

**VOLUNTARY CLEANUP CONTRACT  
16-6426-RP**

**IN THE MATTER OF  
MCCONNELLS CORNER SITE, YORK COUNTY  
and  
MCCONNELLS CV/EF, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and McConnells CV/EF, 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 McConnells Corner Site ("Site"). The McConnells Corner property is located at 851 Heckle Boulevard, Rock Hill, South Carolina ("Property"). The Property includes approximately 8.6 acres and is bounded generally by McConnells Highway on the north; Heckle Boulevard on the east; residential properties and Prestwick Drive on the south; and woodlands and Wildcat Creek on the west. The Property is identified by the County of York as Tax Map Serial Number 597-04-01-002; 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. "McConnells" shall mean McConnells CV/EF, LLC. McConnells CV/EF, LLC is a Delaware Limited Liability Company authorized to do business in South Carolina with its principal place of business located at 3900 Rose Lake Drive, Charlotte, NC, 28717-2836.
  - B. "Contamination" shall mean impact by a Contaminant, Hazardous Substance, Petroleum or Petroleum Product.



SIGNATURE                     DW                    

A, shall mean that portion of the Site, which is subject to ownership, prospective ownership, or possessory or contractual interest of McConnells CV/EF, 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. The Property contains one retail building anchored by a Food Lion supermarket. Other tenants of the building include a Family Dollar, Wing-Wah, Karate, K Nails, and Cherry Cleaners.
- B. According to the City of Rock Hill Planning and Development, a dry cleaner has been permitted at the Property since 1999. The first dry cleaner operated at the location until 2004 and used a petroleum-based cleaning solution.
- C. The current dry cleaning operation at the Property, Cherry Cleaners,

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started operations in late 2004 and has used tetrachloroethene (PCE) as its dry cleaning solution since occupancy in 2004. The dry cleaning "plant" is currently situated on a heavily stained vinyl floor tile with a sealed concrete floor. The plant is situated within a metal spill containment pan.

- D. According to a Phase II Report dated July 26, 2010, 12 soil borings were completed at interior floor locations and around the outside of the facility. No contaminants were detected at concentrations exceeding US EPA Industrial Regional Screening Levels, but samples from only two of the borings were analyzed.
- E. A Phase II Limited Subsurface Investigation was conducted by EFI Global, Inc., on March 7, 2016. Two exterior soil borings and two interior soil borings were completed and five soil samples were collected and analyzed for volatile organic compounds. PCE, trichloroethene (TCE), cis-1,2-dichloroethene, and trans-1,2-dichloroethene were detected in the samples above Regional Screening Levels for Protection of Groundwater.
- F. A Groundwater Assessment was conducted by EFI Global, Inc., on June 28, 2016. Three (3) permanent ground water monitoring wells were installed at the Property to a depth of 40 feet below grade level. The wells were developed and samples were collected and analyzed for volatile organic compounds. The samples contained PCE and TCE concentrations above the Maximum Contaminant Levels.

### RESPONSE ACTIONS

3. McConnells 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 McConnells' contact person for

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matters relating to this Contract. McConnells will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify McConnells in writing of any deficiencies in the Work Plan, and McConnells 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 an investigation to determine the source, nature, and extent of Contamination at the Site.
- B. Submit to the Department an investigation 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 Work Plan. The Department shall review the investigation report for determination of completion of the investigation and sufficiency of the documentation. If the Department determines that the investigation is not complete, it will send written notification of such to McConnells, and McConnells shall subsequently conduct additional investigation to further determine the source, nature, and extent of Contamination. If the Department determines that the investigation is complete but the investigation report is incomplete, the Department shall send to McConnells a letter indicating that revision of the investigation report is necessary. Within thirty-(30)-days of receipt of such letter from the Department, McConnells shall submit a revised investigation report addressing the Department's comments.
- C. If determined necessary by the Department, conduct a Feasibility Study or other evaluation of remedial and/or removal alternatives for addressing Contamination at the Site.

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4. McConnells 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 McConnells.

5. McConnells 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 McConnells pursuant to this Contract.

6. Within sixty (60) days of the execution date of this Contract and once a quarter thereafter, McConnells 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) 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:

SIGNATURE                     DW                    

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

McConnells O.P. Cassels  
McConnells CV/EF, LLC  
C/O Edison Foard Construction Services  
P.O. Box 19888  
Charlotte, N.C. 28219  
pcassels@edisonfoard.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, 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. McConnells 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 §§ 44-56-200 and 44-56-740, McConnells shall, on a quarterly basis, reimburse the Department for Oversight Costs of activities required under this Contract occurring after July 1, 2016. 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:

THIS IS CERTIFIED AS A TRUE  
AND CORRECT COPY

SIGNATURE

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McConnells: O.P. Cassels  
McConnells CV/EF, LLC  
C/O Edison Foard Construction Services Inc.  
P.O. Box 19888  
Charlotte, N.C. 28219

All of McConnells' 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). The Property is a shopping center with tenants other than Cherry Cleaners. Should the Department need to enter into parts of the Property occupied by other tenants the Department agrees that it will coordinate such entry with McConnells. McConnells will take steps to facilitate any such entry into parts of the Property leased to tenants other than Cherry Cleaners. McConnells 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 McConnells is unable to obtain access from a subsequent Property owner or tenant, 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 McConnells.



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### RESTRICTIVE COVENANT

11. If hazardous substances in excess of residential standards exist at the Property after McConnells has completed the actions required under this Contract, McConnells 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 McConnells and witnessed, signed, and sealed by a notary public. McConnells shall record this restrictive covenant with the Register of Deeds or Mesne Conveyances in York 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 McConnells or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. McConnells or subsequent owners of the Property shall file an annual report with the Department by May 31<sup>st</sup> 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. 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.

