

Aug 07, 2009 17:22

REMEDICATION AGREEMENT AND COVENANT NOT TO SUE
FOR WINDIATE PARK

This Remediation Agreement and Covenant Not to Sue is executed on this date of Oct. 26, 1995, between the CITY OF FLINT (the "City") and the GENERAL MOTORS CORPORATION ("GM"). The City and GM shall collectively be referred to as the "Parties." This Agreement is made in reference to the following facts:

A. The City is the owner of property located between Pengally Street and Milton Drive in Flint, Michigan, commonly known as the Windiate Park (the "Park") the legal description of which is attached as Exhibit A.

B. Recent investigation has revealed that a landfill was formerly located in the Park.

C. Response activities have documented environmental impacts as a result of the presence of the landfill in the Park.

D. The Parties have a shared interest in having the Park fully remediated in a manner acceptable to the Michigan Department of Natural Resources and its successor, the Michigan Department of Environmental Quality (collectively, the "MDEQ").

E. It is the mutual intent of the Parties to expedite response activity necessary to remediate the Park.

F. GM, with the approval of the City, has proposed placement of a soil cap on the affected areas of the Park. This soil cap may become part of the final remedy.

THEREFORE, in consideration of the mutual promises and

Aug 07, 2009 17:22

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Aug 07, 2009 17:22

covenants made in this Agreement, the Parties agree as follows:

1. GM will undertake at its expense the preparation and execution of a Remedial Action Plan ("RAP") for the Park consistent with the requirements of the Michigan Environmental Response Act, MCLA §§ 20101-20142 (Part 201) for submittal to the MDEQ for approval. This RAP may include placement of a permanent soil cap over the affected areas, but GM may proceed with placement of the soil cap prior to submission or approval of the RAP. The Parties acknowledge and agree that placement of the soil cap prior to submission or approval of the RAP does not constitute a warranty or representation of any kind that the work performed will result in the achievement of the remedial criteria as established by law.

2. The contents of the RAP and the choice of remedial action and cleanup criteria proposed therein shall be determined at the sole discretion of GM with reasonable opportunity for comment by the City. It is the intent of this Agreement that GM shall have full control over preparation of the RAP, and remedial selection and implementation, consistent with the current and projected use of the property for a park.

3. A Park Committee composed of interested area residents and representatives of GM and the City will be formed to coordinate preparation of a park renovation plan. The City will pay reasonable costs associated with preparation of the plan. If the park renovation plan is acceptable to the City and GM, GM will pay reasonable costs associated with implementation of the approved renovation project. The City will maintain at its expense the Park

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Aug 07, 2009 17:22

and all related amenities in the future unless otherwise provided for in this Agreement.

4. The City will consent to and cooperate with GM in obtaining necessary state, federal and local governmental authorizations and permits necessary to implement the RAP. To the extent administratively possible, this consent includes issuance of all authorizations or permits necessary from the City free of cost to implement the RAP.

5. The City will fully cooperate with GM to obtain approval from the MDEQ of the RAP, including authorizing and implementing reasonable land use or exposure controls consistent with the current and projected use of the Park as a park, including title and/or deed restrictions, and zoning restrictions and/or variances consistent with the cleanup criteria proposed by GM and approved by the MDEQ, including, but not limited to, limitations on future use of the Park to uses that would not jeopardize the integrity of the soil cap, the erection and operation of monitoring and treatment wells, capping, and placement of permanent markers.

6. The City will provide the following in-kind services, at its sole expense, upon request by GM:

- A. The use of a survey crew as necessary to define private property boundaries inside and around the Park;
 - B. Curb removal and replacement;
 - C. GM will be responsible for tree removal and rubbish removal contemplated under the scope of this agreement.
- The City will match the monies spent by GM for tree

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Aug 07, 2009 17:22

removal and rubbish removal, up to the amount of \$25,000.00, and said funds will be used for tree replacement and/or other Park amenities;

D. Grass cutting and general Park maintenance and care before and after completion of the RAP;

E. Installation of fencing during construction to prevent trespassing, vandalism, and potential exposure to construction and remediation hazards. This does not constitute a warranty or a guarantee that the such fencing will prevent trespassing, vandalism, and potential exposure to construction and remediation hazards;

F. Raising the four catch basins and sanitary manholes inside the Park to ensure proper drainage following placement of the soil cap;

G. Raising fire hydrants to the proper grade during construction of the soil cap;

H. Repair, replacement, and installation of sidewalks following completion of the soil cap;

I. To the extent allowed by law, use, at no cost to GM, of storm and/or sanitary sewers to dispose of surface or groundwater;

J. Purchase and installation of appropriate Park signage;

K. Daily street cleaning during construction; and

L. A water supply, to be used for dust suppression and

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Aug 07, 2009 17:22

Shane Noreen

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Aug 07, 2009 17:22

equipment cleansing.

7. The City will allocate \$50,000 over a two year period for a park project to be used for maintenance of Park amenities, mowing and for regular cap maintenance. Regular cap maintenance will consist of visual inspections, mowing, reseeding as necessary and filling in settled areas. The City will be responsible in perpetuity for the regular maintenance of the cap upon its completion.

