

**Prospective Purchaser Agreement  
Between the State of Alaska and the Palmer Car Wash, LLC  
Concerning the Purchase of the Former Palmer Tesoro**

1. This agreement (Agreement) is made between the State of Alaska, Department of Environmental Conservation (ADEC) and Palmer Car Wash, LLC (Purchaser) concerning the purchase of the former Palmer Tesoro,<sup>1</sup> located at 175 W. Arctic Ave., Palmer, Alaska (Parcel).

2. ADEC enters into this Agreement pursuant to Title 46, chapter 3 of the Alaska Statutes (AS) and Title 18, chapters 75 and 78 of the Alaska Administrative Code (AAC).

3. Purchaser and ADEC enter into this Agreement to:

a. release Purchaser, as well as its directors, officers, members, managers, employees, contractors, subcontractors, agents, and insurers (the “Released Parties”) from potential liability that might otherwise arise under state law based on the terms and conditions described below for existing petroleum contamination (Contamination) located on or beneath the Parcel from leaking underground storage tanks (diesel and gasoline) that formerly existing on the Parcel; and to

b. protect public health and the environment by allowing ADEC access to the Parcel for the purpose of conducting environmental remediation and sampling and to protect users of the site from exposure to Existing Contamination.

4. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to the reservations contained in Section VIII (Reservation of Rights) herein, the potential liability of the Released Parties for the Existing Contamination located on or beneath the Parcel, which would otherwise result from Purchaser’s ownership of the Parcel.

5. The Parties agree that it is in the best interest of the public to resolve the Purchaser’s potential liability as the prospective owner of the Parcel, in exchange for an agreement with Purchaser to limit use and development of the Parcel and to take specified actions to prevent exposure to Existing Contamination that may be located on or beneath the Parcel, as provided herein.

**I. Definitions**

6. Unless otherwise expressly provided, the terms used in this Agreement that are defined in AS Title 46, chapter 3, or in the regulations promulgated thereunder shall have the meaning assigned to them in those statutes and regulations, including any amendments in effect as of the effective date of this Agreement. For purposes of this Agreement, the following terms shall have the following meanings:

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<sup>1</sup> Hazard ID 23764, File Number 2245.26.002.

- a. "ADEC" shall mean the Alaska Department of Environmental Conservation.
- b. "Existing Contamination" shall include petroleum and its constituents such as benzene, toluene, ethylbenzene, xylenes, and naphthalene that is located on or beneath the Parcel and was released onto the Parcel prior to Purchaser's ownership of the Parcel.
- c. "Parcel" shall mean the following real property located at 175 W Arctic Ave., Palmer, AK, more particularly described as follows:

**Tract A of FISHER'S CORNER, according to Plat No. 2018-15 of the official records of the Palmer Recording District, Third Judicial District, State of Alaska.**
- d. "Parties" shall mean ADEC and Purchaser collectively.
- e. "Party" shall mean either ADEC or the Purchaser.
- f. "Purchaser" shall mean the Palmer Car Wash, LLC.
- g. "Released Parties" shall mean the Purchaser, as well as its directors, officers, employees, contractors, subcontractors, agents, and insurers who might otherwise be liable for the Existing Contamination located on or beneath the Parcel without entering into this Agreement.
- h. "Use Restrictions" shall mean those restrictions on use of the Parcel identified in Section IV (Use Restrictions) of this Agreement.

## **II. Statement of Facts**

7. Purchaser wishes to purchase the Parcel from the current owner and liable party responsible for cleaning up the Existing Contamination, Fisher's Fuel, Inc. The existing Chickadees building will be demolished and removed and a new fuel station, convenience store and car wash will be constructed on the Parcel. The convenience store will be approximately 5000 square feet and the tunnel car wash will be approximately 6000 square feet.

8. Existing Contamination has come to be located on and beneath the Parcel, in both the soil and groundwater, from a petroleum release that occurred in 1989 during the time in which the facility was previously operated by persons other than the Purchaser as a commercial fueling station.

