

APPENDIX E

AGREEMENT FOR PAYMENT FOR EXPANSION OF MUNICIPAL WATER LINES

This Agreement for Payment For Expansion of Municipal Water Lines (“Agreement”) is made by and among the State of Vermont Agency of Natural Resources (“VTANR”), the Town of Bennington (“Town”), and Saint-Gobain Performance Plastics Corporation (“Saint-Gobain”) (collectively the “Parties”).

WHEREAS, in connection with VTANR’s response actions to address the presence of perfluorooctanoic acid (“PFOA”) in groundwater, Saint-Gobain has voluntarily cooperated with the VTANR with respect to these response activities to date, including paying for the sampling of soils, surface water, groundwater, and drinking water supply wells throughout the Town , providing bottled water to residents in the Town, paying for the installation of point-of- entry treatment (“POET”) systems on private supply wells in which PFOA has been detected at concentrations at or above 20 ppt;

WHEREAS, VTANR and the Town have requested that Saint-Gobain also pay to expand the municipal water systems in the Town so that certain residences located within the Town may be connected to those water systems, and Saint-Gobain has agreed to pay for such extensions pursuant to the terms of a Consent Order (“Consent Order”) between the State and Saint-Gobain, dated on or about April 8, 2019and

WHEREAS, the Parties now seek to memorialize the terms and procedures for payment of the expansions of the municipal water systems in the Town as provided for in the Consent Order:

NOW, THEREFORE, in consideration of the promises and responsibilities contained herein, the Parties agree as follows:

I. DEFINITIONS

As used in this Agreement, the following terms shall mean:

1. “Construction Costs” means an amount equal to the total payments incurred by the Town in accordance with the terms of the Construction Contracts awarded for the Project on an “as bid” basis, subject to increase only as a result of one or more change orders approved by Saint-Gobain and the Town

in accordance with this Agreement. Construction Costs shall not include any costs incurred by the Town to operate or maintain the Project once construction is complete.

2. “Management Costs” mean the costs of final design, construction management, survey, permitting, permit fees, easement acquisition costs, bidding of the project, allocation fees, recording fees, and all other reasonable and necessary costs associated with oversight and management of construction of the portion of the Project in the Town.

3. “Project” means the construction of an extension of the municipal public water supply in the areas described as Corrective Action Area II—Operable Unit A in Appendix B.

4. “Saint-Gobain” means Saint-Gobain Performance Plastics Corporation

5. “Saint-Gobain Parties” means Saint-Gobain, its parent companies, and each of their respective direct or indirect affiliates, directors, officers and employees.

6. “State” means the State of Vermont and any agency thereof, including, but not limited to, the Vermont Agency of Natural Resources.

7. “Town” means the Town of Bennington.

II. STATE OBLIGATIONS

8. The Vermont Agency of Natural Resources shall administer a special, segregated Fund to be identified as the Saint-Gobain Waterline Fund (“Account”) owned and maintained by the State at TD Banknorth. The funds deposited in the Account by Saint-Gobain shall be used solely for the purposes set forth in this Agreement.

9. The VTANR shall send Saint-Gobain an account balance statement one time each month during the duration of the Project and will confirm Account balances upon Saint-Gobain’s request. If any monies are unobligated for the completion of the project and remain in the Account following completion of the Project, the State shall return such monies to Saint-Gobain within 30 days.

10. Prior to making the first monthly progress payment, and the first monthly progress payments following each annual renewal of the Town’s and Contractor’s insurance-related information, as set forth in Paragraph 18, VTANR shall receive notice from Saint-Gobain and the Town that the Prepayment Certification requirements of Section V have been met.

11. Monthly progress payments from the Account will be made to the Town for Construction Costs in accordance with the terms of this Agreement, provided both of the following have occurred with respect to each such payment:

a. The Town has provided Saint-Gobain with the monthly construction drawdown schedule required under Paragraph 15(i) and the written verification required under Paragraph 15(j); and

b. Saint-Gobain has sent VTANR verification that a payment may go forward, or 10 business days has elapsed and Saint-Gobain has not filed an objection to the payment request.

