

## ESCROW AGREEMENT

This Escrow Agreement is made this 26th day of October, 2006, by and among the Commonwealth of Massachusetts ("Commonwealth"), acting by and through the Attorney General and the Department of Environmental Protection ("Department"), New Ventures Associates, LLC ("New Ventures"), and Janice Morse of the Newburyport Bank, Newburyport, Massachusetts as escrow agent ("Escrow Agent").

WHEREAS, the Suffolk Superior Court entered a Preliminary Injunction on October 20, 2006 in *Commonwealth of Massachusetts v. New Ventures Associates, LLC*, C.A. 06-0790 C (the "Order") which, in paragraph 1 (k), required that New Ventures deposit \$200,000 into a Department approved escrow account; and

WHEREAS, paragraph 1 (k) of the Order further requires that \$120,000 of the total \$200,000 placed in escrow be dedicated for paying for the requirements of paragraph 1 (a) and 1 (b) of the Order relating the execution and fulfillment of a contract for purchase and installation of an enclosed flare for use at the Crow Lane landfill (the "Facility") located at Crow Lane in Newburyport, Massachusetts (the "Site"); and

WHEREAS, paragraph 1 (k) of the Order also requires that \$80,000 of the total \$200,000 placed in escrow be dedicated for paying for the requirements of paragraph 1 (e) and 1 (h) of the Order relating the operation of a temporary landfill gas ("LFG") pretreatment system at the Site; and

WHEREAS, the Parties desire to set forth the procedures by which the Escrow Account shall be established and by which funds may be released from the Escrow Account in accordance with the requirements and conditions of the Order;

NOW THEREFORE, the Parties and the Escrow Agent agree as follows:

### **I. Escrow Agent**

1. The Parties designate Janice Morse of the Newburyport Bank, 63 State Street, Newburyport, Massachusetts, 01950 (the "Escrow Bank"), to be the Escrow Agent to hold, manage, and disburse the sums to be deposited into an escrow account ("Escrow Account") in accordance with the terms and conditions of the Order and this Escrow Agreement.

## **II. Establishment of Escrow Account and Accounting**

2. By the date of this agreement, New Ventures shall deliver the \$200,000 payment required under paragraph 1 (k) of the Order to the Escrow Agent in accordance with the terms and conditions of the Order and this Escrow Agreement.

3. Within one (1) day of receiving the \$200,000 payment required by paragraph 1 (k) of the Order and paragraph 2, Section II of this Agreement, above, the Escrow Agent shall open an interest bearing Escrow Account in the federally-insured, Newburyport Bank, 63 State Street, Newburyport Massachusetts, 01950 (the "Escrow Bank"), and shall deposit into it the full amount of the \$200,000 payment.

4. Within seven (7) days of opening the Escrow Account, the Escrow Agent shall notify the Parties of the account number of the Escrow Account, the Escrow Account balance, and the date on which the Escrow Account was opened. The Escrow Agent shall establish a checking account to facilitate disbursement of funds in the Escrow Account. The Escrow Agent shall keep possession of the bank statements and book(s) of the Escrow Account until such time as it is terminated in accordance with the terms of the Order and this Escrow Agreement, or until a successor Escrow Agent is appointed as provided in this Agreement.

6. The Escrow Account shall be opened with the signature of the Escrow Agent indicating that checks drawn against the account may be signed by the Escrow Agent and by no other person. Disbursements shall be made from the Escrow Account only in accordance with the terms of this Escrow Agreement.

7. All interest income accrued on funds in the Escrow Account shall become part of the Escrow Account. The total of the initial deposit, any future deposits, and accrued interest thereon shall be herein referred to as the "Escrow Funds."

8. The Escrow Agent shall maintain a record of all deposits, income, disbursements, and other transactions of the Escrow Account. The Parties shall have the right to inspect all books, bank statements, and records of the Escrow Agent relating to the Escrow Account at reasonable times upon request.

9. New Ventures shall pay any taxes, fees, charges or other costs of administration of the Escrow Account and such taxes, fees, charges or costs shall not be paid out of the Escrow Funds. New Ventures shall also pay for the services of the Escrow Agent, at the rate of \$50.00 per hour, and such payments for the services of the Escrow Agent shall also not be paid out of the Escrow Funds.

### **III. Disbursements from Escrow Account**

The Escrow Agent shall make disbursements of the Escrow Funds and any accrued interest only to:

10. New Ventures, upon receipt from the Department of a written certification for authorization of disbursement of Escrow Account Funds. New Ventures may submit to the Department a request for authorization of disbursement of Escrow Funds along with a certification signed by a New Ventures corporate officer duly authorized to sign and bind New Ventures. Any such request shall be in the form attached to this Escrow Agreement as "Attachment A," which is incorporated within and made part of this Escrow Agreement, and shall include a certification that the actions and conditions required under the Order have been completed and satisfied. Immediately upon receipt of written authorization from the Department in the form attached to this Escrow Agreement as "Attachment B," which is incorporated within and made part of this Escrow Agreement, the Escrow Agent shall pay the amount(s) authorized by the Department from the Escrow Account to New Ventures indicated in the authorization.

