

RESOLUTION OF THE CITY COUNCIL

No. 6

Approved January 10, 1994

WHEREAS, the City of Providence wishes to develop the former Gorham site; and

WHEREAS, such development requires the remediation of certain environmental damage that has occurred at that location; and

WHEREAS, the City wishes to have other parties participate in the remediation, yet desires to avoid protracted litigation in achieving that end; and

WHEREAS, Textron, Inc. a former owner of the site, has indicated a willingness to cooperate in the site remediation; and

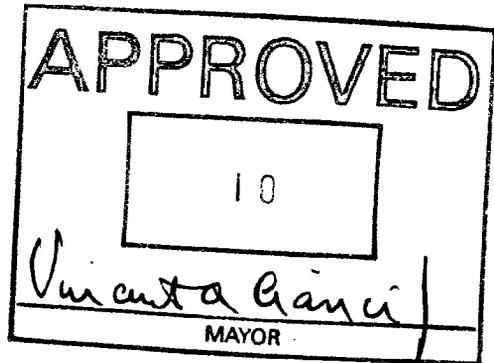
WHEREAS, Textron is prepared to participate in the remediation without resort to the courts,

NOW, THEREFORE, BE IT RESOLVED That His Honor, the Mayor, is hereby authorized to execute a Settlement Agreement substantially in accordance with the form attached hereto.

IN CITY COUNCIL

READ AND PASSED

James Strassmiller
PRES.
Michael R. Clement
CLERK



THE COMMITTEE ON
PUBLIC WORKS

Approves Passage of
The Within Ordinance

Richard A. Garcia
Chairman
1/3/94 *Clerk*

AGREEMENT

THIS AGREEMENT made as of this _____ day December, 1993, is by and between TEXTRON INC. ("Textron"), a Delaware corporation with a principal place of business at 40 Westminster Street, Providence, Rhode Island, and the CITY OF PROVIDENCE, RHODE ISLAND (the "City"), a Rhode Island municipal corporation.

Recitals

1. The City currently owns, through tax foreclosure and the subsequent foreclosure of the so-called rights of redemption, a 37.37 acre parcel located at the intersection of Downing Street and Adelaide Avenue and listed at Plat 51, Lot 170 in the Tax Assessor's Office in the City of Providence (hereinafter referred to as the "Gorham Site"). The Gorham Site was historically used by the Gorham Manufacturing Company for the manufacture of silver, silverplate, and bronze products.

2. In 1967, Textron acquired all of the issued and outstanding stock of the Gorham Manufacturing Company, took legal title to the Gorham Site, and continued manufacturing operations at the Gorham Site until 1986. Textron sold the Gorham Site to Adelaide Development Company on August 5, 1986.

3. The City desires to develop and market the Gorham Site. However, environmental site assessments conducted at the Gorham Site have revealed the presence of contaminants in the soil and water, including the groundwater, and in or on buildings and structures on the site that may require remediation.

4. It is Textron's intention, in cooperation with the City, to develop and implement an appropriate environmental site remediation program for the Gorham Site and to limit its liability for the Gorham Site to those obligations set forth in this Agreement.

NOW THEREFORE, the City and Textron agree as follows:

Agreements

1. Objectives of the Parties

The objectives of the parties in entering into this Agreement are to assure Textron, with the good faith cooperation and support of the City, investigates, develops, designs and implements environmental remediation activities at the Gorham Site for the soil and groundwater only as required by state law in a manner that protects the public health, welfare, and the environment consistent with current Rhode Island environmental regulations and remediation standards lawfully accepted by DEM for sites used for industrial purposes. The parties agree that the City shall in good faith cooperate and support Textron's efforts to remediate the Gorham Site pursuant to standards lawfully accepted by DEM for sites used for industrial purposes. Subject to the provisions of paragraph 6 below, the parties also intend that the City will be solely responsible for the remediation of all buildings and structures on the Gorham Site.

