

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755  
LANSING, MICHIGAN 48909

DANA NESSEL  
ATTORNEY GENERAL

May 7, 2020

Bryan L. Amann  
City of Detroit  
Coleman A. Young Municipal Center  
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3011 W. Grand Blvd., Ste. 2500  
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Sharon R. Newlon  
Dickinson Wright, PLLC  
500 Woodward Ave., Ste. 4000  
Detroit, MI 48226

Re: *Michigan Department of Environmental Quality v City of Detroit, City of Detroit Building Authority, and Detroit Land Bank Authority*  
Ingham County Circuit Court File No. 18-862-CE

Dear Counsel:

Enclosed please find a copy of the First Modification to Consent Judgment that was signed by the Court and Proof of Service.

Should you have any questions, please do not hesitate to contact me at the number provided below.

Sincerely,

/s/ Neil D. Gordon

Neil D. Gordon  
Assistant Attorney General  
Environment, Natural Resources, and  
Agriculture Division  
(517) 335-7664

NDG:jg  
Enclosures  
cc/w/encs: Jason Wolf (EGLE)  
Tammy Bell (EGLE)

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Plaintiff,

No. 18-862-CE

v

HON. WANDA M. STOKES

CITY OF DETROIT, CITY OF DETROIT  
BUILDING AUTHORITY, AND  
DETROIT LAND BANK AUTHORITY,

Defendants.

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Attorney for Plaintiff  
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FIRST MODIFICATION TO CONSENT JUDGMENT

WHEREAS, on December 19, 2018, the Court approved and entered the Consent Judgment signed by Plaintiff Michigan Department of Environmental Quality (DEQ) and Defendants the City of Detroit, the City of Detroit Building Authority (DBA), and the Detroit Land Bank Authority;

WHEREAS, Paragraph 6.1 of the Consent Judgment states that Defendants shall pay a settlement amount of \$100,000 to the DEQ pursuant to the following schedule: (a) Defendants shall pay \$10,000 to the DEQ within thirty days after the Effective Date of the Consent Judgment; (b) Defendants shall pay \$45,000 to the DEQ within one year after the Effective Date of the Consent Judgment; and (c) Defendants shall pay \$45,000 to the DEQ within two years after the Effective Date of the Consent Judgment;

WHEREAS, Defendants paid \$10,000 to the DEQ within thirty days after the Effective Date of the Consent Judgment;

WHEREAS, Paragraph 6.3 of the Consent Judgment states that within twelve months after the Effective Date of the Consent Judgment, Defendants may submit to the DEQ a proposal for a supplemental environmental project pursuant to the DEQ's Policy and Procedures for Supplemental Environmental Projects for Penalty Mitigation, and that if the DEQ approves the proposal, then the Parties shall modify this Consent Judgment pursuant to Paragraph 13.3;

WHEREAS the DEQ has been renamed the Michigan Department of Environment, Great Lakes, and Energy (EGLE) pursuant to Executive Order 2019-02 signed by Governor Gretchen Whitmer on February 4, 2019;

WHEREAS, Defendants submitted to EGLE a proposal for a supplemental environmental project within twelve months after the Effective Date of the Consent Judgment that includes planting trees and shrubs in Detroit between Interstate 75 (I-75) and Clark Park to create a vegetative buffer that, among other things, absorbs air pollution;

WHEREAS, EGLE has approved Defendants' proposal for a supplemental environmental project; and

WHEREAS, Section IV, VI, X, and IV of the Consent Judgment are modified as follows:

#### IV. DEFINITIONS

4.1 Terms used in this Consent Judgment that are defined in the Asbestos NESHAP, Part 55 of the NREPA, or in the administrative rules promulgated pursuant to Part 55 of the NREPA shall have the meaning assigned to them in Part 55 of the NREPA and those regulations and administrative rules, unless otherwise provided in this Consent Judgment.

4.2 Whenever the terms set forth below are used in this Consent Decree, including attached appendices, the following definitions shall apply:

- a. "Asbestos Inspection" means the inspection described in Paragraph 5.5(a).
- b. "Asbestos Inspection Report" means the written report described in Paragraph 5.5(b).

