

RGI95MAI

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: UMTRA

NAME OF AGENCY OR CONTRACTOR: RUST GEOTECH
INCORPORATED, UNITED STATES DEPARTMENT OF ENERGY (DOE),
COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
(CDPHE)

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: REMOVAL OF
MILL TAILINGS FROM 531 MAIN STREET, DOE AGREEMENT NO. DE-
R004-95AL6487A, DOE/STATE OF COLORADO COOPERATIVE AGREEMENT
NO. DE-FC04-81AL16257, DOE ID NO. GJ00863-VL

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1995

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

RUST Rust Geotech Inc.

A WMX Technologies Company
P.O. Box 14000 • 2597 B¹/₄ Road
Grand Junction, Colorado 81502-5504

Phone 970.248.6000
Fax 970.248.6040

April 24, 1995

City of Grand Junction
Attn: Mark Relph
250 North Fifth Street
Grand Junction, CO 81501-2668

Subject: Remedial Action Work on 531 Main Street

Dear Mr. Relph:

Rust Geotech, Inc. will work with the City of Grand Junction on this project in the following manner:

1. The work will not begin before August 1, 1995 and will be completed within two weeks from the date of beginning construction or as mutually agreed upon by both parties and to the fullest extent possible will not occur during special events scheduled on Main Street. No work will occur during the month of September 1995. Should quantities of contamination grow significantly beyond that assessed, this schedule may not be possible to maintain.
2. A two week notice for the schedule of construction shall be given to the City of Grand Junction Public Works Department and office of the Grand Junction Downtown Development Authority prior to work beginning in the field. The notice will include the name of the contractor, construction start and ending dates and times for construction.
3. Concrete replacement will be in accordance with the City of Grand Junction construction standards.

A schedule of special events is requested from the City so that construction can be scheduled around those events.

Your cooperation is appreciated.

Sincerely,



Fred Hudson
Subcontract Administrator

VICINITY PROPERTY
REMEDIAL ACTION AGREEMENT

THIS AGREEMENT, by and among the UNITED STATES OF AMERICA (hereinafter referred to as the "Government"), represented by the United States Department of Energy (hereinafter referred to as "DOE"), the STATE OF COLORADO (hereinafter referred to as the "STATE"), represented by the COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (hereinafter referred to as the "CDPHE") and CITY OF GRAND JUNCTION (hereinafter referred to as the "Owner"),

WITNESSETH THAT:

WHEREAS, pursuant to Title I of the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604 (hereinafter referred to as the "Act"), the Government, represented by DOE, and the State have entered into a cooperative agreement (hereinafter referred to as "Cooperative Agreement") in order to implement a jointly-conducted program of assessment and remedial action at that certain DOE-designated processing site in Mesa County, Colorado, known as the Climax Mill Site, together with associated vicinity properties; and

WHEREAS, the Owner owns and controls a parcel of real property (hereinafter referred to as the "Vicinity Property") described in the map attached hereto as Appendix A; and

WHEREAS, DOE has designated the Vicinity Property for remedial action and the Owner has agreed to such remedial action under the terms set forth below;

NOW THEREFORE, it is agreed that:

1. Right of Entry, Inspection and Right to Restrict Access.
 - a. The Owner owns and controls the Vicinity Property and hereby grants to the State and to DOE, their authorized representatives, contractors and subcontractors, without payment of any land use charge: (a) right of entry in, across, and over the Vicinity Property to perform remedial action on the Vicinity Property and to take soil samples, perform radiologic surveys, and to perform or take any other reasonable action consistent with the expeditious performance and evaluation of such remedial action; and (b) the right to restrict access to, and post appropriate warning signs on, such parts of the Vicinity Property, as may be necessary, in order to facilitate remedial action and protect the health and assure the safety of the public: PROVIDED, that such rights are subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

