

06-07

AGREEMENT AND COVENANT

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This Agreement and Covenant ("Agreement") is made this 23rd day of March, 2009 by and 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, 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 under Suffolk Superior Court, No. SUCV2006-0790-C. 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, 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 City has responded to claims asserted by New Ventures under General Laws Chapter 21E, Section 4A; and

WHEREAS, on or about August 2007 a claim for injunctive relief, entitled "Defendant's Motion to Resume Closure of the Landfill" was filed by New Ventures with the Suffolk Superior Court under SUCV2006-00790; and

WHEREAS, the City has filed responsive pleadings and counterclaims; and

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

[Handwritten signatures]

NOW, THEREFORE, in consideration of the mutual covenants by and between the parties and the specific consideration recited herein, the sufficiency of which is hereby expressly acknowledged, the parties hereto agree as follows:

1. New Ventures and the City hereby agree to suspend all pending litigation relative to the Landfill, including the progression and prosecution of the 4A process pursuant to M.G.L. c. 21E and any M.G.L. c. 30A and M.G.L. c. 249, §4 appeals, and further agrees to a stay of the injunctive action.
2. The City agrees not to commence any action against New Ventures or suspend, inhibit or otherwise prevent the closure of the Landfill provided that New Ventures is in substantial compliance with the Board of Health Order dated on or about March of 2009, except to the extent that such action is in response to imminent threats to public health and safety or in response to the gross negligence or willful or wanton acts or omissions of New Ventures that causes a threat to public health and safety. In the event the Board of Health finds that an imminent threat to public health and safety has occurred or that there has been gross negligence or willful or wanton acts or omissions by New Ventures that causes a threat to public health or safety, the Board of Health shall send the New Ventures written notice specifying the imminent threats to public health and safety or in response to willful or wanton acts or omissions by New Ventures that pose an imminent threat to public health or safety in reasonable detail. The Parties agree to confer in good faith to resolve such dispute within three (3) days or such shorter period as the circumstances require. New Ventures shall be given ten (10) days to cure the condition or such shorter period as the parties agree is warranted by the circumstances. Only if the Parties are unable to resolve the alleged imminent threats to public health and safety or the response to willful or wanton acts or omissions by New Ventures that pose a threat to public health and safety through this dispute resolution process can the City bring an action against New Ventures for alleged imminent threats to public health and safety or in response to alleged willful or wanton acts or omissions by New Ventures that cause an imminent threat to public health or safety.
3. Upon closure of the Landfill, New Ventures agrees to provide the City with a covenant not to sue expressly stating that New Ventures will not continue any pending action or commence any further litigation against the City relative to the Landfill, or any environmental condition thereon or emanating therefrom. This obligation to provide a covenant not to sue shall not apply if the City engages in any actions which suspend, inhibit or otherwise prevent the closure of the Landfill, except to the extent that such actions are in response to an imminent threat to public health and safety or in response to the gross negligence or willful or wanton acts or omissions of New Ventures that cause a threat to public health and safety, further provided that the parties have followed the notice and cure provisions contained in Paragraph 2 hereof. The parties hereto acknowledge that this paragraph is not intended to and in no way waives New Ventures' rights against the City in the event that any other individual, entity or the

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Commonwealth files a claim or action against New Ventures relative to the operation or remediation of the Landfill (a "third-party action"), except to the extent that such claim is based upon the gross negligence or willful or wanton acts or omissions of New Ventures. In the event any such third party action is commenced, that gives rise to claims or defenses under M.G.L., C. 21E, in connection with materials deposited at the landfill other than C&D materials and which was not caused by the willful or wanton acts or omissions of New Ventures, the covenant not to sue shall become ineffective as to such action. This provision shall in no way constitute an admission by the City of any liability or obligations with respect to such third party actions, nor does the City waive any defenses or claims relative thereto.

4. New Ventures acknowledges and shall comply with the Noisome Trade conditions imposed upon it as well as its obligations under the outstanding order as entered in Lawrence Superior Court C.A. No. ESCV2007 - 01255.
5. New Ventures agrees to continue to pay the City for the services of Dave Madden in supervising materials brought to the Landfill. Payments shall be made for inspections of truck materials and shall not be made when the Landfill is not receiving materials or C&D disposal has been stopped by the BOH or the Department. Prior to the re-opening, the City shall provide New Ventures with an accounting of the monies held by the City on account for these services, New Ventures agrees that it will always maintain one month's value of services on account with the City for reimbursement purposes.
6. New Ventures further agrees to pay the City the sum of \$ 5898.10 in full satisfaction for soils and materials delivered to the Landfill prior to the date of this Agreement. New Ventures shall provide payment in full within fifteen (15) days of the effective date of this Agreement.
7. This Agreement is the sole and entire agreement between the parties as to this matter and the parties expressly acknowledge that there are no other inducements and/or representations being relied on by either party, except as set forth herein and any modification to this Agreement shall not be valid unless expressly set forth in writing and signed by all the parties to this Agreement.
8. Each party acknowledges that they have had the advice of counsel of their choice in connection with settlement of the litigation and execution of this Agreement and execute this Agreement as its free act and deed.
9. This Agreement shall be governed by and construed under the laws of the Commonwealth of Massachusetts.
10. This Agreement may be signed in multiple counterparts, which together shall constitute the agreement of the parties.

11. This Agreement will take effect upon full execution by the parties and the issuance of the Order by the Newburyport Board of Health to New Ventures to close the Landfill.
12. The undersigned signatories warrant and represent that they have full power and authority to bind the respective parties to this Agreement.
13. This Agreement shall bind and inure to the benefit of the parties and their respective heirs, successors and assigns.
14. If any terms or provisions of this Agreement, or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. It is understood and agreed that any provisions of law, statutory or otherwise, the effect of which is to limit the generality of the terms of this Agreement or its effect as a bar to claims not presently known, is expressly waived.

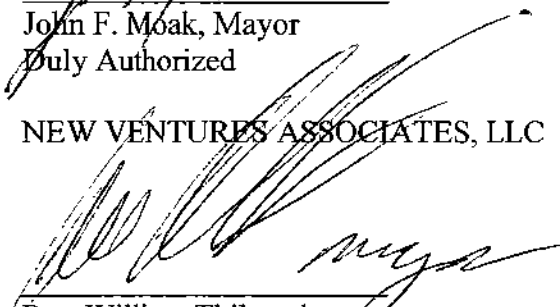
IN WITNESS WHEREOF, we have hereunto set our hands and seals as of the date above first written.

CITY OF NEWBURYPORT



John F. Moak, Mayor
Duly Authorized

NEW VENTURES ASSOCIATES, LLC



By: William Thibeault
Its: Managing Member
Duly Authorized

