



Emergency Spill Response Agreement

This Agreement is made this ____ day of ____, 20____, by and between Advanced Waste Services, Inc. (AWS), an Illinois corporation with offices located at 1126 South 70th Street, West Allis, Wisconsin 53214 ("CONTRACTOR"), and ____, a(n) ____ corporation with its principal place of business at ____ ("CLIENT").

WHEREAS, CONTRACTOR is engaged in the business of providing Emergency Spill Response Services ("Services") to respond to discharges, releases and spills of hazardous and non-hazardous substances; and

WHEREAS, CLIENT desires to engage CONTRACTOR to provide such Services; and,

WHEREAS, CLIENT and CONTRACTOR desire to establish the terms and conditions pursuant to which such Services will be provided.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

SECTION 1. PURPOSE

1.1 This agreement establishes the terms and conditions under which CONTRACTOR shall provide remedial and other services in connection with the following discharge, release and/or spill of hazardous and/or non-hazardous substances: ____("Event").

SECTION 2. SCOPE OF SERVICES

2.1 The Services contemplated in connection with the response to discharges, releases and/or spills of hazardous and/or non-hazardous substances related to the Event may include, but not limited to, the following: containment, recovery, repackaging, and removal of materials; site evaluation, decontamination and restoration; transportation, storage, treatment or disposal of wastes; technical services, including sampling, laboratory analysis, and other related services; and/or standby of personnel and equipment in anticipation of imminent activation. (hereinafter "Services").

SECTION 3. CONTRACTOR'S WARRANTIES

3.1 CONTRACTOR shall provide supervision, labor, materials, tools, equipment and subcontracted items for the performance of the Services.

3.2 CONTRACTOR shall take necessary precautions for the safety of its employees, and shall comply with applicable provisions of the Occupational Safety and Health Act. It is understood and agreed, however, that CONTRACTOR shall not be responsible for the elimination or abatement of safety hazards created by or otherwise resulting from work being performed by CLIENT'S employees, its contractors or agents.

3.3 CONTRACTOR represents that it holds the permits and licenses required for the performance of Services.

SECTION 4. CLIENT'S WARRANTIES

4.1 CLIENT shall provide full and complete information regarding its requirements for the Services.

4.2 CLIENT shall designate a representative who shall be fully acquainted with the Services to be provided hereunder and who shall be authorized to approve changes in the Services; render decisions promptly; authorize commitments and expenditures on behalf of CLIENT; approve CONTRACTOR'S daily worksheets and to accept, verify and approve CONTRACTOR'S invoices.

4.3 CLIENT shall be responsible for repairs to all roadways, structures and rights-of-way resulting from CONTRACTOR'S reasonable use thereof.

4.4 CLIENT represents and warrants that it shall provide payment to CONTRACTOR for the services provided by CONTRACTOR as set forth in Section 5, and shall demonstrate (including entering into an unconditional and absolute guarantee agreement at CONTRACTOR'S request) to CONTRACTOR'S satisfaction prior to the commencement of the Services, and at such other times as CONTRACTOR may require, that sufficient funds are available and committed by CLIENT for the entire cost of the Services. Unless such financial assurances are provided by CLIENT, CLIENT agrees that CONTRACTOR shall not be required to commence or continue any Services and may immediately stop work. The failure of CONTRACTOR to insist upon the provisions of this paragraph any one time shall not constitute a waiver of CLIENT'S obligation to make payments pursuant to this Agreement nor shall it constitute a waiver of CONTRACTOR'S right to request that evidence of sufficient funds be provided by CLIENT at a later date

4.5 CLIENT shall communicate to CONTRACTOR all special hazards or risks known to the CLIENT which are related to the performance of Services pursuant to this Agreement.

Client Initials

SECTION 5. COMPENSATION

5.1 CLIENT agrees to pay CONTRACTOR in accordance with the Emergency Response Rate Sheet (hereinafter "Rates" which is attached hereto and is hereby incorporated by reference) for Services provided including but not limited to response or standby activities, including mobilization/demobilization of resources. CLIENT AGREES THAT ALL HOURLY RATES WILL BE BILLED AS AN EIGHT HOUR MINIMUM AND ON A PORTAL-TO-PORTAL BASIS. CLIENT further agrees that in the event CONTRACTOR requires the assistance of a third party labor or equipment subcontractor, CONTRACTOR shall invoice and CLIENT shall pay the subcontractor's emergency response hourly rates plus 20%.