8. To ensure that the foregoing services are provided on a timely basis, the City will designate David Ready as project coordinator for the City. GM will coordinate its activities with Mr. Ready to schedule the services listed in paragraph six of this Agreement.

9. The City does hereby grant GM access to the Park in perpetuity for the purpose of performing the RAP, monitoring the remedy, placement of the soil cap, long term operation and maintenance of the remedy and remediating any adjoining properties. In addition to the provisions of this agreement, such access shall be conducted pursuant to the following:

- A. GM will make all reasonable efforts to avoid damage to any asphalt or concrete surface;
- B. GM will cause any area of the Park which it disturbs after the soil cap is in place to be restored as close as reasonably possible to its condition which existed immediately prior to the activity causing the

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Aug 07, 2009 17:22

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disturbance;

Aug 07, 2009 17:22

C. Unless the Parties agree in writing, upon permission of the MDEQ, GM shall forthwith close and remove any monitoring wells and plug the well holes. The removal of the monitoring wells and the plugging of any well holes shall be done in accordance with all applicable requirements of federal, state and local statutes, ordinances, rules and regulations and City construction specifications;

D. In all undertakings by either Party to procure any samples from the Park, the other Parties representative shall have the right upon notice to representatives of the Party procuring the samples, to obtain a split sample of such sampling. The Party seeking to split the samples will provide sampling containers for its samples and will be solely responsible for any tests conducted on those samples; and

E. Both Parties agree to deliver to the other, a copy of all data generated under the scope of this Agreement within five (5) business days after its validation by any applicable quality control process.

10. The parties understand and agree that this Agreement (or actions referred to in or required by this Agreement) is not, and shall not be construed as, an admission by either of the Parties of any liability, wrongdoing, or violation of local, state or federal law.

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Aug 07, 2009 17:22

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Aug 07, 2009 17:22

11. (a) Subject to paragraph 19, and except as provided in subparagraph (b) below, each of the Parties, on behalf of it and its respective departments, agencies, successors, predecessors, subsidiaries, assigns, agents, employees, officers and directors, does hereby release and covenant not to sue the other from and with respect to all claims related to the existence of contamination in the Park or associated with the remediation of the Park.

(b) Except for claims for damages or injuries caused by performance of any work under this Agreement, this release does not encompass contribution or indemnification actions between the parties arising from claims brought by third parties against GM or the City, and in that regard each of the Parties hereby waives any defenses it may have against the other party based on any alleged failure to comply with or under the Contribution Among Joint Tortfeasors Act, MCLA 600.2925 a-d. Nothing in this section, 11(b), shall abrogate the indemnification rights of the Parties under paragraph 19.

12. GM shall be responsible for the timely performance of the RAP including, but not limited to, the design, construction, monitoring, oversight, execution of all security bonds, performance bonds, or any other "financial mechanisms" required by the MDEQ to ensure performance of the RAP except as otherwise provided in this Agreement.

13. This Agreement shall apply to and shall be binding upon the City, its successors and assigns, and upon GM, its successors and assigns. No change or changes in the ownership or corporate

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Aug 07, 2009 17:22

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Aug 07, 2009 17:22

status of GM shall in any way alter GM's responsibilities under this Agreement. GM shall remain and be responsible for compliance with this Agreement and for insuring that its contractors, subcontractors, laboratories and consultants perform all work in conformance with the terms and conditions of this Agreement.

14. The signatories to this Agreement certify that they are authorized to execute and legally bind the Parties they represent.

15. In the event that either Party discovers the existence of groundwater contamination in excess of Generic Residential Cleanup Criteria, as promulgated under Part 201 of the Natural Resource and Environmental Protection Act, 1994 PA 451, off-site and caused by migration of hazardous substances located in the Park, the Party who discovers the existence of groundwater contamination shall immediately notify the herein designated Official of the other Party of the existence and location of such environmental contamination.

16. Upon written request by a designated representative of the City, GM will provide the City with copies of all non-privileged documents generally designated for which the City can show a demonstrable need and within GM's possession or control relating to the implementation of the cap and other response activities conducted on the Park pursuant to this Agreement.

17. GM and the City will provide each other, or their designated representatives, with copies of all correspondence, analytical reports, work plans, or RAP's provided to the MDEQ as related to the Park. GM will notify the MDEQ to put Kevin Lavalley,

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Aug 07, 2009 17:22

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Aug 07, 2009 17:22

as representative of the City, on the meeting list for all future meetings between the MDEQ and GM involving the Park.

18. The City and GM shall initially negotiate informally any dispute that arises under this Agreement. Such informal negotiation shall end ten days after GM or the City advises the other in writing that the dispute still exists unless the Parties agree otherwise in writing. If GM and the City cannot informally resolve a dispute under this Agreement, then either of the Parties may request arbitration.

