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MEMORANDUM

To: Terry Berns, Ad Hoc Committee, Crow Lane Landfill
From: Joseph P. Sullivan, City Solicitor 
Re: Host Committee
Date: October 18, 2002

Dear Terry:

Kindly find enclosed the final and fully executed copy of the Host Community Agreement dated October 7, 2002. Please note that I am still waiting on receipt of the final exhibit 3 and 4 from Attorney Richard Nysten's office. Exhibit 3 is the operational plan referenced in the Agreement and exhibit 4 is the conceptual grading plan for the athletic fields option which will be presented to the City Council pursuant to the Agreement. Once the final version of these two exhibits is received, I will notify you to pick them up at my office.

Thank you and the other members of your committee for your valuable input into this process. I believe, as the Daily News editorialized in yesterday's paper, that with your help, the City was able to "dot all the i's and cross all the t's". As you are aware, any concerns that the City was not able to address in the process of negotiating this Agreement will be addressed through our discussions with the Massachusetts Department of Environmental Protection.

**HOST COMMUNITY AGREEMENT BETWEEN
THE CITY OF NEWBURYPORT, MASSACHUSETTS, AND
NEW VENTURES ASSOCIATES, LLC**

October 7, 2002

Agreement made by and between the **City of Newburyport**, Massachusetts (the "City"), and **New Ventures Associates, LLC**, its successors and assigns ("NVLLC").

WHEREAS, NVLLC is the current owner of approximately 14 acres of real property at Crow Lane in Newburyport, Massachusetts, that is the location of an inactive, unlined solid waste landfill (the "Landfill")

WHEREAS, the Massachusetts Department of Environmental Protection ("DEP") has notified NVLLC that it must conduct final closure of the Landfill in accordance with M.G.L. Chapter 111, §150A and 310 CMR 19.00, and an Administrative Consent Order ("ACO") to be negotiated by DEP and NVLLC to set forth the applicable requirements and deadlines for the Landfill closure; and

WHEREAS, in accordance with DEP's *Guidelines for Determining Closure Activities at Inactive Unlined Landfills*, as amended July 6, 2001 (the "Guidelines"), and DEP Policy #COMM-97-001, NVLLC is requesting approval to use materials approved by DEP to conduct grading and shaping of the Landfill prior to construction of an impermeable landfill cap; and

WHEREAS, it is the intention of NVLLC and the City that the Landfill be closed, in conformity with law, and in a manner which will not jeopardize the health, safety, welfare or natural resources of the community and its citizens;

NOW, THEREFORE, in consideration of resolution and avoidance of disputes between the City and NVLLC concerning the proposed Landfill closure, the payment of \$10.00, receipt of which is hereby acknowledged, and other good and valuable consideration, the parties agree as follows:

1.0 PARTIES

The parties to this agreement are:

1.1 The City of Newburyport having a principal place of business at the Newburyport City Hall, 60 Pleasant Street, Newburyport, Massachusetts 01950 which, unless otherwise specified, is acting through its Mayor.

1.2 New Ventures Associates, LLC, a Massachusetts limited liability company with a usual place of business at 85-87 Boston Street, Everett, Massachusetts, 02149, its successors and assigns, presently acting through its managing member, William Thibeault (collectively

“NVLLC”).

2.0 THE LANDFILL

The Landfill that is the subject of this Agreement is located off Crow Lane in Newburyport, and is delineated on an engineering plan attached to this Agreement as Exhibit 1. The portion of said Landfill that is to be used for the proposed Final Grading Plan is shown on Exhibit 1. The parties agree that the Conceptual Grading and Stormwater Management Plan prepared by GZA; (Figure C-4) dated August 11, 2000 and revised through June 4, 2002 is the Final Grading Plan for purposes of this Agreement, only.

3.0 OPERATION OF LANDFILL

3.1 For grading and shaping the Landfill, NVLLC shall use only those soils meeting the requirements of the DEP Policy COMM #97-001 for soil reuse at unlined landfills; and (b) materials approved for such use in accordance with the Guidelines, sections D, E, and F.

