

Thursday, November 15, 2012

## MEMORANDUM

To: Jim Dinley, CBS Administrator

From: Garry White, Director

Subject: True Alaska Bottling (TAB) Bulk Water Agreement Amendment Request

### Introduction

True Alaska Bottling (TAB) is requesting to have its "Purchase Agreement for Raw Water in Bulk for Export" amended for the fourth time. The Amendment will contain the following changes:

- Section 3.1 of the agreement is amended for an additional 36 month extension for TAB to take delivery and export water.
- Section 3.1 of the agreement is amended to increase TAB's water allocation from 8,960 Acre-feet to 27,773 acre-feet.

The Amendment contains the following conditions and provisions:

- 1,462 Acre-feet of the remaining CBS Bulk Water allocation will be reserved by the CBS for use in small water operations. This water allocation will only be allowed to be exported from Sitka in package sizes of a 20' container or less. No bulk water tanker operations will be allowed with this water allocation. (Note: bottled water can be moved in larger containers)
- TAB will pay the CBS a \$1,000,000 dollar non-refundable payment, no later than 12/08/2012 to be applied towards export of water payments within the 36 month extension, but if no export occurs, it shall be retained by the CBS unencumbered. CBS will retain any interest earned from the non-refundable payment.
- The \$350,000 previously paid to the CBS by TAB as non-refundable payments will be allowed to be applied towards export of water payments within the 36 month extension.

The SCIP Board reviewed TAB's request at their 10/08/2012. The Board and TAB were unable to come to an agreement on the details of the amendment. The Board and TAB met again on 10/15/2012 approved the terms of the proposed amendment.

## **Background**

The CBS obtained water permits to export raw water in bulk from the Blue Lake watershed when they acquired the former mill property at the Sawmill Cove Industrial Park.

State of Alaska permits LAS 19669 and ADL 43826 allow for the export of 29,235 Acre-feet of water for bulk export. One Acre-foot equals 325,851 US gallons of water. Therefore the CBS has roughly 9.5 billion gallons (BG) of water available for export each year.

The CBS has entered into multiple bulk water export agreements in the past with various entities. Currently the CBS has one active bulk water agreement with TAB.

## **History of TAB bulk water agreement**

On 12/07/06 the CBS entered into an agreement with TAB for a bulk water allocation of 8,960 Acre-feet or approximately 2.9 BG of water.

Section 3.1 of the bulk water export agreement required TAB to export a minimum amount of water within a 24 month period starting 12/07/2006. TAB failed to export the required water by 12/07/2008. Since that time period TAB has negotiated with the CBS, 3 separate amendments to Section 3.1 to allow for longer terms to export the required amount of water.

- 2008 – CBS allowed TAB 12 additional months to export water. TAB paid the CBS \$100,000 for the extension.
- 2009 – CBS allowed TAB another 12 months to export water. TAB paid the CBS \$100,000 for the extension.
- 2010 – CBS allowed TAB 24 additional months to export water. TAB paid the CBS \$150,000 for the extension.

## **Basic Terms of TAB's Existing Bulk Water Agreement**

(Note: please see amendment 1-3 for changes to original agreement)

- A minimum amount of water must be exported within a set time period or Stage specified in Section 3.2 of the contract.
  - 50 million US gallons of water must be exported within the time period specified in Section 3.1 of the contract.
- The agreement defines Stages of water volume export to retain water allocation amounts. (Section 3.2)
  - TAB gains more allocations by exporting more water and can lose allocation amounts by failing to export specified amounts.
- Municipal water uses retain first right and priority to the water. (Section 4a)

- The agreement allows for planned hydroelectric dam expansion and possible non-water delivery due to the project. (Section 4c)
- The price for water has been set at \$3,258.51/Acre-feet or \$0.01/US gallon. (Section 7.1)
- Recently the CBS has been requiring TAB to pay a non-refundable payment to be applied towards water export payments owed to Sitka within the contract time frame.
- The water based distribution system must be approved by the CBS. (Section 10)
  - Currently it is unknown what design or structure will be used to move the water to a transportation vehicle or vessel.
  - Funding and ownership of infrastructure will be negotiated.

### **Other Bulk Water Export Proposals**

The SCIP Director frequently receives inquiries regarding Sitka's Bulk Water asset. Many calls are speculative in nature with very few formal proposals being submitted for the SCIP Board and CBS Assembly consideration.

On August 27, 2012, the SCIP Board received a proposal from Cove Water Resources (CWR) requesting a similar bulk water agreement to TAB's current agreement. Representing CWR via a conference call during the meeting was Eddie Tang, Greg Miller, and Paul Roche. After the meeting it was brought to the CBS Attorney's attention that Eddie Tang of CWR had entered into a "Mutual nondisclosure and noncircumvention agreement" with TAB. Further discussions with CWR were put on hold until the legal ramifications could be defined more clearly.

On November 1, 2012, the SCIP Board received and heard a formal proposal from Black Hat Distribution Inc. (BHD). Paul Roche was the representative for BHD. The BHD proposal is attached.

The SCIP Board declined to take any action on the BHD proposal. The Board consensus was that the BHD proposal should be brought back for consideration if the TAB proposal was not approved by the Assembly or if TAB should not meet its obligation to make the \$1,000,000 payment by 12/8/2012. The Board discussed the long term relationship with TAB including statements that TAB has acted in good faith and has made all payments required by previous bulk water agreements and extensions.

### **Attachments**

- Attached is information concerning Sitka's bulk water permits.
- Attached is the proposed Amendment #4 to TAB's bulk water agreement.
- Attached is TAB's initial agreement to export bulk water
- Attached are all three amendments to the original bulk water agreement.
- Attached is TAB's proposal to the CBS.
- Memo from SCIP Director to SCIP Board dated 10/10/2012.

- Attached are minutes from both SCIP meetings concerning TAB's proposal.
- Attached is the CWR proposal to the CBS
- Attached are the minutes from the SCIP meeting concerning CWR proposal.
- Attached is BHD's proposal to the CBS
- Attached are minutes from SCIP meeting concerning BHD proposal.
- Attached is correspondence between TAB and BHD legal councils.

### **Additional Information**

- TAB has requests that a liaison be appointed by the CBS to help move permitting issues through for a future water based water distribution system. The SCIP Board recommended the SCIP Director continue to work with TAB.

### **SCIP Board Action**

The SCIP Board made the following motion at their 10/15/2012 meeting:

**MOTION:** **M/S Horan/Fondell** moved to recommend to the Assembly that the TAB bulk water contract be extended based on TAB's counter proposal for bulk water export as presented on page three of the memo dated October 10, 2012, with the addition that the SCIP Director be appointed as liaison.

TAB's Counter Proposal for Bulk Water Export Agreement Amendment (memo of Oct. 10, 2012, page 3)

- Section 3.1 is amended for another 36 month extension.
- Water allocation is increased from 8,960 Acre-feet to 27,773 acre-feet. 1,462 Acre-feet will be reserved by Sitka for use in small water operations. Water can only be exported from Sitka in package sizes of a 20' container or less. No bulk water tanker operations will be allowed. (Note: bottled water can be moved in larger containers)
- TAB will pay a \$1,000,000 dollar non-refundable payment, no later than 12/08/2012 to be applied towards export of water payments within the 36 month extension, but if no export occurs, it shall be retained by the CBS unencumbered. CBS will retain any interest earn from the non-refundable payment.
- TAB requests that the \$350,000 previously paid to the CBS as non-refundable payment be allow to be applied towards export of water payments within the 36 month extension.

Board Discussion:

- For the record, the Board wanted to emphasis that they have spent a significant amount of time discussing the details of this issue prior to making any recommendation to the CBS.

**ACTION: Motion PASSED 4/0 on a roll call vote.**  
Yeas: Aaron Wilkinson, Chris Fondell, Charles Horan, Dan Jones  
Nays: None Absent: Grant Miller

**Assembly Action**

The SCIP Board requests that the CBS Assembly approve the recommendations made by the SCIP Board for an amendment to TAB's "Purchase Agreement for Raw Water in Bulk for Export".

**Bulk Water Export  
City and Borough of Sitka  
Related Permits**

Total amount of water available annually for bulk export = 9,526,253,985 gallons (26.1 million gallons per day).

State of Alaska Certificate	MGD *	Acre Feet	Annual Gallons
#LAS 19669	12.5	14,000	4,561,914,000
#ADL 43826	13.6	15,235	4,964,339,985
<b>TOTAL Permitted</b>	<b>26.1</b>	<b>29,235</b>	<b>9,526,253,985</b>

\* MGD = million gallons per day

**Current TAB Agreement**

	MGD	Acre Feet	Annual Gallons
TAB contract	8	8,960	2,919,624,960
<b>TOTAL encumbered</b>	<b>8</b>	<b>8,960</b>	<b>2,919,624,960</b>

Available water for other bulk export contracts =

	MGD	Acre Feet	Annual Gallons
<b>TOTAL available</b>	<b>18.1</b>	<b>20,275</b>	<b>6,606,629,025</b>

**Proposed TAB Amendment**

	MGD	Acre Feet	Annual Gallons
TAB Amendment	24.8	27,773	9,049,859,823
<b>TOTAL encumbered</b>	<b>24.8</b>	<b>27,773</b>	<b>9,049,859,823</b>

Available water for other non-bulk export contracts =

	MGD	Acre Feet	Annual Gallons
<b>TOTAL available</b>	<b>1.3</b>	<b>1,462</b>	<b>476,394,162</b>

**TRUE ALASKA BOTTLING COMPANY  
PURCHASE AGREEMENT  
FOR RAW WATER  
IN BULK FOR EXPORT**

**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 Exhibit A (a map) and Exhibit 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 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 24 months after the effective date of this Agreement. At the conclusion of the 24-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 24-month period immediately after the effective date of this Agreement, TAB must take delivery of and export at least 20 million gallons of water. If TAB does not take delivery of and export at least 20 million gallons of water from Sitka pursuant to this Agreement in the first 24 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 (45<sup>th</sup>) 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 Twenty four 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	122.8 af (40mg)	61.4 af (20mg)	12-month period
Stage 2	33.6 MG	2,000 af	306.9 af (100mg)	122.8 af (40mg)	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	( ) <sup>1</sup>	N/A	3,068.9 af (1bg)	12-month period

Stage 1: Stage 1 begins 24 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 61.4 af (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 (45<sup>th</sup>) day after Sitka gives notice to TAB by certified mail that TAB has failed to meet such requirement, unless within said 45-day period, TAB cures such failure as determined by Sitka in its sole discretion.

<sup>1</sup> 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 2: If TAB takes delivery of and exports a total of at least 122.8 acre-feet (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 122.8 af (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.

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 said 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.**

4.1 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.
- 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 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 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.

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 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, terminate, 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 new 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 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 courts of the State of Alaska sitting 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 Administrator to execute this Agreement on behalf of Sitka, and the 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.

**TRUE ALASKA BOTTLING COMPANY**

DATE \_\_\_\_\_

Richard Kearns, President

STATE OF \_\_\_\_\_ )

) ss. **ACKNOWLEDGMENT**

\_\_\_\_\_ JUDICIAL DISTRICT )

THIS CERTIFIES that on this \_\_\_\_ day of \_\_\_\_\_, 2006, **Richard Kearns**, known to me or who has produced sufficient identification to be the person whose name is subscribed to on the foregoing **TRUE ALASKA BOTTLING COMPANY PURCHASE AGREEMENT FOR RAW WATER IN BULK FOR EXPORT**, 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 he executed the document freely and voluntarily.

Notary Public by and for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**THE CITY AND BOROUGH OF SITKA**



John C. Stein, City and Borough Administrator

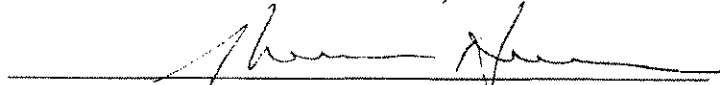
DATE 11/9/2006

STATE OF ALASKA )

) ss. **ACKNOWLEDGMENT**

FIRST JUDICIAL DISTRICT )

THIS CERTIFIES that on this 9<sup>th</sup> day of Nov, 2006, **John C. Stein**, known to me or who has produced sufficient identification to be the person whose name is subscribed to on the foregoing **TRUE ALASKA BOTTLING COMPANY PURCHASE AGREEMENT FOR RAW WATER IN BULK FOR EXPORT**, signed this document, and by signing affirms that he is the **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 **PURCHASE AGREEMENT FOR BLUE LAKE RAW BULK WATER**, and he executed the same freely and voluntarily.

  
Notary Public for Alaska  
My Commission Expires: with office

**ATTEST:**

\_\_\_\_\_  
Colleen Pellett, CMC  
Municipal Clerk

**TRUE ALASKA BOTTLING COMPANY**

*Richard Kearns*  
Richard Kearns, President

DATE 10-10-06

STATE OF Oregon

)  
) ss. **ACKNOWLEDGMENT**  
)

                     JUDICIAL DISTRICT

THIS CERTIFIES that on this 10 day of Oct., 2006, Richard Kearns, known to me or who has produced sufficient identification to be the person whose name is subscribed to on the foregoing **TRUE ALASKA BOTTLING COMPANY PURCHASE AGREEMENT FOR RAW WATER IN BULK FOR EXPORT**, 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 he executed the document freely and voluntarily.



