



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
& ENVIRONMENTAL CONTROL  
DIVISION OF WASTE AND HAZARDOUS SUBSTANCES  
391 LUKENS DRIVE  
NEW CASTLE, DELAWARE 19720-2774

SITE INVESTIGATION &  
RESTORATION SECTION

TELEPHONE: (302) 395 - 2600  
FAX NO.: (302) 395 - 2601

February 20, 2012

Mr. Timothy Niblett, President  
Green Services, Inc.  
P. O. Box 929 Bel Air, MD 21014

**RE: Signed Direct-Push Drilling Services Contract #NAT-11169 DPDS**

Dear Mr. Niblett:

Enclosed please find a signed copy of Contract #NAT-11169 DPDS. The enclosed copy is for your records. Thank you for your interest in the contract and DNREC-SIRS looks forward to working with you on this contract. Should you have any questions please feel free to contact me at 302-395-2600.

Sincerely,

Robert C. Asreen, Jr.  
Hydrologist

RCA:tlw  
RCA12015.doc  
AD 003 I B 1

Enclosure: Professional Services Agreement Contract #NAT-11169 DPDS Direct-Push  
Drilling Services

pc: Timothy Ratsep, Environmental Program Administrator, DNREC-SIRS  
Paul Will, Program Manager, DNREC-SIRS  
Elizabeth M. LaSorte, Paralegal, DNREC-SIRS  
Robert S. Kuehl, Deputy Attorney General, DOJ

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**PROFESSIONAL SERVICES AGREEMENT**  
**Contract #NAT-11169 DPDS**  
**Direct-Push Drilling Services**

This Agreement ("Agreement") is entered into as of January 1, 2012 ("Effective Date") and will end on December 31, 2015, by and between the State of Delaware, Department of Natural Resources and Environmental Control ("DNREC"), and GREEN SERVICES, INC., a corporation, with offices at 511 Adelaide Lane, Bel Air, MD 21015 ("GREEN SERVICES").

WHEREAS, Delaware desires to obtain certain professional services regarding Environmental Investigation and Remediation Services; and

WHEREAS, GREEN SERVICES desires to provide such services to DNREC on the terms set forth below;

WHEREAS, DNREC and GREEN SERVICES represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, DNREC and GREEN SERVICES agree as follows:

**1. Services.**

1.1 This Agreement is a multiple source contract for professional services. GREEN SERVICES is one of several firms that DNREC has entered into agreements with under Contract No. NAT-11169 to provide professional services to DNREC, consisting of Direct-Push Drilling Services, on specific projects. Entering into this Agreement entitles GREEN SERVICES to receive notices from DNREC during the Contract period when DNREC requires professional services on any specific project. The notice will request that GREEN SERVICES submit a proposal to DNREC for the professional services requested in the notice. The notice may be sent, at DNREC's discretion, to more than one firm under Contract No. NAT-11169 DPDS. GREEN SERVICES's specific project proposal shall be based on the list of prices established as part of this Agreement. DNREC, at its discretion, will select a specific project proposal from one of the vendors that received the notice. If GREEN SERVICES's proposal is selected, GREEN SERVICES will be invited to enter into negotiations to conclude an agreement to provide professional services on the specific project. In the negotiations, DNREC may request that GREEN SERVICES use certain positions, or place certain individuals in the positions, to provide the professional services called for in the notice. If DNREC and GREEN SERVICES are able to reach an agreement on the project specific proposal, it shall be set forth in an Addendum which shall be attached to this Agreement and made a part hereof. As used hereinafter, the term "Agreement" shall include all Addenda entered into hereunder, unless the two terms are used separately and the context indicates otherwise.

1.2 GREEN SERVICES shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.3 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Delaware's request for proposals; and (c) Green Services response to the request for proposals. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.4 The Request for Proposal, Proposal, Specification or Scope of Work, Special Instructions, Purchase Order, Addenda for specific projects, and Agreement shall be a part of, and constitute the entire Agreement entered into by the State of Delaware and GREEN SERVICES. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof. In the event there is any discrepancy between any of these Contract documents, the following order of documents governs so that the former prevails over the latter:

- Contract
- Addenda for specific projects
- Request for Proposal
- Specifications or Scope of Work
- Proposal
- Purchase Order
- Special Instructions

1.5 Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by GREEN SERVICES shall be furnished without the written authorization of DNREC. When DNREC desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify GREEN SERVICES, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by GREEN SERVICES for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1. GREEN SERVICES will not be required to make changes to its scope of work that result in GREEN SERVICES's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

## **2. Payment for Services and Expenses.**

2.1 The term of the initial contract shall be from January 1, 2012 through December 31, 2015. This Agreement may be renewed for two (2) additional one (1) year periods under the same terms and conditions.

2.2 Delaware will pay GREEN SERVICES for the performance of services on a specific project described in the Addendum for that project. DNREC has no obligation to pay GREEN SERVICES for any services under this Agreement unless an Addendum has been signed by DNREC and GREEN SERVICES for a specific project, and DNREC has issued a purchase order for the services called for in the Addendum.

