

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims is made on this ____ day of _____, 2008 between New Ventures Associates, LLC (“New Ventures”), and the City of Newburyport, Massachusetts acting by and through its Mayor (the “City”).

WHEREAS, New Ventures purchased the landfill off Crow Lane in Newburyport (the “Landfill”) in 2000; and

WHEREAS, the City allegedly arranged for municipal solid waste and sewage sludge to be deposited in the Landfill when the Landfill was owned and operated by a private party; and

WHEREAS, New Ventures is required to close the Landfill in accordance with 310 CMR 19.00; and

WHEREAS, on October 7, 2002, the City and New Ventures entered into a Host Community Agreement (the “HCA”) establishing certain conditions for the closure including the following provisions:

New Ventures agrees that it will not request a modification of the Final Grading Plan [defined as the conceptual GZA plan revised through June 4, 2002] from the DEP that exceeds the volumes contained in the Final Grading Plan (Exhibit 1) without the prior affirmative vote and written approval by the City Council and the Mayor. §3.14; see also §§2.0 and 3.3.

and

New Ventures shall not deliver more than 35 truckloads to the Landfill in any 24-hour period. §3.5; and

WHEREAS, New Ventures intends to close the Landfill pursuant to an Administrative Consent Order executed in 2003 with the Department of Environmental Protection (“DEP”) and a Final Judgment to be entered in Suffolk Superior Court. The final design of the closure is based upon a plan entitled the “Final Grading and Stormwater Management Plan” prepared by SITEC Environmental, Inc. and dated March 17, 2008 and revised through April 24, 2008 (the “Final Plan”); and

WHEREAS, the Final Plan differs from the 2002 GZA Plan referenced in the HCA; and

WHEREAS, on May 14, 2008, New Ventures requested that the City Council and Mayor approve the Final Plan and an increase in daily truckloads of non C&D materials, in accordance with the Final Plan; and

WHEREAS, on July 9, 2007, the DEP issued a Notice of Responsibility letter to New Ventures asserting that New Ventures is responsible for the release of hazardous materials at the Landfill under M.G.L., c. 21E; and

WHEREAS, on August 6, 2007, New Ventures sent the City a notice letter under General Laws Chapter 21E, Section 4A(a) asserting that the City is responsible for an equitable share of the liability for release of hazardous material at the Landfill as cited by the DEP; and

WHEREAS, the parties want to resolve the Landfill closure and Chapter 21E issues that have been raised amicably to the extent possible; and

WHEREAS, there are no present Cease and Desist Orders preventing the resumption of closure of the Landfill.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Newburyport City Council and Mayor approve the implementation of the Final Plan and the importation of material in accordance with the Final Plan, as attached hereto.
2. New Ventures releases the City of Newburyport (together with its boards, officials, employees, agents, representatives, successors and assigns) fully and completely from any and all claims, demands, notices, actions, suits, and causes of action for any and all response costs under General Laws, Chapter 21E or any other costs or damages incurred or to be incurred for all time by New Ventures regarding any and all materials deposited, brought to, or otherwise contained in or at the Landfill, regardless of the origin or date of receipt at the Landfill of such materials.
3. The release contained herein shall not take or remain in effect if the City or any of its boards and officials, for reasons other than response(s) to imminent threats to public health and safety, takes or omits to take any action that prohibits or prevents New Ventures from complying with the schedule set out in its 2008 Settlement Agreement with the Commonwealth and the Final Judgment entered in Suffolk Superior Court, as may be amended other than from the willful and wanton conduct of New Ventures, provided, however, that New Ventures responds reasonably and in good faith to orders issued to New Ventures by the City or any of its boards or officials. Prior to the issuance of any orders in response to an imminent threat to public health, written notice shall be provided to New Ventures citing the imminent threat. The City shall make its representative available to meet with New Ventures regarding the imminent threat within forty-eight (48) hours and determine how the alleged imminent threat to public health can be resolved. [redundant]