12. Monthly progress payments from the Account will be made to the Town for Management Costs in accordance with the terms of this Agreement, provided all of the following have occurred with respect to each such payment:

a. The Town has provided Saint-Gobain with the estimated work schedule and a schedule of the Management Costs as required under Paragraph 15(k);

b. The Town has provided Saint-Gobain with the written documentation of work completed as required under Paragraph 15(l);

c. The Town has provided the verification required under Paragraph 15(m);
and

d. Saint-Gobain has sent VTANR verification that a payment may go forward, or 10 business days has elapsed and Saint-Gobain has not filed an objection to the payment request.

13. Upon the request of Saint-Gobain or the Town, VTANR shall assist the Parties to informally resolve a dispute under this Agreement without invoking administrative review provisions.

14. VTANR shall act as a neutral party to resolve disputes under this Agreement.

III. TOWN OBLIGATIONS

15. The Town will, either through its own employees or through qualified design professionals, consultants, and contractors and subcontractors (any one a “Contractor” and collectively “Contractors”), provide for all labor, services, materials, and equipment required to construct, complete, and operate the portion of the Project within the Town. Without limiting the foregoing, Town shall:

a. Prepare bid packages and conduct a bid process for all sub-parts of the Project within the Town in accordance with applicable State law (if any) and the Town’s ordinances, rules, and regulations. The bid packages must include a terms and conditions document which, among other things, contains the insurance requirements set forth in Paragraph 23 and the payment and performance bonds requirements set forth in Paragraph 27.

b. Review all bids and award Construction Contracts to the lowest responsive and responsible bidder providing a bid provided that such a bid was received.

c. Enter into written contracts (“Construction Contracts”) with the Contractors with respect to the provision of all services, labor, materials, and equipment used for the construction of the portion of the Project within the Town.

d. If Construction Contracts are entered, pay the Contractors in accordance with the terms of the Construction Contracts using the funds disbursed by the State from the Account as described in Paragraph 8.

e. Apply for and obtain all required permits and government approvals, including, but not limited to, those required by VTANR and the Vermont Agency of Transportation, in addition to any other required State or local permits.

f. Obtain any required land surveys (including, but not limited to, boundary, topographic, and wetland surveys) necessary for the permitting, design, and construction of the portion of the Project within the Town.

g. Assist in obtaining executed easements, rights-of-way or other written permission from land owners to whose property temporary or permanent access may be required for design, construction, or other activities required for completion of the portion of the Project within the Town.

h. Supervise, administer, coordinate, and oversee construction of the portion of the Project within the Town.

i. At the end of each month, provide Saint-Gobain and VTANR a rolling monthly construction draw-down schedule, showing estimated monthly Construction Costs through the completion of the Project within the Town.

j. The Town shall provide a written verification from the Construction Contractor stating that work invoiced has been completed in accordance with the terms of the applicable Construction Contract, the work is not defective, and Contractor's requisition is in order for payment. The Town shall provide this verification electronically to Saint-Gobain and VTANR no fewer than 20 days before payment is due under the Construction Contract. In all Construction Contracts, the Town shall require Contractor to keep all property related to the Project free from liens arising hereunder and shall require the Contractor to furnish, upon request, waivers of liens from all of its subcontractors prior to any progress or final payment being made from the Account.

k. The Town shall provide Saint-Gobain and VTANR with an estimated work schedule for the Project along with a schedule of the Management Costs that it anticipates it will incur for each month of the Project. The Town may periodically update its schedule and forecasted Management Costs as it deems necessary during the course of the Project. The Parties understand and agree that these schedules are being provided for planning purposes only and that the actual costs may vary. However the total Management Costs shall not exceed \$2,035,055 for the Town. The work schedule shall identify labor rates and overhead costs.

l. The Town shall track its actual Management Costs related to the portion of the Project within the Town. At the end of each month, the Town shall provide Saint-Gobain with a written statement documenting the work completed and materials purchased or expenses incurred during the prior month and the overall progress of the Project, along with a certification from the Construction Contractor that all work on the Project was performed in accordance with all applicable, laws, regulations, and specifications in the Construction Contracts.

