

**COMMONWEALTH OF MASSACHUSETTS**

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In the Matter of: ) )  
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CDM Smith Inc. ) )  
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**SETTLEMENT AGREEMENT**

The Commonwealth of Massachusetts, by and through its Attorney General Maura Healey (“the Commonwealth”), and CDM Smith Inc. (“CDM”) enter into this Settlement Agreement to conclude and resolve claims arising from the allegations set forth in Section I, ¶¶ A-S, *infra* (“the Covered Conduct”).

**I. COMMONWEALTH’S INVESTIGATION**

The Commonwealth has conducted an Investigation concerning CDM’s role in the design and construction oversight of the “Water Street/Plum Island Turnpike Water Main and Force Main” (“Contract One”) and “Water Distribution and Vacuum Sewer Systems” (“Contract Two”) projects (collectively, the “Project”) (“the Investigation”). Based upon the Investigation, the Commonwealth alleges:

A. CDM became involved with the Project in September 1998, when, in response to a request for proposals (“RFP”) from the City of Newburyport and the Town of Newbury (collectively, “the Municipalities”), CDM submitted a proposal to perform an “Alternatives Evaluation” to provide water and sewer service for Plum Island.

B. The Project was funded by the Massachusetts Department of Environmental Protection from the Commonwealth’s Clean Water State Revolving Fund and Drinking Water State Revolving Fund. The state revolving funds provided low interest loans to the Municipalities to assist their compliance with federal and state water quality requirements.

C. The Municipalities selected CDM to perform the Alternatives Evaluation study.

D. Thereafter, on October 31, 2000, CDM and the Municipalities entered into a contract for CDM to provide “professional design services” in connection with the Project (the “Design Services Contract”). CDM’s scope of work pursuant to the Design Service Contract included creating all plans, specifications, and regulatory submittals as necessary to prepare the Project to be put to bid for construction.

E. CDM completed its initial design of the Project in August 2002. CDM provided revised drawings in February 2004. Based on scheduling, logistics, and cost considerations, CDM divided the Project into two construction contracts, to be bid separately: Contract One and Contract Two (collectively “the Contracts”).

F. Contract One consisted of the off-island water and sewer portions of the Project, including subaqueous crossings under the Plum Island River and Plum Island Basin. Contract Two consisted of the on-island portions of the water and sewer system, including the main vacuum pumping station.

G. CDM prepared bid documents for each of the contracts, which included technical specifications for construction, project drawings, references to all permits, and geotechnical requirements. The technical specifications detailed materials and installation procedures, and the project drawings detailed the Project’s layout. These documents became incorporated into Contracts (collectively “the Contract Documents”).

H. On April 24, 2002, CDM and the Municipalities executed an agreement for “Professional Bidding and Construction Services” (“the Construction Services Contract”), pursuant to which CDM agreed to: assist the Municipalities with all aspects of the bidding process and, once

the contracts were awarded, act as the Municipalities' representative on site to ensure that the contractors completed the Project in accordance with the Contract Documents.

I. To fulfill its oversight responsibilities under the Construction Services Contract, CDM provided the services of Resident Project Representatives ("RPRs").

J. CDM failed adequately to perform services as required by the Design Services Contract and the Construction Services Contract.

K. Ultimately, Contract One was awarded by the Municipalities to SB General Contracting, Inc. ("SB") and Contract Two was awarded by the Municipalities to D&C Construction Co., Inc. ("D&C").

L. Construction of the Project began in August 2004.

M. Although most piping throughout the project consisted of PVC pipe, the Contract Documents also called for installation of some ductile iron pipe, fittings and appurtenances.

N. Section 02616 of the contract specifications for Contracts One and Two, entitled "Ductile Iron Pipe and Fittings," governed the installation and testing of "ductile iron pipe and fittings as shown on the Drawings and as specified herein." Part. 1.01(A).

O. Section 02616 states "[a]ll ductile iron pipe shall have an exterior polyethylene wrap...furnished in tube or sheet form [...] conforming to the requirements of ANSI/ASTM Standard Specification D1248." Part 2.01(D).

P. Contract One required use of polyethylene-wrapped ductile iron pipe at the east and west banks of the Plum Island River, where directionally-drilled HDPE pipe connected to PVC water and sewer mains, and on 16 hydrants, which were to be connected to the water main with ductile iron lateral connections.

Q. Contract Two required use of polyethylene-wrapped ductile iron pipe on 131 hydrants, which were to be connected to the water main with ductile iron lateral connections.

R. SB and D&C failed to wrap any ductile iron pipe installed on the Contracts in polyethylene encasement.

S. CDM failed to properly familiarize its RPRs with the applicable ductile iron specifications and failed to require SB and D&C to abide by the ductile iron specifications during the Project's construction, in violation of its contractual and statutory obligations.

## II. RECITALS

**WHEREAS**, CDM is a Massachusetts corporation with a principal place of business at 75 State Street, Boston, MA;

**WHEREAS**, in response to the Investigation, CDM denies any allegations of wrongdoing and liability under federal or state statutes or regulations or its contracts with the Municipalities;

**WHEREAS**, the Commonwealth, CDM, and the Municipalities wish to fully and finally resolve the Investigation and to avoid the costs and uncertainties of litigation;

**NOW, THEREFORE**, in consideration of the foregoing premises and covenants, terms, and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, upon the consent of the Commonwealth and CDM (hereinafter, collectively referred to as the "Parties"), it is hereby **STIPULATED** and **AGREED**:

### III. RELIEF

1. Immediately upon execution of this Settlement Agreement, the Mutual Release and Agreement attached as Exhibit A and incorporated herein by reference and the Escrow Agreement attached as Exhibit B and incorporated herein by reference, CDM shall make payments totaling \$5,500,000, as follows:

- a. CDM shall pay the Commonwealth \$4,750,000 (“the Lump Sum Payment”); and
- b. CDM shall pay \$750,000 (“the Escrowed Funds”) into an escrow account established at and managed by SunTrust Bank (“Escrow Agent”) pursuant to the Escrow Agreement attached as Exhibit B.

