

**VILLAGE OF HOOSICK FALLS
REGULAR MEETING**

October 13, 2020

**RESOLUTION AUTHORIZING ACCEPTANCE OF FUNDS WITH FULL
RESERVATION OF RIGHTS**

WHEREAS, as a result of the use, discharge, release and disposal of materials containing perfluorooctanoic acid (“PFOA”) and other synthetic chemicals referred to as polyfluoroalkyl compounds (“PFCs”) by Saint-Gobain Performance Plastics Corporation (“SGPP”) and Honeywell International Inc. (“Honeywell”), PFOA and other PFCs have been released into the environment in and around the vicinity of the Village of Hoosick Falls; and

WHEREAS, such use, discharge, release, and disposal of PFOA and other PFCs has resulted in the presence of PFOA and other PFCs in the Village of Hoosick Falls’ water supply system; and

WHEREAS, the Village of Hoosick Falls has suffered and incurred, and will continue to suffer and incur, certain damages as a result of such PFOA and PFC contamination; and

WHEREAS, the Village of Hoosick Falls, through its elected officials and retained legal counsel, have duly attempted to resolve legal issues pertaining to such PFOA and PFC contamination as described herein with representatives of SGPP and Honeywell; and

WHEREAS, such efforts by the Village have not been successful in resolving all legal issues pertaining to the above-described contamination in and around the Village of Hoosick Falls; and

WHEREAS, the Village has nonetheless sought to have SGPP and Honeywell pay the Village for reimbursement of certain expenses and lost revenue previously incurred by the Village as a result of the contamination of the Village’s water supply system, and has previously made demand therefor; and

WHEREAS, SGPP and Honeywell collectively have previously paid to the Village of Hoosick Falls the sum of \$780,729.98 for certain expenses previously incurred by the Village; and

WHEREAS, the prior payments by SGPP and Honeywell to the Village of Hoosick Falls were made with the acknowledgment by SGPP and Honeywell that the Village would not provide any general release to such companies for such payments, that the acceptance of such payments was not in satisfaction of all amounts claimed by the Village to be due and owing from SGPP and/or Honeywell, and that the Village retained all rights and claims that the Village may have relative to future expenses not reimbursed by SGPP and/or Honeywell, and further that the Village retained all rights and claims for all other damages incurred by the Village of Hoosick Falls with regard to the above-described contamination; and

WHEREAS, the Village of Hoosick Falls acknowledged that SGPP and Honeywell likewise reserved all rights with respect to all claims by the Village for expenses, and other damages not included in the payments to the Village of Hoosick Falls as described herein; and

WHEREAS, the Village continues to deem SGPP and Honeywell responsible for additional damages in excess of such prior expenses paid by SGPP and Honeywell, and retains the legal right to pursue recovery of such additional damages from SGPP and Honeywell; and

WHEREAS, the New York State Department of Environmental Conservation approved in April 2019 a Protocol Work Plan for the granular activated carbon (“GAC”) system on the Village water supply system, pursuant to which the Village performs routine day-to-day operation and maintenance of the GAC system, and SGPP and Honeywell are obligated to reimburse the Village for the costs it incurs in connection with such routine operation and maintenance; and

WHEREAS, the Village has incurred costs and will incur future costs associated with routine, day-to-day operation of the GAC system performed by the Village at the Village water supply system; and

WHEREAS, SGPP and Honeywell have agreed to make a further payment of \$144,976.98 for the costs to be incurred by the Village in connection with the day-to-day routine operation of the GAC system and routine preventative maintenance for Village of Hoosick Falls fiscal years 2020-2021 and 2021-2022; and

WHEREAS, SGPP and Honeywell and the Village agree that such costs described in the preceding recital clause does not include, and SGPP and Honeywell will separately fund, non-routine sampling of the GAC system and non-routine repairs to the system due to equipment malfunctions, required modifications to the system approved and incorporated into the GAC Protocol Work Plan, and carbon change-outs; and

WHEREAS, SGPP and Honeywell have further agreed to separately fund any incidental costs that the Village may incur in order to treat water pumped during the rehabilitation or repair of Municipal Public Supply Well #7 provided that such costs are associated with the presence of PFOA in the water and the Village provides documentation of such costs; and

WHEREAS, the Board of Trustees of the Village of Hoosick Falls hereby determines that it is in the overall public interest and beneficial to the welfare of the Village of Hoosick Falls to accept the offer by SGPP and Honeywell to pay to the Village the sum of \$144,976.98 for costs to be incurred in fiscal years 2020-2021 and 2021-2022 as described hereinabove, with SGPP and Honeywell separately funding costs that the Village may incur in order to treat water pumped during rehabilitation or repair of Municipal Public Supply Well #7, and with the Village retaining all legal rights relative to all costs incurred after fiscal year 2021-2022, all costs for non-routine of sampling of the GAC system and non-routine repairs to the system due to equipment malfunctions, required modifications to the system approved and incorporated into the GAC Protocol Work Plan, carbon change-outs, and other damages incurred and to be incurred by the Village with respect to the above-described contamination, with neither SGPP nor Honeywell requesting any release of any legal claims the Village may have and the Village not providing any such release for such payment; and

WHEREAS, a payment agreement has been proposed for the payments as described hereinabove in the form and content as set forth in “Exhibit A” attached to this Resolution; and

WHEREAS, the Village Board of Trustees has reviewed and duly deliberated on the proposed payment agreement with respect to the payments as described hereinabove, and seeks to approve such agreement;

NOW, THEREFORE, BE IT RESOLVED by the Village Board of Trustees of the Village

of Hoosick Falls in special session duly convened as follows:

1. The Board of Trustees of the Village of Hoosick Falls hereby approves the payment agreement in the form and content as set forth in "Exhibit A" attached to this Resolution, and further hereby authorizes the Mayor to execute such agreement on behalf of the Village of Hoosick Falls.

