

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

**[Pengelly Road Site, Dixieland Subdivision,
Flint, Michigan (No Site ID Number)]**
Genesee County, Michigan

MDEQ Reference No.:
RAP-LANDUSE-RRD-[YR]-[number]

AGREEMENT FOR A LIMITED RESIDENTIAL REMEDIAL ACTION

This Agreement for a Limited Residential Remedial Action (the "Agreement") is entered into voluntarily by the Michigan Department of Environmental Quality ("MDEQ"), Remediation and Redevelopment Division ("RRD"), and General Motors Corporation, a Delaware corporation ("GM"), to specify the agreed upon conditions for approval of a Limited Residential Remedial Action Plan ("RAP", as described and defined in Paragraph 2.8 below) at the Pengelly Road Site. By execution of this Agreement, the MDEQ and GM agree to be bound by all of its terms.

RECITALS

Whereas, Section 20120b(3) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20101 et seq. ("NREPA"), requires that provisions for land use or resource use restrictions, operation and maintenance, installation of permanent markers, if determined by the MDEQ to be necessary, and financial assurance, if determined by the MDEQ to be necessary, be stipulated in a legally enforceable agreement with the MDEQ for all remedial actions undertaken pursuant to Section 20120a(1)(f) to (j) or (2) of the NREPA; and

Whereas, this Agreement pertains to the Property located in the City of Flint, County of Genesee, State of Michigan, legally described in Attachment A attached hereto, and commonly

known as [Pengelly Road Site, Dixieland Subdivision, Flint, Michigan (No Site ID Number)] (“Property”); and

Whereas, as of the Effective Date of this Agreement, the RAP for a Limited Residential remedial action submitted to the MDEQ as described below, including its attachments and any MDEQ-approved modifications, conforms with the applicable requirements of Part 201 of the NREPA and the Part 201 Administrative Rules (“Part 201 Rules”), and is approved by the MDEQ; and

Whereas, this Agreement satisfies the requirements of Section 20120b(3) of the NREPA; and;

Whereas, as provided by Rule 533(17) of the Part 201 Rules the MDEQ will issue to GM a certification of completion in accordance with Section 20114(5) of NREPA.

Based on the foregoing Recitals, and in consideration of the MDEQ’s approval of the RAP for a Limited Residential remedial action, GM and the MDEQ stipulate and agree as follows:

I. PARTIES BOUND

1.1 This Agreement shall apply to and be binding upon GM and the MDEQ and their successors. No change in ownership or corporate or legal status of GM, including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter GM's responsibilities under this Agreement. GM shall provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Property owned by GM and shall provide a copy of this Agreement to any subsequent owners or successors prior to the transfer of any ownership interests. No transfer of ownership interest shall occur without adequate and complete provision that allows GM to carry out its obligations under this Agreement and to assure the effectiveness

and integrity of the RAP. GM shall comply with the requirements of Section 20116 of the NREPA

1.2 The signatories to this Agreement certify that they are authorized to execute it and legally bind the parties they represent.

II. DEFINITIONS

2.1 “Day” or “day” means a calendar day, unless otherwise specified in this Agreement.

2.2 “Effective Date” means the date that this Agreement is fully executed by all parties to it.

2.3 “GM” means General Motors Corporation, a Delaware corporation, and its successors.

2.4 “MDEQ” means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf.

2.5 “Operation and Maintenance Plan” or “O&M Plan” means the Operation and Maintenance Plan for Lot 460 Pengelly Road Site, Flint, Michigan, attached hereto as Attachment B. The O&M Plan is a component of the RAP.

2.6 “Part 201” means Part 201, Environmental Remediation, of the NREPA, MCL 324.20101 *et seq.*, and the Administrative Rules promulgated thereunder.

2.7 “Property” means the property located at vacant land, Pengelly Road, Tax Parcel No. 41-29-151-001, and legally described in Attachment A and sometimes referred to as “Lot 460.”

2.8 “Remedial Action Plan” or “RAP” means the remedial action plan entitled, Closure Report – Pengelly Road Site, Flint, Michigan dated January 31, 2005, prepared by O'Brien & Gere Engineers, Inc.

2.9 “Response Activity Costs” means all costs lawfully incurred by the State to oversee, enforce, inspect and document compliance with this Agreement, including, but not limited to, costs incurred to: inspect response activities at the Facility; observe and comment on field activities; review and comment on documents or reports required to be submitted to the MDEQ under this Agreement; collect and evaluate samples; purchase equipment and supplies to perform inspection activities; attend and participate in meetings; prepare cost reimbursement; and perform response activities pursuant to Paragraph 12.3 of this Agreement.

