

## SETTLEMENT AGREEMENT AND PARTIAL RELEASE

This Settlement Agreement and Release, effective as of the date it is fully executed, is made and entered into by the State of Alaska and John E. and Carol A. Cook, and C & R Enterprises *dba* Sterling Tesoro Service Station. The State of Alaska and the Cooks are hereinafter collectively referred to as the "PARTIES", and may be referenced singularly as a "PARTY".

WHEREAS, on or about December 1988, hydrocarbon contamination was discovered as part of the expansion of the Sterling Highway that was later determined to have originated from the Cooks Sterling Tesoro Service Station;

WHEREAS, on or about September 1990, the Alaska Department of Environmental Conservation undertook cleanup actions at the Cooks Sterling Tesoro Station;

WHEREAS, in October 1991, John and Carol Cook (Cooks) entered into a Compliance Order by Consent (No. 89-230-137-1) with DEC in which the Cooks agreed to undertake additional cleanup of the contamination;

WHEREAS, the State of Alaska subsequently provided over \$920,000 from the Underground Storage Tank Assistance Program for investigation and remediation of the contamination from the Cook's Tesoro Station;

WHEREAS, since that time, the Cooks have spent additional sums conducting remediation and long-term groundwater monitoring at the site;

WHEREAS, the PARTIES wish to resolve certain cleanup obligations under the 1991 Compliance Order by Consent and avoid the expense and disruption of further enforcement proceedings;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the PARTIES hereto agree as follows:

**PARTIES**

A. "State of Alaska" means the State of Alaska in all its capacities and includes all departments, divisions and agencies of the State government, and their officers and employees.

B. "Cooks" means John E. and Carol A. Cook, and C & R Enterprises dba Sterling Tesoro Service Station, and their predecessors, successors, and assigns.

**DEFINITIONS**

A. The "Site" as used herein shall mean the Cooks Sterling Tesoro Service Station and the real property located at Lots 1B, 1A and 2A of Doser Subdivision No. 2, within section 7, township 5 North, range 8 West of the Seward Meridian, Sterling, Alaska.

B. "Cooks Tesoro Contamination" as used herein shall mean petroleum contamination on or from the Site that initially entered the environment prior to October 11, 1991.

**I. RELEASES AND COVENANTS NOT TO SUE BY THE PARTIES**

A. For and in consideration of the sum of ~~Four Hundred Thousand Dollars~~ <sup>FIVE HUNDRED EIGHTY SIX THOUSAND NINE HUNDRED SIXTY SIX DOLLARS</sup> (\$586,966.00), receipt of which is hereby acknowledged, the State of Alaska agrees to

- (1) release its hazardous substance release cost recovery liens on the Site;
- (2) allow the Cooks to retain the Cooks Tesoro Station Property sale proceeds free and clear of any claims by the State; and
- (3) release the purchaser of the Cooks Tesoro Station Property from any liability for the petroleum contamination subject to the 1991 Compliance Order by Consent except for (a) providing DEC and its contractors access to the Site; and (b) providing for the proper disposal of contaminated soil or groundwater should it be disturbed as part of future construction on the property or renovation of the station.

B. Except with respect to the obligations in Article I(A)(3)(a) & (b) of this Agreement, the State of Alaska, upon the effective date of this Settlement Agreement, releases, discharges and covenants not to sue the Cooks with respect to any and all claims, demands, actions, causes of action, lawsuits, and liabilities, of any kind and nature, (including, without limitation, all civil and administrative claims under federal or state statutes and implementing regulations, or common law for compensatory damages, or equitable or remedial relief, e.g. loss of use, restoration costs, remediation and response costs, consultant fees, attorney's fees and costs, property damage, natural resource damages or economic loss) that arise from, relate to, or are based on, or could in the future arise from, relate to, or be based on the Cooks Tesoro Contamination; and any unresolved remediation obligations under the 1991 Compliance Order by Consent.

C. Upon the effective date of this Settlement Agreement, the Cooks release, discharge and covenant not to sue the State of Alaska, with respect to any and all claims,

demands, actions, causes of action, lawsuits, and liabilities, of any kind and nature, (including, without limitation, all civil and administrative claims under federal or state statutes and implementing regulations, or common law for compensatory damages, or equitable or remedial relief, e.g. loss of use, restoration costs, remediation and response costs, consultant fees, attorney's fees and costs, property damage, natural resource damages or economic loss) that arise from, relate to, or are based on, or could in the future arise from, relate to, or be based on the Cooks Tesoro Contamination.