2.3 Each specific project Addendum entered into under this Agreement shall be the subject of a separate purchase order. It is expressly understood that the work defined in any Addendum to this Agreement must be completed by GREEN SERVICES and it shall be GREEN SERVICES's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee established in the Addendum. DNREC's total liability for all charges for services that may become due under any Addendum to this Agreement is limited to the total maximum expenditure(s) authorized in DNREC's purchase order(s) to GREEN SERVICES for the specific project Addendum, including any amendments to the purchase order based on additional work required by any change order.

2.4 GREEN SERVICES shall submit monthly invoices to DNREC in sufficient detail to support the services provided during the previous month. DNREC agrees to pay those invoices within thirty (30) days of receipt. In the event DNREC disputes a portion of an invoice, DNREC agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide GREEN SERVICES a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle GREEN SERVICES to charge interest on the overdue portion at the lower of 1.0% per month or 12% per annum. All payments should be sent to GREEN SERVICES, 511 Adelaide Lane, Bel Air, MD 21015.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by GREEN SERVICES. If an Appendix specifically provides for expense reimbursement, GREEN SERVICES shall be reimbursed only for reasonable expenses incurred by GREEN SERVICES in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any

related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 DNREC shall subtract from any payment made to GREEN SERVICES all damages, costs and expenses caused by GREEN SERVICES's negligence, resulting from or arising out of errors or omissions in GREEN SERVICES's work products, which have not been previously paid to GREEN SERVICES.

2.8 Invoices shall be submitted to:

DNREC-SIRS  
391 Lukens Drive  
New Castle, Delaware 19720  
Attn: Project Manager

**3. Responsibilities of GREEN SERVICES.**

3.1 GREEN SERVICES shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by GREEN SERVICES, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, GREEN SERVICES shall follow practices consistent with generally accepted professional and technical standards. GREEN SERVICES shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, GREEN SERVICES shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. GREEN SERVICES shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by GREEN SERVICES's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the GREEN SERVICES to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. GREEN SERVICES will not produce a work product that violates or infringes on any copyright or patent rights. GREEN SERVICES shall, without additional compensation, correct or revise any errors or omissions in its work products. GREEN SERVICES shall, without additional compensation, correct or revise any errors or omissions in its work products resulting from violations or infringements on any copyright or patent right.

3.3 Permitted or required approval by Delaware of any products or services furnished by GREEN SERVICES shall not in any way relieve GREEN SERVICES of responsibility for the professional and technical accuracy and adequacy of its work. DNREC's review, approval, acceptance, or payment for any of GREEN SERVICES's

services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and GREEN SERVICES shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DNREC caused by GREEN SERVICES's performance or failure to perform under this Agreement.

3.4 GREEN SERVICES shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by GREEN SERVICES's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project	Team	Title	% of Project Involvement
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The Project Manager, and all of the GREEN SERVICES's associates and employees who will perform services on any specific project under this Contract, are subject to the review and approval of DNREC, where such approval shall not be unreasonably withheld.

3.5 On any specific project, the designation of persons for each position performing services called for by this Agreement is subject to review and approval by DNREC. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, GREEN SERVICES will notify DNREC immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by DNREC. If GREEN SERVICES fails to make a required replacement within 30 days, Delaware may terminate this Agreement, or any Addendum hereto, for default. Upon receipt of written notice from DNREC that an employee of GREEN SERVICES is unsuitable to Delaware for good cause, GREEN SERVICES shall remove such employee from the performance of services and substitute, with DNREC's approval, in his/her place a suitable employee, the approval of which by DNREC shall not be unreasonably withheld.

3.6 GREEN SERVICES shall furnish to DNREC's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 GREEN SERVICES agrees that its officers and employees will cooperate with DNREC in the performance of services under any Addendum to this Agreement and will be available for consultation with DNREC at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 GREEN SERVICES has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by DNREC or any other political subdivision of DNREC.

3.9 GREEN SERVICES will not use DNREC's name, either express or implied, in any of its advertising or sales materials without DNREC's express written consent.

3.10 The rights and remedies of DNREC provided for in this Agreement are in addition to any other rights and remedies provided by law.

#### **4. Time Schedule.**

4.1 A project schedule for a specific project may be included in the Addendum.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by DNREC.

4.3 In the event that GREEN SERVICES fails to complete the project or any phase thereof within the time specified in any Addendum to this Agreement, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in any Addendum to this Agreement or any extensions thereof, DNREC shall suspend the payments scheduled as set forth in the Addendum.

#### **5. State Responsibilities.**

5.1 In connection with GREEN SERVICES's provision of the Services, DNREC shall perform those tasks and fulfill those responsibilities specified in any Agreement, or any Addendum hereto, which this applies.

5.2 DNREC agrees that its officers and employees will cooperate with GREEN SERVICES in the performance of services under this Agreement and will be available for consultation with GREEN SERVICES at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by GREEN SERVICES under this Agreement shall be subject to review for compliance with the terms of this Agreement by DNREC's designated representatives. DNREC representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform GREEN SERVICES by written notice before the effective date of each such delegation.

