

Execution Copy

FIRST AMENDMENT
TO THE
INCINERATION FACILITIES LEASE AGREEMENT

among

THE BOROUGH OF NAUGATUCK, CONNECTICUT,
as Lessor

and

THE WATER POLLUTION CONTROL AUTHORITY
OF THE BOROUGH OF NAUGATUCK,
as Lessor

and

NAUGATUCK ENVIRONMENTAL TECHNOLOGIES, LLC,
as Lessee

Dated as of

June 4, 2002

FIRST AMENDMENT
TO THE
INCINERATION FACILITIES LEASE AGREEMENT

This FIRST AMENDMENT TO THE INCINERATION FACILITIES LEASE AGREEMENT is made and dated as of June 4, 2002 among the Borough of Naugatuck, Connecticut, a political subdivision organized and existing under the laws of the State of Connecticut, the Water Pollution Control Authority of the Borough of Naugatuck, a water pollution control authority established by the Borough of Naugatuck pursuant to Chapter 103 of the Connecticut General Statutes (the "WPCA"; the WPCA and the Borough of Naugatuck, Connecticut are collectively referred to herein as the "Lessor") and Naugatuck Environmental Technologies, LLC, a limited liability corporation organized and existing under the laws of the State of Connecticut and authorized to do business in the State of Connecticut (the "Lessee").

RECITALS

WHEREAS, the Lessor and the Lessee have heretofore executed an Incineration Facilities Lease Agreement dated October 25, 2001 (the "Lease Agreement"; capitalized terms used but not defined herein are as defined for purposes of the Lease Agreement); and

WHEREAS, in the course of completing their Approval Period responsibilities, the parties have determined that certain provisions of the Lease Agreement should be clarified or modified.

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Amendment of the Lease Agreement. Each of the following sections of the Lease Agreement is hereby amended, in relevant part, as set forth below; in each case, language to be deleted from the provision is bracketed and language to be added thereto is underscored:

(a) Amendment of Recital (B) of the Lease Agreement. Recital (B) to the Lease Agreement to read, in its entirety, as follows:

(B) The sludge incineration facilities are operated by the U.S. Filter Operating Services, Inc. under a contract which expires on [April 30, 2002] August 31, 2002, or such earlier time as provided in such contract.

(b) Addition of Definition of "ICI Labor and Materials Payment Bond" to Section 1.1 of the Lease Agreement. New definition of "ICI Labor and Materials Payment Bond" to Section 1.1 of the Lease Agreement, to read, in its entirety, as follows:

"ICI Labor and Materials Payment Bond" means the surety bond which guarantees the timely payment by the Lessee for all labor, materials, supplies, implements, and machinery and equipment furnished with respect to the Initial

Capital Improvements, and which shall be provided in accordance with Section 16.4 and substantially in the form set forth in the Transaction Forms.

(c) Addition of Definition of “Offsetting Credits” to Section 1.1 of the Lease Agreement. New definition of “Offsetting Credits” to Section 1.1 of the Lease Agreement, to read, in its entirety, as follows:

“Offsetting Credits” has the meaning set forth in subsection 4.6(B).

(d) Amendment of Definition of “Security Instruments” in Section 1.1 of the Lease Agreement. “Security Instruments” in Section 1.1 of the Lease Agreement to read, in its entirety, as follows:

“Security Instruments” means the Guaranty Agreement, the Letter of Credit, the ICI Labor and Materials Payment Bond, the Operations Collateral Bond and the Operations Surety Bond.

(e) Amendment of Subsection (D)(4) of Section 4.5 of the Lease Agreement. Subsection (D)(4) of Section 4.5 of the Lease Agreement to read, in its entirety, as follows:

(4) the amounts of any milestone payments for Advancement Work for which Requisitions have been duly submitted and approved in accordance with this Section shall bear interest beginning 30 days following the date of each such Requisition, at an annual interest rate of [6.9] 6.0 percent through the date of actual payment.

(f) Amendment of Section 4.6 of the Lease Agreement. Section 4.6 of the Lease Agreement to read, in its entirety, as follows:

SECTION 4.6. TRANSACTION COST REIMBURSEMENT AND OTHER PAYMENTS. (A) Financed Payments. On the Commencement Date, the Lessor shall be paid from the proceeds of the financing for the ICI Design/Build Work:

- (1) an amount equal to \$1,552,075 for reimbursement of its transaction costs incurred in the procurement and negotiation of this Lease Agreement; and
- (2) an amount equal to \$310,415 for its costs to be incurred in reviewing and monitoring the ICI Design/Build Work.

(B) Lessee Payment on Commencement Date. The Lessee shall reimburse the Lessor on the Commencement Date an amount equal to \$100,000, subject to Cost Substantiation, for the Lessor’s costs incurred and to be incurred in obtaining the State air permit to construct the fluidized bed incinerator portion of the Initial Capital Improvements.

