

Wednesday, May 01, 2013

MEMORANDUM

To: Jay Sweeney – CBS Interim Administrator
From: Garry White, Director
Subject: S & S General Contractors Lease Request

Introduction

S & S General Contractors (S&S), a local construction contractor, is interested in leasing Block 2, Lot 1 of the SCIP for a minimum of two years. S&S would like to use the lot for equipment and/or construction material storage in the long term. S&S will be subleasing the lot to Colaska, Inc. dba QAP in the short term for material storage in relation with the Sawmill Creek Road Phase III project.

The SCIP Board approved the lease request in August, 2012 and recommend approval of the lease.

Background

Block 2, Lot 1 is a 222,869 SF undeveloped lot. It contains a roughly 22,000 SF area that was once part of the APC landfill. The Alaska Pulp Corporation worked with the State of Alaska Department of Environmental Conservation (DEC) in 1998-1999 to provide post closure improvements to the landfill. DEC approved the closure of the landfill in 1999.

The lot has sat dormant since the CBS took over ownership in 2000.

Currently all develop raw land at the SCIP is currently leased. Development of this lot will allow use for current and future projects at the SCIP.

Lease Terms

The SCIP Board approved the following lease terms:

- Lease is for Block 2, Lot 1 for a minimum of two years at an annual lease rate of \$0.06 per square foot per year (222,869 SF = \$13,372.14)
- The Lot is undeveloped property. Utilities are not available to the Lot.
- S&S will clear and develop approximately 80,000 to 110,000 square feet of the Lot

- In exchange for the development of the Lot, S&S will receive a lease credit equal to one year's lease or \$13,372.14.
- Approval from the State of Alaska Department of Environmental Conservation (DEC) is required to develop the area containing the former landfill.
- S&S is required to submit a development plan to the CBS for CBS and DEC approval

Landfill Development Plan

- S&S will submit development plans directly to DEC for their approval of lot development. DEC will dictate requirements for the lot post development. S&S will be required to fulfill DEC requirements.
 - Additional liability and indemnification language has been added to lease to protect the CBS.
- S&S will submit plans to CBS Public Works Department for their approval of site development and post development.

Action

- Approval of lease area.



LEASE AGREEMENT

**THE
CITY & BOROUGH
OF SITKA**

**&
S&S GENERAL CONTRACTORS
& EQUIPMENT RENTAL, INC.**

(GROUND LEASE)

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EXHIBITS:

Exhibit A – Diagram of Lease Area

Exhibit B – Management Requirements at Sawmill Cove Industrial Park, Sitka, Alaska

**LEASE AGREEMENT BETWEEN
CITY AND BOROUGH OF SITKA AND
S & S GENERAL CONTRACTORS & EQUIPMENT RENTAL, INC.**

PREAMBLE

This lease agreement is effective as of the ____ day of April, 2013, between the City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("Sitka" "or "Lessor") and S & S General Contractors & Equipment Rental, Inc. P. O. Box 1440, Sitka Alaska 99835 ("Lessee"), referred to as "Lease." This Lease consists of the Special Provisions, the General Provisions, and the attached Exhibits A and B. Exhibit A is a pictorial representation of the area leased on Block 2, Lot 1 of the Sawmill Cove Industrial Park ("SCIP"). Exhibit B is the "Management Requirements at Sawmill Cove Industrial Park, Sitka, Alaska," which summarizes the Prospective Purchasers Agreement, the Management Plan and the Conveyance Agreement regarding SCIP. This Lease was approved by the SCIP Board of Directors on August 27, 2012 and approved by Sitka Assembly on _____, 2013.

SPECIAL PROVISIONS

ARTICLE I: LEASE, TERM OF LEASE, AND TERMINATION OF LEASE

SECTION 1.1 CONVEYANCE OF ESTATE IN LEASE

Lessor, for and in consideration of the covenants and agreements made by Lessee, does lease to Lessee, and Lessee leases from Lessor, the Subject Property or Premises as shown on Exhibit A. The Subject Property is Block 2, Lot 1, consisting of approximately 222,869 square feet at the rate of \$0.06 per square foot per year. The Term is for two (2) year, and commences on the ____ day of _____, 2013. There is an option to extend the Lease Agreement for ____ two-year term(s), if mutually agreed to by the Parties.

SECTION 1.2 RESERVED

SECTION 1.3 RESERVED

**SECTION 1.4 DISPOSITION OF IMPROVEMENTS AND LESSEE'S PERSONAL PROPERTY
FOLLOWING TERM OF LEASE**

With the exception of such improvements described in the next sentence, Lessee shall remove from the Subject Property any personal property or improvements constructed, installed, or deposited on the Subject Property, outside of the site development plan, at the termination of this Lease or any extension thereof unless Lessee makes a separate written agreement with Sitka to do otherwise. Subject to the provisions of the next sentence and subject to agreement by Lessor, Lessee shall leave behind at no cost to Sitka improvements. Any improvements or personal property not removed after thirty (30) days have passed after termination of this Lease shall be deemed abandoned and at Lessor's option shall become the property of Lessor, and Lessee shall repay to Sitka any costs of removing such improvements or personal property from the Subject Property if Sitka does not exercise such option. Subject to Sitka's obligations under Subsection

3.1(a) below, Lessee agrees to leave Subject Property in a neat, clean, and at the end of the term of the Lease.

SECTION 1.5 COVENANTS TO PERFORM

This Lease is made upon the above and the following terms and conditions, each of which the Party bound by such covenants and conditions agrees to perform, irrespective of whether the particular provision is in the form of a covenant, an agreement, a condition, a direction, or otherwise, and each Party agrees to provide the other Party with documents or further assurances as may be required to carry out the expressed intentions.

ARTICLE II: RENT

SECTION 2.1 CALCULATION & METHOD OF PAYMENT OF RENT

Notwithstanding any other provision of this Lease, on the Term start date set out in Article I, Lessee shall pay the full annual rent payment owed under this Lease, which shall be prorated if the date this Lease is executed is not the first day of the month. Subject to the provision in the previous sentence, Lessee shall pay the lease payments in advance for the Term of the Lease without the necessity of any billing by Lessor. Lessee will lease the space as shown in Exhibit A for \$13,372.14 per year. A credit equal to the first year's lease term of \$13,372.14 is given in exchange for the clearing and development of approximately 80,000 to 110,000 square feet of the Subject Property. Sales tax is to be paid in addition to the stated Rent.

SECTION 2.2 RESERVED

SECTION 2.3 RESERVED

SECTION 2.4 RESERVED

ARTICLE III: RESTRICTIONS UPON USE OF SUBJECT PROPERTY

SECTION 3.1 LESSEE'S OBLIGATIONS AS TO CONSTRUCTION, MAINTENANCE, REPAIR AND SAFETY

(a) Except as provided in this Lease, Lessee acknowledges the Subject Property is in an "as is" condition. At the sole cost and expense of Lessee and in compliance with all legal requirements, Lessee may purchase, construct, develop, repair, and/or maintain any improvements, using materials of good quality and matching existing finishes.

Lessor reserves the right to expand or modify the Subject Property. In that event, the Lessor and Lessee will work together to complete such expansion or modification in a manner that minimizes disruption to Lessee's use of the Subject Property. Some anticipated disruptions could be operational disturbances from noise, dust and other construction activities.

(b) Lessee acknowledges that Lessor has made no representation or warranty with respect to Lessee's ability to obtain any permit, license, or approval.

(c) Lessee shall also use the Subject Property and any improvements placed thereon only for lawful uses.

(d) Lessee shall confine its equipment, storage and operation to the Subject Property.

(e) Lessee shall not permit the accumulation of waste or refuse matter on the Subject Property, and Lessee shall not obstruct or permit the obstruction of the streets, sidewalks, access ways, or alleys adjoining the Subject Property except as may be permitted by Lessor or other municipal authorities having jurisdiction. Lessee shall do all things necessary during the term of this Lease to remove any dangerous condition from time to time existing on the Subject Property as the result of the use by Lessee.

(f) Lessee may erect outdoor signage at its expense with the permission of the City and Borough of Sitka Building Official, the Planning Director, and the Public Works Director. The style, size and physical placement location of the sign will be approved on a case-by-case basis.

SECTION 3.2 LESSOR'S APPROVAL OF CERTAIN ALTERATIONS OR IMPROVEMENTS

Lessee shall not make or permit to be made any alteration of, addition to, or change in improvements, nor demolish all or any part of the improvements without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. The phrase "improvements" in the previous sentence includes any water and wastewater systems and electrical systems that may serve or be adjacent to the Subject Property. In requesting consent Lessee shall comply with all applicable laws and ordinances, and shall submit to the Public Works Director of the City and Borough of Sitka or his or her written designee detailed plans and specifications of proposed work, an explanation of the needs and reasons for the work, and a plan for full payment of the costs of the work. Lessor shall notify Lessee of its approval or objections no later than 30 days after receiving the information described in the previous sentence. In approving or objecting, Lessor shall be acting in its proprietary function and not its regulatory function. Any such approval in this proprietary function does not relieve Lessee of any obligation to obey the law. Nothing in this Section shall be interpreted to prevent Lessee from removing at the termination of this Lease any improvements or personal property as described in Section 1.4.

SECTION 3.3 RIGHTS OF ACCESS TO SUBJECT PROPERTY

(a) Lessor reserves for itself and any public utility company the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of opening, inspecting, repairing, replacing, reconstructing, maintaining, or servicing the public utilities, if any, located on the Subject Property, as well as for the purposes of constructing or installing new public utilities. Lessor also reserves for itself and the Alaska Department of Environmental Conservation the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of regulation and enforcement of this Lease. Sitka also reserves for itself the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of (1) inspection of all work being performed in connection with the construction of improvements; (2) showing Subject Property for exhibiting Subject Property in connection with renting or leasing Subject Property in a matter that will not unreasonably interfere with Lessee's

business; and (3) placing "For Sale" or "For Rent" signs on Subject Property. Lessee shall not charge for any of the access allowed in the situations described in this subsection.

