

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS

SUPERIOR COURT
DOCKET NO. 1683-CV-00113

TOWN OF PLYMOUTH,
Plaintiff,

v.

VEOLIA WATER NORTH AMERICA -
NORTHEAST LLC, et al.,
Defendants.

- CONSOLIDATED WITH -

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
DOCKET NO. 1684-CV-01282

COMMONWEALTH OF
MASSACHUSETTS,
Plaintiff,

v.

VEOLIA WATER NORTH AMERICA -
NORTHEAST LLC, et al.
Defendants.

STIPULATION OF DISMISSAL, WITH PREJUDICE

Pursuant to Mass.R.Civ.P. 41(a)(1)(ii), the parties to the above entitled consolidated action, by and through their attorneys, hereby stipulate that this action, and all claims, counterclaims and crossclaims asserted therein, shall be and are hereby dismissed with prejudice, without costs and without attorneys' fees.

Dated: OCT 19, 2019

TOWN OF PLYMOUTH,
By their attorneys,

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David J. Doneski (BBO# 546991)
Janelle M. Austin (BBO# 666835)
KP Law, P.C.
Town Counsel
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(617) 556-0007
rholland@k-plaw.com
ddoneski@k-plaw.com
jaustin@k-plaw.com

**VEOLIA WATER NORTH
AMERICA-NORTHEAST, LLC,
VEOLIA NORTH AMERICA,
INC., & VEOLIA WATER NORTH
AMERICA OPERATING
SERVICES, LLC**
By their attorney,

David M. Rogers (BBO #542233)
James M. Campbell (BBO# 541882)
Campbell Campbell Edwards &
Conroy
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drogers@campbell-trial-lawyers.com

CDM SMITH INC.
By its attorneys,

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P. GIOIOSO & SONS, INC.
By its attorneys,

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Ian Bagley, Esq.
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**STANTEC CONSULTING
SERVICES**
By its attorneys,

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Brian C. Newberry, Esq.
Donovan Hatem, LLP
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bnewberry@donovanhatem.com
mcoghlan@donovanhatem.com

**AMERICAN HOME ASSURANCE
COMPANY, INSURANCE
COMPANY OF THE STATE OF
PENNSYLVANIA, & AMERICAN
INTERNATIONAL GROUP, INC.,**
By their attorney,

Eric H. Loeffler, Esq.
Davids & Cohen, P.C.
40 Washington Street, Suite 20
Wellesley, MA 02481
eloeffler@davids-cohen.com

COMMONWEALTH OF MASSACHUSETTS

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VEOLIA WATER NORTH AMERICA -
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VEOLIA WATER NORTH AMERICA -
NORTHEAST LLC, et al.
Defendants.

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("Settlement Agreement") is made as of September 17, 2019 by and among the Town of Plymouth, MA (the "Town") and the following parties: Veolia Water North America-Northeast, LLC ("Veolia Northeast"); Veolia Water North America Operating Services, LLC ("Veolia Operator"); Veolia North America, Inc. ("VNA," together with Veolia Northeast and Veolia Operator, "Veolia"); The Insurance Company of the State of Pennsylvania ("ICSP"); American Home Assurance Company ("AHAC"); American International Group, Inc. ("AIG," together with ICSP and AHAC, the "Veolia Sureties"); CDM Smith Inc. ("CDM Smith"); P. Gioioso & Sons, Inc. ("Gioioso"); and Stantec Consulting Services, Inc. ("Stantec," together with CDM Smith the "Engineers"), each having a principal address as set forth in **Exhibit A** attached hereto. The foregoing parties may be referred to

individually as a "Party" and collectively as the "Parties." All the foregoing Parties excluding the Town may also be referred to collectively as the "Defendants."