For those soils and materials to be disposed at the Landfill that do not require or have a BUD approval, NVLLC hereby agrees to provide a copy of the test results for said materials to the Newburyport Board of Health at least two working days prior to disposal at the Landfill in order for the City to review the analysis. For those soils and materials to be disposed at the Landfill that have a BUD approval, NVLLC agrees to provide a copy of the updated BUD approvals to the Newburyport Board of Health at least two working days prior to disposal at the Landfill in order for the City to review the approval.

NVLLC hereby agrees that it will not transport or deliver said materials to the Landfill until two working days have passed from the Newburyport Board of Health's receipt of the analysis or approval sent to it. If the Board of Health or the City's Licensed Site Professional ("LSP") find that the materials do not comply with the above soil reuse policy, or that the BUD approval is not up to date, it shall inform NVLLC within two working days of receipt of the analysis or approval, and NVLLC shall not deliver said materials to the Landfill until it complies with said Policy.

3.2 Fly ash , coal ash or Big Dig materials shall be prohibited from being used in any way at the Landfill;

3.3 NVLLC shall at all times comply with the requirements of the ACO relating to the closure of this Landfill. In the event that NVLLC requests a modification or amendment to the ACO, including an amendment or modification to the FAM as defined in 5.1 below, then NVLLC shall provide the City with seven (7) day advance written notice of such request. The City reserves the right to provide comments to NVLLC and to the DEP regarding any such request. NVLLC agrees that it will not request a modification of the Final Grading Plan from the DEP that exceeds the volumes contained in the Final Grading Plan (Exhibit 1) without affirmative vote and written approval by the City Council and the Mayor.

3.4 NVLLC, shall instruct the contractors, sub-contractors and agents delivering material to the Landfill, as to the following truck routes: (a) DELIVERY: Route 95 to Exit 57, Route 113 East to Low Street, to Crow Lane, to the Landfill and (b) EXIT: Landfill to Crow Lane, to Low Street, to Graf Road to Scotland Road east to EXIT 56 to Route 95. No other route shall be used by NVLLC, its contractors, sub-contractors and agents without the prior written approval of the Mayor Deliveries to the Landfill shall be restricted to weekdays between the hours of 8:00 a.m. to 5:00 p.m.

3.5 NVLLC shall not deliver more than 35 truckloads to the Landfill in any 24-hour period. No trucks with a capacity over 50 tons gross weight (Massachusetts Highway Tractor Trailer Weight Limits) shall access the Landfill. Prior to the commencement of the Landfill closure project, NVLLC shall notify the Mayor of the steps to be taken to ensure that trucks traveling to and leaving the Landfill do not deposit material on the public roadways, including without limitation installation of a method to clean the wheels and undercarriage before trucks leave the site. NVLLC will keep a street sweeper at the landfill full time to sweep regularly the adjacent public ways, including but not limited to Crow Lane and those portions of Low Street within 1000 feet of its intersection with Crow Lane. In addition, NV agrees to maintain Crow Lane and to repair any structural damage to it relating to the Landfill closure project.

In addition, the City may install a temporary signal at the intersection of Crow Lane and Low Street that would have the effect of stopping the traffic on Low Street while trucks exit Crow Lane and attempted to merge into the on-going traffic on Low Street. Moreover, upon the request of the Mayor finding that the traffic conditions at the intersection of Crow Lane and Low Street are posing a threat to public safety, NVLLC will meet with the Mayor, the Police Chief and the DPW, within 48 hours of said request, to address the traffic concern.

3.7 Trucks that deliver fill materials to the Landfill shall be owned by or affiliated with NVLLC. For purposes of this Agreement, "affiliated with NVLLC" means that there is a contractual relationship between the truck company and NVLLC. NVLLC shall be responsible for and hold harmless, defend and otherwise indemnify the City for all damages arising out of the operation of said trucks.

3.8 Grading and spreading operations on the Landfill shall occur only during daylight hours, up until 6:00 PM. NVLLC reserves the right to conduct grading and spreading operations on Saturdays during daylight from 9 AM until 4 PM, provided further that there are no truck deliveries on Saturdays. NVLLC may temporarily stockpile material as it is delivered to the Landfill. Deliveries to the Landfill shall be arranged in such a manner so as to avoid backing up of trucks to the extent practicable.