(b) Lessee shall not construct any permanent improvements over or within the boundary lines of any easement for public utilities without receiving the written prior consent of Lessor and any applicable utility company.

(c) Lessee acknowledges that the Subject Property may be subject to agreements for ingress and egress, utilities, parking, and maintenance of common areas as described on attached Exhibit A. Lessee agrees that it shall comply with the terms of such cooperative agreements, in accordance with the terms of such agreements, those portions of such maintenance expenses that are attributable to the Subject Property, as more fully set forth therein.

SECTION 3.4 ADDITIONAL CONDITIONS OF LEASING

Lessee recognizes and shall cause all beneficiaries of Lessee and all permitted successors in interest in or to any part of the Subject Property to recognize that:

(a) Lessee will cooperate with the City and Borough of Sitka Public Works Department and will notify this Department of any maintenance deficiencies or of any equipment failures that require maintenance or repair. Lessee will be provided a 24 hour telephone number to notify the Lessor of any event that requires immediate response by the Lessor.

(b) Lessee covenants and agrees that as it relates to use of the facility, it will not, on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of person in any manner prohibited by Federal or State laws or regulations promulgated thereunder, and Lessee further grants the Lessor the right to take such action to enforce such covenant as it deems necessary or as it is directed pursuant to any Federal or State law or regulation.

(c) Lessor may sell the Subject Property in the future and all agreements regarding the Subject Property, including this Lease, between Lessor and Lessee shall be completely transferable to the new owner. A transfer of the Subject Property to any such entity shall not create any restrictions upon use of the Subject Property in addition to those set forth in this Lease.

(d) Lessor may, upon at least 10 days prior notice to Lessee, temporarily suspend the supply, if provided on the Subject Property, of water, wastewater service, electric power to perform routine maintenance and, in all events, subject to unavoidable delays, as provided in Section 4.4. Such interruptions shall be of as short duration as necessary to perform such maintenance, and Sitka shall not be responsible for any such costs or expenses as a result of suspending such utilities.

(e) Lessee will pay any applicable City and Borough of Sitka Fire Marshal fees and other building permit fees when due.

(f) Lessee is responsible for taking any measures that Lessee deems necessary to provide security for their property. Sitka is not responsible for theft or vandalism.

SECTION 3.5 CONTROL OF RODENTS AND OTHER CREATURES ON SUBJECT PROPERTY

Lessee shall take reasonable affirmative measures to ensure that its operations do not attract to Subject Property or any portion of the Sawmill Cove Industrial Park property any of the following creatures: rodents, vermin, insects, eagles, crows, ravens, seagulls, or bears.

ARTICLE IV: UTILITY SERVICES & RATES

SECTION 4.1 PROVISION OF UTILITY SERVICES

Currently, no utility services are provided to the Subject Property. If and when utility services are provided, Lessee shall pay the cost of use of such utility services, to be paid monthly upon billing by the City and Borough of Sitka.

SECTION 4.2 RESERVED

SECTION 4.3 RESERVED

SECTION 4.4 LESSOR LIMITED LIABILITY AND NON-LIABILITY

In the event utility services are provided, and except to the extent that any such failure, injury, or other casualty is due to Lessor's negligence or breach of any obligation under this Lease, Lessor shall not be liable for any failure of utility services, or for any injury or damages to person or property caused by or resulting from any natural disaster, natural condition, earthquake, hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain, or snows which may leak or flow from the street, sewer, or from any part of the Subject Property, or leakage of sewer, or plumbing works therein, or from any other place, or for sewer or plumbing works therein, or from any other place. Lessor shall not be held responsible or liable for any claim or action due to or arising from any suspension of operation, breakage, unavoidable accident or injury of any kind occurring to, or caused by the sewer mains by an act of God, beyond Lessor's control, or caused by the elements, strikes, riots, or a terrorist or terrorists.

SECTION 4.5 RESERVED

SECTION 4.6 RESERVED

ARTICLE V. LIABILITY

SECTION 5.1 LIABILITY OF LESSEE AND INDEMNIFICATION OF LESSOR.

Lessee agrees to indemnify, defend, and hold harmless Lessor against and from any and all claims by or on behalf of any person, firm, or corporation arising, other than due to acts or omissions of Lessor, from the conduct or management of or from any work or thing whatsoever done in or about the Subject Property and structures and improvements, including liability arising from products produced on the property. Lessee also agrees to indemnify, defend, and hold Lessor harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessor, during the term of this Lease from: (a) any condition of the Subject Property or improvements placed on it; (b) any breach or default on the part of the Lessee regarding any act or duty to be performed by Lessee pursuant to the terms of this Lease; (c) any

act or negligence of Lessee or any of its agents, contractors, servants, employees or licensees; and (d) any accident, injury, death or damage caused to any person occurring during the Term of this Lease in or on the Subject Property. Lessee agrees to indemnify, defend, and hold harmless Lessor from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessor, in any claim or action or proceeding brought asserting claims of or asserting damages for any alleged act, negligence, omission, conduct, management, work, thing, breach, default, accident, injury, or damage described in the previous two sentences. The above agreements of indemnity are in addition to and not by way of limitation of any other covenants in this Lease to indemnify the Lessor. The agreements of indemnity by the Lessee do not apply to any claims of damage arising out of the failure of the Lessor to perform acts or render services in its municipal capacity.

SECTION 5.2 LIABILITY OF LESSOR AND INDEMNIFICATION OF LESSEE.

Except to the extent of liabilities arising from Lessee's acts or omissions, Lessor indemnifies, defends, and holds Lessee harmless for liabilities to the extent that they were incurred by reason of conditions existing on the site as of the date of execution of this Lease or by reasons of Lessor's acts or omissions. Lessor also agrees to indemnify, defend, and hold Lessee harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessee, during the term of this Lease from (a) any condition of the Subject Property or improvements placed on it; (b) any breach or default on the part of the Lessor regarding any act or duty to be performed by Lessor pursuant to the terms of the Lease; (c) any act or negligence of Lessor or any of its agents, contractors, servants, employees, or licensees; and (d) any accident, injury, death, or damage caused to any person occurring during the Term of this Lease in or on the Subject Property. Lessor agrees to indemnify, defend, and hold harmless Lessee from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessee, in any claim or action or proceeding brought asserting claims of or asserting damages for any alleged act, negligence, omission, conduct, management, work, thing, breach, default, accident, injury, or damage described in the previous two sentences. The above agreements of indemnity are in addition to and not by way of limitation of any other covenants in this Lease to indemnify the Lessee.

SECTION 5.3 REIMBURSEMENT OF COSTS OF OBTAINING POSSESSION.

Each Party agrees to pay and to indemnify the other Party prevailing in any dispute hereunder against, all costs and charges, including but not limited to, full reasonable counsel and legal fees lawfully and reasonably incurred in enforcing any provision of this Lease including obtaining possession of the Subject Property and establishing the Lessor's title free and clear of this Lease upon expiration or earlier termination of this Lease.

SECTION 5.4 SPECIFIC AND SPECIAL CONDITIONS.

In addition to the general indemnity language in Sections 5.1, 5.2 and 5.3, the Lessee shall clean up or otherwise remediate any release, threat of release, or discharge of hazardous materials that occurs either in the permit area or in connection with the Lessee's activities in the permit area, specifically the former Alaska Pulp Corporation Landfill site, regardless of whether those activities are authorized under this Lease. The Lessee shall perform cleanup or remediation immediately upon discovery of the release, threat of release, or discharge of hazardous materials.

The Lessee shall perform the cleanup or remediation to the satisfaction of the State of Alaska Department of Environmental Conservation (DEC) at no expense to Lessor.

Upon revocation, termination or expiration of this Lease, the Lessee shall deliver Subject Property free and clear of any new contamination, or any pre-existing contamination exposed by actions of the Lessee or their subcontractors to the CBS with the requirements established by the DEC Solid Waste Program.

Lessee will hire approved professionals, to-wit, a professional registered Alaskan engineer, to determine and certify as necessary, that full remediation has occurred, in compliance with all applicable federal, state and local laws.

Lessee has an affirmative duty to protect from injury and damage the land, property and other interest of Lessor. Damage includes, but is not limited to, fire suppression costs and damages associated with or resulting from the release or threatened release of a hazardous substance occurring during or as a result of the Lessee's activities on, or related to, the Subject Property, erosion of the cap caused by excessive movement, grading or weight, which they acknowledge is the former Alaska Pulp Corporation Landfill site.

GENERAL PROVISIONS

ARTICLE VI: DEFINITIONS

SECTION 6.1 DEFINED TERMS

For the purposes of this Lease, the following words shall have the meanings attributed to them in this Section:

- (a) "Event of Default" means the occurrence of any action specified in Section 14.1.
- (b) "Imposition" means all of the taxes, assessments, utility rates or charges, levies and other governmental charges, levied or assessed against the Subject Property, any part thereof, any right or interest therein or any rent and income received there from as well as sales taxes on rent.
- (c) "Improvements" or "improvements" means all improvements of any nature now or hereafter located upon the Land, as well as all apparatus and equipment necessary for the complete and comfortable use, occupancy, enjoyment and operation of the Subject Property, including any constructed fence or signage; excepting only in each case articles of personal property appurtenances and fixtures (including trade fixtures) owned by Lessee, Sublessees, or others, which can be removed without defacing or materially injuring the improvements remaining on the Subject Property, from the Subject Property with the portion of the Subject Property from which such items are removed being returned to a condition at least as good as that existing on the date of this Lease. "Improvements" also includes fill, grading, asphalt, and other non-building land improvements.
- (d) "Personal Property" means tangible personal property owned or leased and used by the Lessee or any sublessee of the Lessee, in connection with and located upon the Subject Property.

