

**HOST COMMUNITY AGREEMENT BY AND  
AMONG BETWEEN TOWN OF SANDWICH,  
THE TOWN OF SANDWICH BOARD OF HEALTH AND  
SANDWICH STUMP DUMP, INC.**

This Agreement entered into this 10th day of August, 1995, by and among the Town of Sandwich, Massachusetts (the "Town"), a municipal corporation, acting by and through its Board of Selectmen, the Town of Sandwich Board of Health (the "Board of Health") and Sandwich Stump Dump, Inc. ("SSD"), a Massachusetts corporation having a usual place of business at 295 Service Road, Sandwich, Massachusetts.

WHEREAS, SSD and the Town of Sandwich (Zoning) Board of Appeals (the "Board of Appeals") have been engaged in litigation captioned Sandwich Stump Dump, Inc. vs. Sandwich Board of Appeals, Barnstable Superior Court, C.A. No. 91-809 with respect to the interpretation of a constructively issued special permit;

WHEREAS, SSD has also been involved in litigation with the Board of Health in litigation captioned the Sandwich Stump Dump, Inc. vs. Board of Health of the Town of Sandwich, Appeals Court No. 92-P-1865 with respect to the grant of a site assignment; and

WHEREAS, the Town, the Board of Appeals, the Board of Health and SSD agree that it is in the public interest to resolve by settlement all outstanding issues relating to the aforesaid litigation and, thereby, to settle said litigation finally and for all purposes; and, in order to effect such settlement, have entered into a Settlement Agreement on even date herewith (the "Settlement Agreement").

WHEREAS, the Settlement Agreement contemplates that the Town, the Board of Health and SSD will also enter into this Host Community Agreement which shall conform to the requirements of Paragraph 18 of the Settlement Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1.0 PARTIES**

The parties to this Agreement are: The Town of Sandwich, Massachusetts which, unless otherwise specified, is and will be acting through its Board of Selectmen; the Town of Sandwich Board of Health; and Sandwich Stump Dump, Inc., a Massachusetts corporation having a usual place of business at 295 Service Road, Sandwich, Massachusetts.

## 2.0 THE FACILITY

The "Facility" that is subject to this Agreement consists of approximately 31.43 acres situated at 295 Service Road in Sandwich, Barnstable County, Massachusetts, and is more particularly described in Exhibit A to this Agreement which is hereby made part hereof.

## 3.0 OPERATION OF FACILITY

### 3.1 Description of Operations

Consistent with the terms of the Settlement Agreement, the Facility has been site assigned for purposes of operating of (i) a wood waste processing and disposal facility and (ii) a processing and transfer station for recyclable material and demolition and construction waste. The definitions of "wood waste", "recyclable material" and "demolition and construction waste" shall be as specified in the Solid Waste Management Regulations which are set forth at 310 Code of Massachusetts Regulations ("CMR") 19.000. The definition of "wood waste" specifically excludes new or used lumber or wood from construction/demolition debris and wood pieces or particles containing or likely to contain asbestos, chemical preservatives such as creosote, pentachlorophenol, paints, stains or other coatings. (Demolition and construction waste is hereinafter referred to as "C&D Waste", and wood waste, recyclable material and C&D waste are hereinafter collectively referred to as "Permitted Wastes"). The operations of the Facility are subject to the tonnage limits, restrictions on hours of operation and other requirements set forth in the Settlement Agreement, and shall be conducted in accordance with all applicable Federal, state and local laws, rules, regulations and orders.

### 3.2 Compliance

SSD agrees to operate the Facility in compliance with (a) all permits and approvals issued by the Massachusetts Department of Environmental Protection (the "DEP"); (b) the limitations, restrictions and requirements set forth in the Settlement Agreement and referred to in the site assignment issued by the Board of Health (hereinafter collectively and individually referred to as the "terms of the Settlement Agreement"); and (c) the terms and conditions of this Agreement; provided, however, that SSD reserves all of its legal rights, defenses and remedies to contest any alleged violation(s) of any such permit; approval; terms of the Settlement Agreement; or terms and conditions of this Agreement.

