

**MODEL CONTRACT—with optional contribution protection
and settlement agreement language
VOLUNTARY CLEANUP CONTRACT
18-[PCAS#]-RP**

**IN THE MATTER OF
[SITE NAME] SITE, [COUNTY] COUNTY
and
[COMPANY NAME]**

Beginning with Paragraph 12, Yellow text is the standard language. Blue highlighted text is alternate language to include/replace if the RP is requesting Contribution Protection.

This Contract is entered into by the South Carolina Department of Health and Environmental Control and [COMPANY NAME], pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 through 760, as amended, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 to 9675, as amended, and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200, with respect to the facility known as the [SITE NAME] Site (“Site”). The [COMPANY NAME] property is located at [LOCATION], South Carolina (“Property”). The Property includes approximately [NUMBER OF ACRES] acres and is bounded generally by [LOCATION AND DESCRIPTION OF PROPERTY]. The Property is identified by the County of [COUNTY] as Tax Map Serial Number [MAP #]. A legal description of the Property is attached to this Contract as Appendix A.

DEFINITIONS

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, and if not set forth therein, shall have the meaning assigned to them pursuant to CERCLA, the HWMA, and in regulations promulgated under these statutes.

A. “[COMPANY SHORT NAME OR RESPONDENTS]” [If more than one company entering into VCC, then use “Respondents” instead and detail each corporate affiliation as in the following sentence] shall mean [COMPANY NAME]. [COMPANY SHORT NAME OR RESPONDENTS OR RESPONDENTS] is a [STATE OF

INCORPORATION] [CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, ETC.] with its principal place of business located at _____.

- B. "Contamination" shall mean impact by a Contaminant or Hazardous Substance. [If Petroleum is included in the VCC, then use this definition: "Contamination" shall mean impact by a Pollutant or Contaminant, Petroleum and Petroleum Product, or Hazardous Substance.]
- C. "Contract" shall mean this Responsible Party Voluntary Cleanup Contract.
- D. "Department" shall mean the South Carolina Department of Health and Environmental Control or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- E. "Hazardous Substance" shall have the same meaning as defined under subparagraphs (A) through (F) of Paragraph (14) of CERCLA § 101, 42 U.S.C. § 9601(14).
- F. Optional: "Petroleum" and "Petroleum Product" shall mean crude oil or any fraction of crude oil, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds for each square inch absolute), including any liquid, which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel.
- G. "Pollutant" or "Contaminant" includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction,

or physical deformations, in organisms or their offspring; "contaminant" does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA § 101, 42 U.S.C. § 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.

- H. "Property" as described in the legal description attached as Appendix A, shall mean that portion of the Site, which is subject to ownership, prospective ownership, or possessory or contractual interest of [COMPANY SHORT NAME OR RESPONDENTS OR RESPONDENTS]. [Provide additional info if needed.]
- I. [Optional Paragraph if more than one RP entering into VCC] "Respondents" shall mean _____, and _____.
- J. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.
- K. "Site" shall mean all areas where a Hazardous Substance, **Petroleum, Petroleum Product**, Pollutant or Contaminant has been released, deposited, stored, disposed of, or placed, or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA.
- L. "Voluntary Cleanup" shall mean a Response Action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 to 760, as amended.
- M. "Work Plan" shall mean the plan for additional Response Actions to be conducted at the Site as described in Paragraph 3 of this Contract.

FINDINGS

2. Based on the information known by or provided to the Department, the following findings are asserted for purposes of this Contract:

- A. [Various details of the Site: past owners, operators, past assessment/remedial activities, Department's Past Costs of response as estimated through _____].