(e) "Premises" means the "Subject Property."

(f) "Rent" means the lease rate, which is the amount Lessee periodically owes and is obligated to pay Lessor as lease payments under this Lease for the use of the demise.

(g) "Subject Property" is the area leased as shown on Exhibit A or elsewhere in the document.

(h) "Sublessee" and "Sublease" -- any reference to "sublessee" shall mean any subtenant, concessionaire, licensee, or occupant of space in or on the Subject Property holding by or through the Lessee; the term "sublease" shall mean any lease, license, concession or other agreement for the use and occupancy of any part of the Subject Property made by any Person holding by or through the Lessee.

(i) "Term" means the period of time Lessee rents or leases the Subject Property from Lessor.

ARTICLE VII: INSURANCE

SECTION 7.1 INSURANCE

Lessee shall maintain property damage and comprehensive general liability insurance in the amount of one million dollars (\$1,000,000), including leasehold improvements. Lessor shall be named as an additional insured.

SECTION 7.2 NOTIFICATION OF CLAIM, LOSS, OR ADJUSTMENT

Lessee shall advise Lessor of any claim, loss, adjustment, or negotiations and settlements involving any loss under all policies of the character described in Section 7.1.

SECTION 7.3 WAIVER OF SUBROGATION.

The Party insured (or so required) releases the other Party from any liability the other Party may have on account of the loss, cost, damage or expense to the extent of any amount recoverable by reason of insurance whenever: (i) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the Parties to this Lease, or anyone claiming under it in connection with the Subject Property or improvements; and (ii) the Party is then covered in whole or in part by insurance with respect to loss, cost, damage or expense or is required under this Lease to be so insured.

In such circumstances, the Parties also hold on or waive any right of subrogation which might otherwise exist in or accrue to any person on account of it, provided that the release of liability and waiver of the right of subrogation shall not be operative in any case where the effect is to invalidate the insurance coverage or increase its cost. In the case of increased cost, the other Party shall have the right, within thirty (30) days following written notice, to pay the increased cost keeping the release and waiver in full force and effect.

ARTICLE VIII: RESTRICTIONS REGARDING ASSIGNMENT, SUBLEASES, AND TRANSFERS OF SUBJECT PROPERTY

SECTION 8.1 LESSEE WITHOUT POWER TO ASSIGN LEASE OR TRANSFER OR ENCUMBER SUBJECT PROPERTY

Lessee has no power under this Lease to assign the Lease or transfer the Subject Property, except with approval of the SCIP Board of Directors. Lessee has no power to encumber Subject Property or pledge its interest in Subject Property as collateral for a loan or mortgage.

SECTION 8.2 LIMITATIONS ON SUBLEASES

Lessee shall not sublease the Subject Property or any portion of it except with approval of the SCIP Board of Directors. All Subleases entered into involving all or any part of the improvements or the Subject Property shall be expressly subject and subordinate to this Lease, including Exhibits A and B, and including all or any improvements or additions. Lessor's consent to a sublease of the Subject Property shall not release Lessee from its obligations under the Lease. Lessor's consent to a sublease shall not be deemed to give any consent to any subsequent subletting.

ARTICLE IX: USE AND PROTECTION OF THE SUBJECT PROPERTY

SECTION 9.1 PROPERTY AS IS – REPAIRS

Lessee acknowledges that it has examined the Subject Property and the present improvements including any public improvements presently located there and knows the condition of them and accepts them in their present condition and without any representations or warranties of any kind or nature whatsoever by Lessor as to their condition or as to the use or occupancy which may be made of them. Lessee assumes the sole responsibility for the condition of the improvements located on the Subject Property. The foregoing shall not be deemed to relieve Lessor of its general municipal obligations, or of its obligations under Section 3.1.

SECTION 9.2 COMPLIANCE WITH LAWS

Lessee shall throughout any term of this Lease, at Lessee's sole expense, promptly comply with all the laws and ordinances and the orders, rules, regulations, and requirements of all federal, state, and municipal governments and appropriate departments, commissions, boards, and officers (whether or not the same require structural repairs or alterations) and all other legal requirements that may be applicable to the use of the Subject Property. Nothing in the foregoing sentence shall be deemed to relieve Lessor of its general obligations in its municipal capacity.

SECTION 9.3 NOTIFICATION OF CITY AND BOROUGH OF SITKA'S PUBLIC WORKS DIRECTOR OF DISCOVERY

Lessee shall promptly notify the Public Works Director of the City and Borough of Sitka within 24 hours if any contaminated soils or other media that require special handling are encountered on the of Contamination Subject Property.

Lessee shall be responsible for all clean-up costs associated with contamination of soils of Subject Property, adjoining property, and/or buildings caused by or attributed to Lessee through

its operations on the Subject Property. In the event of Lessee's failure to clean-up to applicable regulatory standards or to the satisfaction of the Public Works Director, the Lessor may perform clean-up or contract for clean-up and all charges for such work shall be payable by Lessee.

SECTION 9.4 USE OF UTILITY LINES

No utility services are currently provided. If Lessee desires utilities, Lessee and Lessor shall negotiate and enter an amendment to this Lease regarding which utility services to provide, the costs associated with such service, and the rate for such utility services.

If such utility services are requested and granted, Lessee shall connect or otherwise discharge to such utility lines, including electric, water and/or wastewater lines, as are approved by the appropriate City and Borough of Sitka Department, which may include the Department of Public Works and/or Electric Department, and shall obtain any permits and comply with any conditions specified by the Director of Public Works and/or the Electric Department Director for such connections.

SECTION 9.5 PERMITS AND APPROVALS FOR ACTIVITIES

Lessee shall be responsible for obtaining all necessary permits and approvals for its activities unless otherwise specifically allowed by Lessor. Not less than ten (10) days in advance of applying for permits to any public entity other than the City and Borough of Sitka, Lessee shall provide copies of all permit applications and associated plans and specifications to the Director of Public Works of the City and Borough of Sitka to facilitate review by departments of the City and Borough of Sitka. The City and Borough of Sitka is not obligated to comment on the permit applications and plans. The result of any review by the City and Borough of Sitka does not affect Lessee's obligation to comply any applicable laws.

ARTICLE X: LESSOR'S RIGHT TO PERFORM LESSEE'S COVENANTS; REIMBURSEMENT OF LESSOR FOR AMOUNTS SO EXPENDED

SECTION 10.1 PERFORMANCE OF LESSEE'S COVENANTS TO PAY MONEY

The Lessee covenants that if it shall at any time default or shall fail to make any other payment due (i.e., utilities, taxes, etc.) and the failure shall continue for ten (10) days after written notice to the Lessee, then the Lessor may, but shall not be obligated, and without further notice, to or demand upon the Lessee and without releasing the Lessee from any obligations of the Lessee under this Lease, make any other payment in a manner and extent that the Lessor may deem desirable.

SECTION 10.2 LESSOR'S RIGHT TO CURE LESSEE'S DEFAULT

If there is a default involving the failure of the Lessee to keep the lease area in good condition and repair in accordance with the provisions of this Lease, to make any necessary renewals or replacements or to remove any dangerous condition in accordance with the requirements of this Lease or to take any other action required by the terms of this Lease, then the Lessor shall have the right, but shall not be required, to make good any default of the Lessee. The Lessor shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business, or other damage of or to the Lessee by reason of bringing materials, supplies and equipment onto Subject

Property during the course of the work required to be done to make good such default, and the obligations of the Lessee under this Lease shall remain unaffected by such work, provided that the Lessor uses reasonable care under the circumstances prevailing to avoid unnecessary inconvenience, annoyance, disturbance, loss of business, or other damage to the Lessee.

SECTION 10.3 REIMBURSEMENT OF LESSOR AND LESSEE

All sums advanced by the Lessor pursuant to this Article and all necessary and incidental costs, expenses and attorney fees in connection with the performance of any acts, together with interest at the highest rate of interest allowed by law from the date of the making of advancements, shall be promptly payable by the Lessee, in the respective amounts so advanced, to the Lessor. This reimbursement shall be made on demand, or, at the option of the Lessor, may be added to any rent then due or becoming due under this Lease and the Lessee covenants to pay the sum or sums with interest, and the Lessor shall have (in addition to any other right or remedy) the same rights and remedies in the event of the nonpayment by the Lessee as in the case of default by the Lessee in the payment of any installment of rent. Conversely, the Lessee shall be entitled to receive from the Lessor prompt payment or reimbursement on any sums due and owing from the Lessor to the Lessee, together with interest at the highest rate allowed by law.

ARTICLE XI: DAMAGE OR DESTRUCTION

SECTION 11.1 REPAIR AND REPLACEMENT OF IMPROVEMENTS FOLLOWING DAMAGE

(a) If the Subject Property shall be destroyed or damaged by any cause as to be unfit, in whole or in part, for occupancy and such destruction or damage could reasonably be repaired within ninety (90) days from the date of such damage or destruction, then Lessee shall not be entitled to surrender possession of the Premises, nor shall Lessee's liability to pay rent under this Lease cease, without the mutual consent of the Parties; in case of any such destruction or damage, Lessor shall repair the same with all reasonable speed and shall complete such repairs within ninety (90) days from the date of such damage or destruction. If during such period Lessee shall be unable to use all or any portion of the Premises, a proportionate allowance shall be made to Lessee from the rent corresponding to the time during which and to the portion of the Premises of which Lessee shall be so deprived of the use.

