

EXHIBIT A

AGREEMENT

THIS AGREEMENT ("Agreement") is entered into this ____ day of _____, 2003 by and between Thermal Remediation Services, Inc., a Washington State corporation ("Contractor"), and The Lockformer Company, a division of Met-Coil Systems Corporation, a Delaware corporation ("Owner").

RECITALS:

- A. Owner operates its manufacturing business from premises located in DuPage County, Illinois commonly known as 711 Ogden Avenue, Lisle, Illinois which consists of a manufacturing and office building (ABusiness Premises@) as well as a vacant parcel of land adjacent to and contiguous with its Business Premises (collectively, the Business Premises and other real property of Owner is for convenience referred to as "Premises");
- B. Prior to this Agreement the Premises were contaminated with certain Hazardous Materials as hereinafter defined, specifically including trichloroethene ("TCE");
- C. On or about October 4, 2001 the United States Environmental Protection Agency ("USEPA") issued an order to Owner requiring the remediation of the Premises ("106 Order");
- D. The Illinois Environmental Protection Agency ("IEPA") has also required remediation of the Premises;
- E. The Owner has retained the services of Clayton Group Services, Inc. ("Clayton") as its environmental consultant and for remediation services to be performed on the Premises;
- F. Contractor is familiar with Clayton and has previously performed work on other projects as a subcontractor of Clayton;
- G. The USEPA has approved the Lockformer Work Plan prepared by Clayton and submitted by Clayton on behalf of Owner pursuant to the 106 Order ("Work Plan");
- H. The Work Plan requires electric resistance heating ("ERH") of a portion of the Premises defined in the Work Plan in order to achieve remediation objectives;
- I. The Work Plan requires other remediation work to be performed on the Premises and Owner has retained Clayton to perform certain remediation work, in addition to performing those portions of the Work which are required by the Proposal (as hereinafter defined) to be performed by Owner;
- J. Contractor consulted with Clayton in the preparation of the Work Plan and is familiar with the ERH portions of the Work Plan and the remediation procedures and requirements described in the Work Plan to be performed by ERH technology;
- K. Contractor is aware of the existence of contamination on the Premises and acknowledges that Contractor is engaged in the business of remediation and is therefore familiar with the risks of performing work on contaminated property;
- L. Contractor has submitted to Owner a certain Proposal for Electrical Resistance Heating Remediation, Lockformer Facility, Lisle, Illinois dated February __, 2003 ("Proposal") a copy of which is attached hereto as Exhibit A and incorporated into this Agreement by

- reference as though fully set forth herein;
- M. This Agreement and the Proposal, together with any additional instruments so stating which are executed by or on behalf of the parties hereto are collectively referred to and included as the "Contract Documents";
 - N. The Proposal describes the work to be performed by Contractor (as also described in more general terms in the Work Plan) in order to assist Owner's compliance with the 106 Order ("Work");
 - O. In order to proceed expeditiously on the remediation work on the Premises required by the USEPA, Owner has previously ordered certain materials through Contractor to be used in the performance of Contractor's work, as set forth in Exhibit B attached hereto and incorporated herein by reference;
 - P. The Owner desires to retain the Contractor for purposes of completion of all Work in accordance with and subject to the terms of this Agreement; and
 - Q. The Contractor wishes to undertake the Work and has previously commenced preparation for remediation activities on the Premises.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENTS:

1. Recitals. The foregoing Recitals are hereby incorporated into this Agreement and made a part hereof by reference.
2. One Document, Conflict. This Agreement, together with the Proposal and all other Contract Documents, shall be collectively deemed to be one agreement unless the context requires otherwise. This Agreement and Exhibit A shall be considered a single document unless the context requires otherwise. In the event of any conflict between the terms of this Agreement and the terms of any of the other Contract Documents, notwithstanding anything to the contrary in such other Contract Documents, the terms of this Agreement shall govern, control and prevail to the extent of such conflict and specifically, this Agreement (including Exhibit A) governs any work orders or assignments, written or oral, that Owner may issue to Contractor or proposals of Contractor. Conflicting provisions within the Contract Documents shall prevail in the following descending order of precedence: a) this Agreement; b) the most recent proposal or change order accepted by the Owner; c) the most recent work order provided to Contractor by Clayton; d) any document submitted to Owner by Contractor bearing the signature of any of the Contractor's officers, including without limitation the current officers, namely: Michael Dodson, Greg Beyke and Jerry Wolf.
3. Permits. Contractor represents, warrants and agrees that it is or that prior to the commencement of any work will become duly licensed to do business in the state of Illinois

and in the Village of Lisle, Illinois ("Village") to the extent required by applicable law. Contractor further represents, warrants and agrees that it holds all licenses, permits, certifications or other special licenses necessary to perform the Work contemplated by this Agreement, and that any subcontractor retained by Contractor to carry out any portion of the Work is in full compliance with this paragraph of the Agreement. Provided the foregoing provisions of this paragraph are true and correct, Owner, directly or through Clayton, will obtain any permits required by the Village in order for Contractor to commence the Work, further provided, however that Contractor shall cooperate with Owner and Clayton and shall assist Owner at no charge up to and including 8 hours of labor and \$100 in obtaining Village electrical building permits. For any other work required of Contractor by Owner beyond that set forth in the Proposal, except to the extent that the Owner undertakes such action and provides appropriate notice thereof to Contractor, the Contractor shall take all actions necessary to timely obtain any and all permits, licenses and approvals necessary to performance of the Work. Owner shall pay for such permits, licenses and approvals and shall compensate Contractor for its reasonable expense in obtaining such permits, licenses and approvals.

4. **Suitability of Site** Contractor acknowledges that Contractor has been permitted by Owner to inspect and evaluate the Premises and all Contract Documents as well as local ordinances, laws, rules and regulations applicable to the Work to Contractor's satisfaction and no limitation has been placed upon the number or type of inspections conducted, the documents to be reviewed by the Contractor, or Contractor's access to Clayton for the purpose of obtaining environmental information regarding the Premises. Contractor acknowledges that its questions concerning the Premises and its condition, including without limitation its physical and environmental condition, have been answered to Contractor's satisfaction and that Contractor has consulted with Clayton in the formulation of the Work Plan. Contractor further represents that it has engaged in the performance of remediation projects similar to the Work contemplated by the Agreement and is familiar with such work. Contractor represents and warrants that it is familiar with, or prior to commencing the Work, will become familiar with the applicable building code requirements for the governmental entities having jurisdiction over the Premises, including without limitation the Village. Contractor states and covenants that to the best of Contractor's professional knowledge and experience the Premises is suitable for the performance of the Work and its completion within the time frame set forth in the Proposal and in this Agreement. It is understood that during the performance of the Work, Contractor and its Subcontractors are likely come into contact with Hazardous Materials (as hereinafter defined). Contractor covenants and agrees for itself and for any agent or employee of Contractor, subcontractor, sub-subcontractor or materialman of the Contractor and their respective agents and employees, and any other party claiming by, through or under the Contractor (collectively for convenience referred to as a ASubcontractor@ or ASubcontractors@) that, to the best of its professional knowledge, at the execution of this Agreement it knows of no site conditions which will delay the performance of the Work by Contractor itself or any of the Subcontractors. The parties

acknowledge that every remediation site is unique and that conditions may be discovered after commencement of the Work which would affect the ability to complete the Work on a particular schedule; Contractor agrees that in the event such conditions are encountered by Contractor or if Contractor becomes aware of such conditions, that Contractor will promptly inform Owner and Owner's agent of such conditions, and shall thereafter work with Owner and Owner's agent to determine how such conditions should be addressed. Contractor furthermore agrees and covenants for itself and for every Subcontractor that to the best of Contractor's professional knowledge, after due inquiry, the Work on the Premises does not pose any risk of bodily injury, death, sickness, disease or any other risk to the health of any person employed by Contractor or any Subcontractor, nor risk of injury to or destruction of tangible property of the Contractor or that of any Subcontractor beyond those which are normal, customary and commercially acceptable for remediation projects of the nature and type of this Work. In the event that any of the above representations become untrue or require modification at any time, then Contractor shall so notify Owner in writing of the facts giving rise to such change, falsity or other required modification.

5. **Performance of the Work.**

A. General Terms: The Contractor is an independent contractor and shall have sole responsibility for and control over means, methods, techniques, sequences and procedures for performing the Work and for reasonable coordination of the Work with other remediation work being simultaneously performed on the Premises by Clayton.