- b. The Owner further grants to the State and to the Government, including DOE, the Nuclear Regulatory Commission, and the Environmental Protection Agency, and their authorized representatives, the right to periodically enter upon the Vicinity Property at any time in order to inspect the Vicinity Property for the purposes of carrying out this Agreement and enforcing the Act and any rules and regulations promulgated under the Act.
2. Title to Residual Radioactive Materials. The Owner hereby grants to DOE all right, title and interest in all residual radioactive materials, equipment, vegetation, improvements and other property permanently removed from the Vicinity Property by the State or DOE, their authorized representatives, agents, contractors and subcontractors, in performing remedial action upon the Vicinity Property.
3. Remedial Action. The remedial action to be performed shall be that which is described in the Vicinity Property Remedial Action Plan attached hereto as Appendix B and incorporated herein by reference, subject to such changes deemed necessary by the State and DOE during the performance of such remedial action. The Owner shall be informed of all such changes. The remedial action contemplated herein shall be performed by the DOE, its authorized representatives, agents, contractors and subcontractors. The Owner shall not be held liable or have a duty to pay for any of the remedial action work performed hereunder by DOE, its authorized representatives, contractors and subcontractors.
4. Restoration. DOE shall be responsible for loss or destruction of, or damage to, the Owner's real and personal property caused by the activities of DOE, its authorized representatives, contractors and subcontractors, in exercising any of the rights granted in this Agreement: PROVIDED, that such responsibility shall be limited to restoration of such real and personal property to a condition reasonably comparable to its condition immediately prior to the performance of remedial action by techniques of backfilling, seeding, sodding, landscaping, rebuilding, repair or replacements indicated in the Vicinity Property Remedial Action Plan (Appendix B), and such other methods as may be agreed to by the State, DOE, and the Owner during the course of remedial action under this Agreement.

The parties acknowledge that use of the phrase "condition reasonably comparable to its condition immediately prior to the performance of remedial action" contemplates that the work performed by the DOE through its contractors or subcontractors may include the use of alternate materials or variations due to the use of new materials.

PROVIDED FURTHER, that to the extent that latent or patent defects or out-of-code conditions exist on the Vicinity Property, and to the extent that said defects or conditions were either pre-existing or were not the subject or result of the remedial action, DOE shall not be responsible for the correction of, or any costs associated with the correction of, such defects or conditions except to the extent DOE, in its sole discretion, determines that the correction of such defects or conditions would facilitate the performance of remedial action on the Vicinity Property.

5. Release of Liability/Hold Harmless. Subject to the provision of Paragraph 4, Restoration, the Owner, on behalf of himself, his heirs, successors and assigns, hereby: (1) releases the State and the Government from, and holds the State and Government harmless against, any liability or claim thereof by the Owner on behalf of the Owner, his heirs, successors or assigns arising out of the performance of any remedial action on the Vicinity Property; and (2) releases contractors and subcontractors of the Government, and holds contractors and subcontractors of the Government harmless against, any liability or claim thereof by the Owner on behalf of the Owner, his heirs, successors or assigns arising out of the performance of any remedial action on the Vicinity Property, if the Government, by virtue of its contractual relationship, would be ultimately financially responsible for such liability or claim. For purposes of this Agreement the term "subcontractors" includes all tiers of subcontracts.
6. State or Government-Owned Property. Except for title to personal property brought to the Vicinity Property by DOE or the State in order to restore the Vicinity Property pursuant to the Vicinity Property Remedial Action Plan (Appendix B) or Paragraph 4, Restoration, title to all personal property brought to the Vicinity Property by the State or the Government, or their authorized representatives, contractors or subcontractors, during the term of this Agreement shall remain in the State or the Government, as appropriate, and such title shall not be affected by incorporation or attachment thereof to any property not owned by the State or the Government, nor shall personal property, or any part thereof, become a fixture or lose its identity as personalty by reason of affixation to any realty. The Owner shall not be liable for any loss of or damage to such State or Government personal property, or for expenses incidental to such loss or damage, except that the Owner shall be responsible for any such loss or damage (including expenses incidental thereto) which results from the willful misconduct or lack of good faith of the Owner.
7. Permits and Licenses. The State and DOE, their authorized representatives, contractors and subcontractors, shall obtain all necessary permits or licenses and abide by all applicable Government, State, and Local laws, regulations and ordinances.
8. Lessee/Sublessee Consent. If the Vicinity Property is subject to any leases or subleases, the Owner shall obtain the consent of the lessees and sublessees, as appropriate, to enter into this Agreement. Such consent shall be evidenced by the signatures of the lessees and sublessees in the space provided on the Lessee/Sublessee Consent Page of the Agreement. Such consent shall constitute the unconditional agreement, by each lessee or sublessee, with all terms and conditions of this Agreement, including but not limited to: the terms and conditions regarding right of entry and inspection, right to restrict access, transfer of title to residual radioactive materials and other property permanently removed from the Vicinity Property, title to State or Government-owned property, notice to subsequent purchasers, term and termination, and appropriations; Appendix A; and Appendix B. By such consent, each lessee or sublessee, on behalf of himself, his heirs, successors and assigns, hereby: (1) releases the State and the Government from, and holds the State and Government harmless against, any liability or claim thereof by the lessee or sublessee on behalf of the lessee or sublessee, his heirs, successors or assigns arising out of the performance of any remedial action on the Vicinity Property; and (2)

