

**VOLUNTARY CLEANUP CONTRACT
23-7734-RP**

**IN THE MATTER OF
AZALEA COMPLEX SITE, CHARLESTON COUNTY
and
CHARLESTON COUNTY**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Charleston County, 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 Azalea Complex Site ("Site"). The Charleston County property is located at 4350 Azalea Drive, 3691 Leeds Avenue, and 4361-4365 Headquarters Road, North Charleston, South Carolina ("Property"). The Property includes approximately 47 acres and is bounded generally by Headquarters Road to the north, Azalea Drive to the south, Industrial Avenue to the east, and Leeds Avenue to the west. The Property is identified by the County of Charleston as Tax Map Serial Numbers 411-13-00-004, 411-13-00-005, and 411-13-00-007. 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. Charleston County is a government entity with its principal place of business located at 4045 Bridge View Drive, North Charleston, South Carolina 29405.

- B. "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. "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 Charleston County.
- I. "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.
- J. "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.
- K. "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.
- L. "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. Property Ownership:

411-13-00-004

- County of Charleston

Unknown – Present

411-13-00-005

- Charleston Nashville Joint 6/13/83 – 1/22/85
- South Carolina Electric and Gas 1/22/85 – 10/13/11
- County of Charleston 10/13/11 – Present

411-13-00-007

- Conversion Conversion 1/1/73 – 3/21/73
- Smith & Smith Inc 3/21/73 – 12/9/21
- 4365 Headquarters Road LLC 12/9/21 – 6/23/22
- County of Charleston 6/23/22 – Present

- B. 4350 Azalea Drive has approximately 33 acres and currently contains 17 structures utilized by Charleston County for various purposes including Field Operations, Fleet Operations, Elections, EMS, and Mosquito Control, among others.
- C. 3691 Leeds Avenue has approximately 10 acres and currently contains the Charleston County Sheriff's office.
- D. 4361-4365 Headquarters Road has approximately 4 acres and currently contains former commercial trucking logistics and repair facilities.
- E. A portion of the Property may have been used in the past for residential purposes and to treat incoming overseas casualties during World War II as part of the Stark General Hospital campus. Development of the Property for its current use began in the early 1960s.
- F. Based upon the available historical sources and in-house files, the Property (as well as the adjoining and surrounding properties) appears to have originally been part of the Corn Hill Plantation. The Property and surrounding properties (comprising 276 acres) were purchased by the United States Corps of Engineers in the early 1940s to be used as a staging area to classify incoming overseas

casualties during World War II as the Stark General Hospital. The main hospital structures were located southeast of the Property. Barracks, supply buildings, and other support structures were located throughout the 276-acre facility. The entire facility was classified as surplus in 1945 and sold to various investors. The now defunct Charleston Industrial Associates acquired some of this land and in the early 1960s traded some of their property to Charleston County in a land transaction.

RESPONSE ACTIONS

3. Charleston County 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 Charleston County's contact person for matters relating to this Contract. Charleston County will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify Charleston County in writing of any deficiencies in the Work Plan, and Charleston County 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.
- 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 Charleston County, and Charleston County 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 Charleston County a letter indicating that revision of the report is necessary. Within thirty (30) days of receipt of such letter from the Department, Charleston County 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.

4. Charleston County 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 Charleston County.

5. Charleston County 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 Charleston County pursuant to this Contract.

6. Within sixty (60) days of the execution date of this Contract and once a quarter thereafter, Charleston shall submit to the Department a written progress report that must

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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) email, (B) regular U.S. mail, (C) certified or registered mail, postage prepaid, return receipt requested, (D) nationally recognized overnight delivery service company, or (E) 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: Kim Kuhn
South Carolina Department Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201
kuhnm@dhec.sc.gov

Charleston County: Stacy Miller
4045 Bridge View Drive
North Charleston, SC 29405

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 Charleston County, 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. Charleston County 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

9. In accordance with S.C. Code Ann. §§ 44-56-200 and 44-56-740, Charleston County shall, on a quarterly basis, reimburse the Department for Oversight Costs of activities required under this Contract. 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:

Charleston County: Stacy Miller
4045 Bridge View Drive
North Charleston, SC 29405

All of Charleston County'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.

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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). Charleston County 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 Charleston County is unable to obtain access from the Property owner, the Department may obtain access and perform Response Actions. All the Department's costs associated with access and said Response Actions will be reimbursed by Charleston County.

