

**AMENDMENT NO. 2 TO
TRUE ALASKA BOTTLING COMPANY PURCHASE AGREEMENT
FOR RAW WATER IN BULK FOR EXPORT**

WHEREAS, the City and Borough of Sitka (hereinafter "Sitka") and True Alaska Bottling Company ("TAB") executed the "True Alaska Bottling Company Purchase Agreement for Raw Water in Bulk for Export" (hereinafter "the Agreement"), with an effective date of October 10, 2006;

WHEREAS, Sitka and TAB agreed to amend the Agreement as set out in the Amendment No. 1 To True Alaska Bottling Company Purchase Agreement For Raw Water In Bulk For Export ("Amendment No. 1"); and

WHEREAS, Sitka and TAB agree to further amend the Agreement as set out in this Amendment No. 2 to True Alaska Bottling Company Purchase Agreement For Raw Water In Bulk For Export ("Amendment No. 2"); and

WHEREAS, this Agreement to extend TAB's deadline by one additional year at Sections 3.1 and 3.2 is contingent upon TAB agreeing to the following conditions, which were required and approved by the CBS Assembly at its Regular Meeting on January 26, 2010:

1. Revising the Agreement, in part, at Sections 2, 3, 4, 5, 6, 10 and 14. See below and attached "Amended True Alaska Bottling Company Purchase Agreement for Raw Water in Bulk For Export (Incorporating Amendment No. 2) for easy reference to amendments;
2. That Sitka receives a non-refundable payment of \$100,000 from TAB at the time of the execution of this Amendment No. 2, to be applied towards export water payments owed in the next year, but if no export occurs, it shall be retained by Sitka unencumbered;
3. That TAB agrees to pay the outstanding balance of its outstanding lease payment owed to Sitka at the time of the execution of this Amendment No. 2; and
4. That the Amendment will take effect upon receipt of \$100,000 and outstanding lease balance to Sitka, that must be submitted within one month of the Assembly's motion approving Amendment No. 2, not later than February 26, 2010.

NOW, THEREFORE, Sitka and TAB, based on TAB agreeing and fulfilling all conditions required by the City and Borough of Sitka Assembly set out above, agree to Amendment No. 2, which includes amending the Agreement as follows, as authorized and pursuant to Section 20 of the Agreement (new language underline; deleted language stricken):

2. Definitions.

* * *

g) "export" means the transportation by TAB of bulk water to a destination outside the City and Borough of Sitka ~~the hydrologic unit of the Blue Lake drainage.~~

* * *

3. Water Volumes Contracted by TAB from Sitka.

3.1 Sitka will make available to TAB a total of 8,960 acre-feet of raw water for a period of ~~4836~~ months after the effective date of this Agreement. At the conclusion of the ~~4836~~-month period described in the previous sentence, TAB's access to water will revert to the stages outlined in Subsection 3.2 of this Agreement, providing TAB has met the minimum export volumes set out in Section 3 (this Section) of this Agreement. During the ~~4836~~-month period immediately after the effective date of this Agreement, TAB must take delivery of and export at least ~~5020~~ million gallons of water. If TAB does not take delivery of and export at least ~~5020~~ million gallons of water from Sitka pursuant to this Agreement in the first ~~4836~~ months after the effective date of this Agreement, this Agreement shall, at Sitka's election, terminate and expire without further action by Sitka on the forty-fifth (45th) day after Sitka gives notice to TAB by certified mail that TAB has breached or failed to comply with one of more of the conditions or requirements of this Agreement. unless within said 45-day period, TAB cures the specified default or defaults to Sitka's satisfaction, as determined by Sitka in its sole discretion.

3.2 ~~48 36~~ months after the effective date of this Agreement, the Stages described in this subsection start. The quantities of raw water in bulk which is available for export by TAB from Sitka under this Agreement are set forth below, and shall increase in maximum export volumes available and minimum export requirements as follows:

Contract Increment Stages	Maximum Water Delivery per 24-Hour Period	Acre-Foot Available Annually	Minimum Export Required to Move to Next Stage	Minimum Export Required to Remain at Stage	Required Period of Performance
Stage 1	33.6 MG	1,000 af	230.2 422.8 af (75mg)	153.4 61.4 af (50 20mg)	12-month period
Stage 2	33.6 MG	2,000 af	306.9 af (100mg)	230.2 422.8 af (75 40 mg)	12-month period
Stage 3	33.6 MG	4,000 af	920.7 af (300mg)	306.9 af (100mg)	12-month period
Stage 4	33.6 MG	10,000 af	3,068.9 af (1bg)	920.7 af (300mg)	12-month period
Stage 5	33.6 MG	() ¹	N/A	3,068.9 af (1bg)	12-month period

¹ Annual acre-feet available and the minimum amount of water available for export per 12-month period will be determined solely by Sitka at that time based on availability.

Stage 1: Stage 1 begins ~~48~~ 36 months after the effective date of this Agreement. Sitka will make available to TAB not less than 1,000 acre-feet (325.8 MG) of raw water in a 12-month period in Stage 1. To remain at Stage 1 for a 12 month-period starting on the Stage Anniversary Date of Stage 1, TAB must have taken delivery of and exported from Sitka a minimum of ~~153.4~~ 61.4 af (~~50~~ 20 MG) of bulk water within the 12-month period immediately previous to the most recent Stage Anniversary Date of Stage 1. If TAB does not meet the requirement set out in the previous sentence to remain at Stage 1, this Agreement shall, at Sitka's election, terminate and expire without further action by Sitka on the forty-fifth (45th) day after Sitka gives notice to TAB by certified mail that TAB has failed to meet such requirement, unless within the said 45-day period, TAB cures such failure as determined by Sitka in its sole discretion.