releases contractors and subcontractors of the Government, and holds contractors and subcontractors of the Government harmless against, any liability or claim thereof by the lessee or sublessee on behalf of the lessee or sublessee, his heirs, successors or assigns arising out of the performance of any remedial action on the Vicinity Property, if the Government, by virtue of its contractual relationship, would be ultimately financially responsible for such liability or claim. For purposes of this Agreement, the term "subcontractors" includes all tiers of subcontracts.

9. Binding Effect. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Owner. Except to the extent lessees and sublessees have consented to this Agreement pursuant to Paragraph 8, Lessee/Sublessee Consent, the Owner shall: (1) notify the State Site Representative or the Contracting Officer as designated in the signature block below, if the Vicinity Property is, or at any time during the term of this Agreement should become, leased, sold, or otherwise transferred to a party other than the Owner; and (2) give written notice to any purchaser, lessee, or transferee of the applicability of the rights of the State and the Government contained in this Agreement when such purchase, lease, or transfer takes place during the term of this Agreement.
10. Notice to Subsequent Purchasers. The State shall take such action as may be necessary, pursuant to DOE regulations and with the informed consent of the Owner by virtue of his or her execution of this Agreement, to assure that any person who purchases the Vicinity Property shall be notified, through the public land records, prior to the purchase, of the nature and extent of residual radioactive materials removed from the Vicinity Property, including the condition of the Vicinity Property after such action.
11. Covenant Against Contingent Fees. The Owner warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Owner for the purpose of securing business. For breach or violation of this warranty, DOE and the State shall have the right to annul this Agreement without liability or in its discretion to recover from the Owner, the full amount of such commission, percentage, brokerage, or contingent fee.
12. Officials Not to Benefit. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.
13. Health and Safety. The State and the DOE, their authorized representatives, contractors and subcontractors, shall use their best efforts to protect the health and assure the safety of the public during performance of remedial action under this Agreement.

14. Term and Termination.

- a. The term of this Agreement shall commence on the effective date hereof and shall continue, unless sooner terminated hereunder, until the remedial action upon the Vicinity Property is completed and certification by DOE, through radiologic measurements deemed appropriate by DOE, that the Vicinity Property meets the applicable radiation standards promulgated by the U. S. Environmental Protection Agency (40 CFR Part 192) for the protection of the public health, safety and environment.
- b. The State and DOE may terminate this Agreement at any time and for any reason, and such termination shall be effected by delivery, by the State or DOE, or both, to the Owner of a Notice of Termination specifying the reason for the termination and the date upon which such termination becomes effective: PROVIDED, that this Agreement shall not be so terminated until such time as the State and DOE restore the Vicinity Property to a condition reasonably comparable to its condition immediately prior to the performance of remedial action thereon under this Agreement.