11. To the Department, upon receipt from the Department of an order by the Suffolk Superior Court under the action *Commonwealth of Massachusetts v. New Ventures Associates, LLC*, Suffolk Superior Court C.A. 06-0790 C, or subsequent action to enforce the requirements of the Order, , or ordering the Escrow Agent to disburse Escrow Funds to the Department for the sole purpose of fulfilling New Ventures' requirements under paragraphs 1 (a), 1 (b), 1 (e) or 1 (h) of the Order and authorizing the Department to receive said Escrow Funds for these purposes only.

12. Disbursements shall be made from the Escrow Account only in accordance with the terms of this Escrow Agreement.

### **IV. Termination of Escrow Account**

14. The Escrow Account, once opened, shall remain in effect until the Escrow Agent has received from the Commonwealth authorizations for disbursements of all Escrow Funds and the Escrow Agent has disbursed all Escrow Funds from the Escrow Account in accordance with such authorizations and Section III, above.

15. When any and all remaining Escrow Funds have been disbursed and the Escrow Account is terminated, the Escrow Agent shall then provide a final accounting of all transactions hereunder to the Parties.

## **V. Responsibilities of Escrow Agent**

16. The Escrow Agent's sole obligation hereunder shall be to perform the duties set forth in this Escrow Agreement, which duties are intended to be purely ministerial in nature. The Escrow Agent shall not be liable to any party hereto if the Escrow Agent acts in accordance with this Escrow Agreement. The Escrow Agent shall be entitled to assume the truth and correctness of any notice, signature, or document(s) presented to him/her.

## **VI. Resignation, Removal, or Successor Escrow Agent**

17. The Escrow Agent may resign from serving as an escrow agent pursuant to this Escrow Agreement without prejudice to his/her rights, privileges, or immunities by giving at least sixty (60) days prior written notice to the Parties. Such resignation shall take effect on the date specified in such notice or on the date sixty (60) days from the date it is received by all Parties, whichever is later, unless a successor Escrow Agent shall have been sooner appointed, in which event such resignation shall take effect immediately upon the appointment of a successor Escrow Agent.

18. The Escrow Agent may be removed at any time by a written instrument or concurrent instruments signed by duly authorized agents of the Parties and delivered to the Escrow Agent.

19. If at any time hereafter the Escrow Agent resigns, is removed, or otherwise becomes incapable of acting, or the position of Escrow Agent shall become vacant for any of the foregoing reasons or for any other reason, the Parties hereto shall promptly appoint a successor Escrow Agent. Upon appointment, such successor Escrow Agent shall execute and deliver to his/her predecessor and to the Parties hereto an instrument in writing accepting such appointment hereunder. Thereupon, without further act, such successor Escrow Agent shall be fully vested with all the rights, immunities, and powers, and shall be subject to all the duties and obligations of his/her predecessor, and the predecessor Escrow Agent shall promptly deliver all books, records, and other property and monies held by him/her hereunder to such successor Escrow Agent.

20. In the event that a successor Escrow Agent has not been appointed pursuant to the provisions of paragraph 19 within thirty (30) days after the effective date of such resignation, removal, dissolution, incapacity, or vacancy, the Escrow Agent shall deposit the full amount of the Escrow Funds with the civil clerk of the Superior Court for Suffolk County, and shall interplead all Parties hereto. Upon so depositing such Escrow Funds and filing its pleading, the Escrow Agent shall be released from all future obligations under the terms hereof.

## **VII. Notices**

21. All notices, certifications, authorizations, requests, or other communications required or permitted to be made under this Escrow Agreement, shall be in writing and shall be delivered by hand, or by overnight courier, or shall be mailed by certified mail, postage prepaid, return receipt requested, as follows:

### **To the Department:**

Mr. Richard J. Chalpin  
Regional Director  
Massachusetts Department of Environmental Protection  
205B Lowell Street  
Wilmington, MA 01887

### **To the Attorney General:**

Matthew C. Ireland  
Assistant Attorney General  
Environmental Protection Division  
One Ashburton Place  
Boston, Massachusetts, 02108  
617-727-2200, ex. 2434

### **To New Ventures:**

Richard A. Nysten, Esq.  
Lynch DeSimone & Nysten, LLP  
12 Post Office Square  
Boston, Massachusetts 02109  
617-348-4500

### **To the Escrow Agent:**

Janice Morse  
Executive Vice President & Treasurer  
The Newburyport Bank  
63 State Street  
Newburyport, MA 01950  
978-225-8713

or to such other place or to the attention of such other individual as a Party from time to time may designate by written notice to all other Parties.