The Contractor shall fully supervise, direct and execute the Work to Owner's reasonable satisfaction and to the reasonable satisfaction of Clayton using Contractor's best efforts, attention and professional skill. The Contractor will work diligently and without unnecessary delay to complete the Work. The Contractor shall enforce strict discipline and good order among Contractor's employees, agents and Subcontractors and shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall be solely responsible for safety and security in the performance of the Work, including without limitation for the proper execution of any procedures, rules or instructions regarding environmental safety provided by Clayton.

The Contractor shall not permit any of its agents or employees or other person carrying out the Work to enter upon the Business Premises without prior written consent of the Owner. The Contractor will employ all reasonable efforts to arrange the Work so as to minimize its effect on the existing facilities of the Business Premises or other work being performed thereon, including without limitation site remediation work being performed by Clayton, its employees, agents, subcontractors or other persons carrying out Clayton's work.

B. Taxes. Contractor shall provide and pay for labor, materials, supplies, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated into the Work except insofar as the Proposal states that Owner or Clayton is to provide such items. The

Contractor shall be solely responsible for and shall pay all sales, consumer, use and similar taxes for the Work or materials acquired by Contractor for use in performance or incorporation into the Work. The Contractor shall pay all taxes, contributions, and premiums payable as to its employees or on its operations under the applicable state or federal law and shall indemnify, defend and hold Owner harmless from all liability, loss, and expense resulting from Contractor's failure to comply with such laws.

- C. Substitutions, Additions and Change Orders. The Contractor may make substitutions or changes in the Work only with the written consent of Owner or Clayton pursuant to a Change Order, as hereinafter defined. The Contractor shall be responsible for inspection of portions of the Work already performed to determine that such portions are in proper condition to receive subsequent Work. The Contractor shall obtain materials and equipment in sufficient time to avoid delay in the Work. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. Owner may, by and through Clayton or independently of Clayton, through written directions, make changes in, deletions from, and additions to the Work ("Change Order") and Contractor shall carry out the Work as so altered. In the event that a Change Order materially changes the Work or the time and materials to be expended by Contractor in performing the Work, the parties will negotiate the adjustment to the Contract Price, as hereinafter defined, to be paid by Owner pursuant to this Agreement, whether an increase or decrease. Requests for additional costs will not be allowed for correction of problems that could have reasonably been avoided by Contractor within the scope of the Work: i) by careful review of information provided to Contractor by Owner or Clayton, ii) by timely and proper communication with Owner or Owner's agent, or iii) by careful review and adjustment of size or location of various necessary items of the Work. In the event that the parties are unable to agree upon the amount of any adjustment, Contractor shall proceed without delay to fulfill the Change Order, and Contractor shall maintain and provide to Owner such reasonable records as will support a claim for an increase or decrease in the Contract Price, and the matter will be negotiated by the parties upon completion of the Work. If at such time the parties are unable to agree upon the amount of any adjustment in the Contract Price, the matter will be submitted to binding arbitration. In the arbitration the arbitrator will determine the reasonable adjustment to the payment due Contractor or refund due Owner in light of the increase in time and services to be provided by Contractor attributable to the Change Order and the pricing structure reflected in the Proposal. Whenever an event occurs or conditions arise which the Contractor considers a basis for additional compensation or time, Contractor shall so notify Owner immediately by telephone, and confirm in writing with five (5) business days, after the occurrence of the event or discovery of the conditions, and provide detailed information to substantiate Contractor's request for a Change Order.
- D. Materials Storage. All materials shall be delivered and stored in a secure manner of Contractor's choosing and Contractor shall be responsible for the safekeeping of all such material, equipment, tools or other items on the Premises for performance of the Work.

- The Contractor will store materials on the Premises in such a manner so as to not damage the grounds or interfere with other ongoing remediation work. The Contractor shall keep the Premises and surrounding areas free from accumulation of waste materials or rubbish caused by operations performed pursuant to the Work.
- E. Overtime. Except as specifically permitted by Owner in advance, or where there will be no increase in the Contract Price or any other additional cost to Owner, Work to be performed pursuant to this Agreement shall not be performed at any time requiring the payment of overtime or premium wages.
- F. Cooperation with Clayton. The Contractor shall coordinate the performance of all of its Work with Clayton and shall employ all reasonable efforts to coordinate the performance of its Work with any other separate contractor or subcontractor retained by Owner or Owner's agent to perform services, remediation or construction on the Premises, so as to avoid unnecessary delay in the performance of the Work and timely completion of the Work.
- G. Access. Owner shall provide unimpeded access to the Premises and to third party sites if required for the Work. The Contractor shall provide the Owner, Clayton and their agents, employees, subcontractors and consultants and any other or separate contractor retained by Owner or Clayton with access to the Premises and to the Work for inspection and other purposes.
- H. Safety Procedures. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work pursuant to this Agreement. The Contractor shall obey and cause its employees, agents and Subcontractors to obey any instructions relating to environmental safety provided by Clayton, in Clayton's Health & Safety Plan, or any amendment or supplement thereto, but Contractor shall have the sole responsibility to take all necessary precautions for the protection of the health and safety of its employees and of all persons on the Premises who may be affected by the Work being performed by Contractor. Contractor shall cooperate with Clayton and Owner in efforts to prevent injuries to workers on the Premises, Owner, Owner's employees and the general public.
- I. Clean Up. Contractor will clean up and remove from the Premises all rubbish and debris generated by Contractor. In the event that Contractor refuses to clean up as stated above, Owner, after twenty-four (24) hours notice to Contractor, reserves the right to do the clean up and charge Contractor the cost and overhead for doing the cleanup.
- J. Reporting. Contractor shall provide written progress reports to Owner no less often than monthly.
6. Contract Price. The Owner shall pay the Contractor for the performance of the Work. The total price set forth in Exhibit A ("Contract Price") is the cost to Owner of the Work to be performed by Contractor. The parties acknowledge that in Exhibit A Contractor has provided Owner with an estimate as to the necessary electrical energy ("Input") and expected cost to achieve the cleanup goals specified in Section 10(b)(i) ("Cleanup Goals") for the Work but it is further acknowledged that Contractor has not guaranteed achievement of the

Cleanup Goals, but has agreed to achieve Substantial Completion. It is further understood by the parties that Owner is required by the terms of the 106 Order to achieve the Cleanup Goals and that the Work may continue beyond the time when the Input has been provided to the Premises, upon terms set forth in Exhibit A and in this Agreement. Notwithstanding, the Owner may at its sole and exclusive discretion, upon five (5) days written notice, direct Contractor to cease operation at any time following the time when the Input has been supplied to the Premises. Prior to requesting any payment, Contractor shall complete the procedures set forth in Section 7 (and in the case of Final Payment or Substantial Completion Payment, in Section 8), including inspection of Contractor's Work by Owner's environmental consultant. For purposes of this inspection provision, Clayton is Owner's environmental consultant, provided however, that by written notice, Owner may appoint such other properly qualified environmental remediation company as a substitute Owner's environmental consultant. Contractor warrants and agrees that the price charged by Contractor in Exhibit A is the lowest price Contractor has charged in any substantially similar transaction. During the course of Contractor's performance of the Work, for any and all amounts requested by Contractor in excess of the Contract Price including without limitation any amounts due pursuant to a Change Order, Contractor shall maintain complete and accurate records of all of Contractor's costs, expenses and time expended per person per day in performance of the Work or the expense of materials purchased. Owner and its agents, including without limitation Clayton, shall have the right at reasonable times and places, to inspect, copy and audit such of Contractor's books, accounts, time cards, records of transactions, estimates, schedules, correspondence or any other records or documents which provide the basis for any claim or request from Contractor that any amount is due from Owner in excess of or in addition to the Contract Price. Such records shall be retained by Contractor until the parties have agreed upon the amount, if any, to be paid by Owner in excess of the Contract Price.