[B](C) Lessee [Payments] Arrangement for Offsetting Credits. [The Lessee shall reimburse the Lessor as follows:] Within 60 days following the Commencement Date, the Lessee shall arrange for the Company to offset and

credit the following amounts against such amounts as owed by the Lessor to the Company under the Interim Service Contract ("Offsetting Credits"); provided that, for purposes of computing the accrued interest on the amounts owed by the Lessor to the Company under the Interim Service Contract, the Offsetting Credits shall be deemed effective as of the Commencement Date under this Lease Agreement:

[(1) on the Commencement Date, an amount equal to \$100,000, subject to Cost Substantiation, for its costs incurred and to be incurred in obtaining the State air permit to construct the fluidized bed incinerator portion of the Initial Capital Improvements; and]

[2][(1) [within 30 days following the Commencement Date,] an amount equal to (i) all Cost Substantiated fees paid by the Lessor for the fiscal year ending June 30[, 2002] in which the Commencement Date occurs that were required for the maintenance of Governmental Approvals for the Incineration Facilities (other than the Title V Permit as provided in subsection (D) of this Section) and for which the Lessee will be responsible hereunder as of the Commencement Date, multiplied by [(2)] (ii) a fraction, the denominator of which is 365, and the numerator of which is the number of days from the Commencement Date through June 30[, 2002] of the fiscal year in which the Commencement Date occurs. (If the Commencement Date occurs before June 30, 2002, the amount to be determined pursuant to the formula in this item (1) shall be for the Lessor's fiscal year ending June 30, 2002. If the Commencement Date occurs after June 30, 2002, the amount to be determined pursuant to the formula in this item (1) shall be for the Lessor's fiscal year ending June 30, 2003.); and

(2) an amount equal to the Cost Substantiated fees paid by the Lessor to the DEP relating to the operation portion of the State air permit to construct and operate the fluidized bed incinerator portion of the Initial Capital Improvements.

(D) Lessee Payments for Title V Permit Fees. With respect to the Title V Permit, the Lessee shall reimburse the Lessor an amount equal to (i) all Cost Substantiated fees paid by the Lessor for the calendar year ending December 31, 2002 that were required for the maintenance of the Title V Permit and for which the Lessee will be responsible hereunder as of the Commencement Date, multiplied by (ii) a fraction, the denominator of which is 365, and the numerator of which is the number of days from the Commencement Date through December 31, 2002. The Lessee shall reimburse the Lessor within 30 days following the Lessee's receipt of the Lessor's notice as to the fees paid for the Title V Permit.

(g) Addition of subsection 10.4(B)(8) of the Lease Agreement. New subsection 10.4(B)(8) of the Lease Agreement to read, in its entirety, as follows:

(8) ICI Labor and Materials Payment Bond. The Lessee has obtained and delivered to the Lessor an ICI Labor and Materials Payment Bond as

required by Section 16.4. Such bond shall be substantially in the form set forth in the Transaction Forms.

(h) Addition of subsection 10.5(O) of the Lease Agreement. New subsection 10.5(O) of the Lease Agreement to read, in its entirety, as follows:

(O) Prompt Payment. The Lessee shall, within 30 days after payment to the Lessee by the Lessor, pay any amounts due any Subcontractor, whether for labor performed or materials furnished, when the labor or materials have been included in a Requisition submitted by the Lessee and paid by the Lessor. The Lessee shall include in each of its Subcontracts a provision requiring each Subcontractor to pay any amounts due under any of its subcontracts, whether for labor performed or materials furnished, within 30 days after such Subcontractor receives a payment from the Lessee which encompasses labor or materials furnished by such Subcontractor. Claims against the Lessee or any Subcontractor under this subsection shall be subject to the provisions of Section 49-41a of the Connecticut General Statutes, as amended.

(i) Addition of subsection 10.11(F) of the Lease Agreement. New subsection 10.11(F) of the Lease Agreement to read, in its entirety, as follows:

(F) Labor Preference for Certain Portions of the ICI Design/Build Work. In the employment of mechanics, laborers and workman to perform that portion of the ICI Design/Build Work involving the construction, remodeling or repairing of any public building, preference shall be given to citizens of the United States, who are, and continuously for at least three months prior to the Commencement Date have been, residents of the labor market area, as established by the Labor Commissioner of the State of Connecticut, in which such work is to be done, and if no such qualified person is available or if insufficient numbers of such qualified persons are available, then to citizens who have continuously resided in the county in which the work is to be performed for at least three months prior to the Commencement Date, and then to citizens of the State who have continuously resided in the State at least three months prior to the Commencement Date.