RESPONSE ACTIONS

3. [COMPANY SHORT NAME OR RESPONDENTS] agrees to submit to the Department for review and written approval within thirty (30) days of the execution date of this Contract a Work Plan for the Site that is consistent with the technical intent of the National Contingency Plan. The Work Plan shall be implemented upon written approval from the Department. The Work Plan shall include the names, addresses, and telephone numbers of the consulting firm, the analytical laboratory certified by the Department, and [COMPANY SHORT NAME OR RESPONDENTS]'s contact person for matters relating to this Contract. [COMPANY SHORT NAME OR RESPONDENTS] will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify [COMPANY SHORT NAME OR RESPONDENTS] in writing of any deficiencies in the Work Plan, and [COMPANY SHORT NAME OR RESPONDENTS] will respond in writing to the Department's comments within thirty (30) days. The Work Plan and all associated reports shall be prepared in accordance with industry standards and endorsed by a Professional Engineer (P.E.) and/or Professional Geologist (P.G.) duly-licensed in South Carolina and shall set forth methods and schedules for accomplishing the following tasks:

- A. Conduct a Remedial Investigation (RI) to determine the source, nature, and extent of Contamination at the Site **[OR modify if a remedial/removal action is planned]**.
- B. Submit to the Department an RI Report (to include a Baseline Risk

Assessment or other evaluation of risk to human health and the environment) in accordance with the schedule in the approved RI Work Plan. The Department shall review the report for determination of completion of the RI and sufficiency of the documentation. If the Department determines that the field investigation is not complete, it will send written notification of such to [COMPANY SHORT NAME OR RESPONDENTS], and [COMPANY SHORT NAME OR RESPONDENTS] shall subsequently conduct additional field investigation to further determine the source, nature, and extent of Contamination. If the Department determines that the field investigation is complete but the report is incomplete, the Department shall send to [COMPANY SHORT NAME OR RESPONDENTS] a letter indicating that revision of the report is necessary. Within thirty-(30)-days of receipt of such letter from the Department, [COMPANY SHORT NAME OR RESPONDENTS] shall submit a revised report addressing the Department's comments.

- C. If determined necessary by the Department, conduct a Feasibility Study to evaluate remedial alternatives for addressing Contamination at the Site. ALTERNATIVE: If determined necessary by the Department, conduct a Feasibility Study or other evaluation of remedial and/or removal alternatives for addressing Contamination at the Site.

4. [COMPANY SHORT NAME OR RESPONDENTS] shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan that is consistent with Occupational Safety and Health Administration regulations. The Health and Safety Plan is submitted to the Department for information purposes only. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by [COMPANY SHORT NAME OR RESPONDENTS].

5. [COMPANY SHORT NAME OR RESPONDENTS] shall inform the Department in writing at least five (5) working days in advance of all field activities pursuant to this Contract and, if deemed necessary by the Department, shall allow the Department and its authorized representatives to take duplicates of any samples collected by [COMPANY SHORT NAME OR RESPONDENTS] pursuant to this Contract.

6. Within sixty (60) days of the execution date of this Contract and once a quarter thereafter, [COMPANY SHORT NAME OR RESPONDENTS] shall submit to the Department a written progress report that must include the following: (A) actions taken under this Contract during the previous reporting period; (B) actions scheduled to be taken in the next reporting period; (C) sampling, test results, and any other data, in summary form, generated during the previous reporting period, whether generated pursuant to this Contract or not; and (D) a description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

7. All correspondence by either party to the other shall be in writing and deemed sufficiently given if delivered by (A) regular U.S. mail, (B) certified or registered mail, postage prepaid, return receipt requested, or (C) nationally recognized overnight delivery service company or (D) hand delivery to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing.

Unless otherwise directed in writing by either party, all correspondence, work plans, and reports should be submitted to:

The Department: [PROJECT MANAGER]
South Carolina Department Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201
[USERNAME]@dhec.sc.gov

[Company Short Name or Respondents] (Company Contact Information)
Address
City State Zip

All final work plans and reports shall include two (2) paper copies and one (1) electronic copy on compact disk.

PUBLIC PARTICIPATION

8. Upon execution of this Contract by [COMPANY SHORT NAME OR RESPONDENTS], the Department will seek public participation in accordance with S.C. Code Ann. § 44-56-740(D), and not inconsistent with the National Contingency Plan. [Company Short Name] will reimburse the Department's costs associated with public participation (e.g., publication of public notice(s), building and equipment rental(s) for public meetings, etc.).