- c. "Asbestos Inspector" means the person(s) described in Paragraph 5.4.
- d. "Asbestos NESHAP" means the National Emission Standard for Asbestos, 40 CFR 61.140 *et seq.*
- e. "DBA" means the City of Detroit Building Authority.
- f. "DBA Project Liaison" means a person employed by the DBA to, among other things, observe Demolitions performed under the Demolition Program.
- g. "Demolition" means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any residential or commercial building.
- h. "Demolition Personnel" means the persons performing a Demolition.
- i. "Demolition Program" means the City of Detroit's plan for the demolition of blighted and dangerous residential and commercial buildings located in the City of Detroit that the DBA coordinates and implements through agreements with the City of Detroit and the Detroit Land Bank Authority.
- j. "DEQ" means the Michigan Department of Environmental Quality.
- k. "DLBA" means the Detroit Land Bank Authority.

l. "Effective Date" means the date of entry of the Consent Judgment by the Court as recorded on the Court docket or, if the Court instead issues an order approving the Consent Judgment, the date such order is recorded on the Court docket, whichever occurs first.

m. "Effective Date of First Modification" means the date of entry of the First Modification to Consent Judgment by the Court as recorded on the Court docket or, if the Court instead issues an order approving the First Modification to Consent Judgment, the date such order is recorded on the Court docket, whichever occurs first.

n. "Paragraph" means a portion of this Consent Judgment identified by an Arabic number.

o. "Part 55 of the NREPA" means Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, MCL 324.5501 *et seq.*

p. "Parties" mean the Michigan Department of Environmental Quality, the City of Detroit, the City of Detroit Building Authority, and the Detroit Land Bank Authority.

q. "RACM" means regulated asbestos-containing material as defined in the Asbestos NESHAP.

r. "Rule 942" means Rule 942 of the Michigan Air Pollution Control Rules, Mich Admin Code, R 336.1942.

s. "Section" means a portion of this Consent Judgment identified by a Roman numeral.

t. "Working Day" means Monday through Friday and excludes state and federal holidays.

#### VI. SETTLEMENT AMOUNT AND SUPPLEMENTAL ENVIRONMENTAL PROJECT

6.1 Defendants shall pay a settlement amount of \$33,100 to EGLE pursuant to the following schedule: (a) Defendants paid \$10,000 to EGLE within thirty days after the Effective Date of the Consent Judgment, and (b) Defendants shall pay \$23,100 to EGLE within thirty days after the Effective Date of First Modification. Each payment shall be made in the form of a certified check or cashier's check and made payable to the "State of Michigan." Payment shall be sent to:

Michigan Department of Environment, Great Lakes, and Energy  
Accounting Services Division, Cashier's Office  
P.O. Box 30657  
Lansing, MI 48909-8157

To ensure proper credit, each check shall reference *Michigan Department of Environment, Great Lakes, and Energy v Detroit Building Authority*, and Payment Identification Number AQD40205.

6.2 Interest. If any portion of the settlement amount due to EGLE is not paid when due, then Defendants shall pay interest on the amount past due, accruing from date payment is due through the date of payment, at the rate specified in MCL 600.6013(8).

6.3 The City of Detroit shall implement a Supplemental Environmental Project (SEP), the Clark Park Vegetative Barrier, in accordance with all provisions of Appendix B, which is attached hereto.

6.4 The City of Detroit is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Consent Judgment. The City of Detroit may use contractors or consultants in planning and implementing the SEP.

6.5 Certification. With regard to the SEP, the City of Detroit certifies the truth and accuracy of each of the following:

a. That all cost information provided to EGLE in connection with EGLE's approval of the SEP is complete and accurate and that the City of Detroit in good faith estimates that the cost to implement the SEP is \$89,200;

b. That the City of Detroit is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That the SEP is not a project that the City of Detroit was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Judgment;

d. That the City of Detroit has not received and will not receive credit for the SEP in any other enforcement action;

e. That the City of Detroit will not receive reimbursement for any portion of the SEP from any other person; and



f. That the City of Detroit is not a party to any state or federal financial assistance that is funding or could be used to fund the SEP.