Stage 2: If TAB takes delivery of and exports a total of at least ~~230.2~~ 122.8 acre-feet (~~75~~ 40 MG) of bulk water in a 12-month period, then the amount of bulk water Sitka will make available for delivery to TAB will be increased to 2,000 acre-feet of water in a 12-month period, provided at that time that Sitka still has adequate water quantities available and uncommitted. To remain at Stage 2 for a 12-month period starting on the Stage Anniversary Date of Stage 2, TAB must have taken delivery of and exported from Sitka at least ~~230.2~~ 122.8 af (~~75~~ 40 MG) within the 12-month period immediately previous to the most recent Stage Anniversary Date of Stage 2. If TAB does not meet the requirement set out in the previous sentence to remain at Stage 2, TAB reverts to Stage 1 and a new Stage Anniversary Date of Stage 1 is created.

* * *

4. The Parties' Rights and Obligations Regarding Water Delivered for Export.

a. By this contract, Sitka is entering into an Agreement to sell raw water in bulk under water rights issued to Sitka by the State of Alaska under water export authority contained in Water Appropriation Certificates LAS 19669 and ADL 43826. Sitka's contractual obligation to deliver water to TAB in the quantities specified in this Agreement is subject to these limitations:

a) Sitka shall retain first right and priority to water required for its municipal drinking water supply system and its municipal hydroelectric system, and it may suspend or limit raw water deliveries in bulk to TAB to meet the ~~reasonable~~ requirements of its municipal drinking water and hydroelectric systems, including the planned expansion of its hydroelectric system.

* * *

c) Sitka may temporarily suspend raw water deliveries in bulk in order to perform planned and routine maintenance on its municipal drinking water, hydroelectric and/or water delivery systems, provided that Sitka shall give not less than 60 days prior notice to TAB of any such planned suspensions.

* * *

5. Water Distribution.

5.1 Provided that TAB is in compliance with all terms of this agreement Sitka agrees to not sell water for export to other entities for a price less than the price currently charged to TAB for equivalent Blue Lake water without offering the same price to TAB.

~~5.2 Provided that TAB is in compliance with all terms of this agreement Sitka agrees to refer all inquiries from third parties for the purchase of bulk water to TAB. If TAB is unable to come to terms for sale of bulk water to said third parties within 90 days of the referral by Sitka to TAB, Sitka may proceed with direct negotiations with said third party without further obligation to TAB.~~

~~5.3 Notwithstanding any other provision of this Agreement, this Section does not apply to any purchaser of bulk water who has executed a bulk water purchase agreement with Sitka prior to the date of this Agreement, including any assignee of such agreement~~

6. No Warranty by Sitka of Water Quality or Fitness for a Particular Purpose.

* * *

6.2 TAB acknowledges and agrees that Sitka's planned expansion necessary and routine alterations in its hydroelectric operations may produce temporary changes in water quality due to turbidity, and that the occurrence of such events shall not alter or affect TAB's contractual obligations under this Agreement.

* * *

10. Delivery, Loading, and Transportation of Water in Bulk.

10.1 The parties agree that TAB shall be solely responsible for the costs of acquisition, construction and installation of any structure, facility or vessel which it determines to be required or convenient for the loading and transportation of bulk water delivered to it by Sitka, and for initiating and completing such acquisition, construction and installation. All structures and facilities, ~~for~~ construction of all structures and facilities, must comply with all Federal, State, and local law, including zoning requirements, and must be reviewed by SMCIP Board for its recommendation to Assembly, subject to Assembly approval before construction.

* * *

10.5 Sitka's point of delivery of bulk water to TAB shall be that physical location where the Sitka-owned physical facilities and equipment, employed in the transportation of Sitka's bulk water for delivery to TAB, terminates, ~~and which is the location where the remaining physical facilities and equipment employed in the transportation of such water are facilities owned by others.~~ Sitka's flow meter which is used to calculate the quantities of water delivered to TAB shall be located near the point of delivery.

1-27-10
1-27-10

10.6 Sitka shall retain the right to ~~pay for, install,~~ own, and operate a raw water delivery pipeline that serves the Sawmill Cove Industrial Park, if Sitka so desires. In such event, Sitka may require TAB to use Sitka's facilities and may change the point of delivery to the point at which Sitka's ~~new~~ facilities end. Unless and until Sitka shall deliver such new facilities TAB shall be fully responsible, at its own cost and expense, for arranging and accomplishing transport of bulk water from the point of delivery established by Sitka.

* * *

14. Assignment.

This Agreement, which is in the nature of a personal services contract, may not be assigned by either party without the prior written consent of the other party, which shall have full discretion to grant or withhold such approval, in its sole and absolute discretion except as provided below.

~~TAB may assign this Agreement on a one-time basis to Langenberg Research LLC 3590 W. Third St, Eugene, Oregon 97402 if, at the time of assignment, Langenberg Research LLC can demonstrate it is financially capable of performing the requirements of this Agreement to the satisfaction of Sitka.~~

~~Langenberg Research shall be bound by all the terms and requirements of this Agreement.~~

~~Langenberg Research shall not be authorized to assign this Agreement to any third party without prior written consent of Sitka.~~

Sitka may form a Port Authority or similar entity, in the future and this agreement shall be completely transferable to said Port Authority. A transfer of the agreement to any such entity shall not create any restrictions upon TAB to purchase water other than those restrictions named in this agreement.