RESPONSE COSTS

**INCLUDE FIRST PARAGRAPH OF PARAGRAPH 9
IF THE DEPARTMENT HAS INCURRED ANY PAST COSTS AT THE SITE**

9. [COMPANY SHORT NAME OR RESPONDENTS] shall, within thirty (30) days of the execution date of this Contract, pay to the Department by certified or cashier's check the sum of _____ dollars (\$____.____) to reimburse estimated past response cost incurred by the Department through _____, 20__ ("Past Costs") relating to the Site. [COMPANY SHORT NAME OR RESPONDENTS] payment for Past Costs should be submitted to:

The Department: Linda Jackson
South Carolina Department of Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, SC 29201

In accordance with §§ 44-56-200 and 44-56-740, [COMPANY SHORT NAME OR RESPONDENTS] shall, on a quarterly basis, reimburse the Department for Oversight Costs of activities required under this Contract occurring after _____. Oversight Costs include, but are not limited to, the direct and indirect costs of negotiating the terms of this Contract, reviewing Work Plans and reports, supervising corresponding

work, and activities and costs associated with public participation. Payments will be due within thirty (30) days of the Department's invoice date. The Department shall provide documentation of its Oversight Costs in sufficient detail so as to show the personnel involved, amount of time spent on the project for each person, expenses, and other specific costs. Invoices shall be submitted to:

[Company Short Name or Respondents]: [Addressee's Name]
[Billing Contact Information]

All of [COMPANY SHORT NAME OR RESPONDENTS]'s payments should reference the Contract number on page 1 of this Contract and be made payable to:

The South Carolina Department of Health & Environmental Control

If complete payment of the Past Costs or of the quarterly billing of Oversight Costs is not received by the Department by the due date, the Department may bring an action to recover the amount owed and all costs incurred by the Department in bringing the action including, but not limited to, attorney's fees, Department personnel costs, witness costs, court costs, and deposition costs.

ACCESS

10. The Department, its authorized officers, employees, representatives, and all other persons performing Response Actions will not be denied access to the Site during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). [COMPANY SHORT NAME OR RESPONDENTS] and subsequent owners of the Property shall ensure that a copy of this Contract is provided to any lessee or successor or other transferee of the Property, and to any owner of other property that is included in the Site. If [COMPANY SHORT NAME OR RESPONDENTS] is unable to obtain access from the Property owner, the Department may obtain access and perform Response Actions. All of the Department's costs associated with access and said Response Actions will be reimbursed by

[COMPANY SHORT NAME OR RESPONDENTS].

RESTRICTIVE COVENANT

11. **[Include if Company is the Property Owner. If the Company for this contract is not the Property owner of record, then a separate Access and Restrictive Covenant Agreement should be negotiated and fully executed prior to entering into this contract OR use the alternate text below.]** If hazardous substances in excess of residential standards exist at the Property after [COMPANY SHORT NAME OR RESPONDENTS] has completed the actions required under this Contract, [COMPANY SHORT NAME OR RESPONDENTS] shall enter and file a restrictive covenant. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and representatives of [COMPANY SHORT NAME OR RESPONDENTS] and witnessed, signed, and sealed by a notary public. [COMPANY SHORT NAME OR RESPONDENTS] shall record this restrictive covenant with the Register of Deeds or Mesne Conveyances in [the county in which the Property is located] County. The signed covenant shall be incorporated into this Contract as an Appendix. A Certificate of Completion shall not be issued by the Department until the restrictive covenant, if required, is executed and recorded. With the approval of the Department, the restrictive covenant may be modified in the future if additional remedial activities are carried out which meet appropriate clean-up standards at that time or circumstances change such that the restrictive covenant would no longer be applicable. The Department may require [COMPANY SHORT NAME OR RESPONDENTS] or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. [COMPANY SHORT NAME OR RESPONDENTS] or subsequent owners of the Property shall file an annual report with the Department by May 31st of each year detailing the current land uses and compliance with the restrictive covenants for as long as the restrictive covenant remains in effect on the Property. The report must be submitted in a manner prescribed by the Department.