(j) Amendment of Subsection (A)(1) of Section 14.2 of the Lease Agreement. Subsection (A)(1) of Section 14.2 of the Lease Agreement to read, in its entirety, as follows:

(1) Security for Performance. The failure of the Lessee to obtain or maintain in full force and effect any Security Instrument required by Article XVI as security for the performance of this Lease Agreement (unless the Lessor has released the Lessee from its obligation to provide a Security Instrument pursuant to Section [16.4] 16.5), without excuse for Uncontrollable Circumstances;

(k) Amendment of Subsection (A)(4) of Section 14.7 of the Lease Agreement. Subsection (A)(4) of Section 14.7 of the Lease Agreement to read, in its entirety, as follows:

(4) remove all Ash Residue from the Ash Lagoons or make a cash payment to the Lessor sufficient to enable the Lessor to remove such Ash Residue from the Ash Lagoons. The Lessee acknowledges, for purposes of clarifying its Ash Residue removal obligations under this item (4), that it accepted responsibility for the disposal of any Ash Residue in the Ash Lagoons as of the Commencement Date of this Lease Agreement;

(l) Addition of Section 16.4 of the Lease Agreement. New Section 16.4 of the Lease Agreement to read, in its entirety, as follows:

SECTION 16.4. ICI LABOR AND MATERIALS PAYMENT BOND. (A) Requirements. On or before each initial construction commencement date for each Initial Capital Improvement and Capital Modification, the Lessee shall provide financial security for the performance of its construction obligations hereunder through ICI Labor and Materials Payment Bonds issued by a surety company: (1) approved by the Lessor having a rating of "A" in the latest revision of the A.M. Best Company's Insurance Report; (2) listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies"; and (3) properly registered and licensed to conduct business in the State. The ICI Labor and Materials Payment Bonds shall be issued in the name of the Lessee, as principal, and the Lessor, as obligee, in the amount of the Fixed ICI Design/Build Price, to be adjusted to account for any Fixed ICI Design/Build Price Adjustments, and shall remain open until the Final Completion of the applicable Initial Capital Improvements and Capital Modification. The Lessee shall be responsible throughout the Term of this Lease Agreement for monitoring any surety company issuing a ICI Labor and Materials Payment Bond required by this Section in accordance with the provisions of subsections 16.2(B)(1) and 16.2(B)(2).

(B) Reimbursement by Lessor. The Lessor, in accordance with this subsection, shall reimburse the Lessee an amount equal to the premium (without markup for profit, administration or otherwise) paid by the Lessee for obtaining and maintaining the ICI Labor and Materials Payment Bond required for the Initial Capital Improvements through the actual date of Final Completion or the scheduled date of Final Completion for the Initial Capital Improvements or Capital Modification, which ever is earlier. Such premium shall be reimbursed by the Lessor within 30 days following submittal of invoices therefor by the Lessee. The base premium for the ICI Labor and Materials Payment Bond for the Initial Capital Improvements is anticipated to be \$79,739 assuming a 730-day duration, with an additional surcharge of 1% of the base premium for extension of the bond for each 30-day period greater than 730 days. The parties acknowledge that, as of the Commencement Date, the Scheduled ICI Acceptance Date is 910 days and that Final Completion is scheduled to occur no later than 30 days thereafter (or 940 days) as provided by subsection 11.11(A). Based on the foregoing, and assuming that the Scheduled ICI Acceptance Date and Final Completion are not extended pursuant to subsection 11.9(B), the Lessor's obligation to reimburse the Lessee hereunder with respect to the premium for the ICI Labor and Materials Payment Bond would be determined as follows:

1. If Final Completion occurs on a day that is less than or equal to 730 days, the Lessor shall reimburse the Lessee an amount equal to the base premium only.
2. If Final Completion occurs on a day that is greater than 730 days and less than or equal to 940 days, the Lessor shall reimburse the Lessee an amount equal to the base premium plus the additional surcharge based on the number of days Final Completion occurs beyond 730 days. For example, if Final Completion occurred at 840 days, the Lessor would reimburse the Lessee for the premium surcharge on four 30-day extension periods.
3. If Final Completion occurs on a day that is greater than 940 days, (1) the Lessor shall reimburse the Lessee an amount equal to the base premium plus the additional surcharge based on 210 days (i.e., 940 days minus 730 days), equal to seven 30-day extension periods, and (2) the Lessee shall be responsible for the additional surcharge based on the number of days Final Completion occurs beyond 940 days.

The parties recognize that the Scheduled ICI Acceptance Date and the scheduled date for Final Completion may be extended on a day for day basis pursuant to subsection 11.9(B). In such event, the scheduled date for Final Completion of 940 days as set forth in items 1 through 3 of the above example would likewise be extended on a day for day basis. For example, if an Uncontrollable Circumstance extends the Scheduled ICI Acceptance Date by 60 days, Final Completion would be scheduled to occur no later than 30 days after 970 days (or 1,000 days); and in such event, the Lessor would reimburse the Lessee for the base premium plus the surcharge for nine 30-day extension periods.