TRUE ALASKA BOTTLING COMPANY

Terrence J Trapp
CEO (title)

STATE OF Alaska)
) ss.
COUNTY OF NA)

THIS CERTIFIES that on this 27 day of January, 2010, Terrence J Trapp, known to me or who has produced sufficient identification to be the person whose name is subscribed to this document, signed this document, and by signing affirms that he is the President of TRUE ALASKA BOTTLING COMPANY, that he has been authorized to execute the foregoing document on its behalf, and executes the document freely and voluntarily.



Sara L Peterson
Notary Public by and for City and Borough of Sitka
My Commission Expires: 4-15-2011

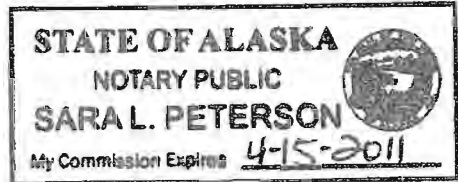
THE CITY AND BOROUGH OF SITKA
Jim Dinley
JIM DINLEY, Municipal Administrator

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS CERTIFIES that on this 27 day of January, 2010, Jim Dinley signed this document, and by signing affirms that he is the MUNICIPAL ADMINISTRATOR of the City and Borough of Sitka, Alaska, a municipality organized under the laws of the State of Alaska, that he has been authorized to execute the foregoing document, and executes the document freely and voluntarily.

Sara L Peterson
Notary Public for Alaska
My Commission Expires: 4-15-2011

ATTEST:
Sara Peterson for
Colleen Ingman, MMC
Municipal Clerk



**AMENDED
TRUE ALASKA BOTTLING COMPANY
PURCHASE AGREEMENT
FOR RAW WATER
IN BULK FOR EXPORT
(Incorporating Amendment No. 2)**

BETWEEN:

City and Borough of Sitka
100 Lincoln Street
Sitka, Alaska 99835

AND

True Alaska Bottling Company
4500 Sawmill Creek Road
Sitka, Alaska 99835

1. Term and Documents Comprising this Agreement.

1.1 The initial term of this Agreement shall begin on the effective date and shall end at 11:59 p.m. Alaska Standard Time on December 31, 2026. The City and Borough of Sitka (hereinafter referred to as "Sitka" in this Agreement) hereby grants to True Alaska Bottling Company (hereinafter referred to as "TAB" in this Agreement), on the terms and conditions set forth herein, the right to purchase raw water in bulk for export, to be delivered to it by Sitka from the Blue Lake reservoir, a water source within Sitka.

1.2 At the conclusion of the initial term of this Agreement, each of three additional terms of five (5) years each for extension of this Agreement may be exercised upon the consent of both parties. TAB must notify Sitka in writing no later than four (4) months before the end of the initial Agreement period of its desire to add an additional five year term, and shall thereafter notify Sitka no later than four (4) months prior to the expiration of each exercised additional term of its desire to exercise the next five year time period. If TAB does not timely notify Sitka in writing, the Agreement will terminate at the expiration of the then-current contract term. Sitka's bulk raw water price is subject to re-negotiation before the commencement of each additional term. If said price is not agreed to, the Agreement will terminate at the expiration of the then-current contract term. Either party may decide to not implement any additional term for any reason, in its sole discretion.

1.3 The Agreement shall consist of the 21 sections in this Agreement plus Appendix A (a map) and Appendix B (the "Prospective Purchaser Agreement Between the State of Alaska and the City-Borough of Sitka for the Former Alaska Pulp Corporation Pulp Mill Property" dated April 28, 1999, including all attachments, which specifically includes "Memorandum of Understanding between the State of Alaska and the City and Borough of Sitka [:] Management Plan for Sawmill Cove Property (Former APC Property).")

2. Definitions.

In this Agreement, the following terms shall have the definitions stated:

- a) "acre-foot" or "af" means 325,851 U.S. gallons.
- b) "annually" means 12 consecutive months.
- c) "beneficial use" means the application of water, purchased by TAB for export or for use at the point of delivery, to a useful purpose, including domestic, commercial, agricultural, wildlife, and recreational uses.
- d) "BG" or "bg" means billions of gallons.
- e) "bulk water" means raw water or potable water sold by Sitka to TAB under this Agreement, and delivered by Sitka to TAB in the measured quantities specified in this Agreement.
- f) "deliver" or "to deliver" or "delivered" means the act by Sitka of making a specific quantity of water available to TAB at the point of delivery.
- g) "export" means the transportation by TAB of bulk water to a destination outside the City and Borough of Sitka ~~the hydrologic unit of the Blue Lake drainage.~~
- h) "gallon" means one US gallon or 3.785 liters.
- i) "MG" or "mg" means millions of gallons.
- j) "MGD" means millions of gallons per consecutive 24-hour period.
- k) "per day" means calendar day starting at midnight.
- l) "per week" means during a period of seven (7) consecutive days.
- m) "per year" means during a period of 12 consecutive months.
- n) "point of delivery" means that physical location where the legal possession, ownership, and risk associated with the bulk water which is the subject of this Agreement transfers from Sitka to TAB, as specified in this Agreement.
- o) "raw water" means untreated water delivered by Sitka from Blue Lake via the Blue Lake penstock, a conduit which transports water from Blue Lake to the Blue Lake Powerhouse as shown on Exhibit A.
- p) "rule curve" means the relationship between the elevation of the water surface of Blue