*Lezlie R Cowart*  
Notary Public by and for Wells Fargo Bank  
My Commission Expires: Sept. 21, 2008

**THE CITY AND BOROUGH OF SITKA**

*John C. Stein*  
John C. Stein, City and Borough Administrator

DATE 11/9/2006

STATE OF ALASKA

)  
) ss. **ACKNOWLEDGMENT**  
)

FIRST JUDICIAL DISTRICT

THIS CERTIFIES that on this 9<sup>th</sup> day of Nov., 2006, John C. Stein, known to me or who has produced sufficient identification to be the person whose name is subscribed to on the foregoing **TRUE ALASKA BOTTLING COMPANY PURCHASE AGREEMENT FOR RAW WATER IN BULK FOR EXPORT**, signed this document, and by signing affirms that he is the **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 **PURCHASE AGREEMENT FOR BLUE LAKE RAW BULK WATER**, and he executed the same freely and voluntarily.

*[Signature]*  
Notary Public for Alaska  
My Commission Expires: with office

ATTEST:

*Colleen Pellett*  
Colleen Pellett, CMC  
Municipal Clerk

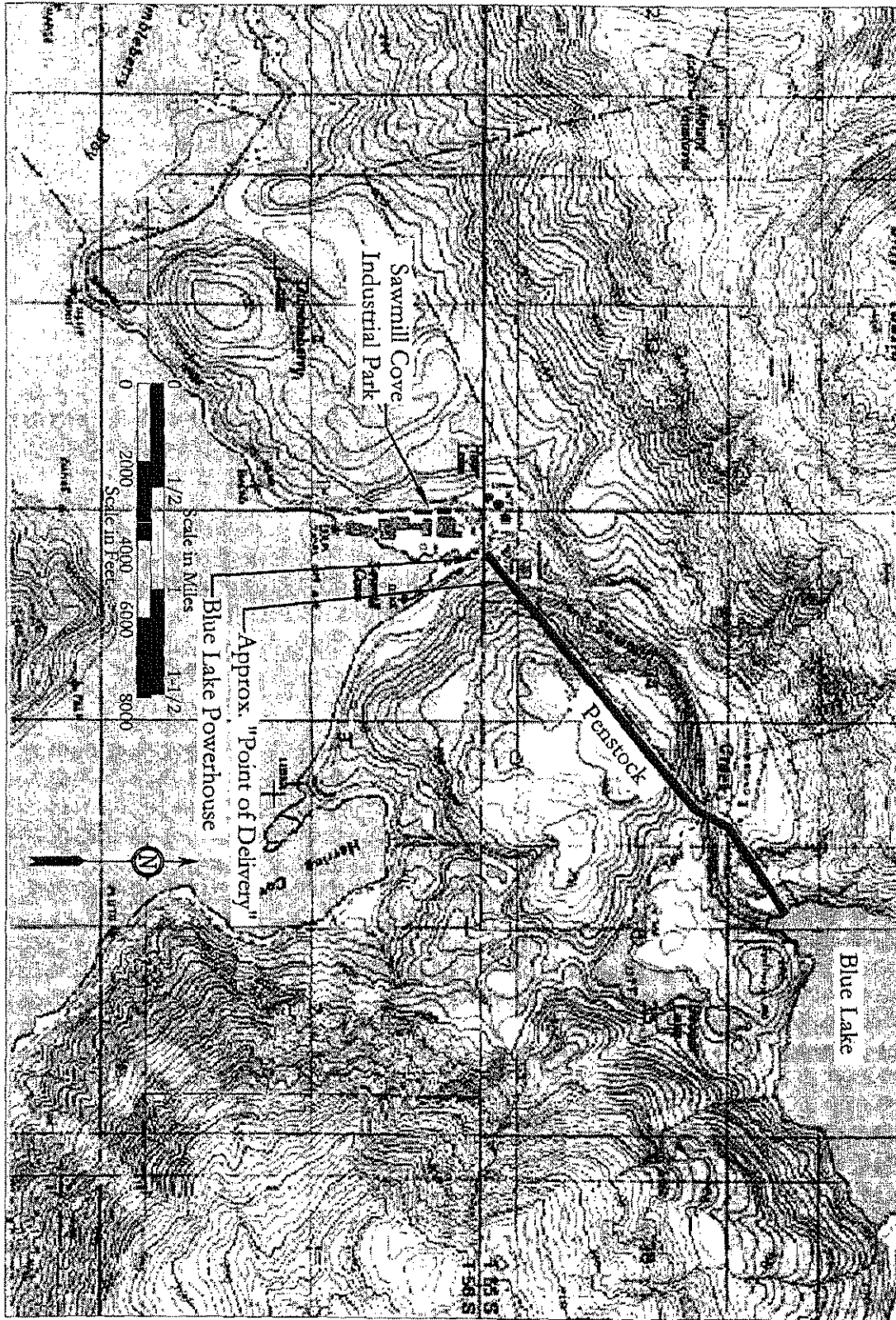



Exhibit A

DESIGN	SCALE
CHANGES	DATE
APPROVED	
SHEET NO.	


**City and Borough of Sitka**  
 DEPARTMENT OF PUBLIC WORKS  
 100 LINCOLN STREET • SITKA, ALASKA 99583  
 TEL (907) 747-1908 FAX (907) 747-3138

Point of Delivery of Bulk Water

REVISIONS	
NO.	DESCRIPTION

**AMENDMENT NO. 4 TO  
TRUE ALASKA BOTTLING COMPANY PURCHASE AGREEMENT  
FOR RAW WATER IN BULK FOR EXPORT**

WHEREAS, the City and Borough of Sitka ( "Sitka") and True Alaska Bottling Company ("TAB") entered into the "True Alaska Bottling Company Purchase Agreement for Raw Water in Bulk for Export" ("Agreement"), on December 7, 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");

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

WHEREAS, Sitka and TAB agreed to further amend the Agreement as set out in this Amendment No. 3 To True Alaska Bottling Company Purchase Agreement For Raw Water In Bulk For Export ("Amendment No. 3");

WHEREAS, Sitka and TAB agree to further amend the Agreement as set out in this Amendment No. 4 To True Alaska Bottling Company Purchase Agreement For Raw Water In Bulk For Export ("Amendment No. 4");

WHEREAS, this Amendment No. 4 extends TAB deadlines by three additional years at Sections 3.1 and 3.2, contingent upon the following conditions, which were required and approved by Sitka Assembly at its Regular Meeting on November 27, 2012:

1. Sitka receives a non-refundable payment of \$1,000,000 from TAB to be applied towards export water payments owed to Sitka during the three-year term of this Amendment No. 4. Sitka shall retain any interest earned from this non-refundable payment;
2. Amendment No. 4 will take effect only upon receipt of the \$1,000,000, received no later than December 8, 2012;
3. Prior non-refundable payments of \$350,000 made by TAB to Sitka based on this Agreement will be applied towards export of water payments within the three-year term of this Amendment No.4; and
4. If no water export occurs within the three-year term of this Amendment No. 4, in accordance with the Agreement at Article 3.1 and 3.2, all prior payments as listed including the \$100,000,000 payment made under Amendment No. 4 shall be retained by Sitka unencumbered.

NOW, THEREFORE, Sitka and TAB, based on the conditions required above, agree to Amendment No. 4, which includes amending the Agreement as follows and as authorized pursuant to Section 20 of the Agreement (new language underline; deleted language stricken):

### 3. Water Volumes Contracted by TAB from Sitka.

3.1 Sitka will make available to TAB a total of 27,773 ~~8,972~~ acre-feet of raw water for a period of 108 72 months after the effective date of this Agreement. At the conclusion of the 10872-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 10872 -month period immediately after the effective date of this Agreement, TAB must take delivery of and export at least 50 million gallons of water. If TAB does not take delivery of and export at least 50 million gallons of water from Sitka pursuant to this Agreement in the first 10872 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 (45<sup>th</sup>) 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.

3.2 108 72 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 af (75mg)	153.4 af (50 mg)	12-month period
Stage 2	33.6 MG	2,000 af	306.9 af (100mg)	230.2 af (75 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	( ) <sup>1</sup>	N/A	3,068.9 af (1bg)	12-month period

Stage 1: Stage 1 begins 108 72 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 af (50 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 (45<sup>th</sup>) day

<sup>1</sup> 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.

after Sitka gives notice to TAB by certified mail that TAB has failed to meet such requirement, unless within the 45-day period, TAB cures such failure as determined by Sitka in its sole discretion.

\* \* \*

**5. Water Distribution**

\* \* \*

5.2 Sitka will not enter into any agreement to sell water in bulk with the remaining 1,462 acre-feet of its bulk water allocation. Any sales of the remaining bulk water allocation will be limited to export in containers of a 20' container van or smaller. Sale of water bottled in City and Borough of Sitka is not subject to this restriction.

**TRUE ALASKA BOTTLING COMPANY**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (title)

THIS CERTIFIES that on this \_\_\_\_ day of \_\_\_\_\_, 2012, \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public by and for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**THE CITY AND BOROUGH OF SITKA**

\_\_\_\_\_  
JAMES E. DINLEY, Municipal Administrator

STATE OF ALASKA )  
 ) ss.  
FIRST JUDICIAL DISTRICT )

THIS CERTIFIES that on this \_\_\_\_ day of \_\_\_\_\_, 2012, **James 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.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_



**AMENDMENT NO. 1 TO SUBLEASE AGREEMENT  
BETWEEN THE CITY AND BOROUGH OF SITKA  
AND OSTROV ENTERPRISES d/b/a AIRPORT GIFT SHOP**

City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("CBS") and Ostrov Enterprises d/b/a Airport Gift Shop ("Ostrov"), 600 C Airport Road, Sitka, Alaska 99835 ("Tenant"), agree to amend and modify the Sublease Agreement ("Sublease") dated April 1, 2011. This Amendment No. 1 to Sublease was approved by the CBS Assembly on \_\_\_\_\_ and is subject to approval by State of Alaska, Department of Transportation and Public Facilities ("DOT&PF") in accordance with Section 24.2.

The following sections of the Sublease are amended as follows (new language underlined; deleted language stricken):

Exhibit A - Pictorial representation of the areas subleased in the Sitka Rocky Gutierrez Airport terminal building, ("Terminal Building"), including sublease space L-4 and L-6, at 600 Airport Road, Sitka, Alaska 99835 ("Subject Property").

\* \* \*

**Section 1.1 Conveyance of Estate in Sublease.**

CBS, for and in consideration of the Rents received and of the covenants and agreements made by Tenant, does sublease to Tenant, and Tenant subleases from CBS, the Subject Property as shown on Exhibit A. Exhibit A shows an approximately 1,053 ~~798~~ square feet of Terminal Building space for purposes of a gift shop and/or espresso stand.

\* \* \*

**Section 2.1 Calculation & Method of Payment of Rent During the Initial Five-Year Term of the Sublease.**

The first year of the Sublease begins on the commencement date of this Sublease set out in Article I. Each successive year of the Sublease begins on the corresponding anniversary commencement date of the Sublease. Notwithstanding any other provision of this Sublease, on the term start date set out in Article I, Tenant shall pay the full Sublease Rent for the year. Subject to the provision in the previous sentence, Tenant shall pay the Sublease payments for subsequent years each month in advance on the first day of each and every month for which Rent is due throughout the term of the Sublease without the necessity of any billing by CBS. Tenant will sublease the space as shown in Exhibit A for \$21,481.20 ~~16,279.20~~/year payable at a rate of \$1,790.10 ~~1,356.60~~/month plus applicable cost of living adjustments referred to in Section 2.2 and extension option adjustments in Section 2.3.

All other sections of the Sublease that are not modified by this Amendment No. 1 remain in full force and effect.

**OSTROV ENTERPRISES d/b/a  
AIRPORT GIFT SHOP**

\_\_\_\_\_  
Print Name \_\_\_\_\_

**STATE OF ALASKA**                    )  
  ) **ss:**  
**FIRST JUDICIAL DISTRICT**    )

THIS CERTIFIES that on this \_\_\_\_ day of \_\_\_\_\_, 2012, personally appeared before me \_\_\_\_\_, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who by signing this agreement, swears or affirms that he/she is the \_\_\_\_\_ of Ostrov Enterprises d/b/a Airport Gift Shop and is authorized to sign this document on behalf of the Tenant, and does so freely and voluntarily.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

**CITY AND BOROUGH OF SITKA**

\_\_\_\_\_  
Jim Dinley, Municipal Administrator

**STATE OF ALASKA**                    )  
  ) **ss.**  
**FIRST JUDICIAL DISTRICT**    )

THIS CERTIFIES that on this \_\_\_\_ day of \_\_\_\_\_, 2012, before me, a Notary Public in and for the State of Alaska, personally appeared JIM DINLEY, who is the Municipal Administrator of the City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska, that he has been authorized by to execute the foregoing document, and does so freely and voluntarily.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

**AMENDMENT NO. 1 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 agree to amend the Agreement at set out in this Amendment No. 1 To True Alaska Bottling Company Purchase Agreement For Raw Water In Bulk For Export ("Amendment No. 1") at Sections 3.1 and 3.2, regarding any reference to the first "24 months" of the Agreement, and changing it to the first "36 months" of the Agreement, which will extend the deadline by one additional year until December 8, 2009 for TAB to "take [the required] delivery of and export at least 20 million gallons of water from Sitka pursuant to this Agreement;"

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 27, 2009:

1. Revising Section 5.2 of the Agreement to provide for required start or notification dates and 30 day progress updates by TAB regarding third party inquiries for the purchase of bulk water;
2. That Sitka receives a non-refundable payment of \$118,000 in case from TAB at the time of the execution of this Amendment No. 1, and that \$18,000 of that money will go toward outstanding bills that TAB owes to Sitka, with \$100,000 retained by Sitka unencumbered;
3. That TAB agrees to pay, and not contest, the outstanding balance of its current debts owed to the Sitka, by December 1, 2009;
4. That Dick Kearns of TAB submit an affidavit attesting to the existence of a contract to sell bulk water that he is not allowed to share due to a confidentiality agreement; and
5. That this Amendment will take effect upon receipt of \$118,000 to Sitka that must be submitted within one month of the Assembly's motion, by February 27, 2009.