## **II. ACKNOWLEDGMENT OF SCOPE OF RELEASE AND COVENANT NOT TO SUE.**

A. Except as provided in Article I(B), each Party intends and agrees that the release of claims in Article I of the Settlement Agreement shall extend to each other Party, their past, present, and future attorneys, agents, contractors, insurers, servants, representatives, employees, subsidiaries, affiliates, predecessors and successors-in-interest, who may in any way be responsible for any damages sustained, whether or not such parties are specifically named in this release of claims and settlement agreement, and whether or not such damages are presently known or unknown. Each Party acknowledges that the Party is familiar with the decisions of the Alaska Supreme Court in the cases of *Young v. State of Alaska*, 455 P.2d 899 (Alaska 1969), *Alaska Airlines v. Sweat*, 568 P.2d 916 (Alaska 1977), and *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978), or has had the benefit of advice of an attorney concerning the meaning and import of these decisions, and it is still that Party's true intent and desire to release to the full extent set forth in Article I each other Party, its past, present, and future attorneys, agents, contractors, insurers, servants, representatives, employees, subsidiaries, affiliates, predecessors and

successors-in-interest or any other person or entity who could at any future date be possible defendants in any action arising directly out of the Cooks Tesoro Contamination as fully as though they were specifically listed and named herein.

B. Each Party intends and agrees that the covenant not to sue shall have the same scope as the release as described in Paragraph A of this Article except as follows:

(1) If any person or entity not a party to this Settlement Agreement (“Third Party”) asserts a claim relating to or arising directly from the Cook Tesoro Contamination in any present or future litigation against any of the Parties, no Party shall assert a right of contribution or indemnity against any other Party. However, notwithstanding any other provision of this Settlement Agreement, the sued Parties may assert any claim or defense against each other or implead any other Party necessary as a matter of law to obtain an allocation of liability among the Parties in a case under this paragraph. Any such actions shall be solely for the purpose of allocating liability, if any. The Parties shall not enforce any judgments against each other in such cases.

(2) A Party may sue another Party to enforce the terms of the Settlement Agreement.

### **III. ADDITIONAL TERMS.**

A. Permanent And Binding Resolution: This Settlement Agreement is a permanent and binding accord and resolution of the rights and obligations of the PARTIES with respect to all matters that are the subject of this Settlement Agreement or the Releases attached hereto.

B. Right of Entry to Perform Remediation: The Cooks agree that they will provide entry to the Site during the hours of 8 a.m. to 6 p.m. and after no less than seventy-two hours notice, to DEC and its Agents to enter in, on, upon, over and across any portion of the Site to operate, maintain, alter, repair, and remove existing devices for the monitoring, containment, and treatment of contamination in soil, air and water, investigate and take samples, and, upon agreement as to the scope of work, excavate and remove waste, pollutants, hazardous substances, contaminated soils; contaminated waste, close and abandon monitoring wells, and such other conduct or activities as which may be agreed upon. Nothing in this Settlement Agreement shall be construed to require the State of Alaska to clean up, remediate, or restore the Cooks Tesoro Contamination or contamination released at the Site.

C. No Admission: By entering into this Settlement Agreement, the PARTIES do not intend to make, nor shall they be deemed to have made, any admission of any kind. The PARTIES agree that they are entering into this Settlement Agreement solely as a business decision for the purposes of settling certain disputes between them and to avoid the cost of further litigation with respect to these disputes. This Settlement Agreement is the product of informed negotiations and compromises of previously stated legal positions. Nothing contained in this Settlement Agreement shall be construed as an admission by any PARTY as to the merit or lack of merit of any particular theory relating to the payment of claims arising from or relating to the Cooks Tesoro Contamination or the Cooks Tesoro Litigation. Statements made in the course of negotiations have been and shall be without prejudice to the rights of the PARTIES in any disputes or transactions with any other persons or entities not party to this Settlement

Agreement. With respect to all such matters or persons, the PARTIES hereby reserve all previously held positions and all other rights and privileges.

