

FDA905TH

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF AGENCY OR CONTRACTOR: WILLIAM SERVISS FOR FRANK DUNN AUTO

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: CLEAN-UP AND VACATING
AGREEMENT OF LOTS 6 AND 7 BLOCK 2 SOUTH FIFTH STREET SUBDIVISION

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1990

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

STIPULATION AND AGREEMENT

Don McSee -
forwarded you
Dan Wilson
10/4/90.
JH

In order to settle the several claims between the parties, the parties agree to be bound by the terms hereof and agree that in the event of default by a party, the other party shall be entitled to entry of judgment by the Court to the end that the non-defaulting party obtains the benefit of the provisions of this stipulation.

The parties agree as follows:

1) William Serviss, d/b/a Frank Dunn Auto ("Serviss") shall vacate and clean the real property, owned by the City of Grand Junction ("City"), commonly known as the Frank Dunn property, and more particularly described on the attached exhibit, according to the following schedule, terms and conditions.

2) The portion of the property lying to the South of Struthers Avenue has been cleaned and vacated by Serviss. Except as provided herein, that portion of the property described as Lots 6 and 7, Block 2, South Fifth St. Subdivision, which lies immediately west of Serviss' lot, shall be cleaned and vacated in its entirety by Serviss by 5 p.m. on November 10, 1990. The balance of the property shall be cleaned and vacated in its entirety by Serviss by 5 p.m. on November 10, 1990. In order to be certain that the foregoing deadlines are acceptable to the federal Department of Energy, Serviss has agreed to verify that such deadlines will not interfere with, and are acceptable to, the Department of Energy.

3) For the purposes of this stipulation, "cleaned" means that Serviss shall remove all personal property from the property, specifically, he shall remove from the property all things which are three inches or longer in any dimension including all tires, metal, auto parts and all debris including but not limited to automobile parts, scrap metal, plastic, glass, tires, and other trash, rubbish or waste naturally occurring or manmade, and "cleaned" includes the other requirements set forth in this paragraph. Things which are completely buried and are not moved in any way as a result of the "cleaning" to be done by Serviss are not required to be removed by Serviss pursuant to this stipulation, unless such buried materials or debris was buried during the time that Serviss occupied the property. There are several pieces of concrete and asphalt which Serviss represents were not placed on the property during his tenancy; based on that representation, the City has agreed that Serviss is not required to remove and dispose of those pieces which are located as shown on the attached Exhibit B. Serviss hereby warrants and represents that neither he nor any employee, agent or assign of his has buried nor will bury any debris in on or about the subject property. Any and all debris which is exposed or partially buried and meets the size criteria established herein shall be removed by Serviss.

4) The City hereby agrees to allow Serviss to temporarily store automobile tires on Lots 6 and 7, Block 2, South Fifth Street Sub-division until 5 p.m. on November 10, 1990 or within 60 days after the Mesa County Landfill will accept tires. The tires shall be stacked in a neat and orderly fashion and shall be stacked and maintained in conformity with applicable Codes and Ordinances of the City. Serviss shall be responsible for contacting the City's Fire Marshal in advance of stacking of the tires in order to ensure that compliance with applicable codes is had. All risk of loss and all liability which may accrue because of such storage shall be solely Serviss'.

5) Serviss agrees to pay rent to the City of 100.00 dollars per day, or portion thereof, in the event Serviss fails, for whatever reason whether or not beyond his control, to comply strictly with the cleanup and vacating deadlines agreed to herein, including the removal of all tires on the property by the deadline in paragraph (4) above. Any amounts due to the City pursuant to this stipulation shall accrue interest at the rate of eighteen percent per annum. Notwithstanding the foregoing, Serviss shall not have to pay such rent which would otherwise be payable pursuant to this provision for that period of time that Serviss' fails to perform because of an act of God such as flood or storm or from an act of the City which prevents Serviss from complying.

6) Serviss agrees to pay and the City hereby agrees to accept \$5000.00 payable in accordance with the attached Exhibit C; there shall be no prepayment penalty. Serviss agrees to confess judgment to enforce this stipulation in the event of his default. Such \$5000 constitutes the full and complete settlement for preexisting unpaid rent and for rent which would otherwise have accrued to the City, except as stated herein.

7) Serviss acknowledges that the City will suffer extensive damages if the schedule is not adhered to and the cleanup is not completed in a timely fashion as set forth because the City may lose the benefits of mill tailings remediation by the federal Department of Energy. Therefore, Serviss further agrees that in the event he fails to abide by the terms of this stipulation, he shall be liable to the City for the costs required to remediate the property, if the City incurs such expenses because of Serviss' action or inaction.

8) Other than as set forth herein, the parties waive all claims they may have as to the other intending that this stipulation constitute a complete release and accord.

9) Serviss has represented that he, nor those for whom he is responsible, have placed, deposited or discharged any materials or substances on the property regulated or prohibited by state or federal laws, such as the federal Resource and Conservation Recovery Act. Based on this representation, the City assumes that no hazardous nor toxic materials or substances are on, under, or in

the property due to the acts or failure to act of Serviss, his agents, employees or assigns. The parties do not by this stipulation intend to deal with such issues but rather, intend that any such hazardous or toxic materials or substances are be dealt with independently of this action or this stipulation.

10) This stipulation is enforceable at law and in equity and the parties agree that any and all actions taken in the enforcement of its terms and conditions shall be brought in Mesa County Colorado. Attorney fees, costs and expenses, including expert's fees and costs, incurred in enforcing this stipulation shall be borne by the breaching party or the party failing to comply. Interest shall accrue on any unpaid fees, costs, expenses, or money judgments at the rate of nine percent per annum.

11) Serviss has had the benefit of advice and counsel of his attorney; Serviss understands that he is waiving legal rights and possible defenses and that the City is relying on his agreement to abide by such waiver and his agreement to cooperate with the contemplated actions of the City in the event of default or breach of this stipulation.

CITY OF GRAND JUNCTION

By: *Mark A. Olsen*

Dated: 11/5/90

William F. Serviss
William Serviss

Dated: October 10, 1990

Approved: *Donald McBee*
Donald McBee
Attorney for William Serviss

Dated: 10 Oct 90

Beginning Principal (08/28/90) = \$5,000.00
 Annual Interest Rate = 15%
 Future Value (01/01/91) = \$5,256.85

<u>Pmt. Date</u>	<u>Amount</u>	<u>Principal</u>	<u>Interest</u>	<u>Balance</u>
01/01/91	\$1,000.00	\$743.15	\$256.85	\$4,256.85
02/01/91	1,000.00	946.79	53.21	3,310.06
03/01/91	1,000.00	958.62	41.38	2,351.44
04/01/94	1,000.00	970.61	29.39	1,380.83
05/01/91	1,000.00	982.74	17.26	398.09
06/01/91	403.07	398.09	4.98	-0-
TOTALS	\$5,403.07	\$5,000.00	\$403.07	