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 amend the Agreement as follows, as authorized and pursuant to Section 20 of the Agreement:

A. Section 3.1 of the Agreement is amended to read as follows (new language underline; deleted language stricken):

**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 months after the effective date of this Agreement. At the conclusion of the 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 36-month period immediately after the effective date of this Agreement, TAB must take delivery of and export at least 20 million gallons of water. If TAB does not take delivery of and export at least 20 million gallons of water from Sitka pursuant to this Agreement in the first 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 (45<sup>th</sup>) 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.

B. Section 3.2 of the Agreement is amended to read as follows (new language underline; deleted language stricken):

**3. Water Volumes Contracted by TAB from Sitka.**

3.2 Thirty six 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:

\* \* \*

Stage 1: Stage 1 begins 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 61.4 af (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 (45<sup>th</sup>) day after Sitka gives notice to TAB by certified mail that TAB has failed to meet such requirement, unless within said 45-day period, TAB cures such failure as determined by Sitka in its sole discretion.

C. Section 5.2 of the Agreement is amended to read as follows (new language underline; deleted language stricken):

5. **Water Distribution.**

\*\*\*

*days*

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. TAB shall give written notice to Sitka within seven calendar of any such inquiry, and shall monthly from the date of the initial notice give written status reports to Sitka regarding such inquiries. If TAB reaches agreement with any third party regarding bulk water sales, Sitka shall be given a written notice of such an agreement with three calendar days of the agreement. 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.

Nothing in this Amendment No. 1 supersedes, voids, or modifies the Agreement except as provide in this Amendment No. 1. All other sections of the Lease that are not modified by this Amendment No. 4 shall remain in full force and effect.

**TRUE ALASKA BOTTLING COMPANY**

*Charles Richard Kearns*

Richard Kearns, President

DATE 3-3-09

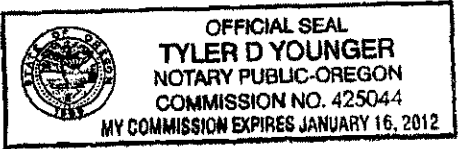
STATE OF Oregon

Linn JUDICIAL DISTRICT

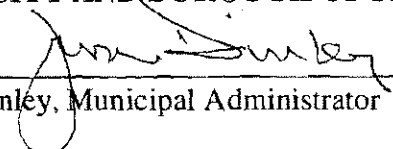
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) ss. **ACKNOWLEDGMENT**  
)

THIS CERTIFIES that on this 3 day of March, 2009, **Richard Kearns**, 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.

*Tyler D. Younger*  
Notary Public by and for Linn, Oregon  
My Commission Expires: 1/16/12



**THE CITY AND BOROUGH OF SITKA**

  
\_\_\_\_\_  
Jim Dinley, Municipal Administrator

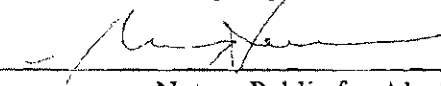
DATE 3-26-09

STATE OF ALASKA )


) ss. **ACKNOWLEDGMENT**

FIRST JUDICIAL DISTRICT )

THIS CERTIFIES that on this 26<sup>th</sup> day of March, 2009, **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.

  
\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: with office

**ATTEST:**

  
\_\_\_\_\_  
Colleen Ingman, MMC  
Municipal Clerk

192.018

**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 (45<sup>th</sup>) 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	<del>230.2 422.8</del> af (75mg)	<del>153.4 61.4</del> af (50 20mg)	12-month period
Stage 2	33.6 MG	2,000 af	306.9 af (100mg)	<del>230.2 422.8</del> 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	( ) <sup>1</sup>	N/A	3,068.9 af (1bg)	12-month period

<sup>1</sup> 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.

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.~~

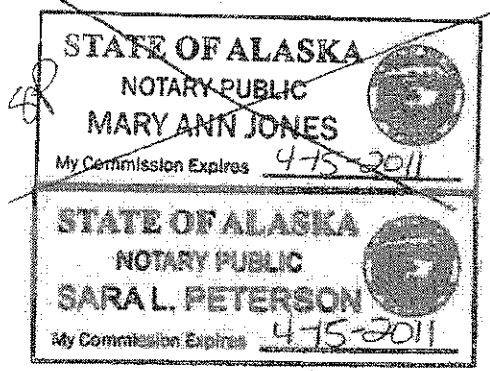
Sitka may form a Port Authority or similar entity, in the future and this agreement shall be completely transferable to said Port Authority. A transfer of the agreement to any such entity shall not create any restrictions upon TAB to purchase water other than those restrictions named in this agreement.

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

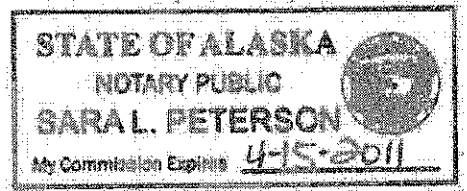
STATE OF ALASKA )  
 ) ss.  
FIRST JUDICIAL DISTRICT )

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 (45<sup>th</sup>) 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	<del>230.2</del> <u>122.8</u> af (75mg)	<del>153.4</del> <u>61.4</u> af (50 <u>20</u> mg)	12-month period
Stage 2	33.6 MG	2,000 af	306.9 af (100mg)	<del>230.2</del> <u>122.8</u> af (75 <u>40</u> -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	( ) <sup>1</sup>	N/A	3,068.9 af (1bg)	12-month period

<sup>1</sup> 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~~ ~~422.8~~ 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~~ ~~422.8~~ 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.

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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.

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.

TAB  
1-27-10  
1-27-10

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.

**AMENDMENT NO. 3 TO  
TRUE ALASKA BOTTLING COMPANY PURCHASE AGREEMENT  
FOR RAW WATER IN BULK FOR EXPORT**

WHEREAS, the City and Borough of Sitka ("Sitka") and True Alaska Bottling Company ("TAB") entered into the "True Alaska Bottling Company Purchase Agreement for Raw Water in Bulk for Export" ("Agreement"), on December 7, 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");

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

WHEREAS, Sitka and TAB agree to further amend the Agreement as set out in this Amendment No. 3 To True Alaska Bottling Company Purchase Agreement For Raw Water In Bulk For Export ("Amendment No. 3");

WHEREAS, this Amendment No. 3 extends TAB deadlines by two additional years at Sections 3.1 and 3.2, contingent upon TAB agreeing to the following conditions, which were required and approved by the CBS Assembly at its Regular Meeting on January 25, 2011:

1. Sitka receives a non-refundable payment of \$150,000 in two installments of \$75,000 from TAB to be applied towards export water payments owed to Sitka during the two-year term of this Amendment No. 3;
2. Amendment No. 3 will take effect only upon receipt of the first \$75,000 installment, received no later than February 26, 2011;
3. To keep the Agreement in effect, the second installment of \$75,000 is owed no later than February 26, 2012.
4. If no water export occurs within the two-year term of this Amendment No. 3, in accordance with the Agreement at Article 3.1 and 3.2, both payments shall be retained by Sitka unencumbered; and

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. 3, which includes amending the Agreement as follows and as authorized pursuant to Section 20 of the Agreement (new language underlined; deleted language stricken):

**3. Water Volumes Contracted by TAB from Sitka.**

3.1 Sitka will make available to TAB a total of 8,972 acre-feet of raw water for a period of 72 ~~48~~ months after the effective date of this Agreement. At the conclusion of the ~~72~~48 -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 ~~72~~48 -month period immediately

after the effective date of this Agreement, TAB must take delivery of and export at least 50 million gallons of water. If TAB does not take delivery of and export at least 50 million gallons of water from Sitka pursuant to this Agreement in the first 7248 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 (45<sup>th</sup>) 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 72 48 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 af (75mg)	153.4 af (50 mg)	12-month period
Stage 2	33.6 MG	2,000 af	306.9 af (100mg)	230.2 af (75 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	( ) <sup>1</sup>	N/A	3,068.9 af (1bg)	12-month period

Stage 1: Stage 1 begins 72 48 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 af (50 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 (45<sup>th</sup>) day after Sitka gives notice to TAB by certified mail that TAB has failed to meet such requirement, unless within the 45-day period, TAB cures such failure as determined by Sitka in its sole discretion.

\* \* \*

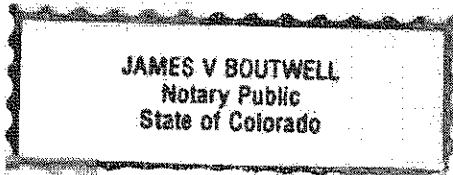
<sup>1</sup> Annual acre-feet available and the minimum amount of water available for export per 12-month period will be determined solely by Sitka at that time based on availability.

TRUE ALASKA BOTTLING COMPANY

Terrence J. Trapp  
CEO (title)

STATE OF COLORADO )  
 ) ss.  
COUNTY OF JEFFERSON )

THIS CERTIFIES that on this 9<sup>TH</sup> day of FEB, 2011, TERRENCE 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.



James V. Boutwell  
Notary Public by and for James V. Boutwell  
My Commission Expires: 9/28/2014

THE CITY AND BOROUGH OF SITKA

James E. Dinley  
JAMES E. DINLEY, Municipal Administrator

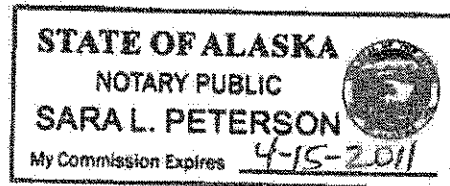
STATE OF ALASKA )  
 ) ss.  
FIRST JUDICIAL DISTRICT )

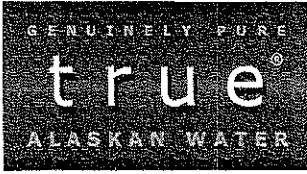
THIS CERTIFIES that on this 15 day of February, 2011, James Dinley signed this document, and by signing affirms that he is the MUNICIPAL ADMINISTRATOR of the City and Borough of Sitka, Alaska, a municipality organized under the laws of the State of Alaska, that he has been authorized to execute the foregoing document, and executes the document freely and voluntarily.

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

ATTEST:

Serena Wild  
Sara Peterson  
Acting Municipal Clerk  
Assistant





True Alaska Bottling  
4500 Sawmill Cove Road  
Sitka, AK 99835  
907-747-4623

September 20, 2012

Mr. Garry White  
Executive Director  
Sitka Economic Development Association  
329 Harbor Drive, Suite 212  
Sitka, Alaska 98835

Dear Garry:

After reviewing your memo to the SCIP on September 11, TAB is concerned that if 100 million gallons is not exported by the end of the 2 year extension, whatever portion of the \$1,000,000 that has been prepaid but not shipped will be forfeited by TAB. This concern stems from how long it will take to gain all approvals and complete the loading station/bulk water dock in Sitka. There are many factors that come into play with the loading station including permitting, availability and delivery of materials, weather, CBS, State of Alaska and Federal approvals, and the hydro-electric expansion that are beyond the control of TAB. Delays in any of these areas will extend the time to have a loading facility available for bulk water export. The time frame for the completion of the loading station has been estimated from 6 months to more than one year. The problem is that TAB cannot know or control many of the factors which will transpire in the development of the loading facility. The impact of such delays could mean that there may not be adequate time to take delivery of the prepaid amounts.

With this concern in mind, TAB requests that the contract extension be 3 years. TAB has paid roughly \$100,000 per year for contract extensions. If CBS were to grant contracts similar to TAB's to two other companies for all of the available water, the anticipated amount for all three companies would be \$300,000 per year. Over 3 years, this would amount to \$900,000. TAB is offering to pay \$1,000,000 now to CBS. In essence, TAB is paying for all of the available water in advance for the next 3 years. If the delivery of water or the construction of the bulk water loading station is delayed because of actions taken by the CBS, e.g, expansion of the hydro- electric plant, then each month of delay should also be added to the term of the contract.