7. **Partial Payments.** Upon execution of this Agreement, Contractor shall prepare and submit a General Contractor's Sworn Statement listing all Subcontractors which Contractor intends to use to perform the Work and an estimate of the amounts that will be paid to each such Subcontractor. For each payment requested during the performance of the Work, the Contractor shall submit to the Owner an Application for Payment in the form attached hereto as Exhibit B which shall include a currently dated Sworn General Contractor's Statement and mechanic lien waivers and affidavits in form and substance satisfactory to the Owner. The Contractor shall not include within any Application for Payment any Work which has not been delivered and incorporated into the Work or any Work which does not fully and completely conform with the Contract Documents. Each Application for Payment shall be for that Work delivered to and/or performed upon the Premises and incorporated into the Work during the thirty days preceding the date of the Application for Payment. In the event the Owner does not approve any portion of the Application for Payment or the entire application for payment, the Owner shall promptly notify the Contractor, which notifications shall describe the reasons why the Owner is objecting to such

application. The Contractor shall then correct or otherwise resolve the problem pursuant to the terms of the Contract Documents. The Application for Payment shall also be accompanied by a report by Owner's environmental consultant (as defined in section 6 of this Agreement) certifying that the Work has been satisfactorily completed and materials are in place as indicated by the current payment request of the Contractor; no Application for Payment shall be approved by Owner without such a certification by the Owner's environmental consultant which report will be promptly requested by Owner. An Application for Payment shall be approved for payment by the Owner upon Owner's receipt of all required submissions ("approved application") and payment shall be made as soon as possible but no later than sixty (60) days thereafter except as follows: an amount equal to ten percent (10%) of the amount of any approved application shall be retained by Owner and paid to Contractor as a part of the Final Payment ("retainage") as defined in and upon terms set forth in section 8 of this Agreement; furthermore, no amount shall be paid toward Demobilization and Final Reports (as set forth in Exhibit A) until the termination of operation of the ERH system on the Premises and actual demobilization and delivery of final reports. In the event the Owner receives notification of the filing of any lien by Contractor, or any Subcontractor of Contractor, the Owner shall have the right to exercise any rights or remedies the Owner deems appropriate. The Contractor shall be solely responsible for obtaining releases for any liens arising out of Work for which Owner has made payment (less only any retainage) within thirty (30) days of Owner's receipt of notification of such lien. In the event Contractor fails to remove such liens within the thirty (30) day period, the Owner shall have the right to make payments directly to all or any Subcontractor rather than to Contractor on behalf of a Subcontractor and to set off the amount Owner expended in removing such lien (including without limitation for attorney fees, if any) against sums due from Owner to Contractor.

8. **Final Payment** After Substantial Completion has been achieved, and the Work accepted by Owner, and a final inspection report has been provided to Owner by Owner's environmental consultant stating that all Work described in Exhibit A has been satisfactorily completed (except as may be required by section 9 hereinafter), the Contractor shall deliver to the Owner a Final Sworn General Contractor's Statement, final waivers of lien and supporting affidavits from Contractor and all Subcontractors and any other documents as reasonably requested by the Owner, including without limitation any additional warranty by Contractor agreed upon by the parties in a Contract Document and any manufacturer's or Subcontractor's warranties or guaranties relating to the Work. Prior to the submission of the Application for Final Payment and when the Contractor or the Owner has received the final certificate of completion, the Owner, Clayton, any other agent of Owner and the Contractor shall inspect the Work to determine which minor items, if any, have not yet been completed. After all of the foregoing documents have been received by the Owner, the Owner shall promptly order a tract book search to confirm the absence of any mechanic lien claims for work that has been paid for by Owner or, for any lien which may have been recorded, to confirm that a Final Waiver in proper form has been delivered to Owner. After the Owner

has approved all of the foregoing documents, the Owner has received the results of the tract book search, which results confirm that there are no mechanic lien claims arising out of the Work performed by Contractor or its Subcontractors, or other confirmation as determined by and acceptable to Owner including without limitation, delivery of a Final Waiver of lien, and provided that the Contractor has satisfied all other duties and requirements set forth in this Agreement, the Owner shall pay as soon as possible, but no later than sixty (60) days to the Contractor the retainage and any unpaid balance of the Contract Price ("Final Payment"), except that if the ERH remediation operations are to be continued by Contractor, there shall be no payment for those amounts attributable to Demobilization and Final Report.

9. **Commencement of Work; Continuation of Work.** The Contractor shall commence performance of the Work on the date of this Agreement ("Commencement Date") and shall commence operation of the ERH System on or before May 15, 2003. The Work shall continue until the first to occur of achieving Cleanup Goals or completion of the Input, or termination by Owner as set forth in section 6, provided however that if Substantial Completion has been achieved but Owner wishes to continue operations by Contractor, then the following shall govern and control the conduct of the parties:
- a. The terms of this Agreement shall continue in full force and effect;
 - b. The weekly sum set forth in Exhibit A shall be due to Contractor for each week after completion of the Work during which work continues on the Premises until either the Cleanup Goals are achieved or termination by Owner;
 - c. Payment shall be due to Contractor on the same terms and conditions as set forth in section 7 for partial payments, including a retainage;
 - d. Payment of final amounts due and retainage on weekly payments shall be due to Contractor upon the earlier of achievement of the Cleanup Goals or termination by Owner, and such payment shall be made upon the same terms and conditions as are set forth in Section 8 for Final Payment ("Substantial Completion Payment"); and
 - e. Payment of the amount due for Demobilization and Final Report, as set forth on Exhibit A, shall be due to Contractor only following completion of Demobilization and delivery of the Final Report to Owner. If such payment is due following Substantial Completion Payment, payment for Demobilization and Final Report shall be made upon the same terms and conditions as are set forth in Section 8 for Final Payment.

10. **Substantial Completion.**

- a. The Contractor shall achieve Substantial Completion with respect to the Work no later than February 15, 2004. The Contractor shall achieve the Cleanup goals or such further standard of power input with respect to any additional Work arising from a new or additional agreement or proposal no later than the date set forth in such agreement or proposal. The date of Substantial

Completion may be amended only pursuant to a Change Order signed by Owner. Notwithstanding the foregoing, in the event the Contractor is delayed at any time in progress of the Work by an intentional act of the Owner, by court order, by governmental order, by an act of God or by any other cause beyond the reasonable control of the Contractor ("Act of Delay"), the date of Substantial Completion shall be extended for that period of time during which the Contractor is so prohibited from completing the Work as a result of the Act of Delay. In the event the Act of Delay also requires that any portion of the Work which was completed prior to the Act of Delay must be repaired or refurbished, the additional extension of time will encompass time necessary for such refurbishment or repairs.

b. The term "Substantial Completion" shall mean the earliest date, without regard to the number of operational days, when either one of the following events have occurred:

- i. the RAOs identified in Table 3.0-1 of the approved Work Plan have been met, and specifically, the concentration of TCE in soil is no more than 10 mg/kg at any sample location; and the 95th percentile upper confidence limit for TCE is no more than 8.9 mg/kg; or
- ii. the energy input has been provided to the Premises pursuant to Exhibit A.

11. **Warranty.** The Contractor warrants to the Owner that materials and equipment furnished under the Agreement or incorporated into the Work will be of good quality and new, that the Work will be free from defects not inherent in the materials specified, that the Work (including without limitation the services) will be free from defects, including latent defects, in design, material and workmanship and that the Work will conform to the Contract Documents. The Contractor further warrants that the Work will be performed by highly skilled workers and supervisors in a manner which is in accordance with the highest standards in its industry. This Warranty shall survive Final Payment and Substantial Completion Payment.

12. **Indemnification.**

A. **General.** The terms of this paragraph shall survive any termination of this Agreement. To the fullest extent permitted by law, the Contractor hereby agrees to and shall indemnify, protect, defend and hold harmless the Owner from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of

or resulting from Contractor's negligent performance of the Work or breach of this Agreement, including without limitation any claim, damages, loss or expense attributable to bodily injury, sickness, disease or death, or to injury (including without limitation injury caused by or related to exposure to Hazardous Materials located upon the Premises as a result of Contractor's failure to fully comply with the Clayton Health and Safety Plan or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph. Further, the Contractor hereby agrees to and shall indemnify, protect, defend and hold harmless the Owner from any from any and all losses, claims, lawsuits or demands made or caused in whole or in part by any:

- i. act or omission of the Contractor or any other party claiming by, through or under the Contractor in, on or about the Premises; or
- ii. any negligent act or omission of any Subcontractor or any other party claiming by, through or under the Contractor; or
- iii. act or omission occurring as a result of a breach of this Agreement; or
- iv. any matter arising from application of the ERH technology by Contractor.

B. Patent Indemnification. Contractor agrees to indemnify, hold harmless and defend the Owner at Contractor's sole expense, against any action or suit which may be threatened or brought against Owner at any time for alleged infringement of any patent or patents because of the performance of any Work hereunder by Contractor or its Subcontractors, vendors, or suppliers, or because of the possession, use or sale of any structure, apparatus, material or other things, or any other or more elements thereof, furnished hereunder by Contractor, its Subcontractors or vendors or the use of any construction methods, tools, machines or other construction devices used in the execution of the Work under this Agreement, including but not limited to ERH technology; Contractor agrees to indemnify and save harmless Owner from any damages or other sums awarded or assessed in any action or suit.