9. Remediation of petroleum releases has been ongoing since 1989 including the excavation and treatment of petroleum-contaminated soil and the removal of the underground

storage tanks and associated components. It is anticipated that the site will be ready for closure within the next 18-24 months. However, groundwater contamination continues to exist on the Parcel and the release cannot be closed until groundwater sampling indicates that Existing Contamination is below ADEC cleanup levels or the responsible party and landowner agree to the placement of appropriate institutional controls designed to limit current and future exposure to remaining contamination.

10. Purchaser represents, and for the purposes of this Agreement ADEC relies on those representations, that Purchaser has not caused or contributed to the release of the Existing Contamination located on or beneath the Parcel.

### **III. Work to be Performed**

11. Prior to beginning new construction on the Parcel, Purchaser agrees to hire a qualified environmental professional to develop a *Soil and Water Management Plan* that addresses how contaminated media on the Parcel will be managed during demolition of the existing building, and construction and development of the Parcel.

### **IV. Use Restrictions (“Institutional Controls”)**

12. Purchaser agrees to limit use of the Parcel as follows:

The groundwater on or beneath the Parcel cannot be withdrawn and used for any purposes, including drinking, excavation de-watering, or industrial cooling without prior ADEC review and approval.

If buildings are constructed over the contaminated area, the vapor intrusion pathway must be evaluated and mitigated if the pathway is complete. See Figure 1.

13. Nothing in this Section IV shall create any obligation for Purchaser to perform or fund any site characterization, cleanup work, site monitoring, or other activity to address or deal with Existing Contamination on the Parcel.

### **V. Access/Notice to Successors in Interest**

14. Upon acquisition, Purchaser agrees to provide access to the Parcel to ADEC, its authorized officers, employees, representatives, and all other persons performing response actions under ADEC oversight. ADEC shall be provided with access to the Parcel at all reasonable times for the purposes of performing and overseeing response actions at the Parcel under applicable state and federal law, including but not limited to sampling soil and groundwater to determine whether Existing Contamination is below ADEC cleanup levels.

15. Purchaser shall use its best efforts to ensure that the assignees, successors-in-interest, concessionaires, or sub-lessees of Purchaser’s interests in the Parcel shall provide the

same access to the Parcel to ADEC, its authorized officers, employees, and representatives, as Purchaser is required to provide under this Agreement.

16. Purchaser shall provide a copy of the *Notice of Prospective Purchaser Agreement* attached to this Agreement to any future concessionaire, assignee, or sub-lessee of Purchaser's interests in the Parcel.

17. Purchaser shall ensure that any subsequent concessionaire agreements, leases, subleases, assignments, or transfers of interest(s) in the Parcel are consistent with the terms and conditions of this Agreement.

#### **VI. Due Care/Cooperation**

18. Purchaser shall exercise due care with respect to the Existing Contamination on and beneath the Parcel, and shall comply with all applicable local, state, and federal environmental laws and regulations related to the Existing Contamination.

19. With the exception of the Existing Contamination, in the event Purchaser becomes aware of any action or occurrence by Purchaser which causes or threatens a release of hazardous substances, pollutants, or contaminants at, or from, the Parcel, Purchaser shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements, immediately notify ADEC of such release or threatened release.

#### **VII. State of Alaska Covenant Not to Sue**

20. Except as otherwise provided in Section VIII (Reservation of Rights) of this Agreement, the State of Alaska covenants not to sue or take any other civil or administrative action against the Released Parties for any and all liability with respect to the Existing Contamination located on or beneath the Parcel pursuant to AS Title 46, chapter 3, the common law, or federal environmental laws. This covenant not to sue shall become effective upon signature by both parties to this Agreement and extend only to the Released Parties and not to any other person or entity except as provided for in Section IX (Parties Bound/Transfer of Covenant). This covenant not to sue shall be ineffective if it is discovered that the Purchaser caused or contributed to the Existing Contamination located on or beneath the Parcel.