2.10 “State” means the State of Michigan, including the Michigan Department of Attorney General and the Michigan Department of Environmental Quality, and any authorized representatives acting on their behalf.

2.11 Unless otherwise stated herein, all other terms used in this Agreement, which are defined in Part 3, Definitions, of the NREPA, MCL 324.301; Part 201 of the NREPA; or the Part 201 Administrative Rules, 1990 AACRS R 299.5101, *et seq.*, as amended by changes at 2002 Michigan Register 24 that became effective on December 21, 2002, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Administrative Rules.

III. IMPLEMENTATION

3.1 GM agrees to implement and comply with the terms of the RAP and this Agreement. As approved, each component of the RAP shall be deemed incorporated into this Agreement and made an enforceable part of this Agreement. The scope of the RAP currently consists of the establishment of land use and resource use restrictions, and the construction and maintenance of a soil cover to achieve the following performance objectives:

(a) Prevent unacceptable exposures to hazardous substances present at the Property consistent with the zoning of the Property and the cleanup criteria developed under Part 201 for a limited residential land use.

(b) Assure the effectiveness and integrity of the RAP and the protection of public health, safety, and welfare and the environment.

3.2 Within sixty (60) days after the first anniversary of this Agreement and within sixty (60) days of each anniversary thereafter, GM shall provide an annual report to the MDEQ project coordinator describing the implementation of the RAP, including, but not limited to, the operation and maintenance activities and any other response activities that have been undertaken by GM at the Property for the prior year. The report shall include an assessment and documentation of the integrity of the soil cover exposure control mechanism on which the RAP is dependent; and compliance with land or resource use restrictions, including, if applicable, institutional controls. If appropriate, the report shall describe any modifications to the RAP that should be implemented to assure the continued effectiveness and integrity of the remedial action.

3.3 The MDEQ reserves the right to review all records, data, and reports documenting the response activities that have been undertaken by GM.

3.4 Approval of the RAP shall not be construed to mean that the MDEQ concurs with all conclusions, methods or statements in the RAP or warrants that the RAP comports with law.

3.5 Pursuant to Section 20120b(9) of the NREPA, GM shall provide notice of the land use restrictions required by the RAP to the zoning authority for the local unit of government in which the facility is located within thirty (30) days after the Effective Date of this Agreement. A copy of the notice provided to the local zoning authority shall also be provided to the MDEQ within thirty (30) days after the Effective Date of this Agreement.

3.6 Subject to the provisions of Paragraph 3.8 hereof, if, based upon new information, the MDEQ determines that a modification to the work specified in the approved RAP is necessary to: (a) assure the effectiveness, integrity, or reliability of the remedial action; (b) correct a lapse or noncompliance under Paragraph 12.2 of this Agreement; or (c) otherwise comply with this Agreement, the MDEQ may require that such modification be incorporated into the RAP; however, only modifications consistent with the scope of the approved RAP (limited residential land use restrictions) may be required by the MDEQ. Upon MDEQ approval, GM shall perform the response activities that are provided for such modification in accordance with MDEQ-approved implementation schedules.

3.7 GM may request that the MDEQ consider a modification to the RAP by submitting a request for modification that provides sufficient detail as to the modification requested and provides justification for the modification to the MDEQ for review and approval. Any such request for modification by GM must be forwarded to the MDEQ at least thirty (30) days prior to the date that the performance of any affected response activity is due. Upon MDEQ approval, GM shall perform the response activities that are provided for in the modification in accordance with MDEQ-approved implementation schedules.

3.8 This Agreement and the RAP may only be modified by written agreement between GM and the MDEQ, RRD Division Chief or his or her authorized representative.

IV. LAND USE OR RESOURCE USE RESTRICTIONS

4.1 GM shall file for recording, or cause to be filed for recording with the Genesee County Register of Deeds the MDEQ-approved Restrictive Covenant attached hereto as Attachment C within twenty-one (21) days after the Effective Date of this Agreement. The Restrictive Covenant complies with the requirements of Part 201. GM shall provide a true copy of the recorded Restrictive Covenant, including liber and page numbers, to the MDEQ within thirty (30) days after the document is recorded and returned to GM. The true copy of the recorded Restrictive Covenant shall be forwarded to the MDEQ in accordance with Section IX (Communications and Notices) of this Agreement.

V. FINANCIAL ASSURANCE MECHANISM

[NOT APPLICABLE]

VI. PERMANENT MARKERS

[NOT APPLICABLE]

VII. COMPLIANCE WITH PART 31 OF THE NREPA

[NOT APPLICABLE]

VIII. NOTICE OF PROPERTY CONDITIONS

Within thirty (30) days after the Effective Date of this Agreement, GM shall provide written notice that the Property is a “facility” as defined in Section 20101(1)(o) of the NREPA, to the following persons at the Property:

- All easement holders of record
- All utility franchise holders of record
- All owners or operators of public utilities that serve the property described in Attachment A
- All owners or lessees of severed subsurface mineral rights or subsurface formations.

