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David W. W. W.

**VOLUNTARY CLEANUP CONTRACT
17-6474-RP**

**IN THE MATTER OF
CHICK-FIL-A #466 SITE, GREENVILLE COUNTY
and
CHICK-FIL-A, INC.**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Chick-fil-A, Inc., 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 Chick-fil-A #466 Site ("Site"). The Chick-fil-A property is located at 1564 Laurens Road, Greenville, South Carolina ("Property"). The Property includes approximately 0.574 acres and is bounded generally by Laurens Road on the north; East Antrim Drive on the west; Landwood Avenue on the east; and McAlister Market Place shopping center on the south. The Property is identified by the County of Greenville as Tax Map Serial Number 0266000132201. A legal description of the Property is attached to this Contract as Appendix A.

DEFINITIONS

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, and if not set forth therein, shall have the meaning assigned to them pursuant to CERCLA, the HWMA, and in regulations promulgated under these statutes.

- A. "CFA" shall mean Chick-fil-A, Inc. Chick-fil-A, Inc. is a Georgia corporation authorized to do business in South Carolina with its principal place of business located at 5200 Buffington Road, Atlanta, GA.
- B. "Contamination" shall mean impact by a Pollutant or Contaminant, Petroleum and Petroleum Product, or Hazardous Substance.

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- C. "Contract" shall mean this Responsible Party Voluntary Cleanup Contract.
- D. "Department" shall mean the South Carolina Department of Health and Environmental Control or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- E. "Hazardous Substance" shall have the same meaning as defined under subparagraphs (A) through (F) of Paragraph (14) of CERCLA § 101, 42 U.S.C. § 9601(14).
- F. "Petroleum" and "Petroleum Product" shall mean crude oil or any fraction of crude oil, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds for each square inch absolute), including any liquid, which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel.
- G. "Pollutant" or "Contaminant" includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; "contaminant" does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA § 101, 42 U.S.C. § 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.
- H. "Property" as described in the legal description attached as Appendix

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- A, shall mean that portion of the Site, which is subject to ownership, prospective ownership, or possessory or contractual interest of CFA.
- 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. Prior to development, the Property consisted of grassed and partially wooded land from at least 1936. Based on historical city directories, the current Chick-fil-A restaurant was first documented on the site in 1992. Based on a review of the historical information, the Property, along with the adjoining parcel to the west was formerly one property identified as 1550 Laurens Road. The Property was first developed with a car wash facility (Exxon Car Wash and later documented as Constan Car Wash) as early as 1974 until 1984. According to historical aerial photographs, the car wash facility contained evidence of an underground storage tank (UST) pit. The apparent

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former UST pit is located on the western adjoining parcel (currently developed with a Cook Out restaurant located at 1560 Laurens Road).

- B. Terracon Consultants, Inc. (Terracon) conducted a Phase I Environmental Site Assessment at the Property in November 2016, identifying a former on-site car wash with apparent underground storage tanks (USTs) as a recognized environmental condition (REC). A subsequent Limited Site Investigation (LSI) conducted by Terracon at the Property in December 2016 revealed tetrachloroethene impacts to groundwater on the Property at concentrations above Environmental Protection Agency Maximum Contaminant Levels (EPA MCLs). The LSI also identified a potential vapor intrusion (VI) condition on the Property.
- C. Following receipt of the Department's approval to proceed, Terracon advanced four soil borings to facilitate the installation of four groundwater monitoring wells (denoted as MW-1 through MW-4) and the collection of four soil samples (SB-1 through SB-4) at the Property.
- D. Tetrachloroethene was reported at levels above its MCL of 5 micrograms per liter ($\mu\text{g/L}$) in all four groundwater samples collected: MW-1 at 4,090 $\mu\text{g/L}$; MW-2 at 390 $\mu\text{g/L}$; MW-3 at 649 $\mu\text{g/L}$; and, MW-4 at 425 $\mu\text{g/L}$. Methylene Chloride was also reported at a level above its MCL (5 $\mu\text{g/L}$) in sample MW-3 (10.2 $\mu\text{g/L}$).

