ENVIRONMENTAL SERVICES
CONTRACT ADDENDUM

1. It is anticipated that from time to time during the term of the Agreement, Company may request Contractor to provide personnel, equipment and facilities necessary to perform environmental services as specified by Company. Contractor agrees to provide and perform such environmental services pursuant to the terms of the Agreement between the Parties and this Addendum.

Such services may include the following items: (i) sampling and testing of environmental media, and removal and remediation actions (including emergency responses) with respect to spills, leaks and other releases of substances (“Substances”); (ii) cleaning, decommissioning and/or removal and disposal of storage tanks and associated piping and infrastructure; (iii) sampling and testing, transportation, treatment, storage, disposal or recycling with respect to waste or other secondary materials, including hazardous waste, (collectively “Waste”) generated by Company; (iv) the provision of engineering and technological services relating to the environment; (v) the prompt arrival by Contractor at the location of spilled, leaked or otherwise released Substances and the containment, neutralization, decontamination, recovery, cleanup and repackaging of the Substances; and (vi) site remediation and/or restoration (such items are included in the defined term “Services”). Substances and Waste are herein collectively referred to as “Material(s).”

The particular Services requested of Contractor at a given location shall be detailed in Company’s request or Work Order (or Purchases/Service Order, as applicable, and all of these documents shall be referred to as a “Work Order” in this Addendum). The request, manifest or other documents provided by Company to Contractor shall also describe the Material involved with the Services. Contractor agrees to provide Services upon verbal request relating to spills on an as-called basis, twenty-four (24) hours per day, seven (7) days per week, for the term of the Agreement.

2. Contractor warrants that it has the expertise to perform the Services, that the equipment and facilities provided by it to perform Services are suitable to perform such Services, and that all personnel are properly trained. Contractor acknowledges that it is aware of and understands the potentially toxic and hazardous nature of the Materials which may be involved with the Services and the risks which may be presented to persons, property and the environment. Contractor shall perform all Services hereunder in full compliance with all applicable governmental laws, regulations, orders and published official statements of policy. Contractor warrants that if Contractor owns, controls, selects, or approves the facility to which Materials will be delivered, the facility will be licensed and permitted to receive, treat, store, dispose and/or recycle such Materials as required under applicable laws or regulations. Notwithstanding the foregoing, Contractor shall consult with Company prior to the use of any treatment, storage, disposal or recycling facility and shall use only sites that Company has designated as “selected for use” in its request or Work Order. Contractor shall make its own determination as to the precautions appropriate for any particular Material, but Contractor shall accept Company's determination in a given situation as to how a Material is to be managed and handle it accordingly.

Contractor shall perform the Services in a lawful, safe, diligent and workmanlike manner and take all necessary precautions to protect persons and property from damage or injury. If Services are to be undertaken on Company premises, Contractor shall comply with Company's safety procedures. Contractor is and shall perform the Services under this Addendum and the Agreement as an independent Contractor and as such shall have and maintain exclusive control and direction over all its employees, agents, subcontractors (or “Subcontractors” if defined in the Agreement), and operations. Contractor and the members of Contractor Group are not employees, agents, or representatives of Company or Company Group and shall not act as, or purport to act as an agent, representative or employee of Company or Company Group. Contractor assumes full and exclusive responsibility for payment of all compensation, benefits, premiums, contributions, payroll taxes, and
other taxes now or hereafter required by any law or regulation as to all personnel engaged in the performance of the Services under this Addendum and the Agreement.

3. If Services include transportation of Material, Contractor agrees to instruct all truck drivers as to the proper procedures to be used and the precautions to be followed in handling, loading, and transporting the Material. The Contractor shall use an appropriate manifest system which meets all applicable legal and regulatory requirements (for Services rendered in the United States such applicable legal and regulatory requirements specifically include all United States Department of Transportation and United States Environmental Protection Agency requirements). Contractor warrants that it is duly licensed to receive the Material which is the subject of any agreed upon request for Services, and that the drivers supplied by Contractor will be fully trained, authorized, equipped and licensed and the trucks supplied will be equipped and licensed to carry any such Material in accordance with all applicable Federal, State or local health, environmental, and safety laws and regulations. All trucks and other equipment used by Contractor for performance of the Services shall be in a safe operating condition, shall be in compliance with applicable laws and regulations, and shall be suitable for the particular Services requested and shall be periodically inspected and timely maintained.