(b) If such destruction or damage cannot reasonably be repaired within ninety (90) days from the date of such damage or destruction, Lessor shall notify Lessee within fifteen (15) days after the determination that restoration cannot be made in 90 days. If Lessor elects not to repair or rebuild, this Lease shall be terminated. If Lessor elects to repair or rebuild, Lessor shall specify the time within which such repairs or reconstruction will be complete, and Lessee shall have the option, to be exercised within thirty (30) days after the receipt of such notice, to elect either to terminate this Lease and further liability hereunder, or to extend the Term of this Lease by a period of time equivalent to the time from the happening of such destruction or damage until the Premises are restored to their former condition. In the event Lessee elects to extend the Term of this Lease, Lessor shall restore the Premises to their former condition within the time specified in the notice, and Lessee shall not be liable to pay rent for the period from the time of such destruction or injury until the Premises are so restored to their former condition.

The timeframes in this article may be modified by mutual agreement of the Parties.

ARTICLE XII: MECHANIC'S LIENS

SECTION 12.1 DISCHARGE OF MECHANICS' LIENS

The Lessee shall neither suffer nor permit any mechanics' liens to be filed against the title to the Subject Property, nor against the Lessee's interest in the Subject Property, nor against the improvements by reason of work, labor, services or materials supplied or claimed to have been supplied to the Lessee or anyone having a right to possession of the Subject Property or improvements as a result of an agreement with or the assent of the Lessee. If any mechanics' lien shall at the time be filed against the Subject Property including the Improvements, the Lessee shall cause it to be discharged of record within 30 days after the date that Lessee has knowledge of its filing.

ARTICLE XIII: LIEN FOR RENT AND OTHER CHARGES

SECTION 13.1 LIEN FOR PAYMENTS

The whole amount of the rent and each and every installment, and the amount of all taxes, assessments, utility charges and other charges and impositions paid by the Lessor under the provisions of this Lease, and all costs, attorney's fees and other expenses which may be incurred by the Lessor in enforcing the provisions of this Lease or on account of any delinquency of the Lessee in carrying out any of the provisions of this Lease, shall be and they are declared to constitute a valid and prior lien upon the Subject Property and the improvements, and upon the Lessee's leasehold estate, and may be enforced by equitable remedies including the appointment of a receiver.

ARTICLE XIV: DEFAULT PROVISIONS

SECTION 14.1 EVENTS OF DEFAULT

Each of the following events is defined as an "Event of Default":

(a) The failure of the Lessee to pay any installment of rent, or any other payments or deposits of money, or furnish receipts for deposits as required, when due and the continuance of the failure for a period of ten (10) days after notice in writing from the Lessor to the Lessee.

(b) The failure of the Lessee to perform any of the other covenants, conditions and agreements of this Lease on the part of the Lessee to be performed, and the continuance of the failure for a period of thirty (30) days after notice in writing (which notice shall specify the respects in which the Lessor contends that the Lessee has failed to perform any of the covenants, conditions and agreements) from the Lessor to the Lessee unless, with respect to any default which cannot be cured within thirty (30) days, the Lessee, or any person holding by, through or under the Lessee, in good faith, promptly after receipt of written notice, shall have commenced and shall continue diligently and reasonably to prosecute all action necessary to cure the default within an additional sixty (60) days.

SECTION 14.2 RESERVED

SECTION 14.3 REMEDIES IN EVENT OF DEFAULT

The Lessor may treat any one or more of the Events of Default as a breach of this Lease and at its option, by serving written notice on the Lessee and each Secured Party and Leasehold Mortgagee of whom Lessor has notice (such notice not to be effective unless served on each such person) of the Event of Default of which the Lessor shall have received notice in writing, the Lessor shall have, in addition to other remedies provided by law, one or more of the following remedies:

(a) The Lessor may terminate this Lease and the Term created, in which event the Lessor may repossess the entire Subject Property and improvements, and be entitled to recover as damages a sum of money equal to the value, as of the date of termination of this Lease, of the rent provided to be paid by the Lessee for the balance of the stated term of this Lease less the fair rental value as of the date of termination of this Lease of the fee interest in the Subject Property and improvements for the period, and any other sum of money and damages due under the terms of this Lease to the Lessor and the Lessee. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(b) The Lessor may terminate the Lessee's right of possession and may repossess the entire Subject Property and improvements by forcible entry and detainer suit or otherwise, without demand or notice of any kind to the Lessee (except as above expressly provided for) and without terminating this Lease, in which event the Lessor may, but shall be under no obligation to do so, relet all or any part of the Subject Property for rent and upon terms as shall be satisfactory in the judgment reasonably exercised by the Lessor (including the right to relet the Subject Property for a term greater or lesser than that remaining under the stated term of this Lease and the right to relet the Subject Property as a part of a larger area and the right to change the use made of the Subject Property). For the purpose of reletting, the Lessor may make any repairs, changes, alterations or additions in or to the Subject Property and improvements that may be reasonably necessary or convenient in the Lessor's judgment reasonably exercised; and if the Lessor shall be unable, after a reasonable effort to do so, to relet the Subject Property, or if the Subject Property are relet and a sufficient sum shall not be realized from reletting after paying all of the costs and expenses of repairs, change, alterations and additions and the expense of reletting and the collection of the rent accruing from it, to satisfy the rent above provided to be paid, then the Lessee shall pay to the Lessor as damages a sum equal to the amount of the rent reserved in this Lease for the period or periods as and when payable pursuant to this Lease, or, if the Subject Property or any part of it has been relet, the Lessee shall satisfy and pay any deficiency upon demand; and the Lessee acknowledges that the Lessor may file suit to recover any sums falling due under the terms of this Section and that any suit or recovery of any portion due the Lessee shall be no defense to any subsequent action brought for any amount not reduced to judgment in favor of the Lessor. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(c) In the event of any breach or threatened breach by the Lessee of any of the terms, covenants, agreements, provisions or conditions in this Lease, the Lessor shall have the right to invoke any

right and remedy allowed at law or in equity or by statute or otherwise as through reentry, summary proceedings, and other remedies were not provided for in this Lease.

(d) Upon the termination of this Lease and the Term created, or upon the termination of the Lessee's right of possession, whether by lapse of time or at the option of the Lessor, the Lessee will at once surrender possession of the Subject Property and dispose of personal property and improvements as described in Section 1.4. If possession is not immediately surrendered, the Lessor may reenter the Subject Property and Improvements and repossess itself of it as of its former estate and remove all persons and their personal property, using force as may be necessary without being deemed guilty of any manner of trespass or forcible entry or detainer. Lessor may at its option seek expedited consideration to obtain possession if Lessor determines that the Lease has terminated as described in the first sentence of this paragraph, and Lessee agrees not to oppose such expedited consideration.

(e) In the event that the Lessee shall fail to make any payment required to be made provided for in this Lease or defaults in the performance of any other covenant or agreement which the Lessee is required to perform under this Lease during the period when work provided for in this Lease shall be in process or shall be required by the terms of this Lease to commence, the Lessor may treat the default as a breach of this Lease and, in addition to the rights and remedies provided in this Article, but subject to the requirements of service of notice pursuant to this Lease, the Lessor shall have the right to carry out or complete the work on behalf of the Lessee without terminating this Lease.

SECTION 14.4 WAIVERS AND SURRENDERS TO BE IN WRITING

No covenant or condition of this Lease shall be deemed to have been waived by the Lessor unless the waiver be in writing, signed by the Lessor or the Lessor's agent duly authorized in writing and shall apply only with respect to the particular act or matter to which the consent is given and shall not relieve the Lessee from the obligation, wherever required under this Lease, to obtain the consent of the Lessor to any other act or matter.

ARTICLE XV: LESSOR'S TITLE AND LIEN

SECTION 15.1 LESSOR'S TITLE AND LIEN PARAMOUNT

The Lessor retains title to the Land under this Lease. Any Lessor's lien for rent and other charges shall be paramount to all other liens on the Subject Property.

SECTION 15.2 LESSEE NOT TO ENCUMBER LESSOR'S INTEREST

The Lessee shall have no right or power to and shall not in any way encumber, the title of the Lessor in and to the Subject Property. The fee-simple estate of the Lessor in the Subject Property shall not be in any way subject to any claim by way of lien or otherwise, whether claimed by operation of law or by virtue of any express or implied lease or contract or other instrument made by the Lessee, and any claim to the lien or otherwise upon the Subject Property arising from any act or omission of the Lessee shall accrue only against the leasehold estate of the Lessee in the Subject Property and the Lessee's interest in any improvements, and shall in all respects be subject to the paramount rights of the Lessor in the Subject Property.

ARTICLE XVI: REMEDIES CUMULATIVE

SECTION 16.1 REMEDIES CUMULATIVE

No remedy conferred upon or reserved to the Lessor shall be considered exclusive of any other remedy, but shall be cumulative and shall be in addition to every other remedy given under this Lease or existing at law or in equity or by statute. Every power and remedy given by this Lease to the Lessor may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by the Lessor. No delay or omission of Lessor to exercise any right or power arising from any default shall impair any right or power, nor shall it be construed to be a waiver of any default or any acquiescence in it.

SECTION 16.2 WAIVER OF REMEDIES NOT TO BE INFERRED

No waiver of any breach of any of the covenants or conditions of this Lease shall be construed to be a waiver of any other breach or to be a waiver of, acquiescence in, or consent to any further or succeeding breach of it or similar covenant or condition.