m. The Town shall provide a written verification stating that Management Costs invoiced has been completed consistent with the Management Cost Estimate (and any revisions thereto) and the Town's requisition is in order for payment. The Town shall provide this verification electronically to Saint-Gobain and VTANR no fewer than 20 days before payment is due.

n. The Town may submit a disbursement request to VTANR 10 business days after providing Saint-Gobain with the payment requisition and written verification required by Paragraph 15(j) or (l).

o. If a change order is required, the Town shall electronically send the request for a change order to Saint-Gobain and VTANR, along with a written explanation for the need for the change order, as well as any additional cost required due to the change order which the Town seeks as additional Construction Costs hereunder. Nothing herein obligates Saint-Gobain to pay for change orders attributable to errors or omissions caused by the negligence of the Town or the Contractors or not required by the Consent Order, and the Town shall confer with Saint-Gobain prior to approving any proposed change orders.

p. The Town shall supervise required testing, inspection, start up, and acceptance of the Project within the Town.

q. The Town shall certify that the Project within the Town has been completed within 30 days of the completion of the Project.

r. Assume ownership of, and responsibility for on-going operation and maintenance of the Project within the Town after Project Completion.

16. The Town shall provide Saint-Gobain and VTANR with copies of the fully executed Construction Contracts, documentation of the completed work under each Construction Contract, all water testing reports, and all inspection reports.

17. Nothing in this Agreement shall require the Town to enter into Construction Contracts for work that would not be eligible for payment by the Fund, or if The Fund does not contain sufficient money to pay the costs thereof.

18. The Town shall provide Saint-Gobain and VTANR with copies of its and its Contractors' certificates of insurance and, where applicable, copies of policy endorsements prior to beginning of work or services and annually upon renewal of the Town's and its Contractors' insurance programs evidencing that the policies required by Paragraphs 23 and 27 are in force and including coverage specifications as noted. The Town shall not commence work until certificates and endorsement copies have been provided and no objection has been filed with VTANR by Saint-Gobain under Paragraph 22(a).

19. The Town shall provide Saint-Gobain and VTANR with copies of the payment and performance bonds required by Paragraph 27.

20. The Town shall make all other documents related to the Project available to Saint-Gobain or VTANR upon request.

IV. SAINT-GOBAIN'S OBLIGATIONS

21. Subject to the Town's and its Contractors' performance of their respective obligations under the Construction Contracts and the Town's compliance with this Agreement, Saint-Gobain shall pay the Town for the Project as follows:

a. Saint-Gobain shall pay for the Construction Costs incurred by the Town under the terms of the Construction Contracts and any approved change order. This obligation shall be met through payments as required in Paragraph 21(d).

b. Saint-Gobain shall pay Management Costs on a "time and materials" basis for all costs up to an amount not to exceed \$2,035,055 for the Town in the aggregate associated with the Town's oversight and management of Project within the Town. This obligation shall be met through payments as required in Paragraph 21(e).

c. The Parties recognize that change orders may be required due to a change in scope of the underlying Project; however, nothing in this Agreement obligates Saint-Gobain to pay for change orders which are either (i) for work in addition to, or different from, the requirements of the Consent Order; or (ii) attributable to errors or omissions caused by the negligence of the Town or its Contractors. The Town shall follow the procedure in Paragraph 15(o) hereunder before agreeing to any proposed change order affecting such the Town's part of the Project.

d. In order to fund the Construction Costs, Saint-Gobain will make an initial payment to VTANR in the amount of \$2,500,000.00 that shall be deposited into the Account established under Paragraph 8 of this Agreement. At the conclusion of each month thereafter, or a longer period as applicable, Saint-Gobain shall make a payment to the Account in order to ensure that the Account balance is sufficient to cover the estimated costs of work to be completed in the following two months. All payments into the Account shall be made by wire transfer from Saint-Gobain to the Account pursuant to wire instructions to be provided by the State to Saint-Gobain.

e. In order to fund the Management Costs, Saint-Gobain will make an initial payment to VTANR in the amount of \$250,000.00 that shall be deposited into the Account established under Section II of this Agreement. At the conclusion of each month thereafter, or a longer period as applicable, Saint-Gobain shall make a payment to the Account in order to ensure that the Account balance is sufficient to cover the estimated Management Costs to be completed in the following two months. All payments into the Account shall be made by wire transfer from Saint-Gobain to the Account pursuant to wire instructions to be provided by the State to Saint-Gobain.

