

AGREEMENT

This Agreement (“Agreement”) is made and entered into by and between the Village of Hoosick Falls and Saint-Gobain Performance Plastics Corporation and Honeywell International Inc. (collectively, the “Parties”).

RECITALS

WHEREAS, the Village of Hoosick Falls (the “Village”) is a municipality incorporated and organized pursuant to the New York Village Law. The Village is located in the Town of Hoosick, Rensselaer County, New York.

WHEREAS, the Village owns and operates a municipal water supply system (“Village Water Supply System”) that provides water to residents of the Village.

WHEREAS, Saint-Gobain Performance Plastics Corporation (“SGPP”) is a corporation doing business in the State of New York.

WHEREAS, Honeywell International Inc. (“Honeywell”) is a corporation doing business in the State of New York.

WHEREAS, SGPP owns a facility located on McCaffrey Street in the Village of Hoosick Falls. Due to the presence of Perfluorooctanoic Acid (“PFOA”) in the soils and groundwater, the facility was designated as an Inactive Hazardous Waste Disposal Site by the New York State Department of Environmental Conservation (“DEC”) in 2016, (hereinafter the “McCaffrey Street Site” or the “Site”). The Site was previously owned by Allied Signal Laminate Systems, Inc., a predecessor to Honeywell.

WHEREAS, the Village water supply system has been contaminated with PFOA.

WHEREAS, in June 2016, SGPP and Honeywell entered into an Order on Consent and Administrative Settlement with DEC (the “DEC Order”). Pursuant to the DEC Order, the

Companies installed a granular activated carbon (“GAC”) filtration system at the Village’s water treatment plant (the “GAC System”) for the purpose of removing PFOA contamination from the Village Water Supply System.

WHEREAS, DEC designated the Village’s “existing contaminated municipal water supply” as Operable Unit 2 (“OU-02”) for the McCaffrey Street Site.

WHEREAS, on December 3, 2022, DEC issued a Record of Decision (“ROD”) for OU-02 in which it determined that the remedy (hereinafter the “OU-02 Remedy”) will consist of the following elements:

- a. Development of two new groundwater supply wells consisting of existing test wells located south of Hoosick Falls which will be converted to production wells.
- b. Provide required redundancy by maintaining an existing Village supply well, referred to as “Well 7”, in order to provide a water source in the event of an outage or deficiency in supply from the new production wells.
- c. Construction of a water transmission line from the two new groundwater supply wells to the Hoosick Falls water treatment plant via existing public rights of way or by rights of way and easements to be acquired.
- d. Continued operation and maintenance of the public water supply treatment plant for removal of naturally occurring elements, disinfection and distribution to meet applicable water supply requirements; and
- e. Continued operation and maintenance of the GAC System to ensure that PFOA contamination is not present in the finished water in the Village Water Supply system.

WHEREAS, SGPP and Honeywell have jointly and individually determined to undertake the OU-02 Remedy as described in the ROD, a copy of which is attached and made a part hereof as Exhibit “A”, subject to and dependent upon their entry into an acceptable agreement or Consent Order with DEC.

WHEREAS, the new groundwater supply wells and other associated hardware required by the ROD (including but not limited to pumps, power connections/sources, meters) and the construction of the new water line will all constitute improvements to the Village Water Supply System infrastructure (hereinafter “Improvements”).

WHEREAS, the Village will be responsible for the operation and maintenance of the Improvements to the Village Water Supply System infrastructure and the GAC System, following completion of construction by SGPP and Honeywell and transfer of ownership of such Improvements to the Village.

WHEREAS SGPP, Honeywell and the Village are entering this Agreement to define the obligations and responsibilities of each with regard to the design and construction of the Improvements, the dedication of the Improvements and the GAC System to the Village, and to establish a protocol for reasonably determining the costs for the Village’s operation and maintenance of the Improvements and the GAC System.

WHEREAS, SGPP and Honeywell acknowledge that operation and maintenance of the Improvements and the GAC will result in costs for the operation of the Village Water Supply System that are incremental to, or in addition to, the cost for the operation of the Village Water Supply System prior to the addition of the GAC System and the Improvements required by the ROD.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, and contingent only upon SGPP and Honeywell (the “Companies”) entering into a related Order on Consent and Administrative Settlement (the “DEC Remedial Order”) with DEC, SGPP, Honeywell, and the Village agree as follows:

1. RECITAL CLAUSES

The recital clauses set forth above are hereby incorporated in, and made a substantive part of this Agreement.