Lake and the volume of water contained in Blue Lake, as it pertains to the reservation of water for fish, wildlife, and habitat protection.

q) "Stage" means a time period in this Agreement that starts 12 months after the effective date of this Agreement; a Stage is composed of one or more 12-month periods, with each 12-month period starting on the anniversary of the day the Stage begins.

r) "Stage Anniversary Date" means the day starting a 12-month period in a Stage.

s) "ton" means one US short ton or 2,000 pounds.

t) "water rights" means those rights to the beneficial use of water which are held by Sitka under certificates of appropriation issued by the State of Alaska pursuant to Alaska law.

3. Water Volumes Contracted by TAB from Sitka.

3.1 Sitka will make available to TAB a total of 8,960 acre-feet of raw water for a period of ~~36~~ 48 months after the effective date of this Agreement. At the conclusion of the ~~48~~ ~~36~~-month period described in the previous sentence, TAB's access to water will revert to the stages outlined in Subsection 3.2 of this Agreement, providing TAB has met the minimum export volumes set out in Section 3 (this Section) of this Agreement. During the ~~48~~ ~~36~~-month period immediately after the effective date of this Agreement, TAB must take delivery of and export at least ~~50~~ 20 million gallons of water. If TAB does not take delivery of and export at least ~~50~~ 20 million gallons of water from Sitka pursuant to this Agreement in the first ~~48~~ ~~36~~ months after the effective date of this Agreement, this Agreement shall, at Sitka's election, terminate and expire without further action by Sitka on the forty-fifth (45th) day after Sitka gives notice to TAB by certified mail that TAB has breached or failed to comply with one of more of the conditions or requirements of this Agreement, unless within said 45-day period, TAB cures the specified default or defaults to Sitka's satisfaction, as determined by Sitka in its sole discretion.

3.2 ~~48~~ ~~36~~ months after the effective date of this Agreement, the Stages described in this subsection start. The quantities of raw water in bulk which is available for export by TAB from Sitka under this Agreement are set forth below, and shall increase in maximum export volumes available and minimum export requirements as follows:

Contract Increment Stages	Maximum Water Delivery per 24-Hour Period	Acre-Feet Available Annually	Minimum Export Required to Move to Next Stage	Minimum Export Required to Remain at Stage	Required Period of Performance
Stage 1	33.6 MG	1,000 af	230.2 122.8 af (75mg)	153.4 61.4 af (50 20 mg)	12-month period
Stage 2	33.6 MG	2,000 af	306.9 af (100mg)	230.2 122.8 af (75 40 mg)	12-month period
Stage 3	33.6 MG	4,000 af	920.7 af (300mg)	306.9 af (100mg)	12-month period
Stage 4	33.6 MG	10,000 af	3,068.9 af (1bg)	920.7 af (300mg)	12-month period
Stage 5	33.6 MG	() ¹	N/A	3,068.9 af (1bg)	12-month period

¹ Annual acre-feet available and the minimum amount of water available for export per 12-month period will be

Stage 1: Stage 1 begins ~~48~~ 36 months after the effective date of this Agreement. Sitka will make available to TAB not less than 1,000 acre-feet (325.8 MG) of raw water in a 12-month period in Stage 1. To remain at Stage 1 for a 12 month-period starting on the Stage Anniversary Date of Stage 1, TAB must have taken delivery of and exported from Sitka a minimum of ~~153.4~~ 61.4 af (~~50~~ 20 MG) of bulk water within the 12-month period immediately previous to the most recent Stage Anniversary Date of Stage 1. If TAB does not meet the requirement set out in the previous sentence to remain at Stage 1, this Agreement shall, at Sitka's election, terminate and expire without further action by Sitka on the forty-fifth (45th) day after Sitka gives notice to TAB by certified mail that TAB has failed to meet such requirement, unless within the said 45-day period, TAB cures such failure as determined by Sitka in its sole discretion.

Stage 2: If TAB takes delivery of and exports a total of at least ~~230.2~~ 122.8 acre-feet (~~75~~ 40 MG) of bulk water in a 12-month period, then the amount of bulk water Sitka will make available for delivery to TAB will be increased to 2,000 acre-feet of water in a 12-month period, provided at that time that Sitka still has adequate water quantities available and uncommitted. To remain at Stage 2 for a 12-month period starting on the Stage Anniversary Date of Stage 2, TAB must have taken delivery of and exported from Sitka at least ~~230.2~~ 122.8 af (~~75~~ 40 MG) within the 12-month period immediately previous to the most recent Stage Anniversary Date of Stage 2. If TAB does not meet the requirement set out in the previous sentence to remain at Stage 2, TAB reverts to Stage 1 and a new Stage Anniversary Date of Stage 1 is created.

Stage 3: If TAB takes delivery of and exports a total of at least 306.9 acre-feet (100 MG) of bulk water per 12-month period, then the amount of water Sitka will make available for delivery to TAB will be increased to 4,000 acre-feet per year, provided at that time that Sitka still has adequate water quantities available and uncommitted. To remain at Stage 3 for a 12-month period starting on the Stage Anniversary Date of Stage 3, TAB must have taken delivery of and exported from Sitka at least 306.9 af (100 MG) within the 12-month period immediately previous to the most recent Stage Anniversary Date of Stage 3. If TAB does not meet the requirement set out in the previous sentence to remain at Stage 3, TAB reverts to Stage 2 and a new Stage Anniversary Date of Stage 2 is created.