VIII. Miscellaneous

22. This Escrow Agreement shall be binding upon, and shall inure to the benefit of, the respective Parties hereto and their successors and assigns.

23. This Escrow Agreement may not be amended, altered, or modified except by written instrument duly executed by all of the Parties hereto.

24. This Escrow Agreement shall be governed by and be construed in accordance with the laws of the Commonwealth of Massachusetts.

25. The headings and paragraph titles in this Escrow Agreement are merely for convenience of the Parties and shall not be used in interpreting any of the provisions of the Agreement.

IN WITNESS WHEREOF, the Parties have caused this Escrow Agreement to be duly executed as of the day and year first written above.

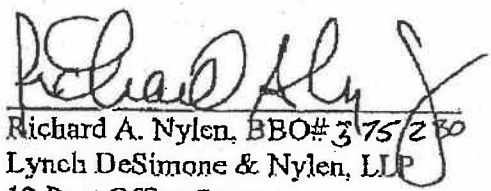
COMMONWEALTH OF MASSACHUSETTS THOMAS F. REILLY ATTORNEY GENERAL NEW VENTURES ASSOCIATES LLC

By: ..



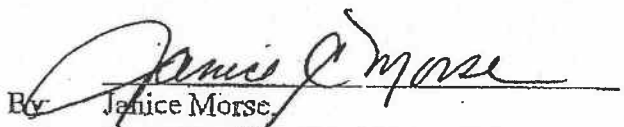
Matthew C. Ireland, BBO # 554868 Assistant Attorney General One Ashburton Place Boston, Massachusetts, 02108 617-727-2200, ex. 2434

By its Counsel



Richard A. Nylén, BBO# 375230 Lynch DeSimone & Nylén, LLP 12 Post Office Square Boston, Massachusetts 02109 617-348-4500

Janice Morse, as Escrow Agent



Janice Morse Executive Vice President and Treasurer The Newburyport Bank 63 State Street Newburyport, MA 01950 978-225-8713

Dated: October 26, 2006

## ATTACHMENT A

### CERTIFICATION OF EXPENDITURES AND REQUEST FOR AUTHORIZATION OF PAYMENT

1. This Certification is contemplated by the Escrow Agreement executed by and among the Commonwealth of Massachusetts, acting by and through the Attorney General and the Massachusetts Department of Environmental Protection (the "Department"), and New Ventures Associates, LLC ("New Ventures") on October 25, 2006 in accordance with the requirements of paragraph 1 (k) of the Preliminary Injunction entered by the Suffolk Superior Court on October 20, 2006, in *Commonwealth of Massachusetts v. New Ventures Associates, LLC*, C.A. 06-0790 C (the "Order"), and is intended to secure the release of funds contained in an Escrow Account established pursuant to the Escrow Agreement and the Order. All terms used in this Authorization shall have the same meaning as they have in the Order and/or the Escrow Agreement.

2. New Ventures and/or their contractor(s) or consultant(s) has/have incurred costs for the performance of the actions required to comply with paragraph 1 (a), 1 (b), 1 (e), and/or 1 (h) of the Order. These actions were performed on the following date(s) for performance of the tasks indicated:

Date(s) Nature of action performed and requirement of Order met (strike non-applicable subparagraph)

- (a) New Ventures has executed a contract for purchase and installation of the fully automated enclosed flare ("Flare"), completed all required payments and other contractual obligations for the purchase and installation of the Flare, and completely installed and begun operation of the Flare, including a minimum of forty-eight (48) consecutive hours of operation in compliance paragraph 1 (a) and 1 (b) of the Order and in accordance with the performance standards specifications in Addendum 3 of Appendix A to the Order.
- (b) New Ventures has completed its operation of the temporary pretreatment system pursuant to paragraphs 1 (e) and 1 (h) of the Order and has fully installed and begun operation of the permanent pretreatment system for a minimum of forty-eight (48) consecutive hours in compliance with the requirements of paragraph 1 (d) of the Order and in accordance with the performance standards of Appendix A of the Order.

These costs are itemized in the documentation attached hereto.

3. These costs do not include any of the following: (a) taxes, fees, charges or other costs of administration of the Escrow Account; (b) fees, charges or costs related to services of the Escrow Agent; or (c) fees, charges, or costs related to services of attorneys.

4. I hereby certify that the above specified actions in the amount(s) indicated below were performed in full compliance with the requirements and conditions of the specified paragraphs of the Order. :

Payment Amount (strike non-applicable subparagraph):

- (a) for completion of task referenced in paragraph 2(a) above - \$120,000.00.
- (b) for completion of task referenced in paragraph 2(b) above - \$80,000.00
- (c) following termination of the Escrow Account all accrued interest.