2. Site Remediation

(a) Textron shall, at its sole cost and expense, immediately commence to develop and implement a site remediation program (the

"Remediation Program") to comprehensively investigate, assess, characterize, remedy, and remediate surface and subsurface soil and water contamination at the Gorham Site, but does not include any contamination (as defined in paragraph 6 below) which may be present inside or on the exterior of or caused by any buildings or structures, including without limitation, underground heating oil storage tanks which currently exist on the Gorham Site and which were not leaking prior to August 5, 1986. The Remediation Program, and all plans, standards, specifications, and activities set forth, developed or required therein, shall be subject to the reasonable approval of the City consistent with the City's obligations under this Agreement and the objectives of the parties detailed in paragraph 1 above, and shall be in accordance with state law and subject to the approval of the Rhode Island Department of Environmental Management ("DEM"). The Remediation Program shall be prepared and implemented in accordance with the requirements of the DEM Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases dated March 31, 1993 (the "Remediation Regulations"). The City shall notify Textron of any approval or disapproval required herein within seven (7) days of receipt of the plans and other documents and failure to provide timely notice of disapproval is deemed to be approval of such plans and other documents by the City. Subject to Paragraph 2(f), the Remediation Program shall, to the extent feasible, be implemented in phases by location to minimize disruption of or interference with future use or

development of the Gorham Site. If compliance with this subsection 2(a) becomes too onerous or cumbersome for Textron to pursue the Remediation Program, the City in good faith will meet with Textron to discuss relief from this subsection.

(b) The parties anticipate that the development and implementation of the Remediation Program will require coordination with the DEM in accordance with the Remediation Regulations. The City shall cooperate with Textron in connection with all dealings with the DEM regarding the Remediation Program and shall use good faith efforts to achieve the objectives of the parties set forth herein. The City shall have the right to attend every meeting between Textron and DEM regarding any matters relating to the development or implementation of the Remediation Program or any activities at the Gorham Site and Textron shall give the City reasonable notice of all such meetings, except for those meetings which are routine. Upon receipt and review, Textron shall provide the City with copies of all plans, reports (including reports of sampling tests) or other documents received from its consultants or contractors which refer or relate to activities performed pursuant to the Remediation Program. The City, as owner of the Gorham Site, shall execute and deliver any and all documents required by DEM, other public authority, other party or by law for the Remediation Project, including hazardous waste generator manifests and documents authorizing utility service to the Remediation Project.

(c) Textron shall submit timely applications and requests for any other permits and approvals necessary for any activity required by the Remediation Program and the DEM and shall use best efforts to obtain any permits and approvals.

(d) If the United States Environmental Protection Agency ("EPA") intervenes in the Remediation Program or otherwise becomes involved with the Gorham Site, the City will cooperate fully with Textron in seeking EPA's approval of the Remediation Program and in all other dealings with EPA, including, without limitation, cooperation in having the Gorham Site remediated pursuant to standards lawfully accepted by EPA for sites used for industrial purposes.

(e) Textron's obligations with respect to remediation of the Gorham Site shall be satisfied when the remediation goals of the Remediation Program approved by DEM pursuant to the Remediation Regulations have been achieved.

(f) Nothing herein shall limit the City from selling, leasing, commencing the development of, or authorizing the private development of the Gorham Site or any portion thereof or building thereon, as long as such activities do not interfere with the implementation of the Remediation Program. If there is an incremental cost to the Remediation Program because of the sale, lease or development of all or part of the Gorham Site before the Remediation Program is complete under Section 2(e) herein, the City shall bear sole responsibility for such costs.

3. Reporting

Beginning with the first quarter following the effective date of this Agreement, and for each quarter thereafter until all activities required under the Remediation Program have been completed, Textron shall submit to the City written progress reports which shall be due on the fifteenth day of the month immediately following the quarter covered by the report. The report shall: (1) describe the actions that have been taken in connection with the Remediation Program during the previous calendar quarter; (2) include all results of sampling, tests, and other data received by Textron during the previous calendar quarter; (3) describe all actions that are scheduled for the next quarter and provide other information relating to the progress of activities as is customary in the industry; and (4) include information regarding unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Remediation Program.

4. Contractors

(a) Textron and the City agree that Rhode Island contractors and vendors shall be given preference for certain activities required by the Remediation Program. Textron, however reserves the right to retain engineers, laboratories and consultants it deems necessary to develop the Remediation Program. For other contractors and vendors, Textron shall seek to use Rhode Island contractors and vendors for all on-Gorham Site cleanup and remediation activities (including off-site transportation,

treatment, and disposal) unless Textron demonstrates that the use of a Rhode Island Contractor or vendor for a particular task or activity is not feasible because: (1) the work quality and expertise of the Rhode Island contractor or vendor to perform the activity or task are not equivalent to the out-of-state contractor or vendor; or (2) the cost to Textron to use a qualified Rhode Island contractor or vendor is not competitive with that of the out-of-state contractor or vendor for the same activity or task or (3) the contractor or vendor is not able to protect Textron from liability. Textron shall provide contemporaneous copies of bid documents and responses to the City for contractors and vendors other than Textron's engineers, laboratories and consultants.

