

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Agreement”) is made by and between the STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION (“ADEC” or “State”), KAE, INC. (“KAE”), and THE CITY OF BUCKLAND, ALASKA (“City”) (hereinafter collectively “the Parties”), and provides as follows:

RECITALS

A. On April 12, 2012, ADEC filed suit against KAE for recovery of state response costs, civil assessments, and declaratory relief under AS 46.03.822 and related statutes in response to the release of #1 diesel fuel discovered on April 5, 2008 at the Old Buckland IRA Tank Farm located in the City of Buckland, Alaska, as more particularly alleged in the Complaint filed in that certain action now entitled *State of Alaska, Department of Environmental Conservation v. KAE, Inc., et al.*, Anchorage Superior Court Case No. 3AN-12-6436 CI (the “Action”). The “Release at the Site” refers to the release of #1 diesel fuel discovered on April 5, 2008 at the Old Buckland IRA Tank Farm located in the City of Buckland, Alaska, as alleged in the Complaint.

B. On May 11, 2012, KAE filed its Answer and Third-Party Complaint for Contribution against the City.

C. On July 10, 2012, the City filed its Answer and Affirmative Defenses to KAE’s Third-Party Complaint.

D. The Parties desire to settle all disputes and differences that may exist

between them arising out of or related to the Action in order to avoid the complication and expense of litigating such claims.

E. This Agreement is negotiated and executed by the Parties in good faith and at arms length and is a fair and equitable compromise of claims, which were vigorously contested.

F. The Parties enter into this Agreement as a final settlement of all claims in connection with the Release at the Site and, as provided below, do not admit any liability arising from occurrences or transactions pertaining to the Release at the Site.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, it is agreed as follows:

I. SETTLEMENT OF CLAIMS BETWEEN THE STATE AND KAE

A. Payment Terms

1. In full and complete settlement of the State's claims against KAE, KAE shall pay the State the amount of \$175,000, payable in the following installments:

- a. \$100,000 due July 15, 2013;
- b. \$37,500, plus accrued interest, due September 1, 2014; and
- c. \$37,500, plus accrued interest, due September 1, 2015.

2. Interest on the unpaid balance shall accrue at the rate of 8% beginning July 15, 2013, and continuing thereafter until paid in full.

3. All payments required under this section shall be made payable to the State of Alaska, and delivered to the Alaska Department of Law, Attn: Steven G. Ross,

Assistant Attorney General, 1031 West 4th Avenue, Anchorage, Alaska 99501, by no later than 5:00 p.m. (Alaska time) on the due date.

B. Confession of Judgment Without Action

4. Concurrent with the execution of this Agreement, KAE agrees to enter into a Confession of Judgment Without Action (the “Confession of Judgment”) in the form attached hereto as Exhibit 1. The State agrees to withhold filing the Confession of Judgment with the Court or taking any other action to execute on the Confession of Judgment, so long as KAE makes timely payments to the State as provided herein.

5. If KAE does not make any payment required by this Agreement on time, time being of the essence, or if KAE is otherwise in default hereunder, all remaining payments shall immediately become due and payable and, except as otherwise provided herein, the State shall be entitled to immediately file the Confession of Judgment in court without notice or demand of any default to KAE. The validity, amount, and appropriateness of the Confession of Judgment and the payment required thereunder shall not be subject to review.

6. Prior to filing the Confession of Judgment, the State shall give KAE five (5) days written notice of its intent to file the judgment by certified letter addressed to KAE, Inc. at the following address:

2400 Spenard Road
Anchorage, Alaska 99503

With a courtesy copy (by regular mail) to:

Brooks Chandler Esq.
Boyd, Chandler & Falconer LLP
911 West 8th Ave., Suite 302
Anchorage, Alaska 99501

KAE waives any notice of entry of judgment (or other notice requirement) which might otherwise be required under applicable law or rule of court. The State and KAE further agree to waive findings of fact and conclusions of law and the right to appeal any lawful judgment that may be entered under the Confession of Judgment.