13. Notices. Any notice, demand, request or other communication shall be effective only if: i. delivered by hand to the party whose attention it is directed; ii. sent by Federal Express or similar service for next business day delivery; or, iii. mailed by registered or certified mail postage prepaid, return receipt requested, to the addresses listed below, or at such other address as the parties may from time to time designate by notice. Every notice, demand, request or other communication hereunder shall be deemed to have been given when

personally delivered or on the first business day following the date when the communication is delivered to said service if it is sent by Federal Express or similar service or on the third business day following the date it is deposited in the United States mail if the U.S. Mail is utilized.

A. If intended for Owner:

The Lockformer Company
711 Ogden Avenue
Lisle, Illinois 60532
Attention: Rian Scheel

with a copy to:

Valerie J. Freireich
Chuhak & Tecson, P.C.
30 S. Wacker Drive
Suite 2600
Chicago, Illinois 60606
Facsimile No.: (312) 444-9027

B. If intended for Contractor:

Thermal Remediation Services, Inc.
2325 Hudson Street
Longview, WA 98632

with a copy to:

Mr. Randy Barnard
O'Shea Barnard Martin
1500 Skyline Tower
10900 NE Fourth #1500
Bellevue, WA 98004
Facsimile No.: (425) 454-4800

Alternatively, a notice, demand, request or other communication may be given by facsimile transmission subject to the following conditions:

- i. The facsimile numbers to be utilized shall be those numbers as listed above or such other numbers as are provided by any such parties;
- ii. Any facsimile which is initiated after 4:00 p.m. Central Time on any given day shall be deemed given on the immediately following business day;
- iii. The sender or transmitter of the communication shall also make a duplicate notification in accordance with the terms of the first sentence of this Paragraph 12;
- iv. Any facsimile transmission made on a day other than a business day shall be deemed given on the first business day following the date the facsimile transmission is made; and
- v. Any facsimile transmission made on a business day and prior to 4:00 p.m. Central Time shall be deemed given on the date of transmission.

14. **Representations and Warranties.** The Contractor hereby represents and warrants to the Owner, in addition to all other representations and warranties contained in the Contract Documents, as follows:

- A. No Breach. The performance of the Work by the Contractor will not result in a breach of any terms or conditions of, constitute a default under any indenture, or

other agreement to which the Contractor is a party or which violates any judgment, order, writ, injunction or decree of any court, administrative agency, or governmental body having jurisdiction over the Contractor.

- B. Authority. The Contractor has full power and authority to enter into this Agreement and to perform its obligations hereunder. This Agreement is valid and enforceable in accordance with its terms and subject to applicable bankruptcy laws and regulations.
- C. No Bankruptcy. As of the date of this Agreement, there are no bankruptcy or insolvency proceedings filed or threatened against or filed by the Contractor or any Subcontractor and the Contractor has no present intentions of filing any petition seeking protection under any bankruptcy statute or law.
- D. Requirements. The Contractor is familiar with or prior to commencement of work, will become familiar with the applicable requirements of the USEPA, the IEPA and the Village, and Contractor will follow such requirements.
- E. Safety. The Contractor is able to provide sufficient supervision during the performance of the Work to ensure the safety and well-being of its employees, agents and Subcontractors and all other persons entering onto the Premises or the site.
- F. Intentionally Deleted.
- G. ERH Interference. That through proper installation and shielding, which Contractor shall provide at no additional cost, the ERH technology will not cause electrical or other interference with the proper functioning or signal strength of equipment, appliances, and systems on the Business Premises, on the Premises and being used in other remediation activities, or located on the property of owners of nearby parcels of land.

The Contractor hereby agrees to and shall indemnify, protect, defend and hold-harmless the Owner from and against any and all claims, losses, damages, actions or causes of action which the Owner may sustain as a result of any of the representations or warranties of the Contractor set forth in this Paragraph 13 being false or incorrect. The terms of this Paragraph 13 shall survive any termination of this Agreement unless the sole reason for the termination of this Agreement is as a result of a default by the Owner which is not cured within any applicable grace period.

15. Default. In the event a party hereto fails to satisfy any duty or obligation required of it to be performed and satisfied, the other party shall have the right to notify the defaulting party of such default. In the event the default is not fully and completely cured within ten (10) business days of the date of such notification, or if the nature of the default makes full and complete cure within ten (10) business days unreasonable, in the event the default party has not commenced

actions reasonably designed to cure such default and is not diligently pursuing such actions to completion, the party making the notification shall have the right to exercise any and all rights and remedies available at law or equity. More specifically, the Owner shall have the following rights:

- A. Reject Work. Reject any nonconforming or defective Work, items or service, and require the prompt correction or replacement of the Work, supplies or services at Contractor's risk and expense, and subject to the same warranties as originally furnished concerning the Work, supplies or services;
- B. Correct Work. To correct or replace the nonconforming Work, supplies or services with conforming Work, supplies or services, and charge to Contractor the increased costs incurred by Owner as a result; or
- C. Retain Work. Retain the nonconforming Work, supplies or services, whereupon the price payable to Contractor shall be reduced by an amount equitable under the circumstances.

Nothing in this paragraph shall be construed to supersede or in any way to limit any other express or implied warranty, right, cause of action, claim or any other remedy possessed by Owner at law or equity, including, but not limited to contract, tort or statute, with respect to the Work, supplies or services to be furnished under this Agreement.

16. Attorneys' Fees. In the event of a breach or default of a party hereunder which is not cured within any applicable grace period, the prevailing party shall be entitled to recover from the other party, and said party hereby agrees to pay to the prevailing party, all reasonable attorneys' fees and court costs incurred by the prevailing party as a result of such default.

17. Notice of Delay. In the event the Contractor has any reason to believe that there will occur a delay in the timely performance of any of the Contractor's obligations hereunder or in the ability of Contractor to achieve Substantial Performance solely by providing the Input, the Contractor shall provide immediate written notice thereof to the Owner and Clayton.

18. Owner's Right to Stop the Work. If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Agreement, or fails to provide progress reports to Owner, then the Owner, by written order signed personally or by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause of such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

19. Owner's Right to Carry Out the Work. If the Contractor defaults or neglects to

carry out the Work in accordance with the Contract Documents and fails within the ten (10) day cure period set forth in section 14 above to commence and continue correction of such default or neglect with diligence and promptness, or if the Work is halted as a result of any court order or other actions of similar nature affecting Contractor, the Owner may, after such ten (10) day period, without prejudice to other remedies the Owner may have, correct such deficiencies including by continuing the Work through use of other contractors. In such case, the Contract Price shall be reduced by the amount paid by the Owner to correct the deficiencies or continue the Work. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

20. **Arbitration.** Any controversy or claim arising out of or related to the Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof.

21. **Time.** Time is of the essence of this Agreement.

22. **Protection of Persons and Premises.**

A. **Precautions.** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- i. employees on the Work and other persons who may be affected thereby including the general public;
- ii. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors; and
- iii. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Work.

B. **Laws.** The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. The Contractor shall comply with, adopt and put into effect such reasonable practical suggestions as may be offered by Clayton regarding the safety of persons or property, including compliance with Clayton's Health and Safety Plan, provided Clayton delivers a copy thereof to Contractor. If Owner becomes aware of Contractor's noncompliance with such instructions, then Owner shall notify Contractor in writing directly or through Clayton. If Contractor does not take appropriate corrective action within ten (10) business days of such notification, then Owner shall have the right, at its discretion, without further notice,

to suspend all payments to Contractor until compliance is made by Contractor.

C. Handling of Materials. The Contractor shall handle and dispose of all materials brought onto the Premises by Contractor in a safe, secure and proper manner and in full compliance with all applicable federal, state and local laws, statutes, rules, regulations, orders, or ordinances relating to Hazardous Materials or the environment. The Contractor shall protect the Premises and the neighboring properties from further contamination caused, created or arising from Contractor's Work to the fullest extent possible and shall at all times for itself and its Subcontractors protect against and prevent any release into the environment of any Hazardous Materials.

D. Safeguards. The Contractor shall erect and maintain, as required by existing conditions and performance of this Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

E. Care. Whenever unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities only under supervision of properly qualified personnel. Contractor shall consult with Clayton prior to undertaking any Work which risks the generation or release of Hazardous Materials and do its utmost to prevent such a release.