RESPONSE ACTIONS

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

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this Contract. CFA will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify CFA in writing of any deficiencies in the Work Plan, and CFA 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. Identify and assess any data gaps in previous assessments and investigations at the Site to identify the source(s), nature, and extent of the Contamination.
- B. Submit to the Department a Remedial Investigation (RI) Report (to include a Baseline Risk Assessment or other evaluation of risk to human health and the environment) in accordance with the schedule in the approved RI Work Plan. The Department shall review the report for determination of completion of the RI and sufficiency of the documentation. If the Department determines that the field investigation is not complete, it will send written notification of such to CFA, and CFA shall subsequently conduct additional field investigation to further determine the source, nature, and extent of Contamination. If the Department determines that the field investigation is complete but the report is incomplete, the Department shall send to CFA a letter indicating that revision of the report is necessary. Within thirty-(30)-days of receipt of such letter from the Department, CFA shall submit a revised 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.

4. CFA 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

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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 CFA.

5. CFA 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 CFA pursuant to this Contract.

6. Within sixty (60) days of the execution date of this Contract and once a quarter thereafter until issuance of the Certificate of Completion, CFA 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:

The Department: Regan D. Rahn
South Carolina Department Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201
rahnr@dhec.sc.gov

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CFA: Evan Foster
Existing Restaurants – Strategic Reinvestment
Chick-fil-A, Inc.
5200 Buffington Road
Atlanta, GA 30349
evan.foster@cfacorp.com

Chick-fil-A Real Estate Legal – Existing Restaurants
5200 Buffington Road
Atlanta, GA 30349
william.hudson@cfa.corp.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. CFA 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, CFA shall, on a quarterly basis, reimburse the Department for oversight costs actually incurred for activities required under this Contract. Oversight costs include, but are not limited to, the direct and indirect costs of negotiating the terms of this Contract, reviewing Work Plans and reports, supervising corresponding work, and activities and costs associated with public participation. Payments will be due within thirty (30) days of the Department's invoice date. The Department shall provide documentation of its oversight costs in sufficient detail so as to show the personnel involved, amount of time spent on the project for each person, expenses, and other specific costs. Invoices shall be submitted to:

David Wilcox

CFA: Jennifer Wilcox
Existing Restaurants – Strategic Reinvestment
Chick-fil-A, Inc.
5200 Buffington Road
Atlanta, GA 30349
jennifer.wilcox@cfacorp.com

All of CFA's payments should reference the Contract number on page 1 of this Contract and be made payable to:

The South Carolina Department of Health & Environmental Control

If complete payment of the past costs or of the quarterly billing of oversight costs is not received by the Department by the due date, the Department may bring an action to recover the amount owed and all costs incurred by the Department in bringing the action including, but not limited to, attorney's fees, Department personnel costs, witness costs, court costs, and deposition costs.

ACCESS

10. The Department, its authorized officers, employees, representatives, and all other persons performing Response Actions will not be denied access to the Site 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). CFA 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 CFA 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 CFA.

RESTRICTIVE COVENANT

11. If hazardous substances in excess of residential standards exist at the Property after CFA has completed the actions required under this Contract, CFA shall enter and

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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 CFA and witnessed, signed, and sealed by a notary public. CFA shall record this restrictive covenant with the Register of Deeds or Mesne Conveyances in Greenville County. The signed covenant shall be incorporated into this Contract as an Appendix. A Certificate of Completion shall not be issued by the Department until the restrictive covenant, if required, is executed and recorded. With the approval of the Department, the restrictive covenant may be modified in the future if additional remedial activities are carried out which meet appropriate clean-up standards at that time or circumstances change such that the restrictive covenant would no longer be applicable. The Department may require CFA or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. CFA 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, CFA, 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 settlement, CFA 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

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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 the provisions of Paragraph 16, nothing in this Contract is intended to limit the right of the Department to undertake future Response Actions at the Site or to seek to compel parties to perform or pay for costs of Response Actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of Response Actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

15. Subject to the provisions of Paragraph 16, nothing in this Contract is intended to be or shall be construed as a release or covenant not to sue for any claim or cause of action that the Department may have against CFA for any matters not expressly addressed by and settled through this Contract.

