

DRAFT

LANDFILL CLOSURE AGREEMENT

(Mabardy Landfill)

The parties to this Agreement are the Town of Winchendon ("Town"), a municipal corporation in Worcester County, Massachusetts, acting by and through its Board of Selectmen, and 580 River Street LLC ("580 River Street"), a Massachusetts limited liability Company with a principal office located at 355 Main Street, Ste 25, Woburn, MA 01801. This Agreement is made and entered into this ____ day of _____, 2020.

WHEREAS, 580 River Street is the owner of property located at 580 River Street in Winchendon, Massachusetts ("Site"), upon which property is located a former solid waste disposal facility ("Landfill"); and

WHEREAS, the Landfill is the subject of an Administrative Consent Order and Notice of Noncompliance ("ACO") issued September 23, 2019 by the Massachusetts Department of Environmental Protection ("MassDEP) and entered into by 580 River Street on October 9, 2019 (ACO No. 0005313); and

WHEREAS, 580 River Street has submitted, and MassDEP has approved a "Conceptual Closure Plan" in accordance with applicable Solid Waste Management regulations and associated MassDEP guidelines and policies relating to landfill closures; and

WHEREAS, pursuant to MassDEP's approval of the Conceptual Closure Plan and the ACO, the Landfill will be subject to a Closure Project ("Landfill Closure Project"), pursuant to applicable statutes and regulations, and subject to MassDEP supervision; and

WHEREAS, onsite and offsite activities relating to the Landfill Closure Project have the potential to impact the Town by placing a temporary demand on Town roadways; and

WHEREAS, an earth removal operation, a sand and gravel processing and an asphalt, brick and concrete recycling business, operated by C.J. Mabardy Washed Sand & Gravel, Inc. and its successors pursuant to a Special Permit issued by the Board of Appeals and valid through November 25, 2022, operates on a separate portion of the Site; and

WHEREAS, 580 River Street and the Town share goals of minimizing the impacts of the Landfill Closure Project, and the combined impacts of the Landfill Closure Project and sand and gravel operation on the Town and its residents; and

WHEREAS, use of River Street and other public ways for activities associated with the Landfill Closure Project will add to the deterioration of such public ways; and

WHEREAS, 580 River Street wishes to mitigate the costs impacts of the incremental deterioration on the Town;

IT IS AGREED AS FOLLOWS:

AGREEMENT

PRIOR TO COMMENCEMENT OF LANDFILL CLOSURE PROJECT

1. Schedule. 580 River Street shall, within thirty days of the execution of this Agreement, submit to the Town an anticipated schedule for the Landfill Closure Project, including estimated dates of actions required under the ACO, to ensure that work proceeds to completion with the time required by MassDEP. 580 River Street shall notify the Town in writing of any alterations to this schedule resulting in a variation of more than 30 days for any event as anticipated in the schedule originally provided.
2. Health and Safety Plan. Prior to commencement of the receipt of grading and shaping materials at the Site, 580 River Street shall, submit to MassDEP and to the Town a copy of the "Health and Safety Plan" ("HASP") as required under Section III.8.K of the ACO. The HASP shall pertain to the worker safety and environmental measures that will be employed during all phases of the Landfill Closure Project in order to protect workers from any dangers associated thereto. The HASP shall include a COVID-19 health and safety protocol consistent with the Commonwealth's requirements for state-sponsored projects.
3. River Street Preparation. To ensure the viability of River Street throughout the duration of the Landfill Closure Project, anticipated to be three (3) years, the Town at its sole discretion may, within 30 days prior to the commencement of the receipt of grading and shaping materials at the Site, make repairs to the portion of River Street from Route 202 to the site entrance. Such repairs may include, but are not limited to a topcoat of asphalt on the portion of River Street from Route 202 to the site entrance.. 580 River Street will fund the cost of the repairs. Such costs shall be credited to the Host Community Fee paid to the Town by 580 River Street.
4. Establish River Street Baseline. Prior to the commencement of Item 3 and prior to the commencement of the Landfill Closure Project, 580 River Street will hire Tighe & Bond to perform a roadway survey on the portion of River Street from Route 202 to the site entrance, including but not limited to roadway conditions as well as any infrastructure such as drainage, water, sewer, etc. 580 River Street is responsible for the costs associated with the survey. 580 River Street will present the survey results to the Town and upon the Town's acceptance, the survey will serve as the River Street baseline condition.