2. THE COMPANIES’ OBLIGATIONS

- A. Subject to the terms of the DEC Remedial Order, the Companies shall be responsible for the design and construction of the Improvements required by the ROD.
- B. Pre-Design Investigation: The Companies shall submit to DEC, with a copy to the Village, a Scope of Work for all pre-design environmental investigations, surveying, and/or other investigative activities necessary to design and construct the Improvements. Upon DEC approval of the pre-design investigation scope of work, Honeywell and SGPP shall implement the scope of work. The Companies shall provide the results of the pre-design investigation to DEC, New York State Department of Health (“DOH”), and the Village in a pre-design investigation report.
- C. Design: The Companies will provide design documents for the implementation of the ROD to the Village. The design documents will be prepared at the various stages (e.g., 30%, 90%, and final) and provided to DEC, NYSDOH and the Village for review and comment. If necessary, representatives of the Companies and representatives of the

Village will meet and confer to resolve any issues and concerns raised by the Village in accordance with Section 4 below.

- D. Consultation: As provided in Section 3 herein below, the Village will undertake a timely review and provide any comments it may have with respect to the design documents.
- E. Construction: The Companies will undertake construction and completion of the Improvements in accordance with the terms of the DEC Remedial Order and the approved Final Design.

3. COOPERATION AND ASSISTANCE BY THE VILLAGE

In consideration of the Companies' commitment to undertake the Improvements required by the ROD, the Village agrees to work in a collaborative and cooperative manner with the Companies in furtherance of the timely design and construction of the Improvements. To this end, the Village will do as follows:

- A. Provide a copy of the Village's current, published design and construction specifications for projects of this nature, as applicable, and timely review and acknowledge as appropriate that the design and engineering of the Improvements meets the Village's published specifications for projects of this nature.
- B. During the design and construction phases, provide notice of any nonconformance with the Village published specifications promptly after discovering any such nonconformance.
- C. Promptly notify the Companies of any proposed change in the Village Code or specifications for projects of this nature that may impact the Village's acceptance of the Improvements. The parties shall discuss any such change in good faith and, subject to such discussions, the Companies will implement any such change relative to the remaining

portion of the project. The Village is not aware of any such changes being considered at the time of the execution of this agreement.

- D. Provide access to lands owned by the Village for those portions of the Improvements which will be located on property owned by the Village.
- E. Timely apply to DOH and any other relevant agencies for permit modifications relating to incorporating the Improvements into the Village Water Supply System.
- F. Issue all permits required from the Village to construct the Improvements upon timely applications submitted by the Companies.

4. PROJECT DESIGN REVIEW

As provided in Section 2 above, to the extent that the Village has comments on any design submission, the Village shall provide those comments, in writing, to the Companies and DEC in a timely manner. The Parties shall meet and work in good faith to resolve the Village's comments. To the extent that the Parties cannot agree on resolution of any such comments, the comments shall be referred to DEC and the Companies and the Village will confer with DEC to resolve the comments consistent with the requirements of the ROD. In the event that the Companies, the Village and DEC are unable to resolve the issues raised by the Village's comments, any Party hereto may terminate this Agreement by providing explicit notice of such termination to the other parties.

5. PROPERTY RIGHTS ACQUISITION

- A. If the Companies provide notice to the Village that the Companies have been unable to obtain easements or other property rights necessary for the construction of the Improvements on land that is not owned by the Village, the Village shall provide assistance to the Companies for the purpose of obtaining such easements and other property rights,

including the exercise of its powers of eminent domain to the extent permitted by law. The Companies shall reimburse the Village for all costs, including legal fees and expenses, associated with the Village's assistance in acquiring such rights, including those relating to the exercise of the power of eminent domain.

- B. For any property rights that the Companies have acquired, the Village shall accept the Companies' irrevocable offer of dedication pursuant to Section 10, and shall, upon acceptance, take title to such property rights.