7. The Parties shall bear their own attorney's fees and costs incurred in the Action. However, in the event that State is required to pursue its rights under the Confession of Judgment, then the State may include in the balance due to the State any amounts incurred in executing on the judgment as well as any costs in recovering said amounts.

C. Contingencies Regarding Additional Services on Village Safe Water Projects

8. City of Manokotak (Construction Management and Engineering Support Services). KAE is presently providing construction management and engineering support services under a contract to the City of Manokotak for the Manokotak Heights Water and Wastewater Project in Manokotak, Alaska, which is funded and administered through the ADEC Village Safe Water Program ("VSW"). VSW and KAE agree to negotiate in good faith and upon agreement, process a contract amendment (Amendment #13) to the KAE contract for the additional services. The final approved amendment shall be presented by VSW to the City of Manokotak by no later than May 6, 2013.

9. City of McGrath (Engineering Design Services). VSW shall use its best efforts to secure the release of pending federal and state funds for funding the final design of upgrades to the water treatment plant in McGrath, Alaska, including completion and submission of a "dire sanitation need" letter from ADEC to the U.S. Department of Agriculture, Rural Development, Alaska Service Center (the federal funder) by no later than May 15, 2013.

10. Cheesh-na Tribal Council (Construction Administrative Services). After sealed bids are opened on May 6, 2013 regarding the Cheesh-na Community Center Water and Sewer Project near Chistochina, Alaska ("the Project"), which is funded through VSW, and assuming there is adequate funding to award the contract to an acceptable bidder, VSW will use its best efforts to facilitate a contract amendment with KAE to provide construction administrative services for the Project within thirty (30) days of the award.

II. SETTLEMENT OF CLAIMS BETWEEN KAE AND THE CITY

11. Payment Terms. In full and complete settlement of KAE's claims against the City filed under the Action, the City shall pay KAE the sum of \$40,000 within sixty (60) days of April 15, 2013. The payment by the City of this amount constitutes a complete and final settlement of any and all claims that have been raised, or could have been raised against the City, regarding the Release at the Site. Should KAE be found in default of the payment terms to the State contained in this Agreement, neither KAE nor the State shall be entitled to pursue any claims against the City related to this Agreement

and/or the Release at the Site, including, but not limited to KAE's failure to make settlement payments to the State.

III. MUTUAL RELEASE OF CLAIMS

12. Mutual Release of Claims. As of the Effective Date of this Agreement and except as otherwise provided herein, each of the Parties hereby forever releases discharges, and covenants and agrees not to assert (by way of the commencement of an action, joinder, or in any other fashion) against the other, and their respective officers, directors, employees, agents, insurers, representatives, servants, successors and assigns, and anyone else acting on its behalf, any and all claims, demands, causes of action, damages, liabilities, accounts, costs, expenses and liens, of any kind whatsoever in law or in equity whether known or unknown, suspected or unsuspected, of any kind or nature, arising out of or related to the Action and/or the Release at the Site, including any claim(s) regarding offsite migration of contamination related to the Release at the Site.

13. Waiver of Contribution Rights. The Parties hereby waive any and all rights (1) to obtain contribution arising under this Action and/or related to the Release at the Site from persons not named as a party in this Action, or (2) otherwise recover costs, cleanup expenses or damages arising under this Action or related to the Release at the Site from persons not named as a party to this Action, except insurance carriers.

IV. DISMISSAL OF ACTION

14. Dismissal of Action. Except as otherwise provided herein, concurrent with the execution of this Agreement, the Parties (through their respective attorneys of record)

shall execute a Stipulation and Order of Dismissal with prejudice in the form attached hereto as Exhibit 2.

V. GENERAL TERMS AND PROVISIONS

15. Recitals. The recitals set forth above are incorporated herein and made a part of this Agreement, and the terms set forth herein are contractual and not a mere recital.