D. Use of Agreement: The PARTIES agree that this Settlement Agreement and Release and any acts in the performance of this Settlement Agreement and Release are not intended to be, nor shall they in fact be, used in any case or other proceeding for any purpose, including, but not limited to, efforts to prove either the acceptance by any PARTY hereto of any particular theory of coverage or as evidence of any obligation that any PARTY hereto has or may have to anyone. Provided, however, that nothing contained in this section shall be interpreted to restrict the right of any PARTY (a) to bring a claim or to introduce evidence predicated on a breach of this Settlement Agreement, (b) to supply a copy of any Release attached hereto or (c) to provide proof as to the fact of settlement and release provided herein if necessary to respond to a suit or claim.

E. Protection Afforded: This Settlement Agreement shall be deemed to fall within the protection afforded compromises and offers to compromise by Rule 408 of the Federal Rules of Evidence and any similar state law provision.

F. Entire Agreement: This Settlement Agreement constitutes the entire agreement between the PARTIES regarding the Cooks Tesoro Contamination and the Cooks Tesoro Litigation. Except as explicitly set forth in this Settlement Agreement and the Release, there are no representations, warranties, or inducements, whether oral, written, expressed or implied, that in any way affect or condition the validity of this Settlement Agreement or the Releases or any of

their conditions or terms. All prior negotiations, oral or written, are merged in this Settlement Agreement.

G. No Assignment: The Cooks warrant that, except as provided for in this Settlement Agreement and the 1991 Compliance Order by Consent, they have not, as of the effective date of this Settlement Agreement, assigned, conveyed, or otherwise transferred any claims, demands, causes of action, rights, or obligations related in any way to the Cooks Tesoro Contamination, or to the claims, losses, and expenses released herein.

H. Other Assurances: Each PARTY hereto shall provide such further and other written assurances reasonably necessary to effectuate the terms and intent hereof. In the event that either PARTY seeks a Court Order determining that the settlement was effective and/or in good faith, the PARTIES, to the fullest extent reasonably possible, shall cooperate and assist each other in obtaining said good faith settlement determination. In the event any claim or action is brought against the State of Alaska by any person with respect to liabilities or obligations released hereunder, the Cooks agree that they will not take any position that is inconsistent with the position of the State of Alaska that no such claim will now lie against the State of Alaska.

I. Authorship: The PARTIES agree that this Settlement Agreement and the Release reflect the joint drafting efforts of all PARTIES. In the event any dispute, disagreement or controversy arises regarding this Agreement, the PARTIES shall be considered joint authors and no provision shall be interpreted against any PARTY because of authorship. Each PARTY also agrees that it is fully informed as to the meaning and intent of this Settlement Agreement and the Release and has been advised by independent counsel of its choosing in that regard.



J. Execution: This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

K. Amendment: This Settlement Agreement may not be amended or modified except by a written instrument signed by the duly authorized representatives of all of the PARTIES.

L. Headings: The headings of sections are designed to facilitate ready reference to subject matter and shall be disregarded when resolving any dispute concerning the meaning or interpretation of any language contained in this Settlement Agreement.

M. Notices: Any statements, communications or notices to be provided pursuant to this Settlement Agreement shall be sent by certified mail to the attention of the PARTIES indicated below, until such time as notice of any change of person to be notified or change of address is forwarded to all PARTIES:

(a) For the State of Alaska

Breck C. Tostevin, Esq.  
Senior Assistant Attorney General  
Department of Law  
Office of the Attorney General  
Anchorage Branch  
1031 W. Fourth Avenue, Suite 200  
Anchorage, AK 99501

(b) For the Cooks:

John and Carol Cook  
P.O. Box 1254  
Soldotna, AK 99669

With a Copy To:

Amy Gurton Mead, Esq.  
Robertson, Monagle & Eastaugh  
Goldbelt Place, Suite 300  
801 West 10<sup>th</sup> Street  
Juneau, AK 99801

N. Authority and Binding Effect:

(a) The individuals signing this Settlement Agreement and Release and the PARTIES on whose behalf such individual are signing hereby represent and warrant that they are empowered and authorized to sign on behalf of and bind the PARTIES for whom they have signed in all respects.

(b) This Settlement Agreement and Release shall be binding upon and shall inure to the benefit of the PARTIES, their heirs, successors, assigns, affiliated companies, subsidiaries, parents, stockholders, principals, agents and predecessors in interest thereto.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement by their duly authorized representatives.

