

**AGREEMENT
CITY OF WEST ALLIS AND WISCONSIN MOTORSPORTS LLC
PARAMEDIC AMBULANCE/FIRE ENGINE STAND-BY
MILWAUKEE MILE EVENTS FOR 2009**

THIS AGREEMENT made and entered into as of the date signed below by the respective parties, by and between WISCONSIN MOTORSPORTS LLC, hereinafter called "WM", and the CITY OF WEST ALLIS FIRE DEPARTMENT, a municipal corporation, hereinafter called "WAFD".

WHEREAS, WM has requested the WAFD to be on stand-by for the purpose of providing advanced life support services (ALS) as well as fire related response services during specified hours of racing events at the Milwaukee Mile Speedway located at Wisconsin State Fair Park in West Allis, Wisconsin and WAFD has agreed to perform such service.

NOW, THEREFORE, it is hereby agreed as follows:

1. DESCRIPTION, TYPE AND MANNER OF SERVICE TO BE PERFORMED.

WAFD shall provide emergency response teams and vehicles, including but not limited to, paramedic ambulances and single or multiple person fire engines in a manner as agreed upon in advance by the parties to be present at the Milwaukee Mile Speedway during racing and other specified events as requested by WM. The primary function of the paramedic unit shall be the performance of advanced life support services in response to medical emergencies related to auto racing. In the event that a medical emergency occurs in the grand stand or other area of the Milwaukee Mile grounds, the paramedic ambulance may also be requested to respond. The single and multiple person fire engines shall be equipped for, and be responsible for, pressurizing pre placed hose lines and response to "infield/pit row" firefighting needs, respectively. Minor first aid and re-hydration will not be a primary function of these units.

The WAFD will also provide the additional service of participating in an Emergency Operating Center, hereinafter "EOC", on the Milwaukee Mile Raceway grounds when requested in advance of the event by WM. The EOC representative shall be an Officer of the WAFD and said Officer will be responsible to coordinate/command all fire service functions of an incident as part of a unified command system.

In the event a situation arises whereby WAFD can only furnish a lesser number of emergency response vehicles than what is requested by WM for a particular event due to service breakdown of other vehicles or for any other reason, the City shall provide as much verbal notice as possible to WM and it shall be WM's sole responsibility to make alternative plans if additional emergency response vehicles are actually required on site. WAFD agrees to work with WM in securing additional emergency response vehicles from another neighboring fire department but the sole responsibility for obtaining said additional vehicles shall be the responsibility of WM.

2. TERM.

The term of this Agreement shall commence April 1st, 2009, and shall continue through December 31st, 2009, unless and until terminated as provided in Paragraph 9 of this Agreement. A new and/or revised Agreement will be signed for the next race year should the parties want services to extend beyond the term of this Agreement.

3. BILLING RATES, COMPENSATION AND COLLECTIONS.

A. 2009 Billing.

For calendar year 2009, WM shall pay \$198.00 per hour for a four (4) person fire engine, \$56.00 per hour for a single person fire engine, \$73.00 per hour for the EOC operator and \$94.00 per hour for a two (2) person paramedic unit (EMS). Said rates are subject to change for either calendar year in the event that WAFD incurs significant operational changes within its department. In the event of a rate change, WAFD will notify WM of said change in writing at least fifteen (15) days prior to the change at which point WM may terminate this Agreement in accordance with Paragraph 9 or do nothing and have deemed to accept said changes as stated by WAFD.

Billed time will commence thirty (30) minutes prior to the start of standby and end thirty (30) minutes after the termination of standby, which is to coincide with the starting and ending times of the racing event.

B. Prepayment for Services.

WM shall pay the estimated cost of an event, based on the attached cost estimates, at least five (5) business days prior to an event. Failure of WM to make prepayment as required herein or to pay for any outstanding financial obligations of WM shall be grounds for WAFD to refuse to provide the services contemplated herein.

4. CANCELLATION.

A three-hour minimum will be charged by WAFD if the event is not cancelled at least twelve (12) hours before the scheduled start time. WAFD will not bill WM for scheduled standby when races are cancelled at least twelve (12) hours prior to the scheduled standby time. Pre-race cancellations shall be made by calling Assistant Chief Steve Bane at 414-302-8910 (office) or 414 881-4313 (cell). In the event Assistant Chief Steve Bane is not available, WM shall call 414-302-8000 and ask for the Battalion Chief in command at said time to cancel any race event.