4. The City shall undertake post-closure activities at the Landfill for a period of thirty (30) years in accordance with 310 CMR 19.00 to consist of mowing the cover vegetation, maintaining the leachate collection system (except as provided in Section 5 herein), monitoring the downgradient surface and groundwater, monitoring and ensuring the ignition of the enclosed flare to burn off landfill gases, and submitting necessary reports of these activities to the DEP.
5. New Ventures shall undertake post-closure activities at the Landfill to consist of maintaining and exchanging media for the pretreatment, and maintaining the enclosed flare for the time required by the Department and for the first year after approval of the closure by the DEP shall be responsible for maintaining the leachate collection system and disposing of the leachate collected therein. New Ventures shall store sufficient media for pretreatment on-site in the City owned garage, within an area defined in a plan attached hereto.
6. New Ventures shall grant an easement to the City for its use of a portion of the Landfill for the purpose of installing a pad or platform on the Landfill site in a location mutually agreed upon by the parties hereto and capable of supporting a wireless telecommunications facility or alternative energy facility, to be erected by or on behalf of the City. The City shall notify New Ventures on or before [date] as to the type of facility to be installed upon the pad and shall provide all copies of geotechnical information to support the construction of the Facility without harming or disrupting the FML or closure. The facility shall be placed in a designated area within Phases 1A, 2A, or 3A, of the Landfill on an area large enough to support the use. New Ventures shall contribute \$50,000 toward the design and construction. All revenues generated by the facility constructed thereon shall be applied first to construction of the facility, second to the post-closure costs incurred by the City with respect to the Landfill, and finally any remaining revenue shall be divided equally between the City and New Ventures with an annual accounting by the City.
7. Upon conclusion of the closure of the Landfill, New Ventures shall engage a licensed surveyor to identify and mark the Landfill property lines, and eliminate encroachments onto City owned property beyond those lines.
8. New Ventures will comply with all reasonable requirements imposed by the DEP, to the satisfaction of DEP, and will comply with the Final Plan, including but not limited to the undertaking of borings and testing to ensure that the berm constructed on the Landfill is structurally sound, and shall provide copies of all boring and testing logs and reports to the City.
9. New Ventures shall provide the City with a Jerome Meter for monitoring hydrogen sulfide at the Landfill at locations determined by the Health Department, said Jerome Meter to be maintained and repaired by New Ventures at its sole cost and expense during the closure period, but shall not be responsible for repairs necessitated by the City's willful and wanton destruction of the Jerome

Meter. A Jerome Meter shall become the property of the City after closure and shall be separate, and apart from any equipment required for the satisfaction of any monitoring obligation on the part of New Ventures contained herein.

10. New Ventures shall itself take measurements of the levels of hydrogen sulfide during closure emanating from the Landfill, such measurements to be taken at the surface and perimeter of the Landfill, as well as at the existing air monitoring station on Charmanski Drive, all as required by the Department and shall report results of such measurements in writing on a daily basis to the Board of Health.
11. In the event that any specific material brought to the site is determined to violate the gypsum removal protocol established by the DEP, New Ventures shall not dispose of the specific material at the Landfill or commingle such material with material already present at the Landfill site, and shall remove such material from the Landfill site until the noncompliance is cured.
12. New Ventures will maintain staffing of the Landfill on a full-time basis, and shall undertake a full-time complaint response protocol consistent with the requirements of the DEP during closure.
13. New Ventures shall undertake roadway repairs as required under the terms of the HCA.
14. New Ventures may, with the approval of the Mayor, transport up to thirty-five (35) trucks per day in addition to the thirty-five (35) trucks per day authorized by the HCA provided that those additional trucks contain only materials necessary for closure or post-closure and not construction and demolition (“C&D”) materials.
15. A representative of New Ventures shall be available to meet with the City, acting by and through its Mayor, on a weekly basis as requested to update the Mayor on progress at the Landfill and to receive and transmit reports of problems and concerns with Landfill operations during closure.
16. New Ventures shall be responsible for paying the inspector retained by the City to inspect the truckloads during closure.
17. Upon execution of this Agreement, New Ventures shall prepare and file an Agreement for Judgment in the following outstanding matters:
 - a. New Ventures Associates, LLC v. City of Newburyport, et al.
Essex Superior Court C.A. No. 2007-02465
 - b. New Ventures Associates LLC v. Newburyport Board of Health
Appeals Court No. 2008-P-0468

18. This Agreement is binding upon the parties hereto, their successors, assigns, legal representatives and constituent boards and authorities of the City. No party hereto shall assign or transfer any interest in the Agreement without the written consent of the other.
 19. Notwithstanding any of the provisions contained herein, the parties reserve all of their rights with respect to the ongoing matter entitled In the Matter of New Ventures Associates, LLC: Crow Lane Landfill; Docket No. DEP-05-1392; and no actions undertaken therein shall constitute violations of this Agreement.
 20. If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.
 21. This Agreement shall be governed, construed, and enforced by the laws of the Commonwealth of Massachusetts and the parties hereto submit to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.
 22. This Agreement will take effect upon full execution by the parties.
- [redundant]
23. The signatories below represent that they have the authority to bind the respective parties to this Agreement.
 24. This Agreement may be executed in counterparts.

Executed on this ____ day of _____ 2008.

CITY OF NEWBURYPORT

APPROVED AS TO FORM

John F. Moak, Mayor

Mark R. Reich, Esq.

NEW VENTURES ASSOCIATES, LLC

By: William Thibeault

Its: Managing Member

APPROVED AND AGREED

Newburyport City Council

By:

Its: