

**VOLUNTARY CLEANUP CONTRACT  
15-5044-NRP**

**IN THE MATTER OF  
FORMER CHARLESTON NAVAL COMPLEX – PARCEL B  
CHARLESTON COUNTY  
AND  
SOUTH CAROLINA STATE PORTS AUTHORITY**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and the South Carolina State Ports Authority with respect to the Property located on the former Charleston Naval Complex, North Charleston, South Carolina. The Property includes approximately 10.499 acres identified by Tax Map Serial No. 400-00-00-202 (formerly identified as a portion of the parent property identified by TMS No. 400-00-00-004). In entering this Contract, the Department relies on the representations contained in the "Non Responsible Party Application for Voluntary Cleanup Contract" of April 30, 2015, and any amendments thereto, by the South Carolina State Ports Authority, which is incorporated into this Contract and attached as Appendix A.

**AUTHORITY**

This Contract is entered into pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 *et seq.* (as amended); the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. §§ 44-56-10, *et seq.* (as amended), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C.A. §§ 9601, *et seq.*, the S.C. State Underground Petroleum Environmental Response Bank Act, S.C. Code Ann. §§ 44-2-10, *et seq.* (as amended), and the South Carolina Pollution Control Act, S.C. Code Ann. §§ 48-1-10, *et seq.*

**DEFINITIONS**

1. Unless otherwise expressly provided in this Contract, terms used herein shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup

Program, S.C. Code Ann. §§ 44-56-710, *et seq.* (as amended), and if not set forth therein, shall have the meaning assigned to them pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. §§ 44-56-10, *et seq.* (as amended), the S.C. Pollution Control Act, S.C. Code Ann. §§ 48-1-10, *et seq.* (as amended), the S.C. State Underground Petroleum Environmental Response Bank Act, S.C. Code Ann. §§ 44-2-10, *et seq.* (as amended) or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C.A. §§ 9601, *et seq.*

- A. "SCSPA" means the South Carolina State Ports Authority.
- B. "AOCs" shall mean Areas of Concern located on the Property.
- C. "Beneficiaries" means SCSPA's Non-Responsible Party lenders, signatories, parents, subsidiaries, and successors, including new purchasers, lessees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.
- D. "Change in Land Use" shall mean:
  - i. Any change in the use of the Property that would be inconsistent with those specific exposure assumptions in the human health and/or ecological risk assessments or other criteria that served as the basis for selecting the Land Use Controls as part of the final RCRA remedial/corrective action;
  - ii. Any activity that may disrupt the effectiveness of the Land Use Controls, including but not limited to: excavation of an AOC; demolition at an AOC; groundwater pumping that may impact a groundwater mixing zone or groundwater corrective action or monitoring program; a construction project that may impact ecological habitat protected by the corrective action; removal of access control; removal of warning signs; or rezoning;

- iii. Any activity that may alter or negate the need for specific Land Use Controls.
- E. "CNC" shall mean the Charleston Naval Complex.
- F. "Contamination" means the presence of a contaminant, pollutant, hazardous substance, petroleum, or petroleum product.
- G. "Contract" means this Voluntary Cleanup Contract.
- H. "Department" means 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.
- I. "Existing Contamination" shall mean any Contamination present on, or under, the Site as of the execution date of this Contract.
- J. "Government" shall mean the United States Department of the Navy.
- K. "Hazardous Substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C.A. § 1321(b)(2)(A)], (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C.A. § 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C.A. §§ 6901 *et seq.*] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C.A. § 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C.A. § 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C.A. § 2606]. The term does not include petroleum, including crude oil or any fraction thereof which is

not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

- L. "Land Use Controls" shall mean any mechanism or control that limits the use of and/or exposure to any portion of that property, including water resources, arising from the need to protect human health and the environment. The term encompasses "institutional controls," such as those involved in real estate interests, governmental permitting, zoning, public advisories, deed notices, and other legal restrictions. The term also includes restrictions on access, whether achieved by means of engineering barriers (e.g., fence or concrete pad) or by human means (e.g., the presence of security guards). Additionally, the term includes both affirmative measure to achieve the desired restrictions (e.g., night lighting of an area) and prohibitive directives (e.g., no drilling of drinking water or irrigation wells for the duration of the remedial/corrective action).
- M. "Property" means the real property as described in the Non Responsible Party Application for Voluntary Cleanup Contract attached as Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual interest of SCSPA or its Beneficiaries.
- N. "RCRA" shall mean the Resource Conservation and Recovery Act.
- O. "Segregated Sources" means drums, tanks, or similar discrete containers that potentially hold substances that may cause Contamination upon release to the environment.
- P. "Site" means all areas where a contaminant, petroleum, or petroleum product has been released, deposited, stored, disposed of, or placed or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel.

Q. "SWMU" shall mean solid waste management units located on the Property.

R. "Waste Materials" means any Contamination-causing solid, semi-solid, or liquid material discarded, buried, or otherwise present on the Property, and may include sludge, slag, or solid waste materials such as empty containers and demolition debris or materials containing asbestos, lead-based paint, or petroleum or other contaminants.

## 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:

United States Department of the Navy

- 11/3/04

Department of Homeland Security

11/3/04 - Present

B. Property and Surrounding Areas: The Property is located on the former CNC and is bounded generally to the north by the former CNC landfill (Combined SWMU 9) and the Federal Law Enforcement Training Center (FLETC) properties with the SCSPA Veterans Terminal and Cooper River beyond; to the east by SCSPA's bulk container terminal (currently under construction); to the south by wetlands associated with Shipyard Creek and the former Macalloy site with heavy industrial areas and businesses beyond; and to the west by the former CNC landfill (Combined SWMU 9), SWMU 196, ConGlobal container repair facility, and the former Montenay Incinerator site.

The Property is subject to RCRA Hazardous Waste Permit Number SC0170022560. The Property was conveyed from the Navy (Government) to the

Department of Homeland Security (current owner of the Property) via a memorandum of agreement between them entitled *Transfer and Acceptance of Military Real Property*, dated June 24, 2003. With the exception of the portion of Property within SWMU 9, the Property is the subject of a Memorandum of Agreement between the Department and the Government with respect to petroleum contamination.

Building 661, a former communications center for the CNC built in 1968, is located on a portion of the Property along with a mobile structure and two one-story wooden structures. An asphalt parking lot is located north of Building 661. The remainder of the Property is primarily undeveloped wetlands and includes a portion of Shipyard Creek. Since a portion of the Property is located on SWMU 9, restrictions regarding the use of the Property are required in accordance with the selected RCRA remedy for SWMU 9.

Two underground storage tanks (USTs) were located near the southwest corner of Building 661. The USTs contained diesel fuel for Building 661's emergency generator. The Department's Permit ID for the USTs is #14437. UST #1 was installed in 1986 and removed from the ground in 1992. UST #2 was installed in 1992 and removed from the ground in 1997. During the removal of UST #1 in 1992, petroleum product was found leaching into a piping trench. It was suspected that the petroleum product was associated with a release of fuel oil from a tank which had been housed in a storage shed east of UST #1. Documents from 1992 do not state if the tank in the storage shed was an AST or UST; however, historical records indicate a fuel oil AST was located at the site and removed prior to 1990. In 1997 a release was reported from UST #2 when it was removed from the ground. After additional assessment, the release from UST #2 received a Conditional NFA (CNFA) from the Department on March 3, 2008.

Historical records indicate an AST was temporarily located at the northwest corner of Building 661 in 1992 to serve the emergency generator at Building 661 after UST #1 was removed and before UST #2 was installed.

Historical drawings indicate two former USTs were possibly located at the northwest and northeast corners of Building 661; however, historical records do not provide additional information about the two possible USTs

Historical records indicate a former septic tank and drainage field (AOC 654) are located south-southwest of Building 661 and are no longer in use. Other historical drawings indicate the septic tank was located north of Building 661 and the drainage field was located east of Building 661.

Media (soil, sediment, groundwater, and surface water) samples were collected on the subject property in November 2011 and March 2012 as part of the South Carolina Department of Transportation's (SCDOT's) preliminary assessment of the subject property for the planned Port Access Road. The proposed right-of-way for the Port Access Road includes the subject property. Analytes were detected in soil, sediment, and groundwater samples collected on the subject property at concentrations greater than applicable screening levels.

- C. Applicant Identification: SCSPA is an instrumentality and agency of the State of South Carolina with its principal place of business located at 176 Concord Street, Charleston, South Carolina, 29401. SCSPA affirms that it has the financial resources to conduct the response action pursuant to this Contract.
- D. Proposed Redevelopment: SCSPA will acquire the Property and intends to construct a portion of the planned Port Access Road to the Charleston Naval Base Container Terminal.

