

**VOLUNTARY CLEANUP CONTRACT
00-5393-NRP**

**IN THE MATTER OF
LAKE CONESTEE, GREENVILLE COUNTY
and
CONESTEE FOUNDATION, INC.**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and The Conestee Foundation, Inc. pursuant to the South Carolina Brownfields/Voluntary Cleanup Program, South Carolina Code Ann. Section 44-56-710, et seq. and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq. as adopted by reference in the South Carolina Hazardous Waste Management Act (the "HWMA"), S.C. Code Ann. § 44-56-200, including any amendments, or in the regulations promulgated thereunder. This Contract is entered with respect to the property known as Lake Conestee located on the Reedy River in the center of Greenville County, South Carolina. Lake Conestee includes approximately 145 acres and is bounded generally by The City of Greenville's baseball stadium and closed municipal landfill, on the northeast, and by various privately owned parcels elsewhere around its perimeter and an adjoining tract of approximately six (6) acres located on the east side of the Reedy River and downstream of the Lake Conestee dam. The terms and conditions of this Contract shall be consistent with the "Certification," submitted on March 20, 2000, by The Conestee Foundation, Inc. which is incorporated into this Contract and attached as Appendix A. A map of the property is attached as Appendix B.

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in CERCLA and the South Carolina Brownfields/Voluntary Cleanup Program.
 - A. "Department" shall mean the South Carolina Department of Health and Environmental Control.
 - B. "Contract" shall mean this Voluntary Cleanup Contract.
 - C. "The Site" shall mean all areas where a 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 Section 101 (28).

- D. "Foundation " shall mean Conestee Foundation, Inc.
- E. "Work Plan" shall mean the Site Assessment Work Plan.
- F. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants, present or existing on or under the Site as of the execution date of this Contract.
- G. "Responsible Party" means: (a) the owner and operator of a vessel, as defined in CERCLA Section 101 (28), or a facility; (b) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of; (c) any person who by contract, settlement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances; and (d) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, as defined in CERCLA Section 101 (38), or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance.
- H. "Nonresponsible party" means any party which is neither: (i) a responsible party at the time the voluntary cleanup contract is signed, including lenders, economic development agencies, fiduciaries, trustees, executors, administrators, custodians, subsequent holders of a security interest; nor (ii) a parent, subsidiary of , or successor to a responsible party.

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

- A. Lake Conestee was created in the mid-1830's when a dam was built across the Reedy River approximately seven miles south of Greenville, South Carolina. Three years later, the dam began providing power to a mill that produced cotton textile goods. In 1926, the original dam was replaced by one of stone masonry construction, which stands today. The 1926 dam impounded an area of approximately 145 acres. The Village of Conestee was constructed in the 1840's to provide housing and services to mill employees.
- B. The first community-wide wastewater treatment works to serve Greenville was constructed in 1892, discharging to the Reedy River two miles upstream of Lake Conestee. The degradation of Lake Conestee began and continued until major wastewater treatment works improvements, including the National Pollutant Discharge Effluent System Program and pre-

treatment programs were implemented in the 1980's as a result of the Clean Water Act of 1972. Lake Conestee received and filtered the stormwater runoff and sediment from its 65 square mile watershed since the lake has first constructed. In addition, the lake has received treated and untreated municipal and industrial wastewater discharges and residues since Greenville's early industrial development began. It is estimated that the lake is over 95 % silted-in on a volumetric basis.

