

EMERGENCY RESPONSE AGREEMENT

THIS AGREEMENT ("Agreement"), is made this _____ day of _____ 2002, by and between SHAMROCK ENVIRONMENTAL CORPORATION, a North Carolina corporation (hereinafter referred to as "Contractor"), and _____ (hereinafter known as "Customer").

WHEREAS, Contractor is in the business of providing emergency environmental services; and

WHEREAS, Customer desires to engage Contractor to provide such services in accordance with the terms and conditions stated in this Agreement;

NOW, THEREFORE, Contractor and Customer agree as follows:

1. **Engagement.** Customer hereby engages Contractor to perform and render the environmental services described below or on Contractor's written proposal or work order identified below:

("Services"). The Services shall be performed subject to the terms and conditions of this Agreement.

2. **Compensation.** All Services rendered by Contractor for Customer under this Agreement shall be billed to Customer on a time and materials basis, which shall be at Contractor's then current standard rates for applicable labor, materials and equipment, which may change from time to time. Work or materials not covered under Contractor's then current rate schedule shall be billed at a rate of cost plus 20%. Customer agrees to pay amounts invoiced by Contractor within 30 days of invoice date. Customer further agrees to pay Contractor an interest charge of one and one-half percent (1 1/2%) per month on invoice balances not paid within thirty (30) days of invoice date. In the event of Customer's failure to pay any amount due upon Contractor's invoice(s) or in the event of Customer's breach of this Agreement, Customer agrees to pay Contractor all reasonable attorney's fees, collection fees, costs and expenses incurred by Contractor in any legal action brought to collect unpaid invoice balances owed by Customer or to enforce this Agreement.

3. **Schedule.** The time period to start and complete the project will be as agreed upon between Contractor and Customer.

4. **Indemnification.** Customer hereby agrees to indemnify and hold Contractor harmless from and against any and all losses, liabilities, claims and costs, including legal costs, expenses and reasonable attorney's fees, which Contractor may incur, become responsible for, or pay out as the result of any breach by Customer of any provision of the Agreement, or otherwise resulting from the fault or negligence of Customer (provided, however that the foregoing indemnity shall not apply to losses caused solely by Contractor's gross negligence, recklessness or intentional torts).

5. **Definitions.** ("Hazardous Materials") shall mean materials at the Project Site and any other substances produced or resulting from such materials which contain constituents, have characteristics, or are present in quantities, that materially increase risk or hazard to human health, property or the environment, or which are defined as such under federal state or local laws or regulations. ("Waste") shall mean any and all products or materials delivered or made available at the Project Site to Contractor for handling, storage, transportation, disposal or treatment by the Contractor.

6. **RCRA Compliance.** Nothing contained within this Agreement shall be construed or interpreted as requiring the Contractor to assume the status of a generator, storer, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42, USCA, Section 6901, et seg. as amended (hereinafter "RCRA") or within any federal, state or local statutes governing the treatment, storage and disposal of Hazardous Materials, Waste or other materials. The Customer shall assume the responsibility for compliance with the provisions of RCRA and any federal, state or local laws governing the treatment, storage and disposal of Hazardous Materials, Waste or other materials. In no event will Contractor take title to any Hazardous Materials, Waste or other materials, unless otherwise agreed to herein.

7. **Duties of Contractor.** Contractor agrees that it will (a) employ reasonable care in the receipt, handling, treatment, storage, transportation, disposal or other disposition of Hazardous Materials, Waste or other materials offered to it by Customer; (b) observe and comply with all applicable federal state and local laws and regulations relating to the receipt, handling, treatment, storage, transportation and disposal or other disposition of Hazardous Materials, Waste or other materials hereunder and (c) obtain and comply with all governmental permits, licenses and approvals required to receive, handle, treat, store, transport and dispose of Hazardous Materials, Waste or other Materials hereunder.