When Contractor is requested to perform Services, Contractor shall advise Company the specific timing and methods it will use in connection with its performance hereunder. Upon completion of Services, Contractor shall leave the area clean and free of all tools, equipment, waste and rubbish.

4. Contractor, when requested by Company, shall provide Company with copies of all documents relating to the Services, including the characterization, handling, transportation, storage, treatment and disposal of Material hereunder and related licenses and permits issued by governmental authorities and correspondence and applications relating thereto. Contractor shall immediately notify Company if:

   (a) Contractor discovers (or is served with notice of) a violation of any law, regulation, permit or license which relates to Services;

   (b) proceedings are commenced which could lead to revocation of permits or licenses which relate to Services;

   (c) permits, licenses or other government authorizations relating to Services are revoked;

   (d) litigation is commenced against Contractor which could affect the Services;

   (e) Contractor becomes aware that its equipment or any facilities which are used or proposed to be used are not in compliance, or may fail to comply in the future, with applicable laws or regulations.

5. Company, without in any way relieving Contractor of its obligations and without assuming any responsibility, may also at its expense inspect and test the equipment, procedures and facilities used or proposed for use by Contractor for Services. If Company, in its sole discretion, should determine that the equipment, procedures or facilities are unsafe or otherwise inappropriate, Company may suspend performance of requested Services until the condition is fully corrected to Company’s satisfaction. If this condition is not fully corrected within a reasonable time, Company may terminate this Addendum, the Agreement and/or its request for Services according to the termination provisions set forth in the Agreement.
6. COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, WHETHER OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE, CONCERNING ANY MATERIALS WITH RESPECT TO WHICH COMPANY MAY REQUEST SERVICES.

7. Title and risk of loss with respect to any Material that Contractor agrees to handle, store, treat, recycle or dispose of shall pass from Company (or its designee) as follows:

   (a) In the event Company provides or arranges for transporting the Material to the storage, treatment, recycling or disposal facility, title and risk of loss with respect to the Material shall be and remain with Company (or its designee) until the Material is accepted by Contractor.

   (b) In the event Contractor or a third party (whether paid by Company or Contractor) provides or arranges for transporting the Material to the storage, treatment, recycling or disposal facility, title and risk of loss with respect to the Material shall be and remain with Company (or its designee) until the Material is loaded into trucks, rail cars, or other transporting equipment provided by or at the request of Contractor, at which time title and risk of loss shall pass to Contractor.

8. Before accepting Material from Company (or its designee), Contractor may, but is not obligated to, require satisfactory completion of the following quality assurance procedures. These procedures may include the following:

   (a) Prior to shipments, Company will, at Contractor's request, complete a pre-qualification application for all Material to be processed. The pre-qualification application and a representative sample of the proposed Material will be reviewed and analyzed by Contractor to determine whether the Material meets specifications. If the Material meets specifications, Contractor will allow the Material to be shipped.

   (b) Contractor may inspect and analyze every load of Material it takes possession of to ensure that the Material is the same as the Material contained in the pre-shipment sample. Contractor may also examine all containers for structural integrity and count containers and compare with the number reported on the shipment records.

   (c) The sampling and testing by Contractor shall be performed in compliance with applicable laws and regulations and in accordance with methods and procedures equivalent to the United States Environmental Protection Agency's Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods SW846.

9. Contractor shall have the right to reject (or to revoke its acceptance of) any non-conforming Material; provided that Contractor’s actions or inactions have not caused the Material to be non-confirming. Contractor shall not be obligated to collect or dispose of or arrange for alternate collection or disposal of any non-conforming Material. The term "non-conforming," as applied to Material, means Material: (i) which is not materially in accordance with the representations, warranties, descriptions, specifications or limitations stated in this Addendum and the Agreement, a Work Order, or the applicable waste profile sheet; or (ii) which fails to conform to the applicable Material description, is materially different from prequalification samples, if any, or if any packaging and/or marking provided by Company is not in accordance with applicable laws and requirements provided in advance to Company by Contractor. In no event shall Material be deemed non-confirming unless it materially increases the nature or extent of the hazard and risks undertaken by Contractor in agreeing to handle, load, transport, store, process, treat, recycle or dispose of the Material.

If, on arrival at the final designated disposal facility, the Material is determined to be conforming Material, or if the Material is mixed with other materials at any facility such that it loses its identity as
Company’s Material or the Material is treated to chemically or physically change its composition at any facility, then the Material shall be deemed accepted.