- C. Based on water quality and sediment data, it is reasonable to expect that the sediments of Lake Conestee may be contaminated with chemicals from various point and nonpoint sources over the years. Limited sampling has shown elevated concentrations of chromium, copper, zinc, and lead in Lake Conestee sediments, as well as high chemical oxygen demand (COD) and nutrient levels. Water quality sampling in the Reedy River below the lake indicates the river is impaired for aquatic life because of chromium concentrations in sediments. Based on the industrial history of the watershed it is quite likely that metals, as well as polyaromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), and other industrial contaminants, contaminate the sediments. Further, as most of the watershed was in agricultural production prior to World War II, the potential exists for pesticide contamination in sediments.
 - D. The Foundation plans to purchase Lake Conestee and transform it into a managed wetlands complex with an environmental teaching center. The managed wetland will serve as a community resource, greenspace, and wildlife habitat and help achieve the larger goal of creating a greenway along the entire length of the Reedy River. This project will assist in the enhancement of the Conestee community.
3. The terms and conditions of this Contract apply to and shall inure to the benefit of each signatory and its officers, directors, agents, receivers, trustees, heirs, executors, administrators, successors, and assigns, and upon any successor agency of the State of South Carolina that may have responsibility for and jurisdiction over the subject matter of this Contract.
 4. The Foundation is a South Carolina nonprofit organization established for the expressed purpose of restoring and managing Lake Conestee and the surrounding natural resources, and to facilitate the economic redevelopment of the Conestee community. The Conestee Foundation's principal place of business is located at 1 Marshall Court, Greenville, South Carolina. The Foundation is a nonresponsible party at the Site, and is not a parent, successor or subsidiary of a Responsible Party at the Site. The Foundation has had no previous involvement with the Site, including but not limited

← Non-Profit

to any such activities that may have resulted in any Existing Contamination at the Site.

5. The Foundation agrees to submit to the Department for review and written approval within one hundred and twenty (120) days of the effective 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 prepared in accordance with industry standards and endorsed by a duly licensed Professional Engineer (P.E.) and/or Professional Geologist (P.G.) and shall set forth methods and schedules for accomplishing the following tasks:
 - A. The assessment of Lake Conestee shall include representative areas of the property including the lake area, the river channel and sloughs, wetland areas, deltaic deposits, and upland areas. A representative number of soil, sediment, surface water and groundwater samples shall be collected from appropriately selected locations and shall be analyzed to adequately characterize the site.
 - B. Ecological risks posed by the site shall be assessed based on the soil, sediment and surface water data. Human health risks shall be assessed based on soil, sediment, surface water and groundwater data.
 - C. Based on the results of the risk assessments, the need for biological sampling shall be evaluated and performed if necessary.
 - D. Collection and analysis of sediment cores shall be performed to characterize buried sediments in deltaic deposits. Core locations should be selected through the use of aerial photos and other historical information to identify different historical areas of deltaic deposition. Data obtained from analysis of the cores shall be used to address the potential impact of disturbance of the buried sediments to human health and the environment.

6. The Work Plan shall include the name, address, and telephone number of the Foundation's contact person for matters relating to this property. The Foundation shall include the names, addresses, and telephone numbers of the consulting firm and the South Carolina certified analytical laboratory. The Foundation will notify the Department in writing of changes in the contractor or laboratory. Attached to the Work Plan but under separate cover shall also be a Health and Safety Plan that is consistent with Occupational Safety and Health Administration Regulations. The Department will review the Work Plan and will notify the Foundation in writing of any deficiencies in the Work Plan, and the Foundation shall respond in writing within thirty (30) days to the Department's comments.

7. The Foundation shall submit to the Department a written progress report within thirty days of initiating the Work Plan and once a month from that date to 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.
8. 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 public participation. Any oversight costs incurred by the Department which are not paid by funds allotted by the United States Environmental Protection Agency (EPA) for the Department's oversight of Brownfields assessment activities being conducted by governmental and/or non-profit entities shall be paid by the Conestee Foundation. Payments will be due within thirty (30) days of receipt of the Department's invoice for oversight costs from the previous quarter.
9. Two years after the execution date of this Contract, the Foundation shall provide the Department with the following information concerning the status of the property with respect to the following: the number of jobs created, the amount of increase to the tax base, the number of acres/gallons cleaned up and to what standard (industrial, residential, etc.), and any other criteria which would help demonstrate that entering into this Contract has been beneficial to the state, the community, and the Department.
10. Subject to the provisions of Paragraph 18 of this Contract, 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, administrative or judicial, civil or criminal, past or future, in law or equity, that the Department may have against any person, firm, corporation, potentially responsible party, or other entity not a signatory of this Contract.
11. 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 other than the Foundation to perform or pay for 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. The Foundation acknowledges that it is purchasing property where response actions may be required.

