

LIME REMOVAL AGREEMENT

THIS AGREEMENT is entered into effective as of _____, 20__, by and between American Crystal Sugar Company, a Minnesota cooperative corporation (“ACSC”), and _____ (“Contractor”).

WHEREAS, ACSC is in the business of processing sugarbeets into sugar, and in connection therewith, has spent lime (“Lime”) available for use by third parties;

WHEREAS, Contractor is willing to remove, at no expense to ACSC, an agreed upon quantity of the Lime and land apply (or contract for the application) the Lime as a soil conditioner.

WHEREAS, the parties hereto desire to enter into a contract for the removal and use of Lime.

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and conditions set forth herein, ACSC and Contractor agree as follows:

1) Removal of Lime.

- (a) ACSC grants Contractor the right to remove Lime in amounts to be mutually agreed upon at no cost to either Contractor or ACSC from the _____ Factory (the “Factory”). The removal of the Lime by Contractor shall be referred to as the “Removal”. Removal shall occur at such times and in such amounts as are mutually agreed upon, subject to the following schedule:

[insert quantity and monthly schedule].

- (b) ACSC will load the Lime into Contractor’s trucks. Contractor shall be responsible for clean-up and removal of any Lime which may spill during transport, and in the event of such a spill the Contractor agrees that he or she will immediately notify the Factory and the ACSC Regulatory Affairs Department. Contractor shall be responsible for undertaking and completing any required road repair resulting from Contractor’s removal activities.
- (c) Contractor agrees to operate in a professional manner while removing the Lime and agrees to follow any guidelines and safety and security requirements that may be established by ACSC with regard to activities occurring on ACSC property.
- (d) The Lime is being given to the Contractor “As Is, Where Is and With All Faults” and Contractor acknowledges that ACSC makes no representation or warranty as to the quality, value, or condition of the Lime, or its efficacy as a soil conditioner.
- (e) At time of Removal, Contractor shall execute any receipt or further documentation required by ACSC to accomplish the transfer of the Lime.

- (f) The Contractor must also disclose to ACSC each location where the Lime will be delivered, stored or used after Removal. Contractor agrees that the Lime will be used only in the location(s) specified. The Contractor will notify ACSC immediately if the Lime is used in any other location.
- (g) Title to, and responsibility for, the Lime will transfer from ACSC to Contractor at the time the Lime has been loaded into Contractors truck/trailer.

2) **Regulatory Compliance.**

- (a) Contractor represents and warrants that (i) it shall only land apply the Lime as a soil conditioner; (ii) that it has knowledge of all legal requirements and regulations that must be followed in performing the Removal and application of the Lime; (iii) that it shall perform the Removal and application of the Lime in compliance with all applicable governmental, local and other competent authorities, laws, regulations and orders, including applicable environmental health and safety provisions; and (iv) that it shall be responsible for paying all fines and penalties that may result from its non-compliance with such requirements, laws, regulations and orders. Contractor further represents and warrants that it has obtained all necessary licenses to perform the Removal in the states or jurisdictions where the Removal will be carried out.
- (b) Contractor agrees to use and handle the Lime in a manner that is protective of surface and groundwater. Contractor agrees and understands that by undertaking the Removal, Contractor shall be responsible for the proper management of the Lime and such management shall be in accordance with best management practices and safeguards that shall be employed by the Contractor to guaranty the prevention of surface and groundwater contamination. Contractor acknowledges that any contamination of groundwater and/or surface water supplies as a result of the Contractors handling or mishandling of the Lime could subject the Contractor to enforcement actions.
- (c) Contractor grants ACSC the right to inspect its facilities where the Lime will be stored after Removal and/or where the Lime will be applied, upon reasonable notification by an ACSC representative.
- (d) In addition to the other requirements set forth in this Section 2, Contractor shall comply with the specific state requirements set forth on Exhibit A, attached hereto, applicable to the state(s) in which the Lime will be utilized.

- 3) **Term and Termination.** The term of this Agreement shall commence as of the date of this Agreement and shall continue through the completion of the Removal associated with the schedule set forth in Section 1(a). This Agreement may be terminated prior to completion of the Removal: (i) by mutual agreement of the parties; or (ii) upon written notice by ACSC in the event the Contractor defaults in its performance hereunder.

4) Indemnification.

- (a) Contractor shall defend, indemnify and hold harmless ACSC, its members, directors, officers, employees, agents and representatives against any and all liabilities, costs and damages, including reasonable attorneys' fees, arising from or in connection with:
 - (i) Any breach by Contractor of any provision of this Agreement, including, but not limited to, the failure of Contractor to comply with any applicable regulatory requirements or any representation or warranty;
 - (ii) Injury or death to persons or damage to property arising from the negligent or intentional act or omission of Contractor, Contractor's employees, and subcontractors, in connection with or resulting from the Removal;
 - (iii) Any claim, demand, cause of action, loss, expense or liability on account of actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out of the Removal or application of the Lime, including acts or omissions of Contractor, Contractor's employees, or subcontractors, in performance of the Removal or application of the Lime.
- (b) Contractor's indemnification obligation under this Section shall survive termination of this Agreement.