No water can be shipped until a viable loading station or dock is constructed. There is only room for one bulk water dock and only one company can build it. TAB is prepared to undertake this effort immediately and certainly has the incentive to complete this effort as soon as possible considering the \$1,000,000 deposit it will make to CBS. TAB will need the assistance of CBS to help obtain the necessary approvals and coordinate with the various government agencies. TAB is proposing that a liaison be appointed by the city to interface with TAB and help with the necessary permits and approvals. To keep CBS informed of the progress, TAB offers to furnish a progress report on a quarterly or more frequent basis to the Sawmill Cove Board. This report in conjunction with the CBS liaison will keep the CBS updated on the progress of the loading facility. This business is significant and important for CBS and TAB.

Yours truly,

Terry Trapp  
CEO – True Alaska Bottling Company

## **SAWMILL COVE BOARD OF DIRECTORS**

**Meeting Minutes – October 08, 2012** (Approved by the Board on November 1, 2012)

### **H. UNFINISHED BUSINESS**

#### **2. TAB Bulk Water Agreement Amendment**

Mr. Trapp joined the meeting via teleconference at about 4:05pm.

Mr. Trapp provided background and reviewed TAB's proposal:

- Since the first part of 2012, TAB has been working with Aqua Alaska (principles in Fairbanks) on the logistics of shipping bulk water.
- Aqua Alaska has secured financing to cover the costs to develop the needed infrastructure in the receiving countries.
- The principles of Aqua Alaska have developed successful businesses in the pipeline industry as well as other investments such as a bottling plant in Hyder, Alaska.
- TAB has signed an agreement with Aqua Alaska to export bulk water.
- Aqua Alaska has negotiated with shipping companies in Greece, United Kingdom, Denmark and Holland. They are in the process of selecting one of these companies to be a joint venture partner Aqua Alaska. Each of the shipping companies has vessels they could commit to transporting bulk water.
- There is a current surplus of vessels and these companies are interested in entering a new market.
- Due to the significant investment required, the investment company and the shipping companies are asking for exclusive rights on the transport of bulk water world-wide.
- TAB is requesting an exclusive contract for bulk water. TAB would work with other companies interested in shipping bulk water at an affordable price in the interest of selling as much bulk water as possible.
- Aqua Alaska and the shipping companies are concerned with quality control of the water and insist on stainless steel hulls and piping of the vessels.
- They request that no docking infrastructure be started until they have a chance to determine their specific infrastructure needs.
- Prior to construction of a dock, Aqua Alaska is interested in immediately shipping water via Flexi-Tanks or other containerization.
- Customer contracts in the Middle East and Mexico are ready for execution.

Mr. Trapp stated that TAB is requesting a three-year exclusive contract for all the bulk water available for export from Sitka. TAB will pre-purchase one-hundred million gallons of water, paying \$1 million when the contract becomes effective. TAB asks that the CBS not engage in any new applications with any other parties regarding bulk water at this time. TAB also requests that the \$350,000 previously paid to the CBS for TAB's contracts be applied as a credit toward exports for the next three years. Any delays in construction of infrastructure or the export of bulk water due to decisions made by the CBS, such as the expansion of the Blue Lake dam or operation of the bulk water pipelines, should be added to the term of TAB's contract on a monthly basis. TAB also requests an assigned CBS liaison.

#### **Board Discussion:**

- The type of dock and ownership were discussed. The City and Borough of Sitka will maintain ownership of the bulk water pipeline. TAB could receive water credits in exchange for the costs for dock construction, but ultimately, the CBS would need to own and control the infrastructure.
- Marine engineers estimates six months for planning, six months for permitting, and one year for construction of a dock. This is just their estimate.
- Concerns about committing to exclusivity with TAB for that length of time were discussed.

#### **Public Comment:**

Mr. Roche (Black Hat Distribution)

- Black Hat has been in a JV agreement with Cove Water since 2009.

- Black Hat is the exclusive distributor of True Alaska bottled water and has an option to purchase the bottling plant. The option is for a period of five-years.
- Black Hat is negotiating with two overseas companies regarding bottled water export.

Regarding TAB's proposal:

- TAB's statement that another entity would not be able to export bulk water from Sitka within the three-year period is based on assumptions that such a company has no infrastructure on the receiving end or the ability to market and distribute to an end user as premium bottled water.
- A company selling premium bottled water will not be moving bulk water in a supertanker, but use three to four medium capacity ships in the first year. This would bring in more revenue to Sitka in one year than the proposed TAB contract based on a \$1 million payment.
- TAB states they are paying for all available bulk water in advance for the three-year period. At current one-cent per gallon pricing, the value of all available Sitka water is \$95 million per year. While this level of export is not attainable now, it does represent the true value of Sitka's bulk water asset.
- Is there a conflict with the CBS plan to construct a multi-purpose bulkhead dock and a bulk-water dock?
- There is a short-term alternative to export water from Sitka without the need for the costly infrastructure.
- There is a company interested in acquiring water for three to four medium sized ships and perhaps purchase and expand the bottling plant, pending resolution of current legal matters. This company has the ability to process and market the water.

**Discussion included:**

- Historic production of the bottling plant and challenges of marketing in the past.
- Exclusivity should include milestones or performance requirements.
- Responsibility for delays, CBS vs. TAB, can be defined.
- Volume of water requested by TAB, and how much to hold back to provide for other needs.
- Time period for the contract and milestones to be met over that period.

**MOTION:** **M/S Jones/Fondell** moved to recommend to the Assembly, the terms presented in the memo dated September 11, 2012\*, for the amendment of TAB's bulk water agreement.

\* Four bullet points of the September 11, 2012 memo.

- Section 3.1 is amended for another 36-month extension.
- Water allocation is increased from 8,960 acre-feet to 29,200 acre-feet (35 acre feet or 11,404,785 US gallons set aside for bottled water allocation).
- TAB will pay a \$1,000,000 dollar non-refundable payment, no later than 12/08/2012 to be applied towards export of water payments within the 36-month extension, but if no export occurs, it shall be retained by the CBS unencumbered. CBS will retain any interest earned from the non-refundable payment.
- TAB requests that the \$350,000 previously paid to the CBS as non-refundable payment be allowed to be applied towards export of water payments within the 36-month extension.

**Discussion:**

- Pricing of the water.
- The value of exclusivity and the amount of payment required.
- Amount of water needed to be withheld for the bottling plant and other uses. Cove Partners no longer has a guaranteed water allocation for the bottling plant.

**AMENDMENT:** **M/S Horan/Jones** moved to amend bullet point number two as follows:

- Water allocation is increased from 8,960 acre-feet to **27,773** ~~29,200~~ acre-feet.

**ACTION on AMENDMENT:** **Motion PASSED 4/0 on a roll call vote.**

Yeas: Dan Jones, Aaron Wilkinson, Chris Fondell, Charles Horan,



Nays: None

- **AMENDMENT: M/S Jones/Fondell** moved to amend bullet point number three to say that TAB will pay a \$1,000,000 dollar non-refundable payment, no later than 12/08/2012 to be applied towards export of water payments within a 24 month extension, if the CBS and TAB agree, TAB will pay another \$500,000 dollar non-refundable payment no later than 12/08/2014 to be applied towards export of water payments within the following 12 months, but if no export occurs under either benchmark, the funds shall be retained by the CBS unencumbered. CBS will retain any interest earn from the non-refundable payment.

**Discussion:**

- Amount and timing of payments.
- Bullet point number one remains the same.
- Bullet point number four remains the same, but will be clarified to state that: TAB will be allowed to use the \$350,000 previously paid to the CBS as non-refundable payment to be applied towards export of water payments within the 36 month extension.

**ACTION on AMENDMENT: Motion PASSED 4/0 on a roll call vote.**

Yeas: Aaron Wilkinson, Chris Fondell, Charles Horan, Dan Jones,  
Nays: None  
Absent: Grant Miller

Mr. Trapp responded that the proposal as amended was not acceptable to TAB.

**Discussion:**

- The Board considered options.

**ACTION on Original MOTION: Motion PASSED 3/1 on a roll call vote.**

Yeas: Charles Horan, Dan Jones, Aaron Wilkinson,  
Nays: Chris Fondell  
Absent: Grant Miller



INDUSTRIAL PARK  
329 Harbor Dr. Suite 212, Sitka, AK 99835

907-747-2660

Wednesday, October 10, 2012

## MEMORANDUM

To: Sawmill Cove Industrial Park Board of Directors (SCIP Board)

From: Garry White, Director

Subject: TAB Extension Request

### Introduction

True Alaska Bottling (TAB) is requesting an extension to its existing bulk water contract.

The SCIP Board reviewed TAB's request at their 10/08/2012 meeting. The Board and TAB were unable to come to an agreement on the details of the amendment to the contract. This agenda item will discuss a counter proposal from TAB.

### Background

The CBS obtained water permits to export raw water in bulk from the Blue Lake water shed when they acquired the former mill property at the Sawmill Cove Industrial Park.

State of Alaska permits LAS 19669 and ADL 43826 allow for the export of 29,235 Acre-feet of water for bulk export. One Acre-foot equals 325,851 US gallons of water. Therefore the CBS has roughly 9.5 billion gallons (BG) of water available for export each year.

The CBS has entered into multiple bulk water export agreements in the past with various entities. Currently the CBS has one active bulk water agreement with TAB. On 12/07/06 the CBS entered into an agreement with True Alaska Bottling (TAB) for a bulk water allocation of 8,960 Acre-feet or approximately 2.9 BG of water.

The CBS retains 20,275 Acre-feet or roughly 6.6 BG of water available for export. (Please see attached spreadsheet.)

### History of TAB bulk water agreement

Section 3.1 of the bulk water export agreement required TAB to export a minimum amount of water within a 24 month period starting 12/07/2006. TAB failed to export the required water by 12/07/2008. Since that time period TAB has negotiated with the CBS, 3 separate amendments to Section 3.1 to allow for longer terms to export the required amount of water.

- 2008 – CBS allowed TAB 12 additional months to export water. TAB paid the CBS \$100,000 for the extension.
- 2009 – CBS allowed TAB another 12 months to export water. TAB paid the CBS \$100,000 for the extension.
- 2010 – CBS allowed TAB 24 additional months to export water. TAB paid the CBS \$150,000 for the extension.

### **Basic Terms of TAB's Existing Bulk Water Agreement**

- A minimum amount of water must be exported within a set time period specified in Section 3.2 of the contract.
  - 50 million US gallons of water must be exported within the time period specified in Section 3.1 of the contract.
- The agreement defines stages of water volume export to retain water allocation amounts.
  - TAB gains more allocations by exporting more water and can lose allocation amounts by failing to export specified amounts.
- Municipal water uses retain first right and priority to the water.
- The agreement allows for planned hydroelectric dam expansion and possible non-water delivery due to the project.
- The price for water has been set at \$3,258.51/Acre-feet or \$0.01/US gallon.
- Recently the CBS has been requiring TAB to pay a non-refundable payment to be applied towards water export payments owed to Sitka within the contract time frame.
- The water based distribution system must be approved by the CBS.
  - Currently it is unknown what design or structure will be used to move the water to a transportation vehicle or vessel.
  - Funding and ownership of infrastructure will be negotiated.

### **TAB's Original Proposal for Bulk Water Export Agreement Amendment**

- Section 3.1 is amended for another 36 month extension.
- TAB requests if delivery of water or the construction of the bulk water loading station is delayed because of actions taken by the CBS, e.g. expansion of the hydro-electric plant, then each month of delay should also be added to the term of the contract.
- Water allocation is increased from 8,960 Acre-feet to 29,235 acre-feet.

- TAB will pay a \$1,000,000 dollar non-refundable payment, no later than 12/08/2012 to be applied towards export of water payments within the 36 month extension, but if no export occurs, it shall be retained by the CBS unencumbered. CBS will retain any interest earned from the non-refundable payment.
- TAB requests that the \$350,000 previously paid to the CBS as non-refundable payment be allowed to be applied towards export of water payments within the 36 month extension.
- TAB requests that a liaison be appointed by the city to interface with TAB and help with the necessary permits and approvals.

### **SCIP Board's counter proposal for Bulk Water Export Agreement Amendment**

- Section 3.1 is amended for another 36 month extension contingent on the following.
- Water allocation is increased from 8,960 Acre-feet to 27,773 Acre-feet.
- TAB will pay a \$1,000,000 dollar non-refundable payment, no later than 12/08/2012 to be applied towards export of water payments within a 24 month extension, if the CBS and TAB agree, TAB will pay another \$500,000 dollar non-refundable payment no later than 12/08/2014 to be applied towards export of water payments within the following 12 months, but if no export occurs under either benchmark, the funds shall be retained by the CBS unencumbered. CBS will retain any interest earned from the non-refundable payment.
- TAB will be allowed to use the \$350,000 previously paid to the CBS as non-refundable payment to be applied towards export of water payments within the 36 month extension.