19. With respect to the scope of this Agreement, GM is solely responsible for the safe performance of its employees, agents, contractors and any persons acting on its behalf in any activities performed pursuant to this Agreement. In this regard, GM shall indemnify and hold harmless the City, its successors and assigns, from any and all claims or causes of action arising from any negligence, recklessness or intentional misconduct by GM, its contractors or its agents in the construction of the soil cap or execution of the RAP, to the extent such claims or causes of action do not result from any negligence, recklessness or intentional misconduct by the City, its contractors or its agent, or do not result from the performance of the services described in paragraph 6 and 7 above.

With respect to the scope of this Agreement, the City is solely responsible for the safe performance of its employees, agents, contractors and any persons acting on its behalf in any activities performed pursuant to this Agreement. In this regard,

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Aug 07, 2009 17:22

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Aug 07, 2009 17:22

the City shall indemnify and hold harmless GM, its successors and assigns, from any and all claims or causes of action arising from any negligence, recklessness or intentional misconduct by the City, its contractors or its agents in the performance of the services described in paragraph 6 and 7 above, to the extent such claims or causes of action do not result from any negligence, recklessness or intentional misconduct by GM, its contractors or its agents.

20. Neither the City nor GM waive any claims or rights they may have against any person or entity not a party to this Agreement, each expressly reserving the right to assert any and all claims each Party may have against any other party not a party to this Agreement.

21. All notices required or desired to be given hereunder shall be sent by first class mail,

if to GM, to:

James P. Walle
General Motors Building-12th floor
3044 West Grand Boulevard
MC 482-112-149
Detroit, MI 48202

if to the City, to:

Chief Legal Officer
City Attorney's Office
City Hall
1101 S. Saginaw St.
Flint, MI 48502

Any notice required or desired to be given hereunder may also be delivered personally by one party hereto to the other, in which case receipt is effective upon completion of such delivery.

22. Neither the terms of this Agreement nor the performance of any actions thereunder is intended to directly or indirectly

Shane Noreen

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Aug 07, 2009 17:22

Shane Noreen

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Aug 07, 2009 17:22

benefit any person or entity not a party to the Agreement and no interest or right is conferred upon any third party by the Agreement.

23. GM will be solely responsible for the proper disposal of any hazardous waste removed by GM from the Park, if any, including manifesting and disclosure requirements, relating to placement of the soil cap.

24. In performance of any task included under the scope of this Agreement, each consultant or contractor hired by GM shall maintain a policy of general comprehensive liability insurance in such amounts as GM agrees to be proper but in no event less than \$1,000,000.

25. In performance of all activities under the scope of this Agreement, GM hereby designates Bob Metcalf as project coordinator with whom representatives of the City can make immediate contact if such a need arises.

26. Any contract GM enters into with a consultant, contractor or subcontractor employed for the performance and the implementation of any activity under the scope of this Agreement shall require that the consultant, contractor or subcontractor comply with all laws, including (but not limited to) applicable health and safety laws and regulations as well as the health and safety plan prepared for this project by General Motors.

27. This Agreement shall be modified only upon the written agreement of GM as evidenced by signature of GM legal counsel and of the City by signature of legal counsel for the City or a duly

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Aug 07, 2009 17:22

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PRESENTED: OCT 23 '95

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ADOPTED: OCT 23 '95

Aug 07, 2009 17:22

**Resolution Authorizing Remediation Agreement and Covenant Not to Sue
between the City of Flint and General Motors Corporation
for Windiate Park**

BY THE MAYOR:

WHEREAS, the City of Flint owns Windiate Park located between Pengally Street and Milton Drive in the City of Flint, and

WHEREAS, recent investigation by the City, GM and the State of Michigan revealed the presence of contaminated soils on the site requiring remediation activities, and

WHEREAS, GM, with City approval, has approved proposed placement of a soil cap on affected areas of the Park as an interim step to protect area residents, and the State of Michigan is considering this as a possible final remediation, subject to public hearings and approvals by the Michigan Department of Environmental Quality, and

WHEREAS, representatives of the City and GM have negotiated a proposed agreement to establish the rights and responsibilities of the parties in connection with going forward with the Remedial Action Plan, (while protecting the legal position and defenses each may have) to allow the Remedial Action Plan to be implemented forthwith,

NOW, THEREFORE, BE IT RESOLVED, that the appropriate City officials are hereby authorized to enter into the Remediation Agreement and Covenant Not to Sue for Windiate Park.

APPROVED AS TO FORM:


Michael T. Joliat
Chief Legal Officer

**APPROVED BY
CITY CCUNCIL**

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Aug 07, 2009 17:22

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Aug 07, 2009 17:22

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authorized representative of the City.

28. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

THE CITY OF FLINT

By Woodrow Stanley

Its _____

GENERAL MOTORS CORPORATION

By _____

Its _____

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Louis A. Hawkins
City Clerk

APPROVED AS TO FORM

Michael T. Joliat
City Attorney

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Aug 07, 2009 17:22

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authorized representative of the City.

28. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

THE CITY OF FLINT

By _____

Its _____

GENERAL MOTORS CORPORATION

By William J. McIsland

Its Manager, Remediation Projects

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APPROVED AS TO FORM

Michael T. Joliat
City Attorney

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Aug 07, 2009 17:22