5. Notice of Commencement. 580 River Street shall, prior to commencing the delivery, acceptance, stockpiling, and placement of approved grading and shaping materials at the Landfill, notify the Town in writing of the date it will commence these activities.

OPERATIONS OF LANDFILL CLOSURE PROJECT

6. Placement of Grading and Shaping Materials. 580 River Street may accept approved landfill closure grading and shaping materials and use them to grade and shape the Landfill for a period of time not to exceed two (2) years from the date of the initial placement of the approved landfill closure grading and shaping materials, in order to achieve the approved closure grades set forth in the Corrective Action Design (CAD) permit, unless such time period is extended by the MassDEP.
7. Capping. Within three (3) years of the initial date of receipt of grading and shaping materials at the Landfill or within one year of completion of placement of grading and shaping materials, 580 River Street shall complete the installation of the final cover/capping system approved by the MassDEP Corrective Action Design (CAD).
8. Records Management System. 580 River Street shall maintain a daily records management system documenting the source of generation and quantity of all grading and shaping materials delivered to the Landfill as part of the closure/capping project. 580 River Street shall record the quantities of all such materials accepted at the Landfill in units of weight and shall submit all such records to the Town monthly.
9. Prevention of Nuisance. 580 River Street shall not allow any activity associated with the Landfill Closure Project to cause or contribute to a nuisance condition, or a condition of air pollution, as a result of dust, noise, or odors; nor cause a threat or potential threat to public health, safety, or the environment.
10. Hours of Operation. The hours of operation for all activities on the Site associated with the Landfill Closure Project, and for operation of all activities associated with the sand and gravel/ABC operation, shall be from 7:30 a.m. to 4:30 p.m., Mondays through Fridays, excluding holidays, except as permitted otherwise by the Town, consistent with the existing Special Permit.
11. Delivery of Grading and Shaping Material. The delivery of grading and shaping materials to the Site shall not exceed 64 deliveries on any given day, except as otherwise permitted by the Town.
12. Access to Site. Truck traffic to and from the Site shall be restricted to access via Route 202 to River Street. All truck traffic associated with the Landfill Closure Project or the sand and gravel/ABC operation is not allowed to use Hale Street or Sibley Road.

13. Monitoring Agent. A qualified professional engineer, registered in Massachusetts and experienced in solid waste facility design, construction and management, mutually agreeable with 580 River Street, shall be retained by the Town, at the expense of 580 River Street, to serve as the Town's agent to monitor the Site and the grading and shaping activities of the Landfill Closure Project. Such monitoring shall consist of periodic site visits and review of all records to ascertain compliance with approved plans so that progress reports to the Town can be completed. The monitoring Agent will have no authority to direct activities on the Site. The Town's agent shall be allowed access to the Site during normal operating hours and due to liability concerns must be accompanied by a 580 River Street representative at all times. A maximum budget of \$2,500.00 per month will be allocated to fund the Monitoring Agent, including access to the contents of trucks entering or leaving the site, for purposes of monitoring activities relating to the Landfill Closure Project, and for providing the Town with thorough and timely reports. If the Monitoring Agent deems samples of material are necessary, 580 River Street's LSP must be present when the samples are collected, and subsequently split with 580 River Street's LSP so 580 River Street may perform their own tests on the collected materials.

HOST COMMUNITY FEE AND FINANCIAL ASSURANCES

14. Host Community Fee. 580 River Street shall pay to the Town a total of \$350,000.00. This amount shall be paid to the Town upon execution of this Agreement. For every ton of grading and shaping materials delivered to the site in excess of 350,000 tons, 580 River Street will pay the Town \$1.00 per ton on a monthly basis. Acceptance of material for grading and shaping in conjunction with closure activities is not considered solid waste operations
15. Financial Assurance Mechanisms. 580 River Street shall provide a Closure Financial Assurance Mechanism and a Post-Closure Financial Assurance Mechanism as required by MassDEP.
16. Repairs to River Street. Concurrently, with the commencement of delivery of grading and shaping materials, 580 River Street is responsible for maintaining the portion of River Street from Route 202 to the site entrance. Following the completion of the Landfill Closure Project, Tighe & Bond shall perform a roadway survey to assess the condition of the portion of River Street from Route 202 to the site entrance to determine if any repairs/replacement are necessary in order to return the portion of River Street from Route 202 to the site entrance to conditions equivalent to the River Street baseline established in Item 4. The costs of the survey and the recommended repairs/replacement shall be the responsibility of 580 River Street. To secure payment of such costs, prior to the commencement of activities associated with the Landfill Closure Project a performance bond in the amount of Three Hundred Thousand Dollars (\$300,000), in terms satisfactory to the Town, shall be provided by 580 River Street to the Town. Said