### **TAB's Counter Proposal for Bulk Water Export Agreement Amendment**

- Section 3.1 is amended for another 36 month extension.
- Water allocation is increased from 8,960 Acre-feet to 27,773 acre-feet. 1,462 Acre-feet will be reserved by Sitka for use in small water operations. Water can only be exported from Sitka in package sizes of a 20' container or less. No bulk water tanker operations will be allowed. (Note: bottled water can be moved in larger containers)
- TAB will pay a \$1,000,000 dollar non-refundable payment, no later than 12/08/2012 to be applied towards export of water payments within the 36 month extension, but if no export occurs, it shall be retained by the CBS unencumbered. CBS will retain any interest earned from the non-refundable payment.

- TAB requests that the \$350,000 previously paid to the CBS as non-refundable payment be allow to be applied towards export of water payments within the 36 month extension.

**Action**

- Discussion and recommendation to the Assembly on terms of the amendment to extend.

## SAWMILL COVE BOARD OF DIRECTORS

Meeting Minutes – October 15, 2012 (Approved by the Board on November 1, 2012)

### H. UNFINISHED BUSINESS

#### 1. TAB Bulk Water Agreement Amendment

Ms. Hillhouse clarified that the discussion is limited to anything related to the TAB proposal before the Board. Black Hat will be allowed to bring its proposal at an upcoming Board meeting.

Mr. Roche stated that as long as he can present at a separate meeting his proposal, he will not stay on line and comment about TAB proposal (Mr. Roche stayed on the line to hear the TAB proposal)

Mr. Trapp made the following points:

- TAB is requesting a three-year extension to the contract.
- TAB is requesting allocation of the total amount of bulk water available for export, roughly 9 billion gallons, and agrees that the amount to be reserved (i.e. 500,000,000 gallons) is acceptable as long as it is not available for bulk water export and is shipped only in containers 20' or less in length.
- TAB agrees to pay \$1 million as a prepayment for 100 million gallons.
- TAB requests a credit for previous payments to the CBS in the amount of \$350k as future water credits at the time TAB takes delivery of water.
- TAB requests that Garry White be appointed as the liaison between TAB, the CBS and the SCIP Board.
- TAB requests that they be informed of anything that might delay or prevent TAB from acquiring the necessary tidelands lease from the CBS.

*A permit for construction within the tidelands will also be required from the Army Corps of Engineers, and this is beyond the control of the CBS.*

Board Discussion:

- The SCIP Board can recommend to the Assembly that they approve the lease of specific tidelands.
- The Board would provide support for TAB in seeking necessary permits with the Director, Garry White acting as liaison.

Ms. Hillhouse advised that the SCIP Board can wait to make a decision on the TAB proposal until the proposal by Black Hat/Cove Water Resources receives Board hearing at the next meeting.

The Board and Municipal Attorney discussed options regarding how to handle multiple proposals. The Board can consider multiple proposals that even could be in conflict, and make recommendations, leaving the final decision to the Assembly.

**MOTION:** M/S Horan/Fondell moved to recommend to the Assembly that the TAB bulk water contract be extended based on TAB's counter proposal for bulk water export as presented on page three of the memo dated October 10, 2012, with the addition that the SCIP Director be appointed as liaison.

TAB's Counter Proposal for Bulk Water Export Agreement Amendment (memo of Oct. 10, 2012, page 3)

- Section 3.1 is amended for another 36 month extension.
- Water allocation is increased from 8,960 Acre-feet to 27,773 acre-feet. 1,462 Acre-feet will be reserved by Sitka for use in small water operations. Water can only be exported from Sitka in package sizes of a 20' container or less. No bulk water tanker operations will be allowed. (Note: bottled water can be moved in larger containers)
- TAB will pay a \$1,000,000 dollar non-refundable payment, no later than 12/08/2012 to be applied towards export of water payments within the 36 month extension, but if no export occurs, it shall

be retained by the CBS unencumbered. CBS will retain any interest earned from the non-refundable payment.

- TAB requests that the \$350,000 previously paid to the CBS as non-refundable payment be allowed to be applied towards export of water payments within the 36 month extension.

Board Discussion:

- For the record, the Board wanted to emphasize that they have spent a significant amount of time discussing the details of this issue prior to making any recommendation to the CBS.

**ACTION: Motion PASSED 4/0 on a roll call vote.**

Yeas: Aaron Wilkinson, Chris Fondell, Charles Horan, Dan Jones

Nays: None

Absent: Grant Miller

## **PROPOSAL OF SITKA BULK WATER EXPORT TO CHINA**

Cove Water Resources Inc., a Alaskan company (hereafter referred as CWR), has been engaging a Hong Kong listed public company in the discussion of bulk water export from Sitka to China for the past 6 months.

The HK company has a state-of-the-art water bottling plant in southern China, capable of producing up to 40 million cases of bottled water per year. It has distribution channels throughout China. With the increasing pollution in China's water resources, the company is looking for viable bulk water sources worldwide. It has been looking at optional bulk water sources in Norway, New Zealand and Adak in Alaska for the past one year.

When approached by the HK company, CWR management strongly recommends Sitka source. Although there are some challenges regarding loading infrastructure at Sitka, CWR feels that Sitka has a strong long-term expansion potential compared with the other bulk water sources.

With years of close business relationship between CWR management and Sitka, CWR is hereby submitting to the Sawmill Cove Industrial Park Board and the Assembly of City and Borough of Sitka (hereafter collectively referred as Sitka) the following proposal for your consideration and approval:

1. CWR realizes that it will take some time to go through the procedures before a new water purchase contract can be issued. Since CWR is currently finalizing the agreement with the HK company, the water purchase contract is a crucial pre-requisite. CWR is requesting Sitka to issue CWR a temporary contract so CWR can proceed with the negotiation with the HK company.
2. CWR would like to secure similar water purchase contract from Sitka as that of True Alaska Bottling Company (TAB). CWR would like to have a minimum water volume requirement for the first eighteen months to be between 25 mg and 50 mg per year. After the first eighteen months, the volume can go up to minimum of 50 mg per year.
3. CWR is aware that Sitka would like to have a \$100,000 water purchase prepayment per year for each water purchase contract. CWR is also aware that Sitka is requesting Alaska State government for \$7.5 million funding



for the proposed deep-water bulkhead port at Silver Bay and the this funding request can only be approved after the November 2012 Election. This funding is crucial to an early materialization of bulk water export from Sitka. CWR is requesting that Sitka allows CWR to puts \$100, 000 water purchase prepayment in trust until 30 days after the 2012 Election.

4. CWR has worked with the HK company to have secured several brand-new storage tanks at the receiving port. The off-loading infrastructure is in place to make the shipping of Sitka water a reality. Meanwhile CWR has also secured a brand-new 16,500DWT food-grade tanker ready to ship water to China.

The bottom line is that CWR will need a water purchase contract from Sitka in place before any final deal can be reached with the HK company and the first water shipment can start as early as summer 2013. Time is of the essence. We would like Sitka to fast-track this water purchase contract so it will generate real economic benefits for both CWR and Sitka.

Cove Water resources Inc.

Greg Miller

President

- Lot 7 is 32,879 square feet with a set yearly lease rate of \$0.36 per square foot per year.
- Total lease area is 73,907 square feet with an annual lease amount of \$26,606.52.

**ACTION: Motion PASSED 3/0 on a roll call vote.**

Yeas: Charles Horan, Grant Miller, Aaron Wilkinson,

Nays: None

Absent: Chris Fondell

Abstain: Dan Jones

#### 4. Silver Bay Seafoods Lease Request

Mr. Riggs provided the following information for Board consideration:

- The area currently leased for net storage will be needed during the Blue Lake Expansion project.
- SBS has invested a significant amount of money in establishing a net repair and storage service.
- The net repair and storage service is important to the local commercial fishermen that would otherwise have to take their nets to another community. Maintaining this service in Sitka supports the local commercial fleet and increases local economic activity.
- Original consideration was to relocate to space on Lot 6 or 7, however, since Aggregate Construction has expressed interest in these lots, SBS is looking at other options, including space on Lot 16.
- Silver Bay Seafoods (SBS) is interested in finding a suitable long-term or permanent location for net storage.

Discussion of options for Lot 16 included:

- The condition of the Carpenters Shop, including a non-working sprinkler system, makes it unleaseable without significant expense to the SCIP Enterprise Fund.
- The Lot, or a portion of the Lot may be put up for sale in the near future.
- The CBS is planning to store rock along the highway side portion of this Lot during the Blue Lake expansion project.
- SBS is interested in possibly purchasing a portion of Lot 16 as a logical continuation of SBS owned property within the Park.

Mr. Riggs will bring a proposal to the SCIP Board in September for their consideration.

#### 1. SCIP Wharfage Discussion (taken out of order)

Discussion included:

- Lack of infrastructure
- Near-term freight types that would most likely come ashore at the SCIP

**MOTION: M/S Jones/Miller** moved that the SCIP Board set the following wharfage rates:

- Rock, Sand, and Gravel - \$1.00 per ton.
- All other Freight will be determined on a case-by-case basis.

**ACTION: Motion PASSED 4/0 on a roll call vote.**

Yeas: Dan Jones, Grant Miller, Charles Horan, Aaron Wilkinson,

Nays: None

Absent: Chris Fondell

Abstain: None

#### NEW BUSINESS

#### 1. Cove Water Resources, Inc. Bulk Water Request

Greg Miller and Eddie Tang joined the meeting via teleconference.

Mr. White advised the Board that Cove Water Resources (CWR) is interested in a bulk water contract similar to the TAB contract.

Mr. Tang provided the following information for the Board's consideration:

- He has been involved, on and off, with Sitka bulk water interests since the mid-1990's and is aware of the challenges.
- He was directly involved with the efforts to establish bulk water export from Adak. Adak received its first export permit in September of 2011.
- He has been in contact with a company in Hong Kong that has a bottling plant in South China that has been looking for a bulk water source as far away as New Zealand.
- A brand new, reasonably sized tanker of 16,500 dead weight tons is available that could transport 4,125,000 gallons of water.
- There is an offloading facility already in place in Southern China.
- SCIP has no dock yet, but it may be possible to load water using a barge to secure the tanker and a pipeline extension from the end of the shore side pipe.
- The goal is to load the first tanker before May of 2013 as summer is the high season for the water market.
- He sees an opportunity to market Sitka's water due to its high quality and the lack of such quality from sources in Asia.
- Due to business cycles in China, CWR would also request that the contract start date and renewal dates be set for the middle of March rather than in December.
- CWR would like to get the contract approved as soon as possible.

Mr. Sweeney cited the need to include a notice within the lease that there will be a sixty (60) day outage to draw water at some point during the Blue Lake expansion project.

The Board instructed the Director to work with CWR on a draft bulk water contract to be brought back to the Board for their consideration at the September meeting. Changes to the contract will be to reduce the volume requirements of stage #1 (Section 3.1 of the contract) from 50 million gallons to 20 million gallons and to set a term of 18 months for moving the first shipment.

**2. CBS FY2014 Legislative Request (moved to after I.3. to accommodate Public Works staff)**

**3. Building 4690 Renovations RFP Approval**

Mr. Henrie reviewed the bid process and RFP requirements of the project and also noted the following:

- Only two bids were received, the lowest from CBC Construction.
- Materials to complete Arctic entryways are on site.
- The gutters and some leaks in the roof need to be fixed due to damage from heavy snow load last winter.
- An additional electrical transformer is estimated to cost \$35k.

Mr. Sweeney advised the Board that the SCIP Enterprise Fund currently has funds in undesignated working capital that can cover the cost of work on the 4690 building. However, unless there is a significant change to cash flow, funds will run out. As of the start of FY2013 (July 1, 2012) the SCIP Enterprise Fund had a balance of \$323k in undesignated working capital. The burn rate is about \$170k per year (or \$14 per month). Repayment of the \$300k+ loan for paving has not been included in this burn rate.

*There has been no evidence presented or found that shows the SCIP Board ever approved of, or recommended approval of, taking on a loan for the paving project. There is no record that the SCIP Board was informed that a loan was attached to the paving project.*

Based on a rate of return for leasing the building to the Electric Department during the Blue Lake expansion project, the Board consensus was that the money expended now would be recovered within two years. The

Black Hat Distribution Inc. And /OR NEW CO. (BHD)  
70 172 Street  
Surrey B.C. V3S9R2

October 27, 2012

Mr. Gary White  
Executive Director SEDA  
329 Harbor Drive, Suite 212  
Sitka, Alaska 98835

Dear Gary:

RE: BHD and /or NEW CO. Proposal for bulk water contract

BHD (formerly 535176 LTD, DBA Blue Glacier Water) has been in business since 1997. As of 2009 the BHD has been in a JV agreement with Cove Partners LLC the owners of Sawmill Cove bottling plant. BHD is the exclusive distributor of Sitka "True Alaskan Water" using a plant-based (PLA) bottle. Under the terms of this JV agreement BHD has an option to purchase the bottling plant, this option is for a period of five years. BHD is aware of the status of the property at this time, but it is hoped that this issue will be dealt with early in 2013. BHD and its overseas partners are currently doing due diligence on the bottling plant.