In the event that, after a load of Material is accepted by Contractor, all or any portion of the Material in the load is determined by Contractor to be non-conforming due to no fault that can be attributed to Contractor’s actions or inactions, Contractor may revoke acceptance of the Material by giving written notice to Company, which shall include the reasons for revocation and supporting analytical data. Except in instances in which the Materials became non-conforming due to actions or inactions by Contractor (in such cases, Contractor shall maintain title, risk of loss and all other incidents of ownership in and to the Material), a revocation of acceptance shall operate to revest title, risk of loss, and all other incidents of ownership in and to the rejected Material in Company effective as of the date Contractor gives notice to Company of such revocation. Contractor shall notify Company within forty-eight (48) hours of the discovery of non-conforming Material. If the Material is in Contractor's possession, the Parties shall promptly agree upon a lawful manner of disposition that will protect Contractor from the increased hazard or risk referred to above but at the lowest cost practical under the circumstances. Company shall reimburse Contractor for its reasonable expenses and charges relating to such non-conforming Material, including analytical work, transportation, storage, repair, replacement, decontamination and cleaning of applicable equipment and non-conforming Material charges net of any previous payment for disposal of the load of non-conforming Material by Company. Notwithstanding the foregoing, in instances where the Materials become non-conforming after acceptance by Contractor due to actions or inactions by Contractor or Contractor failed to notify Company within forty-eight (48) hours of the discovery of non-conforming Material, Contractor shall pay any and all expenses and charges (including demurrage charges) incurred by Contractor for handling, loading, preparing, transporting or storing any non-conforming Material.

Material transported to Contractor's facility that is not accepted by Contractor, Material accepted by Contractor and subsequently rejected in accordance with the foregoing provisions or if Materials become non-conforming due to actions or inactions by Contractor, then the Materials shall be prepared for lawful disposition by agreement of the Parties. Pending agreement on disposition Contractor shall retain possession of the Material unless it is necessary by reason of law, facility permit or facility operating procedure to move the Material. If retaining possession of the Material causes Contractor to be in violation of the law, Contractor shall immediately notify Company both verbally and in writing and if an agreement as to lawful disposition cannot be reached promptly, Contractor may send the Material to an interim storage facility in accordance with applicable law (i.e., a storage facility that is licensed and permitted to receive, treat, store and/or dispose of such Materials). Company shall pay Contractor all reasonable expenses and charges (including demurrage charges) incurred by Contractor for handling, loading, preparing, transporting or storing any Material rejected in accordance with this Addendum and the Agreement. However, notwithstanding the foregoing, in instances when the Materials become non-conforming due to actions or inactions by Contractor, Contractor shall pay any and all expenses and charges (including demurrage charges) incurred by Contractor for handling, loading, preparing, transporting or storing any non-conforming Material.

