upon request of the Vendor, may satisfy any other encumbrances. The amounts thus expended shall be deducted from the purchase price of the land.

C. The services of an escrow agent acceptable to both parties may be utilized in the closing of this conveyance. In such event, the Parties shall agree upon closing instructions to the escrow agent and agree to an allocation of the escrow costs. Unless otherwise agreed to herein, the costs of escrow shall be shared equally between the United States and the Vendor.

XII. Costs

- A. Each party shall pay their own attorneys fees and charges.
- B. The Vendor shall pay any grantor's taxes and tax stamps, as well as any real property taxes or assessments owed on the Property up to and including the date of closing.
- C. The United States shall pay the costs of recording deeds and other instruments necessary for conveyance of good title.
- D. As stated in 49 CFR 24.106, the United States shall reimburse the Vendor for all reasonable expenses the Vendor necessarily incurred for:
 - (1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incident to conveying the real property to the United States. However the United States is not required to pay costs solely required to perfect the owner's title to the real property;
 - (2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and
 - (3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

XIII. Remedies of the United States

- A. In the event the Vendor cannot convey satisfactory title to the Property, or the Vendor otherwise fails to perform, the Secretary has discretion to seek specific performance of this Option or to acquire the Property by condemnation. In the event that the Secretary seeks legal remedies to compel conveyance, the payment of consideration shall be as agreed to herein. This Option may be introduced in such proceedings as the stipulation of the Parties hereto with regard to all matters contained herein. In the event the United States resorts to judicial proceedings to enforce its rights under this Option, the Secretary shall be entitled to collect damages resulting from Vendor's breach including attorneys' fees.
- B. The Secretary may at any time record this Option in the land records of the county or jurisdiction wherein the Property is located. For that purpose, Vendor agrees to provide acknowledgements if such are required for recordation.

XIV. Environmental Quality Provisions

- A. The Vendor agrees to inspect his/her land for the presence of hazardous substances, pollutants and contaminants, and petroleum; provide documentation of results of the inspection; and certify that to the best of his/her knowledge there are no releases, threatened releases, disposal or storage of hazardous substances, pollutants, contaminants or petroleum on the lands which are being conveyed. The terms "hazardous substance," "pollutants and contaminants," and "release" are defined in 42 U.S.C. 9601(14), (33) and (22), respectively.
- B. In the event it is discovered, before the United States has recorded the deed which conveys the subject Property to the United States, that the Property is contaminated, including but not limited to contamination resulting from solid wastes, hazardous wastes or substances, pollutants or contaminants, or other regulated substances, or that the subject Property is in a condition which would constitute a violation of any applicable federal, state or local laws or regulations relating to the protection of health, safety, or the environment, the United States may, at its sole election and without incurring any liabilities or obligations arising there from, either:

- (1) Declare this contract to be null and void; or
- (2) adjust the acreage and description of the Property to exclude from the conveyance those portions of the property that are affected by the newly discovered contamination condition. Correspondingly, the

consideration to be given by the United States as set forth under this Option shall be adjusted accordingly to reflect the adjustment of the Property to be conveyed to the United States; or

C. In the event that the Vendor elects to remediate the contamination, the United States may extend this contract for a reasonable time to allow the Vendor to complete the remediation and for the Secretary to determine whether those portions of the property affected by the remediation are acceptable to the United States. Correspondingly, the consideration to be given by the United States as set forth under this Option shall be adjusted accordingly to reflect any diminution in the value of the Property as a result of any residual contamination, continuing operation and maintenance requirements, or land use controls.

D. Cleanup and removal of inorganic debris, garbage, refuse (such as tires, old car bodies, fences, trash dumps, hunter shelters, etc.), and improvements to which no value is assigned, shall be the responsibility of the vendor unless waived in writing by the United States. Cleanup will be approved by the authorized representative of the Secretary as a condition precedent to closing. The following improvements will be removed at Vendor's expense:

None.

XV. Relocation Benefits (49 CFR Part 24). Check appropriate box:

- The result of this acquisition is that a displaced person as defined in regulation is required to relocate. Therefore, any relocation benefits payable to such displaced person shall be governed by applicable regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601, *et seq.*). See: 49 C.F.R. 24.
- No relocation benefits are to be claimed under this Option as the Vendor who voluntarily conveys his or her property without recourse to the power of eminent domain is not a displaced person.