In witness whereof, the undersigned has executed this Certification under the pains and penalties of perjury this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
as corporate officer of New Ventures Associates, LLC, duly authorized

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_ 6 \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Notary Public  
My commission expires:

**ATTACHMENT B**

**AUTHORIZATION OF PAYMENT**

1. I am a duly authorized employee of the Massachusetts Department of Environmental Protection ("Department")(or any successor agency).
  
2. This Authorization is contemplated by the Escrow Agreement executed by and among the Commonwealth of Massachusetts, acting by and through the Attorney General and the Department, and New Ventures Associates, LLC on October 25, 2006 in accordance with the requirements of paragraph 1 (k) of the Preliminary Injunction entered by the Suffolk Superior Court on October 20, 2006, in *Commonwealth of Massachusetts v. New Ventures Associates, LLC*, C.A. 06-0790 C (the "Order"), and is intended to secure the release of funds contained in an Escrow Account established pursuant to the Escrow Agreement and the Order. All terms used in this Authorization shall have the same meaning as they have in the Order and/or the Escrow Agreement.
  
3. New Ventures and/or their contractor(s) or consultant(s) has/have incurred costs for the performance of actions required by paragraph 1 (a), 1 (b), 1 (e), and/or 1 (h) of the Order. These costs, in the amount of \$ \_\_\_\_\_, are itemized in the documentation attached hereto. Pursuant to Paragraph 10 of the Escrow Agreement, the Escrow Agent is hereby directed to present payment immediately of the Escrow Funds in the amount(s) indicated to New Ventures as designated below:

Payment Amount:

Department of Environmental Protection:

By: \_\_\_\_\_  
Name:  
\_\_\_\_\_  
title

ATTACHMENT A

CERTIFICATION OF EXPENDITURES AND REQUEST FOR AUTHORIZATION OF PAYMENT

1. This Certification is contemplated by the Escrow Agreement executed by and among the Commonwealth of Massachusetts, acting by and through the Attorney General and the Massachusetts Department of Environmental Protection (the "Department"), and New Ventures Associates, LLC ("New Ventures") on October 25, 2006 in accordance with the requirements of paragraph 1 (k) of the Preliminary Injunction entered by the Suffolk Superior Court on October 20, 2006, in Commonwealth of Massachusetts v. New Ventures Associates, LLC, C.A. 06-0790 C (the "Order"), and is intended to secure the release of funds contained in an Escrow Account established pursuant to the Escrow Agreement and the Order. All terms used in this Authorization shall have the same meaning as they have in the Order and/or the Escrow Agreement.

2. New Ventures and/or their contractor(s) or consultant(s) has/have incurred costs for the performance of the actions required to comply with paragraph 1 (a), 1 (b), 1 (e), and/or 1 (h) of the Order. These actions were performed on the following date(s) for performance of the tasks indicated:

Date(s) Nature of action performed and requirement of Order met (strike non-applicable subparagraph)

- (a) New Ventures has executed a contract for purchase and installation of the fully automated enclosed flare ("Flare"), completed all required payments and other contractual obligations for the purchase and installation of the Flare, and completely installed and begun operation of the Flare, including a minimum of forty-eight (48) consecutive hours of operation in compliance paragraph 1 (a) and 1 (b) of the Order and in accordance with the performance standards specifications in Addendum 3 of Appendix A to the Order.
- (b) New Ventures has completed its operation of the temporary pretreatment system pursuant to paragraphs 1 (e) and 1 (h) of the Order and has fully installed and begun operation of the permanent pretreatment system for a minimum of forty-eight (48) consecutive hours in compliance with the requirements of paragraph 1 (d) of the Order and in accordance with the performance standards of Appendix A of the Order.

These costs are itemized in the documentation attached hereto.

3. These costs do not include any of the following: (a) taxes, fees, charges or other costs of administration of the Escrow Account; (b) fees, charges or costs related to services of the Escrow Agent; or (c) fees, charges, or costs related to services of attorneys.

4. I hereby certify that the above specified actions in the amount(s) indicated below were performed in full compliance with the requirements and conditions of the specified paragraphs of the Order. :

Payment Amount (strike non-applicable subparagraph):

- (a) for completion of task referenced in paragraph 2(a) above - \$120,000.00
- (b) for completion of task referenced in paragraph 2(b) above - \$80,000.00
- (c) following termination of the Escrow Account all accrued interest.

In witness whereof, the undersigned has executed this Certification under the pains and penalties of perjury this 9 day of February, 2007

  
as corporate officer of New Ventures Associates, LLC, duly authorized

Sworn and subscribed before me this 9<sup>th</sup> day of FEBRUARY, 2007



Notary Public  
My commission expires:  
May 28, 2010