(m) Amendment of Section 16.4 of the Lease Agreement. Section 16.4 of the Lease Agreement to read, in its entirety, as follows:

SECTION [16.4] 16.5 COST OF PROVIDING SECURITY FOR PERFORMANCE. (A) Lessee Responsibility. Except as otherwise provided herein, the cost and expense of obtaining and maintaining the Security Instruments required under this Article as security for the performance of the Lessee's obligations hereunder shall be borne by the Lessee without reimbursement from the Lessor.

(B) Release of Security. The Lessor shall have the right at any time to release the Lessee from its obligation to provide the Letter of Credit required under this Article. Upon any such release and for such time as the Lessor does not reinstate the Letter of Credit requirement hereunder, the Lessee shall increase the Base Rent in an amount equal to \$3,250 (as adjusted annually by the Adjustment Factor) for each Contract Year the Letter of Credit has been released. Notwithstanding the Lessor's having elected to release the Letter of Credit hereunder, the Lessor may direct the Lessee at any time thereafter to

reinstate such Letter of Credit. In such event, the Lessee shall within 15 days following such notice of reinstatement furnish the Lessor with the reinstated Letter of Credit.

(n) Amendment of Section 17.13 of the Lease Agreement. Section 17.13 of the Lease Agreement to read, in its entirety, as follows:

SECTION 17.13. NOTICE OF LITIGATION AND OTHER MATTERS. (A) Notice of Litigation. In the event the Lessee or Lessor receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Incineration Facilities, the party receiving such notice or undertaking such prosecution shall give the other party timely notice of such proceedings, claims or investigations and shall inform the other party in advance of all hearings regarding such proceedings, claims or investigations.

(B) Notices Relating to Lessor Financing. In the event that the Lessor receives or gives notice of the occurrence or threatened occurrence of an event of default, or the exercise of any remedies, under any agreement relating to the financing (including any municipal lease financing) of the Initial Capital Improvements or any other improvements or work to be performed by the Lessee under this Lease Agreement, the Lessor shall within two business days of the receipt or giving thereof provide a copy of such notice to the Lessee.

(o) Addition of Transaction Form to the Lease Agreement. New Transaction Form E ("Form of ICI Labor and Materials Payment Bond") to read, in its entirety, as set forth Attachment A to this First Amendment.

Section 2. Entire Agreement. This First Amendment, and the Lease Agreement, to the extent not modified hereby, set forth the entire understanding of the parties hereto with respect to the subject matter hereof and supercedes all prior understandings and communications, whether written or oral with respect to such subject matter.

Section 3. Severability. The invalidity or inability to enforce any provision of this First Amendment will not affect the other provisions, and this First Amendment will be construed in all respects to the extent possible to fulfill the purposes of this First Amendment as if such invalid or unenforceable provision were omitted. To the extent any provision of this First Amendment is held to be invalid or unenforceable, the parties agree to negotiate in good faith in an effort to adopt revised provisions designed to reflect the original intention of the parties and the purposes of the First Amendment.

Section 4. Singular and Plural. Singular words shall connote the plural as well as the singular, and vice versa (except as indicated), as may be appropriate.

Section 5. References; Headings. Unless otherwise indicated, references within this First Amendment to articles, sections or subsections are references to articles, sections or subsections in or to the Lease Agreement. The headings preceding

the text of the articles, sections or subsections of this First Amendment shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

Section 6. Successors. This First Amendment shall be binding upon and inure to the benefit of, the Lessor and the Lessee, and their respective successors and permitted assigns.

Section 7. Third Party Beneficiaries. The provisions of this First Amendment are solely for the benefit of the Lessor and the Lessee and nothing in this First Amendment shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this First Amendment or any provision contained herein.

Section 8. Governing Law. This First Amendment shall be interpreted and construed in accordance with the applicable laws of the State.

Section 9. Counterparts; Effective Date. This First Amendment may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same instrument. This First Amendment shall be immediately effective upon the completed execution hereof.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed and delivered by their duly authorized officers or representatives as of the date first above written.

[Borough Seal]

THE BOROUGH OF NAUGATUCK, CONNECTICUT, as Lessor

ATTEST:

By: _____

Joan B. Taf
Mayor

THE WATER POLLUTION CONTROL AUTHORITY OF THE BOROUGH OF NAUGATUCK, as Lessor

ATTEST:

By: _____

Ronald Merancy
Chairman

NAUGATUCK ENVIRONMENTAL TECHNOLOGIES, LLC, as Lessee

ATTEST:

By: _____

Steven J. Kruger
Vice President

Attachment A to the First Amendment

TRANSACTION FORM E

FORM OF ICI LABOR AND MATERIALS PAYMENT BOND

[Form to be provided by Lessee on or before the Commencement Date.]