[ALTERNATE TEXT] If hazardous substances in excess of residential standards exist at the Property after [COMPANY SHORT NAME OR RESPONDENTS] has completed the

Response Actions required under this Contract, a covenant placing necessary and appropriate restrictions on use of the Property shall be executed and recorded. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department, representatives of [COMPANY SHORT NAME OR RESPONDENTS] and, if the Property has been sold, the current owner of the Property and witnessed, signed, and sealed by a notary public. [COMPANY SHORT NAME OR RESPONDENTS] or the current owner of the Property shall file this restrictive covenant with the Register of Deeds or Mesne Conveyances in [Name of County] County. The signed covenant shall be incorporated into this Contract as an Appendix. A Certificate of Completion shall not be issued by the Department until the restrictive covenant, if required, is executed and recorded. With the approval of the Department, the restrictive covenant may be modified in the future if additional remedial activities are carried out which meet appropriate clean-up standards at that time or circumstances change such that the restrictive covenant would no longer be applicable. The Department may require [COMPANY SHORT NAME OR RESPONDENTS] or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. [COMPANY SHORT NAME OR RESPONDENTS] or subsequent owners of the Property shall file an annual report with the Department by May 31st of each year detailing the current land uses and compliance with the restrictive covenants for as long as the restrictive covenant remains in effect on the Property. The report must be submitted in a manner prescribed by the Department.

OBLIGATIONS AND BENEFITS

12. [IF CONTRIBUTION PROTECTION IS REQUESTED, ADD THE FOLLOWING, if not, delete and renumber paragraphs] Upon execution of this Contract by the Department, the [RP], its signatories, parents, subsidiaries, successors and assigns shall be deemed to have resolved their liability to the State in an administrative settlement for purposes of, and to the extent authorized under 42 U.S.C. § 9613(f)(2), S.C. Code Ann. § 44-56-200, for the matters addressed in this Contract. "Matters addressed" are all Response Actions taken or to be taken at or in connection with this Site under this Contract and any subsequent amendments to this Contract, and all

response costs incurred or to be incurred under this Contract and any subsequent amendments to this Contract. Further, by resolving its liability to the State for some or all of a Response Action in this administrative settlement, the [RP] may seek contribution to the extent authorized under 42 U.S.C. § 9613(f)(3)(B), S.C. Code Ann. § 44-56-200 from any person who is not a party to this administrative settlement. A thirty (30) day comment period shall be required prior to the Department's execution of this Contract, and shall commence upon publication of the notice of this proposed Contract in the *South Carolina State Register*.

13. Nothing in this Contract is intended to be or shall be construed as a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against a responsible party who is not a signatory to this Contract and who is not a signatory's parent, subsidiary, successor or assign.

14. Subject to the provisions of Paragraph 1516, nothing in this Contract is intended to limit the right of the Department to undertake future Response Actions at the Site or to seek to compel parties to perform or pay for costs of Response Actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of Response Actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

15. Subject to the provisions of Paragraph 1516, nothing in this Contract is intended to be or shall be construed as a release or covenant not to sue for any claim or cause of action that the Department may have against [COMPANY SHORT NAME OR RESPONDENTS] for any matters not expressly addressed by and settled through this Contract.

16. Upon successful completion of the terms of this Contract, [COMPANY SHORT NAME OR RESPONDENTS] shall submit to the Department a request for a Certificate of Completion.