6.6 SEP Completion Report. Within thirty days after the date set for the completion of the SEP, the City of Detroit shall submit to EGLE a SEP Completion Report that contains the following information:

- a. A detailed description of the SEP as implemented;
- b. A description of any problems encountered in completion the SEP and solutions thereto;
- c. An itemized list of all SEP costs expended, and documentation of all expenditures;
- d. Evidence of the SEP completion (which may include, but is not limited to, photographs and vendor invoices or receipts);
- e. To the extent possible, documentation supporting the quantification of benefits associated with the SEP and an explanation of how such benefits were measured or estimated; and
- f. A certificate stating:

I certify that the Supplemental Environmental Project has been fully implemented pursuant to the provisions of the Consent Judgment entered in *Michigan Department of Environment, Great Lakes, and Energy v Detroit Building Authority*, Case No. 18-862-CE (Ingham County Circuit Court), that I am familiar with the information in this document, and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for knowingly or intentionally submitting false information, including the possibility of fines and imprisonment for knowing violations.

## X. STIPULATED PENALTIES

10.1 Defendants shall pay a stipulated fine of \$3500 per violation for each failure to comply with Paragraph 5.1 or 5.2.

10.2 Defendants shall pay a stipulated fine of \$2000 per violation per calendar day for each failure to comply with Paragraph 5.3, 5.5, 5.6(b), 5.7, 5.9, or 5.12.

10.3 Defendants shall pay a stipulated fine of \$2000 per violation for each failure to comply with Paragraph 5.4, 5.6(a), 5.8, 5.10, 5.11, 5.13, or 5.14.

### 10.4 Stipulated Penalties for the SEP

a. If the City of Detroit fails to satisfactorily complete the SEP identified in Paragraph 6.3 and Appendix B by the deadline set forth in Appendix B, then the City of Detroit shall pay a stipulated penalty of \$1000 per day for each day after the deadline.

b. If the City of Detroit fails to implement the SEP or abandons work on the SEP, then the City of Detroit shall pay a stipulated penalty of \$66,900. The stipulated penalty under this subparagraph shall accrue as of the date specified for completing the SEP or the date performance ceases, which is earlier.

c. If the City of Detroit fails to expend \$89,200 for the SEP but otherwise has satisfactorily completed the SEP, then the City of Detroit shall pay a stipulated penalty equal to 125% of the difference between \$89,200 and any eligible project dollar amounts expended to implement the SEP in accordance with Appendix B, unless the failure to expend the entire amount is caused by a force

majeure event as determined in accordance with Section VIII (Force Majeure), in which case the City of Detroit shall pay a stipulated penalty equal to 100% of the difference between the required expenditure and any eligible project dollar amounts expended to implement the SEP.

10.5 The DBA shall pay a stipulated fine of \$500 per violation per calendar day for failure to comply with any other provision of this Consent Judgment.

10.6 All accrued stipulated fines shall be paid by Defendants within thirty calendar days, after written demand by EGLE, in the form of a check made payable to the "State of Michigan" and delivered to the Michigan Department of Environmental Quality, Financial & Business Services Division, Revenue Control, P.O. Box 30657, Lansing, Michigan 48909. To ensure proper credit, all payments made pursuant to this Consent Judgment shall include the Agreement Identification Number AQD40205-S on the face of the check.

10.7 The provisions of this Section X (Stipulated Penalties) shall not bar EGLE from seeking any additional remedies or sanctions available to them for any violation of this Consent Judgment, or any other provision of applicable law.

10.8 EGLE, at its discretion, may seek stipulated fines or statutory civil fines for any violation of this Consent Judgment which is also a violation of any provision of applicable federal and state law, rule, regulation, permit, or EGLE Administrative Order. However, EGLE is precluded from seeking both a stipulated fine under this Consent Judgment and a statutory civil fine for the same violation.

10.9 To insure timely payment of any stipulated fines that become due pursuant to Paragraph 10.1 through Paragraph 10.5 above, Defendants shall pay an interest penalty to EGLE each time they fail to make a complete or timely payment. This interest penalty shall be based on a rate that is one percent plus the average interest rate paid at auctions of five-year United States treasury notes during the six months immediately preceding July 1 and January 1, as certified by the state treasurer, compounded annually, and using the full increment of the amount due as principal, calculated from the due date specified in this Consent Judgment until the date that the delinquent payment is finally paid in full. Payment of an interest penalty by Defendants shall be made to the "State of Michigan" in accordance with Paragraph 10.6 above. Interest payments shall be applied first towards the most overdue amounts or outstanding interest penalty owed by Defendants before any remaining balance is applied to a subsequent payment amount or interest penalty.