15. Appropriations and Expenditures. To the extent that provisions of this Agreement call for the expenditure of appropriated funds in fiscal years subsequent to the current fiscal year, such provisions shall be subject to the availability of funds, appropriated by both Congress and the State, which may be legally expended for such purposes.

16. Effective Date. The effective date of this agreement shall be the date of execution by the State of Colorado, the DOE, and the Owner, whichever date is the latest.

17. Owner Responsibility. With respect to the work performed under this Agreement, except as to hidden or latent defects, the Owner shall have a period of seven (7) calendar days after completion of the Final Inspection and Approval to submit a written objection to the DOE designating those portions of the completed work which the Owner believes are not in compliance with this Agreement. Resolution of the written objection, or failure to submit a timely written objection, shall be conclusively deemed as a waiver of defects in the performance of the work, except for latent or hidden defects. The effective date for any and all warranties that DOE may enforce for the benefit of the Owner, under Paragraph 18 hereof, shall be the date of the Final Inspection and Approval.

18. DOE Responsibility. The Government, for the benefit of the Owner, shall use its best efforts to enforce any warranties, expressed or implied, which the Government or its prime contractors are entitled to in connection with the work performed under this Agreement caused by omission of materials, defective materials, poor or improper workmanship.

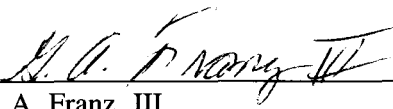
19. Appendices. The following Appendices are attached to and made a part of this Agreement:

Appendix A - Vicinity Property Map and Legal Description;
Appendix B - Vicinity Property Remedial Action Plan

DOE Agreement No.: DE-R004-95AL64871
DOE/State of Colorado, Cooperative
Agreement No.: DE-FC04-81AL16257
DOE ID Number: GJ-00863-VL

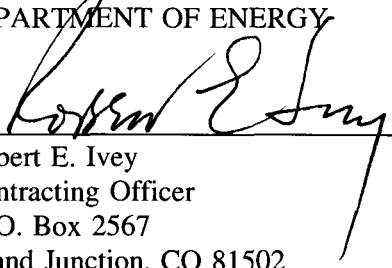
IN WITNESS WHEREOF, the parties hereto have executed this Agreement in several counterparts.

THE STATE OF COLORADO
DEPARTMENT OF PUBLIC HEALTH
AND ENVIRONMENT

By: 
G. A. Franz, III
Hazardous Materials & Waste
Management Division
Colorado Department of Public
Health and Environment


Date: 3-24-95

THE UNITED STATES OF AMERICA
U. S. DEPARTMENT OF ENERGY

By: 
Robert E. Ivey
Contracting Officer
P. O. Box 2567
Grand Junction, CO 81502

Date: 3/27/95

OWNER: _____

By: 
CITY OF GRAND JUNCTION
Mark Achen, City Manager
250 North 5th Street
Grand Junction, Colorado 81501

Date: 4/25/95

DOE Agreement No.: DE-R004-95AL64871
DOE/State of Colorado, Cooperative
Agreement No.: DE-FC04-81AL16257
DOE ID Number: GJ-00863-VL

APPENDIX A

VICINITY PROPERTY MAP
AND
LEGAL DESCRIPTION

Street Address: 531 Main Street, Grand Junction, Colorado

Legal Description: Lot 8, Block 117, City of Grand Junction, County of Mesa, State of Colorado.

Vicinity Property Map: Refer to the following drawing(s) attached to this Agreement and incorporated herein by reference: 3-D00863-F1.

APPENDIX B

VICINITY PROPERTY
REMEDIAL ACTION PLAN

Surveys have shown that residual radioactive materials exist on the Vicinity Property. In order to meet the general health and environmental standards promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR 192, it will be necessary to remove the residual radioactive materials and, as may be required, such plantings and property improvements on the Vicinity Property within the shaded areas as shown in Appendix A. The shaded areas represent the DOE estimate of the extent of residual radioactive materials on the property. The exact amount of material will be determined during the remedial action.

