

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

00.38.112
100.23.025 ✓
FRANK H. MURKOWSKI
GOVERNOR

Environmental
1031 WEST 4th AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5274
FAX: (907) 278-7022

June 21, 2006

Mr. Arvil Still
Mid-City Enterprises, LLC
841 Skyline Drive
Fairbanks, AK 99712

RECEIVED

JUN 27 2006

**CONTAMINATED
SITES
FAIRBANKS**

Re: McCall Property Prospective Purchaser Agreement:
AGO File No. 661-06-0206

Dear Mr. Still:

Enclosed please find a copy of the fully executed prospective purchaser agreement and the notice. I have forwarded the notice to the Fairbanks Records Office for recording. Thank you for your assistance in finalizing this agreement.

Sincerely,

DAVID W. MÁRQUEZ
Attorney General

By:



Breck C. Tostevin
Senior Assistant Attorney General

BCT:sjl

cc: Doug Bauer, DEC/Fairbanks

AGREEMENT BETWEEN PROSPECTIVE PURCHASER AND ADEC

The Alaska Department of Environmental Conservation (ADEC) and Mid-City Enterprises, LLC (Prospective Purchaser), hereby agree to the terms listed below.

This agreement is entered into pursuant to the PROSPECTIVE PURCHASER AGREEMENT IN EVENT OF MUNICIPAL FORECLOSURE between the Fairbanks North Star Borough (Borough), dated June 20, 2000 for the J. McCall, Inc. property, Section 28, Township 1 South Range 1 East, Fairbanks Meridian, located at 1566 Davidson Street, North Pole, Alaska (hereinafter "the property").

On August 24, 2000, the Prospective Purchaser acquired the property from the Borough through a tax foreclosure deed.

A. The Prospective Purchaser represents and ADEC agrees that the Prospective Purchaser has no prior connection to the property before its acquisition of the property from the Borough and would not be legally responsible for the current contamination on the property if it did not acquire the property from the Borough.

B. In order to facilitate productive re-use of the property, ADEC hereby releases the Prospective Purchaser from liability under state law, including but not limited to AS 46.03.822 (strict liability) and AS 46.03.760 (civil action for pollution damages). This release applies only to liability for contamination that exists on the property at the time that the Prospective Purchaser acquired a deed from the Borough. ADEC hereby covenants not to sue or take any other civil, administrative, or criminal action against the Prospective Purchaser due to contamination that exists on this property at the time that the Prospective Purchaser acquired the deed. The preceding release and covenant is further subject to the following conditions and limitations. If the Prospective Purchaser does not comply with the conditions and limitations below, this release and covenant is null and void.

CONDITIONS AND LIMITATIONS BETWEEN ADEC AND THE PROSPECTIVE PURCHASER

C. The Prospective Purchaser agrees to perform a site characterization of the property in accordance with 18 AAC 75.335 if it is determined by ADEC to be necessary, in order to identify the extent and nature of the site contamination. The site characterization activity shall include the items set forth in Attachment A, which will also include a date by which the characterization must be completed. The Prospective Purchaser acknowledges that the site characterization will be

performed at his own expense and will not be reimbursed by the Borough or ADEC.

D. The Prospective Purchaser agrees to clean up the property as set forth in Attachment B, as negotiated between ADEC and the Prospective Purchaser, by a date to be determined by ADEC after completion of the site characterization. The cleanup activity shall be conducted in accordance with Article 3 of 18 AAC 75 (including 18 AAC 75.390 if ADEC determines that a waiver of modification will be protective of human health, safety, and welfare, and of the environment).

E. The Prospective Purchaser will allow ADEC or their authorized representative, entry onto the property for all regulatory purposes.

F. ADEC does not release the Prospective Purchaser from any potential liability for new releases that occur on the property after the Prospective Purchaser takes possession or acquires the deed (whichever occurs first).