6. TRANSACTIONAL COSTS

- A. **Project Review and Oversight Costs.** Implementation of the OU-02 remedy will result in transactional costs to the Village, including but not limited to: (1) the hiring of a qualified engineering consultant to provide oversight of the design; (2) the hiring of a qualified engineering consultant to provide construction inspection services during construction; (3) legal and technical costs associated with permitting with respect to the new public water supply; and (4) legal and technical costs associated with the acceptance of property rights and Improvements (collectively "Costs").
- B. **Project Review and Oversight Tasks.** The engineering consultant retained by the Village shall have responsibilities including the following:
 - 1. Review the Design Plans developed by, or on behalf of the Companies for the Improvements to the Village Water Supply System infrastructure as required by the ROD and prepare comments regarding such plans.
 - 2. Engage in discussions with the representatives of the Companies, DEC and NYSDOH for the purpose of resolving any comments or concerns raised by the engineering consultant with respect to the plans for the Improvements.

3. To the extent that construction drawings for development of the Improvements are not included in the Design Plans, as referenced above, review and provide comments regarding such construction drawings.

4. Engage in discussions with the representatives of the Companies, DEC and NYSDOH for the purpose of resolving any comments or concerns regarding the construction drawings.

5. Monitor the construction of the Improvements on a reasonable schedule for the purpose of confirming that the construction is undertaken in conformity with the approved plans; such responsibility shall include periodic inspections of construction activities and observing the testing of all components comprising the Improvements.

6. Review the Improvements as constructed and advise the Village during the procedures for the Village's acceptance of the Improvements as provided in Section 10, hereof.

C. **Escrow Account.** The Companies agree to fund an escrow in the amount of \$80,000.00 ("Initial Escrow Amount") to cover the Village's Costs set forth in Paragraph 6A above. Such amount will be held in escrow by the Village's counsel (Escrow Agent) and quarterly accountings of disbursements from the escrow will be provided to the Companies. In the event that the initial payment is reduced to the amount of \$20,000.00, the Escrow Agent will provide notice to the Village and Companies. In such case, the Village agrees to provide the Companies an updated Cost Estimate within 30 days of such notice and the Companies agree to negotiate in good faith with the Village about a reasonable replenishment of the escrow account. Any replenishment of the escrow account is subject to the Companies' review and approval of the Village's Costs up to that point and the

updated Cost Estimate with reference to the Village's current Schedule of Rates ("Additional Escrow Amount"), such funding shall not be unreasonably withheld.

- D. **Escrow Agreement.** The establishment of the Escrow shall be the subject of a separate agreement to be executed with the escrow agent and said Escrow Agreement shall be consistent with the terms hereof.
- E. **Escrow Agent.** As a precondition for the funding of the Escrow Account, the designated Escrow Agent shall acknowledge the deposit and the establishment of the escrow account, and agree to hold and disburse funds only upon written request of the Village, with a copy to the Companies.
- F. **Final Release of Escrow Funds.** At the conclusion of construction activities, the Companies will submit a Construction Completion Report to DEC certifying that the construction has been completed in accordance with the Design. Once the DEC approves the Construction Completion Report and after payments have been tendered for all outstanding fees and costs, the Village agrees to execute a written release of the remainder of the Escrow Account ("**Final Release**") authorizing the remaining funds to be disbursed to the Companies by the Escrow Agent.

7. FINANCIAL ASSURANCES

The Companies shall maintain financial assurances, as required by DEC, for the performance of activities required by the DEC Remedial Consent Order and the Companies shall provide to the Village copies of all documents submitted to DEC relating to such financial assurances.

8. CALCULATION OF LONG-TERM COSTS

- A. Operation of the Improvements and the GAC System will result in incremental costs (i.e., those costs above the baseline operating costs the Village would have incurred to operate

the municipal water supply in the absence of PFOA, as identified in Section 8C below) to the Village on a continuing basis (the "Incremental Costs"). The Companies and the Village agree that calculation of the Incremental Costs can be reasonably calculated based upon: (1) the final design and projected operational characteristics of, and maintenance requirements of the Improvements; (2) the available data and information as to the costs associated with the operation and maintenance of the GAC System during the period 2016 to the present; (3) the cost of water quality sampling as may be required by DEC to monitor for the presence of PFOA and other perfluorinated substances (PFAS) in the supply wells; and (4) the available data of costs identified in Section 8C below.