### BONA FIDE PROSPECTIVE PURCHASER STATUS

3. SCSPA certifies that it is not a current owner of the Property, or parent, successor or subsidiary of a current or past owner of the Property; is not a Responsible Party for the site, or a parent, successor or subsidiary of a Responsible Party for the site; and has not had any involvement with the Property in the past other than activities performed in anticipation of participation in the Voluntary Cleanup Program. SCSPA also certifies that it is eligible to be a Bona Fide Prospective Purchaser for the Property.

### RESPONSE ACTION

4. SCSPA agrees to conduct the response actions specified in the sub-paragraphs below. An initial Work Plan shall be submitted by SCSPA, or its designee, within thirty (30) days after the date of execution of this Contract by the Department, or such earlier or later date if approved by the Department's project manager. A Report of the assessment results shall be submitted by SCSPA, or its designee in accordance with the schedule provided in the initial Work Plan. SCSPA acknowledges that the assessment may find distributions of Existing Contamination requiring additional assessment and/or corrective action on the Property that cannot be anticipated with this Contract. If not addressed by the Government as required by its RCRA Permit, SCSPA agrees to perform the additional assessment and/or corrective action consistent with the intended uses of the Property under the purview of this Contract; however, SCSPA may seek an amendment of this Contract to clarify its further responsibilities. SCSPA shall perform all actions required by this Contract, and any related actions of SCSPA's choosing not expressly required by this Contract, pursuant to Work Plans and/or Addenda approved by the Department. SCSPA will provide the Government with a copy of the Work Plan and all associated reports upon submittal to the Department. Copies to the Government will be addressed as follows:

BRAC Environmental Coordinator  
NAVFACHQ, BRAC PMO



Building 679, Naval Business Center  
4911 South Broad Street  
Philadelphia, PA 19112-1303

A. Work Plan Logistics:

- 1). The Work Plan(s) shall set forth a schedule and methods for assessment and corrective action activities detailed herein.
- 2). The Work Plan(s) shall be submitted to the Department in the form of one hard copy and one electronic copy of the entire Work Plan on a compact disk (in .pdf format).
- 3). All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes, regulations, and permitting requirements (e.g., stormwater management and waste disposal regulations). SCSPA shall identify and obtain the applicable permits before beginning any action.
- 4). The Work Plan shall be in accordance with the Process to Conduct Construction Activities in Areas under Land Use Controls at the Charleston Naval Complex, Revision 3 dated April 2007, found in Appendix D for new construction and/or renovations in areas of the Complex that are subject to corrective action by the Government and/or Land Use Controls.
- 5). The Work Plan(s) shall be in accordance with accepted industry standards and shall be signed and sealed by a Professional Engineer or Professional Geologist duly licensed in South Carolina.
- 6). The Work Plan(s) shall provide detailed information about the proposed sampling points, collection methods, analytical methods, quality assurance procedures, and other pertinent details of the assessment and/or corrective measures activities consistent with the following:
  - a). Sample collection methodologies shall be consistent with the US EPA Region IV Field Branches Quality System and Technical Procedures.
  - b). All monitoring wells and groundwater sampling points shall be constructed in accordance with 25 S.C. Code Ann. Regs. R.61-71, the South Carolina Well Standards. The Work Plan shall provide sufficient detail to support

issuance of the well approvals by the Department.

- c). The laboratory analyses for samples taken pursuant to the Work Plan are specified in the media-specific sub-paragraphs below, but may include any of the following:
  - i. the full EPA Target Analyte List (TAL);
    - i). EPA Target Analyte List excluding cyanide (TAL-Metals);
  - ii. the full EPA Target Compound List (TCL);
    - i). EPA Target Compound List Volatile Organic Compounds (TCL-VOCs);
    - ii). EPA Target Compound List Semi-Volatile Organic Compounds (TCL-SVOCs);
    - iii). EPA Target Compound List Pesticides (TCL-Pesticides);
    - iv). EPA Target Compound List Polychlorinated Biphenyls (TCL-PCBs).
- d). All analytical methods shall use appropriate detection levels to allow comparison to the media-specific screening criteria listed in the "EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites" in effect at the time of sampling. The applicable Protection of Groundwater SSL for soil samples shall be the "MCL-Based SSL", if listed. If the applicable screening criteria are lower than achievable detection levels, the analytical method shall use the lowest achievable detection levels.

- 7). The Work Plan shall include the names, addresses, and telephone numbers of SCSPA's consulting firm(s), analytical laboratories, and SCSPA's contact person for matters relating to this Contract and the Work Plan.
  - a). The analytical laboratory shall possess applicable Certification defined in 25A S.C. Code Regs. R.61-81, for the test methods specified in the Work Plan.
  - b). SCSPA shall notify the Department in writing of any changes concerning the consulting firm(s), contact person(s), or laboratory identified in the

#### Work Plan.

- 8). The Department will notify SCSPA in writing of approvals or deficiencies in the Work Plan.
- 9). SCSPA, or its designee, shall respond in writing within thirty (30) days of receipt of any comments on the Work Plan by the Department.
- 10). SCSPA shall begin implementation of the Work Plan as soon as reasonably possible after receipt of written approval of the Work Plan by the Department.
- 11). SCSPA shall inform the Department at least five (5) working days in advance of all field activities conducted pursuant to the Work Plan, and shall allow the Department, or its authorized representatives, to take duplicates of any samples if desired.
- 12). SCSPA shall preserve items on the Property that may: 1) provide evidence of a Potentially Responsible Party's involvement at the Site; 2) lead to the discovery of other areas of Contamination at the Site; or 3) contain environmental information related to the Site. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. SCSPA shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.

#### B. Report Logistics

- 1). Report(s) shall be prepared in accordance with accepted industry standards and shall be certified by signature and seal of a Professional Engineer or Professional Geologist duly licensed in South Carolina.
- 2). The Report(s) of assessment and/or corrective measures activities shall include a discussion of investigation methods and any deviations from the Department approved Work Plan. The Report shall also include tables and figures to summarize all data, a surveyed map documenting sampling locations, documentation of field observations including well core logs,

sample descriptions, field screening results, and all laboratory analytical data.

- 3). All Report(s) shall be submitted to the Department in the form of one hardcopy and one electronic copy of the entire Report on a compact disc (in .pdf format).

C. Assess Waste Materials and Segregated Sources:

- 1). SCSPA shall characterize all Waste Materials and Segregated Sources identified below. Assessment shall include an evaluation of contaminant concentrations and an estimation of the quantity or extent of each type of Waste Material or Segregated Source, as applicable, or as specified below.
  - a). Roll-off dumpster containing general trash and debris;
  - b). The trash located sporadically throughout the Property;
  - c). The 5-gallon paint cans located inside Building 661.
- 2). SCSPA shall also characterize for disposal any other Waste Material and Segregated Sources that may be discovered on the Property at any time during assessment, corrective action, or development activities in accordance with applicable regulations.
- 3). Upon discovery of any Segregated Source that has not yet released all contents to the environment, SCSPA shall expeditiously stabilize or remove the Segregated Source from the Property.
- 4). SCSPA shall immediately notify the Department if a release of Contamination occurs as a result of its assessment, stabilization or removal actions. SCSPA shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

D. Conduct a well survey:

- 1). SCSPA shall map all public and private wells used for drinking water supply within a one-half mile radius of the Property, and wells used for irrigation or other non-drinking water use within a one-quarter mile radius.
- 2). SCSPA shall report sufficient information to the Department to allow the

Department to secure permission to sample the wells. At a minimum, this information shall include the: 1) Location of the well; 2) Identity and mailing address of the well owner; and, 3) Telephone number, if publicly available or otherwise known to SCSPA, of the well owner or occupant of the residence served by the well.

E. Assess soil quality across the Property:

- 1). SCSPA shall collect and analyze a minimum of 9 soil samples from 5 locations on the Property. SCSPA shall collect one surface soil sample (0-1 foot below ground surface) and one subsurface soil sample (2 foot minimum depth) from each of the following locations, unless otherwise specified:
  - a). A presumed background location to be analyzed for TAL metals;
  - b). One location within the possible former drainage field east of Building 661;
  - c). One location (subsurface soil only) at the possible former UST at the northeast corner of Building 661;
  - d). One location near the former AST and former UST #s 1 and 2 at the southwest corner of Building 661;
  - e). One location near the former AST and possible former UST at the northeast corner of Building 661;
  - f). Two borings shall be installed on the portion of the Property within the boundary of SWMU 9. The borings are to serve as visual evidence regarding the presence or absence of waste materials associated with SWMU 9 and to evaluate the thickness of the existing cover. No samples are to be collected from these borings for laboratory analysis.
- 2). Unless otherwise specified above, each surface soil sample shall be analyzed for TAL-Metals and SVOCs. Each subsurface sample shall be analyzed for TAL-Metals, VOCs and SVOCs. A minimum of one surface and one subsurface sample from the former drainage field shall be analyzed for the full EPA-TAL and EPA-TCL.
- 3). Soil quality results shall be compared to the Residential and Industrial Screening Levels and to the applicable Protection of Groundwater SSL.

F. Assess groundwater quality:

- 1). SCSPA shall assess groundwater quality and flow direction across the Property. Assessment shall include samples from a minimum of four newly installed monitoring wells to bracket the water table. Specific locations shall be as follows:
  - a). One location on the eastern corner of the Property;
  - b). One location southeast of Building 661;
  - c). One location on the portion of the Property within the boundary of SWMU 9;
  - d). One location southwest of Building 661 (near former UST #s 1 and 2 and the AST removed prior to 1990).
- 2). Samples from all groundwater monitoring wells shall be analyzed for TAL-Metals, VOCs and SVOCs. In addition, the sample from the well installed on the portion of the Property within the boundary of SWMU 9 shall be analyzed for the full TAL/TCL parameters.
- 3). Groundwater quality results shall be compared to the primary maximum contaminant level (MCL) standards in the South Carolina State Primary Drinking Water Regulations, S.C. Code Ann. Regs. 61-58, or, if not specified in R.61-58, to the Regional Screening Tables values for "Tapwater."

G. Evaluate and control potential impacts to indoor air:

- 1). SCSPA shall evaluate potential impacts to indoor air if the Department determines significant concentrations of volatile organic compounds are present in the subsurface. The Department will use a modified Johnson and Ettinger Model to determine "Significant concentrations" based on representative soil and/or groundwater quality results reflective of the Property. The model will be constrained towards predicting commercial exposures consistent with the building construction proposed to be used on the Property.
- 2). This evaluation shall, unless otherwise agreed to by the Department, consist

of collection and analysis of indoor air samples from within the building during two separate sampling events approximately six months apart. One sample shall be collected per every 1,000 square feet of building footprint potentially subject to Vapor Intrusion. One sampling event shall be in the winter. Each sampling event shall include collection of a representative number of indoor air samples for laboratory analysis of all site-related volatile organic constituents. The samples collected for laboratory analysis may use either active or passive collection methods provided the same protocol is used for both sampling events. The method shall be capable of detecting gas concentrations at screening levels indicative of a  $10^{-6}$  risk. The applicable screening concentrations shall be based upon the EPA OSWER "Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils" or supplemental EPA guidance.

- 3). The Department may allow SCSPA to implement vapor intrusion control measures in lieu of the above evaluation, or use alternative evaluation methods that, in the Department's sole discretion, offer a similar degree of data usability.
- 4). SCSPA shall submit an addendum to the Work Plan detailing the steps for further study and/or remedial or other control management measures to be implemented if the predicted or measured indoor air concentration exceeds a  $10^{-6}$  risk calculated for occupational exposure (40 hrs/wk, 50 wk/yr, 25 yrs). The Department shall give reasonable consideration of data or other demonstration that shows unacceptable exposures inside the building do not result from the subsurface conditions.

H. Institute reasonable Contamination control measures:

- 1). SCSPA shall stabilize or remove from the Property any Segregated Sources of Contamination that have not yet released all contents to the environment.
  - a). The contents of the Segregated Sources shall be properly reused or disposed of in accordance with regulations.
  - b). SCSPA shall document the characterization results and ultimate

disposition of the materials to the Department within sixty (60) days of removal of any material from the Property.

- 2). SCSPA shall take reasonable measures to limit or prevent human exposure to Existing Contamination on the Property
  - a). Corrective measures shall be required for Waste Materials and Contamination present in any media on the Property with concentrations in excess of appropriate human-health risk-based exposure standards with plausibly complete routes of exposure. Known media or Waste Materials that require Corrective Measures include, but may not be limited to, the following:
    - i. Roll-off dumpster containing general trash and debris;
    - ii. The trash located sporadically throughout the Property;
    - iii. The 5-gallon paint cans located inside Building 661.
  - b). The corrective measures shall be proposed in a Corrective Measures Plan to be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property. Corrective measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the Contamination.
  - c). SCSPA may request Department approval to conduct a site-specific risk assessment to determine levels of Contamination that are acceptable for the intended use of the Property. The risk assessment shall be conducted in accordance with EPA Risk Assessment Guidance for Superfund. Prior to conducting the risk assessment, SCSPA shall submit for Department approval, an overview of risk assessment assumptions including identification of contaminant exposure routes, the type and duration of possible exposures, the magnitude of exposure, and any data gaps that need to be addressed to complete the risk assessment.
  - d). Upon completion of any corrective measures, SCSPA shall provide a Corrective Measures Report to document satisfactory completion of the corrective measures for Department review and approval prior to obtaining



a Certificate of Completion.

- e). In the event that corrective measures include engineering controls that must be maintained or monitored during future use of the Property, a Site Management Plan may be required by the Department. If required, the Site Management Plan shall identify procedures for management of contaminated media that may be encountered as a result of any disturbance of the engineering controls, and for repair or replacement of the engineering controls.

I. Monitor and/or abandon the monitoring wells:

- 1). SCSPA shall implement a groundwater-monitoring program if required by the Department. Continued monitoring requirements will be based on the Department's determination of potential adverse effects on nearby receptors, i.e., individuals that are presently or potentially exposed to Contamination.
- 2). The Department will determine the frequency and duration of the monitoring program on a case-specific basis.
- 3). SCSPA shall abandon the monitoring well(s), with Department approval, when the wells are no longer needed. The wells shall be abandoned in accordance with R.61-71 of the South Carolina Well Standards.

HEALTH AND SAFETY PLAN

5. SCSPA shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. The Health and Safety Plan shall be submitted to the Department in the form of one electronic copy on compact disc (in .pdf format). SCSPA agrees that the Health and Safety plan is submitted to the Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by SCSPA.

PUBLIC PARTICIPATION

6. SCSPA and the Department will encourage public participation to implement this

Contract as follows:

- A. The Department will provide notice, seek public comment, and initiate a thirty-day claim contribution notification period in accordance with established procedures consistent with S.C. Code Ann. § 44-56-750 upon signature of this Contract by SCSPA.
- B. SCSPA shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected no later than one day after the Department's public announcement about the Contract in a newspaper of general circulation in the community.
  - 1). The sign will state "Voluntary Cleanup Project by the South Carolina State Ports Authority under Voluntary Cleanup Contract 15-5044-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of SCSPA. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".
  - 2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the Property without intruding onto the Property.
  - 3). SCSPA shall submit photographs of the sign(s) and a Property drawing showing the location(s) of the signs. The photographs shall be submitted to the Department within 10 days of erecting the sign.
  - 4). SCSPA agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.
  - 5). SCSPA shall maintain the sign(s) in legible condition and at visible locations throughout the duration of the Contract period until a Certificate of Completion is issued on the Property.
  - 6). The sign(s) may be removed to accommodate building or grading activities; however, SCSPA shall restore the sign within two (2) days to its original

location, or other publicly accessible location upon notice to the Department.

#### PROGRESS UPDATES

7. SCSPA shall submit periodic written updates to the Department's project manager until such time as all activities related to the Property are complete pursuant to this Contract. The first update shall be due within 90 days of the execution date of this Contract and semi-annually thereafter.
  - A. The updates may be in summary letter format, but should include information about:
    - 1). The actions taken under this Contract during the previous reporting period;
    - 2). Actions scheduled to be taken in the next reporting period;
    - 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,
    - 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.
  - B. The Department's project manager may allow an extended schedule between updates based on case specific conditions.

#### SCHEDULE

8. SCSPA shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances cause a delay in implementation of the response actions, the Department may require implementation of interim measures to stabilize Contamination or prevent unacceptable exposures. SCSPA shall implement the interim measures in accordance with a Department-approved plan.

#### DECLARATION OF COVENANTS AND RESTRICTIONS

9. For the portion of Property not currently subject to land use controls, SCSPA or its

Beneficiaries shall enter, and record, a Declaration of Covenants and Restrictions (Declaration) for the Property to restrict the use of the Property from residential, recreational, agricultural, child day care, and adult day care use; and prohibit the use of groundwater on the Property. Additional restrictions may be required based on the response actions completed under this Contract. The recorded Declaration shall be incorporated into this Contract as an Appendix and shall be implemented as follows:

- A. The Department shall prepare and sign the Declaration prior to providing it to SCSPA. An authorized representative of SCSPA or its Beneficiaries shall sign the Declaration within ten (10) days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.
- B. SCSPA or its Beneficiaries shall record the executed Declaration with the Registrar of Deeds or Mesne Conveyance for the county where the Property is located.
- C. SCSPA or its Beneficiaries shall provide a copy of the recorded Declaration to the Department within sixty (60) days of the Department's execution. The copy shall show the date and Book and Page number where the Declaration has been recorded.
- D. The Declaration shall be noted on the master deed of any planned development for the Property and noted, or referenced thereafter, on each individual deed of property subdivided from the Property and subject to the Declaration.
- E. The Declaration shall reserve a right of entry and inspection for SCSPA or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.
  - 1). SCSPA or its Beneficiaries shall ensure that the restrictions established by the Declaration remain on any subdivided property.

- 2). SCSPA or its Beneficiaries shall create a procedure to provide a single point of contact responsible for documenting current land use and compliance with the Declaration regardless of the Property's ownership status. The procedure shall be reviewed and approved by the Department before it is implemented.
- F. The Declaration shall provide that the Department has an irrevocable right of access to the Property after SCSPA acquires the Property, and such right of access shall remain until remediation is accomplished for unrestricted use and monitoring is no longer required. Such access shall extend to the Department's authorized representatives and all persons performing response actions on the Property under the Department's oversight.
- G. SCSPA or its Beneficiaries, or the individual or entity responsible for compliance monitoring, shall annually document the Property's land use and compliance with the Declaration to the Department. The report shall be submitted by May 31<sup>st</sup> in a manner and form prescribed by the Department.
- H. The Department may amend the Declaration in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Property change; however, said amendment shall not be applied retroactively unless expressly provided for in the legislation. An amendment may strengthen, relax, or remove restrictions based on the Regional Screening Tables in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the Regional Screening Tables. An amendment to the Declaration shall be duly executed and recorded using procedures similar to those detailed above.
- I. Land Use Controls for the Portion of Property Located on SWMU 9
- 1). SCSPA or its Beneficiaries shall provide written notification to the Department and the Government at least ninety (90) days (except in

emergency situations where notice should be given as soon as practicable) prior to implementation of any change in land use affecting the SWMUs and/or AOCs as identified in the RCRA Hazardous Waste Permit Number SC0170022560 Appendix A-1. Any proposed changes in land use shall be consistent with the RCRA Hazardous Waste Permit Number SC0170022560. The Department must provide concurrence with the contemplated change.

- 2). No land use change affecting the SWMUs and/or AOCs shall be implemented until the Department's response is received. The request for land use change shall include the following, at a minimum:
  - i. An evaluation of whether the anticipated land use change will pose unacceptable risks to human health and the environment or negatively impact the effectiveness of the selected corrective action;
  - ii. An evaluation of the need for any additional corrective action or LUCs resulting from implementation of the anticipated land use change, and;
  - iii. A proposal for any necessary changes in the selected corrective action.
- 3). If the Department determines that additional corrective action by the Government is required prior to the implementation of the requested land use change affecting the SWMUs and/or AOCs, SCSPA or its Beneficiaries shall cooperate fully with the Department and the Government in the performance of the additional corrective action. SCSPA or its Beneficiaries shall not initiate the requested change in land use prior to authorization from the Department and shall abide by any conditions with regard to the land use change as may be imposed by the Department. Except as provided herein, SCSPA or its Beneficiaries shall not be deemed to have accepted responsibility for any corrective action required by the Department, including the final corrective action with respect to the SWMUs and/or AOCs identified in the RCRA Hazardous Waste Permit Number SC0170022560 Appendix A-

1.

- 4). As long as the LUCs remain on the Property, the Government shall remain responsible for the maintenance of the LUCs including, but not limited to, maintenance of any groundwater monitoring and remedial action activities and/or systems on the Property. Further, as long as the LUCs remain on the Property, SCSPA or its Beneficiaries shall conduct inspections at the frequency specified in the most recently approved Corrective Measures Implementation Workplan or other Corrective Action document approved by the Department, for the SWMUs and/or AOCs identified in Appendix A-1 of RCRA Hazardous Waste Permit SC0170022560. Until final Corrective Measures are selected for each AOC and the modified RCRA permit is effective, the appropriate LUCs inspection frequencies shall be included in the Interim Measure Work Plan for Interim LUCs. These inspections shall be for the purposes of verifying that all necessary LUCs have been implemented and are being properly maintained. Appendix E provides the currently approved Land Use Controls and Inspection Frequency for the Charleston Naval Complex SWMUs and AOCs, dated August 2004.

With respect to the LUCs inspection as provided for herein, SCSPA or its Beneficiaries shall be responsible for the following:

- i. Ensure that all required inspections are performed;
- ii. Ensure that the Department and the Government are provided with thirty (30) days advance notice of, and opportunity to observe facility personnel as they conduct at least one of the inspections each year;
- iii. Ensure that the Department and the Government are notified in writing within thirty (30) days of any deficiencies noted;

- iv. Allow access to the Government to ensure that all appropriate measures are undertaken within thirty (30) days to correct any deficiencies and that the Department is notified timely and in writing of measures taken.

SCSPA or its Beneficiaries shall not be deemed to have accepted responsibility for correcting any deficiencies regarding the LUCs by virtue of ownership of the Property unless and until SCSPA or its Beneficiaries expressly assume responsibility for correcting deficiencies regarding the LUCs. If SCSPA or its Beneficiaries expressly and voluntarily assume responsibility for correcting any deficiencies regarding the LUCs, then it shall ensure that all appropriate measures are undertaken within thirty (30) days to correct any deficiency(ies) and that the Department is notified timely in writing of measures taken. If thirty (30) days is not sufficient time to correct the deficiency(ies), SCSPA or its Beneficiaries shall submit a written request for an extension to the Department. The written request must provide the rationale for the extension and a projected timeframe for rectifying the deficiency(ies).

- 5). SCSPA or its Beneficiaries shall prepare and forward an annual report to the Government certifying the continued maintenance of all LUCs associated with the SWMUs and/or AOCs identified in RCRA Hazardous Waste Permit Number SC0170022560 Appendix A-1.
- 6). SCSPA or its Beneficiaries shall follow the Process to Conduct Construction Activities in Areas under Land Use Controls at the Charleston Naval Complex, Revision 3 dated April 2007, found in Appendix D for new construction and/or renovations in areas of the Complex that are subject to corrective action by the Government and/or Land Use Controls.

- 7). While the Government has the responsibility of meeting any and all



requirements of this paragraph pursuant to RCRA Hazardous Waste Permit Number SC0170022560, SCSPA or its Beneficiaries have responsibility to meet the requirements as stated in this Contract.

- 8). Upon transfer of all or a portion of the Property subject to LUCs, SCSPA or its Beneficiaries shall provide the Department and the Government with a copy of the recorded Deed effecting such transfer, along with any supporting information, within ten (10) days of transfer.

Should the decision be made to transfer the Property that is subject to LUCs, or any portion thereof, to any other agency, private person, or entity, either ownership interest, or some lesser form of property interest (e.g., an easement, or right of way, etc.), then SCSPA or its Beneficiaries shall ensure that at a minimum in accordance with South Carolina Hazardous Waste Management Regulation 61-79.270.42:

With respect to the Property subject to LUCs, the Department and the Government are provided written notification prior to the initiation of the property conveyance process. This notification must be submitted at least ninety (90) days prior to the property conveyance and shall indicate the following:

- i. The type of property conveyance (e.g., an easement, or right of way, etc.);
- ii. The anticipated final date for the conveyance;
- iii. Future property owners;
- iv. A list of SWMUs and/or AOCs affected by the conveyance; and,
- v. Mechanism(s) that will be used to maintain any LUCs which may need to remain in place after the property conveyance.

For the Department, this notice shall be made to the following:

Director of Waste Management and  
Director of Site Assessment, Remediation, and Revitalization  
Bureau of Land & Waste Management  
South Carolina Department of Health and Environmental Control  
2600 Bull Street  
Columbia, South Carolina 29201

For the Government, this notice shall be made to the following:

BRAC Environmental Coordinator  
NAVFACHQ, BRAC PMO  
Building 679, Naval Business Center  
4911 South Broad Street  
Philadelphia, PA 19112-1303

All LUCs for SWMUs and/or AOCs identified in the RCRA Hazardous Waste Permit Number SC0170022560 Appendix A-1 and located on the Property must be incorporated into the property conveyance documents so that the grantee(s) is given adequate notice of existing site condition(s). The details of the LUCs provided in the property conveyance documents must be consistent with the details in the document where the final corrective action implementation was approved by the Department.

It is understood that for the planned conveyance of the Property with SWMUs and/or AOCs identified in the RCRA Hazardous Waste Permit Number SC0170022560 Appendix A-1, the Department will re-evaluate the continued appropriateness of any previously agreed upon LUCs based upon the level of assurance provided, to ensure that necessary LUCs will be maintained and enforced.

#### NOTIFICATION

10. All notices required to be given by either party to the other shall be in writing. Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party, throughout the

term of the Contract. Notices by electronic mail or facsimile shall be acceptable if acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of notice shall be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail by which notice shall be deemed to occur seven (7) days after the postmark date; 2) Certified or Registered Mail by which notice shall be deemed to occur on the date received as shown on the receipt; 3) Commercial delivery service company by which notice shall be deemed to occur on the date received as shown on the receipt; or, 4) hand delivery to the other party.

A. All correspondence, notices, work plans, and reports shall be submitted to:

Jerry Stamps  
Bureau of Land and Waste Management  
2600 Bull Street  
Columbia, South Carolina 29201

B. All correspondence and notices to SCSPA shall be submitted to SCSPA's designated contact person who as of the effective date of this Contract shall be:

James K. Van Ness, III  
Vice President, Engineering  
PO Box 22287  
Charleston, South Carolina 29413

#### FINANCIAL REIMBURSEMENT

11. SCSPA or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as provided by S.C. Code Ann. § 44-56-750(D). The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary

Cleanup Program as related to this Contract, and any future amendments thereto, and may include costs related to this Contract and incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to SCSPA on a quarterly basis. In recognition of SCSPA's governmental status, the Department waives reimbursement of oversight costs, exclusive of the cost incurred for public participation. The Department reserves the right to re-instate oversight billing upon thirty-day notice to SCSPA; however, said billing shall not include any costs incurred by the Department prior to receipt of the notice. All costs are payable within thirty (30) days of the Department's invoice submitted to:

James K. Van Ness, III  
Vice President - Engineering  
PO Box 22287  
Charleston, South Carolina 29413

- A. Failure to submit timely payment for costs upon receipt of the Department's invoice is grounds for termination of the Contract pursuant to paragraph 16 herein.
- B. Payment for costs incurred by the Department pursuant to this Contract shall become immediately due upon termination of the Contract by any party pursuant to paragraph 16 herein.

#### ACCESS TO THE PROPERTY

- 12. SCSPA agrees the Department has an irrevocable right of access to the Property for environmental response matters after SCSPA acquires the Property. This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's authorized representatives and all other persons performing response actions on the Property under the Department's oversight.

## CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

13. A Certificate of Completion shall be issued to SCSPA or its Beneficiaries for the Property under this Contract as follows:

- A. SCSPA or its Beneficiaries shall request a Certificate of Completion pursuant to S.C. Code Ann. § 44-56-750(C)(1) after the response actions are completed and any required Declarations are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.
- B. Pursuant to S.C. Code Ann. § 44-56-750(C)(1) the Department shall issue the Certificate of Completion with its covenant not to sue upon determining that SCSPA or its Beneficiaries has successfully and completely complied with the Contract and the voluntary cleanup approved under S.C. Code Ann. §§ 44-56-710 through 760 (as amended).
- C. The Department may issue a Provisional Certificate of Completion if the substantive response actions required under this Contract are complete and a required Declaration has been recorded but all actions under this Contract have not been completed due to Property-specific circumstances.
  - 1). A Provisional Certificate of Completion will include specific performance standards that SCSPA or its Beneficiaries shall continue to meet.
  - 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if SCSPA or its Beneficiaries do not satisfactorily complete the requirements of the Contract as stipulated in the Provisional Certificate of Completion.

## ECONOMIC BENEFITS REPORTING

14. SCSPA or its Beneficiaries shall report information to the Department that

demonstrates that the activities pursuant to this Contract have been beneficial to the State and community. The report shall be submitted within two (2) years after the execution date of this Contract, and annually thereafter until two (2) years after construction of the planned Port Access Road on the Property is complete. SCSPA shall summarize the new operations at the Property, the number of jobs created, the amount of property taxes paid, and the total amount invested in the Property for property acquisition and capital improvements.

#### CONTRACT OBLIGATIONS AND PROTECTIONS INURE

15. The terms, conditions, obligations and protections of this Contract apply to and inure to the benefit of the Department, SCSPA, and its Beneficiaries as set forth below. The following stipulations apply to ensure the transition of all obligations and protections to successive Beneficiaries for any portion of the Property:

- A. SCSPA or its Beneficiaries shall provide a copy of this Contract and applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.
- B. If the Certificate of Completion has not been issued, SCSPA or its Beneficiaries shall request approval from the Department prior to transferring the obligations and protections of this Contract to a new person or entity. The Department shall not unreasonably withhold its approval upon receipt of a Non-Responsible Party Application for Voluntary Cleanup Contract documenting that the new person or entity:
  - 1). Is not a Responsible Party for the Site;
  - 2). Has sufficient resources to complete the activities of this Contract;
  - 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract;
  - 4). Will assume the protections and all obligations of this Contract; and,
  - 5). Will, in the Department's sole discretion, provide a measurable benefit to the State and the community as a result of this transfer.

- C. If the Certificate of Completion has been issued and the portion of the Property is subject to a Declaration or other ongoing obligation pursuant to this Contract, SCSPA or its Beneficiaries shall provide written notification to the Department identifying the new individual or entity within thirty (30) days after the effective date of the ownership change or other possessory transfer of the Property.
- 1). The notification shall include a signed statement from the new individual or entity that its use of the Property will remain consistent with the terms of the Contract and the Declaration, and that it will assume the ongoing obligations and protections of this Contract.
  - 2). This requirement is waived for an individual or entity acquiring a portion of the Property for individual residential or commercial use provided the Declaration is noted on the master deed for the planned development, and the Department has approved the procedure for a single point of contact responsible for documenting current land use and compliance with the Covenant.

#### CONTRACT TERMINATION

16. SCSPA, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty days advance written notice to the other party. Termination shall be subject to the following:
- A. The Department may not terminate this Contract without cause and before termination, shall provide SCSPA or its Beneficiaries an opportunity to correct the cause(s) for termination, which may include, but is not limited to, the following:
- 1). Failure to complete the terms and conditions of this Contract;
  - 2). Change in SCSPA's or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;
  - 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;

- 4). Failure of SCSPA or its Beneficiaries to implement appropriate response actions for additional Contamination or releases caused by SCSPA or its Beneficiaries;
  - 5). Knowingly providing the Department with false or incomplete information or knowing failure to disclose material information;
  - 6). Failure by SCSPA or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at the Property pursuant to this Contract; or,
  - 7). Failure by SCSPA or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of SCSPA's or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.
- B. Should SCSPA or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards caused or contributed by SCSPA or its Beneficiaries have been stabilized or mitigated such that the Property does not pose hazards to human health or the environment.
- C. Termination of this Contract by any party does not waive the Department's authority to require response action under any applicable state or federal law.
- D. Termination of this Contract by any party does not end the obligations of SCSPA or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract. Payment for such costs shall become immediately due.
- E. Upon termination, the protections provided under this Contract shall be null and void as to any party who participated in actions giving rise to termination of the Contract. Revocation of protections shall also apply to that party's lenders, parents, subsidiaries, and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party who participated



in actions giving rise to termination of the contract. The protections will continue for any party who has received protections through a Certificate of Completion for this Contract, and who did not participate in the actions giving rise to the termination.

#### ENTITLEMENT OF PROTECTIONS AND BENEFITS

17. SCSPA and its Beneficiaries are entitled to the protections and benefits in regard to Existing Contamination provided by South Carolina statutes as follows:

A. Effective on the date this Contract is first executed by the Department:

- 1). Protection from contribution claims under CERCLA Section 113. 42 U.S.C.A. § 9613 and S.C. Code Ann. §§ 44-56-200, *et seq.*
- 2). Protection from third-party claims as provided by S.C. Code Ann. § 44-56-750(H).
- 3). Eligibility to file annual application for Voluntary Cleanup Activity Tax Credits pursuant to S.C Code Ann. § 12-6-3550.

B. Effective on the date the Certificate of Completion is issued by the Department.

- 1). The Department's covenant not to sue SCSPA and its Beneficiaries for Existing Contamination but not for any Contamination, releases and consequences caused or contributed by SCSPA or its Beneficiaries.
- 2). Specific tax credits or additional benefits expressly contingent in South Carolina statutes on issuance of the Certificate of Completion.

C. These Protections and Benefits do not apply to any Contamination, releases, and consequences caused or contributed by SCSPA or its Beneficiaries. The Department retains all rights under State and Federal laws to compel SCSPA and its Beneficiaries to perform or pay for response activity for any Contamination, releases and consequences caused or contributed by SCSPA or its Beneficiaries.

#### RESERVATION OF RIGHTS BY THE DEPARTMENT

18. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than SCSPA and its Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than SCSPA and its Beneficiaries, 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.

#### RESERVATION OF RIGHTS BY SCSPA

19. SCSPA retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. SCSPA and its Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for Contamination, releases, and consequences they cause or contribute. However, SCSPA and its Beneficiaries agree to undertake the requirements of this Contract.

#### BURDEN OF PROOF

20. SCSPA and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered Contamination is not caused or contributed by SCSPA or its Beneficiaries. SCSPA and its Beneficiaries shall make this demonstration to the Department's satisfaction in accordance with State or Federal Law applicable to such newly discovered Contamination. For purposes of this clause, newly discovered Contamination means finding types of Contamination not previously identified at the Property or substantially higher concentrations of Existing Contamination.

#### LIMITATION OF CLAIMS BY SCSPA AND ITS BENEFICIARIES

21. In consideration of the protections from the Department under this Contract, SCSPA

and its Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Property pursuant to this Contract. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or negligent acts or omissions, or the Department's willful breach of this Contract.

**[Remainder of page left blank]**

SIGNATORS

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

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH  
AND ENVIRONMENTAL CONTROL**

BY:

DATE:

\_\_\_\_\_  
Daphne G. Neel, Chief  
Bureau of Land and Waste  
Management

DATE:

\_\_\_\_\_  
Reviewed by Office of General Counsel

**SOUTH CAROLINA STATE PORTS AUTHORITY**

BY:

DATE:

\_\_\_\_\_  
*James K. Van Ness, III*

\_\_\_\_\_  
*7 October 2015*

\_\_\_\_\_  
James K. Van Ness III, P.E.

Director, Engineering, Facilities  
Maintenance, and Environmental

# APPENDIX A

South Carolina State Ports Authority

Application for Non-Responsible Party Voluntary Cleanup Contract

April 30, 2015



## Non Responsible Party Application for Voluntary Cleanup Contract

### I. Applicant Information

1. Applicant is a: ☒ Single Entity ☐ Co-Entity (Each Co-Entity must complete items 1-8)
2. Applicant Type: ☐ Private Individual /Sole Proprietorship ☐ For-profit Business (Corp., Partnership, etc.) ☐ Tax-Exempt Trust/ Corporation/ Organization ☒ Government / Other Public Funded Entity
3. Applicant's Legal Name South Carolina State Ports Authority

#### 4. Contract Signatures for this Applicant

##### a. Authorized Signatory

Name	James K Van Ness, III	VP - Engineering	jvanness@scspa.com
Address	PO Box 22287	Title	843-856-7047
City	Charleston	Phone1	843-494-7024
		Phone2	29413
		State	Zip

##### b. Other Signatories ☒ None

Name	Title	Phone	Email	Signature Required On Contract?
		( ) -		<input type="checkbox"/>
		( ) -		<input type="checkbox"/>
		( ) -		<input type="checkbox"/>

#### 5. Physical Location of Applicant's Headquarters

176 Concord Street

Street address	SC	Suite Number
Charleston		29401
City	State	Zip

#### 6. Mailing address: ☒ Same as Authorized Signatory Go to question 7

Contact person (if different from Authorized Signatory)

Title

Street Number or PO Box

Phone1

Phone 2

City

State

Zip

Email

#### 7. Company Structure Information ☒ Not-applicable (Local Government, Sole Proprietorship, Private Individual) - Go to Question #8

a. Company is Incorporated/ Organized/ Registered in \_\_\_\_\_ (state)

b. List all principals, officers, directors, controlling shareholders, or other owners with >5% ownership interest.

Attach additional pages if needed.

Name

Name

_____	_____
_____	_____
_____	_____
_____	_____

c. Is the applicant a subsidiary, parent or affiliate of any other business organization not otherwise identified on this form?

☐ Yes ☐ No

d. If yes, identify all affiliations: \_\_\_\_\_

#### 8. Non-Responsible Party Certification

By signature below, it is affirmed that no person or entity identified anywhere above:

1. Is a current owner of the property
2. Is a Responsible Party for the site
3. Is a parent, successor, or subsidiary of any Responsible Party or owner of the property
4. Has had any involvement with the property in the past other than activities performed in anticipation of participation in the Voluntary Cleanup Program

Authorized Signatory

Co Signatories

## II. Property Information

### 9. Location

a. Physical Address Identified by Charleston County tax assessor as TMS 400-00-00-202

b. County Charleston County

c. ☐ Property is outside any municipal boundaries ☒ Property is inside the municipal limits of City of North Charleston  
(town/city)

### 10. List any Companies or Site names by which the Property is known

SCSPA Parcel B

Former Charleston Naval Complex in North Charleston, SC

A former portion of the parent adjacent property 400-00-00-~~202~~

11. Total Size of Property Covered by this Contract 10.499 Acres

12. How many parcels comprise the Property? 1

### 13. Current Zoning (general description)

M2 - Heavy Industrial District

14. a. Does the property have any above- or below-ground storage tanks? ☐ Yes ☒ No

b. If Yes, provide information on the number and capacity of the tanks, their contents, and whether they will be retained, or closed and/or removed.



15. Parcel Information *Complete the information below for each Parcel (attach additional sheets if needed)*

a. Tax Map Parcel# 400-00-00-202  
b. Acreage 10.499  
c. Current Owner United States of America  
d. Owner Mailing Address The Honorable Jeh Johnson  
Department of Homeland Security  
245 Murray Lane SW, Washington, DC 20535  
e. Contact Person for Access \_\_\_\_\_  
f. Access Person's Phone # \_\_\_\_\_  
g. Is Parcel Currently Vacant? ☒ Yes ☐ No  
h. Buildings on the parcel? ☐ None  
☐ Demolished/Ruins  
☒ Intact, To be demolished  
☐ Intact, To be re-used  
i. Business/facility operations ☐ Never Operated on the parcel  
☒ Not operating since 1997  
(approx date)  
☐ In operation: nature of the business \_\_\_\_\_

a. Tax Map Parcel# \_\_\_\_\_  
b. Acreage \_\_\_\_\_  
c. Current Owner \_\_\_\_\_  
d. Owner Mailing Address \_\_\_\_\_  
e. Contact Person for Access \_\_\_\_\_  
f. Access Person's Phone # \_\_\_\_\_  
g. Is Parcel Currently Vacant? ☐ Yes ☐ No  
h. Buildings on the parcel? ☐ None  
☐ Demolished/Ruins  
☐ Intact, To be demolished  
☐ Intact, To be re-used  
i. Business/facility operations ☐ Never Operated on the parcel  
☐ Not operating since \_\_\_\_\_  
(approx date)  
☐ In operation: nature of the business \_\_\_\_\_

a. Tax Map Parcel# \_\_\_\_\_  
b. Acreage \_\_\_\_\_  
c. Current Owner \_\_\_\_\_  
d. Owner Mailing Address \_\_\_\_\_  
e. Contact Person for Access \_\_\_\_\_  
f. Access Person's Phone # \_\_\_\_\_  
g. Is Parcel Currently Vacant? ☐ Yes ☐ No  
h. Buildings on the parcel? ☐ None  
☐ Demolished/Ruins  
☐ Intact, To be demolished  
☐ Intact, To be re-used  
i. Business/facility operations ☐ Never Operated on the parcel  
☐ Not operating since \_\_\_\_\_  
(approx date)  
☐ In operation: nature of the business \_\_\_\_\_

a. Tax Map Parcel# \_\_\_\_\_  
b. Acreage \_\_\_\_\_  
c. Current Owner \_\_\_\_\_  
d. Owner Mailing Address \_\_\_\_\_  
e. Contact Person for Access \_\_\_\_\_  
f. Access Person's Phone # \_\_\_\_\_  
g. Is Parcel Currently Vacant? ☐ Yes ☐ No  
h. Buildings on the parcel? ☐ None  
☐ Demolished/Ruins  
☐ Intact, To be demolished  
☐ Intact, To be re-used  
i. Business/facility operations ☐ Never Operated on the parcel  
☐ Not operating since \_\_\_\_\_  
(approx date)  
☐ In operation: nature of the business \_\_\_\_\_

a. Tax Map Parcel# \_\_\_\_\_  
b. Acreage \_\_\_\_\_  
c. Current Owner \_\_\_\_\_  
d. Owner Mailing Address \_\_\_\_\_  
e. Contact Person for Access \_\_\_\_\_  
f. Access Person's Phone # \_\_\_\_\_  
g. Is Parcel Currently Vacant? ☐ Yes ☐ No  
h. Buildings on the parcel? ☐ None  
☐ Demolished/Ruins  
☐ Intact, To be demolished  
☐ Intact, To be re-used  
i. Business/facility operations ☐ Never Operated on the parcel  
☐ Not operating since \_\_\_\_\_  
(approx date)  
☐ In operation: nature of the business \_\_\_\_\_

a. Tax Map Parcel# \_\_\_\_\_  
b. Acreage \_\_\_\_\_  
c. Current Owner \_\_\_\_\_  
d. Owner Mailing Address \_\_\_\_\_  
e. Contact Person for Access \_\_\_\_\_  
f. Access Person's Phone # \_\_\_\_\_  
g. Is Parcel Currently Vacant? ☐ Yes ☐ No  
h. Buildings on the parcel? ☐ None  
☐ Demolished/Ruins  
☐ Intact, To be demolished  
☐ Intact, To be re-used  
i. Business/facility operations ☐ Never Operated on the parcel  
☐ Not operating since \_\_\_\_\_  
(approx date)  
☐ In operation: nature of the business \_\_\_\_\_



### III. Property Redevelopment

16. Describe the intended re-use of the property:  
(attach additional sheets if necessary)

Construction of portion of access road to Charleston Naval Base Container Terminal, which the parcel will join.