16. No Admission of Liability. The Parties agree that this Agreement, including any payments made pursuant to it and the negotiations and other communications related to it, is entered into without any admission of liability for any purpose as to any matter arising out of the Action and/or related to the Release at the Site.

17. No Use As Evidence. This Agreement represents the compromise of disputed claims and nothing in this Agreement is intended to be, nor shall be construed as, an admission or resolution of any question of fact or law with respect to any liability or responsibility for the Release at the Site. This Agreement shall not be admissible in any proceeding other than in an action to enforce this Agreement or related to the Confession of Judgment.

18. Time is of the Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Agreement.

19. Headings. All headings used in this Agreement are for reference purposes only and are not intended or deemed to limit or affect, in any way, the meaning or

interpretation of any of the terms and provisions of this Agreement.

20. Representation by Counsel; Understanding of Terms. Each party acknowledges and warrants that such party has had the opportunity to be represented by counsel of its own choice throughout all negotiations which preceded the execution of this Agreement. In this connection, the Parties have discussed this matter with their respective attorneys, advisors, and/or experts as deemed appropriate, have been advised of and are familiar with the case of *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978), and still desire to settle this matter in accord with the settlement terms set forth in this Agreement. Each party has read all of this Agreement and fully understands all terms used and their significance. Each party is satisfied with the Agreement and has signed the Agreement voluntarily.

21. Rules of Construction. Any judicial rule of construction that a document should be more strictly construed against the drafter thereof shall not apply to any provision herein.

22. Severability. The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

23. Modifications. This Agreement may be modified only in a writing signed by the Parties in interest at the time of the modification.

24. No Waiver. The failure of any party to insist upon the strict performance of the terms, conditions and provisions of this Agreement shall not be a waiver of future

compliance or a waiver of any other provision hereof. No waiver by any party of any provisions hereof shall be deemed to have been made unless expressed in writing and signed by a duly authorized representative of such party.

25. Counterparts. This Agreement may be executed in any number of counterparts, but each shall be considered an original and all of which taken together shall constitute a single instrument. Facsimile copies of the executed Agreement shall be acceptable as proof of signature until originals are provided in due course.

26. Signatory Authority. The Parties hereto represent and warrant that they possess the full and complete authority to covenant and agree as provided in this Agreement and, if applicable, to release other parties and signatories as provided herein. If any party is a corporation, the signatory for any such corporation represents and warrants that they possess the authority and have been authorized by the corporation to enter into this Agreement.

27. Binding Effect. This Agreement shall be binding upon the Parties, their respective heirs, legal representatives, successors and assigns.

28. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding (written or oral) shall be effective. This Agreement shall constitute a full and final resolution among the Parties with respect to the Action and/or the Release at the Site.

29. Effective Date. The "Effective Date" of this Agreement shall be the date

upon which this Agreement is fully executed by the Parties.

30. Rule of Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Alaska.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates indicated below.

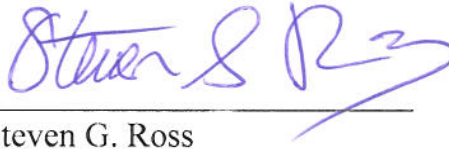
[SIGNATURE PAGES FOLLOW]

Signature Page for Settlement Agreement and Mutual Release in:

*State of Alaska, Department of Environmental Conservation
v. KAE, Inc., et al., Case No. 3AN-12-6434 CI*

DATED: 5/3/13

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By: 

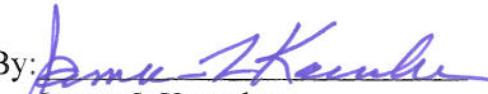
Steven G. Ross
Alaska Bar No. 0509070
Assistant Attorney General
Attorneys for State of Alaska

Signature Page for Settlement Agreement and Mutual Release in:

*State of Alaska, Department of Environmental Conservation
v. KAE, Inc., et al., Case No. 3AN-12-6434 CI*

DATED: 5/3/13

KAE, INC.