2. Within 14 days of receipt of the Lump Sum Payment, the Commonwealth will transfer to the City of Newburyport \$4,550,000 of the Lump Sum Payment, which the City shall place into a trust fund (the “Plum Island Utility Fund”) earmarked for costs and expenses arising from or related to the Project, including but not limited to the repair, modification, improvements, or optimization of the Project, and reimbursement of the City of Newburyport’s insurers, including the MIAA Property & Casualty Group, Inc. (“MIAA”) on terms arranged by the City of Newburyport to include MIAA’s release of any Project-related claims against CDM. This paragraph is for the benefit of, and may be enforced only by, the Commonwealth, CDM and the City, and is not for the benefit of, and may not be enforced by, any other third-party.

3. Of the \$200,000 Lump Sum Payment balance, \$175,000 shall be paid to the Office of the Attorney General and \$25,000 shall be paid the Office of the Inspector General to cover the reasonable fees and costs associated with the Investigation.

4. The Escrow Agent shall disburse the Escrowed Funds to the City of Newburyport 375 days after execution of this Agreement, except as otherwise provided in Exhibits A and B to this Agreement.

5. Upon execution of this Agreement, CDM agrees to provide to the Municipalities all plans and documents it and/or Simpson Gumpertz & Heger have prepared concerning proposed corrosion remediation on the Project, including remediation of corrosion or potential corrosion on the Project.

#### **IV. RELEASE**

6. In consideration of the foregoing and except for the obligations created herein, the Commonwealth forever discharges and releases CDM, and its current and former employees, agents, representatives, officers, directors, managers, insurers, successors and assigns, from civil claims and liability to the Commonwealth arising from the Covered Conduct. Notwithstanding the foregoing, nothing herein is intended to discharge or release CDM, or their current and former employees, agents, representatives, officers, directors, managers, insurers, successors and assigns, from civil claims and liability to the Commonwealth that does not arise from the Covered Conduct. Notwithstanding the foregoing, nothing herein is intended to discharge or release SB or D&C, or their current and former employees, agents, representatives, officers, directors, managers, insurers, successors and assigns, from civil claims and liability to the Commonwealth arising from or related to the Covered Conduct. For avoidance of doubt, nothing herein is intended to release CDM from tax and administrative claims by the Commonwealth.

7. CDM agrees not to seek to recover damages, contribution, indemnification, costs, losses, fees or expense from any person or entity in connection with the Project, except from its own insurers, and except in response to any future Project-related claims against CDM.

8. The Commonwealth agrees that any settlement agreements it reaches with, or any financial recovery it obtains from, any other parties (including any construction companies, insurers, and sureties) concerning the Project, irrespective of form, will contain terms that foreclose those parties from seeking recovery for damages, contribution, indemnification, costs, losses, fees or expense from CDM or CDM's insurers with respect to the Project.

#### V. NOTICES AND CHANGE OF ADDRESS

9. Any notices or communications transmitted between CDM and the Commonwealth pursuant to this Agreement shall be provided in writing by first class mail and email to the Parties or their successors, as follows:

Commonwealth of Massachusetts:

Gillian Feiner, AAG  
Nancy E. Harper, AAG  
Assistant Attorneys General  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
gillian.feiner@state.ma.us  
betsy.harper@state.ma.us

CDM:

Martin F. Murphy  
Foley Hoag LLP  
155 Seaport Boulevard  
Boston, MA 02210  
mmurphy@foleyhoag.com

or to such forwarding address as may be provided by Martin F. Murphy and Foley Hoag LLP

## VI. MISCELLANEOUS

10. The provisions of this Agreement shall be severable and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Agreement shall remain in full force.
11. Consent to this Agreement does not constitute an approval by the Commonwealth of any of CDM's business acts and practices, and CDM shall make no representations to the contrary.
12. This Agreement contains the complete agreement between the Commonwealth and CDM. No promises, representations or warranties other than those set forth in this Agreement have been made by the Parties. This Agreement supersedes all prior communications, discussions, or undertakings, if any, of the Parties, whether orally or in writing, including the tolling agreement between the Commonwealth and CDM effective as of the 26th day of July, 2012, which is hereby terminated.
13. This Agreement may not be changed, altered, or modified, except by written agreement of the Parties.
14. CDM acknowledges it is represented by counsel, Martin F. Murphy, Esq., with whom it has consulted concerning this Agreement.
15. The undersigned signatories acknowledge that execution of this Agreement is voluntary and authorized and executed by persons authorized to bind them to its terms.
16. This Agreement becomes effective upon its execution by all Parties.

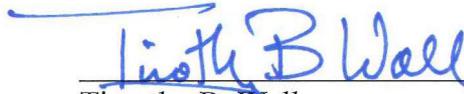
COMMONWEALTH OF MASSACHUSETTS  
MAURA HEALEY  
ATTORNEY GENERAL



8/30/16

Gillian Feiner, Assistant Attorney General  
Health Care & Fair Competition Bureau  
Office of Attorney General Maura Healey  
One Ashburton Place  
Boston, MA02108  
Tel. 617-963-2571

CDM Smith Inc.



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Timothy B. Wall  
President and Chief Operating Officer