



## EMERGENCY RESPONSE & ENVIRONMENTAL SERVICES CONTRACT

COMPANY NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_ Email: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

FACILITY ADDRESS: \_\_\_\_\_

BILLING ADDRESS: \_\_\_\_\_

This Emergency Response & Environmental Services Contract ("Contract") is entered into as of the date set forth above between \_\_\_\_\_, more specifically described above and hereafter referred to as the "Company" and Miller Environmental Group Inc., hereafter referred to as "MEG" (Company and MEG individually referred to as "Party" or collectively referred to as the "Parties").

MEG is engaged in the business of providing emergency response and environmental services. Contracted services shall be more specifically defined in the attached scope of work (emergency response, environmental services and those services defined in the attached scope of work collectively referred to as, the "Services") and Company seeks to engage MEG to provide the Services.

In consideration of the foregoing and the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties intend to be legally bound and MEG shall provide Services to Company solely in accordance with and subject to the terms and conditions as follows:

- I. MEG shall exercise the skill, care, and diligence consistent with industry standards exercised by members of its profession in the location where the Services are provided.
- II. MEG shall be on-call to respond with equipment and manpower, 24-hours a day, 365 days a year. To trigger a Service response from MEG, the Company must call MEG's 24-hour emergency response line (800) 394-8606 and provide the requested information.
- III. MEG shall work in accordance with applicable local, state and federal laws, rules and regulations relating to the environment and hazardous wastes.
- IV. MEG shall supply tools, equipment, materials, labor, supervision and other items to respond, dispose or store on-site at the Company's facility, materials released into the environment or released within the Company's premises. Company shall retain ownership and responsibility for any waste and materials resulting from the Services including, but not limited to response-derived wastes, samples, cuttings and residues. Notwithstanding MEG's assistance to Company with qualifying and/or choosing a TSDF and/or signing shipping documents on behalf of Company, the Company shall be identified as the generator of all wastes and materials resulting from the Services in any required disposal documentation. Moreover, the Company, and not MEG, shall be deemed to have arranged for, selected, identified and approved the applicable disposal site. MEG shall not be deemed to be the "generator," "arranger," "transporter," or "disposer," as such terms are defined in applicable federal and state laws and regulations governing the disposal of wastes.

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- V. MEG, at its sole discretion, will determine whether safe working conditions exist and whether Services may be rendered. Such a determination may consider, among other things, weather, personal protective equipment, atmosphere, damage, and risks to employee health and safety.
- VI. MEG shall not be deemed in default of this Contract for any delay or failure to fulfill any obligation hereunder so long as and to the extent to which any delay or failure in the fulfillment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a circumstance(s) beyond the control of MEG, and MEG's exercise of due diligence and foresight could not reasonably have avoided, such as an act of war, strike, riot, crime, or an act of God. In the event of any such excused delay, the time for performance of such obligations shall be extended for a period equal to the time lost by reason of the delay. MEG shall, as soon as reasonably practicable after the occurrence of any such event, (a) provide written notice to the other Party of the nature and extent of any such condition; and (b) use commercially reasonable efforts to remove any such causes and resume performance under this Contract as soon as reasonably practical.
- VII. If required by applicable laws, rules or regulations to perform the Services, MEG shall supply labor trained in accordance with OSHA and other required safety regulations.
- VIII. The scope of Services shall include all work provided by MEG that is reasonably necessary for the effective and prompt fulfillment of MEG's obligations pursuant to this Contract. MEG shall document all site activities related to the sampling, containment, clean up, storage or transportation of released materials. MEG shall prepare and maintain daily job reports and logs pertaining to all activities performed on behalf of the Company and shall report the quantities and classifications of labor, equipment, and materials used for each project. The daily job reports will be reviewed, accepted, and signed by a representative of the Company daily.
- IX. The Company shall make available to MEG, all proprietary information on materials involved in the project/incident, as well as all information related to surface and subsurface structures, property conditions and sensitive receptors that could affect the safe and effective provision of Services.
- X. Upon request, MEG shall furnish a Certificate of Insurance demonstrating its insurance program.
- XI. Company, at all times, shall maintain care, custody and control of Company's property, including any material that is the subject of the response, any wastes and wastes generated and any equipment being worked on by MEG.
- XII. The Company is responsible for interfacing with local, state, or federal environmental officials. To the extent required by law, it is the Company's legal responsibility to report the spill to federal, state and local officials. MEG will consult with and reasonably support the Company in Company's presentation of the findings of a spill. Notwithstanding the foregoing, MEG may be required by law to report spills to the appropriate authorities if that notice has not already been given. The Company will indemnify MEG for claims, losses, damages, including but not limited to attorney's fees and administrative costs arising from the Company's negligence and/or failure to report.
- XIII. While on Company property, MEG shall obey all Company safety rules and regulations identified by the Company in writing and provided to MEG in advance of MEG's performance of the services.
- XIV. The Company shall pay MEG for all Services performed. MEG reserves the right to require a retainer prior to conducting any services. Any retainers required by MEG will be due upon execution of this Contract and will be applied against invoices. MEG reserves the right to re-evaluate and alter the credit terms and any retainer amount throughout the life of this Contract.
- XV. MEG shall supply itemized invoices on a timely basis according to its published time and material rates that are in effect at the time when service is provided. MEG's current time and materials rate schedule has been provided to the Company and its terms and conditions are incorporated herein by reference.