22. Right to Object.

a. **Objections to Construction Contracts.** Saint-Gobain may file an objection to a Construction Contract within 7 business days from the date the Construction Contract is provided to Saint-Gobain. Objections to a Construction Contract shall be limited to:

i. The Construction Contract includes Construction Costs that are beyond the scope of the Project. Saint-Gobain shall not have the right to object to a scope larger than the Project, provided that the Construction Contract clearly identifies that the Town will not request payment from the Account for those costs.

ii. The Construction Contract does not contain the insurance requirements identified as required under the payment certification requirements of Section V.

b. **Objection to Management Cost Estimates.** Saint-Gobain may file an objection to a Management Cost Estimate within 7 business days from the date the Management Cost Estimate is provided to Saint-Gobain. Objections to a Management Cost Estimate shall be limited to:

i. The Town has included Management Costs that are beyond the scope of the Project.

ii. The Town failed to provide labor billing rates.

c. **Objection to Payment Request.** Saint-Gobain may file an objection to a payment request within 10 business days from the date the Payment Request is provided to Saint-Gobain. Objections to the Payment Requests shall be limited to:

i. That the Payment Request is for Construction Costs that are beyond the scope of the Project;

ii. The Town failed to provide the information required by Paragraph 15(i), (j), (k), (l), or (m);

iii. It is readily apparent that the work invoiced has not been completed as required by the terms of either: (i) the applicable Construction Contract and any change orders thereto; or (ii) the Management Cost Estimate; or

iv. The Town or Contractor has failed to maintain insurance requirements as required by Paragraph 23 or has failed to provide the payment and performance bonds required by Paragraph 27.

d. **Objection to Change Order.** Saint-Gobain may file an objection to a change order within 7 business days from the date that the change order is provided to Saint-Gobain. Objections to change orders shall be limited to:

i. That the change order includes Construction Costs that are beyond the scope of the Project, unless those costs are paid from a source other than the Account;

ii. The change order is for costs due to the Town's or a Contractor's negligence in the design or construction of the Project; or

iii. The change order is inconsistent with the terms of the Consent Order.

V. PREPAYMENT CERTIFICATION REQUIREMENTS

23. Prior to VTANR's disbursement of the first monthly progress payment, and the first monthly progress payments following each annual renewal of the the Town's and Contractor's insurance-related information, the Town and Saint-Gobain shall provide notice to VTANR that the following requirements have been met:

24. **Insurance / Risk of Loss:** While performing any work or providing services related to this Appendix, and any applicable extension thereof, the Town agrees to maintain insurance for itself and its personnel of at least the following kinds and limits, with reputable and financially strong independent insurance companies or a municipal risk pool licensed or permitted to do business in Vermont. Costs associated with additional lines of insurance or coverage requirements beyond those required by this Agreement and requested by Saint-Gobain are eligible Management Costs under this Agreement.

a. **Workers' Compensation** - in accordance with statutory requirements for all locations where work or services are to be provided.

b. **Employer's Liability** - with a limit not less than \$5,000,000 each employee by disease, \$5,000,000 each accident, and \$5,000,000 disease policy limit.

c. **Commercial General Liability** - with a limit of not less than \$1,000,000 per occurrence, \$10,000,000 for products and completed operations, and \$10,000,000 in the aggregate including, but not limited to, coverage for bodily injury, death, property damage, products and completed operations, independent contractors, premises/operations, contractual, explosion, collapse, underground, and personal and

advertising injury liabilities. Policy shall include Saint-Gobain Parties and the State as additional covered parties for ongoing and completed operations. Saint-Gobain Parties and the State are to be afforded the same types of coverage as listed in declarations page of the named insured's policy. Policy shall include a cross liability and severability of interest clauses. Products and completed operations insurance shall be maintained for a period of at least eight (8) years after the date of final payment.