#### **VIII. Reservation of Rights**

21. The State of Alaska covenant not to sue set forth in Section VII does not pertain to any matters other than those expressly specified in paragraph 20. The State of Alaska and ADEC reserve, and the Agreement is without prejudice to, all rights against Purchaser with respect to all other matters, including but not limited to, the following:

- a. Claims based on a failure by Purchaser to meet a requirement of this Agreement, including but not limited to Section III (Work to be Performed), Section IV

(Use Restrictions “Institutional Controls”), Section V (Access/Notice to Successors in Interest), and Section VI (Due Care/Cooperation).

b. Any liability resulting from future releases of hazardous substances, hazardous waste, pollutants, or contaminants, at or on the Parcel.

c. With the exception of work performed pursuant to Section III above, any liability resulting from exacerbation of the Existing Contamination by Purchaser or its lessees or sub-lessees.

d. Any liability resulting from the release or threat of release of hazardous substances, hazardous waste, pollutants, or contaminants at or on the Parcel that is not included within the definition of Existing Contamination.

22. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Alaska, ADEC, or the Purchaser may have against any person, firm, corporation, or other entity that is not a Party to this Agreement.

23. Nothing in this Agreement is intended to limit the right of the State of Alaska or ADEC to undertake future response actions at the Parcel or to seek to compel parties other than the Released Parties to perform or pay for response actions at the Parcel. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions, which may be taken or be required by the State of Alaska or ADEC in exercising its authority under state or federal law, at the Parcel, except as set forth in this Agreement. Purchaser acknowledges that it is acquiring an interest in property where such response actions may be required. Purchaser agrees to cooperate with ADEC in the event that further response actions are necessary.

#### **IX. Parties Bound/Transfer of Covenant**

24. This Agreement shall apply to and be binding upon the State of Alaska, its officers, commissioners, employees, and agents, and shall apply to and be binding on the Purchaser, its officers, directors, members, managers, employees, agents, assigns, successors, contractors, and authorized representatives. Each signatory to this Agreement represents and certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind that party.

25. All of the rights, benefits, and obligations conferred upon the Purchaser under this Agreement may be assigned or transferred by the Purchaser to any person, provided that (i) the assignee or transferee consents in writing to be bound by the terms of this Agreement, (ii) the assignee or transferee provides a certification that the assignee’s or transferee’s actions with respect to the Parcel have not caused or contributed to the Existing Contamination, and (iii) ADEC approves the transfer or assignment in writing within 10 business days of receipt of the request. If ADEC fails to provide a written response in writing within 10 business days of receipt

of the request, the request for approval or transfer shall be deemed approved by ADEC. ADEC's written approval shall not be withheld or conditioned unreasonably.

26. In the event of an assignment or transfer of an interest in the Parcel, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits of this Agreement. The State of Alaska and the assignor or transferor may only modify this Agreement in writing. In the event the Purchaser transfers any of its interests in the Parcel, or assigns, leases, or otherwise permits a third party to use the Parcel, the Purchaser shall require, as a condition of that transfer, assignment, lease, or permit, that the third party comply with applicable terms and conditions of this Agreement.

#### **X. Disclaimer**

27. This Agreement in no way constitutes a finding by ADEC concerning the risks to human health and the environment which may be posed by Existing Contamination on or beneath the Parcel, nor does it constitute any representation by ADEC that the Parcel is fit for any particular use. ADEC makes no representations with respect to the status of the Existing Contamination on or beneath the Parcel. The Purchaser is encouraged to exercise due diligence to thoroughly investigate the status of the release and the nature and extent of the Existing Contamination on or beneath the Parcel.