3.9 NVLLC shall institute a complaint procedure as set forth in Exhibit 2, and shall at all times comply with said procedures.

3.10 Except as provided in 3.15 below, which requires simultaneous submittal to the DEP and to the City, NVLLC shall, within seven (7) days of a written request by the City, furnish all non-confidential records in the possession of NVLLC that are available to the DEP relating

to reuse of materials at the Landfill.

3.11 NVLLC shall follow the stockpiling and reuse procedures required by law and the ACO.

3.12 NVLLC shall, in connection with any testing of materials at the Landfill that may be required by the Department in accordance with the requirements of the ACO, notify the City and provide access to a split sample to the City at the City's sole cost and expense and upon the City's request. In connection with said DEP mandated testing at the landfill, NVLLC and the City's Board of Health member, employee, or LSP, shall select a mutually acceptable date and time and mutually acceptable location for said test. A member, employee, or LSP of the Board of Health shall have access to the Landfill at all times when NVLLC personnel are present on-site, and may be present when NV samples are taken. The authorized employee, member, or LSP of the Board shall sign in with the gatekeeper when arriving at the Landfill and when leaving the Landfill and, for liability insurance reasons and other business reasons, said employee, member or LSP must be accompanied by an NVLLC employee at all times on the site. For site visits that will not involve sample collection, the City shall endeavor to contact NVLLC in advance to coordinate the site visit.

The City shall establish a Mitigation Fund in the amount of \$75,000.00 to be funded in equal installments over three years by NVLLC. Payments shall be sent to the attention of the City Auditor. The first payment is due upon the execution of the ACO, subsequent payments on the annual anniversary of that date. It is understood that a portion of this payment may be utilized by the City to retain the services of an LSP to review independently the testing and analysis provided to the Department and to the Newburyport Board of Health. The City may also use these monies for traffic control, police details or other expenses as it sees fit, except to commence legal actions against NVLLC.

3.13 In the event that any closure material is placed at the Landfill that, in accordance with the sampling and analyses conducted under sections 3.11 and 3.12 above, is determined not to meet the standards set forth in the Guidelines (Sections D, E, &F) or, DEP's Policy Comm 97-001, or is otherwise in violation of the ACO, NVLLC shall take steps to isolate and/or cover the material immediately and shall take additional steps to delineate the horizontal and vertical extent of the closure material in violation, and shall remove said material from the Landfill within three (3) days of receipt of the analyses unless a lesser time is provided for in the ACO.

In addition, upon receipt of the notice of the violation, immediate efforts shall be undertaken to identify the truck, its company and the generator of the contaminated material. Once the truck and generator have been identified, they shall be reported to the Newburyport Board of Health and shall be prohibited from delivering any other material to the Landfill until the violation has been rectified and all contaminated soils have been removed from the Landfill.

In the event a finding is made that materials have been placed in violation of this

agreement or the ACO, NVLLC shall not place or spread additional materials into the general area where the contaminated materials are located until said contaminated materials are removed.

NVLLC hereby agrees that it shall establish and keep on site an internal tracking system identifying the location of materials delivered to the landfill on a daily basis, attached hereto and incorporated by reference. ("Operations Plan"). (Exhibit 3)

3.14 Other than material referenced in 3.13 above, NVLLC shall not be permitted to deposit or remove additional material to or from the Landfill, except with the prior affirmative vote and written approval of the City Council and the Mayor. NVLLC agrees that it will not request a modification of the Final Grading Plan that exceeds the volumes contained in the Final Grading Plan (Exhibit 1) without the prior affirmative vote and written approval of the City Council and the Mayor. The Landfill shall be operated and restored in general conformance with the provisions of the City's ordinances, including Section 11 of the City's Zoning Ordinance and the Board of Health Rules and Regulations.

3.15 NVLLC shall submit to the City (simultaneously when filed with DEP) copies of all plans, Bills of Lading procedures and Bills of Lading, environmental assessments, test results, BUD approvals, testing records, and studies required to be submitted to the DEP pursuant to the ACO. The City reserves the right to provide comments to NVLLC and to the DEP regarding any such submittals, and NVLLC shall be required to address such comments in a manner that is consistent with the ACO and any approvals issued by DEP.

