

**THIRD AMENDMENT
TO
VOLUNTARY CLEANUP CONTRACT
18-5959-NRP**

**IN THE MATTER OF
Spartan Grain, Spartanburg County
and
Morgan & Henry JOF ESA II, LLC (f/k/a Morgan & Henry JOF AAI I, LLC)**

WHEREAS, on April 19, 2019, Morgan & Henry JOF ESA II, LLC (f/k/a Morgan & Henry JOF AAI I, LLC) (“MH”) entered into Voluntary Cleanup Contract 18-5959-NRP (“VCC”) with the South Carolina Department of Health and Environmental Control (“Department”) pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 et seq. (2018), and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C §§ 9601 et seq., pursuant to the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200, with respect to approximately 10.49 acres identified by Tax Map Serial Numbers 7-12-14-005.00 and 7-12-14-0052.02 (“the Parcels”). This VCC initially addressed the transfer of the Parcels for future mixed-use development.

WHEREAS, MH and the Department executed a First Amendment to the VCC on August 30, 2019, covering an additional conveyance of 1.37 acres adjacent to and south of the Northern Parcels, more fully identified by Tax Map Serial Number 7-12-14-037.00 (the “Maaco Property”). MH and the Department executed a Second Amendment to the VCC on June 28, 2023, covering an additional conveyance of 1.96 acres adjacent to the Parcels (the “CSX Property”). In entering this Third Amendment to the VCC, the Department relies on the representations of the “Non Responsible Party Application for Voluntary Cleanup Contract” dated July 20, 2023 by MH, which is incorporated into this Third Amendment to the Voluntary Cleanup Contract 18-5959-NRP (“Third Amendment”) and attached as Appendix A.

WHEREAS, MH is now prepared to receive an additional conveyance of approximately 1.57 acres adjacent to and surrounding the Parcels (“the Property”). The

Property consists of three (3) parcels more fully identified by Tax Map Serial Numbers 7-12-14-004.02, 7-12-14-036.00, and 7-12-14-036.01 and one (1) parcel without an assigned Tax Map Serial Number. Three (3) of the four (4) parcels are undeveloped with the fourth being used by the City of Spartanburg as a storage yard.

The northernmost parcel of the Property is generally bounded to the north by the AC Hotel and West Main Street beyond; to the east by South Daniel Morgan Avenue and commercial development beyond; to the south by the Parcels and the Maaco Property; and to the west by the CSX Property and a rail line beyond. The southernmost parcels of the Property are generally bounded to the north by the Parcels and the CSX Property; to the east by the Maaco Property, South Daniel Morgan Avenue, and a park beyond; to the south by West Henry Street with commercial development beyond; and to the west by the CSX Property, a rail line, and Moretex Chemical Products beyond.

Owners and operators of the Property include the following:

TMS # 7-12-14-036.00

Andrew Millar

December 1966 to October 1978

City of Spartanburg

October 1978 to Present

TMS # 7-12-14-036.01

CSX

1904 to July 1987

City of Spartanburg

July 1987 to Present

**TMS #7-12-14-004.02 and unassigned
parcel (formerly city roads)**

City of Spartanburg

Unknown to Present

GEL Engineering, LLC performed a Phase I Environmental Site Assessment (Phase I) on the Property dated April 26, 2023. The Phase I identified the following recognized environmental conditions: the presence of railroad tracks associated with CSX are located to the west of the Property and adjacent to the southernmost parcel and five (5) businesses that may have handled chemicals of concern located up-gradient and/or adjacent to the Property including Harris Auto, the former City Cleaners, Spartanburg City Cab, Thomas & Sons Dry Cleaners, and Peoples Dry Cleaners (a.k.a Frye's Cleaners).

WHEREAS, the parties hereto now desire to amend the VCC to include the Property as described more fully in Appendix B as part of the VCC and resulting benefits.

NOW THEREFORE IT IS AGREED, that Voluntary Cleanup Contract 18-5959-NRP is hereby amended to include and address the approximately 1.57 acres as described in Appendix B by the inclusion of the following modifications and additional terms:

1. A Supplemental Work Plan shall be submitted by MH, or its designee, within thirty (30) days after the date of execution of this Third Amendment, or such earlier or later date if approved by the Department. The Supplemental Work Plan shall be consistent with Paragraphs 4.A, 4.B, 4.C, 4.G, and 4.H of the VCC. The Supplemental Work Plan shall propose assessment of the Property to include the following additional samples:
 - a. MH shall collect and analyze a minimum of twelve (12) soil samples from six (6) locations on the Property. MH 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:
 - i. Two (2) locations in the northern parcel.
 - ii. One (1) location near the dirt and asphalt mound in the southeastern most parcel.

- iii. Two (2) locations in the laydown yard.
- iv. One (1) location in the southwestern most parcel.
- b. Unless otherwise specified above, each surface soil sample shall be analyzed for TAL-Metals (with chromium speciation to analyze for hexavalent chromium) and TCL-SVOCs. Each subsurface sample shall be analyzed for TAL-Metals (with chromium speciation to analyze for hexavalent chromium), TCL-VOCs, and TCL-SVOCs. A minimum of one (1) surface and one (1) subsurface sample from the location near the dirt and asphalt mound shall be analyzed for the full EPA-TAL (includes cyanide) and EPA-TCL.
- c. MH shall assess groundwater quality and flow direction across the Property. Assessment shall include samples from a minimum of two (2) monitoring wells. Specific locations shall be as follows:
 - i. One (1) location in the laydown yard screened to bracket the water table.
 - ii. From existing well near the northern parcel.
- d. Samples from all groundwater monitoring wells shall be analyzed for TAL-Metals, TCL-VOCs, and TCL-SVOCs. In addition, the well in the laydown yard shall have its samples analyzed for the full EPA-TAL (includes cyanide) and EPA-TCL.

A report of the assessment results shall be submitted by MH, or its designee, in accordance with the schedule provided in the Supplemental Work Plan. MH acknowledges that the assessment conducted pursuant to the Supplemental Work Plan may find distributions of Existing Contamination requiring further assessment and/or corrective action on the Property that was not anticipated in the Supplemental Work Plan. MH agrees to perform the additional assessment and/or corrective action consistent with the intended uses of the Property under the purview of this Third Amendment; however, MH may seek a further amendment of the VCC to clarify its further responsibilities.

FURTHER IT IS AGREED that this Third Amendment in no way is intended to or does affect VCC 18-5959-NRP, the First Amendment, or the Second Amendment to the VCC except as specifically provided herein and such VCC, First Amendment, and Second Amendment remain in full force and effect, subject to this Third Amendment.

SIGNATORIES

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

Henry J. Porter, Chief
Bureau of Land and Waste
Management

DATE: _____

Approved by Office of General Counsel

DATE: _____

Morgan & Henry JOF ESA II, LLC (f/k/a Morgan & Henry JOF AAI I, LLC)

BY:  _____

DATE: 8/31/23

Jason C. Lynch, VP of Manager
Printed Name and Title

APPENDIX A

APPENDIX B