23. Abandonment of the Work. The Contractor hereby agrees that all of the Work shall be diligently performed. If at any time prior to Final Payment or Substantial Completion Payment (if applicable), no material portion of the Work is performed at the Premises within a period of ten (10) or more consecutive days by the Contractor, without reasonable cause approved by Owner's environmental consultant, such an event shall constitute an abandonment by the Contractor. In the event of an abandonment, the Owner shall have the right, but not the obligation, to notify the Contractor. In the event the Work is not resumed in a substantial manner within ten (10) business days of the date of said written notification from the Owner, the Owner shall have the right, in addition to any and all other rights, to terminate this Contract. In the event of such a termination, the Owner shall have the right to utilize any one or more of the Subcontractors or any other contractor deemed appropriate by Owner to complete the Work. In the event of an election by the Owner to utilize any one or more of said Subcontractors, the Contractor shall be deemed to have assigned to the Owner all of the Contractor's rights and interests in the contract with the Subcontractor to the Owner. The Owner shall notify the Contractor of any such election by the Owner.

24. Liquidated Damages. Owner has informed Contractor that the Owner may incur substantial penalties from certain governmental agencies if the Work is not expeditiously completed. For each day on and after the date specified in this Agreement for achievement of Substantial Completion, as adjusted as a result of any Act of Delay, that the Input has not been delivered to the Premises, Contractor shall promptly pay to Owner (or Owner shall withhold from Contractor by way of set-off of sums due to Contractor from Owner) an amount equal to: the Remedial System

Operations portion of the Contract Price divided by 300 (maximum days of operation) multiplied by a fraction, the numerator of which is the Input minus the amount of kW-hrs energy actually input into the Premises and the denominator of which is the Input, which sum is not a penalty, but as liquidated damages to mitigate the costs and damages incurred by Owner by reason of Contractor's failure to achieve the Input. This amount and the payment thereof shall not excuse Contractor from timely performance hereunder or limit Owner from declaring a default hereunder or from exercising any of its remedies hereunder.

25. Insurance.

A. General. The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in Illinois, such insurance as will protect the Contractor (and where applicable, Owner) from claims set forth below which may arise out of or result from the Contractor's operations under the Agreement and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by an employee, independent contractor, representative or agent of Contractor or a Subcontractor, or by anyone for whose acts any of them may be liable:

1. claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
4. claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
5. claims for damages, other than to the Work itself, because of bodily injury to or destruction of tangible property, including loss of use resulting therefrom;
6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of any motor vehicle; and
7. claims involving contractual liability insurance applicable to the Contractor's obligations under this Agreement.

B. Policy. The insurance required by subparagraph 24(A) shall be written for not less than limits of liability specified in this Agreement or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from Commencement Date of the Work until date of Final Payment on all Work and termination of any coverage required to be maintained after Final Payment, if any. Notwithstanding the above, the insurance required by paragraph 24(A) shall be on an occurrence basis. Insurance companies shall be Best rated AA@ or better throughout duration of Work.

C. Coverage. Such insurance shall be written to include the following coverages and for not less than the following minimum limits or greater if required by law:

1. Worker=s Compensation, Occupational Disease and Employer=s Liability Insurance:
 - a. State of Illinois statutory limits.
 - b. Applicable Federal (if any) - Statutory limits.
 - c. Employer=s Liability:
 - Bodily Injury by Accident - \$1,000,000 Each Accident
 - Bodily Injury by Disease - \$1,000,000 Each Accident
 - Bodily Injury by Disease - \$1,000,000 Each Policy Accident
2. Commercial General Liability Insurance including as minimum coverages:
 - Premises - Operations Liability
 - Independent Contractor=s Protective Liability
 - Products and Completed Operations Liability
 - Broad Form Property Damage Endorsement
 - Broad Form Contractual
 - Personal Injury, with Employment Exclusion Deleted
 - a. Special Requirements
 - i. Property Damage Liability Insurance will prove AX, C, and U@ (Explosion, Collapse and Underground hazard) coverage as applicable.
 - ii. Products and Completed Operations.
 - iii. The Owner, Clayton and their agents and employees shall be named as Aadditional insureds@ on the commercial general liability policy of the Contractor and/or Subcontractor of any tier.
 - b. Limits of Liability:

\$5,000,000 Each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

\$5,000,000 General Aggregate

\$5,000,000 Products/Completed Operations Aggregate

\$5,000,000 Personal and Advertising Injury

3. Automobile Liability Insurance

a. Special Requirements:

i. All hired, and non-owned vehicles including the loading or unloading thereof.

ii. The Owner, Clayton and their agents and employees shall be named as Additional insured@ on the commercial automobile liability policy of the Contractor and/or Subcontractors.

\$1,000,000 Aggregate

\$1,000,000 Commercial Single Limit

b. Limits of Liability:

\$1,000,000 Each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

4. Pollution Liability:

Limits of Liability:

\$5,000,000 Each Occurrence

\$5,000,000 Aggregate

5. Professional Liability:

Limits of Liability:

\$5,000,000 Per Claim

\$5,000,000 Aggregate

- D. Certificates and Affidavits. Certificates of Insurance for the above coverages and the Owner's Protective Policy shall be submitted to the Owner for its approval prior to the start of performance of the Work. The Owner, Clayton and their agents and employees shall be named as Additional insureds on all such policies. The Contractor shall certify to the Owner that it has obtained or will obtain similar certificates of insurance from each of its Subcontractors before their Work commences except as otherwise agreed. Each Subcontractor must be covered by insurance of the same character and in the same amounts as the Contractor unless the Contractor and Owner agree that a reduced coverage is adequate, including without limitation that the insurance coverage of any subcontractor on Clayton's Approved Subcontractors List shall be deemed to be adequate and that Subcontractors not normally engaged in environmental remediation work, such as electrical and plumbing contractors shall have insurance coverage typical for their industries. Each Subcontractor's insurance shall cover the Owner, its agents and employees. The Contractor shall submit a statement with each monthly affidavit stating that it has obtained certificates of insurance, or other satisfactory evidence, that all required insurance is in force for each of the Subcontractors listed on his affidavit. If the Additional insureds have other insurance which is applicable to the loss, it shall be on an excess or contingent basis. The amount of the company's liability under this policy shall not be reduced by the existence of such other insurance. Contractor's certificates shall be in duplicate on standard Accord forms.
- E. Policy Terms. These Certificates and insurance policies required by this paragraph 24 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Final Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness with the Contractor's information and belief.
- F. Special Coverage. If any government agency requires special coverage for Work which is not otherwise covered under the specified insurance, the Contractor or Subcontractors shall comply with and provide such insurance, endorsements or extensions as may be required by such agency and name Owner as an additional insured, as appropriate.
- G. Commercial General Liability Insurance. Products and Completed Operations coverage shall be maintained for two (2) years after Final Payment and completion of all Work and Contractor shall provide Owner with satisfactory evidence of such coverage.

26. **Termination by the Owner for Cause.**

A. Cause. The Owner may terminate the Agreement if the Contractor:

- (i) persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- (ii) fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- (iii) persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction or Clayton's Health and Safety Program, or reasonable instruction from Owner, Clayton, or any other agent of Owner regarding environmental safety;
- (iv) becomes insolvent, or seeks the protection of the bankruptcy court;
- (iv) otherwise is guilty of substantial breach of a provision of the Agreement.

B. Remedies. When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and in the case of items 25(A)(i), (ii), or (iii) after giving the Contractor and the Contractor's surety, if any, ten (10) business days written notice, terminate this Agreement and may:

- (i) take possession of the Work, the Premises and of all materials, equipment, tools, and construction equipment and machinery thereon purchased or owned by Owner;
- (ii) accept assignment of subcontracts; and
- (iii) finish the Work by whatever reasonable method the Owner may deem expedient, including without limitation, by retaining another contractor to so complete it.

C. Payment. When the Owner terminates the Agreement for one of the reasons stated in Subparagraph 25(A) above, the Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of this Agreement exceeds costs of finishing the Work, including expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be an obligation for which survives termination of this Agreement.

27. **Miscellaneous.**

A. Law. The validity, meaning and effectiveness of this Agreement shall be determined and

construed in accordance with the laws of the State of Illinois. Venue shall be proper only in the courts of Cook County or DuPage County, Illinois.

B. Definitions. In addition to the other terms as defined in this Agreement, the following terms shall have the following meanings:

The term "Change Order" shall mean a document signed by the Owner and the Contractor which changes any portion of the Work or additional Work, including without limitation sums due, duration or materials. In the event the terms of the Change Order will affect the cost to Owner, the Change Order shall describe the adjustment. In the event the terms of the Change Order will affect the date of Substantial Completion, the Change Order shall recite the adjustment in the expected date of the Substantial Completion.

The term "Hazardous Materials" shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. '9601, et seq.; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. '136, et seq.; asbestos and asbestos-containing materials, PCBs and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. '2601, et seq.; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act of 1982; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. '1910.1200, et seq.; and industrial process and pollution control wastes whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. '6901, et seq. and specifically the term includes asbestos or any other matter giving rise to liability under any other federal, state or local law, ordinance or regulation relating to hazardous substances, or any common law theory based on nuisance or strict liability.