d. Commercial Automobile Liability - with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury, death and property damage for all owned, non-owned, hired or leased vehicles operated by Town personnel. Policy shall include an endorsement, including Saint-Gobain Parties and the State as additional covered parties. Saint-Gobain Parties and the State are to be afforded the same types of coverage as listed in declarations page of the named insured's policy. Policy shall contain an endorsement noting that Contractor's insurance is primary and any other insurance carried by Saint-Gobain or the State shall be noncontributory, if permitted by law.

25. General Requirements applicable to all insurance requirements.

a. All insurance policies required to be maintained by the Town must be written on an occurrence form (claims-made form or modified occurrence not allowed) and shall be maintained without interruption during the period when work on the project is ongoing, unless otherwise provided. The Town's required insurance limits may be satisfied by a combination of primary and excess/umbrella policies.

b. The required insurance policies shall not be canceled, reduced in scope, or allowed to expire until at least 30 days' prior written notice has been given by the Town or its insurance broker or carrier to Saint-Gobain and VTANR.

c. If any of the foregoing insurance coverages are required to remain in force after completion of the Project, additional certificates evidencing continuation of such coverage shall be submitted on an annual basis to Saint-Gobain and VTANR. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished to Saint-Gobain and VTANR as soon as reasonably possible in accordance with the Town's information and belief.

d. The Town waives any claims it might have against Saint-Gobain Parties and the State for payment of any deductibles or retentions or other self-insurance mechanisms.

26. Requirements Applicable to Contractors.

a. The Town shall require all Contractors performing work related to this Agreement to comply with insurance requirements set forth in a Construction Contract, including:

b. Risk of Loss/Property Insurance: The Construction Contract shall require the Contractor to bear the risk of loss and provide insurance for loss or casualty of purchased, stored, or installed but not yet accepted work, equipment, and materials.

c. Workers' Compensation – in accordance with statutory requirements for all locations where work or services are to be provided. The policy shall be amended to include a waiver of subrogation endorsement in favor of Saint-Gobain Parties and the State.

d. Employer's Liability – with a limit not less than \$1,000,000 each employee by disease, \$1,000,000 each accident, and \$1,000,000 disease policy limit. The policy shall be amended to include a waiver of subrogation endorsement in favor of Saint-Gobain Parties and the State.

e. Commercial General Liability – with a limit of not less than \$1,000,000 per occurrence, \$1,000,000 for products and completed operations, and \$2,000,000 in the aggregate including, but not limited to, coverage for bodily injury, death, property damage, products and completed operations, independent contractors, premises/operations, sudden and accidental pollution coverage, and contractual, explosion, collapse, underground, and personal and advertising injury liabilities.

i. Policy shall include endorsements ISO form CG 20 10, CG 20 37 and CG 20 01 including Saint-Gobain Parties and the State as additional insureds. Saint-Gobain Parties and the State are to be afforded the same types of coverage as listed in declarations page of the named insured's policy.

ii. Policy shall include a waiver of subrogation endorsement in favor of Saint-Gobain Parties and the State.

I. Policy shall include a cross-liability and severability of interest clauses.

II. Policy shall contain an endorsement noting that Contractor's insurance is primary and any other insurance carried by Saint-Gobain and the State shall be noncontributory.

f. Commercial Automobile Liability – with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury, death and property damage for all owned, non-owned, hired or leased vehicles operated by Contractor personnel.

i. Policy shall include an endorsement, including Saint-Gobain Parties and the State as additional insureds. Saint-Gobain Parties and the State are to be afforded the same types of coverage as listed in declarations page of the named insured's policy.

ii. Policy shall include a waiver of subrogation endorsement in favor of Saint-Gobain Parties and the State.

iii. Policy shall include a cross-liability endorsement and severability of interest clauses.