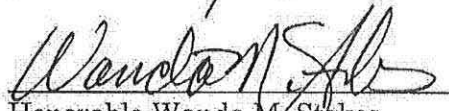
10.10 Defendants agree not to contest the legality of any stipulated penalties assessed pursuant to this Section X, but otherwise reserve the right to dispute the factual basis upon which the application of stipulated penalties is made.

#### XIV. TERMINATION

14.1 This Consent Judgment shall terminate three years after the Effective Date of First Modification provided that Defendants submit to the DEQ a written request to terminate the Consent Judgment. This written request shall include a summary of the activities performed to comply with the provisions of the Consent

Judgment, certify that the civil fine and any stipulated penalties owed to the DEQ under Section VI and Section IX of this Consent Judgment have been paid in full and that Defendants have fully complied with all other provisions of the Consent Judgment. Thereafter, provided full compliance with the provisions of the Consent Judgment has been achieved, the DEQ shall file with the clerk a Satisfaction of Judgment pursuant to MCR 2.620(1).

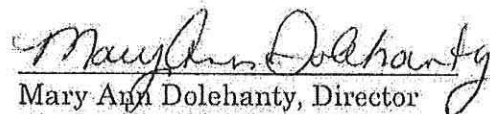
IT IS SO ORDERED THIS 6 day of MAY, 2020.

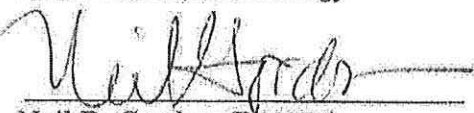
  
Honorable Wanda M. Stokes  
Circuit Court Judge

#### STIPULATION

The parties hereby stipulate to the entry of this First Modification of Consent Judgment.

FOR PLAINTIFF Michigan Department of Environment, Great Lakes and Energy:

By:  Dated: May 1, 2020  
Mary Ann Dolehanty, Director  
Air Quality Division  
Michigan Department of Environment,  
Great Lakes, and Energy

By:  Dated: May 1, 2020  
Neil D. Gordon (P56374)  
Assistant Attorney General  
Environment, Natural Resources  
and Agriculture Division,  
Michigan Department of Attorney General

FOR DEFENDANT City of Detroit:

By: Bryan L. Amman / by Nadia [unclear] with authority Dated: May 1, 2020  
Bryan L. Amman  
Chief Legal Counsel for Capital and Infrastructure

FOR DEFENDANT City of Detroit Building Authority:

By: Floyd E. Allen Dated: April 28, 2020  
Floyd E. Allen  
Attorney for City of Detroit Building Authority

FOR DEFENDANT Detroit Land Bank Authority:

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2020  
Sharon R. Newlon  
Attorney for Detroit Land Bank Authority

FOR DEFENDANT City of Detroit:

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2020  
Bryan L. Amman  
Chief Legal Counsel for Capital and Infrastructure

FOR DEFENDANT City of Detroit Building Authority:

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2020  
Floyd E. Allen  
Attorney for City of Detroit Building Authority

FOR DEFENDANT Detroit Land Bank Authority:

By: Sharon R. Newlon Dated: March 16, 2020  
Sharon R. Newlon  
Attorney for Detroit Land Bank Authority

Appendix B

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Consent Judgment

*Michigan Department of Environmental Quality v City of Detroit*  
Ingham County Circuit Court, Case No.

**Clark Park Vegetative Buffer**

I. The City of Detroit shall comply with the requirements of this Appendix in fulfilling its obligations under Section VI (Settlement Amount and Supplemental Environmental Project) of the Consent Judgment as modified by the First Modification to Consent Judgment.

II. The City of Detroit shall expend \$89,200 to construct a vegetative buffer of Norway Spruce, Green Giant Arborvitae, and Viburnum Lentago at Clark Park in the City of Detroit ("Vegetative Buffer SEP") to reduce transport of particulate matter emissions from automobiles, trucks, and buses. The Vegetative Buffer SEP shall be located at the southern border of Clark Park, along W. Fisher Service Drive between Clark Avenue and Scotten Avenue. The location of the Vegetative Buffer SEP is shown in Exhibit 1.