SECTION 16.3 RIGHT TO TERMINATE NOT WAIVED

Neither the rights given to receive, sue for or distrain from any rent, moneys or other payments, or to enforce any of the terms of this Lease, or to prevent the breach or nonobservance of it, nor the exercise of any right or of any other right or remedy shall in any way impair or toll the right or power of the Lessor to declare ended the term granted and to terminate this Lease because of any event of default.

ARTICLE XVII: SURRENDER AND HOLDING OVER

SECTION 17.1 SURRENDER AT END OF TERM

Lessee shall peaceably and quietly leave, surrender and deliver the entire Subject Property to the Lessor at the termination of the Lease, subject to the provisions of Section 1.4, in good repair, order, and condition, environmentally clean and free of contaminants, reasonable use, wear and tear excepted, free and clear of any and all mortgages, liens, encumbrances, and claims. At the time of the surrender, the Lessee shall also surrender any and all security deposits and rent advances of Sublessees to the extent of any amounts owing from the Lessee to the Lessor. If the Subject Property is not so surrendered, the Lessee shall repay the Lessor for all expenses which the Lessor shall incur by reason of it, and in addition, the Lessee shall indemnify, defend and hold harmless the Lessor from and against all claims made by any succeeding Lessee against the Lessor, founded upon delay occasioned by the failure of the Lessee to surrender the Subject Property.

SECTION 17.2 RIGHTS UPON HOLDING OVER

At the termination of this Lease, the Lessee shall yield up immediately possession of the Land to the Lessor and, failing to do so, agrees, at the option of the Lessor, to pay to the Lessor for the whole time such possession is withheld, a sum per day equal to one hundred and seventy-five

percent (175%) times 1/30th of the aggregate of the rent paid or payable to Lessor during the last month of the term of the Lease the day before the termination of the Lease. The provisions of this Article shall not be held to be a waiver by the Lessor of any right or reentry as set forth in this Lease, nor shall the receipt of a sum, or any other act in apparent affirmance of the tenancy, operate as a waiver of the right to terminate this Lease for any breach of the Lessee under this Lease.

ARTICLE XVIII: MODIFICATION

SECTION 18.1 MODIFICATION

None of the covenants, terms or conditions of this Lease to be kept and performed by either Party to this Lease shall in any manner be waived, modified, changed or abandoned except by a written instrument duly signed, acknowledged, and delivered by both Lessor and Lessee.

ARTICLE XIX: INVALIDITY OF PARTICULAR PROVISIONS

SECTION 19.1 INVALIDITY OF PROVISIONS

If any provision of this Lease or the application of it to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE XX: APPLICABLE LAW AND VENUE

SECTION 20.1 APPLICABLE LAW

This Lease shall be construed and enforced in accordance with the laws of the State of Alaska. The forum and venue for any action seeking to interpret, construe, or enforce this Lease shall be only in the Superior Court for the State of Alaska at Sitka, Alaska.

ARTICLE XXI: NOTICES

SECTION 21.1 MANNER OF MAILING NOTICES

In every case where under any of the provisions of this Lease or otherwise it shall or may become necessary or desirable to make or give any declaration or notice of any kind to the Lessor or the Lessee, it shall be sufficient if a copy of any declaration or notice is sent by United States mail, postage prepaid, return receipt requested, addressed: If to Lessor at: Municipal Administrator, City and Borough of Sitka, of 100 Lincoln Street, Sitka, Alaska 99835, with a copy to: Municipal Clerk at address listed above; and if to Lessee, at: the address set out in the Preamble. Each Party from time to time may change its address for purposes of receiving declarations or notices by giving notice of the changed address, to become effective seven days following the giving of notice.

SECTION 21.2 RESERVED

SECTION 21.3 SUFFICIENCY OF SERVICE

Service of any demand or notice as in this Article provided shall be sufficient for all purposes.

SECTION 21.4 WHEN NOTICE DEEMED GIVEN OR RECEIVED

Whenever a notice is required by this Lease to be given by any Party to the other Party, the notice shall be considered as having been given when a registered or certified notice is placed in the United States Post Office mail as provided by this Article and shall be deemed received on the third business day thereafter and for all purposes under this Lease of starting any time period after notice, the time period shall be conclusively deemed to have commenced three business days after the giving of notice and whether or not it is provided that a time period commences after notice is given or after notice is received.

ARTICLE XXII: MISCELLANEOUS PROVISIONS

SECTION 22.1 CAPTIONS

The captions of this Lease and the index preceding it are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

SECTION 22.2 CONDITIONS AND COVENANTS

All the provisions of this Lease shall be deemed and construed to be "conditions" as well as "covenants," as though the words specifically expressing or importing covenants and conditions were used in each separate provision.

SECTION 22.3 ENTIRE AGREEMENT

This Lease contains the entire agreement between the Parties and shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors or assigns in interest.

SECTION 22.4 TIME OF ESSENCE AS TO COVENANTS OF LEASE

Time is of the essence as to the covenants in this Lease.

ARTICLE XXIII: COVENANTS TO BIND AND BENEFIT RESPECTIVE PARTIES AND TO RUN WITH THE SUBJECT PROPERTY

SECTION 23.1 COVENANTS TO RUN WITH THE SUBJECT PROPERTY

All covenants, agreements, conditions and undertakings in this Lease shall extend and inure to the benefit of and be binding upon the successors and assigns of each of the Parties, the same as if they were in every case named and expressed, and they shall be construed as covenants running with the Subject Property. Wherever in this Lease reference is made to any of the Parties, it shall be held to include and apply to, wherever applicable, also the officers, directors, successors and assigns of each Party, the same as if in each and every case so expressed.

SECTION 23.2 RESERVED

ARTICLE XXIV: ADDITIONAL GENERAL PROVISIONS

SECTION 24.1 ABSENCE OF PERSONAL LIABILITY

No member, official, or employee of the Lessor shall be personally liable to the Lessee, its successors and assigns, or anyone claiming by, through or under the Lessee or any successor in interest to the Subject Property, in the event of any default or breach by the Lessor or for any amount which may become due to the Lessee, its successors and assigns, or any successor in interest to the Subject Property, or on any obligation under the terms of this Lease. No member, official, or employee of the Lessee shall be personally liable to the Lessor, its successors and assigns, or anyone claiming by, through, or under the Lessor or any successor in interest to the Subject Property, in the event of any default or breach by the Lessee or for any amount which become due to the Lessor, its successors and assigns, or any successor in interest to the Subject Property, or on any obligation under the terms of this Lease.

SECTION 24.2 LEASE ONLY EFFECTIVE AS AGAINST LESSOR UPON APPROVAL

This Lease is effective only upon the approval of this month to month Lease by the SCIP Board of Directors, in accordance with the Sitka General Code at Chapter 2.38, and signed by the Municipal Administrator.

SECTION 24.3 BINDING EFFECTS AND ATTORNEYS FEES

This Lease shall be binding up and inure to the benefit of the respective successors and assigns of the Parties. In the event of litigation over this Lease, the Parties agree that the prevailing Party shall receive full reasonable attorneys' fees.

SECTION 24.4 DUPLICATE ORIGINALS

This Lease may be executed in any number of copies, each of which shall constitute an original of this Lease. The warranties, representations, agreements and undertakings shall not be deemed to have been made for the benefit of any person or entity, other than the Parties.

SECTION 24.5 DECLARATION OF TERMINATION

With respect to Lessor's rights to obtain possession of the Subject Property or to revest title in itself with respect to the leasehold estate of the Lessee in the Subject Property, the Lessor shall have the right to institute such actions or proceedings as it may deem desirable to effectuate its rights including, without limitation, the right to execute and record or file with the Recorder of Sitka Recording District, a written declaration of the termination of all rights and title of Lessee in the Subject Property, and the revesting of any title in the Lessor as specifically provided in this Lease.

SECTION 24.6 AUTHORITY

The Lessor and Lessee represent to each other that each has, and has exercised, the required corporate power and authority and has complied with all applicable legal requirements necessary to adopt, execute and deliver this Lease and perform its obligations. Both Parties also represent that this Lease has been duly executed and delivered by each and constitutes a valid and binding obligation of each enforceable in accordance with its terms, conditions, and provisions.