5. HOLD HARMLESS CLAUSE.

A. The WAFD will indemnify and hold WM harmless from all liabilities, judgments, costs, damages and expenses, including without limitation, consequential damages, which may accrue against, be charged to, or recovered from WM by reason

of or on account of damage to the property of, injury to, or death of any person arising from WAFD's performance of its duties under this Agreement.

B. WM will indemnify and hold WAFD harmless from all liabilities, judgments, costs, damages and expenses, including without limitation, consequential damages, which may accrue against, be charged to, or recovered from WAFD by reason of or on account of damage to the property of, injury to, or death of any person arising from WM's performance of or failure to perform its duties, including but not limited to, the proper maintenance and condition of the race track, grandstands, facilities and grounds that make up the Milwaukee Mile Race Track, at any Milwaukee Mile Racetrack event, including, but not limited to, any personal injury or bodily injury (including wrongful death) or property damage, real or personal; any lawsuit brought or threatened, settlement reached, or local, state, or federal government or agency order, including, but not limited to, claims, costs, liabilities, or expenses arising under federal, state or local law; any violation of laws, orders, regulations, requirements, or demands of any governmental authorities; and any breach or violation of any contractual provisions of whatever kind with any third party.

6. INSURANCE.

A. WAFD shall furnish, upon request, WM with a certificate of insurance indicating proof of the following insurance from companies licensed in the State of Wisconsin:

- 1) Workers Compensation – Statutory – in compliance with the Compensation Law of the state.
- 2) Commercial/General Liability Insurance with a minimum limit of \$1M Combined Single Limit for Bodily Injury and Property Damage Liability.
- 3) Automobile Liability Insurance covering the vehicles with a minimum limit of \$1M Combined Single Limit for Bodily Injury and Property Damage Liability.

B. WM shall furnish, prior to execution of this Agreement, WAFD with details of insurance coverage, including any and all Ryders to said insurance policy, that would pertain to WAFD when providing its services under this Agreement, including the following minimum limits and provisions:

1) WORKER'S COMPENSATION INSURANCE.

Worker's Compensation Insurance:

Wisconsin statutory limits for all employees of the bidder to whom the award is made.

All WM Employees, Agents, Contractors or anyone acting under WM's authority shall furnish to WM and WAFD certificates of similar

insurance for all of their respective employees, unless such employees are covered by the protection afforded by WM.

2) GENERAL LIABILITY INSURANCE.

a) Coverage. Coverages must include, but are not limited to the following:

"Occurrence" Coverage Form must be as broad as 1988 "Commercial General Liability" (form CG 00 01) and include the following:

Premises and Operations

Products and Completed Operations, applicable for at least one year following acceptance of the work

Personal Injury with Employment Exclusion deleted

Unlicensed Mobile Equipment

Explosion, Collapse and Underground Hazard Coverages

Blanket Contractual (Independent Consultant's Protective)

Broad Form Property Damage
Contingent Coverage for Subcontractors

Care, Custody and Control Coverages for City-owned or Purchased Materials at the Work Site

Premises Medical Coverage of at least \$10,000 Per Person

b) Minimum Limits of Liability.

Per Occurrence Limit: \$1,000,000

Policy Aggregate: \$2,000,000

Personal Injury Limit: \$1,000,000

Fire Damage Limit: \$ 50,000

Medical Expense Limit: \$ 5,000

3) BUSINESS AUTOMOBILE LIABILITY INSURANCE.

a) Coverage. Coverage must be as broad as CA 00 01 Ed. 1992 – Occurrence Form Code No. 1, "any auto".

Comprehensive Coverage for all Owner, Non-Owned or Hired Motor Vehicles driven by all WM Employees, Agents, Contractors or anyone acting under WM's authority, including vehicles and equipment owned by WAFD if used exclusively for the Milwaukee Mile Race Track.

Uninsured or Underinsured Motorists Liability Coverage at full policy limits.

Transportation by insured vehicles of pollutants, or toxic wastes (as determined by the EPA) shall require a minimum of the Pollution Liability Endorsement (CA9948) and/or the Motor Carrier Act Endorsement (MCA90) to address damages and clean-up costs.

b) Minimum Limits of Liability:

Minimum Limits are the same as specifications for General Liability Insurance.

4) WM further agrees to provide, prior to the execution of this Agreement, the WAFD with a Certificate of Insurance in a form acceptable to the City Attorney naming WAFD as an Additional Insured on said insurance policy or policies as described above.