XVI. General Provisions

A. No Member of Congress, Delegate to Congress, or Resident Commissioner, after his election or appointment, and either before or after he has qualified, and during his continuance in office, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. However, this shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such corporation or company.

B. All representatives, warranties, obligations, and rights set forth herein shall survive the closing and not merge with the deed.

C. All terms and conditions with respect to this offer are expressly contained herein and the Vendor agrees that no representative or agent of the United States has made any representations or promise with respect to this offer not expressly contained herein.

D. The Secretary may assign any and all rights of the United States under this Option to any other party.

E. All commitments of federal funds are subject to Congressional appropriations and any other necessary funding conditions and approvals.

F. This option is a contract binding on the Vendor and, when accepted by the United States, becomes a contract mutually binding on both parties.

XVII. Special Provisions: None

IN WITNESS WHEREOF, the Vendor has executed this Option on this ____ day of ____, 20____.

VENDOR:

BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY, COLORADO

(Witness)

(Witness)

BY: _____

Printed Name: _____

Title: _____

ACCEPTANCE OF OFFER:

In consideration of the foregoing, the Secretary for and in behalf of the United States, agrees to acquire the land herein described, at the price hereinabove set forth, and in accordance with the terms of this instrument.

The offer of the Vendor as contained in this option is hereby accepted for and on behalf of the United States of America this ____ day of ____, 20____.

SECRETARY OF AGRICULTURE

By: _____

JAMES S. BEDWELL
Director, Recreation, Lands and Minerals
Rocky Mountain Region
USDA - Forest Service

Exhibit ASixth Principal Meridian

THE ERA, LITTLE NEL, EMMA AND CONTINENTAL LODES, U.S. MINERAL SURVEY NO. 17294, COUNTY OF SUMMIT, STATE OF COLORADO.

CHALLENGER LODE, U.S. MINERAL SURVEY NO. 920, COUNTY OF SUMMIT, STATE OF COLORADO.

RELIANCE LODE, U.S. MINERAL SURVEY NO. 1436 AND RESOLUTE LODE, U.S. MINERAL SURVEY NO. 1435 AND LORAIN LODE, U.S. MINERAL SURVEY NO. 543, COUNTY OF SUMMIT, STATE OF COLORADO, AND ANY PORTION OF RELIANCE LODE THAT MAY BE LOCATED IN CLEAR CREEK COUNTY, COLORADO.

THE BRAGANZA LODE MINING CLAIM, U.S. MINERAL SURVEY NO 17719, AND THE BRAGANZA EXTENSION LODE, U.S. MINERAL SURVEY NO 17719, COUNTY OF SUMMIT, STATE OF COLORADO.

SILVER WAVE LODE, U.S. MINERAL SURVEY NO. 1774, COUNTY OF SUMMIT, STATE OF COLORADO.

CLIMAX LODE, U.S. MINERAL SURVEY NO. 17737, SILVER MEDAL LODE U.S. MINERAL SURVEY NO. 2184 AND CRESENT LODE U.S. MINERAL SURVEY NO. 2183, COUNTY OF SUMMIT, STATE OF COLORADO.

WHALE EXTENSION, U.S. MINERAL SURVEY NO. 2185, IN SECTION 11, TOWNSHIP 6 SOUTH RANGE 76 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF SUMMIT, STATE OF COLORADO.

REVENUE LODE, U.S. MINERAL SURVEY NO. 458, COUNTY OF SUMMIT, STATE OF COLORADO.

GLENDALE LODE, U.S. MINERAL SURVEY NO. 1802A, ISRAEL WILLIAMS LODE, U.S. MINERAL SURVEY NO. 1803A AND LITTLE FRED LODE, U.S. MINERAL SURVEY NO. 5188, COUNTY OF SUMMIT, STATE OF COLORADO.

LUCKY BALDWIN LODE, U.S. MINERAL SURVEY NO. 5969, COUNTY OF SUMMIT, STATE OF COLORADO.

Containing 95.434 acres, more or less.