In the event Company provides or arranges for transportation of the Material to the storage, treatment, recycling or disposal facility, the shipment shall be deemed accepted if within a forty-eight (48) hour period of arrival at the facility the shipment is not found to be non-conforming Material, or if the Material is mixed with other materials at any facility such that it loses its identity as Company’s Material or the Material is treated to chemically or physically change its composition at any facility. Failure by Contractor to notify Company of non-conforming Material within such period shall be deemed acceptance of such Material.
10. ADDITIONAL INDEMNIFICATION. CONTRACTOR (OR CONTRACTOR GROUP, IF DEFINED IN THE APPLICABLE AGREEMENT, WHICH SHALL BE INCLUDED IN THE TERM “CONTRACTOR” AS USED IN THIS PARAGRAPH), SHALL DEFEND, REIMBURSE, INDEMNIFY AND SAVE HARMLESS COMPANY (AND COMPANY’S INDEMNITEES AND COMPANY GROUP – THE TERMS [COMPANY’S] INDEMNITEES AND COMPANY GROUP SHALL BE INCLUDED IN THE TERM “COMPANY” AS USED IN THIS PARAGRAPH) FROM AND AGAINST ANY AND ALL LIABILITIES, PENALTIES, FINES, FORFEITURES, DEMANDS, CLAIMS, CAUSES OF ACTION, SUITS, LOSSES, DAMAGES AND LIABILITIES FOR INJURY TO OR DEATH OF ANY PERSON (INCLUDING AN EMPLOYEE OF CONTRACTOR OR COMPANY) OR TO PROPERTY, INCLUDING COSTS AND EXPENSES INCIDENTAL THERETO (INCLUDING COSTS OF DEFENSE, SETTLEMENT AND REASONABLE ATTORNEYS’ FEES) WHICH ANY OR ALL OF THEM MAY HEREAFTER SUFFER, INCUR, BE RESPONSIBLE FOR OR PAY OUT WHICH RELATE TO ENVIRONMENTAL CONTAMINATION OR POLLUTION AT A FACILITY OWNED OR APPROVED BY CONTRACTOR THAT ARISE OUT OF THE SERVICES IN OR AT SUCH FACILITY OWNED OR APPROVED BY CONTRACTOR. THIS ADDITIONAL INDEMNIFICATION SHALL APPLY REGARDLESS OF WHETHER ANY SUCH LIABILITIES, PENALTIES, FINES, FORFEITURES, DEMANDS, CLAIMS, CAUSES OF ACTION, SUITS, LOSSES AND DAMAGES, INCLUDING COSTS AND EXPENSES INCIDENTAL THERETO, ARISES IN CONNECTION WITH ACTIONS BY A GOVERNMENT ENTITY, PRIVATE PARTY OR NON-GOVERNMENTAL ORGANIZATION (OR CITIZEN GROUP) AND SHALL APPLY WHETHER OR NOT COMPANY WAS OR IS CLAIMED TO BE NEGLIGENT, WHETHER OR NOT LIABILITY WITHOUT FAULT IS IMPOSED OR SOUGHT TO BE IMPOSED ON COMPANY OR WHETHER OR NOT COMPANY ARRANGED OR IS CLAIMED TO HAVE ARRANGED FOR THE DISPOSAL OF HAZARDOUS SUBSTANCES AS DEFINED BY APPLICABLE LAW OR REGULATION OR TO HAVE CONTRIBUTED TO THE RECYCLING, HANDLING, STORAGE, TREATMENT, TRANSPORTATION OR DISPOSAL OF MATERIAL AT CONTRACTOR'S FACILITY OR FACILITIES APPROVED BY CONTRACTOR. This additional indemnification shall not apply where such claim, fine, loss, damage or liability is the result of the sole negligence or willful misconduct of COMPANY.

11. Without in any way limiting Contractor's obligations pursuant to the above Section 10, Contractor shall maintain the following insurance in addition to the insurance required under the main body of the Agreement (and shall comply with all policy endorsements and evidence of insurance requirements set forth in this Addendum): (a) all insurance that may be required under the laws, ordinances and regulations of any applicable governmental authority; and (b) Pollution Liability Insurance for sudden and accidental pollution incidents with a limit of liability for such insurance not less than $5,000,000 per occurrence and $10,000,000 in the aggregate.

12. Unless the Services provided by Contractor under this Addendum or the Agreement are exempted by federal law, rule, regulation or order, the following clauses contained in the Code of Federal Regulations are incorporated herein by reference: 48 C.F.R. § 52.222-35 (Disabled and Vietnam Veterans); 48 C.F.R. § 52.222-36 (Handicapped Workers); 48 C.F.R. § 52.222-26 (Equal Opportunity); 48 C.F.R. §§ 52.219-8 and 52.219-9 (Utilization of Small and Small Disadvantage Business Concerns); 48 C.F.R. § 52.219-13 (Utilization of Women-Owned Business Concerns) and 48 C.F.R. § 52.223-3 (Hazardous Material Identification and Material Safety Data), and Contractor agrees to comply with these provisions and ensure that its subcontractors (or “Subcontractors”) comply with these provisions. In addition, without limiting the generality of any other provision of the Agreement and this Addendum, Contractor also agrees (i) to comply with all the requirements of 48 C.F.R. § 52.223-2 relating to Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Pub. L. 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued there under before the Effective Date of the Agreement; (ii) that no portion of the work required by the
Agreement or this Addendum will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when a request for Services is made unless and until the EPA eliminates the name of such facility or facilities from such listing; (iii) to use its best efforts to comply with clean air standards and clean water standards at the facility in which the Services are being performed; and (iv) to insert the substance of the provisions of this clause into any nonexempt subcontract, including this section. Unless previously provided, if the value of the Agreement or Services under this Addendum exceeds $10,000, Contractor shall provide a Certificate of Non-segregated Facilities to Company.

Contractor warrants that none of its employees or employees of its subcontractors (or “Subcontractors”) who provide or assist in providing the Services to Company pursuant to this Addendum and the Agreement are unauthorized aliens as defined in the Immigration Reform Control Act of 1986, as amended and in regulations issued there under.

This Addendum shall govern any conflict between the terms of this Addendum and the Agreement.

End of ENVIRONMENTAL SERVICES CONTRACT ADDENDUM