#### **4.0 NOTICES OF NON-COMPLIANCE AND OTHER COMPLAINTS**

##### **4.1 Notices of Non-Compliance**

If the Board of Health or its staff (including the "Facility Monitor" described in Section 5.4 hereof) determines at any time, after due investigation, that the operations of the Facility are not in compliance with the terms of the Settlement Agreement or this Host Community Agreement, the Board of Health may issue to SSD a Notice of Non-Compliance. Said Notice shall specify in reasonable detail the alleged conditions of non-compliance and the information obtained by the Board of Health or its staff which supports the Board of Health's determination of non-compliance. SSD agrees to respond promptly in writing to any such Notice of Non-Compliance issued by the Board of Health and to cure any event of non-compliance within thirty (30) days, or, if such non-compliance cannot reasonably be cured within said thirty days, then to commence promptly such curative action and to pursue it diligently to completion. SSD reserves its legal rights, defenses and remedies to contest any such Notice of Non-Compliance issued by the Board of Health. Nothing herein shall be construed to limit the authority of the Board of Health to take any enforcement or other action authorized by law with respect to the Facility, specifically including, without limitation, any enforcement action under Massachusetts General Laws Chapter 111, Section 150A, and any action to abate a nuisance or to address a condition that threatens the public health, safety or welfare.

##### **4.2 Procedures to Investigate Other Complaints**

A written procedure shall be established by SSD and faithfully implemented to effectively investigate, assess and follow-up on complaints from residential and municipal abutters relative to the Facility's operations. This procedure shall be submitted by SSD to the Board of Health within sixty (60) days after the effective date of the Settlement Agreement and shall include the following:

(a) SSD shall designate a coordinator for community relations by notice in writing given to the Board of Health. Such person (or an alternate should such person be unavailable due to vacation, illness or other reason) shall be available by telephone or in person to consult with the complainant regarding the issue(s) which are the subject of the complaint. Such consultation shall take place within two (2) business days after SSD's being notified of the complaint, and the coordinator for community relations or his or her alternate shall submit a written response to the complainant and the Board of Health within five (5) business days after SSD's being notified of the complaint.

(b) Site visits shall be arranged with the complainant and the Board of Health to assist in the investigation of the complaint should any party so desire. To the extent feasible, such tours shall be scheduled to take place within five (5) business days after the tour is requested.

## **5.0 MONITORING OF THE FACILITY**

### **5.1 Annual Audit**

Compliance with the terms of the Settlement Agreement may be audited through yearly environmental audits of the Facility conducted by a qualified consultant chosen by the Town of Sandwich in accordance with Section 5.4 hereof. The results of any such audit shall be documented in an audit report, which shall be promptly made available to SSD. SSD shall have thirty (30) days from its receipt of said audit report to file with the Board of Health any written comments or objections to it. SSD's comments and/or objections, if any, shall be attached to the audit report as part of the records of the Board of Health.

### **5.2 Entries and Inspections**

SSD agrees to grant the Board of Health and the Town of Sandwich Building Inspector or their duly authorized representatives, without a warrant and upon presentation of proper credentials, the right to inspect the Facility during its hours of operation and at such other times which, in their judgment, are warranted upon reasonable advance notice. Said right of inspection shall include the right to have access to and to copy at all reasonable times all records that are required to be kept by SSD pursuant to the terms of the Settlement Agreement, including, without limitation, all records required to be kept pursuant to State law and regulation and all records documenting the tonnage of Permitted Wastes received by the Facility.

### **5.3 Duty to Provide Information**

SSD shall furnish to the Board of Health and/or the said Building Inspector, within a reasonable time, any information which the Board and/or the Building Inspector may reasonably request which is relevant to determining whether SSD is complying with the terms of the Settlement Agreement.