17. a. Will the future use include any chemical processes, petroleum or chemical storage and handling, on-site waste disposal, or generate any hazardous substances? ☐ Yes ☒ No  
b. If Yes, identify the substances and discuss steps that will be taken to prevent their release to the environment.

18. Will redevelopment lead to the creation of permanent jobs on the property? ☒ Yes Anticipated Number \_\_\_\_\_  
☐ No

19. Projected Increase to the Tax Base as a result of this redevelopment: \$ \_\_\_\_\_

20. a. Will there be Intangible benefits from this redevelopment such as:  
☐ LEED, Earth Craft, EnergyStar, or similar certification of Sustainable Development  
☐ Creation / Preservation of Green Space on the Property  
☐ Deconstruction/ Recycling of demolition or building debris  
☒ Other Provide road access to public project required by regulatory permitting before the marine terminal opens for operation

b. Please Describe:

21. Anticipated date of closing or acquiring title to the property TBD / \_\_\_\_\_ / \_\_\_\_\_

22. Redevelopment Certification  
By signature below, the applicant(s) affirm that their proposed use and activities will not knowingly aggravate or contribute to existing contamination or pose significant human health or environmental risks on the property.



Signature(s)

### IV. Project Management And Financial Viability (Co-Entities, refer to instruction sheet)

23. Environmental Consulting Firm  
☐ None as of this application date

S&ME

Company

620 Wando Park Blvd

Mt. Pleasant

South Carolina

29464

Address

City

State

Zip

Jeremy P. Williams, E.I.T., CIE

Project Contact1

S.C PE/PG Reg. #

Phone1

Phone 2

email

Chuck Black, P.E., LEEP AP

Project Contact 2

S.C PE/PG Reg. #

Phone1

Phone 2

email

24. Legal Counsel (Optional)  
Willoughby & Hoefer, P.A.  
Firm  
Randolph R. Lowell 803-252-3300  
Attorney Phone1 Phone 2  
PO Box 8416 Columbia SC 29202 rlowell@willoughbyhoer.com  
Street Number or PO Box City State Zip email

25. Applicant's Billing Address ☒ Same as Contact person in #6 above Go to question #26

Financial Contact Title  
Company Phone  
Address  
City State Zip

26. **Financial Viability**

By signature(s) below, the applicant agrees to:

1. Pay the Department's costs upon receipt of invoices for implementing the Voluntary Cleanup Program for this Property, and
2. Provide financial statements, if requested, to document financial viability to conduct the response actions on the Property.

☒ Waiver Requested (Check Box If applicable)

The applicant is a Local Government or qualifies as a 501(c) Non-Profit Organization, and requests waiver of some Departmental costs of implementing this contract.

Signatures

**V. Application Completion (The following are required along with this form. Check applicable boxes)**

27. The Legal Description of the Property is attached as a: ☒ Plat Map ☐ Metes and Bounds Text ☐ Both

28. The Phase I Environmental Site Assessment Report is attached as a:

☐ New report completed in the past six months by \_\_\_\_\_ (Name of Environmental Firm)

☒ Older report updated in the past six months by S&ME (Name of Environmental Firm)

29. Environmental sampling data and other reports: (check one)

- ☐ The Applicant is not aware of any environmental testing on the property  
☐ The Applicant believes the Department already has all environmental data in its files on: \_\_\_\_\_ (Site Name)  
☒ The Following reports are attached:

Report Date	Report Name	Environmental Firm
January 2013	Phase I Environmental Site Assessment S&ME	S&ME
July 2014	Phase I Environmental Site Assessment S&ME	S&ME

30. Mailing addresses of Former Owners, Operators and other Potentially Responsible Parties:(check one)

- ☒ Enclosed with this Application as an Attachment  
☐ Will be submitted along with (or before) the signed contract

31. The applicants attest by signature below that this application is accurate to their best knowledge. Furthermore, the applicants request DHEC evaluate the Property for inclusion in the Brownfields Voluntary Cleanup Program and draft a Non-Responsible Party Contract for the Property.

Signature(s)

**This Section for Department Use Only**

Assigned File Name		
Eligible for NRP Contract	Y N	
Assigned File Number		
Assigned Contract Number		



## APPLICATION INSTRUCTIONS

**General instructions:** The Application should be completed electronically. The application may be may saved with partial information, and reopened at a later time for completion.

The form is largely self-explanatory; however, the following information is further clarification for some questions. Additional assistance is available through the Voluntary Cleanup Program at the toll-free telephone number (866) 576-3432.

**#1. Applicant Information:** Check Sole Entity if the contract will be between DHEC and one party (usually an individual, most partnerships, businesses, government bodies, etc.).

Check Co-Entity if the contract will be between DHEC and multiple parties with no controlling interests over each other (Example: A Public-Private Partnership agreement between a local government and a business to redevelop a site). Each Co-Entity must submit its own copy of page 1 with the information specific to their business/corporate structure, etc.

**#3. Applicant's Legal Name:** Enter the full Legal Name of the party that will be entering the contract. If the party is incorporated as a business or non-profit organization, enter the name as recorded in the Articles of Incorporation/Organization. If the entity is a department or sub-division of a government body, include the name of the controlling government body. If the business will operate under a different name, enter that information in #7.d.

**#4. Contract Signatures:** The "Authorized Signatory" is a person who may legally bind the applicant in contractual matters. Identify any other persons that may sign contracts for the entity.

In some business structures (e.g., General Partnerships, Joint Ventures, etc.) multiple persons are required to sign contracts. If applicable, check the box by those names that must sign the contracts in addition to the Authorized Signatory. The Department will not take further steps to implement a contract until all Required Signatures are affixed.

**#5. Physical Address for Applicant:** The address must be the physical location of the applicant's business or headquarters. A post office box is not sufficient.

**#8. Non-Responsible Party Certification:** Each person identified as an Authorized Signatory and as a Required Signature, if any, should sign the application.

**Co-Entities:** Each Co-Entity should have the Authorized Signatory and all Required Signatures, if any, sign #8 only on the page specific to their organization.

**#9. Property Location:** If no address is assigned, identify the road on which the property is located, and the distance and direction from the nearest identifiable crossroads.

**#10. Property Names:** Enter the name that will be used in correspondence with the Department to refer to the Property, and any other names that may be commonly known to the local community because of past operations on the property.

**#13. Current Zoning:** Describe the zoning in terms such as "high-density residential", "retail", "commercial", and "light industrial" since there is no uniform numerical classification across the state.

**#15. Parcel Information:** Include all information for each parcel that will be acquired. Repeat information may be omitted (i.e., the same person currently owns multiple parcels).

If there are more than six parcels, the application may be saved electronically with different file names for as many times as needed for the number of parcels. Attach printouts of the pages with the additional parcels to the final application.

**#26. Financial Viability:** The Department will charge for oversight costs including time to review file materials and prepare a contract. The applicant is obligated to pay the accrued costs if a contract is successfully negotiated (i.e. signed by the applicant and the Department).

The Department may allow Local Governments and qualified Non Profit Organizations to waive payment of some oversight costs. The Department's decision to waive payment will be determined on a case-specific basis, and may be rescinded after due notice to the parties as specified in the contract.

**#27. Property Legal Description:** A legal description or surveyed Plat map must be included with the application. The Plat Map may be a copy of a survey filed with the county or un-filed copy completed by a SC- licensed Surveyor.

**#28 Phase I Environmental Site Assessment Report:** The Phase I Report should be consistent with the US EPA's "*All Appropriate Inquiries Rule*". The Phase I must be completed within the 6 months prior to the application. Environmental consultants may update older reports as long as the update is less than 6 months old.

Phase I reports paid for by other parties can be submitted, but may be subject to intellectual property claims. Applicants may need permission from the environmental consultants that originated the report before submitting it to the Department.

The US EPA may require another update from Local Governments and Non-Profit Organizations as a condition of receiving Brownfields grant money.

**#30 Mailing Addresses of Potentially Responsible Parties:** All former owners, operators and other PRPs ( Potentially Responsible Parties) should be identified if their affiliation with the Property occurred anytime after the probable contamination.

The last known mailing address of the PRPs or of their registered agent(s) should be provided to the Department; however, the application may be filed before this information is compiled. The Department will not place a contract on Public Notice or execute it until sufficient information is provided to allow the Department to notify the PRPs of the contract.