5. Reimbursement of Past Costs

Within ten (10) days of the effective date of this Agreement, Textron shall pay to the City the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) in reimbursement of costs incurred by the City prior to the effective date of this Agreement for actions relating to the City's environmental investigation of the Gorham Site. Except as limited by section 7 below, this payment shall discharge Textron fully from any further obligation to reimburse the City for any Gorham Site costs incurred prior to the effective date of this Agreement.

6. Reimbursement of Building Cleanup Costs

Textron shall pay the City an amount not to exceed One Million Dollars in the aggregate for all costs (including all

engineering, consulting and laboratory fees and costs related thereto) reasonably incurred by the City in connection with the removal of asbestos and other hazardous substances or hazardous wastes, as those terms are defined under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") or the Resource Conservation and Recovery Act ("RCRA"), and the Rhode Island Hazardous Waste Management Act ("RIHWMA") from the buildings and structures (including existing underground heating oil storage tanks which were not leaking prior to August 5, 1986) located on the Gorham Site. The City shall send Textron a written request for payment of such costs, together with an appropriate accounting of the costs claimed, on a monthly basis, with each request to be made as soon as practicable after the close of each monthly period. Each request for payment shall include copies of all bills and invoices, identify the contractor or vendor, and describe the work completed or item purchased. Payment to the City shall be in the form of a check made payable to counsel to the City as escrow agent for the City and shall be made within 30 days of Textron's receipt of the request for payment. The City shall provide Textron with proof of payment.

At the request of Textron, the City will provide City police security for the Remediation Program and Textron will reimburse the City for 50% of the cost.

7. Payment of Environmental Counsel Fees

Textron shall pay McGovern Noel & Benik ("MN&B") an amount not to exceed \$50,000 in the aggregate for past and future legal

services (including costs) provided to the City as special environmental counsel with respect to all matters relating to this Agreement and the Gorham Site. MN&B shall submit to Textron monthly statements, together with appropriate detail and accounting of fees and costs claimed, which shall be paid by Textron in accordance with its customary practices. Textron will not pay MN&B for legal services provided to the City relating to Dispute Resolution under Paragraph 9 of this Agreement or litigation against Textron.

8. Indemnification and Insurance

(a) Textron shall indemnify, save and hold harmless the City and its officials, agents, employees, contractors, and representatives from any and all claims or causes of action arising from, or on account of, acts or omissions of Textron, its officers, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control in carrying out activities pursuant to this Agreement. The City shall not be held out as a party to any contract entered into by or on behalf of Textron in carrying out activities pursuant to this Agreement. Neither Textron nor any such contractor shall be considered an agent of the City unless duly designated in writing by an authorized city official.

(b) Textron waives any and all claims or causes of actions against the City and its officials, agents, employees, contractors and representatives for damages arising from or on account of any contract, agreement, or arrangement between

Textron and any person for performance of activities on or relating to the Gorham Site, including claims on account of construction delays.

(c) Textron shall indemnify and hold harmless the City and its officials, agents, employees, contractors, and representatives for any and all claims or causes of actions for damages arising from or on account of any contract, agreement, or arrangement between Textron and any person for performance of work on or relating to the Gorham Site, including claims on account of construction delays.

(d) Prior to commencing any activities at the Gorham Site, Textron shall secure, and shall maintain until completion of all activities required by the Remediation Program, comprehensive general liability and automobile insurance with limits of two million dollars combined single limit, naming as additional insured the City. In addition, until all activities required under this Agreement are satisfied, Textron shall satisfy, or shall insure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing work on behalf of Textron in furtherance of this Agreement. Prior to commencement of any activities required under this Agreement, Textron shall provide to the City certificates of such insurance or such other document acceptable to the City demonstrating the existence of such insurance. If Textron demonstrates by evidence satisfactory to the City that any contractor or subcontractor

maintains insurance equivalent to that described above or insurance covering the same risks but in a lesser amount, than with respect to that contractor or subcontractor, Textron need provide only that portion, if any, of the insurance described above which is not maintained by the contractor or subcontractor.

9. Dispute Resolution

(a) The Dispute Resolution procedures of this section shall be the exclusive mechanism to resolve disputes arising under this Agreement. Any dispute that arises under this Agreement shall in the first instance be the subject of informal negotiations between Textron and the City. The period for negotiation shall not ordinarily exceed thirty days from the date of written notice by any party that a dispute has arisen, but it may be extended by agreement of the parties. The representatives of the City and Textron shall have full authority to resolve any such dispute through negotiation.