5) Insurance.

- (a) Contractor shall maintain at its own expense, and through an insurance carrier satisfactory to ACSC, the following insurance coverage:
 - (i) Automobile Liability insurance, with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit or One Million Dollars (\$1,000,000) bodily injury and One Million Dollars (\$1,000,000) property damage, all per accident and irrespective of whether vehicles are owned, hired or non-owned.
 - (ii) Comprehensive General Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) general aggregate for personal injury (including death) and property damage.

Contractor agrees to provide ACSC with evidence of such insurance upon ACSC's request.

6) Applicable Law. This Agreement shall be governed in all respects by the laws of the State of Minnesota, excluding its conflict of laws rules.

7) Modification and Waiver. No provision of this Agreement may be amended, modified or waived except by a writing signed by an authorized representative of the party against whom such amendment, modification or waiver is asserted. No waiver or any failure or omission to enforce any provision of this Agreement or any claim or right arising

hereunder shall be deemed to be a waiver of any other provision of this Agreement or any other claim or right arising hereunder.

- 8) **Entire Agreement.** This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, and negotiations, whether written or oral, with respect to the subject matter hereof.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

CONTRACTOR

AMERICAN CRYSTAL SUGAR COMPANY

By: _____

By: _____

Its: _____

Its: _____

Print Name: _____

Address: _____

Exhibit A

State Regulatory Requirements for Storage of By-Product Lime Material:

Minnesota and North Dakota

MPCA and NDDH require the following as part of their approval of field application of waste lime:

- 1) Storage should not occur in areas with greater than two percent slope.
- 2) Storage sites should not be located on areas subject to flooding.
- 3) Storage will not take place in or near any wetland areas.
- 4) Storage will be on Lake Agassiz clay soils. (Lake Agassiz clay is typical for the valley).
- 5) Provide a low soil berm around the stockpile to prevent surface water run-on or run-off.
- 6) Stockpile no more than individual fields or farmer can use.
- 7) Lime can only be stockpiled in a field up to 7 months before it must be spread.
- 8) Measures must be taken to prevent loss of lime during transport.

Exhibit B

State Regulatory Requirements for Land Application of By-Product Lime Material:

Minnesota and North Dakota

MPCA and NDDH require the following as part of their approval of field application of waste lime:

- 1) Soil sampling (see Table 3 below).
- 2) Apply lime by November 15th.
- 3) After the waste lime is applied to a field, it should be incorporated to prevent loss due to wind and water.

All criteria in this section, including slope restrictions, site suitability and separation distances as provided in the following tables should be met for a site to be considered suitable for land application.

Recommended Best Management Practices for Land Application Sites:

Table 1
Minimum Separation Distances from Land Application Site

Feature		Surface Applied	Incorporated Within 48 Hours
Down gradient lakes, rivers, streams, Type 3, 4, and 5 wetlands, intermittent streams, tile inlets connected to surface waters and sinkholes.	Slope 0-6 percent	200 ft	50 ft
	Slope 6-12 percent	Not allowed	100 ft
	Winter (Slope 0% to 2%)	600 ft	Not Applicable
Grassed Waterways	Slope 0-6 percent	100 ft	33 ft
	Slope 6-12 percent	Not Allowed	33 ft

Slope Restrictions: The slope restrictions in **Table 2** are recommended for preventing runoff of by-product limes from land application sites. Winter application should not occur on areas that have greater than 2 percent slope.

Table 2

Slope Restrictions for Application Sites

Slope Percent	Surface Application	Inject or Incorporate within 48 hours
0-6	OK	OK
>6-12	Do not apply	OK
>12	Do not apply	Do not apply

Table 3 - Soil Analysis Requirements and Limits

Parameter	Units	Sample Type	Limit
Soil texture	USDA	Composite ⁽¹⁾	NA
pH	Standard units	Composite ⁽¹⁾	NA
Organic matter	Percent	Composite ⁽¹⁾	NA
Exchangeable phosphorus	ppm	Composite ⁽¹⁾	200 ⁽²⁾
Extractable potassium	ppm	Composite ⁽¹⁾	NA
Soluble salts	mmhos/cm	Composite ⁽¹⁾	4
<p>⁽¹⁾ The composite shall consist of a mixture of 15-20 sub-samples taken in the plow layer, at a rate of 1 composite sample per 40 acres or in the case of VersaLime application, one composite sample per 160 acres.</p> <p>⁽²⁾ The soil test method used for this determination is the Olsen test.</p>			