THE STATE OF ALASKA

By: 

Breck C. Tostevin  
Senior Assistant Attorney General

State of Alaska )  
 )ss  
Third Judicial District )

Before me, a notary public, personally appeared Breck C. Tostevin, Senior Assistant Attorney General who, being duly sworn, stated that he has executed the foregoing Settlement Agreement on behalf of the Party named above and is duly authorized to do so.

Witness my hand and notarial seal this 23rd day of October, 2006.



Merrill J. Lopez  
Notary Public in and for the State of Alaska  
Commission expires: with office

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement by their duly authorized representatives.

JOHN E. COOK

By: John E. Cook  
John E. Cook

State of Alaska )  
 )ss  
Third Judicial District )

Before me, a notary public, personally appeared John E. Cook who, being duly sworn, stated that he has executed the foregoing Settlement Agreement on behalf of the Party named above and is duly authorized to do so.

Witness my hand and notarial seal this 4 day of October, 2006.



Laura M. West  
Notary Public in and for the State of Alaska  
Commission expires: 10/1/06

CAROL A. COOK

By: Carol A. Cook  
Carol A. Cook

State of Alaska )  
 )ss  
Third Judicial District )

Before me, a notary public, personally appeared Carol A. Cook who, being duly sworn, stated that he has executed the foregoing Settlement Agreement on behalf of the Party named above and is duly authorized to do so.



Witness my hand and notarial seal this 4 day of October, 2006.

Laura West  
Notary Public in and for the State of Alaska  
Commission expires: 10/10/06

C & R ENTERPRISES

By: John E. Cook  
John Cook  
Title: owner

State of Alaska )  
 )ss  
Third Judicial District )

Before me, a notary public, personally appeared John E. Cook, being duly sworn, stated that he has executed the foregoing Settlement Agreement on behalf of the Party named above and is duly authorized to do so.

Witness my hand and notarial seal this 4 day of October, 2006.

Laura M. West

Notary Public in and for the State of Alaska

Commission expires: 10/10/06





## NOTICE OF SETTLEMENT AGREEMENT

Whereas, the State of Alaska Department of Environmental Conservation (“ADEC”) and John E. and Carol A. Cook, and C & R Enterprises *dba* Sterling Tesoro Service Station (“Cooks”) have entered into a Settlement Agreement (“Agreement”) relating to the Cook’s Sterling Tesoro Station (“Property”) as described as follows:

Lots 1A, 2A, and 1B of Doser Subdivision No. 2, filed under Plat No. 81-145, Kenai Recording District, Third Judicial District, State of Alaska located within the S ½ NW ¼ SE ¼ Section 7, T5N, R8W, Seward Meridian.


Whereas, the Agreement specifies a condition on the use of the Property and permits ADEC to access the Property for Remediation Activities, concerning which ADEC wishes to inform other persons who may acquire an interest in the Property.

Now, therefore, as more fully specified in the Agreement, ADEC and the Cooks have agreed to the following provisions with respect to the Property:

1. **Condition on Use.** Subject to the terms and conditions of the Agreement, the Property is subject to the following condition on the use of the Property, which may be terminated or modified by ADEC following remediation of the Property: the Cooks and their successors and assigns remain responsible for the proper disposal of any petroleum-contaminated soil or groundwater that it is disturbed as part of future construction on the Property or renovation of the service station on the Property.

2. **Right of Access.** Subject to the terms and conditions of the Agreement, the Cooks and their successors and assigns agree that they will provide entry to the Site during the hours of 8 a.m. to 6 p.m. and after no less than seventy-two hours notice, to ADEC and its Agents to enter in, on, upon, over and across any portion of the Site to operate, maintain, alter, repair, and remove existing devices for the monitoring, containment, and treatment of contamination in soil, air and water, investigate and take samples, and, upon agreement as to the scope of work, excavate and remove waste, pollutants, hazardous substances, contaminated soils; contaminated waste, close and abandon monitoring wells, and such other conduct or activities as which may be agreed upon.

Alaska Department of Environmental Conservation

  
By: Larry Dietrick  
Director, Division of Spill  
Prevention and Response

Dated this 23<sup>RD</sup> day of October, 2006.

Return to: Breck Tostevin  
Assistant Attorney General  
Alaska Department of Law  
1031 West Fourth Avenue, Suite 200  
Anchorage, AK 99501

STATE BUSINESS, NO CHARGE