#### **Filing Mechanics**

The form should be printed out after completion and signed by all persons identified as the "Authorized Signatory" or as "Signature Required". The form should have original signatures for Question #8 on page 1, Question #22 on page 4, and Questions #26 and #31 on page 5.

Co-Entity Applicants should sign Question #8 only on page 1 specific to their organization and on other pages as indicated above.

The completed form and all supporting documentation should be submitted to:

Robert F. Hodges, Jr., PG

Brownfields Voluntary Cleanup Program

Mailing Address:

Bureau of Land and Waste Management, SCDHEC

2600 Bull Street

Columbia SC 29201

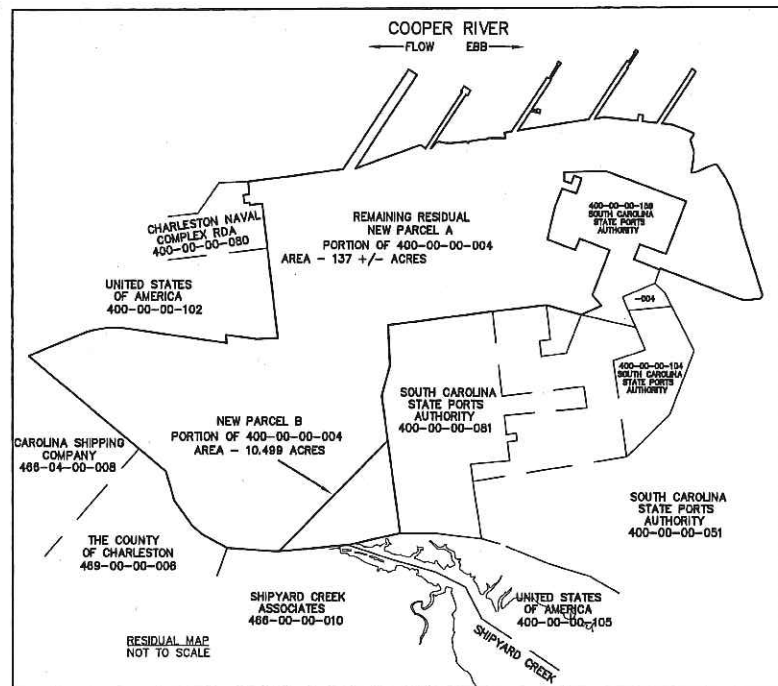
Physical Address (For Hand-Delivery during normal office hours 8:30 AM to 5:00 PM):

8911 Farrow Road (Stern Building)

Columbia SC 23203

There is no application fee.





ORIGINAL COPY  
Plat # 2376  
Return to the City of North Charleston's  
Department of Planning & Management  
Please affix book and page number

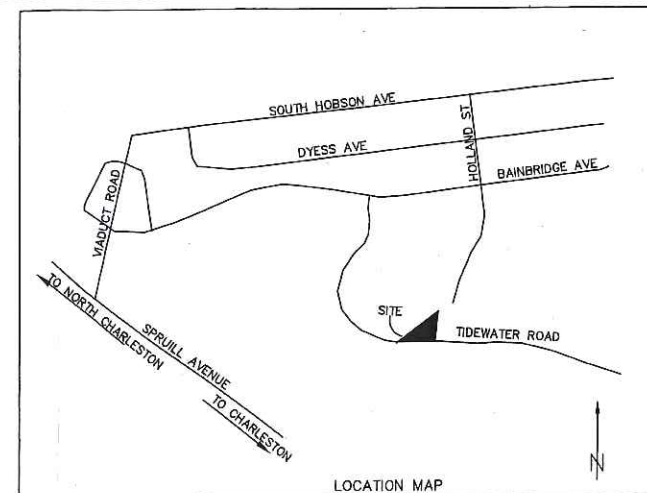
FOR THE CITY OF NORTH CHARLESTON AND RMC USE ONLY

APPROVED PLAT  
Exempt from Section 18-22 (a) and  
18-23 (a) of Subdivision Regulations.  
Date: 8/22/13  
Attest: *Paula M. North*  
PLANNING DIRECTOR  
CITY OF NORTH CHARLESTON

REC'D. PAYMENT 8/20/13  
PER CLERK 2  
RMC OFFICE L13-0297  
CHARLESTON COUNTY, SC

LEGEND:

RBS - 5/8" REBAR SET  
RBF - 5/8" REBAR FOUND  
SF - SQUARE FEET  
CP - CALCULATED POINT THAT LANDS IN SHIPYARD CREEK OR THE MARSHES OF SHIPYARD CREEK  
W.F. - WOOD FRAME  
POB - POINT OF BEGINNING  
CONC. - CONCRETE  
BLK. - BLOCK



SOUTH CAROLINA  
STATE PORTS  
AUTHORITY  
400-00-00-081

NOTES AND REFERENCES

- 1) THE PROPERTY IS CURRENTLY OWNED BY THE UNITED STATES OF AMERICA.
- 2) IT IS NOT THE INTENT OF THIS SURVEY TO SHOW THE EXISTENCE OR NONEXISTENCE OF U.S. ARMY CORPS OF ENGINEERS JURISDICTIONAL WETLANDS.
- 3) THIS PLAT IS NOT INTENDED TO SHOW ALL EXISTING EASEMENTS OR UTILITIES WITHIN THE BOUNDARY.
- 4) THIS PLAT IS INTENDED TO SHOW ONLY THE PHYSICAL FEATURES WHICH AFFECT THE NEW PROPERTY LINE.
- 5) ACCORDING TO THE F.E.M.A. FLOOD INSURANCE RATE MAP 45019 C, PANEL NUMBERS 502J AND 504J DATED 11/17/04 THE PROPERTY LIES IN (AE ELEV 13') AND (AE ELEV. 14') ZONES.
- 6) REFERENCE PLAT BY FORSBERG ENGINEERING DATED JULY 19, 2002 KNOWN AS THE THIRD CONVEYANCE FROM THE UNITED STATES NAVY TO THE RDA AND RECORDED AUGUST 19, 2004 IN THE CHARLESTON COUNTY RMC OFFICE IN PLAT BOOK EH PAGES 275-284.
- 7) REFERENCE PLAT BY FORSBERG ENGINEERING DATED OCTOBER 9, 2003 KNOWN AS THE FOURTH CONVEYANCE FROM THE UNITED STATES NAVY TO THE RDA AND RECORDED JULY 12, 2005 IN THE CHARLESTON COUNTY RMC OFFICE IN PLAT BOOK EJ PAGES 68-78.
- 8) REFERENCE PLAT BY W. MASON LINDSEY JR. DATED SEPTEMBER 20, 2001 AND RECORDED IN THE CHARLESTON COUNTY RMC OFFICE IN PLAT BOOK EG, PAGE 141.
- 9) THIS PLAT DOES NOT SHOW THE CRITICAL AREA FOR SHIPYARD CREEK.
- 10) THE LOCATION OF SHIPYARD CREEK WAS SCANNED FROM AERIAL MAPS AND WAS NOT SURVEYED.
- 11) THE AREA FOR NEW PARCEL B IS  
7.277 ACRES CRITICAL LINE  
2.602 ACRES UPLAND  
0.620 ACRES SHIPYARD CREEK  
10.499 TOTAL ACRES

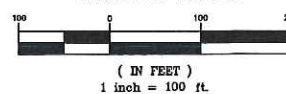
REMAINING RESIDUAL  
NEW PARCEL A  
PORTION OF 400-00-00-004  
AREA = (+/-) 137 ACRES

THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEPARTMENT PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS BY THEIR NATURE ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY DELINEATING THE PERMIT AUTHORITY OF THE DEPARTMENT, THE DEPARTMENT IN NO WAY WAIVES ITS RIGHT TO ASSERT PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY, WHETHER SHOWN HEREON OR NOT.

approved by Steve Brooks 8/1/13  
SIGNATURE DATE

The critical line shown on this plat is valid for five years from the date of this signature, subject to the cautionary language above.

GRAPHIC SCALE



PLAT SHOWING THE SUBDIVISION OF  
TMS 400-00-00-004 (148.5 ACRES) INTO PARCEL  
B (10.449 ACRES) AND REMAINING RESIDUAL PARCEL A. (137 ACRES)  
LOCATED ON THE FORMER NAVAL BASE COMPLEX  
CITY OF NORTH CHARLESTON  
CHARLESTON COUNTY, SOUTH CAROLINA  
SCALE 1"=100' MAY 25, 2007  
REVISED JULY 22, 2013



**FORSBERG ENGINEERING  
AND SURVEYING, INC.**  
1587 SAVANNAH HIGHWAY SUITE B  
P.O. BOX 30575  
CHARLESTON, SOUTH CAROLINA 29417  
(843) 571-2622 FAX (843) 571-6780  
CIVIL ENGINEERING, SURVEYING  
AND LAND PLANNING



I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN.

LEWIS SMITH MOORE, P.L.S. No. 21621