5.2 CONTRACTOR will present its first invoice to CLIENT as soon as possible following commencement of Services provided hereunder, and subsequent invoices every ten (10) days thereafter. CONTRACTOR'S delay in presenting an invoice shall not be constituted as a waiver of CLIENT'S duty to pay within 15 days. CLIENT agrees to pay the full amount of each invoice amount within fifteen (15) days of the date of receipt of said invoice by CLIENT.

5.3 CLIENT agrees that interest shall accrue and will be paid to CONTRACTOR on any unpaid balance of any invoice (including during insurance review) after fifteen (15) calendar days of receipt of invoice by CLIENT at the rate of one and one half percent (1.5%) per month or the maximum amount allowed by law, whichever is greater.

5.4 In the event that legal or other action is required to collect unpaid balance of invoices due CONTRACTOR, CLIENT agrees to pay all costs of collection, litigation or settlement incurred by CONTRACTOR, including any reasonable attorneys fees.

5.5 In the event that work is suspended or terminated for any reason prior to the completion of the services, CLIENT agrees to pay for labor, equipment, materials, disposal and other costs incurred by CONTRACTOR at the agreed Rates.

5.6 CLIENT agrees to pay CONTRACTOR in accordance with the agreed Rates for CONTRACTOR activities, at CLIENT'S request, in connection with any litigation, litigation support or testimony related to the work performed by CONTRACTOR pursuant to this Agreement.

5.7 In the event that CLIENT submits CONTRACTOR'S invoice for insurance coverage, CONTRACTOR hereby agrees to pay any and all balances not covered by CLIENT'S insurer unless CONTRACTOR has waived such balance in writing.

5.8 CLIENT understands and agrees that it will pay CONTRACTOR for the Services contemplated hereunder regardless of fault of another party for causing such Services to be necessary and without regard as to the actual property owner.

SECTION 6. CHANGES IN WORK

6.1 Modifications, including assignments, to the Agreement shall be effective only if in writing and signed by the CLIENT and CONTRACTOR.

6.2 CLIENT agrees to pay CONTRACTOR at the Listed Rates for any costs incurred or delays resulting from CONTRACTOR'S response to any emergency condition which threatens safety of persons or property during the performance of the Services.

6.3 If any change occurs during the term of this Agreement with respect to any laws, rule, regulations or ordinances which affect the rights or obligations of CLIENT or CONTRACTOR under this Agreement, or the applicability of any taxes or fees, or the cost of handling waste materials, CLIENT and CONTRACTOR shall negotiate in good faith to bring this Agreement into conformance with such change or changes. In the event that such agreement cannot be reached, CLIENT or CONTRACTOR shall have the right to terminate this Agreement immediately upon written notice to the other party.

SECTION 7. INSURANCE

7.1 CONTRACTOR shall keep in effect during the term of this Agreement the following insurance coverage:

<u>COVERAGE</u>	<u>LIMITS</u>
Worker's Compensation	Statutory
Automobile Liability	\$1 million combined single limit
Comprehensive General Liability	\$1 million per occurrence, \$2 million aggregate
Professional Liability	\$2 million per occurrence, \$2 million aggregate
Contractor's Pollution Liability	\$5 million per occurrence, \$5 million aggregate

7.2 CONTRACTOR shall provide CLIENT with a certificate(s) of insurance upon written request.

SECTION 8. INDEMNIFICATION

8.1 CONTRACTOR agrees to indemnify and hold harmless CLIENT, its directors, officers, employees and agents from and against any and all costs, liabilities, claims, demands and causes of action including, without limitation, bodily injury to or death of any person or destruction of or damage to any property, except natural resource and other damages as provided in Section 8.3, which CLIENT suffer, incur, or pay out, to the extent such are caused by the negligence or willful misconduct of CONTRACTOR, its agents or employees during the performance of the Agreement or CONTRACTOR'S failure to comply with any laws, regulations or lawful authority of failure to comply with its obligations under this Agreement; except to the extent such liabilities, claims, demands and causes of action result from CLIENT'S failure to comply with any laws, regulations or other lawful authority, or CLIENT'S failure to comply with its obligations under this Agreement or result from the negligence or willful misconduct of CLIENT, its employees or agents.