III. The Vegetative Buffer SEP shall include planting 14 Norway Spruce each 15 feet tall, 59 Green Giant Arborvitae each 8 feet tall, and 20 Viburnum Lentago each 3 feet tall. The location of the plants is shown in Exhibit 1. Additional details for the Vegetative Buffer SEP are included in Exhibit 2.

IV. The City of Detroit shall plant the Norway Spruce, Green Giant Arborvitae, and Viburnum Lentago by November 15, 2020. By November 15, 2022, the City of



Detroit shall replace any Norway Spruce, Green Giant Arborvitae, and Viburnum Lentago that fail to survive.

V. The City of Detroit shall complete the Vegetative Buffer SEP by December 1, 2022.

**EXHIBIT 1**

**to Appendix B - Supplemental Environmental Project**



GENERAL SERVICES DEPARTMENT  
LANDSCAPE DESIGN UNIT  
18100 MEYERS RD, UPPER LEVEL  
DETROIT, MICHIGAN 48226  
(313) 628-4918 Phone  
(313) 628-4915 Fax

NOTES:



PREPARED BY:  
LANDSCAPE DESIGN UNIT

DRAWN BY: JD DATE: 11/12/2019  
CHECKED BY: DATE:  
APPROVED BY:

PARK TITLE:  
CLARK PARK

SHEET TITLE:  
CLARK PARK  
VEGETATIVE BUFFER



SHEET NO. 1 OF 1

SCALE: NTS

PROPERTY NO. -  
DISTRICT NO. -

-  ARBORVITAE - GREEN GIANT: 8' - 10'
-  VIBURNUM LENTAGO: 36"
-  NORWAY SPRUCE: 15'
-  EXISTING TREES

**EXHIBIT 2**

**to Appendix B – Supplemental Environmental Project**

# WHCanon

Landscape Company

**Landscape Proposal**  
**Job: Clark Park Vegetative Buffer**  
**Detroit, MI**

Report date: 12/19/2019

Description	Size	Mea	Qty	Bid Unit Price	Total Bid Price
<b>Plantings</b>					
Norway Spruce	15' ht	ea	14	1,160.00	16,240.00
Green Giant Arborvitae	8' ht	ea	59	415.00	24,485.00
Viburnum Lentago	36"	ea	20	70.00	1,400.00
<b>Misc</b>					
Supply and install plant mix for shrubs		cy	2	95.00	190.00
Supply and install mulch for shrubs		cy	2	65.00	130.00
Additional time to hand dig due to utilities		ls	1	4,650.00	4,650.00
Seed restoration		ls	1	4,995.00	4,995.00
Hand Watering - 16 occurrences		occ	16	875.00	14,000.00
Winter Protection - Wilt Pruf/Burlap - First & Second Year		ls	1	4,550.00	4,550.00
Two Year Maintenance on Plantings - Includes fertilization, weeding & re-mulching once		year	2	5,175.00	10,350.00
Two Year Warranty		year	2	3,555.00	7,110.00
Clean Up/GC/Mobilization		ls	1	1,100.00	1,100.00
<b>Total Base Landscape</b>					<b>89,200.00</b>

**NOTES / QUALIFICATIONS:**

\* Includes hand digging for 49 plants due to the location of underground utilities.

01-Construction Bids/ Detroit Beautification 2019 - Rogell/Clark Park Vegetative Buffer

36700 Northline Road  
 Romulus, Michigan 48174

p 734.941.3900  
 f 734.941.5609

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Plaintiff,

No. 18-862-CE

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CITY OF DETROIT, CITY OF DETROIT  
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SNewlon@dickinson-wright.com

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**PROOF OF SERVICE**

## PROOF OF SERVICE

The undersigned certifies that on May 7, 2020, a copy of the First Modification of Consent Judgment was served on the attorneys of record in the above-captioned case by mailing the same to them at their respective addresses, with first class postage fully prepaid, and via email to their respective email addresses.

/s/ Judith L. Gibson  
Judith L. Gibson, Legal Secretary