5.4 The review comments of DNREC's designated representatives may be reported in writing as needed to GREEN SERVICES. It is understood that DNREC's representatives' review comments do not relieve GREEN SERVICES from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 DNREC shall, without charge, furnish to or make available for examination or use by GREEN SERVICES as it may request, any data which DNREC has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by any Addendum to this Agreement.

GREEN SERVICES shall return any original data provided by DNREC.

5.6 DNREC shall assist GREEN SERVICES in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 GREEN SERVICES will not be responsible for accuracy of information or data supplied by DNREC or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 DNREC agrees not to use GREEN SERVICES's name, either express or implied, in any of its advertising or sales materials. GREEN SERVICES reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

## **6. Work Product.**

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by GREEN SERVICES for DNREC relating to the services to be performed hereunder and not otherwise used or useful in connection with services previously rendered or services to be rendered by the GREEN SERVICES to parties other than DNREC shall become the property of DNREC and shall be delivered to DNREC's designated representative upon completion or termination of this Agreement, whichever comes first. GREEN SERVICES shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by DNREC. DNREC shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 GREEN SERVICES retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with DNREC's rights to the materials, information and documents developed in performing the project. Upon final payment, DNREC shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which GREEN SERVICES retains title, whether individually by GREEN SERVICES or jointly with DNREC. Any and all source code developed in connection with the services provided will be provided to DNREC, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 In no event shall GREEN SERVICES be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, GREEN SERVICES shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by GREEN SERVICES prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of GREEN SERVICES even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. DNREC's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

## **7. Confidential Information.**

To the extent permissible under 29 Del. C. § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

## **8. Warranty.**

8.1 GREEN SERVICES warrants that its services will be performed in a good and workmanlike manner in accordance with the standard of care exercised by professionals performing similar services in similar circumstances. GREEN SERVICES agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by GREEN SERVICES for DNREC in connection with the provision of the Services, GREEN SERVICES shall pass through or assign to DNREC the rights GREEN SERVICES obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

## **9. Indemnification; Limitation of Liability.**

9.1 GREEN SERVICES shall indemnify and hold harmless the DNREC, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the GREEN SERVICES, its agents or employees, or (B) GREEN SERVICES's breach of any material provision of this Agreement not cured after

due notice and opportunity to cure, provided as to (A) or (B) that (i) GREEN SERVICES shall have been notified promptly in writing by DNREC of any notice of such claim; and (ii) GREEN SERVICES shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If DNREC promptly notifies GREEN SERVICES in writing of a third party claim against DNREC that any Deliverable infringes a copyright or a trade secret of any third party, GREEN SERVICES will defend such claim at its expense and will pay any costs or damages that may be finally awarded against DNREC. GREEN SERVICES will not indemnify DNREC, however, if the claim of infringement is caused by (1) DNREC's misuse or modification of the Deliverable; (2) DNREC's failure to use corrections or enhancements made available by GREEN SERVICES; (3) DNREC's use of the Deliverable in combination with any product or information not owned or developed by GREEN SERVICES; (4) DNREC's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in GREEN SERVICES's opinion is likely to be, held to be infringing, GREEN SERVICES shall at its expense and option either (a) procure the right for DNREC to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute DNREC's sole and exclusive remedies and GREEN SERVICES's entire liability with respect to infringement.

9.3 DNREC agrees that GREEN SERVICES' total liability to DNREC for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or GREEN SERVICES negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to GREEN SERVICES.

In no event shall GREEN SERVICES be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought, and even if GREEN SERVICES has been advised of the likelihood of such damages.

## **10. Employees.**

10.1 GREEN SERVICES has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by GREEN SERVICES in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor DNREC's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during

their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

10.3 Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of GREEN SERVICES who will be assigned to this project.

## **11. Independent Contractor.**

11.1 It is understood that in the performance of the services herein provided for, GREEN SERVICES shall be, and is, an independent contractor, and is not an agent or employee of DNREC and shall furnish such services in its own manner and method except as required by this Agreement. GREEN SERVICES shall be solely responsible for, and shall indemnify, defend and save DNREC harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 GREEN SERVICES acknowledges that GREEN SERVICES and any subcontractors, agents or employees employed by GREEN SERVICES shall not, under any circumstances, be considered employees of DNREC, and that they shall not be entitled to any of the benefits or rights afforded employees of DNREC, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. DNREC will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of DNREC or any of its officers, employees or other agents.

11.3 GREEN SERVICES shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, GREEN SERVICES has no authority to bind or commit DNREC. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

## **12. Suspension.**

12.1 DNREC may suspend performance by GREEN SERVICES under this Agreement, or any Addendum hereto, for such period of time as DNREC, at its sole discretion, may prescribe by providing written notice to GREEN SERVICES at least thirty (30) working days prior to the date on which DNREC wishes to suspend. Upon such suspension, DNREC shall pay GREEN SERVICES its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. GREEN SERVICES shall not perform further work under this

Agreement after the effective date of suspension. GREEN SERVICES shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from DNREC to resume performance.