This notice shall also generally describe the nature and location of the contamination. GM shall also provide the persons listed above with a copy of the MDEQ-approved restrictive covenant associated with that person's interest in the Property. Written notice shall be provided to the persons listed above by a method that provides proof of delivery to both the MDEQ and to the above listed persons.

IX. COMMUNICATIONS AND NOTICES

Whenever, under the terms of this Agreement, notice is required to be given or a report, sampling data, analysis, or other document is required to be forwarded by one party to the other, such correspondence shall be directed to the following individuals at the addresses specified below or at such other address as may subsequently be designated in writing:

As to MDEQ:

Eric Van Riper
Remediation and Redevelopment Division
Department of Environmental Quality
P.O. Box 30426
Lansing, Michigan 48933

(Regular Mail)
Telephone: (517) 625-4621
Fax: (517) 625-5000

(Via Courier)
Constitution Hall
525 West Allegan
Lansing, Michigan 48933

As to GM, to:

General Counsel – MC-482-C25-D81
General Motors Corporation
300 Renaissance Center
Detroit, MI 48265
Telephone: (313) 667-3408

with a copy to:

Artis M. Noel – MC 482-026-601
General Motors Corporation
400 Renaissance Center
Detroit, MI 48265
Telephone: (313) 665-7368
Fax: (313) 665-7376

with a copy to:

Director, Environmental Remediation
Worldwide Facilities Group
General Motors Corporation
WFG-Remediation Team
2000 Centerpoint Parkway
Mail Code 483-520-190
Pontiac, MI 48341-3147
Telephone (248) 753-5816

As to MDEQ for submittals required under Sections IV (Land Use or Resource Use Restrictions) and XI (Reimbursement of Costs):

[*Name*], Chief, Compliance and Enforcement Section
Remediation and Redevelopment Division
Department of Environmental Quality
P.O. Box 30426
Lansing, Michigan 48909
Telephone: (517) 373-7818
Fax: (517) 373-2637

Regular Mail:

Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926

Via Courier

Constitution Hall, 4th Floor, South Tower
525 West Allegan Street
Lansing, Michigan 48933

X. ACCESS TO PROPERTY AND RECORDS

10.1 Upon the Effective Date of this Agreement, the MDEQ and its authorized employees and representatives shall, to the extent the Property is owned, controlled or available to GM, have an irrevocable right-of-access at all reasonable times to the Property for the purpose of determining and monitoring compliance with the RAP, including the right to take samples, inspect the operation of remedial action measures, and inspect records related to the RAP.

10.2 This Agreement does not restrict or limit any right that the MDEQ may have to enter the Property or other properties to which access may be required for the protection of the public health, welfare, safety or the environment pursuant to specific statutory or regulatory authority. Consistent with the MDEQ's responsibilities under federal or state law, the MDEQ and its authorized representatives shall use their best efforts to minimize interference and whenever possible employ efforts that are the least intrusive to the operations and commercial activities on the Property. "Best efforts" shall not require the MDEQ to incur any material cost increases in carrying out its responsibilities to protect the public health, safety, or welfare or the environment.

XI. REIMBURSEMENT OF COSTS

11.1 Following the first anniversary of the Effective Date of this Agreement, the MDEQ will provide GM with a Summary Report ("Report") that identifies all Response Activity Costs incurred from the Effective Date of the Agreement through the dates specified in the Report. Thereafter, the MDEQ will periodically provide GM subsequent Reports that set forth all Response Activity Costs incurred from the dates specified in the previous Report through the dates specified in the current Report. GM shall pay the Response Activity Costs within thirty (30) days after receipt of each Report.

XII. REMEDIES FOR BREACH OF AGREEMENT

12.1 GM and the MDEQ recognize and agree that this Agreement is a legally enforceable contract as required by Section 20120b(3) of the NREPA and may be enforced in a court of competent jurisdiction. For that purpose, GM consents to the jurisdiction of the Ingham County Circuit Court in any action by the State to enforce this Agreement. GM also recognizes and understands that the MDEQ's remedies if GM breaches the terms and conditions of this Agreement may include other statutory or common law remedies subject to the rights or defenses available to GM under applicable law.

