

Confined Space Agreement

For good and valuable consideration, it is mutually agreed that the Appleton Fire Department (hereafter "AFD") will complete Confined Space Standby and Rescue to ***Purina Animal Nutrition, LLC*** (hereafter "Owner") at its facility located at ***1700 Bohm Drive, Little Chute, WI 54140*** (hereafter "Facility") during the period ***(January 1, 2022 to December 31, 2022)*** under the conditions specified in this agreement (hereafter "Agreement"). The Appleton Fire Department completes these activities in accordance with OSHA's Permit-Required Confined Space Standard (29 CFR 1910.146) and Wisconsin Department of Safety and Professional Services Chapter SPS 32. AFD will provide this service to Owner under the following conditions:

1. The Appleton Fire Department must be informed of all confined spaces in their classification (29 CFR 1910.146) at the facility. In addition, all information regarding potential hazards, SDS, and relevant information associated with these spaces must be shared (by the owners) per OSHA's Permit-Required Spaces Standard (29 CFR 1910.146).
2. The Appleton Fire Department must have the opportunity to train their personnel in confined space rescue in any of these spaces if such training is deemed necessary prior to providing actual standby services.
3. If the Appleton Fire Department determines that certain specific rescue equipment may be needed, and AFD does not currently own such equipment, Owner shall either purchase or temporarily lease such equipment for AFD's potential use. This purchased equipment will be stored and maintained by your facility.
4. Any confined space equipment (owned by the Appleton Fire Department) that has been damaged or rendered unusable during a confined space rescue or rescue training at the facility shall be repaired at Owner's cost or, if the equipment may not be repaired, Owner shall be responsible for the replacement cost of new equipment.
5. A preplan survey and drawing of the facility will be supplied by Owner. This preplan survey and drawing will be completed per Appleton Fire Department's guidelines and kept on file at the Appleton Fire Department. This preplan will be reviewed and updated by Owner as needed to help better facilitate confined space rescues.
6. The facility is required to meet all components of OSHA's Permit-Required Confined Space Entry Standard (29 CFR 1910.146).
7. Owner shall provide the Appleton Fire Department with any history of accidents, injuries, or fatalities, which occurred within any confined spaces found in the facility since it has been in operation.
8. The numbers of rescuers needed to facilitate a confined space standby and/or rescue at the facility will be the decision of the Appleton Fire Department.
9. Owner shall be responsible for all costs incurred in having the Appleton Fire Department standby at the facility. Costs shall be determined as follows:

Costs shall be determined to include all personnel and equipment costs incurred by AFD and the City of Appleton as a result of any service rendered to the Owner and/or Facility as set forth in paragraph 16. In addition, Owner shall pay AFD an annual nonrefundable contract administration fee of Three Hundred Dollars (\$300) with said amount being due at the time the Agreement is executed. Thereafter said amount shall be due within ten (10) days of the Agreement's annual anniversary as long as the Agreement is in effect.

10. All confined spaces must be appropriately marked accordingly to OSHA 29 CFR 1910.146.
11. When the Owner learns of any changes of confined spaces within the facility, it shall promptly notify the Appleton Fire Department in writing (through the pre-plan survey and drawing process).
12. The Appleton Fire Department will provide a written plan, for the stand-by services provided, upon request.
13. This agreement may be terminated by either party upon 10 days written notification to the other party.

Confined Space Rescues

In addition to the foregoing, the parties also agree as follows:

14. The Appleton Fire Department must be notified at least 10 days previous to all non-emergency IDLH (Immediately Dangerous to Life and Health) confined space entries made at your facility. The Appleton Fire Department Confined Space Rescue Team will complete confined space standby operations in accordance with this Agreement.
15. The Appleton Fire Department must be notified as soon as possible for all emergency IDLH (Immediately Dangerous to Life and Health) confined space entries made at your facility. The Appleton Fire Department Confined Space Rescue Team will attempt to complete confined space standby operations in accordance with this agreement (due to the limited notification process).
16. All confined space standby operations for IDLH entries will be charged at the current hourly rate for Appleton confined space rescue personnel and the FEMA rate for equipment and vehicle use. The number of Appleton rescue personnel used for confined space standby personnel will be at the discretion of the Appleton Fire Department and may vary depending on each situation.
17. If an emergency occurs elsewhere while an IDLH entry at the Facility is taking place, and AFD is standing by, AFD reserves the right to terminate the confined space standby operation in order for AFD to respond to the other emergency.

Additional Provisions

I. Indemnification

For good and valuable consideration, and to the fullest extent allowable by law, Owner hereby indemnifies and shall defend and hold harmless the City of Appleton, its elected and appointed officials, officers, employees or authorized representatives or volunteers and each of them from and against any

and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature whether arising before, during, or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of Owner or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of the Agreement. Owner's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the sole fault, sole negligence, or willful misconduct of the City of Appleton, or its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this Agreement.