12.2 In the event DNREC suspends performance by GREEN SERVICES for any cause other than the error or omission of the GREEN SERVICES, for an aggregate period in excess of 30 days, GREEN SERVICES shall be entitled to an equitable adjustment of the compensation payable to GREEN SERVICES under this Agreement to reimburse GREEN SERVICES for additional costs occasioned as a result of such suspension of performance by DNREC based on appropriated funds and approval by DNREC.

### **13. Termination.**

13.1 This Agreement, or any Addendum hereto, may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2 This Agreement, or any Addendum hereto, may be terminated in whole or in part by DNREC for its convenience, but only after GREEN SERVICES is given:

- a. Not less than thirty (30) calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

13.3 If termination for default is effected by DNREC, DNREC will pay GREEN SERVICES that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to GREEN SERVICES at the time of termination may be adjusted to the extent of any additional costs occasioned to DNREC by reason of GREEN SERVICES's default.
- c. Upon termination for default, DNREC may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event GREEN SERVICES shall cease conducting business, DNREC shall have the right to make an unsolicited offer of employment to any employees of GREEN SERVICES assigned to the performance of the Agreement, or any Addendum hereto, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of GREEN SERVICES to fulfill contractual obligations it is determined that GREEN SERVICES has not so failed, the termination shall be deemed to have been effected for the convenience of DNREC.

13.5 The rights and remedies of DNREC and GREEN SERVICES provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 Gratuities.

13.6.1 DNREC may, by written notice to GREEN SERVICES, terminate this Agreement, or any Addendum hereto, if it is found after notice and hearing by DNREC that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by GREEN SERVICES or any agent or representative of GREEN SERVICES to any officer or employee of DNREC with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement, or any Addendum hereto, is terminated as provided in 13.6.1 hereof, DNREC shall be entitled to pursue the same remedies against GREEN SERVICES it could pursue in the event of a breach of this Agreement by GREEN SERVICES.

13.6.3 The rights and remedies of DNREC provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**14. Severability.**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

**15. Assignment; Subcontracts.**

15.1 Any attempt by GREEN SERVICES to assign or otherwise transfer any interest in this Agreement without the prior written consent of DNREC shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by GREEN SERVICES, without prior written approval of DNREC.

15.3 Approval by DNREC of GREEN SERVICES's request to subcontract or acceptance of or payment for subcontracted work by DNREC shall not in any way relieve GREEN SERVICES of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 GREEN SERVICES shall be and remain liable for all damages to DNREC caused by negligent performance or non-performance of work under this Agreement by GREEN SERVICES, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by DNREC's approval of the GREEN SERVICES's request to subcontract.

**16. Force Majeure.**

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

**17. Non-Appropriation of Funds.**

17.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated DNREC may immediately terminate this Agreement, or any Addendum hereto, and absent such action this Agreement, or any Addendum hereto, shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and DNREC's obligations under it shall be extinguished at the end of the fiscal year in which DNREC fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

**18. State of Delaware Business License.**

GREEN SERVICES and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

**19. Complete Agreement.**

19.1 This agreement and its Appendices shall constitute the entire agreement between DNREC and GREEN SERVICES with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations,

communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

19.3 GREEN SERVICES may not order any product requiring a purchase order prior to DNREC's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

## **20. Miscellaneous Provisions.**

20.1 In performance of this Agreement, GREEN SERVICES shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. GREEN SERVICES shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement, or any Addendum hereto, may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement, or any Addendum hereto, shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement, or any Addendum hereto, shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 GREEN SERVICES covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. GREEN SERVICES further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 GREEN SERVICES acknowledges that DNREC has an obligation to ensure that public funds are not used to subsidize private discrimination. GREEN SERVICES recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other

protected status, DNREC may declare GREEN SERVICES in breach of the Agreement, terminate the Agreement, and designate GREEN SERVICES as non-responsible.

20.6 GREEN SERVICES warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, DNREC shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 GREEN SERVICES shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of DNREC may inspect or audit GREEN SERVICES's performance and records pertaining to this Agreement at the GREEN SERVICES business office during normal business hours.

## **21. Insurance.**

21.1 GREEN SERVICES shall maintain the following insurance during the term of this Agreement:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
- B. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
- F. Medical/Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; or
- G. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, or
- H. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

DNREC shall not be named as an additional insured on any insurance policy obtained by GREEN SERVICES or any of GREEN SERVICES subcontractors pursuant to this Agreement.

21.2 GREEN SERVICES shall provide forty-five (45) days written notice of cancellation or material change of any policies.

21.3 Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State.

21.4 In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

**22. Assignment of Antitrust Claims.**

As consideration for the award and execution of this contract by the State, GREEN SERVICES hereby grants, conveys, sells, assigns, and transfers to DNREC all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this contract.

**23. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. GREEN SERVICES consents to jurisdiction venue in the State of Delaware.