Stage 4: If TAB takes delivery of and exports a total of at least 920.7 acre-feet (300 MG) per 12-month period, then the amount of water Sitka will make available for delivery to TAB will be increased to 10,000 acre-feet per 12-month period, provided at that time that Sitka still has adequate water quantities available and uncommitted. To remain at Stage 4 for a 12-month period starting on the Stage Anniversary Date of Stage 4, TAB must have taken delivery of and exported from Sitka at least 920.7 af (300 MG) within the 12-month period immediately previous to the most recent Stage Anniversary Date of Stage 4. If TAB does not meet the requirement set out in the previous sentence to remain at Stage 4, TAB reverts to Stage 3 and a new Stage Anniversary Date of Stage 3 is created.

determined solely by Sitka at that time based on availability.

Stage 5: If TAB takes delivery of and exports a total of 3,068.9 acre feet (1 billion gallons) of water per 12-month period, then TAB may request from Sitka additional bulk water of which the amount will be determined by Sitka at its sole discretion at that time, provided that Sitka still has adequate water quantities available and uncommitted. To remain at Stage 5 for a 12-month period starting on the Stage Anniversary Date of Stage 5, TAB must have taken delivery of and exported from Sitka at least 3,068.9 af (1 BG) within the 12-month period immediately previous to the most recent Stage Anniversary Date of Stage 5. If TAB does not meet the requirement set out in the previous sentence to remain at Stage 5, TAB reverts to Stage 4 and a new Stage Anniversary Date of Stage 4 is created.

3.3 If TAB fails to take delivery of and export the required minimum quantities specified in Stages 2 through 5 within the time periods specified in those Stages as set out in Subsection 3.2, the respective obligations of Sitka to make water available and of TAB to take delivery of and accept and export shall be reduced to the next lower Stage for the next 12-month period. If TAB meets the minimum performance requirement of that lower Stage within the time period specified, then the next higher Stage shall again become applicable to Sitka's and TAB's respective obligations during the next 12-month period. The date upon which Sitka moves TAB either up or down from stage to stage will start the 12-month time period anew and create a new Stage Anniversary Date, provided at that time that Sitka still has adequate water quantities available and uncommitted for export.

3.4 Notwithstanding any other provision of this Agreement, if water delivered by Sitka to TAB and exported by TAB falls below 20 million gallons during any period of 12 consecutive months, this Agreement shall, at Sitka's election, terminate and expire without further action by Sitka on the forty-fifth (45th) day after Sitka gives notice to TAB by certified mail that TAB has breached or failed to comply with one or more of the conditions or requirements of this Agreement, unless within the 45-day period, TAB cures the specified default or defaults to Sitka's satisfaction, as determined by Sitka in its sole discretion.

3.5 During the first year after the effective date of this Agreement and during periods of any Stage under this Agreement, TAB may take delivery of raw water at a rate no greater than 33.6 MGD.

4. The Parties' Rights and Obligations Regarding Water Delivered for Export.

a. By this contract, Sitka is entering into an Agreement to sell raw water in bulk under water rights issued to Sitka by the State of Alaska under water export authority contained in Water Appropriation Certificates LAS 19669 and ADL 43826. Sitka's contractual obligation to deliver water to TAB in the quantities specified in this Agreement is subject to these limitations:

a) Sitka shall retain first right and priority to water required for its municipal drinking water supply system and its municipal hydroelectric system, and it may suspend or limit raw water deliveries in bulk to TAB to meet the ~~reasonable~~ requirements of its municipal drinking water and hydroelectric systems, including the planned expansion of its hydroelectric system.

b) Sitka will abide by the 1992 Blue Lake Watershed Control Plan as approved by the U.S. Environmental Protection Agency and described in City and Borough of Sitka Ordinance No. 92-1091.

c) Sitka may temporarily suspend raw water deliveries in bulk in order to perform planned and routine maintenance on its municipal drinking water, hydroelectric and/or water delivery systems, provided that Sitka shall give not less than 60 days prior notice to TAB of any such planned suspensions.

d) Sitka shall be relieved of its obligation to deliver raw water in bulk to TAB in the event of an interruption in water supply due to Force Majeure, or due to unforeseen circumstances that require repairs to or reconstruction of the municipal drinking water, hydroelectric systems, water delivery system, or other of Sitka's facilities, to the extent that the availability of raw water in bulk for delivery to TAB under this Agreement is adversely affected, and for so long as is required to effect such repairs or reconstruction, for such time as is necessary to address such circumstances.

e) The volumes of Sitka's raw water deliveries in bulk to TAB for export are subject to Sitka's compliance with all conditions contained in Water Appropriation Certificates ADL 43826, LAS 19669, and LAS 20526, including compliance with the rule curve and the support of spawning, incubation, and rearing of certain species of fish in Sawmill Creek and Blue Lake. Interpretation of applicable requirements and the means used to achieve compliance with such requirements shall be in Sitka's sole discretion.

f) In the event Sitka is relieved of its obligation to make agreed quantities of water available to TAB for reasons noted in this paragraph or due to Force Majeure, then TAB's obligation to take delivery of and to export water shall be reduced to the volumes actually delivered by Sitka during that period of time and the time for TAB's performance shall be extended for the same period of time Sitka has been so relieved of its obligation.