By: 
James J. Kaercher
President HK

ACKNOWLEDGMENT

I, James J. Kaercher hereby certify that I hold the position of President and that I am a responsible official for KAE, Inc. ("KAE") and that I have the authority to enter into this Agreement and to otherwise legally bind KAE. I hereby acknowledge that I have freely and voluntarily entered into this Agreement.

SUBSCRIBED AND SWORN to before me this 3rd day of May, 2013.

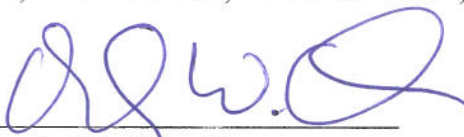



Notary Public, State of Alaska
My commission expires: 11-10-14

APPROVED AS TO FORM AND CONTENT:

DATED: 5/3/13

BOYD, CHANDLER, & FALCONER, LLP

By: 
Brooks W. Chandler
Alaska Bar No. 8310109
Attorneys for KAE, Inc.

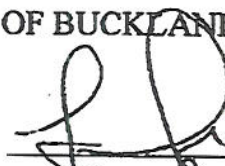
Signature Page for Settlement Agreement and Mutual Release in:

State of Alaska, Department of Environmental Conservation
v. KAE, Inc., et al., Case No. 3AN-12-6434 CI

DATED: 4/26/13

CITY OF BUCKLAND, ALASKA

By:



Tim Gravin [Print Name]

Mayor [Print Title]

ACKNOWLEDGMENT

I, Tim Gravin hereby certify that I hold the position of Mayor of Buckland and that I am a responsible official for the City of Buckland, Alaska ("City") and that I have the authority to enter into this Agreement and to otherwise legally bind the City. I hereby acknowledge that I have freely and voluntarily entered into this Agreement.

SUBSCRIBED AND SWORN to before me this 26th day of April, 2013.



Notary Public, State of Alaska

My commission expires: 03-07-15

APPROVED AS TO FORM AND CONTENT:

DATED: 4/26/13

LANDYE BENNETT BLUMSTEIN LLP

By:



Adolf Zeman, Alaska Bar No. 0411082

Matthew J. Mead, Alaska Bar No. 0711095

Attorneys for City of Buckland, Alaska

13 - SETTLEMENT AGREEMENT AND MUTUAL RELEASE

State of Alaska, etc. v. KAE, Inc., et al., Case No. 3AN-12-6434 CI

AGO #AN2012101650

1
2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

3 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 STATE OF ALASKA, DEPARTMENT)
5 OF ENVIRONMENTAL CONSERVATION)

6 Plaintiff,)

7 vs.)

Case No. 3AN-12-6434 CI

8 KAE, INC., an Alaska corporation,)

9 Defendant.)
10

11 **CONFESSION OF JUDGMENT WITHOUT ACTION**

12 Pursuant to Alaska Statutes 09.30.050, and the Settlement Agreement and
13 Mutual Release attached hereto as Exhibit A (the "Agreement"), which references the
14 facts and circumstances supporting the entry of this Confession of Judgment Without
15 Action, Defendant in the above-entitled action hereby confesses and authorizes a
16 judgment to be entered against said Defendant and in favor of Plaintiff State of Alaska, as
17 follows:
18

- 19 a. Principal amount \$175,000.00 (less any payments
20 previously made under the
21 Agreement)
- 22 b. Prejudgment Interest \$ _____
23 (computed at the annual rate
24 of 8% from July 1, 2013 to the
25 date of judgment)
- 26 c. Subtotal \$175,000 (less any payments
previously made under the
Agreement, plus interest at 8% of
\$ _____)

- 1
- 2 d. Attorney's Fees Not applicable
- 3 e. Costs Not applicable
- 4
- 5 f. TOTAL JUDGMENT \$175,000 (less any payments
- 6 previously made under the
- 7 Agreement, plus interest at 8% of
- 8 \$_____)
- 9 g. Post-Judgment Interest Rate: 8%

10 This Confession of Judgment Without Action is made for the purpose of

11 securing payments to be made by Defendant to Plaintiff pursuant to the Agreement.

