

COST SHARING AND TOLLING AGREEMENT

This Cost Sharing and Tolling Agreement (“Agreement”) is entered into this ____ day of March, 2020 (“Effective Date”), by and between Honeywell International Inc. (“Honeywell”) and the Village of Hoosick Falls (“Village”) (hereinafter collectively referred to as the “Parties” and individually each as “Party”).

RECITALS

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

WHEREAS, AlliedSignal Laminated Systems, an affiliate of Honeywell’s predecessor, at certain times owned and operated several manufacturing facilities in and around the Village and Town of Hoosick;

WHEREAS, the Village owned and operated an unlined municipal landfill in the Town of Hoosick from the mid-1930’s until the facility stopped accepting waste in 1993 (“Village Landfill”);

WHEREAS, the Village Landfill was closed in 1994 by the Village. Currently, the Village operates a Transfer Station in the northeastern part of the property and a solar power facility is located on the Village Landfill;

WHEREAS, the New York State Department of Environmental Conservation (“NYSDEC”) listed the Village Landfill on its Registry of Inactive Hazardous Waste Disposal Sites in 2019. Attached hereto as Attachment “A” is a printout from the New York State Department of Environmental Conservation database of environmental sites, printed on February 20, 2020;

WHEREAS, the NYSDEC sent a notice letter dated May 6, 2019 to parties they deemed potentially responsible parties” (“PRPs”) in May 2019 (“Notice Letter”);

WHEREAS, in addition to other parties, Honeywell and the Village were both named by the NYSDEC in the Notice Letter as PRPs;

WHEREAS, the Notice Letter requested the named parties enter into an Order on Consent and Administrative Settlement to perform a Remedial Program for the Village Landfill;

WHEREAS, Honeywell and the Village are willing to enter into an Administrative Order on Consent with the NYSDEC and are currently negotiating such an Order on Consent and Administrative Settlement (Index No. CO 4-20190705-39) with the NYSDEC (the “Order”) with respect to the environmental investigation and evaluation of the Village Landfill;

WHEREAS, the Parties wish to coordinate in order to reduce burdens and expense on the Parties in defending against any claims or enforcement actions that have been or may be asserted in the future regarding contamination in or emanating from the Village Landfill brought by any federal, state or local regulatory agency (“Landfill Actions”), and to expedite the investigation and, as appropriate, remediation of the Village Landfill;

WHEREAS, the Parties intend to preserve, defer and toll any claims they may have against each other as of the Effective Date related to the Order and other Landfill Actions; and

NOW, THEREFORE, in consideration of the foregoing and the mutuality of the promises made herein, and for other valuable consideration the receipt of which is hereby acknowledged, each of the Parties agrees as follows:

ARTICLE I - AUTHORIZATION TO ENTER AGREEMENT

1. The undersigned represent that they are fully authorized to enter into this Agreement on behalf of the Party for whom they have signed.

2. By signing this Agreement, the Parties intend to bind themselves, their counsel, successors and assigns, and all other persons and/or entities acting on their behalf in connection with the Order and other Landfill Actions.

ARTICLE II - DENIAL OF LIABILITY

3. Nothing herein is intended to be, nor shall be deemed to be, an admission of any duty, obligation, or liability on the part of any Party in connection with the Order or other Landfill Actions. Further, entering into this Agreement shall not be construed as a waiver by any Party to this Agreement of any claim or any defense with respect to any third party. The existence of this Agreement shall not be used in any fashion against the Parties other than to enforce the obligations set forth in this Agreement or otherwise as set forth in this Agreement.

ARTICLE III - COST SHARING

4. (a) Interim Cost Sharing

In order to expedite and facilitate the remedial program for the Village Landfill pursuant to the Order and to advance other Landfill Actions, and to avoid the distraction of potentially unnecessary litigation between each other regarding the responsibility and allocation of costs associated with such efforts, while reserving the Parties' respective rights to pursue any potential claims or defenses that they might have in the future with respect to such costs, the Parties agree to a sharing of certain actions and costs as identified below on an interim basis, subject to later reallocation pursuant to Paragraph 4(b) below.