FURTHER PROVISIONS:

G. ADEC shall use its best efforts to ensure that actions, if any, taken with respect to the property by the Environmental Protection Agency (EPA) are not inconsistent with the terms and conditions of this Agreement. However, the parties to this Agreement recognize that EPA is not bound by its terms, and ADEC does not represent that this Agreement has any effect on a subsequent owner's potential liability under federal law should it acquire the property.

H. The parties hereto represent and warrant that their undersigned representatives have the right and authority to execute this Agreement, and that the consideration for this Agreement is full, fair, and adequate consideration to each party.

I. The parties hereto acknowledge that they understand that the execution of this Agreement does not constitute in any manner whatsoever an admission of liability on the part of any party hereto for any matters covered by this Agreement and that such liability is specifically denied.

J. The parties acknowledge and agree that they have had an opportunity to be represented in the negotiations for the preparation of this Agreement by counsel of their own choosing, that they have read this Agreement, and that they are fully aware of its contents and of its legal effect.

K. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska.

J. This release contains the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. This agreement can be modified in writing signed by the parties to be affected by any modification.

Dated: 6/16/06

Alaska Dept. of Environmental Conservation

By: Lay Detrick
Title: DIRECTOR, SPAR

Dated: 5/25/06

Mid-City Enterprises, LLC

By: Arvil Still
Arvil Still
Member

By: Linda F. Still
Linda Still
Member

APPROVED:

ALASKA DEPARTMENT OF LAW
DAVID MARQUEZ
ATTORNEY GENERAL

By: Breck Tostevin
Assistant Attorney General
6/21/2006

**Attachments A and B to
the Agreement between Prospective Purchaser and ADEC for the Property
Known as 'McCall Property ADEC File 100.23.025'**

Site History:

The McCall property, Fairbanks North Star Borough tax lot TL-2800, Section 28, Township 1 South Range 1 East, Fairbanks Meridian, has been the subject of an Alaska Department of Environmental Conservation (ADEC) site assessment and ground water investigation since 1994. The property was initially suspected of being a contributing source to a regional trichloroethene (TCE) and 1,1,1-trichloroethane (TCA) ground water plume that has impacted residential drinking water wells in the Six Mile Village Subdivision to the northwest. ADEC activities are documented in a series of reports located in ADEC files 100.23.025 (McCall Property) and 100.38.112 (Six Mile Richardson Highway Ground Water Investigation).

The United States Environmental Protection Agency (EPA) conducted a removal action at the property in 1996 where the remnants of approximately 1000 55-gallon barrels were removed from the "North Pit." The removal action is documented in EPA's report *EPA Federal On-scene Coordinator's Final Report McCall Drum Site Fairbanks, Alaska July 8-August 15, 1996*.

Although no TCE sources have been detected to date on the property, the property does have documented environmental conditions that need to be addressed by the Prospective Purchaser. These site conditions requiring action are summarized below.

Suspected Underground Storage Tank (UST) at Former Military Shop Building

Diesel Range Organic (DRO) ground water contamination was discovered in 1998 in monitoring well MW-22 at 3180 micrograms per liter ($\mu\text{g/L}$) which is above the ADEC cleanup level of 1500 ($\mu\text{g/L}$). It was believed that the ground water contamination was caused by a suspected UST that was located adjacent to the former military shop building.

Removal actions by Oil Spill Technology, Inc. in March 2001 discovered that there was no UST at the location, only a pipe sticking out of ground, and there was DRO soil contamination at the ground water table exceeding ADEC cleanup level of 250 milligrams per kilogram (mg/Kg). DRO was detected at three locations in the base of the excavation at the water table at concentrations of 1880 mg/Kg, 6850 mg/Kg, and 2790 mg/Kg. Some of the DRO soil contamination appears to extend beneath the foundation of the former military shop building. The excavated contaminated soil was stored on a liner on the McCall property.