performance bond shall not be released until completion of the Landfill Closure Project and certification by the Department of Public Works that the necessary repairs/replacement have been completed. The Town shall provide 580 River Street with a letter signed by the appropriate Town official, releasing the bond within 60 days of certification. .

SUBMISSION OF DOCUMENTS TO TOWN

17. 580 River Street shall, within thirty days of the execution of this Agreement, submit to the Town copies of the Comprehensive Site Assessment (CSA) and the Corrective Action Design (CAD) applications as well as the associated MassDEP approvals referenced in the ACO, and any amended or modified applications.
18. 580 River Street shall, upon receiving MassDEP's Final Decision on the CAD application referenced in Section III.8.L of the ACO, and satisfying the requirements referenced in this paragraph relating to Financial Assurance Mechanisms, submit copies of these referenced documents to the Town.
19. 580 River Street shall promptly submit to the Town any deficiency notices or requests for additional information received from MassDEP regarding the CSA and CAD permit applications, and other documents referenced in Section III.B of the ACO. Copies of any responses provided to MassDEP shall simultaneously be submitted to the Town.
20. 580 River Street (or its consultants or agents) shall, when submitting to MassDEP any document required under the ACO, simultaneously submit a copy of such document to the Town. Such documents include but are not limited to:
 - a. All permit applications associated with the assessment, closure, closure certification, and post-closure monitoring and maintenance of the Landfill (including responses to any MassDEP comments), as referenced in Section III.8.A of the ACO.
 - b. All environmental monitoring results as referenced in paragraph III.F of the ACO.
 - c. The Post-Closure Monitoring and Maintenance Plan to be submitted to MassDEP pursuant to Section III.8.H.
 - d. The Landfill Closure Certification Report to be submitted to MassDEP pursuant to Section III.8.T.

GENERAL

21. Binding Effect. This Agreement is binding on 580 River Street and its successors and assigns. 580 River Street shall ensure that all its employees, consultants, contractors and agents are aware of the requirements of this Agreement.
22. Entire Agreement. This Agreement constitutes the entire and complete agreement of the parties with respect to the Landfill Closure Project.
23. Modification or Cancellation of Agreement. This Agreement may be modified or cancelled only in writing by agreement of the Parties.
24. Notices. All notices, submittals, and other communications required by this Agreement shall be sent:

If to the Town:

Keith Hickey
Town Manager
Town of Winchendon
108 Front Street
Winchendon, MA 01475

If to 580 River Street:

James J. Mabardy
355 Main Street, Suite 25
Woburn, MA 01801

25. Enforcement and Governing Law. This Agreement may be enforced at law or equity in any court of competent jurisdiction in the Commonwealth of Massachusetts. The validity, interpretation, and performance of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts.
26. No Waiver of Rights. No part of this Agreement shall be construed to limit the authority of the Town of Winchendon or any of its boards, commissions, agencies, or officials to enforce any applicable bylaw, order, rule, regulation, or requirement or condition of any permit; or to exercise any statutory or regulatory authority with respect to the Site or the Landfill Closure Project. No part of this Agreement shall be construed to limit the right of 580 River Street to pursue judicial review of any such enforcement or exercise of authority, or to pursue legal and equitable remedies available to it by law.
27. Severability. If any provision(s) of this Agreement, or its application to any person or entity, shall be held invalid by any court of competent jurisdiction in the Commonwealth of Massachusetts, the remainder of this Agreement shall continue in full force and effect,

and the application of such invalidated provision to persons or entities other than those as to which it has been held invalid shall not be affected by such invalidation.

28. Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto, intending to be bound, have caused this Agreement to be executed as a sealed instrument by their duly-authorized representatives, this _____ day of _____, 2020.

TOWN OF WINCHENON,
by its Board of Selectmen:

Audrey LaBrie, Chair

Barbara Anderson

Michael Barbaro

Richard Ward

Amy Salter

580 RIVER STREET, LLC

By its _____

[office]

[name]

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