4.2 TAB agrees and warrants that the raw water in bulk delivered by Sitka to it for export shall be put to one or more beneficial uses by it or by its water purchasers.

5. Water Distribution.

5.1 Provided that TAB is in compliance with all terms of this agreement Sitka agrees to not sell water for export to other entities for a price less than the price currently charged to TAB for equivalent Blue Lake water without offering the same price to TAB.

~~5.2 Provided that TAB is in compliance with all terms of this agreement Sitka agrees to refer all inquiries from third parties for the purchase of bulk water to TAB. If TAB is unable to come to terms for sale of bulk water to said third parties within 90 days of the referral by Sitka to TAB, Sitka may proceed with direct negotiations with said third party without further obligation to TAB.~~

~~5.3 Notwithstanding any other provision of this Agreement, this Section does not apply to any purchaser of bulk water who has executed a bulk water purchase agreement with Sitka prior to the date of this Agreement, including any assignee of such agreement.~~

6. No Warranty by Sitka of Water Quality or Fitness for a Particular Purpose.

6.1 Sitka does not warrant the quality or fitness for a particular purpose of any water contracted by it for delivery, and/or actually delivered, to TAB under this Agreement. TAB acknowledges and agrees that before entering into this Agreement, it has examined Sitka's water source, Sitka's methods of diversion, and Sitka's means of delivery to TAB of the quantities of water which are contracted under this Agreement, and that it has found all such items adequate and satisfactory for TAB's purposes.

6.2 TAB acknowledges and agrees that Sitka's planned expansion necessary and routine alterations in its hydroelectric operations may produce temporary changes in water quality due to turbidity, and that the occurrence of such events shall not alter or affect TAB's contractual obligations under this Agreement.

6.3 TAB acknowledges and agrees that the quality of water contracted by Sitka to be delivered in bulk to it for export may vary due to natural events over which Sitka has no control, which include, without limitation, rainfall, drought, snowfall, avalanches and landslides, and that the occurrence of such events shall not alter or affect TAB's contractual obligations under this Agreement, except that the quantity of water TAB is obligated to take delivery of and to export shall be reduced to the quantity Sitka can and does make available for delivery to TAB, as a consequence of an occurrence of any of such natural events.

6.4 TAB shall be solely responsible and liable for the quality and usefulness for any particular purpose of all water exported by, transported by, used by, or sold by, or delivered by TAB.

7. Purchase Price For Bulk Water.

7.1 TAB will purchase bulk water for export from Sitka under this Agreement, based upon the following prices: Raw water delivered in bulk to TAB for export shall be priced at U.S. \$0.01 (one cent) per gallon. The purchase price includes Sitka cargo wharfage charges for bulk water delivered to TAB's vessel.

7.2 Raw water delivered by Sitka to TAB for vessel wash-down, washout and any other non-export application shall be priced at US \$0.005 (one-half of a cent) per gallon. Such quantities shall be separately metered, and shall not be included in the total quantities of raw water delivered to TAB for export.

7.3 Beginning July 1, 2016 and every calendar year thereafter, the prices charged by Sitka for water delivered to TAB under this Agreement will be adjusted based on the "All Items" figure for Seattle, Washington as published in the "Consumer Price Index for All Urban Consumers"

(CPI) published the most immediately before January 1 of the calendar year for which prices are being calculated. Notwithstanding the previous sentence, in no event will the CPI adjustment described in the previous sentence exceed + 3.0% nor the adjustment be made if the result of such adjustment would be a decrease in any price charged under this Agreement.

7.4 TAB shall pay Sitka for all volumes of water delivered to TAB as actually measured by flow meters owned, operated, and documented by Sitka at or near the point of delivery. TAB shall pay for each quantity of water loaded no later than fifteen (15) days after the presentation of an invoice by Sitka to TAB for such water. Failure by TAB to make timely payment shall be cause for Sitka to suspend water delivery to TAB.

8. Conditions for Maintaining TAB's Purchase Right and Obligation; Termination.

8.1 Notwithstanding any other provision of this Agreement, this Agreement shall, at Sitka's election, terminate and expire without further action by Sitka on the forty-fifth (45th) day after Sitka gives notice to TAB by certified mail that TAB has breached or failed to comply with one or more of the conditions or requirements of this Agreement, unless within said 45-day period, TAB cures the specified default or defaults to Sitka's satisfaction, as determined by Sitka in its sole discretion.

8.2 Upon termination, all legal rights and obligations as between Sitka and TAB under this Agreement shall cease, except that TAB's obligations to Sitka under Sections 13, 14, 15, 16, and 17 of this Agreement shall survive termination.

9. Sitka's Permitting Actions.

Sitka agrees to take any and all actions which it determines, in the exercise of its sole discretion, to be reasonable, necessary, and economically feasible to maintain in good standing any permit, license, certificate, allocation, appropriation or other authorization which may authorize Sitka to fulfill its obligations under this Agreement.

10. Delivery, Loading, and Transportation of Water in Bulk.

10.1 The parties agree that TAB shall be solely responsible for the costs of acquisition, construction and installation of any structure, facility or vessel which it determines to be required or convenient for the loading and transportation of bulk water delivered to it by Sitka, and for initiating and completing such acquisition, construction and installation. All structures and facilities, for construction of all structures and facilities, must comply with all Federal, State, and local law, including zoning requirements, and must be reviewed by SMCIP Board for its recommendation to Assembly, subject to Assembly approval before construction.