WHEREAS, CDM Smith, through its predecessor Camp, Dresser & McKee Inc., entered into a contract with the Town dated July 31, 1997, entitled, "Standard Form of Agreement between Owner and Engineer for Professional Design, Bidding and Construction Services";

WHEREAS, Veolia Operator, through its predecessor U.S. Filter Operating Services, entered into a contract with the Town dated November 10, 1999, entitled, "Contract for Operation and Maintenance Relating to Town of Plymouth, Massachusetts Wastewater Treatment Plant and Contract System" (the "Operations Contract");

WHEREAS, Gioioso entered into a contract with the Town dated November 10, 1999, entitled, "Contract for Design, Permitting, Construction, Start-Up Testing, and Acceptance Relating to Town of Plymouth, Massachusetts, Modified Pumping Station and Force Mains";

WHEREAS, Stantec, through its predecessor Fay Spofford & Thorndike, entered into a contract with Gioioso dated December 8, 1999, entitled, "Contract for Design, Permitting, Construction, Start-Up Testing, and Acceptance Relating to Town of Plymouth, Massachusetts, Modified Pumping Station and Force Mains (MPS/FM)";

WHEREAS, one or more of the Veolia Sureties issued one or more performance bonds (the "Bonds") listing the Town as "obligee" in connection with the services performed by Veolia Operator under the Operations Contract;

WHEREAS, VNA issued a guaranty in the Town's favor in connection with the services performed by Veolia Operator under the Operations Contract (the "Guaranty");

WHEREAS, in or about December 2015/January 2016, it was discovered that the Town's sewer (influent) force main ruptured in multiple locations due to internal corrosion;

WHEREAS, in the above-captioned, consolidated lawsuit (Town of Plymouth v. Veolia Water North America-Northeast, LLC, et al., Plymouth Superior Court, C.A. No. 1683-CV-00113, and Commonwealth of Massachusetts v. Town of Plymouth, et al., Suffolk Superior Court, C.A. No. 1684-CV-001282) (the "Litigation"), the Town asserted claims against Veolia, the Veolia Sureties, Gioioso and the Engineers seeking damages arising out of the ruptures of the Town's sewer force main, and the Defendants asserted claims, counterclaims and/or cross-claims in the Litigation against other Parties; and

WHEREAS, the Parties have agreed to resolve their claims and the Litigation in good faith and on the terms and conditions set forth in this Settlement Agreement.

NOW, THEREFORE, in exchange for the promises set forth in this Settlement Agreement, and for other good and valuable consideration the receipt and sufficiency of which are hereby expressly acknowledged, the Parties agree as follows:

1. Within 30 calendar days of the date of execution of this Settlement Agreement by the last Party to sign and date the signature page of this Settlement Agreement, the following Parties shall pay to the Town by wire transfer the amounts indicated below, totaling \$22,825,000.00, (see **Exhibit B**, attached hereto, for wire transfer instructions) (said amounts, collectively, the "Settlement Sum"):

- a) Veolia shall pay \$21,000,000.00 to the Town;
- b) CDM Smith shall pay \$325,000.00 to the Town; and
- c) Stantec shall pay \$1,500,000.00 to the Town.

The release of claims in paragraph 2 of this Settlement Agreement shall not be effective until the entire Settlement Sum has been paid to the Town as set forth in this paragraph 1, and each Party has signed this Settlement Agreement through its duly authorized representative(s).