Once the Department determines that [COMPANY SHORT NAME OR

[RESPONDENTS] has successfully and completely complied with this Contract, the Department, pursuant to S.C. Code Ann. § 44-56-740(A)(5) and (B)(1), will give [COMPANY SHORT NAME OR RESPONDENTS] a Certificate of Completion that provides a covenant not to sue to [COMPANY SHORT NAME OR RESPONDENTS], its signatories, parents, subsidiaries, successors and assigns for the work done in completing the Response Actions specifically covered in this Contract and completed in accordance with the approved work plans and reports. The covenant not to sue is contingent upon the Department's determination that [COMPANY SHORT NAME OR RESPONDENTS] successfully and completely complied with this Contract. [IF CONTRIBUTION PROTECTION IS REQUESTED, DELETE THE PRECEDING YELLOW TEXT AND ADD THE FOLLOWING] The covenant not to sue and administrative settlement for purposes of contribution protection are contingent upon the Department's determination that [COMPANY SHORT NAME OR RESPONDENTS] successfully and completely complied with this Contract.

In consideration of the Department's covenant not to sue, [COMPANY SHORT NAME OR RESPONDENTS], its signatories, parents, subsidiaries, successors and assigns agree not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.

17. [COMPANY SHORT NAME OR RESPONDENTS] and the Department each reserve the right to unilaterally terminate this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should [COMPANY SHORT NAME OR RESPONDENTS] elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that any environmental or physical hazard shall be stabilized and/or mitigated such that the Site does not pose a hazard to human health or the environment that did not exist prior to any initial Response Action addressing Contamination identified in this Contract.

18. The Department may terminate this Contract only for cause, which may include but is not limited to, the following:

- A. Events or circumstances at the Site that are inconsistent with the terms and conditions of this Contract;
- B. Failure to complete the terms of this Contract or the Work Plan;
- C. Failure to submit timely payments for Past Costs and/or for Oversight Costs as defined in Paragraph 9 above;
- D. Additional Contamination or releases or consequences at the Site caused by [COMPANY SHORT NAME OR RESPONDENTS], its parents, subsidiaries, successors and assigns;
- E. Providing the Department with false or incomplete information or knowingly failing to disclose material information;
- F. Change in [COMPANY SHORT NAME OR RESPONDENTS]'s or its parents', subsidiaries', successors' and assigns', business activities on the Property or uses of the Property that are inconsistent with the terms and conditions of this Contract; or
- G. Failure by [COMPANY SHORT NAME OR RESPONDENTS] to obtain the applicable permits from the Department for any Response Action or other activities undertaken at the Property.

19. Upon termination of this Contract, the covenant not to sue will be null and void. Termination of this Contract by [COMPANY SHORT NAME OR RESPONDENTS] or the Department does not end the obligations of [COMPANY SHORT NAME OR RESPONDENTS] to reimburse Oversight Costs already incurred by the Department and payment of such costs shall become immediately due. [IF CONTRIBUTION PROTECTION IS REQUESTED, DELETE THE PRECEDING YELLOW TEXT AND ADD THE FOLLOWING] Upon termination of this Contract under Paragraph 17 or 18, the covenant not to sue and administrative settlement for purposes of contribution protection shall be null and void. Termination of this Contract by [COMPANY SHORT NAME OR RESPONDENTS] or the Department does not end the obligations to

reimburse Oversight Costs already incurred by the Department and payment of such costs shall become immediately due.

20. The signatories below hereby represent that they are authorized to enter into this Contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL**

BY: _____ DATE: _____
Daphne G. Neel, Chief
Bureau of Land and Waste Management
Environmental Quality Control

Reviewed by Office of General Counsel

DATE: _____

[COMPANY NAME]

Signature

DATE: _____

Printed Name and Title

APPENDIX A

Legal Description of the Property

County of [COUNTY NAME]

Tax Map Serial Number [Map #]

**[Consider using if VCC includes Findings paragraph that begins:
Various assessments have been conducted ...]**

APPENDIX B

DHEC Approved Date	[COMPANY SHORT NAME]'s Investigative and Environmental Reports*
	_____ Report ([date submitted by RP])

**Various Progress Reports have been submitted since the early 19____'S; however, are not listed here.*