BHD's international sales have been focused on the Asian, Middle Eastern and South American markets. As a result of the marketing of Blue Lake Water, BHD is engaged in discussions with two overseas companies that are looking at the possibility of the continuation of Sitka bottled Water. One of the companies has started its due diligence of the plant and its possible expansion, along with how the Prince Rupert Port may make the plant more cost-effective. BHD and partners are ready to invest up to \$5 million to buy the plant and start bottling water in the spring of 2013. It is estimated that over 25 local full-time employments will be provided to Sitka. As part of the plant acquisition, the possibility of shipping Bulk Water from Sitka will be a deciding factor. This company has the means and the ability to move this project ahead. A new Alaskan Co. will be incorporated to hold and manage all operations in Alaska. This new Co. will favor local trades and professionals from Sitka in its operations.

With the above in mind and all due respect to the board, BHD is now submitting a proposal for a bulk water contract from the City and Borough of Sitka (CBS).

### **Proposal A**

BHD is asking CBS to allocate a minimum of 13,886 acre-feet of water (or 50% of the total 27.773 acre feet set a side for bulk water export) from Blue Lake to BHD for export with a price of \$0.01 per gallon.

**1A** BHD will pay **\$500,000 as a prepayment** to purchase water from CBS for the next 3 years. The payment is payable as soon as CBS approves BHD bulk water contract application. BHD would work with CBS and any other license holder of bulk water to construct and fund the necessary infrastructure in Sitka needed to ship water.

### **Proposal B**

BHD and is asking CBS to allocate the greater of the two, 18,800 acre-feet of water or the remainder of the bulk water that is not under contract as of Dec 15/2012 @ a price of \$0.01 per gallon.

**1B** BHD will pay **\$1,200,000 as a prepayment** to purchase water from CBS for the next 3years. The payment is payable as soon as CBS approves BHD bulk water contract application. Again BHD will work with CBS and any other license holders to construct necessary infrastructure or move ahead on its own with CBS guidance.

### **Further to Proposal A & B**

BHD guarantees to export minimum of 4 shiploads of water, starting no later than Dec 2013. That's a minimum of 20 million gallons (\$50,000 revenue for CBS). BHD will export a minimum of 30 million gallon in 2014 and 40 million gallons for 2015. To put all the volumes together, the total minimum volume to be exported from Sitka in the next 3 years will be up to 90 million gallons minimum, which is equivalent of \$900,000 revenue to CBS. To start moving the first shipload, it means million of dollars has already been invested on the receiving side.

BHD has engaged with a prominent shipping company that will provide food-grade tankers for the shipment of BHD's bulk water. The company has been involved in Sitka's bulk water export logistics since Sitka obtained its first bulk water export license. It has full knowledge of Silver Bay and its logistics.

BHD believes this proposal is in the best interests of CBS and BHD. Please give it serious consideration and approval.

Paul Roche  
President –  
Black Hat Distribution Inc.

## **SAWMILL COVE BOARD OF DIRECTORS**

**Meeting Minutes – November 01, 2012** (not yet approved by the SCIP Board)

### **H. UNFINISHED BUSINESS**

#### **1. Black Hat Distribution, Inc. Bulk Water Request – (Paul Roche via teleconference)**

Mr. Roche made the following points:

- He was an investor with Global H2O.
- Black Hat Distribution, Inc. (BHD) is currently the sole distributor for bottled water under the True Alaska brand, which is owned by Cove Partners, LLC (Star West Holdings).
- Proposal A:
  - Allocation of a minimum of 13,886 acre-feet of water (or 50% of the total 27,773 acre-feet set aside for bulk water export) from Blue Lake to BHD for export with a price of \$0.01 per gallon.
  - BHD would pay \$500,000 as a prepayment to purchase water from CBS for the next three years, payable as soon as the CBS approves BHD bulk water contract application.
  - BHD would work with any other license holder of bulk water to construct and fund the necessary infrastructure in Sitka needed to ship water.
- Proposal B:
  - Mr. Roche stated that Proposal B was BHD's preferred proposal.
  - Allocation of 18,800 acre-feet of water or the remainder of the bulk water that is not under contract as of December 15, 2012 at a price of \$0.01 per gallon.
  - BHD will pay \$1,200,000 as a prepayment to purchase water from CBS for the next three years, payable as soon as the CBS approves BHD bulk water contract application.
  - BHD will work with CBS and any other license holder to construct necessary infrastructure or move ahead on its own with CBS guidance.
- For both proposal A and proposal B:
  - BHD guarantees to export a minimum of four shiploads of water, starting no later than December of 2013.
  - BHD will export a minimum of 20 million gallons in 2013, 30 million gallons in 2014 and 40 million gallons in 2015.
- BHD has engaged Tudor Shipping, LTD ([tudorship.com](http://tudorship.com)) to ship the water in food-grade tankers.
- In order to ship water as soon as possible, temporary infrastructure to support loading a tanker may include floating pontoons and a barge.

#### **Public Comment**

Mr. Trapp stated that, based on the time required for permitting, shipping water by December 2013 seems too ambitious. TAB's estimates are that it will require closer to two years before the first water can be shipped.

Mr. Trapp also expressed concern over BHD's request for such a large quantity of water when the proposal only calls for shipping 20, 30, and 40 million gallons of water in consecutive years.

Mr. Trapp also wanted the Board to consider the years of history that TAB has in dealing with the CBS regarding bulk water.

Mr. Roche responded that BHD intends to use temporary infrastructure to ship water as soon as possible and that the 20, 30, and 40 million gallon amounts are minimum amounts of water to be shipped, not maximums.

Ms. Hillhouse advised the Board that both the TAB proposal and this proposal from Black Hat Distribution will be presented to the Assembly for their consideration, even if the BHD proposal has no SCIP Board recommendation attached.

## **Board Discussion**

**The Chair requested a motion.  
No motion was offered.**

The Board requested clarification from Mr. Roche on Black Hat's intentions regarding bottling water at the plant in Sitka.

Mr. Roche stated that their business plan calls for bottling water in Sitka (at the source) as a premium, high-end product to support the marketing of the bulk water that will be bottled in the receiving countries. However, this is contingent on receiving the bulk water allocation. BHD's bottling plant will be located where the bulk water is. Adak is another possibility that is being considered for bulk water and construction of a bottling plant, if water cannot be secured in Sitka.

Board discussion of their long history with TAB included statements that TAB has acted in good faith and made all payments required by their bulk water contract and extensions. The Board also wanted it known that they were cautious in developing the agreement with TAB and that such caution would be exercised in development of any other bulk water agreements.

The Board came to a consensus that the BHD proposal should be brought back for consideration if the TAB proposal is not approved by the Assembly or if TAB should not meet its obligation to pay the \$1,000,000 by the due date of December 8, 2012.

Mr. Roche expressed surprise that BHD's proposal was being considered as a "back-up" proposal and not on the same footing as TAB's proposal. He stated that BHD might not bring the same proposal back again.

The Board took no formal action on the BHD proposal.



## Garry White

---

**From:** Marianne Jones <mlaw@joneslawgroup.com>  
**Sent:** Thursday, September 13, 2012 1:28 PM  
**To:** Theresa Hillhouse  
**Cc:** mlaw@joneslawgroup.com; paulgroche@yahoo.ca; garrywhite@gci.net  
**Subject:** RE: CWR. Bulk Water

Theresa,

This responds to your email below. It was Garry White who told TAB directly that CWR was Greg Miller and Eddie Tang. Apparently Garry White learned this in a Sawmill Cove Board meeting when an application was discussed. TAB, through Terry Trapp inquired via email as to who were the principals and Garry White responded by phone with the name Greg Miller and Eddie Tang.

The City is clearly on notice that Mr. Tang is part of CWR and to now accept the statement via email that he is not a principal is not proper.

First, the City should require documentation dated prior to this issue being raised as to who the principals of CWR were as filed with the State of Incorporation; review corporate records and first determine if the City should allow CWR to breach and agreement with TAB. Second, the City should determine why Garry White was told Eddie Tang was a principal in CWR, if he was not as they now claim. The City is on notice of this issue and should step back until proof is shown (again proof filed prior to the issue rising here) that Mr. Tang is not involved in CWR.

TAB's position is that Mr. Tang does not have to be a principal of CWR, the mere fact that he signed a non-disclosure/non circumvention agreement with TAB and then his name is mentioned by Garry White in connection with a competing application should be enough to stop the City from any action with respect to CWR.

We respectfully request that Sitka acknowledge it's own speaking agent's representation to TAB, that Garry White learned that Eddie Tang was related to CWR and that before the City allows any further recognition of CWR, this issue be resolved. Specifically, TAB objects to Sitka placing CWR's issue on the agenda, to do so would participate in the violation of a non disclosure/non circumvention agreement TAB has with Eddie Tang.

Please let me know what you intend to do. Marianne.

> I am forwarding to you information received re the non-compete issue.

> Please let us know TAB's position.

>

> From: garrywhite@gci.net [mailto:garywhite@gci.net]

> Sent: Friday, September 07, 2012 11:08 AM

> To: 'Paul Roche'

> Cc: Theresa Hillhouse

> Subject: RE: CWR. Bulk Water

>

> Paul,

>

> Sorry we are not connecting via the phone. I have forward this email

> on to the City and Borough of Sitka (CBS) Attorney for her review. I

> will let you know as soon as possible what I find out. The Sawmill

> Cove Industrial Park (SCIP) Board of Directors meeting was postponed

> until the 20th of September. Depending on the CBS Attorney's

> review, I hope to have your bulk water request on the agenda. I will

> let you know as soon I find something out.

>  
> I will be out of the office traveling to the Midwest starting 9/12,  
> returning 9/19. I hope to have access to email during that period.

>  
> Thanks,

>  
> Garry White  
> Executive Director  
> Sitka Economic Development Association (SEDA)  
> 329 Harbor Dr., Suite 212  
> Sitka, AK 99835  
> 907-747-2660

>  
> www.sitka.net<<http://www.sitka.net>>  
> www.sawmillcove.com<<http://www.sawmillcove.com>>  
> www.sitkamarine.com<<http://www.sitkamarine.com>>  
> From: Paul Roche  
> [mailto:[paulgroche@yahoo.ca](mailto:paulgroche@yahoo.ca)]<mailto:[mailto:paulgroche@yahoo.ca]>  
> Sent: Friday, September 07, 2012 7:26 AM  
> To: Gray White  
> Subject: Fwd: CWR. Bulk Water

>  
>  
>  
> Sent from my iPhone. Paul

>  
> Begin forwarded message:  
> From: Paul Roche <[paulgroche@yahoo.ca](mailto:paulgroche@yahoo.ca)<mailto:paulgroche@yahoo.ca>>  
> Date: 7 September, 2012 17:17:04 GMT+02:00  
> To: Paul Roche <[paulgroche@yahoo.ca](mailto:paulgroche@yahoo.ca)<mailto:paulgroche@yahoo.ca>>  
> Subject: CWR. Bulk Water

>  
>  
>  
>  
> Sent from my iPhone. Paul

>  
>  
> Hello Garry,

>  
> I have been travelling in Europe for the past couple of weeks now. I  
> heard that TAB has some issues with Eddie Tang. I am not sure what the  
> issues are between them.

>  
> Myself and a investor are the principals of Cove Water Resources Inc.  
> I have been working with Greg Miller and Cove Partners for years when  
> the bottling plant was in operation. I have been involved with bulk  
> water on and off since 2000. I am aware of every new development with  
> Sitka's bulk water from your web site. I have been engaging my  
> business contacts in Japan, Korea, China, Mexico and elsewhere for the  
> past few years trying to start selling Sitka's bulk water. That's why  
> the company is ready to apply for the bulk water contract from the City and Borough of Sitka.

>  
> Since this issue with TAB, Greg Miller has asked to step down as  
> President and is no longer connected with CWR, further more Mr Tang  
> has never been part of CWR and has helped me out from time to time  
> with his back ground of Asia They are not part of the company. If any  
> one of them have any issues with TAB, it has nothing to do with the  
> company. In order to avoid any potential problems, the company will  
> not ask either of them to help out the company further with the contract application.  
>  
> I hope this email will make things very clear. Please update me how  
> the application progresses. Is your next Board meeting still scheduled  
> for Sept 10? We would like to see our application advancing quickly  
> and smoothly, which is beneficial to both the city and us.  
>  
> If you have any more questions, please let me know. Thanks.  
>  
> Best Regards,  
>  
> Paul Roche  
>

Marianne K. Jones  
Jones Law Group, PLLC  
11819 NE 34th Street  
Bellevue, WA 98005  
425 576 8899 (phone)  
425 576 9898 (fax)  
206 730 8094 (cell)

## MUTUAL NONDISCLOSURE AND NONCIRCUMVENTION AGREEMENT

This Mutual Nondisclosure and Noncircumvention Agreement (the "Agreement") is made and entered into as of the Effective Date written below between True Alaska Bottling Company, a Washington corporation, and Action Graphite Resources Inc. of #74-1561 Booth Avenue, BC, V3K 6Z9 of Canada (address).

### RECITALS

The parties above have or may enter into a business relationship which may involve the disclosure by each party (the "Disclosing Party") to the other party (the "Receiving Party") of confidential and proprietary information which is owned or known by the Disclosing Party, its affiliates or third parties.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

Confidential Information. "Confidential Information" means all information (i) identified in written or oral format by the Disclosing Party as confidential, trade secret or proprietary information and, if disclosed orally, summarized in written format within thirty (30) days of disclosure, or (ii) the Receiving Party knows or has reason to know is confidential, trade secret or proprietary information of the Disclosing Party.