The following past and future costs (hereafter referred to as "Shared Costs") shall be shared between the Parties on an interim basis, as set forth herein:

- i. All costs incurred by any Party prior to the Effective Date of this Agreement to investigate the Village Landfill shall be borne by the Party incurring such cost;

ii. Honeywell shall fund the costs associated with developing and implementing the Remedial Investigation and Feasibility Study for the Village Landfill;

iii. The Village shall fund all post-closure operations and maintenance activities required pursuant to its 1993 Consent Decree for the Village Landfill, including without limitation pursuant to any work plans approved by NYSDEC pursuant to such Decree, to be conducted during the post-closure care period to maintain the integrity of the various closure systems through landfill inspection, maintenance, repair, monitor and reporting. Such activities include the repair actions to maintain, repair or reconstruct the leachate collection systems; areas of the engineered cover system that may have deteriorated or eroded; and the vegetative cover to promote long-term erosion control and to protect the final cover. Such repair activities shall be conducted in a manner to maintain the integrity of the final remedial systems established during closure construction.

iv. The Order provides that the parties are responsible for payment to NYSDEC of past costs totaling \$505,000. Subject to the provisions set forth in Paragraph 4(b) below, the parties agree to timely negotiate in good faith in an effort to resolve the allocation of those costs so that payment shall be made within the period of 365 days established by Paragraph III of the Order.;

v. Notwithstanding anything to the contrary above, costs incurred by a Party for attorney fees/costs shall not considered Shared Costs subject to interim cost sharing.

b. Final Cost Allocation

i. Upon the termination of this Agreement as provided for in Article VII below, the Parties agree that all Shared Costs and any other costs claimed owed by one Party to the other in connection with the Order and other Landfill Actions shall be subject to final allocation. The Parties of this agreement will encourage the prompt and equitable settlement of the final allocation claims between the Parties. The Parties agree to negotiate their differences directly and in good faith. This effort shall include the Village pursuing any and all insurance policies. If after negotiations, the respective allocable shares of each Party are not resolved, the Parties are free to exercise all other legal and equitable rights.

ARTICLE IV - PROPERTY ACCESS

5. The Village hereby agrees to allow Honeywell, its employees, contractors, subcontractors, and authorized representatives to enter the Village's Property in order to perform all tasks reasonable and necessary in connection with the Order ("Work"). Honeywell agrees to perform the Work in a safe and workman-like manner, and in compliance with applicable federal, state, and local laws, rules and regulations, and to obtain all required permits or authorizations. The rights granted pursuant to this Paragraph are nonexclusive, it being understood and agreed that the Village, its agents, employees, workers, contractors and tenants will have full authority to come upon and have unfettered access to the Village's Property during the performance of the Work, provided that the Village agrees not to adjust, modify, tamper with, bypass, or remove any groundwater monitoring well or sampling equipment on the Village's Property. Upon completion of the Work requiring access to the Village's Property, Honeywell agrees to timely remove all Work-related materials and reasonably restore the Village's property substantially to the condition

it was in prior to such Work. Notwithstanding the foregoing, (a) if any physical damage is caused to the Village's Property by Honeywell or its agents, employees, contractors or authorized representatives (collectively, "Honeywell and its Representatives"), Honeywell, at its sole cost and expense, will promptly repair such damage; and (b) Honeywell will hold the Village harmless from and against all mechanics', materialmen's, laborers', and other liens arising out of the Work performed on the Village's Property. In addition, Honeywell and its Representatives shall enter upon the Village's Property at their own risk, and Honeywell shall defend, hold harmless and indemnify the Village against any loss or damage arising out of the Work caused by the negligence or willful misconduct of Honeywell and/or its Representatives. This hold harmless and indemnification provision shall survive the termination of this Agreement.

ARTICLE V - RESERVATION OF RIGHTS

6. Except as otherwise expressly provided in this Agreement, each Party reserves all of its rights in law and equity to assert all claims and defenses that each Party has or may have against the other Party relating to claims for indemnification, contribution, cost recovery or any other statutory or common law legal theory to obtain payment, reimbursement, or a declaration of liability with respect to any costs, expenses, losses, or liabilities arising out of or related to any alleged contamination in or emanating from the Village Landfill.

ARTICLE VI - TOLLING AGREEMENT FOR DEFERRAL OF CLAIMS AND DEFENSES

7. a. The Parties recognize that their respective interests in promptly and efficiently addressing the Order and other Landfill Actions will be best served if resolution of all disputes which may arise between or among the Parties themselves relating to the Order and other Landfill Actions are deferred. By deferring these matters, the Parties will be able to address the

Order and other Landfill Actions without the distraction and substantial expense resulting from concurrent discovery and litigation between or among themselves.

b. In order to facilitate their mutual interest in deferring litigation between and among each other, the Parties agree to preserve, defer and toll any claims and defenses related to the Order and other Landfill Actions, including any indemnification or contribution claims pursuant to contract, statute or common law, that they may have against each other as of the Effective Date (the “Deferred Claims”) through the earlier of the (i) written termination of this Agreement pursuant to Article VII below; (ii) NYDEC approval of a Site Management Plan under the Order; or (iii) termination of the Order.