The foregoing Resolution, offered by _____ and seconded by _____, was duly put to a roll call vote as follows:

TRUSTEE CRAIG PINE	VOTING _____
TRUSTEE KEVIN O'MALLEY	VOTING _____
TRUSTEE DEB ALTER	VOTING _____
TRUSTEE VANESSA LEWIS	VOTING _____
TRUSTEE EMILY MARPE	VOTING _____
MAYOR ROBERT ALLEN	VOTING _____
DEPUTY MAYOR ROBERT RYAN	VOTING _____

October 13, 2020

Exhibit A

FOR SETTLEMENT AND NEGOTIATION PURPOSES ONLY; NOT ADMISSIBLE

PAYMENT AGREEMENT

This Payment 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”).

R E C I T A L S

WHEREAS:

1. 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.

2. Saint-Gobain Performance Plastics Corporation ("SGPP") is a corporation doing business in the State of New York.

3. Honeywell International Inc. ("Honeywell") is a corporation doing business in the State of New York.

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

5. A granular activated carbon (“GAC”) filtration system has been installed at the Village’s water treatment plant to treat PFOA present in the Village water supply.

6. In June 2016, SGPP and Honeywell entered into an Order on Consent and Administrative Settlement with the New York State Department of Environmental Conservation (“NYSDEC”), pursuant to which SGPP and Honeywell agreed to reimburse the Village for costs it incurred to operate and maintain the GAC filtration system.

7. In April 2019, the NYSDEC approved a Protocol Work Plan for the GAC system, pursuant to which the Village is responsible for the routine day-to-day operation and maintenance of

the GAC system, and SGPP and Honeywell are obligated to reimburse the Village for the costs it incurs in connection with such routine operation and maintenance.

3. The Village asserts that it has incurred costs due to the presence of PFOA in the environment of the Village and the Village Water Supply System and will incur future costs associated with routine, day-to-day operation of the GAC system performed by the Village.

9. SGPP and Honeywell have agreed to pay an amount agreed upon with the Village for the estimated costs that the Village may incur for routine operation and maintenance of the GAC system for the Village's FY 2020/2021 and 2021/2022.

NOW THEREFORE IN CONSIDERATION OF THE FOREGOING RECITALS,
SGPP, Honeywell, and the Village agree as follows.

A. GAC PROTOCOL WORKPLAN

The Village agrees to perform day-to-day operations of the treatment system and routine preventative maintenance as discussed in the GAC Protocol Work Plan. The preventative maintenance tasks to be performed by the Village include those identified as the responsibility of the Village in the Hoosick Falls WTP GAC System Preventative Maintenance Schedule attached hereto as Exhibit A, as well as any other routine maintenance deemed necessary for operation of the GAC System. The Village shall not be responsible for any maintenance tasks identified in Exhibit A for which the Village WTP Operators are not identified as the Designated Person.

B. FUTURE COSTS FOR VILLAGE FY 2020/2021 and 2021/2022

SGPP and Honeywell have agreed to pay, and the Village has agreed to accept, a lump sum payment of \$144,976.98 as full and adequate consideration for the costs ("Costs") to be incurred by the Village in connection with the day-to-day operations of the GAC system and routine preventative maintenance for FY 2020/2021 and 2021/2022. For purposes of this Agreement, the term "Costs" shall mean personnel costs, engineering and consultant costs related solely to day-to-day GAC system operations and routine preventative maintenance, interest charges, mailings and postage due to the presence of PFOA in the Village Water Supply System in the Village's FY 2020/2021 and

2021/2022. Upon receipt of payment as set forth in this Paragraph C, the Village agrees not to assert any claim for Costs incurred during FY 2020/2021 and FY2021/2022.

The Parties further agree that such Costs do not include, and SGPP and Honeywell will separately fund, non-routine sampling of the GAC system and non-routine repairs to the system due to equipment malfunctions, required modifications to the system approved and incorporated into the GAC Protocol Work Plan, and carbon change-outs. In addition, the Parties agree that SGPP and Honeywell will separately fund any incidental costs that the Village may incur in order to treat water pumped during the rehabilitation or repair of Municipal Public Supply Well #7 provided that such costs are associated with the presence of PFOA in the water and the Village provides documentation of such costs.

C. RESERVATION OF RIGHTS

1. 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 and nothing in this letter shall waive, extinguish or modify any such rights, including the right to (jointly and/or individually) contest or challenge any future cost reimbursement or other claims by the Village.

2. The reimbursement terms contained herein shall not in any way alter or abridge any of the rights the Village may have for costs or claims not resolved herein. The Village reserves the right to assert claims against SGPP and Honeywell for alleged damages incurred as a result of PFOA in the Village water supply and the environment, and all other costs not included within the term “Costs” as defined herein.

D. 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.

E. GOVERNING LAW.

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

F. REPRESENTATIONS

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 that Party.

G. TERM

This Agreement shall remain in effect until June 1, 2022, unless a further agreement shall have been executed by that time.

H. 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

Saint-Gobain Performance Plastics Corporation

By: _____

Dated: _____

Title: _____

Honeywell International Inc.

By: _____

Dated: _____

Title: _____

Village of Hoosick Falls

By: _____

Dated: _____

Title: _____