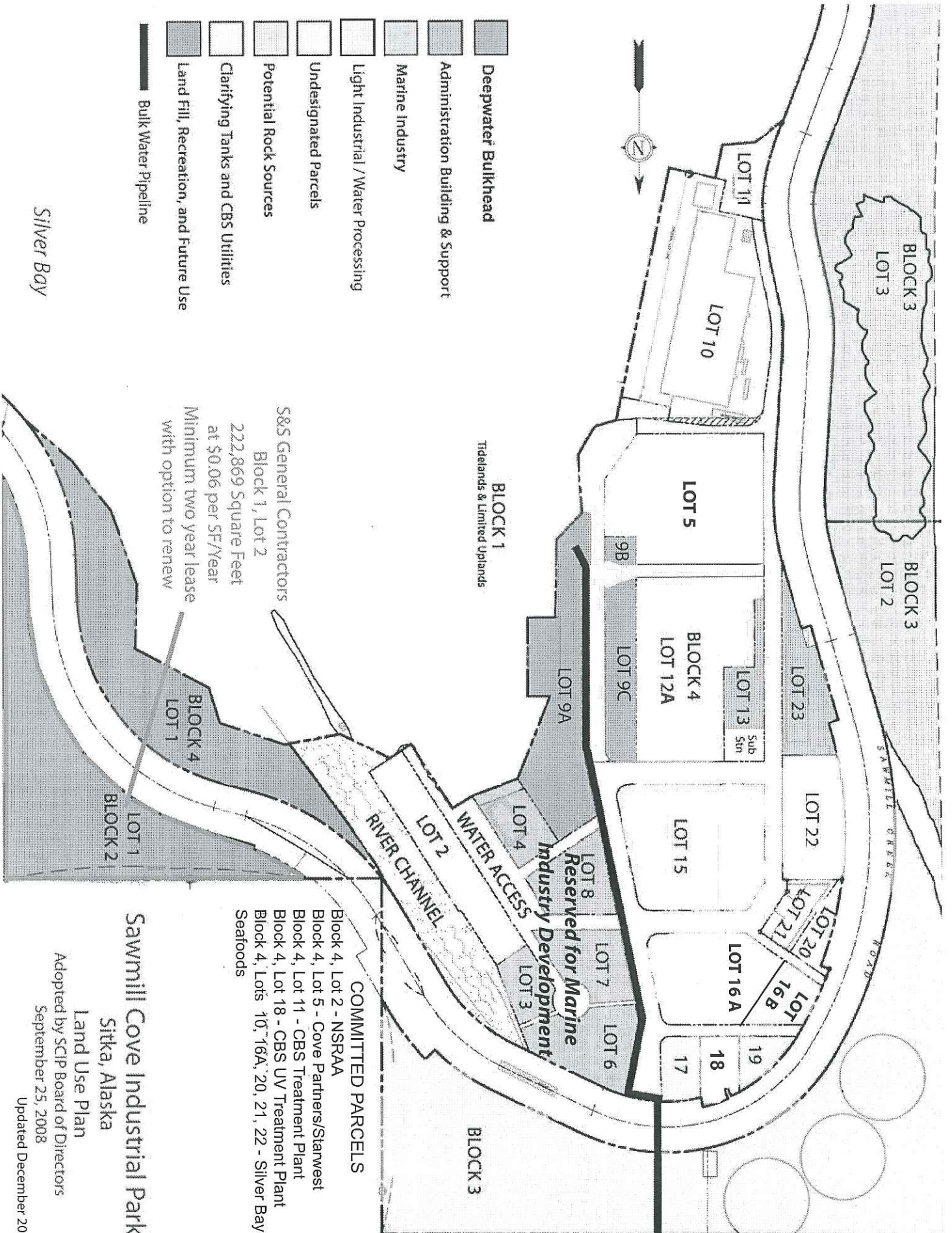
CITY AND BOROUGH OF SITKA

John P. Sweeney, III
Interim Municipal Administrator

On this ____ day of _____, 2013, Timothy Eddy of S&S General Construction & Equipment Rental, Inc, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, signs this Lease on behalf of S&S General Contractors & Equipment Rental, Inc. and affirms by signing this document to be authorized to sign on behalf of S&S General Contractors & Equipment Rental, Inc. and does so freely and voluntarily.

On this ____ day of _____, 2013, JOHN P. SWEENEY, III, INTERIM MUNICIPAL ADMINISTRATOR of the City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska, signs this Lease on its behalf, and affirms by signing this document to be authorized to sign on its behalf, and does so freely and voluntarily.

Notary Public for Alaska
My Commission Expires: _____



Silver Bay

Sawmill Cove Industrial Park

Sitka, Alaska

Land Use Plan

Adopted by SCIP Board of Directors

September 25, 2008

Updated December 2012

S&S General Contractors
Block 1, Lot 2
222,869 Square Feet
at \$0.06 per SF/Year
Minimum two year lease
with option to renew

Block 1
Tidelands & Limited Uplands

Reserved for Marine
Industry Development

COMMITTED PARCELS

Block 4, Lot 2 - NSRAA
Block 4, Lot 5 - Cove Partners/Starwest
Block 4, Lot 11 - CBS Treatment Plant
Block 4, Lot 18 - CBS UV Treatment Plant
Block 4, Lots 10, 16A, 20, 21, 22 - Silver Bay
Seafoods

**Memorandum of Understanding
between the State of Alaska and the City and Borough of Sitka**

**Management Plan for Sawmill Cove Property
(Former APC Property)**

This memorandum of understanding (MOU) "Management Plan" is made between the State of Alaska (State) and the City and Borough of Sitka (CBS) to set forth measures for implementing recorded institutional controls and other long-term responsibilities for management of the former Alaska Pulp Corporation property (Property, Exhibit 1) on Silver Bay, Sitka, Alaska.

This Management Plan describes how CBS and the State will work together to implement the recorded institutional controls and site management activities for: (1) the uplands area and future land uses on the Property; (2) landfills; (3) navigation and dredging; (4) outfalls and water quality; and (5) the long term monitoring plan for natural recovery and protectiveness of the remedy.

Introduction

From approximately 1995-1999, the State has intensively studied the environmental conditions of the Property and the larger areas affected by the operation of the former APC pulp mill (the Upland and Bay Operable Unit study areas) in consultation with the Sitka Tribe of Alaska, other agencies, and the public. This Management Plan specifies the work to be performed under a prospective purchaser agreement between the State and CBS for the former APC pulp mill property and is Attachment 3 to the agreement. The PPA limits CBS liability for existing contamination associated with the Property in exchange for this work. DEC will not require CBS to do any restoration or remediation work on the Property outside of what is required in this Agreement and in DEC's Record of Decision.

This Management Plan implements the Record of Decision (ROD) of the Alaska Department of Environmental Conservation (DEC) for the upland and bay operable unit study areas, the remedy set forth in the ROD for the Area of Concern (AOC, Exhibit 2) in the bay, including responsibility for long term monitoring. This Management Plan also defines coordination between institutional controls and the waterbody recovery plan being developed for Silver Bay.

I. UPLAND & LAND USE

A. Deed restrictions and notices.

1. Deed restrictions or notices have been placed on the entire Property, as described in Exhibit 3. These deed restrictions maintain the following limitations on future use, except as may be modified under the terms of the restriction or notation. This section further clarifies the terms of the deed restriction in order to ensure

consistent interpretation and implementation of the restriction and to provide certainty to potential future users and the public.

- a. Property use. The Property can be used for commercial/industrial (i.e., non-residential) purposes. The Property cannot be used for human habitation, schooling of children, hospital care, childcare, or any purpose necessitating round-the-clock residency by humans. The State of Alaska, Department of Law has the authority to remove this restriction if contaminant levels meet residential cleanup standards established by DEC.
- b. Related uses. Typical uses that are allowed under this restriction include the following: (1) public facilities (e.g., roads, other infrastructure, offices); (2) short-term, part-time residency on board moored vessels; (3) recreational uses in Silver Bay; (4) educational, health care, or similar uses where there is no on-site residency or where use by minors occurs indoors (e.g., out patient or emergency care, vocational training, professional offices).
- c. Duration. The uplands restrictions exist until July 11, 2097 or until DEC determines that dioxin/furan concentrations are low enough for residential use to be an acceptable risk. The deed notations associated with the landfills remain in effect permanently. The deed notice establishing the No Disturbance Zone will remain in effect until July 1, 2040 or until DEC determines that a NDZ is no longer necessary to protect human health, welfare or the environment.
- d. Modification. Of its own accord or if requested by CBS, DEC will review information showing that the deed restrictions may be modified or lifted.

B. Completion of petroleum contaminated soil cleanup.

1. CBS will complete treatment of petroleum contaminated soils in accordance with 18AAC 75. The CBS project manager will be the Environmental Superintendent or designee, who will provide a final written report to DEC within 30 days of completion of the work.
2. Recognizing the limited construction season in Sitka, DEC will review and respond to CBS as soon as possible after receipt of CBS's request for a completion letter, including conducting any on-site inspection if needed. DEC will provide CBS with a letter confirming completion of the work upon DEC's verification that the work has been satisfactorily completed.

C. Future construction activities and management of soils or other media.

1. Reporting. If contaminated soils or other media that require special handling are encountered during construction activities, CBS or its tenants or contractors working on the Property will promptly notify the CBS Public Works Director. In

addition, if contaminated soil or hazardous substances are encountered, CBS will notify DEC. These obligations exist, in addition to all other notifications required by law. The Public Works Director or designee, who may be a qualified contractor, shall serve as the project manager for managing the material or taking any remedial actions.

2. Site management. The Public Works Director or designee will require the testing and proper treatment or disposal in accordance with applicable law and DEC regulations or guidance on the management of contaminated soils or other contaminated media. The Public Works Director or designee will promptly report the actions to be taken to DEC as required by applicable law.
3. DEC approvals. DEC will process any approvals necessary for addressing existing contamination as part of the implementation of the ROD and its institutional controls under applicable regulations and not as enforcement actions.

II. LANDFILLS AND POST CLOSURE MONITORING AND CORRECTIVE ACTION PLAN

There are two landfills on the Property previously owned by APC. The first is at Herring Cove. The Herring Cove Landfill has reached the end of its post-closure monitoring period. A final inspection and report will be prepared by APC. It is the responsibility of APC to take whatever actions are necessary to gain DEC approval for the termination of the post closure period. CBS will not be obligated to conduct monitoring or other activities at the Herring Cove Landfill unless new information about the site becomes available to indicate the landfill is causing pollution or the landfill displays signs of structural failure. CBS will be responsible to complete or pay for future corrective action or monitoring if any is necessary at the Herring Cove Landfill. The remainder of this section refers to the second landfill, which is located adjacent to Sawmill Creek and is known as the APC Industrial Waste Disposal Site.