12. Upon written notification to the Department, the rights and obligations of this Contract shall be assignable to a new purchaser, lessee, parent, subsidiaries, and successors, but only to the extent that the new purchaser, lessee, parent, subsidiaries, and successors have never been a Responsible Party at the Site.
13. The Department, its authorized officers, employees, representatives, and all other persons performing response actions shall have access at all reasonable times to the property pursuant to applicable State and Federal law for the purposes of performing and overseeing response actions relating to the Site. The Foundation shall ensure that a copy of this Contract is provided to any current lessee or sublessee on the Property as of the execution date of this Contract and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property are consistent with this Paragraph.
14. The Foundation shall preserve all drums, bottles, labels, business and operating records, contracts, site studies, investigations, and other physical or written materials relating to the Site that may provide environmental information, evidence of a Potentially Responsible Party's involvement at the Site, or may lead to the discovery of other areas of contamination at the Site. Prior to destruction of any such items, the Foundation shall notify the Department of their location and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense.
15. The Foundation shall inform the Department 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 Foundation pursuant to this Contract.
16. Upon execution of this Contract, the Department shall seek public participation in accordance with the technical intent of the National Contingency Plan and The Brownfields/Voluntary Cleanup Program. Upon signature of this contract by the nonresponsible party, the Department shall provide notification of the

proposed contract in a newspaper in general circulation within the affected community. A comment period must be provided for thirty days from the date of newspaper publication. The public notice period must precede the Department's scheduled date for execution of this contract. Costs associated with public participation, e.g., public notice(s), building and equipment rental(s) for public meetings, etc., will be paid by the Foundation.

17. The Department and the Foundation agree that the following are entitled to protection from contribution claims as provided by CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2) and S.C. Code Ann. § 44-56-200 (Supp.1996); the Foundation, its Board of Directors, and its officers, members, employees, agents, lessees, successors, or assigns. A thirty (30) day comment period for contribution protection commences upon notice of this Contract to potentially responsible parties at the Site as identified by the Department through a reasonable search effort.
18. Upon successful completion of the terms of this Contract as referenced in Paragraph 5 above, the Foundation shall submit to the Department a written notice of completion. Once the Department acknowledges satisfactory completion of the Contract terms, the Department will give the Foundation a Certificate of Completion that provides a covenant not to sue under its authority to enforce CERCLA pursuant to S.C.Code Ann. Section 44-56-200 (Supp.1996), except for releases and consequences that the Foundation causes. In consideration of this liability protection from the Department, the Foundation agrees 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.
19. If hazardous substances in excess of residential standards exist at the Site after the Foundation has completed the actions required under this Contract, land use restrictions may be defined in the Certificate of Completion and the Department shall enter into a restrictive covenant with the Foundation. The Foundation shall file this restrictive covenant with the Register of Mesne Conveyance or Deeds in Greenville County. The signed covenant shall be incorporated into this contract as an Appendix. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and representatives of the Foundation and witnessed, signed, and sealed by a notary public. With the approval of the Department,

the restrictive covenant may be modified in the future if: (a) additional remedial activities are carried out which meet appropriate clean up standards at that time; (b) a significant change in law requiring remediation occurs; or (c) circumstances change such that the restrictive covenant would no longer be applicable.

20. The Foundation specifically denies any responsibility for response costs or damages resulting from Existing Contamination and does not, by signing this Contract, waive any rights that it may have to assert any claims in law or equity against any other person, company, or entity with respect to the Site. However, the Foundation is responsible and liable for any and all contamination it causes or contributes to the Site. Should environmental contamination be discovered at the Site after the execution date of this Contract, the burden is on the Foundation to demonstrate to the Department's satisfaction that the contamination was not caused by the Foundation.
21. The Foundation and the Department each reserve the right unilaterally to 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 Foundation elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that no environmental or physical hazards exist at the Site as a result of the Foundation's actions. 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 intent of this Contract; (b) failure to complete the terms of this Contract; or (c) additional contamination of the Site caused by the Foundation.
22. If the Foundation provides the Department with false or incomplete information or changes its business activities on Site or use of the Site, as outlined in Appendix A, such that they are inconsistent with the intent of this Contract, then the conditions set forth herein shall become null and void.
23. The State CERCLA liability protection is revoked for a party or successor who changes the land use from the use specified in the certificate of completion to one which requires a more comprehensive cleanup.
24. Upon execution of this Contract, all subsequent correspondence and documentation pertaining to the

requirements of this Contract, including five (5) copies of all Work Plans and Reports, shall be submitted to the following: Angela Gorman, Division of Site Assessment and Remediation, Bureau of Land and Waste Management, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201.

THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

BY: R. Lewis Shaw
R. Lewis Shaw, P.E.
Deputy Commissioner
Environmental Quality Control

DATE: 1/22/01
Columbia, South Carolina

Hartsill W. Truesdale
Hartsill W. Truesdale, P.E., Chief
Bureau of Land and Waste Management

DATE: 01/17/01

J. G. O. Kij
Approved by Legal Office

DATE: 01/19/01

CONESTEE FOUNDATION, INC.

Dana H. Leavitt
Dana H. Leavitt, President

DATE: September 28, 2000

RECEIVED

OCT 9

DIVISION OF SITE
ASSESSMENT & REMEDIATION

APPENDIX A

RECEIVED

MAR 20 2000

The Conestee Foundation, Inc.

DIVISION OF SITE
ASSESSMENT & REMEDIATION

March 16, 2000

Gail Rawls Jeter
SCDHEC, Bureau of Land and Waste Management
2600 Bull Street
Columbia, SC 29201

Subject: Voluntary Cleanup Contract for Lake Conestee

Dear Ms. Jeter:

The Conestee Foundation, Inc. proposes to enter into a Voluntary Cleanup Contract with the South Carolina Department of Health and Environmental Control as it acquires Lake Conestee for conversion to a managed wetland and environmental teaching center.

1. The benefits that the purchase and remediation of the Lake Conestee property will provide to the surrounding community, the citizens of South Carolina, and SCDHEC include the following.

- *Substantially reduce the risk posed by the site:* To improve and manage the wetland, the existing dam, constructed in 1926, would be stabilized and the flow regime managed in a manner to minimize disturbance of contaminated lake sediments.
- *Compensate DHEC for previous remediation/removal activities:* N/A
- *Conduct or pay for future remediation/removal activities:* Any necessary future remediation activities will be carried out as part of the active management of the site.
- *Create or retain jobs:* The site is not currently used for any commercial or industrial enterprise. The proposed project will create jobs for teachers, tour guides, maintenance workers, environmental technicians, and environmental managers. The development of the site will have the added impact of promoting redevelopment of the Conestee Mill village community.
- *Create conservation or recreation areas:* The proposed project will turn a polluted eyesore into an attractive greenspace. The site also provides a very significant greenspace and wildlife habitat for waterfowl, shorebirds, songbirds, beaver, muskrat, deer, river otter, fish, and other aquatic creatures, in an otherwise urban area.
- *Enhance water quality:* The site provides significant benefits to the water quality of the Reedy River by providing stormwater attenuation, wastewater polishing, and trapping of sediments and other contaminants. The site also provides significant water quality benefits to downstream communities by retaining vast quantities of suspected contaminated sediments and by oxygenation of the water coursing over the dam.

➤ *Provide community services:* The environmental education center that will be developed on the site will serve schoolchildren from throughout Greenville and Laurens counties.

2. The Conestee Foundation, Inc. is not responsible (as defined under CERCLA § 107 (a)) at the site, nor is it a parent, successor, or subsidiary of a responsible party at the site. As contaminated sediments in the lake, which is fed by the Reedy River, cannot be traced back to specific polluting parties, there is no viable responsible party, which can perform the necessary environmental assessment and/or remediation at the site.

Previous owners and operators of the site:

H.J. Brand, Inc.	12/10/85 – present
J & B Associates	3/17/78 – 12/10/85
Standard Textile Mills, Inc.	11/26/73 – 3/17/78
UPD, Inc.	2/18/72 - 11/26/73
Wyandotte Worsted Co.	3/26/54 - 2/18/72
Blackington Mills, Inc.	19__ - 3/26/1954
W.E. Beattie & Assoc. (Conestee Mills)	1909 – 19__
Reedy River Mfg. Co.	1875 – 1909
James Ashmore and J.A. David	18__ - 1875
Grady Ashmore and Co.	18__ - 18__
Grady, Hawthorne, and Perry	1862 - 18__
Vardry McBee	1815 – 1862
Lemuel Alston	post-Revolutionary War land grant - 1815

3. The new site development, with exercise of due care, will not aggravate or contribute to the existing contamination, as the project's stated purpose is to contain harmful sediments and manage natural resources. The development will not interfere with any DHEC response action, nor will it pose health risks to the community and those persons likely to be present at the site.