4.0 MITIGATION; RECREATIONAL FIELDS AND FUND

4.1 NVLLC shall consult with the City and, within three (3) months after execution of this agreement, NVLLC shall submit to the Mayor and City Council a plan and timetable for (i) rough grading of the adjacent property for potential development by the City as recreational sports fields as an option to be considered by the City and (ii) a proposal to excavate and grind up and relocate the existing stump dump, both areas as shown on Exhibit 4 and both actions to be completed on or before the end of the term of this Agreement. NVLLC shall also present to the City, at the City's request, a payment plan for a Mitigation Fund of \$130,000 to be paid to the City over a three year period, in lieu of rough grading the adjacent property and grinding up the stump dump. If the Mayor and City Council do not desire NVLLC to rough grade the recreational fields, they shall discuss the acceptance of the alternative, above.

5.0 SECURITY FOR PERFORMANCE

5.1 NVLLC agrees to furnish DEP with a financial assurance mechanism ("FAM") as described in 310 CMR 19.051 that is adequate to cover the costs of closure and post-closure care of the Landfill, in accordance with the ACO.

5.2 NVLLC shall maintain a commercial package policy including but not limited to

consisting of automobile liability insurance, property damage and general liability insurance. The City shall be named as an additional insured party.

5.3 NVLLC shall secure the financial obligations and contractual obligations contained herein to the City required by this Agreement with a letter of credit, escrow account bond or accelerated payment schedule; the form of which shall be approved by the City's Counsel, which shall not be unreasonably withheld.

6.0 RELEASE

In the event that NVLLC intends to commence an action against the City of Newburyport for additional damages caused by the City's alleged disposal of materials at the Landfill, NVLLC shall follow the dispute resolution process in Section 7.1, below.

7.0 ENFORCEMENT OF THIS AGREEMENT

7.1 In the event that the City alleges that NVLLC is not in compliance with the terms of this Agreement, the City shall send a written notice to NVLLC detailing the specific aspect(s) of the Agreement with which the City contends NVLLC is not in compliance. The City and NVLLC, will endeavor to resolve in an informal manner any dispute arising under this Agreement through the prompt use of negotiation. If a dispute should arise, the Parties, or their designated representatives, will meet either in person or via teleconference at least once to attempt to resolve the dispute. For that purpose, any Party may request such a meeting within ten (10) days, at a mutually agreed upon time and place; provided, however, that ten (10) days prior written notice shall be provided of any request for an in person meeting. If the dispute has not been resolved within fifteen (15) days after the first meeting of the Parties, either Party may request in writing to resolve the claim or controversy in a formal manner through mediation conducted by a mediator selected by the Parties. Mediation shall not commence until ten (10) days after both Parties have received written notice of a Party's request to utilize mediation. During such ten (10) day period, the Parties will meet at least once in an effort to resolve the dispute. If the dispute is not resolved, the dispute may then proceed to mediation, and the mediation procedure shall be determined by such Parties in consultation with the mediator. The fees and expenses of the mediator shall be borne equally by such Parties. In the event that a party seeks legal relief to enforce the provisions of this Agreement, the party found to be in breach of this Agreement will be liable to the non-breaching party for reasonable attorneys' fees and court costs associated with seeking such relief.

7.2 Nothing herein shall be construed as limiting or expanding in any way the right of the City, including its Board of Health, to enforce all laws, ordinances, and regulations applicable to the activities conducted by NVLLC at the Landfill, and nothing contained herein shall be deemed to represent a grant of license, permit or variance by the City. Additionally, the endorsement of the Agreement by the Mayor may not be deemed a determination by the City that NVLLC is in compliance with the Zoning Ordinance, Board of Health regulations,

Planning Board regulations or City Ordinances.

8.0 PROFESSIONAL AND ADMINISTRATIVE FEES

8.1 Within ten (10) days of receipt of invoices, NVLLC shall reimburse the City for its legal, engineering, surveying (including wetlands delineation, but not including sampling) and administrative costs associated with reviewing the Landfill closure project, and in negotiating and implementing this Agreement. The total amount of said reimbursement by NVLLC shall not be required to exceed \$50,000 and shall be exclusive of the Mitigation Fund.