12 Upon payment of all sums required to be paid by Defendant under the Agreement,

13 Plaintiff shall return the original of this Confession of Judgment Without Action to

14 Defendant marked "SATISFIED". Defendant waives notice or demand of any default

15 under the Agreement and notice of entry of any judgment. Defendant further waives

16 findings of fact and conclusions of law and the right to appeal any lawful judgment that

17 may be entered under this Confession of Judgment Without Action.

18 DATED: _____ KAE, INC.

19 By: _____

20 James J. Kaercher

21 President

22 SIGNATURE PAGE CONTINUES

23

24

25

26

ACKNOWLEDGMENT

I, James J. Kaercher hereby certify that I hold the position of President and that I am a responsible official for KAE, Inc. ("KAE") and that I have the authority to enter into this Confession of Judgment Without Action and to otherwise legally bind KAE in this matter as provided herein; that I have read the foregoing Confession of Judgment Without Action and know the contents thereof; and that I hereby acknowledge that I have freely and voluntarily entered into this Confession of Judgment Without Action on behalf of KAE.

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2013.

Notary Public, State of Alaska

My commission expires: _____

APPROVED AS TO FORM AND CONTENT:

DATED: _____

BOYD, CHANDLER, & FALCONER, LLP

By: _____

Brooks W. Chandler

Alaska Bar No. 8310109

Attorneys for KAE, Inc.

PLAINTIFF'S ASSENT TO CONFESSION

The State of Alaska Department of Environmental Conservation hereby assents to the foregoing Confession of Judgment Without Action.

DATED: _____

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By: _____

Steven G. Ross, Alaska Bar No. 0509070

Assistant Attorney General

Attorneys for State of Alaska

Confession of Judgment Without Action
State of Alaska v. KAE, Inc., et. al.

3AN-12-6434 CI

Page 3 of 3

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA, DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

Plaintiff,

vs.

Case No. 3AN-12-6434 CI

KAE, INC., an Alaska corporation,

Defendant.

KAE, INC.,

Third-Party Plaintiff,

vs.

City of Buckland,

Third-Party Defendant.

STIPULATION AND ORDER OF DISMISSAL

Pursuant to the Settlement Agreement and Mutual Release entered into by the parties and as provided therein, a true copy of which is attached as Exhibit A, the parties stipulate to a dismissal of all claims in this action with prejudice and each party shall bear their own attorney's fees and costs in this matter.

The undersigned certify that the settlement information required under AS 09.68.130 and Civil Rule 41(a)(3) will be submitted to the Alaska Judicial Council.

1
2 DATED: _____

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

3
4 By: _____

5 Steven G. Ross
6 Assistant Attorney General
7 Alaska Bar No. 0509070
8 Attorneys for Plaintiff State of Alaska

9
10 DATED: _____

BOYD, CHANDLER & FALCONER, LLP

11 By: _____

12 Brooks W. Chandler,
13 Alaska Bar No. 8310109
14 Attorneys for Defendant and Third-Party
15 Plaintiff KAE, Inc.

16 DATED: _____

LANDYE BENNETT BLUMSTEIN LLP

17 By: _____

18 Adolf Zeman
19 Alaska Bar No. 0411082
20 Matthew J. Mead
21 Alaska Bar No. 0711095
22 Attorneys for Third-Party Defendant
23 City of Buckland

24 **ORDER**

25 Based on the stipulation of the parties, IT IS HEREBY ORDERED that all
26 claims asserted in the above-captioned action are hereby dismissed with prejudice and
each party shall bear their own attorney's fees and costs in this matter.

DATED: _____

By: _____

John Suddock
Superior Court Judge