1-27-10
1-27-10

10.2 TAB shall pay such port vessel dockage fees established by Sitka. Sitka does not warrant the quality or fitness for a particular purpose of any dock or wharf at such waterfront, and TAB must determine the feasibility of any particular use before engaging in such use.

10.3 TAB shall be solely responsible for the transportation of all water delivered to it by Sitka for export.

10.4 No later than 30 days before the first delivery of water takes place under this Agreement, TAB will designate in a writing to Sitka's Municipal Administrator a local representative as TAB's continuing personal contact with Sitka and its subordinate departments, agencies and authorities.

10.5 Sitka's point of delivery of bulk water to TAB shall be that physical location where the Sitka-owned physical facilities and equipment, employed in the transportation of Sitka's bulk water for delivery to TAB, terminates, ~~and which is the location where the remaining physical facilities and equipment employed in the transportation of such water are facilities owned by others.~~ Sitka's flow meter which is used to calculate the quantities of water delivered to TAB shall be located near the point of delivery.

10.6 Sitka shall retain the right to ~~pay for, install,~~ own, and operate a raw water delivery pipeline that serves the Sawmill Cove Industrial Park, if Sitka so desires. In such event, Sitka may require TAB to use Sitka's facilities and may change the point of delivery to the point at which Sitka's ~~new~~ facilities end. Unless and until Sitka shall deliver such new facilities TAB shall be fully responsible, at its own cost and expense, for arranging and accomplishing transport of bulk water from the point of delivery established by Sitka.

11. Ballast Water and Wash Water Discharges.

11.1 TAB shall comply with all provisions of law applicable to its obligations under this Agreement. TAB shall comply with all applicable international, federal, state, and local requirements regarding the discharge of any ballast water (including bilge water) or any wastes at all times and as to all vessels traveling to and from Silver Bay and/or Sawmill Cove for the purpose of receiving any water to be delivered to TAB by Sitka under this Agreement. Such requirements described in this Section include but are not limited to those in Section IV of the Sawmill Cove Management Plan, which is included in Appendix B.

11.2 TAB shall comply with all applicable federal, state and local requirements regarding the use and disposal of any raw or treated water delivered to TAB by Sitka for the purposes of vessel wash-down or washout, or any other non-export application.

12. Water Loading Plan Requirements.

12.1 Before TAB loads any bulk water delivered to it by Sitka, TAB shall submit to Sitka a written Water Loading Plan. This Plan shall be deemed approved by Sitka unless no later than seven days after the submission the Municipal Administrator of Sitka in his or her sole discretion rejects—or requires TAB to resubmit—any portion of the Plan in a writing to TAB that states the deficiency. Sitka shall deliver no bulk water to TAB and TAB shall not load any bulk water delivered to it by Sitka as long as any portion of the Plan has been rejected and not deemed approved after re-submittal. TAB shall submit a separate Water Loading Plan at least ten (10) days before each loading of bulk water under this Agreement.

12.2 The Water Loading Plans required by this section shall address environmental and logistical considerations related to the loading of water. The issues and items to be addressed in each Water Loading Plan shall include, without limitation, each of the following:

- a) details concerning any vessel to be used by TAB in the loading or transport of bulk water;
- b) steps to be taken to insure the safety of persons involved in the loading of bulk water;
- c) steps to be taken to insure safety of the public before, during, and after loading of water;
- d) steps to be taken to address the effects of wind and tidal conditions on the loading;
- e) steps to be taken concerning moorage and access to vessels during loading;
- f) steps to assure communication before, during, and after loading between those loading and Sitka representatives;
- g) details about the precise location and proposed use of any structure, facility, pipe, pipeline, or other infrastructure to be used in the loading of water and details of how TAB intends to address the risks associated with a catastrophic event arising from TAB's loading activities or TAB's failure to adhere to the proposed Water Loading Plan;
- h) steps to be taken to avoid conflicts with other vessel traffic and industrial park users;
- i) details on proposed handling of any ballast water in any vessel to be used in the loading of water;
- j) details on proposed handling of any residual and/or wash water, or other materials in the tanks of any vessel to be used in the loading;
- k) the days and the periods of time within each day that water is proposed to be loaded; and
- l) details on consistency between the proposed Water Loading Plan and Appendix B, which includes the "Prospective Purchaser Agreement Between the State of Alaska and the City-Borough of Sitka for the Former Alaska Pulp Corporation Pulp Mill Property" dated April 28, 1999, including all attachments, which specifically includes "Memorandum of Understanding between the State of Alaska and the City and Borough of Sitka [:] Management Plan for Sawmill Cove Property (Former APC Property)." Such details on such consistency must include any and all specific steps to be taken to avoid anchoring in prohibited areas and disturbance of the sea bottom in the "No Disturbance" zone described in the last-referenced document.

12.3 TAB shall comply with all provisions of each Water Loading Plan after all of such provisions have been deemed approved either upon submittal or re-submittal under Subsection 12.1 above, as to the water loading operation for which the Water Loading Plan was submitted.

12.4 Approval by Sitka of any Water Loading Plan shall not be deemed to have imposed upon Sitka the status of guarantor of the feasibility, propriety, or safety of any aspect of an approved Water Loading Plan, nor shall such approval be deemed to have created or conferred benefits on any third party.

