

**THIS IS CERTIFIED AS A TRUE
AND CORRECT COPY**

SIGNATURE Elisa Vincent

**VOLUNTARY CLEANUP CONTRACT
18-7411-RP**

**IN THE MATTER OF
CAP RIVER, LLC SITE, GREENVILLE COUNTY
and
CAP RIVER, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and CAP River, LLC, 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 CAP River, LLC Site ("Site"). The CAP River, LLC property is located at 55 East Camperdown Way, Greenville, South Carolina ("Property"). The Property includes approximately 2.376 acres and is bounded generally by Falls Street on the east; East Camperdown Way to the south; a park owned by the City of Greenville to the west; and Japanese Dogwood Lane to the north. The Property is identified by the County of Greenville as Tax Map Serial Number 0069000300101. 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. "CR" shall mean CAP River, LLC. CAP River, LLC is a South Carolina limited liability company with its principal place of business located at 55 East Camperdown Way, Greenville, South Carolina.
- 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 CAP River, LLC.
- 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 Information:

CAP River LLC	9/29/2017 - Present
Camperdown Falls Limited Partnership SC	2/15/1991 - 9/29/2017
Jural Limited Partnership	5/10/1988 - 2/15/1991
C & S National Bank of SC	9/11/1958 - 5/10/1988

- B. Bunnell-Lammons Engineering, Inc. provided a Phase I Environmental Site Assessment (ESA) at the Property on behalf of Centennial American

Properties. Pursuant to the ESA report dated October 4, 2016, the following information was provided:

- i. The Property was formerly developed as Camperdown Mill. The mill was developed in 1876. In 1904 the mill specialized in the production of textile fabrics. The mill was forced into bankruptcy in 1930 and was bought by the Bruce Family.
 - ii. The mill operated until 1956 until the Property was transferred to Citizens and Southern National Bank. The mill was then demolished in 1959.
 - iii. The Property is currently developed with a four-story, multi-tenant commercial office building and a four-story parking deck.
- C. Bunnell-Lammons Engineering, Inc. provided a Limited Phase II ESA at the property. According to this report dated December 22, 2017, the following information was provided:
- i. Three (3) soil samples and one (1) groundwater sample were collected. One (1) temporary monitoring well was also installed.
 - ii. The sampling results detected trichloroethene (TCE), polynuclear aromatic hydrocarbons (PAHs), and metals at concentrations above EPA Residential Standards. The groundwater sample detected from TCE was above Maximum Contaminant Levels.

RESPONSE ACTIONS

3. CR 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 CR's contact person for matters relating to

this Contract. CR will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify CR in writing of any deficiencies in the Work Plan, and CR 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 CR, and CR 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 CR a letter indicating that revision of the report is necessary. Within thirty (30) days of receipt of such letter from the Department, CR 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. CR 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 CR.

5. CR 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 CR pursuant to this Contract.

6. Within sixty (60) days of the execution date of this Contract and once a quarter thereafter, CR 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, (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: Kimberly Kuhn
South Carolina Department Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201
kuhnkm@dhec.sc.gov

CAP River, LLC: Jason Tankersley
CAP River, LLC
Suite #201
935 South Main Street
Greenville, South Carolina 29601
jasont@capllc.com

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 CR, 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. CR 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, CR 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:

CAP River, LLC: Jason Tankersley
CAP River, LLC
Suite #201
935 South Main Street
Greenville, South Carolina 29601
jason@capllc.com

All of CR'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). CR 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 CR 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 CR.

RESTRICTIVE COVENANT

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

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

Once the Department determines that CR 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 CR a Certificate of Completion that provides a covenant not to sue to CR, 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 CR successfully and completely complied with this Contract.

In consideration of the Department's covenant not to sue, CR, 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. CR 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 CR 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 CR, 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 CR'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 CR 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 Paragraphs 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 CR 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 Clisco Vincent

THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL

BY: 

DATE: 2-4-2019

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


Reviewed by Office of General Counsel

DATE: 1/30/19

CAP RIVER, LLC


Signature

DATE: 11/19/18

Jason Tankersley
Printed Name and Title