Client Initials

8.2 CLIENT shall indemnify and hold harmless CONTRACTOR, its parent and affiliated companies and their respective directors, officers, employees and agents from and against any and all costs, liabilities, claims, demands and causes of action including, without limitation, any bodily injury to or death of any person or destruction of or damage to property which CONTRACTOR may suffer, incur, or pay out to the extent such are caused by the negligence or willful misconduct of CLIENT, its employees or agents or the failure of CLIENT to comply with any laws, regulations or other lawful authority or the failure of CLIENT to comply with its duties or obligations under this Agreement; except to the extent such liabilities, claims, demands and causes of action result from CONTRACTOR'S failure to comply with any laws, regulation or lawful authority, or CONTRACTOR'S failure to comply with its obligations under this Agreement or result from the negligence of willful misconduct of CONTRACTOR, its employees or agents.

8.3 Notwithstanding the foregoing, CLIENT shall indemnify, defend and hold harmless CONTRACTOR, its parent and affiliated companies and their respective directors, officers, employees, agents and subcontractors from and against any and all costs, liabilities, claims, demands and causes of action for pollution damages; contamination or adverse effects on the environment; destruction of, damage to, or loss of, whether actual or alleged, any property or natural resources, including the cost of assessing the damage; injury to or economic losses resulting from destruction of real or personal property; damages for loss of subsistence use of natural resources; damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property or natural resources; damages for net costs of providing increased or additional public services; removal cost; and any other costs assessable under the Oil Pollution Act, the Comprehensive Environmental Response, Liability and Compensation Act or other local, state, or federal law or lawful authority applicable to discharges, releases or spills of hazardous or non-hazardous substances which they, individually or collectively, may suffer, incur, or pay out in connection with, or arising out of the Event.

8.4 The rights and obligations of the parties under this Agreement shall inure to the benefit of and shall be binding upon the legal representatives, heirs, and assigns of the parties.

SECTION 9. EXCUSE OF PERFORMANCE

The performance of the Agreement, except for the payment of money for Services already rendered, may be suspended by either party in the event performance of this Agreement is prevented by a cause or causes beyond the reasonable control of such party. Such causes include but are not limited to: acts of God, war, riots, fire, explosion, inclement weather, labor disputes, strikes and lock-outs. The party which is prevented from performing by a cause beyond its reasonable control shall use its best efforts to eliminate such cause or event.

SECTION 10. TERMINATION

10.1 This Agreement may be terminated by either party upon forty-eight (48) hours prior notice to the other party.

SECTION 11. NOTICE

11.1 NOTICE – Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and delivered by certified mail to the address listed below:

CLIENT:

Attention: _____
Telephone: _____
Email: _____

CONTRACTOR:

Advanced Waste Services, Inc.
1126 S. 70th Street, Suite N408B
West Allis, WI 53214

Attention: _____
Telephone: _____
Email: _____

SECTION 12. ADDITIONAL PROVISIONS

12.1 WAIVER – Any waiver by either party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition.

12.2 SEVERABILITY – If any section, subsection, sentence or clause of this Agreement shall be deemed to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of this Agreement or other sections of this Agreement.

12.3 ENTIRE AGREEMENT – This Agreement and exhibits to this Agreement represent the entire understanding and agreement between CLIENT and CONTRACTOR and supersede any and all prior agreements, whether written or oral, that may exist between the parties regarding the same. Additional, conflicting or different terms on any Purchase Order or other preprinted document issued by CLIENT shall be void and are hereby expressly rejected by CONTRACTOR.

12.4 SURVIVAL - Any provision of this Agreement setting forth an obligation or duty which by its very nature cannot be performed during the actual life of this Agreement shall be deemed to survive expiration, termination, completion, or cancellation of the Agreement.

Client Initials

12.5 APPLICABLE LAW - This Agreement shall be interpreted and enforced according to the Laws of the State of Wisconsin.

12.6 BINDING EFFECT - The rights and obligations of the parties under this Agreement shall inure to the benefit of and shall be binding upon the legal representations, heirs, and assigns of the parties.

12.7 JURISDICTION AND VENUE - All disputes arising under this Agreement (other than disputes for which specific performance or other injunctive relief may be sought because monetary damages are inadequate) shall be filed exclusively in the United States District Court of the Eastern District of Wisconsin. Each of the parties agrees to voluntarily submit to, and irrevocably consent to the exclusive jurisdiction of such courts and to waive and agree not to assert any defense of lack of personal jurisdiction, improper venue or forum non-conveniens.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written:

CLIENT:

CONTRACTOR:

Advanced Waste Services, Inc.

Signature

Signature

Printed Name

Printed Name

Title

Title

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