c. The Parties agree that the time period from the Effective Date of this Agreement until the earlier of (i) the written termination of this Agreement; (ii) NYDEC approval of a Site Management Plan under the Order; or (iii) termination of the Order (the “Tolling Period”) shall not be included in calculating the expiration of any statute of limitations or other limitations period applicable to any Deferred Claims. The Parties further agree not to assert, plead, or raise any defense or avoidance to Deferred Claims based on laches, estoppel or the running of any applicable statute of limitations or other limitations period based upon the passage of time during the Tolling Period.

d. The Parties further agree that no Party shall assert in any subsequent action or proceeding (including any arbitration or other alternative dispute resolution forum) any defense based upon collateral estoppel, res judicata, the entire controversy doctrine, waiver or any other similar rule, regulation, or defense based upon any contention that Deferred Claims raised by one Party against the other Party were or should have been brought and resolved in a prior action instituted against either of the Parties by any third party.

ARTICLE VII - TERMINATION OF PARTICIPATION

8. This Agreement may be terminated as follows:
 - a. By mutual written agreement of the Parties; or
 - b. By any Party of this Agreement via written notification to the other Party.

In the event either Party submits written notice of its desire to terminate this Agreement, the final allocation procedures set forth above in Paragraph 4.b. shall be triggered as to all Shared Costs and any other costs claimed owed by one Party to the other in connection the Order or other Landfill Actions, and the termination of this Agreement shall not become effective until completion of that final allocation process.

ARTICLE VIII - NOTICE

9. Any notice required under this Agreement shall, in the first instance, be communicated as practically and promptly as possible to the undersigned counsel for the other Party and shall also be memorialized in writing which shall be mailed to the undersigned for the other Party by registered or certified mail, return receipt requested. Notice is deemed effective on the date it is mailed.

ARTICLE IX - INTEGRATED AGREEMENT

10. This Agreement constitutes the entire understanding of the Parties with respect to the purpose of this Agreement as set forth above and it replaces any prior inconsistent understandings or agreements, written or oral, between or among the Parties regarding the Order and other Landfill Actions.

ARTICLE X - CONSTRUCTION OF AGREEMENT; SEVERABILITY

11. This Agreement is to be construed liberally to achieve its intended purposes. In case any one or more of the paragraphs, clauses or words of this Agreement or the application thereof to any situation, person or circumstance shall for any reason be held to be void, invalid or

unenforceable, such voidness, invalidity or unenforceability shall not affect any of the other paragraphs, clauses or words to this Agreement, or the application thereof, to any other situation, person or circumstance. It is the intent of this Agreement that it is severable and shall be construed and applied as if any such void, invalid, or unenforceable paragraph, clause or word had not been included herein.

ARTICLE XI - AMENDMENT AND MODIFICATION

12. No amendment or modification of this Agreement shall be binding upon the Parties except by subsequent agreement of the Parties in writing, expressly characterized as an amendment or modification of this Agreement, signed by each Party.

ARTICLE XII - ENFORCEMENT OF AGREEMENT

13. The Parties and their respective counsel agree that a breach of the provisions of this Agreement will cause immediate and irreparable harm for which there is no adequate remedy at law, agree that specific performance and injunctive relief are appropriate remedies to compel performance of this Agreement, and expressly agree to such remedies, as well as any other remedies for breach of this Agreement that may be available under law or equity.

ARTICLE XIII - CHOICE OF LAW

14. This Agreement shall be governed by and shall be construed and enforced in accordance with the laws of the State of New York, without regard to its conflicts of laws principles. The Parties agree to submit to the exclusive jurisdiction of the Courts of the State of New York for the purpose of any action arising out of this Agreement or for the enforcement of any provision provided hereunder.

ARTICLE XIV - ASSIGNMENT; BINDING AGREEMENT

15. This Agreement is not assignable by either Party without the prior written consent of the other Party and any attempt to assign any interest herein or obligation hereunder without

such consent is void. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, indemnitors and permitted assigns. This Agreement is not intended to inure to the benefit of any entities other than the Parties and those entities expressly identified in this Paragraph.

ARTICLE XV - EXECUTION

16. This Agreement may be executed in counterparts, all of which taken together shall constitute one agreement. Facsimile and/or electronic signatures shall be deemed to be originals.

IN WITNESS WHEREOF, with the intent to be legally bound, the Parties have executed this Agreement in counterpart on the date designated on their respective signature pages.

VILLAGE OF HOOSICK FALLS

HONEYWELL INTERNATIONAL INC.

By: _____
Robert Allen
Mayor

By: _____
Evan van Hook
Corporate V.P.
Health, Safety, Environment,
Product Stewardship and Sustainability

Dated: _____

Dated: _____

ATTACHMENT “A”

**NYSDEC ENVIRONMENTAL SITE REMEDIATION
DATABASE SITE RECORD**