- A. Timing and responsibility for post-closure activities for the landfill. At such time as DEC approves the post-closure improvements by APC, CBS will assume responsibility for maintaining the landfill in perpetuity. This responsibility includes: (1) performing the post-closure long term monitoring plan below, and (2) repairing and maintaining the general industrial waste landfill cap, diversion ditches and subsidence monitoring controls in a manner that meets the performance standards specified below. DEC's approval of final as-builts of the improvements in the 1999 Site Improvements Completion Report will replace the current list of recommended improvements attached as Exhibit 4.
- B. Long term inspection monitoring and corrective action program for the general industrial waste landfill. CBS will inspect and monitor the landfill according to the following schedule up to December 31, 2022, subject to periodic evaluation of the monitoring program in paragraph B.6. The monitoring program outlined in

this document is considered detection level monitoring. If problems are discovered, assessment level monitoring to evaluate the problems will be implemented by CBS to DEC's satisfaction, and alternative corrective action plans will be proposed by CBS for DEC's approval. CBS is responsible to complete or pay for corrective action deemed necessary by DEC at the landfill. The CBS project manager will be the Environmental Superintendent or designee.

1. Visual inspections.

- a. CBS will conduct visual inspections four times in the first year, two times in the second year when sampling surface water, then annually or as otherwise required by the long term inspection and monitoring program. The annual site inspections will be conducted during typical wet-weather conditions to provide a reasonable basis for evaluating water drainage structures and potential leachate seepages.
- b. Each visual landfill inspection will identify and characterize all active leachate seepage locations along the toe of the landfill embankment.
- c. Exhibit 5 contains the visual inspection forms to be used in carrying out and describing the inspection results for each of the four areas within the landfill.
- d. Each inspection report will also include a brief narrative summary that will:
(1) characterize the overall landfill conditions and results of that inspection;
(2) briefly describe the weather conditions over the last few weeks, and water runoff conditions at the time of inspection; (3) compare previous annual inspection reports; and (4) characterize the overall integrity of the site.

2. Monuments.

- a. As part of the post-closure improvements, APC is responsible for installing a minimum of three (3) survey monuments at locations approved by DEC, and for establishing the initial location coordinates for each monument.
- b. CBS will re-survey the locations of each survey monument annually, or as otherwise required by this long term inspection and monitoring program. The results will be reported to DEC, with a comparison to the original monument locations and the previous year's results. Maintenance of survey monuments and corrective action based on monument surveys is addressed in paragraph II.C.

3. Leachate monitoring. DEC and APC's consultant predict there will be three seeps after the corrective action and that two of the seeps can be combined into a single sampling station for a total of two sampling stations. DEC reserves the right to modify the number of sampling stations and number of samples required if after the corrective action these predictions prove to be inaccurate.

- a. At the three currently active leachate seepage locations that exist, up to two sampling sites will be identified and developed such that representative samples may be obtained.
- b. Samples shall be obtained from up to two sampling stations two times during the first two years and annually thereafter. During the first two years one sample shall be taken in autumn and the other in spring or summer such that high-flow and low-flow of the seeps are both represented.
- c. Flow rates will be estimated and the seepage stream at each sampling site will be sampled independently for all field determined parameters.
- d. If wells are installed by APC, CBS will measure water levels. If required water samples cannot be collected at the seep because the seeps are dry, well sampling points may be substituted if DEC determines that the sampling will provide information necessary to assess the impacts of leachate on surface water.
- e. The initial sampling parameters and analytical methods to be evaluated and reported to DEC are shown on Table 1 in Exhibit 6 and will be updated based on sampling results, as described in paragraph II.B.6.
- f. The sampling analysis methods, except for the mercury testing, shall be those as determined by test methods that are compatible with those defined in the Alaska Water Quality Standards 18 AAC 70.020(b).

4. Earthquake Monitoring.

- a. For purposes of this section, earthquake intensity is measured by the modified Mercalli intensity scale of 1931 as amended for this plan. That scale describes:
 - a level VI Earthquake as: felt by all, many frightened and run outdoors. Some heavy furniture moved; a few instances of fallen plaster or damaged chimneys. Damage slight. Earthquake is reported in Sitka by local newspaper, radio or other public media.
 - a level VIII Earthquake as: damage slight in specially designed structures; considerable in ordinary substantial buildings, with partial collapse; great in poorly built structures. Panel walls thrown out of frame structures. Fall of chimney, factory stacks, columns, monuments, and walls. Heavy furniture overturned. Sand and mud ejected in small amounts. Changes in well water. Persons driving motor cars disturbed. Earthquake is reported in Sitka by local newspaper, radio or other public media.

- b. Within 60 days after any earthquake in Sitka of Level VI intensity or greater, CBS will: conduct a visual inspection of the landfill, and if there are visible cracks, CBS will re-survey the locations of survey monuments and will report findings as described elsewhere in this Plan. The obligations of this paragraph continue even if the survey frequency has been reduced under paragraph II.B.6.a.
 - c. If an earthquake of Level VIII or greater intensity occurs in Sitka and all survey monuments remain within one foot of their original locations, the DEC will discontinue the requirement to survey the monuments.
- 5. Reporting.
 - a. Each visual inspection summary will be transmitted to DEC within 60 days after each inspection, along with completed visual inspection forms and any water quality sampling results.
 - b. After each survey of the monuments along the landfill embankment a report will be transmitted to DEC within 45 days of the survey.
- 6. Periodic evaluation. For any or all areas of the landfill DEC will reevaluate the long term inspection and monitoring program from time to time at the request of CBS based upon monitoring data to determine if the frequency of monitoring/inspections may be reduced or eliminated. The available data will be reviewed, including monument surveys, visual inspection reports, and leachate monitoring results.
 - a. If, after the first five years of monitoring, the horizontal movement of survey monuments toward Sawmill Creek tidelands is less than one foot from their original location, the survey frequency will be reduced to every five years. Horizontal movement shall be measured from an imaginary vertical line passing through the center of the monument when it was constructed.
 - b. Upon request of CBS, or after 10 years, DEC will re-evaluate the leachate monitoring plan based on data received. The decision to continue, reduce, or discontinue leachate monitoring will be based on whether this sampling information indicates that leachate is having or is likely to have adverse impacts on surface waters. If sampling is reduced or eliminated, DEC may require that monitoring recommence if problems are subsequently identified.
- C. Maintenance. CBS will perform maintenance if necessary to maintain the conditions documented in the 1999 Site Improvements Completion Report (as finally approved by DEC), Exhibit 4, after APC has completed the corrective action described in Exhibit 4.

1. Disturbance of survey monuments. Maintenance activities should not disturb the survey monuments. If a survey monument is disturbed it must be replaced as close as possible to the original location and resurveyed. If survey monument horizontal movement had previously been detected, future horizontal movement of the replaced monument must be added to the original horizontal distance for comparison set forth in paragraph II.C.2.
2. Corrective action based upon survey monument movement. If, at any time, the horizontal movement of any of the survey monuments toward Sawmill Creek tidelands is more than one foot from the original location, CBS will immediately evaluate the potential causes for the movement. CBS will transmit the evaluation results and a proposed corrective action plan to DEC within 60 days of the survey. Upon approval by DEC, CBS will carry out the corrective action plan and provide DEC with a report of the completed activities within 30 days of completion.
3. Maintenance standards. The standards set forth below shall be the standards and conditions on which any future maintenance shall be based, unless the parties mutually agree that a less intensive level of maintenance is protective.
 - a. The drainage improvements are permanent and have succeeded in substantially reducing upslope surface water infiltration.
 - b. The leachate seepages have been reduced to minimal levels.
 - c. A healthy grass/vegetative cover has been established across the top surface of the site.
 - d. No significant cracks have opened up, and no unstable areas are observed anywhere along the site's outside embankments, similar to the conditions that required the post-closure improvements.
 - e. There are no areas of erosion that are likely to affect the integrity of the site.
- D. Close-out. At the termination of the long term inspection and monitoring program, CBS will submit a final report for approval by DEC. If the report is approved the post closure period will terminate and no further monitoring will be required.

III. NAVIGATION AND DREDGING

- A. Navigational dredging. – Navigational dredging on the west side of Sawmill Cove in the AOC can occur only in a navigational corridor (see Exhibit 2). Navigational dredging outside of the AOC (see Exhibit 2) is likewise consistent with waterbody recovery goals, subject to the normal permitting process. Navigational dredging within the AOC does not include blasting of the outcrop of

native rocky material in front of the former pulp dock that follows the depth contours to the southeast. Maintenance dredging is anticipated to occur in approximately 10-year intervals, but could vary depending on sedimentation rates. Dredging actions that occur outside of the Navigation Corridor will be limited in scope and ancillary to in-water construction.

- B. Dock use and future expansion. – DEC has determined that: (1) the existing docks can be used as is without any further regulatory action subject only to recorded deed restrictions and notices and (2) berthage and dock expansion alternatives identified in the Decision Framework for Managing Navigation in Sawmill Cove (Exhibit 7) are consistent with the proposed remedy and may be implemented through normal permit processes. Other berthing options are not necessarily precluded, but if proposed, they would have to be evaluated in the future for consistency with the proposed remedy.
- C. In-water construction. – In-water construction in the AOC will be allowed with appropriate precautions incorporated through the permit process. In-water construction in the AOC, including pilings, dolphins, docks, moorage and navigation aids, will employ best professional judgment to specify best management practices (BMPs) to minimize disturbance or resuspension of sediments. An example of an appropriate BMP for drilling, socketing and anchoring piling in bedrock is to remove overlying sediment (if a thin layer exists) or to employ and then clean out a casing used in conjunction with the drill bit (if a thick layer exists).
- D. No Disturbance Zone.
1. A No Disturbance Zone (NDZ) has been established within the AOC (see Exhibit 2). The purposes of the NDZ are to minimize resuspension of pulp residue and to ensure that no activity occurs that may compromise the ability of the area to achieve the natural recovery ecological management goals within the stated time frame. The NDZ encompasses approximately 5-6 acres of tidal and submerged lands that are covered with pulp residue extending to the southwest immediately offshore of outfall 001.
 2. Dredging, expansion of moorage and in-water construction are prohibited in the No Disturbance Zone, except for the following activities: (1) CBS may repair, maintain, or remove existing facilities using best management practices as provided in paragraph III.C and approved by DEC prior to the work; (2) CBS will place and maintain a new navigational marker(s) as provided in paragraph III.E.1; (3) vessels may traverse this zone as provided in paragraph III.E.; and (4) existing stormwater and treated sanitary discharge from outfall 001 may continue, as provided in paragraph IV.C.