### **5.4 Monitoring Fund and Facility Monitor**

In order to enable the Board of Health to monitor effectively SSD's compliance with the terms of the Settlement Agreement SSD agrees within sixty (60) days after the date of this Agreement to pay six thousand (\$6,000.00) into a "Monitoring Fund" to be established by the Town of Sandwich for purposes of

funding monitoring of the Facility pursuant to the following terms and provisions:

(a) The Board of Health shall submit to SSD a scope of services for the Facility monitoring work, together with a list of four independent, professional engineering firms, each of which is experienced and knowledgeable in solid waste matters and/or other technical matters which relate to the Facility's operations. SSD shall within fourteen (14) days after receipt of such information, provide to the Board of Health SSD's comments or objections, if any, relating to the listed firms. Within thirty (30) days thereafter, the Board of Health shall select one or more of said firms to be the Facility Monitor(s). In making this selection, the Board of Health shall take into consideration, in the exercise of its good faith judgment, any comments and/or objections submitted by SSD. If a Facility Monitor so selected by the Board of Health shall resign or for any other reason cease to perform the duties of a Facility Monitor, the selection of a replacement Facility Monitor shall be conducted in the same manner.

(b) The Facility Monitor(s) shall have all of the entry and inspection powers set forth in Section 5.2 of this Agreement.

(c) The Facility Monitor(s) shall be charged with providing to the Town and SSD its (their) independent and unbiased professional evaluation of SSD's compliance with the terms of the Settlement Agreement.

(d) The Facility Monitor(s) shall promptly notify SSD and the Town in writing of any potential violations of the terms of the Settlement Agreement that it (they) believe(s) may have occurred.

(e) The aforesaid \$6,000.00 Monitoring Fund shall be subject to an annual increase as of each anniversary date of this Agreement in proportion to the increase over the immediately preceding twelve month period in the Consumer Price Index for Boston clerical workers as published by the Bureau of Labor Statistics, United States Department of Labor. Should the Bureau of Labor Statistics cease to publish said Index, then an index most nearly comparable thereto published by said Bureau (or any successor entity thereto) shall be utilized.

(f) Notwithstanding anything herein to the contrary, SSD's obligation under this Section 5.4 shall be only to provide sufficient funds annually to replace those funds which were actually expended by the Board of Health for the Facility Monitor(s) during the immediately preceding twelve month period (with the first such annual period to be the twelve months following the date of this Agreement), so that a total of \$6,000.00, plus annual increases (if any) as specified in Section

5.4(e) hereof, shall be available in the Monitoring Fund at the beginning of the ensuing annual period.

(g) SSD reserves its right to challenge in good faith, at any time, the objectivity, professional credentials and/or findings and recommendations of the Facility Monitor(s).

#### **5.5 Enforcement of Groundwater Monitoring**

The Board of Health shall have the power directly to enforce the terms of the groundwater monitoring plan which is approved by the DEP as part of its granting the necessary permit(s) for the Facility pursuant to the aforesaid Solid Waste Management Regulations which are set forth at 310 CMR 19.000.

#### **6.0 FINANCIAL ASSURANCE**

SSD agrees to maintain at all times such financial assurance mechanism(s) as may be required by DEP pursuant to the provisions of the aforesaid Solid Waste Management Regulations which are set forth at 310 CMR 19.000.

#### **7.0 ENFORCEMENT**

This Agreement shall be enforceable by any party hereto in any court of competent jurisdiction and located in the County of Barnstable and the State of Massachusetts, or the United States District Court, District of Massachusetts, or any court of appeal therefrom. Notwithstanding any provision of this Agreement to the contrary, nothing herein shall authorize or empower the Town or any of its boards, agencies or authorities to enforce Federal or state laws, rules, regulations or orders, except insofar as said laws, rules, regulations or orders themselves grant such enforcement authority. This Agreement shall be governed by and interpreted in accordance with the laws of Massachusetts.

#### **8.0 GENERAL PROVISIONS**

##### **8.1 Binding Effect**

This Agreement shall be binding upon the parties hereto and their respective successors and assigns, including all successors to SSD as owners or operators of the Facility. SSD further agrees that it will not sell, lease or otherwise dispose of the Facility to any person or entity that intends to continue the operations thereof, without first obtaining the written agreement of such person or entity to be bound by this Agreement.