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

Once the Department determines that CFA 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 CFA a Certificate of Completion that provides a covenant not to sue to CFA, 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 and administrative settlement for purposes of contribution protection are contingent upon the Department's determination that CFA successfully and completely complied with the Contract.

In consideration of the Department's covenant not to sue, CFA, its signatories,

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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. CFA 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 CFA 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 CFA, 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 CFA's or its parents', subsidiaries', successors' and assigns', business activities on the Property or uses of the Property that are inconsistent with the terms and conditions of this Contract;
or
- G. Failure by CFA to obtain the applicable permits from the Department

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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 CFA or the Department does not end the obligations to reimburse oversight costs already incurred by the Department and payment of such costs shall become immediately due.

20. The signatories below hereby represent that they are authorized to enter into this Contract on behalf of their respective parties.

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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: 9/17/17

Clair A. P.
Reviewed by Office of General Counsel

DATE: 8/30/17

CHICK-FIL-A, INC.

Evan J. Foster
Signature

DATE: 6/13/17

Evan J. Foster Chickfil-A
Printed Name and Title
Development
Manager

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APPENDIX A

Legal Description of the Property

County of Greenville

Tax Map Serial Number 0266000132201

All that tract or parcel of land lying and being in Greenville County, South Carolina and being more particularly described as follows:

Commencing at a 1/2" rebar w/cap found being the northeast corner of a mitered intersection of the southeastern right-of-way of East Antrim Dr (80' R/W) and the southwestern right-of-way of Laurens Rd. (Variable R/W); thence with said right-of-way of Laurens Rd S 55°22'28" E a distance of 72.75' to a point, said Point being The True Point of Beginning; thence continuing with said right-of-way the following calls: S 55°22'28" E a distance of 83.21' to a 1/2" rebar found; thence S 59°40'51" E a distance of 129.75' to a point; thence S 54°45'28" E a distance of 43.30' to a point; thence S 11°15'49" E a distance of 14.53' to a 1/2" rebar found; thence N 32°16'25" E a distance of 25.66' to a point; thence S 55°24'15" E a distance of 18.84' to a point along the western right-of-way of Landwood Ave (30' R/W); thence with said right-of-way S 32°06'23" W a distance of 213.63' to a point; thence S 32°06'23" W a distance of 20.00' to a point; thence leaving said right-of-way N 58°05'11" W a distance of 378.64' to a point; thence N 31°16'12" E a distance of 13.66' to a point; thence N 58°05'11" W a distance of 30.89' to a point along the southeastern right-of-way of East Antrim Dr (80' R/W) ; thence with said right-of-way N 34°26'43" E a distance of 3.83' to a 1/2" rebar found; thence N 34°26'43" E a distance of 22.07' to a 1/2" rebar found; thence leaving said right-of-way S 58°41'23" E a distance of 123.88' to a point; thence N 32°04'07" E a distance of 181.45' to a point, said point being The True Point of Beginning.

Said Parcel having an area of 67535.9 square feet/1.55 acres.

Being the same property as shown on ALTA/NSPS Land Title Survey prepared by MSP & Associates Land Surveying, Inc., Job No. 161057, Michael S. Perdue, South Carolina PLS No. 25289, dated September 21, 2016, last revised _____, ____ 2017.

ALSO being the same property as _____ as shown on that certain Recombination Plat recorded on _____, __, 2017, in Plat Book _____, Page _____ Official Records of Greenville County, South Carolina.