Monitoring wells MW-21 and MW-23 are located nearby and hydraulically down gradient from MW-22. Neither of these monitoring wells detected DRO above cleanup levels. It appears that the DRO soil and ground water contamination are of limited extent and confined to the McCall property.

Required Actions by Prospective Purchaser:

The following activities need to be approved by ADEC, and performed or supervised by a qualified environmental consulting firm or individual.

- A) By June 30, 2006, the Prospective Purchaser will submit to ADEC confirmation soil sampling results for the excavated (land spread) soil. ADEC will review the confirmation sampling results for compliance to the cleanup standards. ADEC may require, and the Prospective Purchaser will complete, additional confirmation sampling or cleanup based on the results of ADEC's review of the confirmation sampling results.

B) By June 30, 2006, the Prospective Purchaser will submit a ground water monitoring plan to ADEC providing for periodic testing of DRO ground water contamination at MW-22 until the ground water meets ADEC cleanup levels. After approval by ADEC, the Prospective Purchaser will implement the groundwater monitoring plan.

C) Pursuant to 18 AAC 75.375, the Prospective Purchaser shall execute the attached Notice of Prospective Purchaser Agreement for filing with the State Recorder's Office to provide notice of this Agreement and the presence of DRO soil and ground water contamination above ADEC cleanup levels on the property in the vicinity of the former military shop building. The Prospective Purchaser shall provide a copy of the Notice of Prospective Purchaser Agreement attached to this Agreement to any current or future concessionaire, lessee or sub-lessee of the property as of the effective date of this Agreement, and shall ensure that any subsequent concessionaire agreements, leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with the terms and conditions of this Agreement. The failure of the Prospective Purchaser to provide a copy of the Notice of Prospective Purchaser Agreement to any current or future concessionaire, lessee or sub-lessee shall not invalidate any provision of the Prospective Purchaser Agreement.

D) Localized soil contamination at ground water interface at MW-21

During the installation of monitoring well MW-21 in 1996, soil samples at the ground water interface (7.5-9.5 ft bgs) contained low-level concentrations of benzene at 0.11 mg/Kg and tetrachloroethene (PCE) at 0.62 mg/Kg. In 1998 ADEC promulgated soil cleanup levels (migration to ground water) for benzene and PCE of 0.02 mg/Kg and 0.03 mg/kg respectively.

Ground water was monitored at MW-21 from 1996 through 1999. Neither benzene nor PCE were detected in the ground water.

If soil within a 100 foot radius of MW-21 is to be disturbed in the future, 1) the Prospective Purchaser shall contact ADEC for soil sampling requirements prior to excavating any soil and 2) will treat or dispose of the soil in accordance with ADEC and federal requirements.

E) Ground Water Monitoring Well Maintenance and Abandonment

The existing ground water monitoring wells shall be maintained by the Prospective Purchaser until ADEC authorizes abandonment and closure of the wells by The Prospective Purchaser. The Prospective Purchaser will maintain and, after requested to do so by ADEC, abandon and close the monitoring wells in accord with ADEC regulations.

F) ADEC access to the Property and Ground Water Monitoring Wells

The Prospective Purchase shall allow ADEC, its authorized officers, employees, representatives, and all other persons performing response actions under ADEC oversight, reasonable access to the property for the purpose of monitoring environmental conditions at the site and to investigation and cleanup activities and for to ground water monitoring wells for the purpose of collecting ground water samples. The Prospective Purchaser shall ensure that assignees, successors in interest, concessionaires, lessees and sub-lessees of the property shall provide the same access as the Prospective Purchaser is required to provide under this Agreement.