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Upon request and when available, MEG will provide a written cost estimate for lump sum work. The Company agrees to pay all invoices pursuant to \_\_\_\_\_ terms from date of invoice. MEG reserves the right to modify its credit terms based on its credit evaluation of the Company. Standard interest charges apply to past due accounts of 1 ½% per month (18% APR) from date of invoice. Payment for services rendered shall be due regardless of any subsequent suspension or termination of the Contract by either party. Company is required to pay all sales tax unless proper exemption and/or resale certificates are provided to MEG prior to the commencement of work.

- XVI. Company shall pay all collection costs incurred by MEG for non-payment of Company invoices, including but not limited to its legal fees, collection agency fees, court costs, and other collection expenses.
- XVII. Payment of a MEG invoice signifies that the Company is satisfied with all service to date and is not aware of any deficiencies in services. Any disputes regarding services or invoices must be received in writing within 10 days of occurrence.
- XVIII. This Contract is between the Company and MEG. If the Company seeks compensation from its Insurance Company or Protection and Indemnity Club, MEG does not release the Company from its obligations agreed to in this Contract. Company acknowledges that payment of MEG invoices are not contingent upon reimbursement from Company's Insurance proceeds, Protection and Indemnity Club or any third-party. MEG holds the Company responsible for the entire itemized bill.
- XIX. All permits, manifests, field notes, photographs, reports and documentation of the Services shall remain the property of MEG until full payment of all invoices is received by MEG.
- XX. This Contract shall be governed by the laws of the State of New York, both as to interpretation and performance. Company hereby irrevocably consents to the exclusive jurisdiction and venue of the State and Federal Courts located in the County of Suffolk, State of New York, for all purposes in connection with any action or proceeding which arises from or relates to this Contract. COMPANY FURTHER AGREES TO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING WHICH ARISES FROM OR RELATES TO THIS CONTRACT.
- XXI. Company shall defend, indemnify and hold harmless, at its expense, MEG and all of its respective officers, agents and employees from and against all liens, losses, costs, expenses, damages, claims, demands, liabilities, causes of action of whatever kind or nature, suits or other proceedings, by whomsoever made, including claims for bodily injuries, death and physical property loss or damage, resulting from or attributable to (i) any negligent act or omission, of Company, its officers, employees or representatives, or (ii) any breach of this Contract by Company

MEG shall defend, indemnify and hold harmless, at its expense, the Company and its respective officers, agents, and employees from and against all claims, losses, costs, expenses, damages, claims, demands, liabilities, causes of action of whatever kind or nature, suits or other proceedings by whomsoever made, including claims for bodily injuries, death and physical property loss or damage resulting from or attributable to any breach of this Contract by MEG.

In no event shall either party, its client, or insurers, directors, officers, affiliates or employees be liable for indirect or consequential damages.

- XXII. The relationship of the Parties under this Contract is that of independent contractors and nothing contained in this Contract is intended or is to be construed so as to constitute the parties as partners, joint venturers, or one party as an agent or employee of the other party.
- XXIII. During the period of this Contract, including any Contract extensions or modifications and one year thereafter, both parties agree not to solicit for employment, hire, or otherwise retain any technical or professional employees of the other party assigned to work on this Contract without prior written approval of the other party. This clause shall in no way be construed to restrict, limit, or encumber the rights of any

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employee granted by law. Further, this prohibition shall not apply to employees hired strictly in response to general advertisements in newspapers or other widely distributed publications, media, or mail, whether electronic or otherwise.

- XXIV. This Contract is in effect until cancelled in writing by either party. Termination of this Contract shall not relieve the Company of its payment obligations to MEG for work performed up and through the termination date along with reasonable costs of demobilization.
- XXV. Any notices contemplated by this Contract shall be delivered via reputable overnight carrier. Notice to Company shall be delivered to the Company Billing Address set forth on page 1 of the Contract. Notice to MEG, shall be delivered to:

Miller Environmental Group Inc.  
538 Edwards Avenue  
Calverton, NY 11933  
Attention: Contracts

The parties may revise the notice address and contact via notice in accordance with this provision.

- XXVI. The failure of either party to enforce, at any time, the provision of this Contract does not constitute a waiver of such provisions in any way or waive the right of either Party at any time to avail itself of such remedies as it may have for any breach or breaches of such provisions. None of the conditions of this Contract shall be considered waived by MEG unless such waiver is explicitly given in writing by MEG. No such waiver shall be a waiver of any past or future default, breach or modification of any of the terms of conditions of this Contract unless expressly stipulated in such waiver.
- XXVII. The invalidity of one provision, or invalid application thereof, of this Contract shall not affect the validity of any other provision or any other application of any provision of the Contract.
- XXVIII. The rights and obligations of the Parties and their respective agents, successors and assignees hereunder shall be subject to and governed by this Contract, which supersedes any other understandings or writings between the parties. No changes, amendments or modifications of any of the terms and conditions of this Contract shall be valid unless reduced to writing and executed by both Parties.

In witness whereof, the Parties have executed this Contract effective as of the most current date set forth below.

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Company: _____	Company: <u>Miller Environmental Group, Inc.</u>
Date: _____	Date: _____