Following removal of the residual radioactive materials and verification by the DOE that the Vicinity Property meets the EPA Standards, the Vicinity Property will be restored to a condition reasonably comparable to its condition immediately prior to the performance of remedial action. Best efforts will be made to minimize disruptions and inconveniences to the Owner.

The following sequence of remedial action operations is anticipated for this Vicinity Property:

- A. Radiologic measurements to establish and mark the areas of residual radioactive materials to guide the excavation.
- B. Photography of existing property conditions for verification during restoration work.
- C. Removal of personal property items from the affected areas for storage by owner or by DOE in a non-affected area during the remedial action.
- D. Installation of a temporary safety/security fence around the excavation site where required.
- E. Removal and disposal as required from the affected areas as shown in the following:
Drawing No.: 3-D00863-F1.
- F. Excavation of soil from the affected areas. Dust control measures will be used during excavation and loading in order to minimize airborne dispersal of residual radioactive materials as well as dust. Continuous radiologic monitoring of the excavated surface will be performed in order to determine when sufficient material has been removed. Covered dump trucks will be used to transport the residual radioactive materials from the Vicinity Property to the State of Colorado Tailings Repository. Underpinning of building foundations will be performed where necessary due to excavation.
- G. Prior to or during the course of remedial action at the Vicinity Property, DOE and the State may determine that any resident of the Vicinity Property is entitled to relocation assistance payments. Such relocation assistance payments in support of said residents removing

themselves from the Vicinity Property during all or part of the remedial action activities thereon may be used for temporary sleeping accommodations, meals, and other daily living expenses at a location other than the Vicinity Property. Entitlement of these relocation assistance payments will be in accordance with the following schedule:

1. Per Diem as follows: None
 2. The Structure will remain occupied during the remedial action. The DOE will use its best efforts to assure safe access to the building at all times while remedial action is in progress.
- H. Radiologic sampling and analysis of the site will be performed by DOE in order to certify that the uranium mill tailings or other residual radioactive materials have been removed from the Vicinity Property in accordance with the EPA Standards.
- I. Restoration of any utility service lines disturbed during remedial action and inspection to assure that they function properly as well as meet local code requirements.
- J. Backfilling of the affected areas to their original grades prior to the start of fixture replacement and landscaping where required.
- K. Re-establishment of interior and exterior concrete work, such as concrete slabs which were removed by the remedial action.
- L. Importing and finish grading of a minimum of twelve (12) inches of topsoil in those areas to be landscaped except in those cases where remedial excavation is shallower.
- M. Trees located within the areas of remedial action shall be considered as residual radioactive material and shall be removed and replaced with trees of like species, in sizes normally available from local nurseries. The replacement trees shall not exceed the sizes of the trees removed. In the event that the Owner wishes the trees to remain, an attempt will be made to save the trees by hand excavation. HOWEVER, the DOE, State, their contractors, and subcontractors shall not be liable in any manner for consequences to the trees or consequential damages occasioned by reason of attempts to save the trees and meet the EPA standards. An initial attempt to save the trees will be made by excavating to a six-inch depth within the safe working radius as determined by one foot of radius for each one inch of radius of the trunk measured at six inches above ground level. If the initial attempt to save the trees in this manner does not result in remedial action which meets the EPA standards, the trees will be removed and replaced as stated above, or if the Owner still wishes for the trees to remain, further hand excavation shall be performed to the extent required to meet the EPA standards.
- N. Landscaping of the property to a condition as closely resembling the conditions prior to beginning remedial action as possible. Lawns will be replaced with sod.

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- O. Re-establishment of any permanent fencing removed during cleanup work.
- P. Return or replacement of property items removed during the course of remedial action.
- Q. Removal of temporary safety/security fencing, if installed.
- R. Final inspection and approval (Owner will be included).

March 14, 1995
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