**24. Notices.**

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

TO DELAWARE: Timothy Ratsep, Environmental Program Administrator  
DNREC-SIRS  
391 Lukens Drive  
New Castle, Delaware 19720

TO GREEN SERVICES: Mr. Timothy Niblett  
President  
GREEN SERVICES, Inc.  
511 Bel Adelaide Lane  
Bel Air, MD 21015

**SIGNATURE PAGE TO FOLLOW**

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Collin P. O'Mara, Secretary  
Delaware Department of Natural Resources  
and Environmental Control

Date: 2-15-12

Date: 2-15-12

**GREEN SERVICES**

\_\_\_\_\_  
Witness

Name: \_\_\_\_\_

Date: 1/20/2012

Date: 1/20/2012



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
& ENVIRONMENTAL CONTROL  
DIVISION OF WASTE AND HAZARDOUS SUBSTANCES  
391 LUKENS DRIVE  
NEW CASTLE, DELAWARE 19720-2774

SITE INVESTIGATION &  
RESTORATION SECTION

TELEPHONE: (302) 395 - 2600  
FAX No.: (302) 395 - 2601

February 6, 2012

Mr. Jose Suarez  
National Contracts Officer  
Vironex, Inc.  
3 Owls Nest Road  
Wilmington, DE 19807

**RE: Signed Direct-Push Drilling Services Contract #NAT-11169 DPDS**

Dear Mr. Suarez:

Enclosed please find a signed copy of Contract #NAT-11169 DPDS. The enclosed copy is for your records. Thank you for your interest in the contract and DNREC-SIRS looks forward to working with you on this contract. Should you have any questions please feel free to contact me at 302-395-2600.

Sincerely,

Robert C. Asreen, Jr.  
Hydrologist

RCA:tlw  
RCA12004.doc  
AD 003 I B 1

Enclosure: Professional Services Agreement Contract #NAT-11169 DPDS Direct-Push  
Drilling Services

pc: Timothy Ratsep, Environmental Program Administrator, DNREC-SIRS  
Paul Will, Program Manager, DNREC-SIRS  
Elizabeth M. LaSorte, Paralegal, DNREC-SIRS  
Robert S. Kuehl, Deputy Attorney General

*Delaware's good nature depends on you!*

Printed on  
Recycled Paper

**PROFESSIONAL SERVICES AGREEMENT**  
**Contract #NAT-11169 DPDS**  
**Direct-Push Drilling Services**

This Agreement ("Agreement") is entered into as of January 1, 2012 ("Effective Date") and will end on December 31, 2015, by and between the State of Delaware, Department of Natural Resources and Environmental Control ("DNREC"), and VIRONEX, a corporation, with offices at 3 Owls Nest Road, Wilmington, DE 19807 ("VIRONEX").

WHEREAS, Delaware desires to obtain certain professional services regarding Environmental Investigation and Remediation Services; and

WHEREAS, VIRONEX desires to provide such services to DNREC on the terms set forth below;

WHEREAS, DNREC and VIRONEX represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, DNREC and VIRONEX agree as follows:

**1. Services.**

1.1 This Agreement is a multiple source contract for professional services. VIRONEX is one of several firms that DNREC has entered into agreements with under Contract No. NAT-11169 to provide professional services to DNREC, consisting of Direct-Push Drilling Services, on specific projects. Entering into this Agreement entitles VIRONEX to receive notices from DNREC during the Contract period when DNREC requires professional services on any specific project. The notice will request that VIRONEX submit a proposal to DNREC for the professional services requested in the notice. The notice may be sent, at DNREC's discretion, to more than one firm under Contract No. NAT-11169 DPDS. VIRONEX's specific project proposal shall be based on the list of prices established as part of this Agreement. DNREC, at its discretion, will select a specific project proposal from one of the vendors that received the notice. If VIRONEX's proposal is selected, VIRONEX will be invited to enter into negotiations to conclude an agreement to provide professional services on the specific project. In the negotiations, DNREC may request that VIRONEX use certain positions, or place certain individuals in the positions, to provide the professional services called for in the notice. If DNREC and VIRONEX are able to reach an agreement on the project specific proposal, it shall be set forth in an Addendum which shall be attached to this Agreement and made a part hereof. As used hereinafter, the term "Agreement" shall include all Addenda entered into hereunder, unless the two terms are used separately and the context indicates otherwise.

1.2 VIRONEX shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.3 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Delaware's request for proposals; and (c) VIRONEX response to the request for proposals. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.4 The Request for Proposal, Proposal, Specification or Scope of Work, Special Instructions, Purchase Order, Addenda for specific projects, and Agreement shall be a part of, and constitute the entire Agreement entered into by the State of Delaware and VIRONEX. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof. In the event there is any discrepancy between any of these Contract documents, the following order of documents governs so that the former prevails over the latter:

- Contract
- Addenda for specific projects
- Request for Proposal
- Specifications or Scope of Work
- Proposal
- Purchase Order
- Special Instructions

1.5 Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by VIRONEX shall be furnished without the written authorization of DNREC. When DNREC desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify VIRONEX, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by VIRONEX for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.6 VIRONEX will not be required to make changes to its scope of work that result in VIRONEX's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

## **2. Payment for Services and Expenses.**

2.1 The term of the initial contract shall be from January 1, 2012 through December 31, 2015. This Agreement may be renewed for two (2) additional one (1) year periods under the same terms and conditions.

2.2 Delaware will pay VIRONEX for the performance of services on a specific project described in the Addendum for that project. DNREC has no obligation to pay VIRONEX for any services under this Agreement unless an Addendum has been signed by DNREC and VIRONEX for a specific project, and DNREC has issued a purchase order for the services called for in the Addendum.