- B. The Companies shall retain a qualified consultant or consultants to prepare a detailed analysis and calculation of the costs for operating and maintaining the Improvements and the GAC System on a long-term basis including necessary capital replacement costs for such assets based on industry standards for expected useful life of such assets.
- C. Within thirty (30) days following the approval of the final design of the Improvements, the Village will provide to the Companies the costs to operate and maintain the current water supply wells and supply lines during the period 2016 to the date of this Agreement.
- D. The Companies will provide to the Village the total cost and the Incremental Costs for the operation and maintenance of the Improvements and the GAC System on an annual basis and over ten (10), twenty-five (25), fifty (50), seventy-five (75), and one hundred (100) year periods beginning with calendar year 2025. The cost projections will be provided to the Village within ninety (90) days following the approval of the final design of the Improvements.

- E. In its sole discretion and at its sole cost, the Village may retain a qualified consultant or consultants to review the analysis and calculations required by the foregoing paragraph “D”.

9. RESOLUTION OF LONG-TERM COSTS

- A. Based upon the calculations required under the terms of foregoing Section 8 hereof, the Companies and the Village agree to undertake good faith negotiations for the purpose of establishing the total amount and manner of payment by the Companies of such Incremental Costs and the cost to operate the GAC System.
- B. In the event that the parties reach an agreement on the amount and manner of payment of the Incremental Costs and the cost to operate the GAC System, the terms thereof shall be incorporated into and made a part of this Agreement.
- C. In the event that the parties cannot reach agreement on the amount and manner of payment of the Incremental Costs and the cost to operate the GAC System by the Companies to the Village within 180 days of the approval of the final design of the Improvements, or such longer period as the parties may agree to in writing, then (1) the Companies shall continue to pay the Village on a periodic basis the Incremental Costs and cost to operate the GAC System; and (2) the parties reserve all rights and defenses as set forth in Section 11 herein below.

10. DEDICATION

- A. The Companies irrevocably offer to the Village at no cost the dedication of the Improvements and the GAC System upon approval of the Construction Completion Report

for such Improvements and the Village agrees to accept such Improvements subject to its review and acceptance of the Construction Completion Report.

- B. The Companies covenant that one or both of SGPP and Honeywell will be seized of all premises being conveyed and will have good right to convey the same.
- C. At the time of such acceptance by the Village, title to such premises and Improvements shall be good and marketable and free from all liens and encumbrances, and in proof thereof, the Companies agree to furnish, at their expense, such searches of title or title policy and title insurance and surveys required by the Village.
- D. The Companies shall transfer all warranties that can be assigned to the Village prior to the dedication and the Village agrees that the Companies shall have no further responsibility for the costs of repair, replacement and maintenance of the Improvements and the GAC System unless the Companies and the Village do not achieve a resolution of permanent costs as provided in foregoing Section 9.

11. RESERVATION OF RIGHTS

- A. The payments provided for herein by the Companies shall not be construed as an admission by the Companies that the payment of such costs is required under any law, rule, regulation, or Order. Moreover, the Companies reserve all rights available to them, including the right to (jointly and/or individually) contest or challenge any claims by the Village not expressly resolved herein, and nothing in this Agreement shall waive, extinguish or modify any such rights. The Companies expressly reserve the right to enforce the provisions of this Agreement.
- B. Nothing contained in this Agreement or otherwise shall constitute a release, waiver or relinquishment by the Village of any rights, remedies, causes of action, or any other claims

unless expressly resolved herein. The Village expressly reserves the right to pursue any and all such rights, remedies, causes of action, or any other claim or claims. Without limitation, the Village expressly reserves the right to enforce the provisions of this Agreement.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties with respect to the matters set forth herein, and it merges and supersedes all prior discussion, correspondence, proposals, agreements and understandings. This Agreement may not be modified, altered or amended except by a subsequent written instrument executed by the Parties.

13. GOVERNING LAW

This Agreement shall be construed, enforced and governed in accordance with the laws of the State of New York.

14. COOPERATION

The Parties agree to cooperate with one another and use all reasonable efforts to accomplish the terms and conditions of this Agreement. The Parties will attempt to resolve any disputes regarding this Agreement in good faith. If any Party reasonably believes the other Party to be in breach of the Agreement, that Party will promptly send written notice to the allegedly breaching Party detailing the nature of the alleged breach and providing a reasonable opportunity to cure.