13. Indemnification of Sitka.

Notwithstanding anything to the contrary in this Agreement, TAB shall defend, indemnify, and hold Sitka harmless from any claim, demand, action, or proceeding of any kind or nature, based upon, arising out of, or related to:

- a. any defect or flaw in the quality of water supplied under this agreement;
- b. any delays on the part of Sitka in the delivery of water under this agreement as the result of the mechanical or physical breakdown of equipment or facilities owned or operated by the Sitka;
- c. claims arising from the transportation or shipment of water after such water has left Sitka's water delivery system and as such has passed the point of delivery;
- d. injuries to employees of TAB or any of its contractors;
- e. damages resulting from accidents involving mooring, unmooring, navigation of vessels, or cargo loading operations, including but not limited to claims for personal injury, property damage, and pollution.

TAB shall at all times during this Agreement maintain insurance policies providing umbrella coverage against matters including but not limited to those discussed in this agreement in an amount not less than U.S. \$5,000,000, with the City and Borough of Sitka named as an additional insured, and with a waiver of subrogation against Sitka. TAB shall be responsible for ensuring that each of its contractors complies with this term. TAB shall deliver reasonable evidence of TAB's compliance with this term to Sitka. TAB shall assure that any contractor for TAB who is to perform any task or work within the territorial jurisdiction of Sitka has insurance appropriate to any task to be performed by that contractor, and TAB shall be responsible for delivering reasonable evidence of such insurance to Sitka.

TAB will ensure that its customers take full responsibility for water product quality that they receive subsequent to TAB's on-site Quality Control laboratory tests. TAB's Quality control staff shall securely store a reasonable quantity of water sampled from each bulk water shipment for 24 months for re-analysis, if required.

14. Assignment.

This Agreement, which is in the nature of a personal services contract, may not be assigned by either party without the prior written consent of the other party, which shall have full discretion to grant or withhold such approval, in its sole and absolute discretion except as provided below.

~~TAB may assign this Agreement on a one-time basis to Langenberg Research LLC 3590 W. Third St. Eugene, Oregon 97402 if, at the time of assignment, Langenberg Research LLC can demonstrate it is financially capable of performing the requirements of this Agreement to the satisfaction of Sitka.~~

~~Langenberg Research shall be bound by all the terms and requirements of this Agreement.~~

~~Langenberg Research shall not be authorized to assign this Agreement to any third party without prior written consent of Sitka.~~

Sitka may form a Port Authority or similar entity, in the future and this agreement shall be completely transferable to said Port Authority. A transfer of the agreement to any such entity shall not create any restrictions upon TAB to purchase water other than those restrictions named in this agreement.

15. Waiver and Integration.

This Agreement integrates the entire Agreement between the parties regarding the sale and purchase of water in bulk. This Agreement supersedes all previous agreements, discussions, and negotiations, whether written or oral. Each party specifically acknowledges and represents that it has had ample opportunity to consult with legal counsel regarding this Agreement, and that any rule that an agreement should be construed against its drafter shall not apply to this Agreement.

16. Force Majeure.

Neither party shall be in breach of this Agreement as the result of any failure or delay in performing any of the obligations in this Agreement if such failure to perform or delay in performing is directly and proximately caused by storm, flood, avalanche, landslide, earthquake, tsunami, act of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, or act of God. Sitka shall not be in breach of this Agreement as the result of any failure or delay in performing any of its obligations in this Agreement if such failure to perform or delay in performing is directly and proximately caused by any order of any United States court of competent jurisdiction, or by any act, rule, regulation, order or directive of any superior governmental unit or any agency thereof, or by any termination, modification, suspension, or revocation of any permit, license, allocation, appropriation, or certificate held by Sitka. In the event Sitka or TAB is relieved of an obligation under this Agreement due to Force Majeure, time frames under this Agreement shall be adjusted accordingly. The party asserting a Force Majeure event must demonstrate direct and proximate cause by clear and convincing evidence.

17. Applicable Law.

Any action or lawsuit brought to construe, interpret, or enforce this Agreement shall be brought in the superior court of the State of Alaska in Sitka, Alaska. Venue for any such action or lawsuit shall lie exclusively in Sitka, Alaska. The parties specifically disavow any application under the removal jurisdiction of the federal courts on grounds of diversity of citizenship, in any litigation concerning this Agreement.

18. Effective Date.

This Agreement is effective as of the last date signed below, which shall be deemed the "effective date" for the purpose of any time period which incorporates that term in this Agreement.

19. Authority.

The parties represent and warrant to each other that they have the full, complete, and absolute authority to enter into this Agreement; that this Agreement has been duly authorized by the governing body of each party; that the person executing this Agreement on its behalf has the full power and authority to do so; and that this Agreement is binding and enforceable against it in accordance with its terms. TAB acknowledges that this Agreement is only effective as against Sitka if the City and Borough of Sitka Assembly votes to authorize the Municipal Administrator to execute this Agreement on behalf of Sitka, and the Municipal Administrator of Sitka represents and warrants by affixing his signature to this Agreement that the Assembly has so voted.

20. Amendment and Severability.

This Agreement may not be amended except by written agreement of both parties. If any provision of this Agreement or any application thereof to any person, entity, or circumstance is held invalid, the remainder of this Agreement and application thereof to any person, entity, or circumstances shall not be affected thereby.

21. Time of Essence.

Time is of the essence in this Agreement.