The term "Contract Documents" shall mean the following: this Agreement, the Proposal, and any further proposals, plans, drawings or specifications agreed upon by the parties, the Work Plan and any Change Orders.

The term "Work" shall include the definition set forth in the Recitals to this Agreement and shall also mean all work described or to be described in the Proposal and any further proposals, plans, drawings and specifications which the parties may agree upon hereafter from time to time. The term "Work" shall specifically include preparation of drawings, shop drawings, plans, reports, graphs and other documents

necessary for the performance, completion and reporting to Owner, Clayton and to the USEPA of the Work and all labor, materials, equipment, transportation and facilities necessary for the proper performance and completion of the Work in each case in accordance with the Contract Documents. In the event of a Change Order, the definition of AWork@ shall also include the work, labor, materials, equipment, transportation and facilities added to the Work or deleted from the Work as described in the Change Order.

The term "specifications" shall mean a list of products, materials and equipment that provides standards of quality, dimension, appearance and function to be provided by the Contractor and agreed upon in advance by Clayton, the Owner or its agent.

C. Captions. The captions as contained in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

D. Assignment. Neither this Agreement nor any of the Contractor's obligations hereunder, shall be assignable by Contractor without the prior written consent of the Owner. Owner may assign its rights under this Agreement without consent of the Contractor.

E. Joint Drafting. The parties hereto expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

F. Severability. Owner and Contractor intend and believe that each provision of this Agreement comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or any portion of any provision or provisions, of this Agreement is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then unless the essential purpose of the Agreement shall be obviated, it is the intent both of Owner and Contractor that any such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein, and that the rights, obligations and interest of Owner and Contractor under the remainder of this Agreement shall continue in full force and effect.

G. Survival. The obligations of the Contractor to indemnify the Owner in accordance with the terms of the Agreement shall survive any termination of the Agreement.

H. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

I. Further Assurances. Each party will, whenever and as often as it shall be reasonably requested so to do by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all conveyances, assignments, corrective and confirmatory instruments, and all other instruments and documents as may be reasonably necessary in order to complete the transaction provided for in this Agreement and to carry out the intent and purposes of this Agreement. The provisions of this section shall survive the closing.

J. Confidentiality. Either party may disclose Confidential Information to the other party. Either party may be a recipient or a discloser of Confidential Information. All disclosures of Confidential Information by either party, whether seen, heard, or written, shall be considered proprietary and any writing shall be marked proprietary at the time such writings are first furnished to the recipient, or within thirty (30) days thereafter. All aspects of the Work and environmental sampling results shall be deemed Confidential Information without further action by either party. The recipient of Confidential Information shall not divulge such information to any third party or use such information for any purpose other than for the purposes of this Agreement without the prior written consent of the discloser. No use of the name "Lockformer" or "Met-Coil" or the address of the Premises shall be made by Contractor in any advertising material of Contractor or in any letter, article, or report in any newspaper, magazine, professional journal, website or any other public writing without the prior written consent of Owner. The recipient of Confidential Information shall treat such information with the same degree of care as it accords to its own proprietary information, but in any event, not less than reasonable care. It is understood by the parties that this obligation of confidentiality shall not apply to information which (a) is published or becomes published or otherwise is or becomes generally available to the public through no breach of this Agreement by the recipient of Confidential Information; or (b) the recipient can show was properly in its possession prior to receipt of the Confidential Information from the discloser other than, with respect to Contractor, pursuant to discussions with Clayton prior to the execution of this Agreement; or (c) is independently developed by the recipient (other than through performance of the Work) as demonstrated by competent documentary evidence; or (d) becomes available to the recipient from an independent source without breach of this Agreement or violation of law; or (e) is required to be disclosed pursuant to proper governmental or judicial process, provided that notice of such process is promptly provided to the discloser in order that the discloser may have every reasonable opportunity to intervene in such process to contest such disclosure. Any press release, statement or other public disclosure which the Contractor makes shall be approved in advance by the Owner. All reports or other disclosures by the Contractor to the USEPA or IGPA shall be made only through Owner or Owner's agent.

K. Binding This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CONTRACTOR:

THERMAL REMEDIATION SERVICES,
INC., a Washington State corporation

By: Michael E Dodson
Name: MICHAEL E DODSON
Its: PRESIDENT
Title

OWNER:

THE LOCKFORMER COMPANY, a
division of MET-COIL SYSTEMS
CORPORATION, a Delaware corporation

By: [Signature]
Name: JOAN SCHERL
Its: VP & GENERAL MANAGER
Title



2325 Hudson Street
Longview, WA 98632
(360) 425-8121
fax: (360) 425-6674

10 February 2003

Mr. Arthur Bourland
Lockformer Company, a division of Met-Coil Systems Corporation
711 Ogden Ave.
Lisle, IL 60532
(630) 964-8000 x3252 fax: -8174
bourlard@lockformer.com

Subject: Revised Proposal for Electrical Resistance Heating Remediation, Lockformer Facility, Lisle, Illinois

Dear Arthur:

Thermal Remediation Services, Inc. (Thermal) is pleased to provide this revised proposal for remediation using Electrical Resistance Heating (ERH) at the Lockformer Facility located in Lisle, Illinois. This proposal replaces all previous proposals provided by TRS. Treatment goals are to meet the RAOs identified in Table 3.0-1 of the approved Lockformer Work Plan (dated 9/20/02) and to specifically:

- Reduce the concentration of trichloroethene (TCE) in soil to no more than 10 mg/kg at any sample location, and
- Reduce the 95th percentile upper confidence limit (95% UCL) for TCE to no more than 8.9 mg/kg.

Background

Electrical Resistance Heating (ERH) passes an electrical current through the soil and groundwater that requires treatment. The electrical current warms the soil and then boils a portion of the soil moisture into steam. This *in situ* steam generation occurs in all soil types, regardless of permeability. Electrical energy evaporates the target contaminant and provides steam as a carrier gas to sweep the VOCs to the vapor recovery wells (VR wells). After the steam is condensed and the extracted air is cooled to ambient conditions, the VOC vapors are treated using conventional methods.

The type of contaminant and the desired clean-up goal affect the energy, time and cost to remediate a site. However, two subsurface parameters are important: the amount of total organic carbon (TOC) and the presence of heavy hydrocarbons such as diesel, oil, or grease.

TOC preferentially adsorbs VOCs in comparison to water; this is why activated carbon is often used for vapor and water treatment. Thermal typically assumes 0.25% soil TOC unless site-specific information is known. Based on the site information provided by Clayton Group Services, average TOC concentrations in soil are 0.70% and the highest TOC measurement has been 0.89% (measured using the non-carbonate carbon, loss-on-ignition method. Thermal has

accounted for these reported levels of TOC in estimating the ERH operating parameters for the site.

The presence of oil, grease, or other low volatility hydrocarbons can also slow the evaporation rate of VOCs. Raoult's Law describes this effect. There are no heavy hydrocarbons reported in the subsurface at the Lockformer project site. However, Thermal recommends that the Owner or Owner's agent collect a soil sample from the degreaser area and analyze the sample for TOC, total petroleum hydrocarbons (TPH) – diesel, and TPH – oil and grease prior to installing electrodes in this area.

II. Site Description

The remediation region is located to the west of the Lockformer facility as shown in the attached figure. The treatment volume is about 33,800 yd³. Included in the treatment region is the degreaser area, a 2,660 ft² region that is impacted from 0 to 16 ft bgs.

The geology consists generally of clay in the remediation region. Perched or slow percolating water is common in the remediation region; however the persistent groundwater table is encountered at about 55 ft bgs.

The initial maximum soil concentration of TCE in the ERH remediation region is 3,400 mg/kg.

III. Scope of Work

The basis for our preliminary design, including specific project parameters, is shown in the attached table. These site-specific parameters are also the basis of the costs presented in this proposal. The text below defines the work tasks required to meet the project objectives and to allow review of the ERH remediation costs. These assumptions also describe the division of work between Owner or Owner's agent and Thermal that will be conducted. Nothing in this scope of work includes the recovery of vapors or soil treatment outside, including below, the heated regions.

Permitting and Design

Owner or Owner's agent will apply and pay for all permits. Thermal will provide assistance (up to 8 hours labor and \$100) in obtaining the electrical building permit. The Owner or Owner's agent will be the author of the site Health and Safety Plan and the O&M Plan. Thermal will provide input on the site Health and Safety Plan (up to 8 hours labor). Thermal will also prepare input on the ERH and Thermal's VR system for the O&M Plan (up to 16 hours labor).