iv. Policy shall contain an endorsement noting that Contractor's insurance is primary and any other insurance carried by Saint-Gobain and the State shall be noncontributory.

g. Excess/Umbrella Liability – with a limit of not less than \$5,000,000 per occurrence, at least with respect to policies required in 4., 5. and 6.; coverage shall provide excess limits and be at least the following form or broader:

i. Policy shall include Saint-Gobain Parties and the State as

additional insureds. Saint-Gobain Parties and the State are to be afforded the same types of coverage as listed in declarations page of the named insured's policy. Policy shall include a waiver of subrogation endorsement in favor of Saint-Gobain Parties and the State.

ii. Policy shall include a cross-liability and severability of interest clauses.

iii. Policy shall contain an endorsement noting that Contractor's insurance is primary and any other insurance carried by Saint-Gobain and the State shall be noncontributory.

h. If applicable Professional Liability (Errors & Omissions) – with a limit of not less than \$5,000,000 per claim and covering claims arising out of or related to acts, errors or omissions in connection with work or services provided by Contractor. The policy shall have a retroactive date on or before the Agreement date or the date of Contractor's first professional service, whichever is earlier. Contractor shall use commercially reasonable efforts to maintain such coverage for five (5) consecutive years following final delivery of work or services.

i. Contractor Pollution Liability with a limit of not less than \$3,000,000 dollars per pollution condition and \$3,000,000 in the aggregate written on an occurrence form with no sunset clause, if applicable, for losses caused by pollution conditions that arise from the operations of the Contractor described under the scope of services to be provided related to this project. Such conditions shall include:

i. Bodily injury, sickness, and disease to include mental anguish or shock, sustained by any one person; including death;

ii. Property damage including physical damage to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically destroyed;

iii. Defense including costs, charges, and expenses incurred in the investigation, adjustment of defense claims for such compensatory damages; and

iv. Transportation coverage including the loading and unloading of products, goods, and/or waste.

j. All insurance policies required to be maintained by Contractor, except for Professional Liability must be written on an occurrence form (claims- made form, occurrence reported form or modified occurrence not allowed) and shall be maintained without interruption during the term of this Agreement or as specified otherwise. In addition, the policies shall be primary and non-contributory to any coverage maintained by Saint-Gobain and the State. Policies specified above may be maintained with limits listed in other foreign currencies, as long as they are equivalent to the amounts required herein. Contractor's required insurance limits may be satisfied by a combination of primary and excess/umbrella policies.

k. Saint-Gobain and VTANR will be provided with certificates of insurance and, where applicable, copies of policy endorsements, declaration pages and form schedules prior to beginning of work or delivery of products or services and annually upon renewal of Contractor's insurance programs evidencing that the aforementioned policies are in force and including the coverage required above. Contractor shall not commence work until the required

certificates, declaration pages, form schedules and endorsement copies have been provided and approved by Saint-Gobain and VTANR.

l. The required insurance policies shall not be canceled, reduced in scope or allowed to expire until at least 30 days' prior written notice has been given by Contractor, its insurance broker or carrier to Saint-Gobain and VTANR. The policies shall contain an endorsement requiring the insurer to give Saint-Gobain and VTANR written notice of reduction, expiration and/or cancellation.

m. Contractor shall require all subcontractors performing work related to this Agreement to maintain insurance coverage in compliance with all terms and conditions as required herein and to name Saint-Gobain and the State as an additional insured. Contractor shall not allow any subcontractor to commence work until evidence of required insurance coverage has been provided and verified by Contractor.

n. If any of the foregoing insurance coverages are required to remain in force after expiration or termination of this Agreement, additional certificates evidencing continuation of such coverage shall be submitted on an annual basis to Saint-Gobain and VTANR. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished to Saint-Gobain and VTANR as soon as reasonably possible in accordance with Contractor's information and belief.

o. Should any loss occur under any of Contractor's or Subcontractor's required insurance policies, Contractor or Subcontractor shall be liable for the amount of any deductibles, retentions or other self-insurance mechanisms specified in such policies. Furthermore, Contractor and Subcontractor waive any claims they might have against Saint-Gobain Parties and the State for payment of any deductibles or retentions or other self-insurance mechanisms.