13. Except as provided in Paragraph 15, 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

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that may be taken or be required by the Department in exercising its authority under State and Federal law.

14. Subject to the provisions of Paragraph 15, 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 McConnells for any matters not expressly addressed by and settled through this Contract.

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

Once the Department determines that McConnells 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 McConnells a Certificate of Completion that provides a covenant not to sue to McConnells, 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. The covenant not to sue is contingent upon the Department's determination that McConnells successfully and completely complied with the Contract.

In consideration of the Department's covenant not to sue, McConnells, 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. McConnells 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 McConnells elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that any environmental or physical hazard shall be stabilized and/or mitigated such that the Site

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does not pose a hazard to human health or the environment that did not exist prior to any initial Response Action addressing Contamination identified in this Contract.

18. The Department may terminate this Contract only for cause, which may include but is not limited to, the following:

- A. Events or circumstances at the Site that are inconsistent with the terms and conditions of this Contract;
- B. Failure to complete the terms of this Contract or the Work Plan;
- C. Failure to submit timely payments for 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 McConnells, 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 McConnells' 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 McConnells 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, the covenant not to sue will be null and void. Termination of this Contract by McConnells or the Department does not end the obligations of McConnells 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

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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: 10/31/16

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Reviewed by Office of General Counsel

DATE: 10/25/16

MCCONNELLS CV/EF, LLC

O. P. Cassels, Jr.  
Signature  
O. P. Cassels, Jr.

DATE: October 24, 2016

Authorized Agent  
Printed Name and Title

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**APPENDIX A**

**Legal Description of the Property**

County of York

Tax Map Serial Number 5970401002

Being all that certain, piece, parcel, or lot of land, situate in the city of Rock Hill, county of York, state of South Carolina, and being shown and designated as the 8.645 acres shown on the ALTA/ACSM Land Title Survey prepared for McConnell's CV /EF, LLC, Delaware Limited Liability Company, by Fisher-Sherer Inc., dated Moy 30, 2011;

The following courses to wit: Commencing at S.C.G.S. Monument "Long", located in the North East quadrant of the Intersection of Heckle Boulevard (90' R/W) and McConnells Highway (75' R/W), said monument being shown and designated as COMMENCEMENT POINT; thence S 72-44-35 W 314.02' to a found 5/8" rebar on the southerly side of McConnells Highway right-of-way; said rebar being shown and designated as the POINT OF BEGINNING, (P.O.B.); thence along the edge of on access drive and parking lot following courses: a curve to the left, radius of 24.56', length of 16.54', chord of S 73-17-43 W 16.23' to a found 5/8" rebar; S 49-33-21 W 15.46' to a found 5/8" rebar; a curve to the left, radius of 8.62', length of 7.57', chord of S 26-32-12 W 7.33' to a found 1/2" rebar; S 07-25-45 W 3.31' to a found 1/2" rebar; S 08-47-09 W 9.28' to a found 5/8" rebar; a curve to the right, radius of 162.75', length of 68.33', chord of S 14-22-46 W 67.83' to a found 5/8" rebar; S 29-50-14 W 11.57' to a found 5/8" rebar ; a curve to the left, radius of 40.15', length of 28.31', chord of S 06-08-38 W 27.73' to a found 5/8" pin; a curve to the left, radius of 12.19', length of 7.90', chord of S 37-21-29 E 7.77' to a point; S 56-47-56 E 8.93' to a found 5/8" rebar; S 51-58-17 E 6.97' to a found 1/2" rebar; S 44-14-00 E 9.38' to a found 5/8" pin; S 56-34-28 E 104.00' to a found 5/8" rebar; S 63-45-43 E 9.41' to a found 5/8" pin; S 57-47-01 E 3.17' to a found 5/8" pin; S 50-38-04 E 9.34' to a found 5/8" rebar; S 57-00-05 E 27.66' to a found 5/8" rebar; S 56-16-43 E 2.42' to a found 1/2" rebar; a curve to the right, radius of 457.17', length of 43.34', chord of S 53-24-23 E 43.32' to a found mag nail; S 40-10-30 E 3.12' to a found mag nail; S 30-13-41 E 8.94' to a found mag nail; a curve to the right, radius of 212.09', length of 44.69', chord of S 27-58-19 E 44.61' to a found 1/2" rebar; S 21-09-18 E 115.22' to a found mag nail; thence S 48-24-07 W 413.16' to a found 5/8" pin; thence N 61-08-02 W through a found 5/8" pinch pipe at 430.76', continuing 47.68' through a found 1/2" pin, continuing 171.27' for a total of 649.71' to a 22" Poplar tree; thence N 33-25-34 W through on iron pin at 90.30', a total of 101.31' to a point in center of creek; thence with the center of creek the following (9) courses: N 43-58-05 E 15.35'; N 51-53-06 E 102.19'; N 59-18-52 E 130.76'; N 50-58-56 E 54.90'; N 44-32-00 E 49.58'; N 79-05-24 E 22.73'; N 56-37-53 E 39.50'; N 48-53-36 E 79.12'; N 64-51-41 E 48.79' to a point on the southern right-of-way of McConnells Highway; thence with said right-of-way S 88-12-06 E 39.60' to a found 5/8" rebar; thence S 00-36-10 W 49.89' to a found 5/8" pin; thence S 89-03-53 E 90.00' to a found 1/2" pinch pipe; thence N 00-30-29 E 48.55' to a found 5/8" rebar located on the southern right-of-way of McConnells Highway; thence along said right-of-way S 89-17-28 E 163.88' to THE POINT OF BEGINNING, containing 8.645 acres, more or less.