

VOLUNTARY CLEANUP CONTRACT
10-5827-RP

**IN THE MATTER OF
OLD CITY OF GREENWOOD DUMP SITE, GREENWOOD COUNTY
AND
THE CITY OF GREENWOOD**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and The City of Greenwood pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 through 760, et seq. (as amended), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq. (2002, as amended), and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-10, et seq. (as amended), with respect to the facility known as the Old City of Greenwood Dump Site which is located at 500 Valley Brook Road, Greenwood, South Carolina ("Property"). The Property includes approximately 10.4 acres and is bounded generally by residential and commercial properties to the north, south, east and west. The CSX railroad borders the Property on the north. The County of Greenwood identifies the property as Greenwood County Tax Map System Number 6856-594-387. A legal description of the property is attached as Appendix A.

DEFINITIONS

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in CERCLA, 42 U.S.C. §§ 9601, et seq. (as amended), the HWMA, S.C. Code Ann. §§ 44-56-10, et seq. (as amended), including any amendments, or in the regulations promulgated thereunder, or the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 through 760 (as amended).
 - A. "The City of Greenwood" shall mean The City of Greenwood.
 - B. "Contract" shall mean this Responsible Party Voluntary Cleanup Contract.
 - C. "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.

- D. "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 (i) through (vi) of Paragraph (D) of CERCLA § 101, 42 U.S.C. §§ 9601, et seq. (as amended), and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.

- E. "Contamination" means impact by a contaminant, petroleum, petroleum product, or hazardous substance.

- F. "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 The City of Greenwood.

- G. "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.

- H. "The Site" shall mean all areas where a contaminant, petroleum, or petroleum product 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.

- I. "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, et seq. (as amended).
- J. "Work Plan" shall mean the plan for additional response actions to be conducted at the Site as described in Paragraph 3 of this Contract.
- K. "Petroleum" and "petroleum product" means 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.

FINDINGS

2. Based on the information known by or provided to the Department, the following findings are asserted for purposes of this Contract:
 - A. A concerned citizen notified the Department in September 2009 that an old dumpsite existed near a residential area in Greenwood, SC. The City of Greenwood was also notified and began researching available information. During a meeting and Site visit in November 2009, it was learned that there were two sites, subsequently named the Old City of Greenwood Dump Site and the Greenwood Cemetery Dump Site. Based on information gathered by The City of Greenwood and observations made in the field by Department staff, the Old City of Greenwood Dump Site (in the College Heights area) was used in the 1950s until the 1970s for disposal of construction and demolition type debris, and trees and limbs. There is also a large aboveground storage tank (AST) that was reportedly used for asphalt storage. Another area of the Site was found to contain 15 to 20 55-gallon drums that were reportedly used for traffic control.
 - B. The Department sampled the Site in December 2009 during Pre-CERCLIS

Screening Assessments.

- C. The analysis of the data for the Site found elevated concentrations of heavy metals around the large aboveground storage tank and the cluster of drums.
- D. Elevated concentrations of poly-aromatic hydrocarbons (PAHs) were also detected in the same areas.
- E. On April 12, 2010, the Department held a public meeting to present the sampling results and to receive input from the citizens.
- F. On May 12, 2010, COG consultant Davis and Floyd, Inc. conducted a second soil sampling event at the Site. Davis and Floyd took eighteen (18) soil samples, eight (8) at locations downgradient of the AST. The analytical data from these samples showed elevated levels of benzo(A)pyrene at only two locations at a depth of thirty (30) inches below ground surface (bgs). All other locations at depths of 6, 18, and 30 inches bgs benzo(A)pyrene was at levels below detection limits. Analytical data from these samples also showed elevated levels of lead at one (1) location at a depth of six (6) inches below ground surface (bgs).
- G. On or about June 28, 2010 the analytical data from Davis and Floyd's laboratory was provided to the Department.