2.3 Each specific project Addendum entered into under this Agreement shall be the subject of a separate purchase order. It is expressly understood that the work defined in any Addendum to this Agreement must be completed by VIRONEX and it shall be VIRONEX's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee established in the Addendum. DNREC's total liability for all charges for services that may become due under any Addendum to this Agreement is limited to the total maximum expenditure(s) authorized in DNREC's purchase order(s) to VIRONEX for the specific project Addendum, including any amendments to the purchase order based on additional work required by any change order.

2.4 VIRONEX shall submit monthly invoices to DNREC in sufficient detail to support the services provided during the previous month. DNREC agrees to pay those invoices within thirty (30) days of receipt. In the event DNREC disputes a portion of an invoice, DNREC agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide VIRONEX a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle VIRONEX to charge interest on the overdue portion at the lower of 1.0% per month or 12% per annum. All payments should be sent to VIRONEX, 3 Owls Nest Road, Wilmington, DE 19807.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by VIRONEX. If an Appendix specifically provides for expense reimbursement, VIRONEX shall be reimbursed only for reasonable expenses incurred by VIRONEX in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 DNREC shall subtract from any payment made to VIRONEX all damages, costs and expenses caused by VIRONEX's negligence, resulting from or arising out of errors or omissions in VIRONEX's work products, which have not been previously paid to VIRONEX.

2.8 Invoices shall be submitted to:

DNREC-SIRS  
391 Lukens Drive  
New Castle, Delaware 19720  
Attn: Project Manager

**3. Responsibilities of VIRONEX.**

3.1 VIRONEX shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by VIRONEX, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, VIRONEX shall follow practices consistent with generally accepted professional and technical standards. VIRONEX shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, VIRONEX shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. VIRONEX shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by VIRONEX's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the VIRONEX to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. VIRONEX will not produce a work product that violates or infringes on any copyright or patent rights. VIRONEX shall, without additional compensation, correct or revise any errors or omissions in its work products. VIRONEX shall, without additional compensation, correct or revise any errors or omissions in its work products resulting from violations or infringements on any copyright or patent right.

3.3 Permitted or required approval by Delaware of any products or services furnished by VIRONEX shall not in any way relieve VIRONEX of responsibility for the professional and technical accuracy and adequacy of its work. DNREC's review, approval, acceptance, or payment for any of VIRONEX's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and VIRONEX shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DNREC caused by VIRONEX's performance or failure to perform under this Agreement.

3.4 VIRONEX shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the

Project Manager, or by VIRONEX's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project	Team	Title	% of Project Involvement
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The Project Manager, and all of the VIRONEX's associates and employees who will perform services on any specific project under this Contract, are subject to the review and approval of DNREC, where such approval shall not be unreasonably withheld.

3.5 On any specific project, the designation of persons for each position performing services called for by this Agreement is subject to review and approval by DNREC. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, VIRONEX will notify DNREC immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by DNREC. If VIRONEX fails to make a required replacement within 30 days, Delaware may terminate this Agreement, or any Addendum hereto, for default. Upon receipt of written notice from DNREC that an employee of VIRONEX is unsuitable to Delaware for good cause, VIRONEX shall remove such employee from the performance of services and substitute, with DNREC's approval, in his/her place a suitable employee, the approval of which by DNREC shall not be unreasonably withheld.

3.6 VIRONEX shall furnish to DNREC's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 VIRONEX agrees that its officers and employees will cooperate with DNREC in the performance of services under any Addendum to this Agreement and will be available for consultation with DNREC at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 VIRONEX has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by DNREC or any other political subdivision of DNREC.

3.9 VIRONEX will not use DNREC's name, either express or implied, in any of its advertising or sales materials without DNREC's express written consent.

3.10 The rights and remedies of DNREC provided for in this Agreement are in addition to any other rights and remedies provided by law.

#### **4. Time Schedule.**

4.1 A project schedule for a specific project may be included in the Addendum.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by DNREC.

4.3 In the event that VIRONEX fails to complete the project or any phase thereof within the time specified in any Addendum to this Agreement, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in any Addendum to this Agreement or any extensions thereof, DNREC shall suspend the payments scheduled as set forth in the Addendum.

## **5. State Responsibilities.**

5.1 In connection with VIRONEX's provision of the Services, DNREC shall perform those tasks and fulfill those responsibilities specified in any Agreement, or any Addendum hereto, which this applies.

5.2 DNREC agrees that its officers and employees will cooperate with VIRONEX in the performance of services under this Agreement and will be available for consultation with VIRONEX at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by VIRONEX under this Agreement shall be subject to review for compliance with the terms of this Agreement by DNREC's designated representatives. DNREC representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform VIRONEX by written notice before the effective date of each such delegation.

5.4 The review comments of DNREC's designated representatives may be reported in writing as needed to VIRONEX. It is understood that DNREC's representatives' review comments do not relieve VIRONEX from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 DNREC shall, without charge, furnish to or make available for examination or use by VIRONEX as it may request, any data which DNREC has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by any Addendum to this Agreement.