Notwithstanding the foregoing, "Confidential Information" shall not include any information which the Receiving Party can show: (a) is now or subsequently becomes legally and publicly available without breach of this Agreement by the Receiving Party, (b) was rightfully in the possession of the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party, (c) was rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality, (d) was developed by or for the Receiving Party independently and without reference to any Confidential Information and such independent development can be shown by documentary evidence, or (e) is disclosed pursuant to an order of a court or governmental agency as so required by such order, provided that the Receiving Party shall first notify the Disclosing Party of such order and afford the Disclosing Party the opportunity to seek a protective order relating to such disclosure.

Nondisclosure. The Receiving Party shall not commercially use or disclose any Confidential Information or any materials derived therefrom to any other person or entity other than persons in the direct employ of the Receiving Party who have a need to have access to and knowledge of the Confidential Information solely for the purpose authorized above. The Receiving Party may disclose Confidential Information to consultants only if the consultant has executed a Nondisclosure Agreement with the Receiving Party that contains terms and conditions that are no less restrictive than these. The Receiving Party shall take appropriate measures by instruction and written agreement prior to disclosure to such employees to protect against unauthorized use or disclosure. The Receiving Party agrees to notify the Disclosing Party immediately if it learns of any use or disclosure of the Disclosing Party's Confidential Information in violation of the terms of this Agreement.

Term. This Agreement shall be effective from the date the last signature is affixed to this Agreement and shall continue for a period of five (5) years from such date.

Non-Circumvention. None of the parties to this Agreement shall make any contact with, deal, or otherwise enter into any transactions with any person or entity introduced to either party by the other party to circumvent the other party so as to prevent such other party from receiving any (or less) fees, profits, commissions, remuneration or other material benefits, as may be due or become due.

None of the parties to this Agreement shall interfere with any of the contractual relations, potential or actual, of any other party to this Agreement. In the case of prior knowledge or possession of information, the reintroduction of said information shall apply to the stipulations of this Agreement for the current transaction.

Title and Proprietary Rights. Notwithstanding the disclosure of any Confidential Information by the Disclosing Party to the Receiving Party, the Disclosing Party shall retain title and all intellectual property and proprietary rights in the Confidential Information. No license under any trademark, patent or copyright, or application for same which are now or thereafter may be obtained by such party is either granted or implied by the conveying of Confidential Information. The Receiving Party shall not alter or obliterate any trademark, trademark notice, copyright notice, confidentiality notice or any notice of any other proprietary right of the Disclosing Party on any copy of the Confidential Information, and shall reproduce any such mark or notice on all copies of such Confidential Information.

Return of Confidential Information. Upon written demand of the Disclosing Party, the Receiving Party shall (i) cease using the Confidential Information, (ii) return the Confidential Information and all copies, notes or extracts thereof to the Disclosing Party within seven (7) days after receipt of notice, and (iii) upon request of the Disclosing Party, certify, in writing that the Receiving Party has complied with the obligations set forth in this paragraph.

Remedies. The Receiving Party acknowledges that if the Receiving Party fails to comply with any of its obligations hereunder, the Disclosing Party may suffer immediate, irreparable harms for which monetary damages may not be adequate. The Receiving Party agrees that, in addition to all other remedies provided at law or in equity, the Disclosing Party shall be entitled to injunctive relief thereunder.

Entire Agreement; Amendment; Assignment. This Agreement constitutes the entire agreement between the parties relating to the matters discussed herein and supersedes any and all prior oral discussions and/or written correspondence or agreements between the parties. This Agreement may be amended or modified only with the mutual written consent of the parties. Any written confirmation of oral disclosures shall also become a part of this Agreement as contemplated. Neither this Agreement nor any right granted hereunder shall be assignable or otherwise transferable.

Governing Law. The provisions of this Agreement shall be governed by the laws of the State of Washington, excluding that body of Washington law concerning conflicts of law. Any legal disputes resulting from the execution or performance of this Agreement shall be brought solely in the Courts of the State of Washington, King County.

Attorneys' Fees. If any party brings any suit or action against the other for relief, declaratory or otherwise, arising out of this Agreement, the prevailing party shall have and recover against the other party all costs and disbursements, including reasonable attorneys fees, in the action and on appeal.

Export Compliance. Neither party shall export, directly or indirectly, any technical data acquired from the other party pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

No Warranty. The Receiving Party shall not reverse-engineer, decompile, or disassemble any software disclosed hereunder. CONFIDENTIAL INFORMATION IS PROVIDED "AS IS" WITH ALL FAULTS. IN NO EVENT SHALL THE DISCLOSING PARTY BE LIABLE FOR THE ACCURACY OR COMPLETENESS OF THE CONFIDENTIAL INFORMATION. None of the Confidential Information disclosed by the parties constitutes any representation, warranty, assurance, guarantee or inducement by either party to the other with respect to the infringement of trademarks, patents, copyrights or any right of third persons.

IN WITNESS WHEREOF, the parties have executed this Mutual Nondisclosure and Noncircumvention Agreement as of the date of the last signature below.

Effective Date: July 16, 2012

True Alaska Bottling Company

By: \_\_\_\_\_

Name/Title:

Action Graphite Resources Inc.

By: Eddie (Shiwei) Tang, CEO

Name/Title



Kenneth M. Wasche, P.C.  
*Attorney at Law*  
310 K Street, Suite 200  
Anchorage, Alaska 99501-2014  
(907) 980-1223

General Practice

Admitted in:

*Alaska*

*Minnesota*

September 18<sup>th</sup>, 2012

Marianne K. Jones, Esq.  
Jones Law Group, PLLC  
11819 NE 34<sup>th</sup> Street  
Bellevue, WA 98005

Re: Cove Water Resources, Inc.

Dear Ms. Jones,

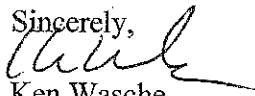
I am the attorney for Cove Water Resources, Inc. I understand that you are the attorney for True Alaska Bottling. It is my understanding that you have communicated erroneous information to the City and Borough of Sitka, Alaska regarding my client's ownership and management structure. It is further my understanding that you have done this in an effort to stop or impede my client's business opportunities.

Your communications with the City and Borough of Sitka, Alaska have been false. Your communications with the City and Borough of Sitka have tortuously interfered with my client's business opportunities. I request that you and your client True Alaska Bottling immediately notify the City and Borough of Sitka and the Sitka Economic Development Association that the information which you communicated to them regarding the ownership and management of Cove Water Resources, Inc. was incorrect.

Nothing in this letter shall be construed as a waiver of my client's rights to pursue any and all claims against you and True Alaska Bottling. In particular, claims of tortuous interference in business opportunities and defamation will be sought against True Alaska Bottling in the event the City and Borough of Sitka refuses to complete the permit and other contractual work for my client's application and proposal for the sale of bulk water or such approvals are not granted due to the erroneous information you have provided regarding my client and your client's threats to the City of Borough of Alaska arising out of some relationship your client had with parties not involved in the ownership and management of my client.

Your immediate attention to this matter is appreciated.

Sincerely,

  
Ken Wasche

CC: Mr. Paul Roche  
KW/

**JONES LAW GROUP, PLLC**

11819 NE 34<sup>TH</sup> STREET  
BELLEVUE, WASHINGTON 98005

MARIANNE K. JONES  
MONA K. MCPHEE

TELEPHONE (425) 576-8899  
FACSIMILE (425) 576-9898

September 24, 2012

**TRANSMITTED BY EMAIL**

Ms. Ken M. Wasche  
Attorney at Law  
310 K Street, Ste 200  
Anchorage, AK 99501-2014

Email: [kcedar@prodigy.net](mailto:kcedar@prodigy.net)

**Re: True Alaska Bottling (TAB); Cove Water Resources, Inc.**

Dear Mr. Wasche:

This finalizes the issue regarding Cove Water Resources, Inc.'s connection with Eddie Tang. Your continued claim that Eddie Tang is not part of Cove Water Resources, Inc. is simply not true.

Attached are draft minutes related to the August 27, 2012 meeting of the Sawmill Cove Industrial Park Board of Directors meeting. Clearly, Mr. Tang presented on behalf of your client to the Board. As such it was a violation of the Mutual Nondisclosure and Noncircumvention Agreement with TAB, a copy of which we attached to our previous correspondence with the City.

Your attempts to the City of Sitka to claim that Mr. Tang is not part of Cove Water Resources simply show that your information is unreliable. He presented in a public meeting to the Sawmill Cove Board. That is reliable fact. Cove Water Resources, through Mr. Eddie Tang, was attempting to obtain similar rights to that of True Alaska Bottling Company with the City and Borough of Sitka. Please be aware that Mr. Tang obtained information when one of his companies and True Alaska Bottling Company discussed business information. All of the business information obtained was subject to a NonDisclosure/NonCircumvention Agreement, which we believe you have.

It is our position that any efforts made by Mr. Tang, regardless of what venture he utilizes, would violate this agreement. Thus, we respectfully requested that the City and Borough of Sitka not allow Mr. Tang to violate this agreement by even contemplating any contract which would circumvent TAB's benefits that it has under its contract with the City and Borough of Sitka.

Thank you for your attention to this matter.

Very truly yours,  
JONES LAW GROUP, PLLC

/s/ Marianne K. Jones

MARIANNE K. JONES  
Attorney at Law



Kenneth M. Wasche, P.C.

*Attorney at Law*

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Admitted in:

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*Minnesota*

October 15<sup>th</sup>, 2012

Theresa Hillhouse, Esq.  
City Attorney  
City and Borough of Sitka  
100 Lincoln St.  
Sitka, AK 99835

Re: Bulk Water Export

Dear Ms. Hillhouse,

I am very concerned regarding the handling of the proposal which my client, Cove Water Resources, Inc., has made regarding entering into an agreement with the City and Borough of Sitka to export bulk water. I have specifically requested that you provide to me the status of my client's proposal for the export of water and for some reason my specific request to you has been referred to an attorney for a competitor of my client.

I would like to provide some background information in order to provide a context for my concerns regarding what has happened over the last couple of months regarding the possibility of exporting bulk water. In August 2012 my client, Cove Water Resources, Inc., submitted a proposal to the Sawmill Cove Industrial Park Board of Directors. My client also appeared by telephone at the August 27<sup>th</sup>, 2012 Board of Directors meeting in support of its proposal. At the time of my client's proposal, Sitka apparently had a contract for about 1/3 of the bulk water available for export with True Alaska Bottling ("TAB"). After submission of my client's proposal, an attorney for True Alaska Bottling made representations to Sitka regarding my client's organizational structure which were not correct. TAB's attorney vaguely claimed that an agreement which TAB may have with a Mr. Eddie Tang somehow prohibited or inhibited Sitka's ability to deal with my client. Importantly, TAB's attorney has not specified what specific information she believes has been used in violation of this supposed agreement with Eddie Tang (which does not even apply to my client). It is my understanding that my client's proposal for exporting water is substantially different than any proposal put forth by TAB, including export facilities, shipping method, and end user. This would explain why TAB's attorney has failed and refused to give any indication about what specific information TAB believes Eddie Tang (who is not an employee, officer, director, or shareholder of my client) disclosed in contravention of the

Kenneth M. Wasche, P.C.

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Theresa Hillhouse, Esq., p.2

October 15<sup>th</sup>, 2012

alleged agreement. Also importantly, TAB has not instituted any legal proceeding against Eddie Tang on account of the alleged violation of the allegedly valid agreement.

To date my client has not been provided a specific written response to its proposal. It has been intimated that TAB's allegations are somehow interfering in the Sawmill Cove board's ability to complete the review of my client's proposal. Most importantly, TAB has now apparently been granted the right to present to the Sawmill Cove board a proposed amendment to the existing agreement (which only accounts for 1/3 of your client's available water and which TAB has for years failed to utilize) which would render it impossible for my client to enter into an agreement. The shareholder of my client has attempted to address the impediments to my client's proposal by submitting a proposal from another entity which that shareholder is affiliated with so that the Sawmill Cove board has a realistic opportunity to fully evaluate all options for Sitka to finally start earning substantial revenues from its ability to export bulk water. It is my understanding that someone is again taking the view that this latest proposal from Black Hat Distribution, Inc. cannot be taken into consideration by the Sawmill Cove board.

My legal concerns are:

1. Violation of Alaska Statute 44.62. This statute requires government bodies to provide reasonable public notice of all meetings. As of this past Friday, I have not even noticed an agenda for the meeting to be held today. Setting aside some timing issues related to recent board meetings, the failure of the Sawmill Cove board to provide reasonable public notice of all proposals available to Sitka for the export of bulk water is not reasonable. There are at least three current proposals which have been made to export Sitka's bulk water. Someone is making an unreasonable decision that the proposals from Cove Water and Black Hat Distribution will not be considered. Said another way, it is unreasonable to notify the public that TAB (with a history of failing to export water) may receive an amendment to its agreement which effectively blocks any competitor from exporting water even though there are competing proposals presently existing.