15. REPRESENTATION

Each of the undersigned representatives of the Parties represents and warrants that he or she has full capacity and authority to enter into this Agreement and to legally bind his or her respective Party to the terms of the Agreement, that to the extent necessary this Agreement has been duly and validly authorized and approved by all requisite corporate, governmental or other

official action, and that no further action is necessary to make this Agreement valid and binding on the Party.

16. FINALITY AND MISTAKE

Each of the Parties to the Agreement has investigated the facts pertaining to it to the extent each Party deems necessary. In entering into this Agreement, each Party assumes the risk of mistake with respect to such facts. This Agreement is intended to be final and binding upon the Parties regardless of any claim of mistake. Each Party relies on the finality of this Agreement as a material factor inducing that Party's execution of this Agreement.

17. AUTHORIZATION TO ENTER INTO AGREEMENT

Each of the Parties has all necessary authority to enter into this Agreement, has authorized the execution and performance of this Agreement, and has authorized the Person signing this Agreement on its behalf to do so.

18. INTERPRETATION OF THIS AGREEMENT.

This Agreement was drafted jointly by the Parties and, in construing and interpreting this Agreement, no provision of this Agreement shall be construed or interpreted against any of the Parties based upon the contention that this Agreement or a portion of it was purportedly drafted or prepared by one of the Parties. The Parties agree that the language in all parts of this Agreement shall be construed as a whole, according to its fair meaning. Any captions, titles, headings, or subheadings in this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

19. EXECUTION.

This Agreement may be executed in counterparts, including via electronic signature, and shall be binding once all Parties have executed the Agreement. The Parties further agree that

signatures provided by portable document format (PDF) or other electronic transmission shall have the same force and effect as original signatures.

20. AGREEMENT NULL AND VOID

The parties acknowledge and agree that, in the event that the Honeywell and SGPP do not enter into an Order on Consent with DEC for the design and implementation of the OU-02 ROD, this Agreement shall be null and void.

21. NOTICES

Any notice, demand, or other communication under this Agreement shall be in writing and shall be deemed duly given if it is addressed to the intended recipient as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed email, or delivered by reputable express overnight courier:

To the Village

Village of Hoosick Falls
Attn: Mayor Robert Allen
Municipal Building
24 Main Street
Hoosick Falls, NY 12090

With a copy to:

Gilchrist Tingley, P.C.
Attn: David Engel
251 River Street, Suite 201
Troy, NY 12180

To Companies

To Honeywell:

Honeywell International Inc.
Attn: Chuck Anthony
General Counsel – Health, Safety, Environment, Product Stewardship, and Sustainability
855 S. Mint St.
Charlotte, NC 28202

With a copy to:

Allen & Desnoyers LLP
Attn: Dale Desnoyers
120 Defreest Drive
Troy, New York 12180

To Saint-Gobain Performance Plastics Corporation:

Brett E. Slensky, Esq.
Environmental Counsel
Saint-Gobain Corporation
20 Moores Road
Malvern, PA 19355

With a copy to:

Archer & Greiner P.C.
Attn: David Edelstein
1025 Laurel Oak Road
Voorhees, NJ 08043

22. WAIVER

The provisions of this Agreement may be waived only by written agreement signed by the waiving party. The waiver by any Party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach of this Agreement.

23. SEVERABILITY

The provisions of this Agreement are not severable, except as provided in the Agreement.

24. THIRD-PARTY BENEFICIARIES

This Agreement does not create any third-party beneficiaries.

25. FORCE MAJEURE

The failure of any Party to perform any of its obligations hereunder shall not subject any Party to any liability or remedy for damages, or otherwise, where such failure is occasioned in

whole or in part by Acts of God, fires, accidents, pandemics, other natural disasters, interruptions or delays in communications or transportation, labor disputes or shortages, shortages of material or supplies, governmental laws, rules or regulations of other governmental bodies or tribunals, acts or failures to act of any third parties, or any other similar or different circumstances or causes beyond the reasonable control of such Party.

26. EXECUTED IN COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which when executed will be deemed to be an original but all of which when taken together will constitute one and the same Agreement.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

Saint-Gobain Performance Plastics Corporation

Dated:

By: _____

Title: _____

Honeywell International Inc.

Dated:

By: _____

Title: _____

Village of Hoosick Falls

Dated:

By: _____

Title: _____

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