RESPONSE ACTIONS

- 3. The City of Greenwood agrees to submit to the Department for review and written approval within thirty (30) days of the execution of this Contract by the Department a Work Plan for the Site that is consistent with the technical intent of the National Contingency Plan. The City of Greenwood agrees to implement the Work Plan upon written approval from the Department. The Work Plan shall include the names, addresses, and telephone numbers of The City of Greenwood's consulting firm, the analytical laboratory certified by the Department, and The City of Greenwood's contact person(s) for matters relating to this Contract. The City of Greenwood will notify the Department in writing of changes concerning its consultant or laboratory. The Department will review the Work Plan and will notify The City of Greenwood in writing of any deficiencies in the Work Plan. The City of

Greenwood, or its designee, will respond in writing to the Department within thirty (30) days to the Department's comments with regard to deficiencies. 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. The Work Plan shall set forth methods and schedules for accomplishing the following tasks:

- A. Remove the previously identified tank and piping, 55-gallon drums, and other surface waste. As used herein, "other surface waste" does not mean or otherwise include "construction and demolition debris" or "land-clearing debris" as those terms are defined at S. C. Code Ann. 44-96-40(6) and (21) respectively;
 - B. Conduct additional soil sampling to confirm the adequacy of the removal;
 - C. Collect soil samples at random locations within the disposal areas to identify the nature and extent of any other potential sources of contamination.
 - D. Excavate test pits on the Property to confirm that buried materials are limited to trees, limbs, construction and demolition debris or land-clearing debris.
 - E. If determined necessary by the Department, based on the soil sample results, conduct a groundwater investigation to determine the nature and extent of potential groundwater contamination;
 - F. Submit a report to the Department outlining the findings of items A – E;
 - G. Based on the findings, the Department may require additional removal and/or remedial activities.
4. The City of Greenwood 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 City of Greenwood agrees that the Health and Safety plan is submitted for informational purposes only to the Department and any liability that may result from implementation of the Health and Safety Plan shall not rest with the Department.

5. The City of Greenwood shall inform the Department in writing at least five (5) working days in advance of all field activities pursuant to this Contract and shall allow the Department and its authorized representatives, if so desired, to take duplicates of any samples collected by The City of Greenwood pursuant to this Contract.

6. Within sixty (60) days of the execution date of this Contract and semi-annually thereafter, or until such time as all activities are complete pursuant to this contract, The City of Greenwood shall submit to the Department's Project Manager 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 related to the Site, whether the data was generated pursuant to this Contract or not; and (D) a description of any environmental problems experienced at the Property during the previous reporting period and the actions taken to resolve them.

7. All correspondence which may or are required or permitted to be given by either party to the other hereunder shall be in writing and deemed sufficiently given if sent 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) by 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.

All correspondence, work plans, notices, and reports (including two (2) copies and one (1) electronic form of all work plans and reports) should be submitted to:

SCDHEC

Keisha Long
South Carolina Department Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201
LONGKD@dhec.sc.gov

The City of Greenwood

City of Greenwood
Attn: City Manager
City of Greenwood
PO Box 40
Greenwood, SC 29648

PUBLIC PARTICIPATION

8. Upon execution of this Contract, the Department will seek public participation in accordance with S.C. Code Ann. § 44-56-740 (as amended) and the technical intent of the National Contingency Plan. The City of Greenwood will pay Costs of Response associated with public participation (e.g., publication of public notice(s), building and equipment rental(s) for public meetings, etc.).

COSTS OF RESPONSE

9. As provided for by HWMA, S.C. Code Ann. §§ 44-56-200 (Rev. 2002) and 44-56-740(B) (as amended), The City of Greenwood shall, on a quarterly basis, reimburse the Department for oversight costs of activities required under this Contract. "Oversight Costs" shall mean those costs, both direct and indirect, incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract and any future amendments thereto. 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:

City of Greenwood
Attn: City Manager
City of Greenwood
PO Box 40
Greenwood, SC 29648

All of The City of Greenwood'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 of the quarterly billing of oversight costs is not received by the Department by the due date, interest shall accrue on the principal balance until such time as the entire amount is submitted. The interest applied to such outstanding balance shall be the rate specified by the federal government for any debts owed.