2. Sitka is not meeting its obligation to consider fairly and honestly all responsive proposals. See *Alaska Movers Ass'n v. Brown*, 445 F Supp. 363,364 (D.D.C. 1987) and *Parcel 49C Ltd Partnership v. United States*, 31 F 3d 1147, 1151 (Fed. Cir. 1994) and *McBirney and Associates v. State*, 753 P.2d 1132 (Alaska 1988).

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Theresa Hillhouse, Esq., p.3  
October 15th, 2012

3. Alaska's antitrust laws forbid contracts, conspiracies, monopolies, or combinations in restraint of trade. *AS 45.50.562-.596 (Alaska 2011)*. Cove Water's proposal has seemingly been brushed under the table. This has been done either (1) with your office making a judicial determination regarding the frivolous complaint of TAB's attorney or (2) in violation of Sitka's public contracting responsibilities. Without a specific explanation of the status of Cove Water's proposal, it seems that Cove Water's (and Black Hat Distribution's) proposals have been rejected arbitrarily and capriciously and in concert with TAB's attorney. We have reviewed records of the board back to 2006 and it appears a board meeting has never been cancelled due to a lack of a quorum until the September 2012 meeting, which appears to have then provided TAB with time to come up with financing to provide a counter proposal. Any contract amendment Sitka enters into based on those circumstances restrains trades and is improper.

4. The manner in which Sitka appears to be dealing with the competing proposals (considering TAB's amendment, which, if adopted, would preclude Cove Water's or Black Hat Distribution's proposals) appears to be a violation of Alaska Unfair Trade Practices Act. See *AS 45.50.471-.561*. The bulk water that Sitka has available for export is clearly a consumer good. As such, the AUTPA applies. The specific unfair trade practice act provisions apparently at play in this matter are:

- a. (4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have (by virtue of Sitka advertising the availability of bulk water for export)
- b. (7) disparaging the goods, services, or business of another by false or misleading representation of fact (as noted above, TAB and Sitka have made false allegations regarding my client)
- c. (8) advertising goods or services with intent not to sell them as advertised (Sitka's web based advertisement of bulk water available for export)
- d. (9) advertising goods or services with intent not to supply reasonable expectable public demand, unless the advertisement prominently discloses a limitation of quantity (same as above)

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Theresa Hillhouse, Esq., p.4  
October 15th, 2012

e. (11) engaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services

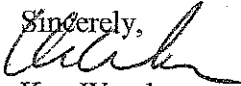
f. (12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression, or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged

Obviously a number of these provisions apply directly to TAB in the context of the false and misleading information which it initially published; but they also apply to Sitka.

In conclusion, my client's singular goal is to be given the opportunity to fairly and completely present its proposal(s) to Sitka. I am confident that if my client is given a fair opportunity to present its proposal, it will become obvious that entering into a contract with my client will be in Sitka's best interests. TAB has had a contract for years and has not exported bulk water. There is not a compelling reason to increase TAB's share of Sitka's exportable water simply because a competitor has a realistic plan to finally utilize Sitka's capability. There does not seem to be any reasonable reason for Sitka to consider proposals in a piecemeal fashion and that is what seems to be happening now; that procedure will preclude full and open competition.

I would ask that the proposal by TAB to amend its contract which I understand to be on the agenda of the Sawmill Cove board for Monday 10/15/12 be removed from consideration. I would further request that the proposal by TAB for a contract modification be considered by the Sawmill Cove board (then presumably subsequently the assembly) at the same time as my client's proposal (and the proposal of Black Hat Distribution). There is no reason why presentations cannot be made by all current proposers and the board(s) then make a decision after they are given the opportunity to compare proposals side by side and fully and completely. Thank you for your prompt attention to this matter.

Sincerely,



Ken Wasche

CC: Mr. Paul Roche

KW/

# JONES LAW GROUP, PLLC

11819 NE 34<sup>TH</sup> STREET  
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MARIANNE K. JONES  
MONA K. MCPHEE

TELEPHONE (425) 576-8899  
FACSIMILE (425) 576-9898

October 29, 2012

**TRANSMITTED BY EMAIL**

Ms. Ken M. Wasche  
Attorney at Law  
310 K Street, Ste 200  
Anchorage, AK 99501-2014

Email: [kcedar@prodigy.net](mailto:kcedar@prodigy.net)

**Re: True Alaska Bottling (TAB); Cove Water Resources, Inc.**

Dear Mr. Wasche:

You continue to confuse the issues and misguide the City of Sitka regarding this matter. The issues are clear: (1) any information that either Cove Water Resources, Inc. or Black Hat Distribution Inc. have, in order to put forth any proposal to the City of Sitka for bulk water export, is by virtue of information obtained by Eddie Tang from True Alaska Bottling Company; (2) any proposal by any of Eddie Tang, Paul Roche, Greg Miller or any related person or company, such as Cove Water Resources, Inc. and Black Hat Distribution Inc., is tainted. The knowledge obtained by Eddie Tang from TAB, which Mr. Tang imparted to Greg Miller and/or Paul Roche, is imputed to any corporate entity in which they are directors or officers. *See Northern Lights Motel, Inc. v. Sweaney*, 561 P.2d 1176 (Alaska 1977), *see also National Bank of Alaska v. J.B.L. & K. of Alaska, Inc.*, 546 P.2d 579, 588 (Alaska 1976), *citing Beetschen v. Shell Pipe Line Corp.*, 248 S.W. 66 (1952) (“A corporation, being an artificial entity, a mere creature of the law, cannot think, speak or act otherwise than by and through the thoughts, speech and action of human beings.” *Beetschen*, 248 S.W. at 73, *citing Hannibal Inv. Co. v. Schmidt*, 113 S.W.2d 1048 *overruled on different issue by Stephen Burns, Inc. v. Trantham*, 305 S.W.2d (Mo. App. 1957); *also citing* 19 C.J.S. Corporations, § 960, page 417. “Under the statutes which authorize its existence and prescribe its form and structure the powers of a corporation are administered and its responsibilities are discharged by an officiate of human beings consisting of a board of directors and certain designated officers such as president, vice president, secretary, etc. Their thoughts, knowledge, words and acts in the exercise of corporate functions within the scope of its charter powers are the thoughts, knowledge, words and deed of the corporation.”)

By pursuing proposals for bulk water export contract, Cove Water Resources, Inc. and/or Black Hat Distribution Inc. are participating in harm to TAB; this harm and your client's participation must cease immediately. The information Cove Water and/or Black Hat have caused to be disclosed publicly was information obtained by and through Eddie Tang, who is subject to the Mutual Nondisclosure and Noncircumvention Agreement between TAB and Action Graphite Resources Inc. As the CEO of Action Graphite, Mr. Tang is personally bound by the non-compete clause. *See i.e. Alaska Interstate Const. LLC v. Pacific Diversified Investments, Inc.*, 279 P.3d 1156, 1175 (Alaska 2012) Mr. Tang has breached the Mutual Nondisclosure and Noncircumvention Agreement with TAB by imparting private information to

Mr. Ken Wasche  
October 19, 2012  
Page 2 of 2

third parties, and TAB is continuing to be further harmed by Mr. Tang's breach by the publication of that information and the interference with TAB's contract with the City of Sitka. Your clients have utilized Action Graphite Resources, Inc.'s breach for their benefit and TAB's detriment without any compensation and as interference to a contractual relationship TAB has with the City of Sitka.

TAB and the City of Sitka have an established contract. In addition, proposals for modifications to that contract are being contemplated and voted upon. You and your clients are aware of both the underlying contract and the proposed modifications to the contract. If the City of Sitka considers your proposal which is founded upon information Eddie Tang presented and disclosed in August 2012 and thereby fails to approve TAB's requested modification as a result of your client's proposal, there is no doubt that TAB can clearly establish a prima facie claim for tortious interference with the contract and its modification between TAB and the City of Sitka. There is a valid and existing contract between TAB and the City. Eddie Tang, Paul Roche, Greg Miller or any related company, such as Cove Water Resources, Inc. and Black Hat Distribution Inc. all have knowledge of the contract. By making their own proposals to the City and by publishing private information of TAB have shown a clear intent to induce a breach of the contract by either TAB or the City. *Bendix Corp. v. Adams*, 610 P.2d 24, 27 (Alaska 1980), *citing Long v. Newby*, 488 P.2d 719 (Alaska 1971) If either TAB or the City of Alaska are interfered with in their negotiations for a modification of the TAB/Sitka contract, TAB will clearly be able to establish that the harm was caused by the wrongful or unjustified conduct of Eddie Tang, Paul Roche, Greg Miller or any related company, such as Cove Water Resources, Inc. and Black Hat Distribution Inc. (Id.) As to the damages, TAB will be able to establish substantial damage caused by the tortious interference with TAB's contract with the City, but the extent of those damages is currently incalculable. (Id.)

The City must also be assured that it may meet all of the terms of its contract with TAB without fear of repercussion. Eddie Tang, Paul Roche, Greg Miller or any related company, such as Cove Water Resources, Inc. and Black Hat Distribution Inc. must immediately cease with any interference with the contract between TAB and City of Sitka.

Very truly yours,  
JONES LAW GROUP, PLLC

/s/ Marianne K. Jones

MARIANNE K. JONES  
Attorney at Law

cc: Theresa Hillhouse

Kenneth M. Wasche, P.C.  
*Attorney at Law*  
310 K Street, Suite 200  
Anchorage, Alaska 99501-2014  
(907) 980-1223

General Practice

Admitted in:

*Alaska*

*Minnesota*

Marianne Jones, Esq.  
11819 NE 34TH Street  
Bellevue, WA 98005

October 30<sup>th</sup>, 2012

Re: True Alaska Bottling

Dear Ms. Jones,

I have received and reviewed your letter to me dated October 29<sup>th</sup>, 2012. Your letter to me does not indicate what communication I have had with you that you are responding to. I assume you are attempting to respond to a letter I sent Ms. Hillhouse expressing to her my concerns about the process which Sitka is going through in regards to the export of its available bulk water. Obviously you do not represent Sitka and therefore you cannot be expected to provide legal advice to Sitka which would protect its legal, as well as economic, interests.

Your 10/29/12 letter again raises an issue regarding your client and an agreement it alleges it has with Eddie Tang. You have again confirmed that my client has no agreement with True Alaska Bottling. Your letter of 10/29/12 is not addressed to Eddie Tang, which does not make sense to me if it is he who your client believes has violated an agreement with your client. Your client has had months to initiate legal action against Eddie Tang, but has failed to do so.

More importantly, your letter continues to allege that "information" Eddie Tang learned from your client has been used to your client's detriment. As I have asked before, what information are you referring to? It seems as though all information my client has used in pursuing an opportunity to export bulk water is public information:

1. TAB had an agreement to export 1/3 of the bulk water available to Sitka to export. That contract and subsequent amendments were public information.
2. TAB has not successfully exported bulk water.
3. Sitka has consistently published to the public that it has excess bulk water available for export. Sitka has made these representations through the Sawmill Cove Board and its website. Those representations continue to be made (which is logical because, to date, Sitka still has bulk water available for export).

It seems clear that your continued letters evidence an effort to impede fair competition. Your claim that my client's information comes from Eddie Tang is wrong. Your letter of 10/29/12 makes a factual assertion without any back up to such a claim. Why didn't you file suit against Eddie Tang in August, then begin the deposition process? If you had done that, then you would have found that your assertions about the source of my client's information are wrong. In

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October 30<sup>th</sup>, 2012

addition to the publically available information above, Mr. Paul Roche has been involved in Sitka's water export capabilities for many years. Mr. Paul Roche is personally aware of both Sitka's capability for all water exports and the on the ground infrastructure in Sitka.

Based on this available public information, my client submitted a proposal to Sitka to enter into an agreement to export the remaining water (not the approximately 1/3 of exportable water TAB had/has an agreement for). After my client submitted its proposal, TAB interfered in the process my client had initiated, apparently in an attempt to amend its existing agreement with Sitka to allocate all of Sitka's bulk water available to export to TAB. How you can now claim that my client has done anything to interfere with your client's contract with Sitka (or even its negotiations for amendments thereof) makes no factual sense based on the timeline of my client's proposal. Again, I would urge you to tell me what facts you claim were not public knowledge that you believe my client (through Eddie Tang or otherwise) used to your client's detriment or in violation of any agreement Eddie Tang allegedly has with your client. Your correspondence seems to attempt to reinvent the actual sequence of events.

The only thing that is "tainted" in this process is your client's attempts at getting around a fair and competitive process to finally get Sitka's bulk water exported. Again, if you can tell me what specific information you believe Eddie Tang gave to my client, please let me know. It is an odd procedural move that your client has undertaken in this matter. Trying to convince Sitka that it should not consider something that is obviously to its economic benefit based on hollow and fact-less allegations is strange. While the lack of litigation has resulted in a dearth of information (cell phone records, electronic mail, telephone records, text messages, etc.) you can be assured that such information will be discovered and an answer as to why your client has attempted to avoid fair and honest competition will likely be discovered.

Sincerely,



Ken Wasche

CC: Theresa Hillhouse, Esq.  
Mr. Paul Roche

KW/