7. MISCELLANEOUS.

A. Participants in this plan agree not to bill each other for transportation of patients to receiving hospitals. Specifically, transport agencies will bill only the patient, the patient's health care insurance provider or the Organization sanctioning the event should the patient be covered by a contractual Agreement between WM and the sanctioning Organization which is the usual and customary practice regarding injuries sustained by race car drivers. In such instances where a transport agency proposes billing the Organization sanctioning the event, said transport agency will contact and discuss the same with WM prior to billing the Organization sanctioning the event. No EMS transport agency will bill the West Allis Fire Department, West Allis Police Department, Wisconsin State Fair Park Police, State Fair Park or its Board of Directors, Wisconsin Motorsports LLC, Paratech Ambulance Service or any other agency unless that transport is for the care and treatment of an employee of the specific agency. In these cases, the transport agency will verify that the patient was an employee performing in his/her assigned employment role prior to the submission of any bill for service.

~~**B.** In the event that any equipment owned by WAFD is damaged as a result of any negligent, reckless or intentional act or omission of a WM employee, agent, contractor or anyone acting under WM's authority, the cost to repair or replace said damaged equipment shall be billed to WM along with and as part of a regular invoice for services and WM agrees to be responsible for the same. WM shall post a bond in the sum of \$250,000.00 to cover damage to WAFD equipment and any~~


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~~amounts paid out by WAFD for worker's compensation related to services performed under this agreement.~~

C. In the event that any equipment belonging to WAFD is provided gratuitously to WM or anyone acting under its authority for use during a racing event, WAFD is not responsible for any damages caused by the manner of use of said equipment or caused by a defect in the equipment or the failure of the equipment to perform in its proper and useful manner. WM agrees to indemnify and hold WAFD harmless from all liabilities, judgments, costs, damages and expenses, including without limitation, consequential damages, which may accrue against, be charged to, or recovered from WAFD by reason of use of said equipment, a defect in the equipment or the failure of the equipment to perform in its proper and useful manner.

D. WM agrees to reimburse WAFD for the costs of supplies used by WAFD in carrying out its duties under this Agreement. Said costs to be itemized on the Billing Invoices as stated in Paragraph 3(A) of this Agreement.

E. WM shall provide meals free of charge to WAFD personnel who are present at the Milwaukee Mile performing duties under this Agreement for four (4) hours or more. Failure of WM to provide said meals shall result in a one (1) hour cessation of the event to allow for WAFD personnel to obtain and eat a meal.

F. WM shall provide the use of the Milwaukee Mile facility to the City of West Allis for the City's Independence Day festivities free of charge.

8. NOTICES.

Any written notice required to be sent by this Agreement shall be sent to the following:

WM: Wisconsin Motorsports LLC
Attn: Claude Napier
7722 West Greenfield Avenue
West Allis, WI 53214

WAFD: West Allis Fire Department
Attn: Assistant Chief Steve Bane
7332 West National Avenue
West Allis, WI 53214

9. TERMINATION.

A. Except as above stated, WM and WAFD may terminate this Agreement at any time without cause upon advance written notice of not less than thirty (30) days.

B. WM may terminate this Agreement upon no less than fifteen (15) days advance written notice if WAFD is determined by WM to be in violation of any of the terms and conditions of this Agreement and, upon receipt of a written notice of such violation, fails to correct such violation within five (5) days of the notice.

C. WAFD may terminate this Agreement upon no less than fifteen (15) days advance written notice if WM is determined by WAFD to be in violation of any of the terms and conditions of this Agreement and, upon receipt of a written notice of such violation, fails to correct such violation within five (5) days of the notice.

10. AMENDMENTS.

All amendments and modifications to this Agreement must be in writing and signed by WM and WAFD.

It is understood by WM and WAFD that all agreements and understandings have been embodied in this Agreement and no changes will be made herein except in writing and duly signed by WM and WAFD.

11. GOVERNING LAW/VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. Any legal action concerning this Agreement shall be brought and maintained in Milwaukee County, State of Wisconsin.

12. ATTACHMENTS.

The document entitled "West Allis Fire Department/Paratech Ambulance Special Event Plan For The Provision of Emergency Medical Services For 2008 Milwaukee Mile Events", attached to this Agreement as Exhibit "A" is incorporated herein and made a part of the terms and conditions of this Agreement. In the event of a contradiction in terms between this Agreement and The Special Event Plan (Exhibit "A"), the terms and conditions of this Agreement shall govern.

WISCONSIN MOTORSPORTS LLC

**CITY OF WEST ALLIS
FIRE DEPARTMENT**

By: 
Claude Napier, Its President

By: _____
Steve Hook, Fire Chief

Date: 3/31/09

Date: _____

Approved as to form
this _____ day of _____, 2009.

Scott E. Post, City Attorney