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SIGNATURE

David Walker

**VOLUNTARY CLEANUP CONTRACT
16-5988-RP**

**IN THE MATTER OF
NORFOLK SOUTHERN WAYNE STREET SITE, RICHLAND COUNTY
and
NORFOLK SOUTHERN RAILWAY COMPANY**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Norfolk Southern Railway Company, 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 Norfolk Southern Wayne Street Site ("Site"). The Norfolk Southern Railway Company property is located at 1001 Wayne Street, Columbia, South Carolina ("Property"). The Property includes approximately 3.01 acres and is bounded generally by Gervais Street on the north; Lincoln Street on the east; Pendleton Street on the south; and Wayne Street on the west. The Property, in part, is identified by the County of Richland as Tax Map Serial Number R08916-11-04A and 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 in CERCLA, the HWMA, and in regulations promulgated under the foregoing statutes, or the Brownfields/Voluntary Cleanup Program.
 - A. "NSRC" shall mean Norfolk Southern Railway Company. Norfolk Southern Railway Company is a foreign corporation authorized to do business in South Carolina with its principal place of business located at 1200 Peachtree Street, NW, Atlanta, Georgia.
 - B. "Contract" shall mean this Responsible Party Voluntary Cleanup Contract.
 - C. "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, Section 101, 42 U.S.C. Section 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.

- D. "Contamination" shall mean impact by a Contaminant or Hazardous Substance.
- E. "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.
- F. "Hazardous Substance" shall have the same meaning as defined under subparagraphs (A) through (F) of Paragraph (14) of CERCLA, Section 101, 42 U.S.C. Section 9601(14).
- G. "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 NSRC.
- H. "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

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environment.

- I. "Site" shall mean all areas where a Hazardous Substance, 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.
- J. "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.
- K. "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. Owners and Operators: The owners and operators of the Property include the following: Norfolk Southern Railway Company (NSRC)
- B. Property and Surrounding Areas: The Property is located in the City of Columbia, South Carolina. It is roughly triangular in shape and is bordered by Pendleton Street to the south, Wayne Street to the west, and a large commercial/retail building to the north and east.

Historically, the Property was used as a railroad depot, a fertilizer bagging site and an automobile salvage yard. Former uses of the surrounding property include a fuel distribution facility (also known as the Lincoln Street Site) located directly east of the Property and SMI Owens Steel, a steel fabrication facility.

From a report titled "Continuing Soil and Groundwater Quality Assessment Work Plan, Norfolk Southern Railway Company, Lincoln and Wayne Street Sites", dated October 1998,

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15 composite surface soil samples and two subsurface composite soil samples were collected for analysis at the Wayne Street Property. Concentrations of lead were detected in the soil up to 25,440 milligrams per kilogram (mg/kg). Concentrations of arsenic were detected in the soil up to 130 mg/kg. Based on the findings of this report additional soil and groundwater investigations were proposed on the Property.

From a report titled "Continued Hydrogeologic Assessment, Norfolk Southern Railway Company, Lincoln Street and Wayne Street Sites", dated May 1999, four monitoring wells were installed on the Wayne Street Property. Lead was detected at a concentration of 2.74 milligrams per liter in monitoring well MW-11, exceeding the maximum contaminant level (MCL) for lead.

A corrective action plan was submitted in May of 2002 titled "Corrective Action Plan, Norfolk Southern Railway Company, Wayne Street Site." The proposed Corrective Action Plan was approved July 10, 2002, but was not implemented.

The annual groundwater monitoring reports indicate that lead has impacted groundwater only in the area of MW-11, but the extent of this impact is uncertain.

RESPONSE ACTIONS

3. NSRC 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 NSRC's contact person for matters relating to this Contract. NSRC will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify NSRC in writing of any deficiencies in the Work Plan. NSRC will respond in writing to

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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. Submit a Soil Removal Action Work Plan for the stabilization and offsite removal of soils contaminated by lead and arsenic above levels suitable for industrial use (800 mg/Kg for lead and 30 mg/Kg for arsenic). The Soil Removal Work Plan should, at a minimum, include the following:

- i. Provisions for establishing a grid and sub-grids for the purpose of collecting samples to determine the horizontal and vertical extent of contamination.
- ii. Proposed methods for collecting, compositing, and analyzing samples.
- iii. Evaluation of soil stabilization and excavation technologies, including a description of activities relating to excavation, handling, loading, and transporting contaminated materials and a confirmation sampling plan to demonstrate compliance with soil remedial goals. (Note – All materials removed from the site must be disposed in a properly licensed and compliant disposal facility.)
- iv. Contingencies for managing and treating, if necessary, all rainwater and/or subsurface water that must be removed during excavation activities.
- v. Provisions, if necessary, for the placement of clean backfill and vegetative cover or other cover approved by the Department

B. Removal Action Construction

- i. Implement the soil stabilization technology and soil excavation in accordance with the schedule in the approved



Soil Removal Action Work Plan.

- ii. Submit to the Department a Soil Removal Action Report in accordance with the schedule in the approved Removal Action Work Plan. The Department shall review the report for determination of completion of the stabilization, excavation and offsite removal of soil and sufficiency of the documentation. If the Department determines that the Removal Action is not complete, it will send written notification of such to NSRC, and NSRC shall subsequently conduct additional activities to complete the Removal Action. If the Department determines that the Removal Action is complete but the report is incomplete, the Department shall send to NSRC a letter indicating that revision of the report is necessary. Within thirty (30) days of receipt, unless otherwise agreed, of such letter from the Department, NSRC shall submit a revised report addressing the Department's comments.