8. **Duties of Customer.** Customer agrees that, unless Contractor is otherwise requested and directed to perform analytical testing or other services as part of the Work to be performed under this Agreement, Customer will (a) accurately identify, in writing, the nature, quantities, age and chemical composition including any contaminants of any Hazardous Materials, Waste or other materials which are the subject of this Agreement which shall be incorporated herein by reference; (b) identify, package and label Hazardous Materials, Waste or other materials and shall be in compliance with all federal (including United States Environmental Protection Agency and United States Department of Transportation), state and local laws and regulations prior to transferring said materials to Contractor; (c) furnish any notices, permits or other written communication, or studies or reports, pertaining to the environmental condition of the soil, surface water or groundwater, or air, on or at the Project Site to Contractor, unless otherwise agreed in writing; (d) be responsible for payment of any taxes for which Customer claims it is exempt or for which Customer issues Contractor direct-pay permits, and shall be responsible for reimbursing Contractor for any gross receipts, sales taxes, use or similar taxes incurred in

EMERGENCY RESPONSE AGREEMENT

the performance of the Work; (e) retain the responsibility to notify appropriate federal, state, or local public agencies as required by law, or otherwise, of any information that may be necessary to prevent any danger to health, safety or the environment; (f) appoint an authorized representative, who shall be present on at the project site during the performance of this Agreement, who shall have authority to receive information from Contractor and to make decisions binding upon Customer.

9. **Access to Premises.** The Customer hereby grants to Contractor, its agents and employees, or shall make available to Contractor, during the term of this Agreement, reasonable access to the premises, facilities, vehicles or site where the Services are to be performed, so that Contractor may fulfill its obligations under this Agreement. The Customer warrants that any right of way provided by the Customer to or from the Customer's premises or project site, to or from the most convenient public way is sufficient to bear the weight of all of Contractor's equipment and vehicles reasonably required to perform the services hereunder. Customer shall not be responsible for damages caused to any private pavement or accompanying subsurface of any route reasonably necessary for Contractor to perform the Services.

10. **Title to Hazardous Materials, Waste or Other Materials.** Customer represents and warrants that it holds clear title to and/or has the authority to give title to all Hazardous Materials, Waste or other materials to be handled, transported, disposed of, or treated hereunder and is under no legal constraints or orders which would prohibit the handling or servicing of said Hazardous Materials, Waste or other materials by Contractor or in any way limit the handling or servicing and/or the transfer of the possession or title to such materials to the Treatment Storage Disposal Facility (TSDF). If the Services include disposal of the Hazardous Materials or Waste, the Customer, in consultation with the Contractor, will choose the name, address and location of the TSDF or Disposal Site where such disposal is to be made.

11. **DISCLAIMER OF WARRANTIES BY CONTRACTOR.** CONTRACTOR MAKES NO WARRANTIES AS TO ANY SERVICES OR MATERIALS TO BE PROVIDED OTHER THAN AS EXPRESSLY STATED IN THIS AGREEMENT, AND ALL WARRANTIES WHETHER IMPLIED OR STATUTORY, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY THE CONTRACTOR.

12. **Limitation of Liability of Contractor.** In no event shall Contractor be liable to Customer for consequential or incidental damages. Contractor shall not be liable to the Customer or any third parties for (a) consequential or indirect losses or damages including, without limitation, the loss of profits, loss of production, plant down-time or Customer's liability to third parties; (b) losses or damages arising from the sole or contributory negligence of the Customer and/or any third party; (c) losses or damages arising from causes beyond Contractor's control including, without limitation, war, riots, acts of governmental authorities, strikes or other labor difficulties, inclement weather, fires, floods and unavoidable casualties or delays in transportation; (d) losses or damages arising from the lack of identification or inaccurate identification of the Hazardous Materials or Waste or other materials. The remedies set forth herein are exclusive and the total liability of Contractor on any claim, whether in contract, tort (including negligence, whether sole or concurrent), or otherwise arising out of, connected with or resulting from the services provided pursuant to this Agreement shall not exceed the total fees paid to Contractor by Customer.

13. **Differing Site Conditions.** If conditions at the project site are encountered by the Contractor which are (a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Proposal or Work Order or otherwise originally contemplated by the parties; or (b) unusual geologic conditions or unknown physical conditions of an unusual nature, which differ materially from conditions ordinarily encountered or from conditions addressed in the Proposal or Work Order or otherwise originally contemplated by the parties, then the Contractor, before conditions are disturbed, will notify Customer not later than 10 days after discovery or first observance of the conditions. Customer shall promptly investigate such conditions, and if such conditions do materially differ and cause an increase or decrease in Contractor's cost of, or the time required for, performance of any part of the Work under the Agreement, an equitable adjustment shall be with respect to Contractor's scope of work, compensation and/or time schedule.

14. **No Third Party Beneficiaries.** Contractor and Customer agree that this Agreement is not intended in any way to benefit third parties and that no third party may justifiably rely upon this Agreement in taking or refraining from taking any action or in any other fashion become a third-party beneficiary under this Agreement.