E. Vessel management.

1. CBS will place a navigational boundary marker or other navigational aid at the - 50 ft MLLW contour of the No Disturbance Zone (Exhibit 2), as determined in consultation with DEC and the US Coast Guard (and which might be located on an existing dolphin). Approaching or departing ships shall not pass over the NDZ shoreward of the line between the seaward corner of the dock and the navigational boundary marker.
2. CBS recognizes and accepts that vessels are not permitted to drop anchor in the Area of Concern. "Anchoring" means dropping anchor, not securing to a buoy or fixed structure. CBS will include a provision in any Port Authority Development Plan that includes the Property, and in any leases or other conveyance of navigational rights in the Property, that:
 - a. Vessels are not allowed to anchor in the AOC; and
 - b. To the extent that it is safe and practicable, the following standard operating procedures will be followed by personnel maneuvering approaching or departing vessels in the vicinity of the NDZ:
 - i. Approach the dock at as high an angle as possible.
 - ii. Minimize the use of the main propulsion system, thrusters, and tugs when over or near the NDZ or buffer zone.
 - iii. Use as low a "bell" (such as "dead slow" or the slowest reasonable revolutions per minute ordered) when berthing.
3. DEC will request NOAA or other agencies as appropriate to show the AOC as a "no anchor" zone on navigational charts of Silver Bay and Sawmill Cove. CBS will request this designation be removed at such time as DEC has determined that sufficient natural recovery has occurred.
4. The existing mooring buoy in the south end of Sawmill Cove may be used or reconstructed for future use by larger vessels. Vessels may traverse the AOC and may be moored in the AOC on single point moorage, as long as they comply with the above restrictions.
5. Any other mooring buoys and navigation aids may be used and reconstructed. New single point mooring buoys and navigation aids may be established in the AOC so long as they are outside the No Disturbance Zone (other than the navigation aid in the NDZ under paragraph III.E.1).

IV. OUTFALLS & WATER QUALITY

- A. Waterbody Recovery Planning. DEC will not require CBS to do any restoration or remediation work in the Area of Concern outside of what is required in this agreement and DEC's Record of Decision. Any additional controls required of CBS or its tenants in the waterbody recovery plan will be implemented through the normal permitting process and will be consistent with CBS use of the Property, as provided in this agreement.
- B. Location in the AOC. With the exception of relatively clean industrial water from between the utility and former pulp docks, the AOC is presumed not to be suitable for wastewater outfalls for the foreseeable future (e.g, 20+ year timeframe).
- C. Stormwater and existing outfalls in the AOC. DEC has determined that existing permitted discharges and new outfalls for stormwater in the AOC are consistent with the proposed remedy and waterbody recovery plan under development, subject to the normal permitting process. Therefore, existing stormwater and treated sanitary discharges from outfall 001 may continue. As may be required when permit applications are submitted, DEC may permit the use of standard modeling to confirm that proposed discharges and activities will not resuspend contaminated sediments in the AOC or discharge pollutants that will set back the natural recovery process.
- D. Other outfalls and discharges. Any other outfalls or discharges within the boundary of an impaired waterbody established under state or federal law, as the boundary may be defined at the time of the proposed discharge, are not necessarily precluded. If proposed, however, they will need to be evaluated in the permit process for consistency with the proposed remedy and waterbody recovery plan to be certain they would not: (1) resuspend contaminated sediments, or (2) set back the natural recovery process in either the AOC or the other impaired areas in Sawmill Cove.
- E. Disclosure to future users. Additional inputs of toxic and deleterious substances and residue in portions of Silver Bay considered to be impaired waterbodies will be limited. Where appropriate, CBS will seek to inform prospective users that review of proposed discharges within any impaired waterbody boundary will likely involve a more detailed review by permitting agencies of source control, additional treatment, and the potential for additional monitoring costs to confirm performance.
- F. Construction of new outfalls. No new outfalls may be constructed in the No Disturbance Zone (see Exhibit 2). In-water construction within or adjacent to the AOC will incorporate appropriate BMPs through the permit process if determined to be necessary. Should CBS want to extend the primary wastewater discharge point from outfall 001, under permit, toward or into the vicinity of Bucko Point,

DEC will not oppose such extension and will support CBS efforts to secure grants or other funding to finance the extension.

V. **LONG TERM MONITORING FOR NATURAL RECOVERY AND PROTECTIVENESS OF THE REMEDY**

- A. The long term monitoring program for evaluating natural recovery and protectiveness of the remedy, and ultimate contaminated sites file closure has two main components: (1) the long term monitoring program; and (2) the monitoring methods/plans (e.g., sampling and analysis methods) that specify the detailed field monitoring protocols to implement the program (which will be included as Exhibit 8 when approved by DEC. It is DEC's expectation that APC will complete the monitoring methods/plans by June 1999.)
- B. Responsibility for long term monitoring. CBS will implement the long term monitoring program and monitoring methods/plans set forth in Exhibit 8. The Year 1 baseline monitoring will occur in 1999 or 2000 at the latest. The State and CBS agree that the management approach and decision framework set forth in the long term monitoring program, and the results of monitoring events, will guide all future decisions regarding monitoring and natural recovery of the AOC.
- C. Project manager. The Environmental Superintendent or designee shall be the project manager for CBS and the Contaminated Sites Remediation Program Manager shall be the project manager for DEC.
- D. Coordination with waterbody recovery plan.
 - 1. DEC and CBS intend to cooperatively develop a component of the long term monitoring program that will complement a waterbody recovery plan for the impaired waterbody that includes Sawmill Cove. Any components that are cooperatively developed and included in the monitoring program under this paragraph will be considered voluntary, not part of the required long term monitoring of the AOC. Voluntary components may be funded differently than the required monitoring.
 - 2. Planning and implementation. DEC and CBS intend to cooperate in development and review of the waterbody recovery plan for Silver Bay. DEC plans to work together with CBS, the Sitka Tribe of Alaska, and other interested public to identify grant funding opportunities for water quality and habitat improvements in Silver Bay, including Herring and Sawmill Coves.
 - 3. Program Manager. For waterbody recovery planning, the Environmental Superintendent or designee shall be the project manager for CBS and the Water Quality Program Manager shall be the project manager for DEC.

VI. MISCELLANEOUS PROVISIONS

- A. Permits. Nothing in this Management Plan exempts a specific site use or redevelopment activity from obtaining any permits required by law.
- B. Usage. Terms used in the Management Plan shall have the following meaning or usage, unless otherwise provided in the plan:
1. "Any" means "if any."
 2. "Applicable law" means the law in effect at the time the management activity is undertaken (not at the time the mou is executed).
 3. "Days" means calendar days, including weekends and holidays.
 4. "Depths" are relative to MLLW.
 5. "Designee" means any person or contractor authorized by the responsible official identified in the management plan or its exhibits.
 6. "Including" means including but not limited to.
 7. "Public review" means a combined, joint review process and period by the State and CBS. At a minimum, public notice will be provided by CBS and documents will be available at City Hall in Sitka. Where action is required on a management action by the CBS Assembly, notice and opportunity to comment means the notice and time period that CBS would otherwise provide to the public prior to action by the Assembly. This process shall not alter any required notice and comment periods for DEC permitting actions under state law.
- C. Any schedule in this Management Plan may be modified (shortened or extended) by mutual agreement. Such agreement can be documented by letter or electronically without the need to amend this agreement
- D. Exhibits may be updated or revised and substituted for the attached exhibits with mutual consent and written confirmation by both parties and without the need to amend the Management Plan.

List of Exhibits

Exhibit 1 – Description of "the Property"

Exhibit 2 – Description of the Area of Concern (AOC) and the Navigational Corridor, the No Disturbance Zone (NDZ), and the Buffer Zone within the AOC

Exhibit 3 – List of deed notices/restrictions

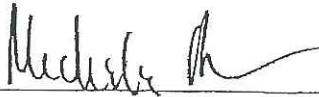
Exhibit 4 – 11/24/98 Inspection Report & Post-closure Completion Recommendations – APC – Sitka Solid Waste Disposal Facility (T. Hanna), G. Miller letter dated 2/23/99 and T. Hanna letter dated 3/17/99) – to be replaced by 1999 Site Improvements Completion Report (Industrial Waste Landfill corrective action report, including final as-builts of the improvements and DEC's approval of the report.)

Exhibit 5 – Post-closure Inspection Form

Exhibit 6 – Landfill leachate monitoring parameters (Table 1)

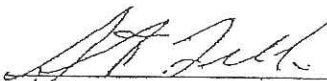
Exhibit 7 – Decision Framework for Managing Navigation in Sawmill Cove

Exhibit 8 – Long term monitoring program, including monitoring methods (sampling and analysis plans)



Michele Brown, Commissioner
Department of Environmental Conservation

4/28/99
Date



Stan Filler, Mayor
City and Borough of Sitka

4/28/99
Date