(b) If the parties fail to resolve any dispute arising under this Agreement by informal negotiations as set forth above, the dispute shall be resolved by the Center for Public Resources ("CPR") in accordance with its rules and paragraph 9(c) below. Resolution of any dispute under this paragraph by the CPR shall be the sole and exclusive means of resolving said dispute, except for an appeal of any decision pursuant to paragraph 9(c)(2) below.

(c) It is the intent of the parties that the dispute resolution procedures shall provide for prompt resolution of any

dispute and shall be cost effective for both parties. The parties shall meet within 180 days of the signing of the agreement with CPR to select a member of the CPR panel of neutrals ("Neutral") to act as dispute resolver and establish a procedure for dispute resolution. The foregoing notwithstanding, the dispute resolution procedure shall include as a minimum the following:

- (1) The Neutral shall be selected by agreement of the parties. If the parties cannot decide on the Neutral, CPR shall select the Neutral.
- (2) The decision of the Neutral shall be binding on the parties and be entered and enforceable in any court of law of competent jurisdiction, unless it is not supported by substantial evidence or the law. In the event that the decision is not supported by substantial evidence or the law, an appeal shall be taken to any federal or state court of competent jurisdiction located in the State of Rhode Island.
- (3) All expenses and fees of Neutral, fees and expenses of persons who select the Neutral, expenses for hearing facilities, stenographers and other expenses of the dispute resolution procedure shall be borne equally by both sides. Each side shall bear its own counsel fees and costs.

- (4) The Neutral shall promptly render a written statement of his or her decision setting forth the relevant facts of the dispute and a clear statement of the basis of the decision including relevant facts or law supporting the decision.
- (5) The Neutral shall determine the extent of discovery and basis for submitting evidence, but both parties acknowledge that the Neutral is to be guided by the need for prompt resolution of the dispute in a cost effective manner for both sides.
- (6) Any party seeking to invoke the dispute resolution procedure shall do so by providing written notice to the other party and the Neutral. An initial meeting with the Neutral to start the procedure shall be held within 30 days of the notice, or sooner if the Neutral or the parties so decide.

10. Release and Indemnification

(a) The City releases and forever discharges Textron, its employees, agents, officers, directors, shareholders, trustees, attorneys, affiliated companies, predecessors, successors and assigns (hereinafter collectively referred to in this section 10 as "Textron") from, against, and in respect of any and all claims, demands, actions, or causes of action which the City presently has, ever had, or may in the future have, under federal or state statutory or common law (including without limitation claims under CERCLA and RCRA) or local law with respect to

surface or subsurface, soil or water environmental conditions or contamination at the Gorham Site.

This release and discharge shall not apply to any claim, demand, action or cause of action asserted against the City by EPA for response costs under CERCLA or RCRA where Textron has declined the option to take over the response action from the City following notice to Textron of EPA's action.

(b) The City releases and forever discharges Textron from, against, and respect of any and all claims, demands, actions, or causes of action which the City presently has, ever had, or may in the future have, with respect to environmental conditions or contamination in any building or structure (including currently existing underground heating oil storage tanks which did not leak prior to August 5, 1986) located on the Gorham Site.

(c) The City indemnifies and holds harmless Textron from any claims, demands, actions or causes of action with respect to surface and subsurface, soil or water environmental conditions or contamination at the Gorham Site brought or asserted by (1) any future owner, lessee or occupant of the Gorham Site, or (2) any agent or employee of the City, including any contractor hired by the City or any agent or employee of such contractor, who is injured or damaged on or by such conditions at the Gorham Site. This indemnity shall not apply to any claim, demand, action, or cause of action asserted by any future owner, lessee, or occupant of the Gorham Site against the City for response costs under CERCLA or RCRA where such claim, demand, action, or cause of

action is based upon a claim, demand, action, or cause of action brought against such owner, lessee, or occupant by EPA where Textron has declined the option to take over the action from the City following notice to Textron of EPA's action.

(d) The City indemnifies and holds harmless Textron for any claims, demands, actions or causes of action arising from or with respect to environmental conditions or contamination in any building or structure (including currently existing underground heating oil storage tanks which did not leak prior to August 5, 1986) located on the Gorham Site brought or asserted by (1) any future owner, lessee or occupant of the Gorham Site, or (2) any agent or employee of the City, including any contractor hired by the City or any agent or employee of such contractor, who is injured or damaged on or by such conditions at the Gorham Site.