15. **Reports.** In connection with the performance of the Services, Contractor may deliver to Customer one or more reports or other written documents reflecting Services provided, the results of such Services or Contractor's evaluation of the results of such Services. All Such reports or other written documents shall become the property of Customer upon delivery; however, all original data gathered by Contractor and work papers produced by Contractor in the performance of the Services are, and shall remain, the sole and exclusive property of Contractor.

16. **Termination.** If a party is in breach of this Agreement and fails to cure the breach within 10 days after receiving notice of the breach from the other party, the other party may then give notice terminating this Agreement. In addition, either party may terminate this Agreement without cause by providing 30 days advance notice of termination to the other party. In the event of termination, the Contractor shall be paid for all Services performed hereunder prior to the effective date of termination plus actual expenses incurred and reasonable expenses of terminating the Work. In the event of termination or suspension of work for more than one month, prior to completion of the Work, the Contractor may complete such analyses and records as are necessary to complete its files and may also complete a report on Services performed to the date of termination or suspension. The expenses of termination shall include all direct costs of Contractor in completing such analyses, records and reports. Customer shall assume full responsibility for site restoration and Contractor shall have no liability therefor in the event of termination or suspension of Contractor's services under this Agreement.

EMERGENCY RESPONSE AGREEMENT

17. **Independent Contractor.** Contractor is and shall at all times be an independent contractor in connection with all Services performed by it for the Customer under this Agreement. Nothing in this Agreement shall be construed to constitute either party as the agent, employee, servant or partner of the other party.

18. **Changes.** Customer and Contractor, without invalidating this Agreement, may order or request, respectively, changes in the Work within the general scope of this Agreement. All changes in the Work shall be authorized by Customer by execution of a Field Work Order or Change Order. In the event changes in the Work result in increased work, unless otherwise negotiated between the parties, Contractor will invoice Customer for Time and Materials expended in accordance with Contractor's then current standard rates. In any emergency affecting the safety of persons or property, Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any increase in the price or extension of time claimed by Contractor on account of emergency Work will be compensated in accordance with paragraph 2.

19. **Notice.** Any notice, communication or statement required or permitted to be given hereunder shall be in writing and deemed to have been sufficiently given when delivered in person or by registered or certified mail, postage prepaid, return receipt requested, to the address of the respective party set forth below.

20. **Entire Agreement.** This Agreement and its attachments or exhibits represents the entire understanding and agreement between the parties and supersedes all prior agreements, whether written or oral, that may exist between the parties. No terms, conditions, prior course of dealings, course of performance, usage of trade, understandings, purchase orders, or agreement purporting to modify, vary, supplement or explain any provision of this Agreement shall be effective unless in writing, signed by both parties. Notwithstanding the foregoing, in no event shall the preprinted terms and conditions found on any Customer's purchase or work order be considered an amendment or modification of this Agreement and, even if such documents are signed by representatives of both parties; such preprinted terms or conditions shall be considered null and void and of no effect.

21. **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, unless such waiver be so expressed in writing and signed the party to be bound.

22. **Assignment and Subcontracts.** Neither party may assign this Agreement without the consent of the other party; however, Contractor may, in its sole discretion, enter into one or more Subcontracts with subcontractors of its choice for the performance of Services under this Agreement.

23. **Severability.** Whenever possible each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable laws, but if any provision shall be prohibited or invalid under applicable laws, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of the provision or the remaining provisions of this Agreement.

24. **Governing Laws, Etc.** This Agreement shall be construed and interpreted in accordance with the substantive laws of the State of North Carolina, without regard to principles of conflicts of law. The parties expressly consent to the personal jurisdiction and venue of the state and federal courts located in North Carolina for adjudication of any claim or dispute arising under this Agreement or otherwise occurring between the parties. This Agreement shall be binding upon and shall inure to the benefit of Contractor and Customer and their respective successors and assigns.

25. **Acceptance.** The Customer, by its authorized representative, has read this Agreement, including all attachments and exhibits, and agrees to be bound hereby. The undersigned representative of the Customer warrants that he has the authority to execute this Agreement on behalf of the Customer.

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

CUSTOMER _____ Address: _____
By: _____
Title: _____

SHAMROCK ENVIRONMENTAL CORPORATION

By: _____ Address: 6106 Corporate Park Drive
Title: _____ Browns Summit, NC 27214