2. Except as expressly set forth in paragraph 3 regarding the release of claims exchanged among Veolia, the Town and the Veolia Sureties, each and every Party, on its behalf and on behalf of its current and former parent companies, subsidiaries, predecessors, affiliates, successors, assigns, attorneys, insurers, re-insurers, sureties, subrogors, subrogees, officers, directors, owners, shareholders, members, managers, boards, officials, employees and agents, hereby forever releases with prejudice and discharges each and every other Party and such Party's current and former parent companies, subsidiaries, predecessors, affiliates, successors, assigns, attorneys, insurers (specifically including, but not limited to, Illinois Union Insurance Company, Great American E&S Insurance Company, ACE American Insurance Company, and Chubb North America Claims), re-insurers, sureties, subrogors, subrogees, officers, directors, owners, shareholders, members, managers, boards, officials, employees and agents of and from any and all known and unknown claims, actions, liabilities, causes of action, grievances, suits, demands, liens, indemnities, controversies and any other legal or equitable claims or actions for damages, compensation, benefits, costs, losses, expenses, attorneys' fees, declaratory relief, and any other form of relief arising out of any past, present or future economic loss, property damage and personal injury, violation of federal or state civil rights, violation of environmental laws and permits, breach of contract, breach of warranty, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, unfair and deceptive acts and practices under G.L. c.93A, negligence, indemnification and liabilities in law and equity (collectively, "claims") arising out of, resulting from and relating to the ruptures of the Town's sewer force main discovered in or about December 2015 and January 2016, including, but not limited to, any costs of repairing and/or redesigning the force main, and including, but not limited to, all claims, counterclaims and cross-claims that were asserted or which could have been asserted by or through any Party in the Litigation, including all claims asserted but stayed by the Superior Court in the Litigation.

3. Notwithstanding the foregoing, and notwithstanding anything to the contrary in this Settlement Agreement, each Party acknowledges and agrees that (a) in entering into this Settlement Agreement, the Veolia Sureties do not release, relinquish or waive any claim, right or cause of action which they have or may have against Veolia arising out of the Bonds or the

Operations Contract, or with respect to other bonds issued by the Veolia Sureties on behalf of Veolia; and (b) the release of claims in paragraph 2 given by the Town to Veolia expressly excludes any "claims" (as such term is defined in paragraph 2) arising after the date of this Settlement Agreement under the Operations Contract and the Guaranty, or any other guaranties (if any) issued by Veolia in connection with the Operations Contract; and (c) the release of claims in paragraph 2 given by the Town to the Veolia Sureties expressly excludes any "claims" (as such term is defined in paragraph 2) arising after the date of this Settlement Agreement under any outstanding bonds (if any) issued by the Veolia Sureties.

4. Each Party represents and warrants that it has the right, capacity and all necessary authority to execute the Settlement Agreement, and represents and warrants that none of the claims released by it in paragraph 2 has been sold, assigned or transferred, in whole or in part, to any person or entity that is not identified herein and a signatory hereto, whether by contract, operation of law or otherwise.

5. Each Party represents and warrants that it has participated equally in the drafting of this Settlement Agreement; it has not relied upon any representations or advice of any other Party regarding this Settlement Agreement; it has had the opportunity to review the Settlement Agreement; it has received the advice of independent legal counsel prior to executing this Settlement Agreement; and it executes this Settlement Agreement voluntarily, as its free act and deed.

6. Each Party acknowledges and agrees that payment of the Settlement Sum is a full accord and satisfaction of any and all claims released by the Town in paragraph 2 of this Settlement Agreement.

7. This Settlement Agreement constitutes the entire agreement among the Parties with respect to settlement and release of the claims set forth in paragraph 2, and supersedes all prior agreements, understandings, expectations and discussions of the Parties, whether oral or written, regarding such matters.

8. No amendment, modification, waiver or termination of this Settlement Agreement shall be binding unless executed in writing and signed by the Party to be bound thereby in the same manner as this Settlement Agreement was executed.

9. The recitals set forth at the beginning of this Settlement Agreement are incorporated into and deemed a part of this Settlement Agreement.

10. This Settlement Agreement has been, and shall for all purposes be deemed to have been, executed and delivered within the Commonwealth of Massachusetts, and this Settlement Agreement and the rights and obligations of the Parties thereunder shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts, without application of any laws concerning conflicts of laws. Any litigation arising out of any breach of this Settlement Agreement shall be brought solely in the Plymouth Superior Court. Each Party agrees that service of any complaint for any breach of this Settlement Agreement may be served on such Party by certified mail at the address for such Party set forth in Exhibit A.

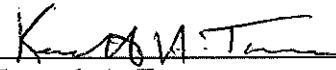
11. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. A copy of a Party's signature shall be deemed an original.