11. Access

Commencing on the effective date of this Agreement, the City agrees to provide Textron and its representatives and contractors, and to representatives of DEM and other regulatory agencies, access at all times to the Gorham Site to perform the activities required hereunder. The City shall assure that access as required hereunder shall be provided by any subsequent owner or lessee of the Gorham Site, or of any portion thereof or building or structure located thereon.

12. Notices and Submissions

Whenever, under the terms of this Agreement, written notice is required to be given or a report or other document is required

to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other party in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to the City and Textron, respectively.

As to the City:

John F. Palmieri, Director
Department of Planning & Development
City of Providence
400 Westminster Street
Providence, Rhode Island 02903

Gregory L. Benik, Esquire
McGovern Noel & Benik
321 South Main Street
Providence, Rhode Island 02903

Joshua Teverow, Esquire
55 Pine Street
Providence, Rhode Island 02903

As to Textron:

Director of
Environmental Affairs
Textron Inc.
40 Westminster Street
Providence, Rhode Island 02903

Litigation Counsel
Textron Inc.
40 Westminster Street
Providence, Rhode Island 02903

13. Parties Bound

This Agreement applies to and is binding upon the City of Providence and upon Textron and their respective successors and assigns. Any change in ownership or corporate status of Textron shall in no way alter Textron's responsibilities under this Agreement. Any sale or lease of the Gorham Site shall in no way alter the City's responsibilities under this Agreement.

14. Modification

Unless otherwise agreed to in writing by the parties, the terms of this Agreement may be modified only in a writing signed by the parties. No act or omission of any party shall be deemed a waiver of the foregoing provisions requiring that this Agreement be amended or modified in writing.

15. Signatories

The undersigned representatives of the City and Textron certify that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

16. Applicable Law

This Agreement shall be interpreted and governed by the laws of the State of Rhode Island. Except as limited by section 9, all claims, disputes and other matters in question arising out of or relating to this Agreement, or the breach thereof, will be decided by proceedings instituted and litigated in a federal or state Court of competent jurisdiction sitting in the State of Rhode Island.

17. Captions

The captions of sections of this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

18. Integrated Agreement

This is the complete and integrated agreement of the parties with respect to the subject matter covered hereby, and supersedes all prior discussions and negotiations. It is agreed that neither the parties hereto nor anyone acting on their behalf has made any statement, promise, representation or agreement, or taken upon itself any engagement whatsoever, verbally or in writing, except as expressly set forth in this Agreement.

19. Force Majeure

It is further understood and agreed that neither party shall be liable for the timely failure to perform any obligation under this Agreement (excluding the payment of money) in the event such party is prevented from so performing by strike, lockout, breakdown, accident, order or regulation of or by any governmental authority, or failure of supply, or inability by the exercise of reasonable diligence to obtain supplies, parts, or employees necessary to furnish such services, or because of war or other emergency, or for any cause beyond the party's reasonable control, or for any causes due to any act or neglect of the other or its servants, agents, employees, licensees, or any person claiming by, through or under the other party.

20. No Admission.

The parties acknowledge that this Agreement effectuates the resolution and compromise of disputed claims asserted by the parties, and that this Agreement is not intended to be and should not be construed as an admission of liability or responsibility by any party.

21. Recording.

This Agreement shall be recorded by the City in the land evidence records of the City of Providence with respect to the Gorham Site.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in counterpart copies, each of which shall be deemed an original for all purposes, as of the date and year first above written.

CITY OF PROVIDENCE

By: _____

Its: _____

TEXTRON INC.

By: _____

Its: _____

STATE OF RHODE ISLAND
COUNTY OF

In _____ on the ____ day of _____, 1993, before me personally appeared _____, to me known and known by me to be the person executing said instrument in said capacity as _____ of the City of Providence, and he/she acknowledged said instrument by him/her so executed to be his/her

free act and deed in said capacity and the free act and deed of the City of Providence.

Notary Public
My Commission expires:

STATE OF RHODE ISLAND
COUNTY OF

In _____ on the ____ day of _____, 1993, before me personally appeared _____, to me known and known by me to be the person executing said instrument in said capacity as _____ of Textron Inc., and he/she acknowledged said instrument by him/her so executed to be his/her free act and deed in said capacity and the free act and deed of Textron Inc.

Notary Public
My Commission expires:

WP:[Coffey]TI039492 .AA2 R10 7-DEC-93 16:02:12