p. None of the requirements contained herein as to types or limits or Saint-Gobain's and the State's approval of insurance coverage to be maintained by Contractor are intended to, and shall not in any manner, limit, qualify or quantify any liabilities and obligations assumed by Contractor under the Agreement or otherwise provided by law. Saint-Gobain reserves the right to review insurance requirements at any point in time and make changes in order to address additional exposures, which may exist as a result of Contractor's performance under the Agreement. Saint-Gobain's failure to monitor compliance or to object to noncompliance or unsatisfactory compliance with any terms of these insurance requirements does not modify or waive Contractor's obligations in any way. In the event of any failure by the Contractor to comply with the insurance provisions of this Agreement, Saint-Gobain may, without or in any way compromising or waiving any right or remedy at law or in equity, upon notice to the Contractor, purchase such insurance, at the Contractor's expense, provided that Saint-Gobain shall have no obligation to do so, and if Saint-Gobain shall do so, the Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

27. Waivers of Subrogation. To the extent authorized by law and any applicable contract of insurance, The Town and Saint-Gobain hereby waive all rights of subrogation against each other, including against their officers and employees, with respect to any and all insured claims. The Parties' insurance policies shall provide such waivers of subrogation by endorsement or otherwise.

28. **Contractors Bond / Insurance:** The Contractors retained under the Construction Contracts shall provide payment and performance bonds for the value of their portion of the total Construction Costs. The surety and form of bonds shall be subject to the Town's and Saint-Gobain's approval and Saint-Gobain shall be named as a dual obligee on the bonds. Each Construction Contract shall require the Contractor to maintain insurance coverage of the type and with the limits specified in Paragraph 24. Saint-Gobain and the State shall be named as an additional named insured on all general liability or commercial liability policies required under the Construction Contracts.

29. **Mutual Waiver of Consequential Damages:** The Town, the State, and Saint-Gobain waive claims against each other for consequential damages arising out of or relating to this Agreement or termination of the Agreement. This mutual waiver includes but is not limited to claims for losses of use, income, profit, financing, business and reputation, loss of management or employee productivity.

30. **Assignment:** No Party shall assign their interest in this Agreement without the written consent of the other.

VI. DISPUTE RESOLUTION

31. **Initial dispute resolution.** If a dispute arises out of, or relates to, this Agreement or its breach, Saint-Gobain, VTANR, and the Town shall endeavor to settle the dispute first through direct discussions.

32. **Formal Dispute Resolution.** If the Parties cannot resolve a dispute through informal dispute resolution, the Parties may request VTANR to conduct formal dispute resolution under this Agreement. The final decision of VTANR in a dispute under this Agreement shall have the same effect as a final decision of the Waste Management Director under Paragraph 42(b) of the Consent Order.

33. **Effect of Dispute Resolution.** When a Party files a dispute under this section, VTANR shall continue to make payments from the Account until that dispute is resolved. If the objection is successful, then a future payment may be deducted for the amount objected to. If the amount objected to exceeds the amount remaining on the Construction Contract or Management Cost Estimate, then VTANR shall withhold payment until resolution of the dispute. A dispute shall not be grounds to stop work. Disputes cannot be used as a basis to not pay for work that was not objected to pursuant to Paragraph 22, except as provided above.

VII. MISCELLANEOUS PROVISIONS

34. **Funding under this Agreement shall be limited to the cost of the expansion of municipal water lines identified in Corrective Action Area II— Operable Unit A as identified in Appendix B of the Consent Order between the State and Saint-Gobain, dated on or about April 8, 2019 , and shall be further limited to the Town of Bennington.**

35. **Nothing in this Agreement shall require the Town to enter into Construction Contracts for work that would not be eligible for payment by the Account, or if The Account does not contain sufficient money to pay the costs thereof.**

36. **The Parties understand and agree that Saint-Gobain is a funding source only for the Project and is not responsible for: the performance of any of the work required under the**