In any and all claims against the City of Appleton, its elected and appointed officials, officers, employees or authorized representatives or volunteers by an employee of Owner, any subcontractor, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Owner or any subcontractor under Worker's Compensation Acts, Disability Benefit Acts, or other employee benefit acts.

No provision of this Indemnification clause shall give rise to any duties not otherwise provided for by this Agreement or by operation of law. No provision of this Indemnity clause shall be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the City of Appleton, its elected and appointed officials, officers, employees or authorized representatives or volunteers under this or any other contract. This clause is to be read in conjunction with all other indemnity provisions contained in this Agreement. Any conflict or ambiguity arising between any indemnity provisions in this Agreement shall be construed in favor of indemnified parties except when such interpretation would violate the laws of the State of Wisconsin.

Owner shall reimburse the City of Appleton, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Owner's obligation to indemnify shall not be restricted to insurance proceeds, if any received by the City of Appleton, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

II. Laws, Regulations and Permits

The Owner shall give all notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the project. The Owner shall also be liable for all violations of the law in connection with work furnished by the Owner.

Safety & Security – The Owner shall execute and maintain its work so as to avoid injury or damage to any person or property. The Owner shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds or work.

In carrying out its work, the Owner shall at all times exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed, and be in compliance with all applicable federal, state and local statutory and regulations requirements. Safety precautions, as applicable, shall include but not be limited to: adequate life protection and lifesaving equipment; adequate illumination; instructions in accident prevention for all employees, such as the use of machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space

procedures, trenching and shoring, fall protection, and other safety devices, equipment wearing apparel as are necessary or lawfully required to prevent accidents, injuries or illnesses; and adequate facilities for the proper inspection and maintenance of safety measures.

III. Insurance Requirements

A. Unless otherwise specified in this Agreement, the Owner shall, at its sole expense, maintain in effect at all times during the performance of the Work, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.

- Commercial General Liability coverage at least as broad as Insurance Services Office (ISO) Commercial General Liability Form with the following minimum limits and coverage:
 - Each occurrence limit..... \$1,000,000
 - Personal and Advertising Limit \$1,000,000
 - General Aggregate Limit \$2,000,000
 - Fire Damage Limit (Any One Fire) \$50,000
 - Medical Expense Limit (Per Person) (self-insured) \$5,000

- Automobile Liability coverage at least as broad as Insurance Services Office Business Automobile Form with \$1,000,000 minimum limits combined single limit per accident for bodily injury and property damage, provided on a “Any Auto” basis.

- Worker’s Compensation as required by the State of Wisconsin and employer’s liability insurance with sufficient limits to meet underlying umbrella liability insurance requirements.

- Umbrella Liability coverage at least as broad as the underlying Commercial General Liability, Automobile Liability and Employers Liability:
 - Minimum limit each occurrence \$2,000,000
 - Aggregate..... \$2,000,000

B. Required Provisions – The general liability, automobile liability and umbrella liability policies are to contain, or be endorsed to contain, the following provisions:

- 1) The City of Appleton, and its officers, Council members, agents, employees and authorized volunteers must be named as additional insureds on all Owner liability policies. This does not apply to Worker’s Compensation Policies.

- 2) For any claims related to this project, Owner’s insurance shall be primary insurance as respects the City of Appleton, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self- insurance, or other coverage maintained by the City of Appleton, its elected and appointed officials, officers, employees, or authorized representatives or volunteers shall not contribute to it.

- 3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Appleton, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

- 4) Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 5) Such liability insurance shall indemnify the City of Appleton, its elected and appointed officials, officers, employees of authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, Owner for damages on account of such bodily injury (including death), property damage, personal injury, completed operations, and products liability.
 - 6) The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability with a minimum of a 24-month policy extension, explosion, collapse, underground excavation, and removal of lateral support, and shall not contain an exclusion for what is commonly referred to by the insurers as the "XCU" hazards.
 - 7) All of the insurance shall be provided on policy forms and through companies satisfactory to the City of Appleton and shall have a minimum A.M. Best's rating of A-VII.
- C. Evidences of Insurance – Prior to execution of the agreement, Owner shall file with the City of Appleton a certificate of insurance (Acord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.

SIGNATURES ARE CONTAINED ON THE FOLLOWING PAGE

**Owner of Permit – Required Confined Space
Purina Animal Nutrition, LLC**

By: _____
Printed Name: _____
Title: _____
Date: _____

Witness: _____
Printed Name: _____
Date: _____

By: _____
Printed Name: _____
Title: _____
Date: _____

Witness: _____
Printed Name: _____
Date: _____

Appleton Fire Department

By: _____
Jacob A. Woodford, Mayor

By: _____
Kami Lynch, City Clerk

Approved as to form:

Christopher R. Behrens, City Attorney
CL A21-0029