ACCESS

10. The Department, its authorized officers, employees, representatives, and all other persons performing response actions under this Contract 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). The City of Greenwood 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 The City of Greenwood is unable to obtain access from the Property owner, the Department may obtain access and perform response activities. All of the Department's costs associated with access and said response actions will be reimbursed by The City of Greenwood.

RESTRICTIVE COVENANT

11. If hazardous substances in excess of residential standards exist at the Property after The City of Greenwood has completed the actions required under this Contract, The City of Greenwood shall enter and file a restrictive covenant for the Property. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and representatives of The City of Greenwood and witnessed, signed, and sealed by a notary public. The City of Greenwood shall file this restrictive covenant with the Register of Mesne Conveyance or Deeds in the county in which the Property is located. The signed covenant shall be incorporated into this Contract as an Appendix. 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 The City of Greenwood or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs, The City of Greenwood 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. The obligations of this Contract apply to and inure to the benefit of The City of Greenwood's signatories, parents, successors, assigns, and subsidiaries.

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 any person, firm, or corporation not a signatory of this Contract or a signatory's parent, successor, assign, or subsidiary.

14. Subject to 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 The City of Greenwood for any matters not expressly included in Paragraph 16.

16. Upon successful completion of the terms of this Contract and the approved Work Plan as referenced in Paragraph 3 above, The City of Greenwood shall submit to the Department a written notice of completion.

Once the Department determines that The City of Greenwood has successfully and completely complied with this Contract, the Department, pursuant to S.C. Code Ann. § 44-56-740(A)(5) and (B)(1) (as amended), will give The City of Greenwood a Certificate of Completion that provides a covenant not to sue The City of Greenwood, its signatories, parents, successors, subsidiaries, and assigns, for the work done in completing the Response Actions specifically covered in the 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 the responsible party successfully and completely complied with the Contract.

In consideration of the Department's covenant not to sue, The City of Greenwood, its signatories, parents, successors, assigns, and subsidiaries 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. The City of Greenwood 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 The City of Greenwood or subsequent owners of the Site 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; or
 - B. Failure to complete the terms of this Contract or the Work Plan; or
 - C. Failure to submit timely payments for oversight costs as defined in Paragraph 9 above, or
 - D. Additional contamination or releases or consequences at the Site caused by The City of Greenwood, its parents, successors, assigns, and subsidiaries;
 - E. Providing the Department with false or incomplete information or knowingly failing to disclose material information; or
 - F. Change in The City of Greenwood or its parents, successors, assigns, and subsidiaries business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract; or
 - G. Failure by The City of Greenwood to obtain the applicable permits from the Department for any response actions or other activities undertaken at the Property.
19. Upon termination of the Contract, the covenant not to sue will be null and void. Termination of this Contract by The City of Greenwood or the Department does not end the obligations of The City of Greenwood to pay oversight costs already incurred by the Department and payment of such costs shall become immediately due.
20. The parties to this Contract agree that this Contract governs The City of Greenwood's liability to the Department for civil sanctions arising from the matters set forth herein and constitutes the entire agreement between the Department and The City of Greenwood with respect to this Contract. The parties are not relying upon any representations, promises, understandings or agreements except as expressly set forth in this Contract.
21. The signatories below hereby represent that they are authorized to and enter into this Contract on behalf of their respective parties.

THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL

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

DATE: 12/15/10

Paige W. Prine
Reviewed by Office of General Counsel

DATE: 12/13/10

THE CITY OF GREENWOOD

J. Charles Barrineau, Jr.
Signature

DATE: December 3, 2010

J. Charles Barrineau, Jr., City Manager
Printed Name and Title

APPENDIX A

Legal Description of the Property