C. Post Removal Site Control/Groundwater Investigation

- i. Maintain fence, control erosion and drainage at excavated areas, and maintain vegetative covers.
- ii. Upon completion of the soil stabilization and removal activities, implement a groundwater assessment and monitoring program as outlined and approved in the Soil Removal Action Work Plan

- D. Based on the findings, the Department may require additional removal and/or remedial activities.

4. NSRC 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

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may result from implementation of the Health and Safety Plan by NSRC.

5. NSRC 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 NSRC pursuant to this Contract.

6. Within sixty (60) days of the execution date of this Contract and once a quarter thereafter, NSRC 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 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 delivered by (A) regular U.S. mail, (B) certified or registered mail, postage prepaid, return receipt requested, (C) or 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.

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

The Department: Tim Hornosky
South Carolina Department Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201
hornostr@dhec.sc.gov

SW

NSRC: Steven R. Aufdenkampe
Norfolk Southern Railway Company
1200 Peachtree Street, NE-Box 13
Atlanta, GA 30309

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, 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. NSRC will reimburse the Department's cost associated with public participation (e.g., publication of public notice(s), building and equipment rental(s) for public meetings, etc.).

RESPONSE COSTS

9. NSRC shall, within thirty (30) days of the execution date of this Contract, pay to the Department by certified or cashier's check the sum of five thousand one hundred sixty-one dollars and sixty-three cents (\$5,161.63) to reimburse estimated past response cost incurred by the Department through June 30, 2015 ("Past Costs") relating to the Site. NSRC's payment for Past Costs should be submitted to:

The Department: John K. Cresswell
South Carolina Department of Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, SC 29201

In accordance with §§ 44-56-200 and 44-56-740, NSRC 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

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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:

NSRC: Steven R. Aufdenkampe
Norfolk Southern Railway Company
1200 Peachtree Street, NE-Box 13
Atlanta, GA 30309

All of NSRC'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 under the Department's oversight will not be denied access to the Property 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). NSRC 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 NSRC 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 NSRC.

RESTRICTIVE COVENANT

11. If hazardous substances in excess of residential standards exist at the Property after NSRC has completed the actions required under this Contract, NSRC shall prepare, enter into, and record 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 NSRC and witnessed, signed, and sealed by a notary public. NSRC shall record this restrictive covenant with the Register of Deeds or Mesne Conveyances in Richland 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 NSRC or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. NSRC 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, NSRC, 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 the Contract, and all response costs incurred or to be incurred under this Contract and any subsequent amendments to the Contract. Further, by resolving its liability to the State for some or all of a Response Action in this administrative

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settlement, NSRC 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 the Contract, and shall commence upon publication of the notice of the 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 the Contract and who is not a signatory's parent, subsidiary, successor and assign.

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 NSRC for any matters not expressly addressed by and settled through this Contract.

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

Once the Department determines that NSRC 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 NSRC a Certificate of Completion that provides a covenant not to sue to NSRC, its signatories, parents, subsidiaries, successors 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.

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The covenant not to sue and administrative settlement for purposes of contribution protection are contingent upon the Department's determination that NSRC successfully and completely complied with the Contract.

In consideration of the Department's covenant not to sue, NSRC, 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. NSRC 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 NSRC 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 NSRC 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 NSRC's or its parents, subsidiaries, successors and

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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 NSRC to obtain the applicable permits from the Department for any Response Action or other activities undertaken at the Property.

19. Upon termination of the Contract under Paragraph 17 or 18, the covenant not to sue and administrative settlement for purposes of contribution protection shall be null and void. Termination of the Contract by NSRC 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 and enter into this Contract on behalf of their respective parties.

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THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL

BY:

Donald G. Neel for

DATE:

6/2/2016

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

Clare H. O'Prin

DATE:

5/26/16

Reviewed by Office of General Counsel

NORFOLK SOUTHERN RAILWAY COMPANY

R.P. Russell

Signature

DATE:

3/10/16

Richard P. Russell

Printed Name and Title

*System Director
Environmental Protection*

APPENDIX A

Legal Description of the Property

County of Richland
Tax Map Serial Number R08916-11-04A

All that certain piece, parcel, lot or tract of land, with any improvements thereon, situate, lying and being in the City of Columbia, County of Richland, State of South Carolina, being shown and delineated as 3.0150 Acres on a property survey prepared for Southern Realty Dev. Corp. by Steadman & Associates, Inc., dated January 23, 2014, and according to said survey, having the following measurements and boundaries:

Beginning at a steel rod located on the northeast corner of Wayne Street and Pendleton Street, and thence proceeding along the eastern boundary of the right-of-way of Wayne Street the following courses and distances: N 20° 37' 34" W for a distance of 571.47 feet to a rebar marker; thence continuing and running N 20° 27' 54" W for a distance of 56.31 feet to a rebar marker; thence turning and proceeding along property of Southern Realty Dev. Corp. the following courses and distances: along a curve having a chord bearing of S 42° 33' 36" E for a chord distance of 114.17 feet and an arc distance of 114.17 feet to a rebar marker; thence turning and running S 59° 50' 38" E for a distance of 239.93 feet to a rebar marker; thence along a curve having a chord bearing of S 60° 55' 42" E for a chord distance of 118.26 feet and an arc distance of 118.26 to a rebar marker; thence along a curve having a chord bearing of S 50° 18' 40" E for a chord distance of 283.00 feet and an arc distance of 284.24 to a rebar marker located on the northern right-of-way of Pendleton Street; and thence turning and proceeding along the northern boundary of the right-of-way of Pendleton Street S 69° 22' 54" W for a distance of 411.25 feet to a steel rod, being the point of beginning.

TMS#:08916-11-04A