RESTRICTIVE COVENANT

11. If hazardous substances in excess of residential standards exist at the Property after Charleston County has completed the actions required under this Contract, Charleston County 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 Charleston County and witnessed, signed, and sealed by a notary public. Charleston County shall record this restrictive covenant with the Register of Deeds in Charleston 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 Charleston County or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. Charleston County 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. Upon execution of this Contract by the Department, Charleston County, 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, Charleston County 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 16, 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 16, 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 Charleston County for any matters not expressly addressed by and settled through this Contract.

16. Upon successful completion of the terms of this Contract, Charleston County shall submit to the Department a request for a Certificate of Completion.

Once the Department determines that Charleston County 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 Charleston County a Certificate of Completion that provides a covenant not to sue to Charleston County, 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 and administrative settlement for purposes of contribution protection are contingent upon the Department's determination that Charleston County successfully and completely complied with this Contract.

In consideration of the Department's covenant not to sue, Charleston, 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. Charleston County 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 Charleston County 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

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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 Oversight Costs as defined in Paragraph 9 above;
- D. Additional Contamination or releases or consequences at the Site caused by Charleston County, 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 Charleston County'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 Charleston County 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 under Paragraph 17, the covenant not to sue and administrative settlement for purposes of contribution protection shall be null and void. Termination of this Contract by Charleston County 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.

THIS IS CERTIFIED AS A TRUE
AND CORRECT COPY

SIGNATURE E. Vincent

THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL

BY: [Signature]

DATE: 6-1-2023

Henry J. Porter, Chief
Bureau of Land and Waste Management
S.C. Department of Health & Environmental Control

[Signature]
Reviewed by Office of General Counsel

DATE: 6/1/23

CHARLESTON COUNTY

[Signature]
Signature

DATE: 4-5-23

William L. Tutten, County Administrator
Printed Name and Title

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APPENDIX A

Legal Description of the Property

County of Charleston

Tax Map Serial Numbers 411-13-00-004, 411-13-00-005, 411-13-00-007

TMS No. 411-13-00-007

ALL that piece, parcel or tract of land, situate, lying and being in the County of Charleston, State aforesaid, and lying south of the road known as Headquarters Road leading eastwardly from Leeds Avenue, containing 3.86 acres, more or less, and shown within the lines lettered "X"- "M", "M"- "C", "C"- "Y", and "Y"- "X", on that certain plat by Robert S. Hill, C.E. & L.S., dated February, 1963, and entitled "Plat Showing Exchange of Property Between Charleston Industrial Association and Charleston County North of Azalea Ave. and East of Leeds Ave. Situate in North Charleston, Charleston Co. S.C.", which said plat is recorded in Plat Book N, Page 139, in the R.M.C. Office for Charleston County.

The above-described property, according to said plat, is more particularly described as follows:

To locate the point of beginning, commence at the southeast intersection of the southern right-of-way line of Dorchester Road and the eastern right-of-way line of Leeds Avenue, which point is marked by a concrete monument, and continue running along the eastern right-of-way line of Leeds Avenue south 17 degrees 30 minutes west 550.66 feet to a point marked by a concrete monument lettered "O" at the intersection of said right-of-way line and Headquarters Road, thence continuing along the eastern right-of-way line of Leeds Avenue south 17 degrees 30 minutes west 70 feet to a point marked by a concrete monument lettered "B", thence cornering and running south 72 degrees 30 minutes 00 seconds east along the division line of property of M.H. Chute and the southern right-of-way line of a 20 foot railroad right-of-way 544.50 feet to a point marked by a concrete monument lettered "X", which is the point of BEGINNING, thence continuing running south 72 degrees 30 minutes 00 seconds east along the southern right-of-way line of said 20 foot railroad right-of-way 428.14 feet to a point marked by a concrete monument lettered "M", thence cornering and running south 18 degrees 43 minutes 30 seconds west along the division line of the property herein conveyed and lands of Charleston County, S.C., 400.09 feet to a point marked by a concrete monument lettered "C", thence cornering and running north 72 degrees 30 minutes 00 seconds west between the property herein conveyed and properties of Charleston County and Manhattan Shirt Company 419.58 feet to a point marked by a concrete monument lettered "Y", thence cornering and running along the division line of property herein conveyed and property of M. H. Chute north 17 degrees 30 minutes east 400 feet to a point marked by a concrete monument lettered "X", being the point of