8.2 Copies of any invoices presented to the City for such costs shall be provided to NVLLC, provided that any information subject to attorney-client privilege may be redacted, and shall be paid within 30 days of receipt.

9.0 MODIFICATIONS TO AGREEMENT

9.1 This instrument sets forth the entire agreement between the parties, and may be canceled or substantially amended only by a written instrument executed by the Mayor and NVLLC, subject to the affirmative vote and written approval by the City Council.

10.0 DEFAULT BY NVLLC

10.1 This Agreement shall remain in full force and effect without any right of termination unless and until NVLLC has completed the Landfill closure project in accordance with the ACO.

10.2 The City reserves the right to seek all available administrative and judicial remedies in the event that NVLLC defaults on any of its obligations regarding closure of the Landfill, and to recover any damages suffered by the City in connection therewith.

11.0 ASSIGNMENT

11.1 This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. NVLLC shall not assign this Agreement to any other party without prior written notice to the Mayor and to the City Council. Said written notice to the Mayor and City Council shall include a written representation by the assignee that it has read this Host Agreement, will continue to comply with its terms and that it has the financial assets, resources and sufficient capabilities and reserves to conduct the Landfill closure and that, upon such transfer, the assignee will be in full compliance with all requirements of the ACO and this Agreement.

12.0 NOTICE

12.1 Any notice hereunder shall be in writing by certified or registered mail, postage prepaid, return receipt requested, and shall be deemed to have been given or made on the date

prepaid, return receipt requested, and shall be deemed to have been given or made on the date of receipt when actually delivered to the City or NVLLC at the address listed in Section 1.0 of this Agreement, except as either party may from time to time (by written notice to the other party) have designated another address.

13. EFFECTIVE DATE

13.1 This Agreement shall take effect upon the execution of an Administrative Consent Order by and between the Department of Environmental Protection and NVLLC governing the final closure of the landfill.

14.0 SEVERABILITY

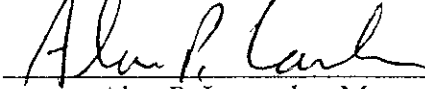
14.1 Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other of its provisions.

15.0 APPLICABLE LAW

15.1 This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

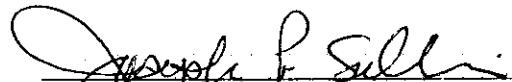
EXECUTED in duplicate under seal, this 7th day of October, 2002.

CITY OF NEWBURYPORT



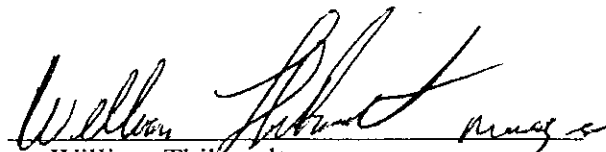
Alan P. Lavender, Mayor

APPROVED AS TO FORM



City Solicitor

New Ventures Associates, LLC

By: 

William Thibeault
Managing Member

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EXHIBIT 2

NVLLC Complaint Procedure

The procedure that New Ventures LLC (NV) will follow for all complaints received from anyone that may become impacted by the project at the Crow's Lane site is as follows:

NV will **establish a toll-free number** that can be called by any person who may feel the need to communicate with NV regarding the Crow Lane project.

This **number will be posted on a sign** at the entrance to the project that in addition to the phone number will have the company name and address.

When NV receives a call or complaint, the **call will be logged in a book** that is kept at the main desk where the calls will be taken, the person taking the call will record the nature of the call, i.e., problem, informational, etc.

The person taking the call will then **notify the field supervisor** for that shift and the supervisor will immediately return the call and attempt to remedy the problem [if possible, within 30 minutes]. The person taking the call also will notify the City of Newburyport Board of Health about the complaint.

If the caller is seeking information only, the call will be referred to the appropriate NV person for a call-back.

In the case of a complaint, the field supervisor will **fill out a field complaint report** and record the nature of the complaint and the remedy for the problem as well as when the problem is corrected. This information will be communicated to the NV person taking the call who in turn will notify the Board of Health about the remedy completed or to be implemented.

This report will be forwarded to the main office and kept in a separate file for reference at a future date if needed by NV or the City.