12. Within three business days of the Town's receipt of the Settlement Sum, each Party shall cause their legal counsel to sign, and the Town shall thereafter file with the Plymouth Superior Court and, if necessary, the Suffolk Superior Court, the "Stipulation of Dismissal" attached hereto as **Exhibit C**. Each Party agrees that it shall be bound to such stipulation by the signature of their legal counsel.

13. Each Party acknowledges and agrees that settlement of the Litigation as reflected in this Settlement Agreement represents the compromise of disputed claims; that each Party expressly disclaims any liability or wrongdoing in connection with the Litigation and the claims and allegations asserted therein; and that this Settlement Agreement will not be filed with the Superior Court in the Litigation unless otherwise ordered by the Court.

TOWN OF PLYMOUTH
By its Board of Selectmen

**VEOLIA WATER NORTH AMERICA
OPERATING SERVICES, LLC**



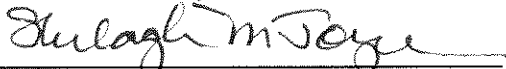
Kenneth A. Favares

Jason Salgo
Executive Vice President, Chief Financial
Officer and Treasurer




John T. Mahoney, Jr.


Date: _____



Shelagh M. Joyce



Betty Cavaeco



Patrick J. Flaherty

Date: Oct. 19, 2019

VEOLIA NORTH AMERICA, INC.

Jason Salgo
Chief Financial Officer

Date: _____

**VEOLIA WATER NORTH AMERICA-
NORTHEAST, LLC**

Jason Salgo
Executive Vice President, Chief Financial
Officer and Treasurer

Date: _____

CDM SMITH INC.

Mario J. Marcaccio

Mario J. Marcaccio
Senior Vice President/General Counsel

Date: 10/15/2019

**STANTEC CONSULTING SERVICES,
INC.**

Peter Howe
Vice President

Date: _____

P. GIOIOSO & SONS, INC.

Francesco Gioioso
Chief Executive Officer/Treasurer

Date: _____

**AMERICAN INTERNATIONAL GROUP,
INC.**

Douglas C. Fine
Complex Claim Director
AIG Claims, Inc.

Date: _____

**AMERICAN HOME ASSURANCE
COMPANY**

Douglas C. Fine
Complex Claim Director
AIG Claims, Inc.

Date: _____

**THE INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA**

Douglas C. Fine
Complex Claim Director
AIG Claims, Inc.

Date: _____

EXHIBIT A
Parties' Principal Addresses

TOWN OF PLYMOUTH
Plymouth Town Hall
26 Court Street
Plymouth, MA 02360

STANTEC CONSULTING SERVICES, INC.
226 Causeway Street, 6th Floor
Boston, MA 02114

P. GIOIOSO & SONS, INC.
50 Sprague Street
Hyde Park, MA 02136

CDM SMITH INC.
75 State Street, Suite 701
Boston, MA 02109

VEOLIA WATER NORTH AMERICA-
NORTHEAST, LLC, VEOLIA NORTH
AMERICA, INC., & VEOLIA WATER
NORTH AMERICA OPERATING
SERVICES, LLC

53 State Street
Boston, MA 02109

AMERICAN HOME ASSURANCE
COMPANY
175 Water Street, 18th Floor
New York, NY 10038

INSURANCE COMPANY OF THE STATE
OF PENNSYLVANIA
175 Water Street, 18th Floor
New York, NY 10038

AMERICAN INTERNATIONAL GROUP,
INC.
175 Water Street, 18th Floor, New York, NY
10038

EXHIBIT B
Wiring Instructions for Settlement Sum

Rockland Trust
288 Union Street
Rockland, MA 02370

ABA # 011304478

For further credit to:

Town of Plymouth
26 Court Street
Plymouth, MA 02360

General Checking Account
#2977014584

EXHIBIT C
Stipulation of Dismissal, With Prejudice
(follows this page)