VIRONEX shall return any original data provided by DNREC.

5.6 DNREC shall assist VIRONEX in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 VIRONEX will not be responsible for accuracy of information or data supplied by DNREC or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 DNREC agrees not to use VIRONEX's name, either express or implied, in any of its advertising or sales materials. VIRONEX reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

5.9 DNREC will mark each boring location and clear such boring locations through "Miss Utility" and/or a private mark out to ensure that they are free of subsurface utilities and/or structures. VIRONEX will not be liable for damages to subsurface utilities and/or structures at the marked locations.

5.10 If injections are required as part of the specifications of the direct-push drilling services contract, VIRONEX will be responsible for implanting this work as per remedial design (or work plan) specifications provided by DNREC. VIRONEX is not responsible for any remediation design as well as for any remediation results or impact to existing site conditions while implementing the remedy as per the remedial design (or work plan) specifications provided by DNREC.

## **6. Work Product.**

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by VIRONEX for DNREC relating to the services to be performed hereunder and not otherwise used or useful in connection with services previously rendered or services to be rendered by the VIRONEX to parties other than DNREC shall become the property of DNREC and shall be delivered to DNREC's designated representative upon completion or termination of this Agreement, whichever comes first. VIRONEX shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by DNREC. DNREC shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 VIRONEX retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with DNREC's rights to the materials, information and documents developed in performing the project. Upon final payment, DNREC shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which VIRONEX retains title, whether individually by VIRONEX or jointly with DNREC. Any and all source code developed in connection with the services provided will be provided to DNREC, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 In no event shall VIRONEX be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, VIRONEX shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by VIRONEX prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of VIRONEX even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. DNREC's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

## **7. Confidential Information.**

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

## **8. Warranty.**

8.1 VIRONEX warrants that its services will be performed in a good and workmanlike manner in accordance with the standard of care exercised by professionals performing similar services in similar circumstances. VIRONEX agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by VIRONEX for DNREC in connection with the provision of the Services, VIRONEX shall pass through or assign to DNREC the rights VIRONEX obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

## **9. Indemnification; Limitation of Liability.**

9.1 VIRONEX shall indemnify and hold harmless the DNREC, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the VIRONEX, its agents or employees, or (B) VIRONEX's breach of any material provision of this Agreement not cured after due

notice and opportunity to cure, provided as to (A) or (B) that (i) VIRONEX shall have been notified promptly in writing by DNREC of any notice of such claim; and (ii) VIRONEX shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If DNREC promptly notifies VIRONEX in writing of a third party claim against DNREC that any Deliverable infringes a copyright or a trade secret of any third party, VIRONEX will defend such claim at its expense and will pay any costs or damages that may be finally awarded against DNREC. VIRONEX will not indemnify DNREC, however, if the claim of infringement is caused by (1) DNREC's misuse or modification of the Deliverable; (2) DNREC's failure to use corrections or enhancements made available by VIRONEX; (3) DNREC's use of the Deliverable in combination with any product or information not owned or developed by VIRONEX; (4) DNREC's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in VIRONEX's opinion is likely to be, held to be infringing, VIRONEX shall at its expense and option either (a) procure the right for DNREC to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute DNREC's sole and exclusive remedies and VIRONEX's entire liability with respect to infringement.

9.3 DNREC agrees that VIRONEX' total liability to DNREC for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or VIRONEX negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to VIRONEX.

In no event shall VIRONEX be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought, and even if VIRONEX has been advised of the likelihood of such damages.

## **10. Employees.**

10.1 VIRONEX has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by VIRONEX in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor DNREC's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For

purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

10.3 Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of VIRONEX who will be assigned to this project.

## **11. Independent Contractor.**

11.1 It is understood that in the performance of the services herein provided for, VIRONEX shall be, and is, an independent contractor, and is not an agent or employee of DNREC and shall furnish such services in its own manner and method except as required by this Agreement. VIRONEX shall be solely responsible for, and shall indemnify, defend and save DNREC harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 VIRONEX acknowledges that VIRONEX and any subcontractors, agents or employees employed by VIRONEX shall not, under any circumstances, be considered employees of DNREC, and that they shall not be entitled to any of the benefits or rights afforded employees of DNREC, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. DNREC will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of DNREC or any of its officers, employees or other agents.

11.3 VIRONEX shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, VIRONEX has no authority to bind or commit DNREC. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

## **12. Suspension.**

12.1 DNREC may suspend performance by VIRONEX under this Agreement, or any Addendum hereto, for such period of time as DNREC, at its sole discretion, may prescribe by providing written notice to VIRONEX at least thirty (30) working days prior to the date on which DNREC wishes to suspend. Upon such suspension, DNREC shall pay VIRONEX its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. VIRONEX shall not perform further work under this Agreement after the effective date of suspension. VIRONEX shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from DNREC to resume performance.

12.2 In the event DNREC suspends performance by VIRONEX for any cause other than the error or omission of the VIRONEX, for an aggregate period in excess of 30 days, VIRONEX shall be entitled to an equitable adjustment of the compensation payable to VIRONEX under this Agreement to reimburse VIRONEX for additional costs occasioned as a result of such suspension of performance by DNREC based on appropriated funds and approval by DNREC.