##### **8.2 Notice**

All notices or other communications to be given or conveyed to SSD shall be sent by certified mail, return receipt requested,

addressed to President, Sandwich Stump Dump, Inc., 295 Service Road, Sandwich MA, 02653. All notices or other communications to be given or conveyed to the Town of Sandwich or to the Board of Health shall be sent by certified mail, return receipt requested, addressed to the Town Administrator (in the case of either the Town or the Board of Health) at Sandwich Town Hall, 145 Main Street, Sandwich, MA, 02653. Any party hereto may change its address for purposes of giving notice or conveying communications by notice given to the other parties in the manner herein provided.

### **8.3 Force Majeure**

No party shall be liable for its failure, in whole or in part, to perform hereunder due to conditions beyond its reasonable control, including, but not limited to, strike, fire, storm, act of God, injunction or the requirement to comply with any law, regulation or order of any governmental body or instrumentality.

### **8.4 Amendment of or Modification to Agreement**

This instrument sets forth the entire Host Community Agreement between the parties, and may be amended or modified only by a written instrument executed by the duly authorized officials and officers, as the case may be, of the Town, the Board of Health and SSD.

### **8.5 Severability**

If any provision of this Agreement is determined to be invalid or unenforceable for any reason, it shall be interpreted or construed to the extent possible so as to accord it maximum effect, and the remaining provisions of this Agreement shall remain in full force and effect without alteration, except as the context may require.

### **8.6 Termination**

In the event that the Board of Health shall rescind or revoke the site assignment for the Facility pursuant to Massachusetts General Laws Chapter 111, Section 150A or any successor provision thereto, this Agreement shall become null and void.

IN WITNESS WHEREOF, the parties hereto have caused this Host Community Agreement to be executed and delivered as of the date first set forth above as a sealed instrument by their respective officials and officers who have been duly authorized and directed to do so.

TOWN OF SANDWICH

By: [Signature]  
Deane Tucker  
Paul Wesse  
Edward L Condon

Its Duly Elected and Serving Board of Selectmen

TOWN OF SANDWICH BOARD OF HEALTH

By: [Signature]  
Sandra Lee Tompkins  
[Signature]

SANDWICH STUMP DUMP, INC.

By: [Signature]  
President 8/23/95

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

August 10 \_\_, 1995

Then personally appeared the above-named Town of Sandwich and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Town of Sandwich, before me,

[Signature]  
Notary Public

My Commission Expires:

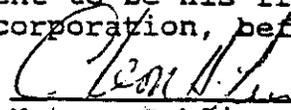
January 20, 2000

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

<sup>At,</sup>  
~~June~~ 23, 1995

Then personally appeared the above-named Frank Durante, President of Sandwich Stump Dump, Inc., as aforesaid, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said corporation, before me,

  
\_\_\_\_\_  
Notary Public Cleon H. Turner

My Commission Expires: ~~March~~ 2, 2001

512165.1

EXHIBIT "A"

the land together with any buildings thereon situated in Sandwich, Barnstable County, Massachusetts, bounded and described as follows:

- NORTHEASTERLY by the southwesterly line of Sarvioc Road, three hundred forty (340) feet;
- SOUTHEASTERLY by land now Owner Unknown being in part a line crossing Discovery Hill Road, thirty-eight hundred fifty-five and 26/100 (3,855.26) feet;
- SOUTHWESTERLY by land now or formerly of Rebekah B. Morse et al, three hundred seventy-nine (379) feet; and
- NORTHWESTERLY by land now or formerly of Carl P. Hettinger being in part a line crossing Discovery Hill Road, thirty-eight hundred forty-six and 34/100 (3,846.34) feet.

All of said boundaries are determined by the Court to be located as shown on plan 40176-A dated April 1979, drawn by Bos Engr. Assoc., Inc., Surveyors, and filed in the Land Registration Office at Boston, a copy of which is filed in Barnstable County Registry of Deeds in Land Registration Book 743 Page 25 with Certificate of Title No. 91225.

MACNELL & FITCH  
ATTORNEYS AT LAW  
PLAZA HILL HOUSE  
ROUTE 2-A  
GET COPY FOR \$100  
ADVERSE CLAIMS OFFICE  
REGISTERED BY # 001-001  
REGISTERED BY # 111-1000

Being the premises described in Certificate of Title No. 111651 registered with the Barnstable County Registry District of the Land Court.