NOTICE OF PROSPECTIVE PURCHASER AGREEMENT

Whereas, the State of Alaska Department of Environmental Conservation ("ADEC") and Mid-City Enterprises, LLC, an Alaskan limited liability company ("Mid-City") have entered into a Prospective Purchaser Agreement and Covenant Not to Sue Between the State of Alaska and Mid-City Enterprises, LLC, Relating to Lands at North Pole, Alaska ("Agreement"), with respect to the remediation of contamination on the real property ("Property") described as follows:

Parcel I – A tract of land located in the Southeast 1/4 of Section 28, Township 1 South, Range 1 East, Fairbanks Meridian; Records of the Fairbanks Recording District, Fourth Judicial District, State of Alaska, more particularly described as follows:

FROM the ¼ corner common to Sections 28 and 27, Township 1 South, Range 1 East, Fairbanks Meridian;

THENCE along the East boundary of Section 28, South 0°06' East a distance of 498.64 feet to a point on the Southerly boundary of the New Richardson Highway and TRUE POINT OF BEGINNING;

THENCE continuing along the East boundary of Section 28, South 0°06' East a distance of 821.49 feet;

THENCE South 89°54' West a distance of 598.07 feet;

THENCE NORTH 10°38'40" West a distance of 538.46 feet;

THENCE North 0°06' West a distance of 389.05 feet;

THENCE North 10°12'30" East a distance of 369.45 feet to a point on the Southerly boundary of the New Richardson Highway;

THENCE along the Southerly boundary South 54°00' East a distance of 781.44 feet to the TRUE POINT OF BEGINNING.

Parcel II – The East ½ of the Southeast ¼ of the Southeast ¼, Section 28, Township 1 South, Range 1 East, Fairbanks Meridian; Records of the Fairbanks Recording District, Fourth Judicial District, State of Alaska.

Whereas, the Agreement provides for the characterization and cleanup of certain Existing Contamination on the Property by Mid-City;

Whereas, the Agreement specifies restrictions on the use of the Property and permits ADEC to access the Property during Remediation Activities, concerning which the

parties to the Agreement wish to inform other persons who may acquire an interest in the Property.

Now, therefore, as more fully specified in the Agreement, ADEC and Mid-City have agreed to the following use restrictions and access provisions with respect to the Property:

1. **Use Restrictions.** Subject to the terms and conditions of the Agreement, the Property is subject to the following use restrictions, which may be terminated or modified by ADEC following remediation of the Property:

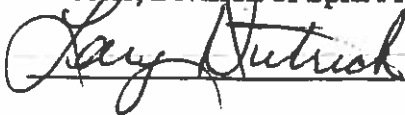
a. Activities which disturb the Existing Contamination or utilize groundwater are prohibited on the Property, except with the written permission of ADEC;

2. **Access.** Subject to the terms and conditions of the Agreement, the Property is subject to the following access requirements:

a. ~~Assignees, successors in interest, concessionaires and lessees (and their sub-lessees)~~ of Mid-City shall provide to ADEC, its authorized officers, employees, representatives, and all other persons performing response actions under ADEC oversight, its authorized officers, employees, representatives, and all other persons performing response actions under ADEC oversight, reasonable access to the property for the purpose of monitoring environmental conditions at the site and to investigation and cleanup activities and for to ground water monitoring wells for the purpose of collecting ground water samples. The Prospective Purchaser shall ensure that assignees, successors in interest, concessionaires, lessees and sub-lessees of the property shall provide the same access as the Prospective Purchaser is required to provide under this Agreement.

Alaska Department Of Environmental Conservation


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



Dated this 6th day of JUNE, 2006

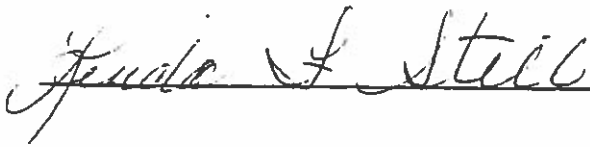
Mid-City Enterprises, LLC.

BY: Avril Still
Member



Dated this 8 day of June, 2008 6

BY: Linda Still
Member



Dated this 8th day of June, 2008 6

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

STATE BUSINESS, NO CHARGE



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