Thermal will revise the electrode detail drawing to produce an appropriate electrode completion for each of the 13 sub-areas (1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 2A, 2B, 2C, 2D and the degreaser region). Thermal will update the plot plan to include VR pipe sizing and location. This design work has been completed.

Subsurface Completion

Owner or Owner's agent will install 212 electrodes with co-located VR wells and 21 TMPs, as shown on the attached figure. Owner or Owner's agent supplies:

1. Drilling subcontractor, sand, bentonite and grout (grout is pure Portland cement).
2. Drilling supervision, including disposal of all drilling derived waste.
3. Plenum installation including asphalt cap with galvanized reinforcing grid, subsurface survey, location survey and spot marking of electrode drilling locations.
4. Permits as required.
5. CPVC pipe and well screen for the plenum with isolation valves at the surface.
6. Unloading and storage of subsurface materials.
7. Trenching and installation of subsurface piping within the Lockformer building.

Thermal supplies:

1. Steel shot and graphite.
2. Electrode elements (steel casing or plates), electrode cables, and electrode wetting system.
3. Well screen and casing for electrode VR wells.
4. Blank 3/4" CPVC pipe with bottom cap and thermocouples for TMPs.
5. Owner or Owner's agent unloads Thermal-supplied materials.
6. Thermal provides on-site electrode installation training and supervision for the first four days of drilling. Thermal will be available by telephone to answer questions during the remainder of the electrode installation.

Thermal will supply materials to treat the depth intervals based upon the exact surface conditions (i.e., depth of the Upper Silty Clay Till/Fill). Thermal's pricing for these materials is based on the electrode depths on Plate R-20 "ERH System Construction Details" (Dated 1-31-03) and the enclosed figure, both of which were provided by Clayton. From these documents, Thermal determined that 5,527 feet of electrodes will be placed and that the treatment volume will be 33,800 cubic yards. If the feet of electrodes to be placed, and thus the actual treatment volume, increases significantly (by more than 10%) than Thermal's costs to install additional feet of electrodes, as well as our estimates of the energy and time to complete the remediation, will need to be increased accordingly.

Surface completion

Owner or Owner's agent supplies:

1. Clear equipment compound (50 ft by 50 ft for TRS equipment, plus room as needed for GAC).
2. Remediation area or perimeter fence and a snow fence within the perimeter fence.
3. Telephone line to the power control unit (PCU).
4. Water line or hose connection (average use 2 gpm) to the TRS condenser.

5. GAC supply, transport, profiling, and regeneration.
6. Owner or Owner's agent will provide the connecting pipe from Thermal's VR system to the GAC vessels.
7. Piping and conduit installation from the electrodes and VR wells inside the building to the exterior of the building (wall or roof).
8. Heat tracing and insulation for the electrode wetting system.
9. Electrical connection to the Thermal's blower discharge heat exchanger.

The Owner will pay the ComEd connection fee (estimated at \$5-10k) and any electrician fee to connect 12-14 kV power to the input disconnect of Thermal's PCU.

Thermal supplies:

1. CPVC pipe, fittings, valves and installation from condenser to VR wells (1" to 8" diameter).
2. CPVC pipe and installation from condenser to the horizontal wells in plenum that have been installed by Clayton. This piping shall be installed above grade.
3. Piping and installation from the condenser to the VR blower and then to the VR blower discharge heat exchanger.
4. PCU and temperature monitoring system.
5. Condenser with cooling tower
6. 40 hp vacuum blower with noise enclosure.
7. Blower discharge heat exchanger.
8. Winterization for the condenser, VR blower, and heat exchanger as required.
9. Thermal will provide a crane to offload and place the above equipment.
10. All electrical connections (except the utility connection to the input disconnect of Thermal's PCU and the connection to the blower discharge heat exchanger).
11. Electrode wetting connections including water pumps, valves, and piping.
12. Testing of equipment interlocks.

Operations

Owner or Owner's agent:

1. Performs all vapor sampling (twice per week).
2. Performs condensate water sampling (if required).
3. Provides client reporting (as required in addition to Thermal).
4. Provides all soil sampling and analyses.

Owner pays for all electrical usage.

Thermal:

1. Operates and monitors heating and temperature monitoring systems (daily).
2. Provides daily (each work day) on-site system checks.
3. Makes major adjustments and repairs to the VR system.

4. Provides weekly operation status reports.
5. Provides site checks and voltage surveys (every two weeks).

Initial testing, shakedown, and start-up might require up to two weeks before Thermal indicates that routine operation has begun and begins counting operational days. The remediation is expected to require 163 to 200 days of ERH operation in order to reach the remedial goal.

The key to cost-effective remediation is to stop the heating of regions that have met the remediation goal and to concentrate efforts on the sub-areas that are still impacted. In order to provide the lowest overall remediation cost, Thermal recommends a general soil sampling approach that allows progress sampling to be performed over the course of the remediation. Thermal will work jointly with the Owner's agent to develop a sampling plan for the EPA that contains enough progress sampling to allow decisions to be made on what portions of the subsurface to continue heating and on the timing and scope of confirmatory sampling. In preparation of the sampling plan, it should be recognized that limiting downtime of the ERH system during of sampling events is important in pursuing the project goals.

Demobilization and Final Report

Thermal:

1. Removes abovegrade components that it supplied.
2. Summarizes heating and temperature data for a final report by Owner or Owner's agent.

Owner or Owner's agent:

1. Abandoning electrodes, VR wells, and TMP borings.
2. Site restoration activities other than removal of TRS equipment and above grade components installed by TRS.

From the time the power input to the subsurface is turned off, the vapor extraction system and condenser will remain operational for not more than 1 week, and will then be demobilized. Thermal will reconfigure the VR system to connect the VR piping to the blower discharge heat exchanger. Owner or Owner's agent will connect the outlet of the blower discharge heat exchanger to the inlet of one of the SVE system vapor-liquid separators. These changes will cause the blower discharge heat exchanger to act as a reduced capacity condenser and the condensate will be collected in the SVE system vapor-liquid separator. Owner or Owner's agent will assume all responsibility for operation and demobilization of the VR system after these modifications have been completed. No Thermal charges will apply to these continued operations by others. To accomplish this, the blower discharge heat exchanger will require an independent source of electrical power other the electrical panel on the PCU.

After ERH remediation is complete the subsurface will slowly cool. The long period at elevated temperatures provides an important polishing step for further reduction in VOC concentrations by heat-enhanced bioremediation, hydrolysis, and dehalogenation by zero valent iron in the

electrodes. Keep in mind that all chemical reactions accelerate at elevated temperatures as described by the Arrhenius Equation.

Our fixed cost bid does not include a performance guarantee. Thermal will continue operations for the stated cost until one of the following occurs:

1. Thermal has input the estimated design remediation energy (5,661,000 kW-hr), or
2. The remediation goals (defined in the first paragraph of this proposal) are met.

Based on experience at previous sites, Thermal attributes about an 85% likelihood that the performance goal will be met within the design remediation energy; however, this is a likelihood, not a guarantee. In the event that the design remediation energy has been input into the subsurface and continued ERH operation is desired by the Owner, the additional TRS charge will be \$22,200 per week.

Thermal's costs include the assumption that our work is not delayed by others. In the event that system installation is complete, or the estimated design remediation energy or remediation goals have been reached, and our equipment is on site yet must sit idle, an additional standby charge of \$850 per day will apply. Thermal's stated cost includes up to 30 workdays (ten hour days) of standby time for soil sampling. Standby charges will apply if the ERH system is shut down for soil sampling by Owner or Owner's Agent in excess of 30 workdays cumulative over the course of the remediation.

We look forward to working with you on this important remediation project. Please call me at (770) 794-1168 if you have any questions or if you would like more information.

Sincerely,
Thermal Remediation Services, Inc.



Gregory Beyke, PE
VP --Engineering

Site Name: **Lockformer Areas 1, 2, and degreaser**

Electrical Resistance Heating Treatment Area: 38,092 sq. ft.

Ave. Shallow Extent of ERH: 3.1 ft

Ave. Deep Extent of ERH: 27.0 ft

Typical Depth to Groundwater: 55 ft

Treatment Volume: 33,800 cu yds

Ave. Soil Organic Carbon Content: 0.70%



Based on provided TOC data.

Estimated Number of Electrodes: 212

Installed in 12-inch o.d. borings.

Estimated Ave. Distance Between Electrodes: 15 ft

Ave. Total Depth of Electrodes: 26.1 ft

Ave. Depth to Top of Electrodes: 5.0 ft

Number of Temperature Monitoring Points: 21

TMPs average 5 thermocouples each.