12.2 If the MDEQ has determined that any of the following provisions are applicable to the remedial action and the RAP and any of these provisions lapse or are not complied with as provided in this Agreement or the RAP, MDEQ's approval of the RAP is void from the time of the lapse or noncompliance until the lapse or noncompliance is corrected to the satisfaction of the MDEQ:

(a) Required Land and/or Resource Use Restrictions; specifically, but not limited to:

(i) if a Required Land and/or Resource Use Restriction is determined to be unlawful by a court of competent jurisdiction; or

(ii) if a Required Land and/or Resource Use Restriction is violated in a manner that results in the RAP not being protective of public health safety, welfare, and the environment

(b) Operation and Maintenance, including inspection (as described in the O&M Plan)

12.3 If GM fails to correct the lapse or noncompliance under Paragraph 12.2 within thirty (30) days after written notification by MDEQ of the lapse or if GM fails at any time to adequately implement the remedial action in accordance with the RAP and this Agreement, the MDEQ may implement those response activities that GM has failed to perform. Costs which the MDEQ lawfully incurs in the performance of response activities shall be reimbursed by GM pursuant to Section XI (Reimbursement of Costs). The RAP will be considered re-approved if the lapse or violation is corrected in accordance with the approved RAP or other approval from MDEQ.

12.4 The MDEQ's approval of the RAP shall be nullified if any of the following occur until the lapse or violation is corrected to the satisfaction of the MDEQ:

(a) if unknown conditions that existed at the Property when the RAP was implemented are discovered and such conditions result in the remedial action no longer being protective of the public health, safety, or welfare or the environment;

(b) failure of the remedial action or response activity to comply with the applicable cleanup criteria or performance objectives established in the RAP or this Agreement;

(c) the MDEQ determines that the RAP is not effective or reliable because the remedial action or response activity repeatedly fails, notwithstanding repeated cure within ninety 90 days after discovery of the failure by either GM or the MDEQ;

12.5 If the MDEQ's approval of the RAP becomes void or nullified, all other terms of this Agreement remain in full force and effect. The RAP will be considered re-approved if the lapse or violation is corrected in accordance with the approved RAP or other approval from MDEQ.

XIII. MODIFICATIONS

This Agreement shall not be modified unless such modification is in writing and signed by an authorized representative of GM and the MDEQ's, RRD Division Chief or his or her authorized representative.

XIV. COVENANT NOT TO SUE THE STATE/INDEMNIFICATION

14.1 GM hereby covenants not to sue or to take any civil, judicial, or administrative action against the State, its agencies, the MDEQ or their authorized representatives, for any claims arising from or connected with the MDEQ's approval or GM's implementation of the RAP or this Agreement.

14.2 GM also agrees to indemnify the State, its agencies, the MDEQ, and their authorized representatives for any claims or for its costs of defending any claims brought by others that are based upon, arise from, or are connected with GM's implementation of the RAP or this Agreement.

XV. RESERVATION OF RIGHTS

15.1 The parties reserve all rights available to them pursuant to Part 201 or any other legal authority.

15.2 Nothing in this Agreement shall affect the duties and obligations GM may have with respect to permits or other governmental approvals or waive GM's duties and obligations under any applicable federal or state laws, including Part 201.

15.3 Nothing in this Agreement shall be construed as a release or covenant not to sue by the State for the benefit of GM or any other person.

15.4 Nothing in this Agreement shall limit the power and authority of the MDEQ or the State to direct or order all appropriate action to: protect the public health, safety, or welfare, or the environment; prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the Property; or to address a lapse or violation under Paragraph 12.4 of this Agreement.

15.5 It is expressly understood that GM makes no admission of liability or of law or of fact, nor waives any right to challenge any unpromulgated MDEQ policy or its application, as a result of the execution of this Agreement nor any document attached to or referred to in this Agreement, and nothing contained in this Agreement nor any document attached to or referred to in this Agreement shall be deemed to be construed to be an admission of any liability or violation of law by GM or as evidence of fault or liability on GM's part.

XVI. APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the State. All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of Part 201 and any other applicable laws.

XVII. SEVERABILITY

The provisions of this Agreement are severable. If any provision is declared by a court of competent jurisdiction to be inconsistent with federal or state law and, therefore, unenforceable, the other provisions of this Agreement shall remain in effect, unless such severance causes this Agreement to fail in its essential intents and purposes, in which case, this Agreement shall become null and void.

XVIII. UNILATERAL WAIVER OF TERMS AND CONDITIONS

Unilateral waiver by any party of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit, or waive such party's rights thereafter to enforce and compel strict compliance with every other term or condition of this Agreement.

XIX. SEPARATE DOCUMENTS

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 instrument.

IT IS SO AGREED:

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

[Name], Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality

Date: _____

GENERAL MOTORS CORPORATION

[Name]
[Title]

Date: _____

List of Attachments

Attachment A – Legal Description of Property

Attachment B – Operation and Maintenance Plan

Attachment C – Land or Resource Use Restrictions [Declaration of Restrictive Covenant]