### **13. Termination.**

13.1 This Agreement, or any Addendum hereto, may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2 This Agreement, or any Addendum hereto, may be terminated in whole or in part by DNREC for its convenience, but only after VIRONEX is given:

- a. Not less than thirty (30) calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

13.3 If termination for default is effected by DNREC, DNREC will pay VIRONEX that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to VIRONEX at the time of termination may be adjusted to the extent of any additional costs occasioned to DNREC by reason of VIRONEX's default.
- c. Upon termination for default, DNREC may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event VIRONEX shall cease conducting business, DNREC shall have the right to make an unsolicited offer of employment to any employees of VIRONEX assigned to the performance of the Agreement, or any Addendum hereto, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of VIRONEX to fulfill contractual obligations it is determined that VIRONEX has not so failed, the termination shall be deemed to have been effected for the convenience of DNREC.

13.5 The rights and remedies of DNREC and VIRONEX provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 **Gratuities.**

13.6.1 DNREC may, by written notice to VIRONEX, terminate this Agreement, or any Addendum hereto, if it is found after notice and hearing by DNREC that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by VIRONEX or any agent or representative of VIRONEX to any officer or employee of DNREC with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement, or any Addendum hereto, is terminated as provided in 13.6.1 hereof, DNREC shall be entitled to pursue the same remedies against VIRONEX it could pursue in the event of a breach of this Agreement by VIRONEX.

13.6.3 The rights and remedies of DNREC provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**14. Severability.**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

**15. Assignment; Subcontracts.**

15.1 Any attempt by VIRONEX to assign or otherwise transfer any interest in this Agreement without the prior written consent of DNREC shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by VIRONEX, without prior written approval of DNREC.

15.3 Approval by DNREC of VIRONEX's request to subcontract or acceptance of or payment for subcontracted work by DNREC shall not in any way relieve VIRONEX of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 VIRONEX shall be and remain liable for all damages to DNREC caused by negligent performance or non-performance of work under this Agreement by VIRONEX, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by DNREC's approval of the VIRONEX's request to subcontract.

**16. Force Majeure.**

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

**17. Non-Appropriation of Funds.**

17.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated DNREC may immediately terminate this Agreement, or any Addendum hereto, and absent such action this Agreement, or any Addendum hereto, shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and DNREC's obligations under it shall be extinguished at the end of the fiscal year in which DNREC fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

**18. State of Delaware Business License.**

VIRONEX and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

**19. Complete Agreement.**

19.1 This agreement and its Appendices shall constitute the entire agreement between DNREC and VIRONEX with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions

of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

19.3 VIRONEX may not order any product requiring a purchase order prior to DNREC's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

## **20. Miscellaneous Provisions.**

20.1 In performance of this Agreement, VIRONEX shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. VIRONEX shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement, or any Addendum hereto, may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement, or any Addendum hereto, shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement, or any Addendum hereto, shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 VIRONEX covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. VIRONEX further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 VIRONEX acknowledges that DNREC has an obligation to ensure that public funds are not used to subsidize private discrimination. VIRONEX recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, DNREC may declare VIRONEX in breach of the Agreement, terminate the Agreement, and designate VIRONEX as non-responsible.

20.6 VIRONEX warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, DNREC shall have the right to annul this contract without liability or at its

discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 VIRONEX shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of DNREC may inspect or audit VIRONEX's performance and records pertaining to this Agreement at the VIRONEX business office during normal business hours.

## **21. Insurance.**

21.1 VIRONEX shall maintain the following insurance during the term of this Agreement:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
- B. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
- C. Medical/Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; or
- D. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, or
- E. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

DNREC shall not be named as an additional insured on any insurance policy obtained by VIRONEX or any of VIRONEX subcontractors pursuant to this Agreement.

21.2 VIRONEX shall provide forty-five (45) days written notice of cancellation or material change of any policies.

21.3 Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State.

21.4 In no event shall the State of Delaware be named as an additional insured on any

policy required under this agreement.

**22. Assignment of Antitrust Claims.**

As consideration for the award and execution of this contract by the State, VIRONEX hereby grants, conveys, sells, assigns, and transfers to DNREC all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this contract.

**23. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. VIRONEX consents to jurisdiction venue in the State of Delaware.

**24. Notices.**

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

TO DELAWARE: Timothy Ratsep, Environmental Program Administrator  
DNREC-SIRS  
391 Lukens Drive  
New Castle, Delaware 19720

TO VIRONEX: Mr. Jose Suarez  
National Contracts Officer  
Vironex, Inc.  
3 Owls Nest Road  
Wilmington, DE 19807

**SIGNATURE PAGE TO FOLLOW**

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**

Witness

Collin P. O'Mara, Secretary  
Delaware Department of Natural Resources  
and Environmental Control

Date:

1/31/2012

Date:

1/31/12

**VIRONEX**

Witness Alan Livadas

Name: Jose Suarez

Date:

January 20, 2012

Date:

January 20, 2012