#### **XI. Notices**

28. All notices, requests, orders, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally to the addresses, or upon receipt if mailed by certified or registered mail, return receipt requested, with postage prepaid, as follows (or to such other addresses as either Party may designate in writing):

For ADEC: Mr. John Halverson, Manager  
Contaminated Sites Program  
Alaska Department of Environmental Conservation  
555 Cordova Street  
Anchorage, AK 99501-2617

For Purchaser: Mr. Jason Woodward  
P.O. Box 870162  
Wasilla, AK 99687

With Copies to: Ms. Rebecca Convery  
Assistant Attorney General  
Alaska Department of Law  
Environmental Section  
1031 W. 4<sup>th</sup> Ave., Suite 200  
Anchorage, AK 99501-2617

## **XII. Effective Date**

29. The effective date of this Agreement shall be the date upon which the Agreement has been fully executed by the Parties or the date on which the Purchaser acquires ownership of the Parcel, whichever comes later.

## **XIII. Attorney General Approval**

30. The signature of the Alaska Attorney General or her designee hereto signifies approval of the State of Alaska Covenant Not to Sue.

## **XIV. Termination/Modification**

31. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate any provisions establishing the obligations, provided that the provisions shall continue in force unless and until the Party requesting such termination receives written agreement from the other Party to terminate the provisions.

32. The Use Restrictions on the Parcel set forth in Section IV may be terminated or modified in whole or in part by ADEC, following a determination by ADEC that the Use Restrictions, or certain of them, are no longer necessary for protection of public health or the environment. Any release of Use Restrictions shall be in writing, signed by an authorized representative of ADEC, and in a form that may be recorded in the Palmer Recorder's Office, Third Judicial District, State of Alaska. Nothing in this paragraph shall authorize ADEC to enlarge the Use Restrictions on the Parcel set forth in Section IV.

## **XV. General Provisions**

33. This Agreement is contingent upon the Purchaser's closing on the purchase of the Parcel.

34. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska. Jurisdiction for any action arising from this Agreement shall be in the superior court for the State of Alaska, Third Judicial District, Palmer, AK.

35. This Agreement contains the entire agreement and understanding between the Parties with respect to its subject matter 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.

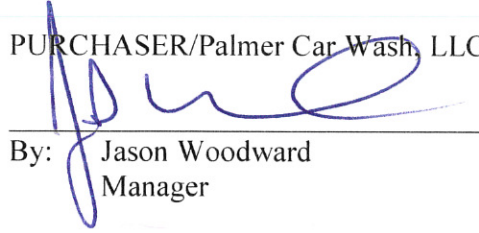
36. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

37. Each signatory to this Agreement represents that he or she has the authority to execute this Agreement and bind the department or corporation on whose behalf he or she is executing the Agreement.



IT IS SO AGREED:

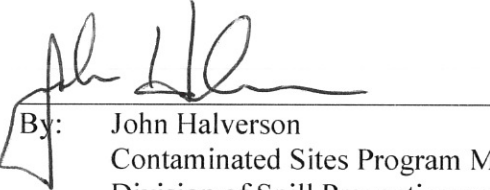
PURCHASER/Palmer Car Wash, LLC

  
By: Jason Woodward  
Manager

Dated this 14 day of SEPT, 2018

IT IS SO AGREED:

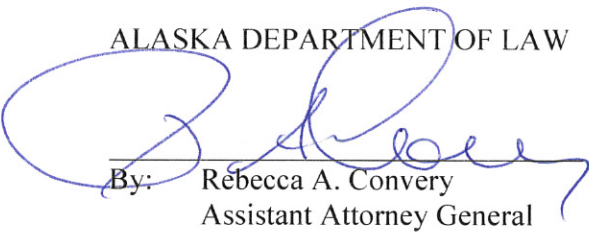
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

  
By: John Halverson  
Contaminated Sites Program Manager  
Division of Spill Prevention and Response

Dated this 21 day of Sept., 2018

APPROVED:

ALASKA DEPARTMENT OF LAW

  
By: Rebecca A. Convery  
Assistant Attorney General

Dated this 19 day of Sept, 2018