4. Financial viability of the party: the Conestee Foundation, Inc., was established in 2000, under the laws of South Carolina, for the expressed purpose of restoring and managing Lake Conestee and the surrounding natural resources. The Conestee Foundation is in the process of filing for status as a 501(c)(3) nonprofit organization registered with the office of the IRS. The Conestee Foundation was established by the Board of Friends of Reedy River, Inc., another non-profit organization, also incorporated in South Carolina. FoRR currently has 320 paid individual memberships as well as 27 business sponsors, with an annual budget of \$35,000. FoRR has been the recipient of several local and state grants, most recently a Section 319 grant from DHEC, awarded in 1999.

5. The Conestee Foundation plans to operate an environmental education center for use by Greenville and Laurens County School Districts and other organizations, involving non-polluting and low-impact activities on the site. The only wastes generated during operation would be human waste from employees and visitors, which would be effectively treated using appropriate on-site technology approved by DHEC.

6. Proposed Scope of Work: In addition to stabilizing the dam and managing the flow regime to minimize disturbance of contaminated sediments, some water control structures may be constructed in inner embayments and sloughs to effect improved stormwater detention, water quality polishing, sediment removal, and waterfowl habitat enhancement. Extensive streambank stabilization projects, bottomland forest improvement projects, and wildlife enhancement projects will be integrated into the management plan.

In addition to the wetlands and habitat management aspects of the project, this site is extraordinarily well-suited to the development of an environmental teaching center. This endeavor would involve the construction of an environmental interpretive center on Taylor Island, which comprises approximately 8-10 acres of mature upland hardwood habitat with a peak elevation at approximately 20 feet above lake level. This interpretive center would be accessible to pedestrians, electric carts, and emergency vehicles via a causeway to be constructed to the island. The curriculum and activities for the teaching center would include the history of sedimentation of Lake Conestee, the contamination history of Lake Conestee and of the Reedy River, the history and impacts of the Colonial Pipeline catastrophe, modules on wastewater treatment and on landfill management, wetlands and wetland habitat management, stormwater management, water quality sampling, and urban wildlife management.

7. Legal description of the site: The Lake Conestee property is recorded by Greenville County as parcel 423-01-010. It includes the dam located at 34° 46.3' N and 82° 21.0' W and the area upstream.

8. Party: Conestee Foundation, Inc.
Contact person: Dana Leavitt, President
Address: 1 Marshall Court
Greenville, SC 29605
Telephone: (864) 420.4941
E-mail: dleavitt@home.com

Please contact me if you have any questions regarding this proposal. Thank you for your consideration.

Sincerely,



Dana H. Leavitt, President

APPENDIX B

47' 30"

3851

3850

3849

3848

3847

640 000
FEET

34° 45'

82° 22' 30"

1 590 000 FEET

976

977

20'

PRODUCED BY THE UNITED STATES GEOLOGICAL SURVEY
 CONTROL BY USGS, NOS/NOAA, AND SOUTH CAROLINA GEODETIC SURVEY
 COMPILED FROM AERIAL PHOTOGRAPHS TAKEN 1976
 FIELD CHECKED 1977. MAP EDITED 1983
 COORDINATE SYSTEM LAMBERT CONFORMAL CONIC
 GRID: 100-METER UNIVERSAL TRANSVERSE MERCATOR ZONE 17
 10,000-FOOT STATE GRID TICKS SOUTH CAROLINA, NORTH ZONE
 GRID DECLINATION 0°45' WEST
 1983 MAGNETIC NORTH DECLINATION 3°30' WEST
 VERTICAL DATUM NATIONAL GEODETIC VERTICAL DATUM OF 1929
 HORIZONTAL DATUM 1927 NORTH AMERICAN DATUM

NORTH

1000

1000 0