Construction Contracts; the management of any parties performing any work on the Project; any injuries or damages claimed by the State or the Town that occur in the course of the performance of the work required by the Construction Contracts; costs related to the operation, maintenance and repair of the municipal public water supply installed as part of the Project; any costs related to any future expansion of the municipal public water supply installed as part of the Project, or the operation, maintenance and repair of such supply; any and all future costs, fees, taxes or other assessments incurred or imposed by the Town related to the use and consumption of water by homeowners or other users of the municipal public water supply and any and all other consequential costs and liabilities incurred by the Town as a result of homeowners' and other users' connection to the municipal public water supply.

37. Nothing in this Agreement shall be construed to create any rights in, or grant or deny any cause of action to, any person not a Party to this Agreement. This Agreement shall not create any third-party beneficiary status to any person who is not a party to this Agreement. Each of the Parties expressly reserves any and all rights, defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto, and nothing herein shall be construed as any admission of or any evidence of any fault, wrongdoing, or liability by Settling Defendant in this action or any other action or proceeding.

38. The Parties understand and agree that the State of Vermont is acting in a limited role in the implementation of this agreement. The only functions the State is performing are: maintenance and management of a fund to receive payments from Saint-Gobain; payment of funds from the Account under the terms of this Agreement; and facilitating resolution of disputes that arise under this Agreement. The State will not be reviewing the Project under this Agreement to ensure that it complies with the terms of Construction Contracts. The State shall not be liable to any other Party to this agreement for any damages other than those that are caused by the State's acts or omissions in the performance of its limited role described above, and only then to the extent permitted by law and capped at an amount not to exceed those funds then remaining in the Account. Further, in no event shall the State be liable to any other Party to this Agreement for any incidental, indirect, speculative, consequential, special, punitive or exemplary damages of any kind (whether based in contract, tort, including negligence, strict liability, fraud or otherwise, or under any other theory) arising out of or in connection with this Agreement, even if advised of such potential damages.

39. This Agreement shall be governed by the laws of the State of Vermont, without regard to choice of law considerations.

40. Except for the timeframes for objection established in Paragraph 22, the failure of any Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

41. The headings in this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

42. This Agreement is for the benefit of Saint-Gobain, the State of Vermont, and the Town of Bennington, and this Agreement represents the entire and integrated agreement between those Parties with respect to the manner of payment for Construction Costs and Management Costs.

VIII. NOTICE

43. Any notice required under this Agreement shall be provided via email to:

Saint-Gobain:

Chris Angier
Director, Environmental Health and Safety
Saint-Gobain Performance Plastics
14 McCaffrey Street
Hoosick Falls, NY 12090
Christopher.Angier@saint-gobain.com

With a copy to:

Brett E. Slensky, Esq.
Environmental Health and Safety Counsel
Saint-Gobain Corporation
20 Moores Road
Malvern, PA 19355
Brett.E.Slensky@saint-gobain.com

And

Christopher R. Gibson, Esq.
Archer & Greiner, P.C.
One Centennial Square
Haddonfield, NJ 08033
cgibson@archerlaw.com

State of Vermont:

David Pasco
Grants Program Manager
Department of Environmental Conservation
One National Life Drive, Main 2
Montpelier, VT 05620
david.pasco@vermont.gov

With a copy to:

Matthew A. Chapman, Esq. General Counsel
Agency of Natural Resources
One National Life Drive, Davis 2
Montpelier, VT 05620
matt.chapman@vermont.gov

and

Laura Murphy, Esq. Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
laura.murphy@vermont.gov

Town of Bennington:

Stuart A. Hurd Town Manager
Town of Bennington, VT
PO Box 469
Bennington VT 05201
shurd@benningtonvt.org

With a copy to:

Jason Dolmetsch, P.E.
MSK Engineering and Design, Inc.
150 Depot Street
P.O. Box 139
Bennington, VT 05201
jdolmetsch@mskeng.com

44. Each party confirms that they have read this Agreement, consulted with counsel and that the terms of this Agreement are understood by it.