Estimated Number of Vapor Recovery Wells: 212

VR wells are co-located with electrodes.

Piping and Well Installation: Above grade

Vapor Recovery Air Flow Rate (scfm): 460 scfm

Vapor Extraction Blower: 40 horsepower

Vapor Treatment Method: carbon

Supplied by Owner or Owner's Agent

Controlling Contaminant: TCE

Average Clean-up Percent: 98.5%

Maximum Expected Temperature: 90-95°C

E.g., reduce 667 mg/kg to 10 mg/kg

Or slightly less due to applied vacuum.

Average Electrical Heating Power Input: 1300 kW

About one-half of the total region is actively heated at any time.

Time to Heat-up first Section: 29 - 34 days

Time to Boil First Section: 53 - 65 days

Estimated Total Heating Treatment Time: 163 - 200 days

Estimated Design Remediation Energy: 5,661,000 kW-hr

Number of Confirmatory Soil Borings: 106

Installed by Owner or Owner's Agent

Costs

| Thermal Remediation Services Costs | fixed bid |
|---|--------------------|
| Design, Work Plans, Permits: | \$50,000 |
| Remediation System Installation and Start-up: | \$770,000 |
| Remediation System Operation: | \$656,000 |
| Demobilization and Final Report: | \$127,000 |
| Total Thermal Costs | <u>\$1,603,000</u> |

TRS cost per cubic yard: \$47

The site map illustrates the Lockformer Facility with various electrode locations marked by alphanumeric codes. The map is divided into several distinct areas, each with its own set of electrodes. A central horizontal road or boundary line runs across the middle of the map. To the left of this line, there are several irregularly shaped areas labeled 1A, 1B, 1C, 1D, 1E, 1F, 1G, and 1H. To the right of the line, there are areas labeled 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, 2K, 2L, 2M, 2N, 2O, 2P, 2Q, 2R, 2S, 2T, 2U, 2V, 2W, 2X, 2Y, and 2Z. Each area contains a grid of electrode locations, with some areas having additional labels like '1A', '1B', '1C', '1D', '1E', '1F', '1G', '1H', '2A', '2B', '2C', '2D', '2E', '2F', '2G', '2H', '2I', '2J', '2K', '2L', '2M', '2N', '2O', '2P', '2Q', '2R', '2S', '2T', '2U', '2V', '2W', '2X', '2Y', and '2Z'. A legend on the right side of the map provides the depth intervals for the electrodes in each area. The legend is as follows:

| Area | Depth Intervals |
|------|-----------------|
| 1A | 8 TO 42 FT |
| 1B | 2 TO 38 FT |
| 1C | 6 TO 24 FT |
| 1D | 0 TO 32 FT |
| 1E | 0 TO 24 FT |
| 1F | 0 TO 22 FT |
| 1G | 0 TO 26 FT |
| 1H | 8 TO 32 FT |

Additional text on the right side of the map includes:

- 212 ELECTRODES
- (112 IN AREA 1, 79 IN AREA 2, AND 14 IN DEGREASER AREA)
- AVERAGE SPACING 16 FEET
- 198 CONFIRMATION SOIL BORINGS
- (189 BETWEEN ELECTRODES IN
- AREAS 1, 2, AND THE DEGREASER AREA,
- AND 19 AROUND THEIR PERIMETER)

| | | | | | |
|----|----|---|----|----|----|
| 1A | == | B | 10 | 24 | FT |
| 1B | == | B | 10 | 28 | FT |
| 1C | == | A | 10 | 28 | FT |
| 1D | == | A | 10 | 22 | FT |
| 1E | == | A | 10 | 22 | FT |
| 1F | == | A | 10 | 22 | FT |
| 1G | == | A | 10 | 22 | FT |
| 1H | == | A | 10 | 22 | FT |
| 1I | == | A | 10 | 22 | FT |
| 1J | == | A | 10 | 22 | FT |
| 1K | == | A | 10 | 22 | FT |
| 1L | == | A | 10 | 22 | FT |
| 1M | == | A | 10 | 22 | FT |
| 1N | == | A | 10 | 22 | FT |
| 1O | == | A | 10 | 22 | FT |
| 1P | == | A | 10 | 22 | FT |
| 1Q | == | A | 10 | 22 | FT |
| 1R | == | A | 10 | 22 | FT |
| 1S | == | A | 10 | 22 | FT |
| 1T | == | A | 10 | 22 | FT |
| 1U | == | A | 10 | 22 | FT |
| 1V | == | A | 10 | 22 | FT |
| 1W | == | A | 10 | 22 | FT |
| 1X | == | A | 10 | 22 | FT |
| 1Y | == | A | 10 | 22 | FT |
| 1Z | == | A | 10 | 22 | FT |
| 2A | == | B | 10 | 24 | FT |
| 2B | == | B | 10 | 28 | FT |
| 2C | == | A | 10 | 28 | FT |
| 2D | == | A | 10 | 22 | FT |
| 2E | == | A | 10 | 22 | FT |
| 2F | == | A | 10 | 22 | FT |
| 2G | == | A | 10 | 22 | FT |
| 2H | == | A | 10 | 22 | FT |
| 2I | == | A | 10 | 22 | FT |
| 2J | == | A | 10 | 22 | FT |
| 2K | == | A | 10 | 22 | FT |
| 2L | == | A | 10 | 22 | FT |
| 2M | == | A | 10 | 22 | FT |
| 2N | == | A | 10 | 22 | FT |
| 2O | == | A | 10 | 22 | FT |
| 2P | == | A | 10 | 22 | FT |
| 2Q | == | A | 10 | 22 | FT |
| 2R | == | A | 10 | 22 | FT |
| 2S | == | A | 10 | 22 | FT |
| 2T | == | A | 10 | 22 | FT |
| 2U | == | A | 10 | 22 | FT |
| 2V | == | A | 10 | 22 | FT |
| 2W | == | A | 10 | 22 | FT |
| 2X | == | A | 10 | 22 | FT |
| 2Y | == | A | 10 | 22 | FT |
| 2Z | == | A | 10 | 22 | FT |
| 3A | == | C | 10 | 24 | FT |
| 3B | == | C | 10 | 28 | FT |
| 3C | == | B | 10 | 28 | FT |
| 3D | == | B | 10 | 22 | FT |
| 3E | == | B | 10 | 22 | FT |
| 3F | == | B | 10 | 22 | FT |
| 3G | == | B | 10 | 22 | FT |
| 3H | == | B | 10 | 22 | FT |
| 3I | == | B | 10 | 22 | FT |
| 3J | == | B | 10 | 22 | FT |
| 3K | == | B | 10 | 22 | FT |
| 3L | == | B | 10 | 22 | FT |
| 3M | == | B | 10 | 22 | FT |
| 3N | == | B | 10 | 22 | FT |
| 3O | == | B | 10 | 22 | FT |
| 3P | == | B | 10 | 22 | FT |
| 3Q | == | B | 10 | 22 | FT |
| 3R | == | B | 10 | 22 | FT |
| 3S | == | B | 10 | 22 | FT |
| 3T | == | B | 10 | 22 | FT |
| 3U | == | B | 10 | 22 | FT |
| 3V | == | B | 10 | 22 | FT |
| 3W | == | B | 10 | 22 | FT |
| 3X | == | B | 10 | 22 | FT |
| 3Y | == | B | 10 | 22 | FT |
| 3Z | == | B | 10 | 22 | FT |
| 4A | == | D | 10 | 24 | FT |
| 4B | == | D | 10 | 28 | FT |
| 4C | == | C | 10 | 28 | FT |
| 4D | == | C | 10 | 22 | FT |
| 4E | == | C | 10 | 22 | FT |
| 4F | == | C | 10 | 22 | FT |
| 4G | == | C | 10 | 22 | FT |
| 4H | == | C | 10 | 22 | FT |
| 4I | == | C | 10 | 22 | FT |
| 4J | == | C | 10 | 22 | FT |
| 4K | == | C | 10 | 22 | FT |
| 4L | == | C | 10 | 22 | FT |
| 4M | == | C | 10 | 22 | FT |
| 4N | == | C | 10 | 22 | FT |
| 4O | == | C | 10 | 22 | FT |
| 4P | == | C | 10 | 22 | FT |
| 4Q | == | C | 10 | 22 | FT |
| 4 | | | | | |

212 ELECTRONES
1110 IN AREA 1, 79 IN AREA 2, AND 14 IN DEGREASER AREA
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THE UNIVERSITY OF CHICAGO