

POSSIBLE MOTION

I MOVE TO approve a 20-year purchase agreement between the City and Borough of Sitka and Arctic Blue Waters Inc. for the export of bulk water, as recommended by the Gary Paxton Industrial Park Board, and authorize the Municipal Administrator to execute the document.



329 Harbor Drive, Suite 212
Sitka, AK 99835
Phone: 907-747-2660

Thursday, August 31, 2017

MEMORANDUM

To: Phillip Messina, CBS Interim Administrator
From: Garry White, Director
Subject: Arctic Blue Waters Alaska Inc. Water Purchase Agreement

Introduction

The Gary Paxton Industrial Park (GPIP) Board of Directors is recommending that the CBS enter into a water purchase agreement with Arctic Blue Waters Alaska Inc. (ABWAI) for the export of bulk water. The GPIP Board recommends approval of the following terms:

Term

- 20-Year term with four 5-year extensions with consent of both parties.

Water Volume

- 6,138 Acre-feet (~2 billion gallons) annually
 - ABWAI must purchase and export a total of 50 million gallons of water within a 60-month period or Sitka can terminate agreement.
 - After 60 months, the agreement defines Stages of water volume export to retain water allocation amounts. (Section 3.2)
 - ABWAI gains more allocations by exporting more water and can lose allocation amounts by failing to export specified amounts.

Water Pricing

- The price for water has been set at \$3,258.51/Acre-feet or \$0.01/US gallon.
- ABWAI is required to make a non-refundable fee of \$100,000 that can be used as water credits.
- ABWAI will receive 50,000 gallons of water free of charge for wash-down, washout, or other non-export applications per each loading event. After the first 50,000 gallons per loading event, the price is \$.005/gallon.

Other Terms

- Ensures municipal water uses retain first right and priority to the water. (Section 4a)
- The agreement allows for hydroelectric dam and water system maintenance. (Section 4c)
- Defines requirements for ballast water discharges and water loading.

- Allows option for ABWAI to install a water based water-loading station per CBS approval. (Section 10)

Background

Arctic Blue Water Alaska Inc. (ABWAI) is requesting to establish a water purchase agreement with the CBS to export raw water in bulk.

Fred Paley is one of the principal owners of Arctic Blue Waters Alaska Inc. Fred has previously obtained water purchase agreements from the CBS in the past. Most recently in 2016, Arctic Blue Water (Canada) entered into a water purchase agreement for 6.8 billion gallons of water. The agreement required a non-refundable payment of \$871,795 to execute the agreement. Arctic Blue Water (Canada) unable to make the non-refundable payment, which resulted in the agreement not being executed.

Mr. Paley is proposing to make a non-refundable payment of \$10,000 shortly after the water agreement is approved with another \$90,000 non-refundable payment due 120 days after agreement execution. Please see the attached memo from Mr. Paley concerning fund availability.

Bulk Water Export Background

The City and Borough of Sitka (CBS) has permits to export 29,235 Acre-feet (~9.5 billion gallons) of raw water annually.

The CBS has entered into multiple water purchase agreements with multiple entities for bulk export since 1996.

Most recently, the CBS had a water purchase agreement with Alaska Bulk Water Inc. (ABWI), formerly True Alaska Bottling Company, to export bulk water from 2006-2015. ABWI paid the CBS \$1.35 million dollars during that timeframe in refundable payments to secure the water purchase agreements. ABWI was unable to meet the terms of its water purchase agreement, which resulted in termination of the agreement in December 2015.

In the spring of 2016, the GPIIP Board directed the GPIIP Director to release a Request for Proposal (RFP) to solicit proposals for exporting water. The CBS received four proposals. The GPIIP Board recommended that two separate entities be awarded water purchase agreements. Both entities were unable to make the required non-refundable payment to execute the agreements. The CBS is currently not under contract with any entity to export water.

The CBS currently retains its entire 29,235 Acre-feet (~9.5 billion gallons) of raw water allocation.

If the Assembly approves both proposed water purchase contracts, the CBS will still have over 23,096 (~7.4 billion gallons) of raw water allocation.

<u>Permit</u>	<u>Acre Feet</u>	<u>Gallons</u>
LAS 19669	14,000	4,561,914,000
<u>ADL 43826</u>	<u>15,235</u>	<u>4,964,339,985</u>
Total Available	29,235	9,526,253,985
<u>Proposed Eckert Agreement</u>	<u>0.31</u>	<u>100,000,000</u>
<u>Proposed ABWAI Agreement</u>	<u>6,138</u>	<u>2,000,073,438</u>
Available for other BW Contracts	23,096.69	7,426,180,547

Additional Information

- ABWAI has stated that it wishes to establish a tideland-loading facility similar to the one installed in the CBS tidelands by Alaska Bulk Water Inc.
 - The location of the tideland-loading station will need to be investigated due to the installation of the new multipurpose dock being install at the GPIIP.
 - Recommended that tideland-loading system be addressed via a separate permit or amendment to agreement at a later date.

Action

- Assembly approval of the water purchase agreement between the CBS and Arctic Blue Waters Alaska Inc.



'Taste the True Nature of Water'

MEMO

TO: Garry White

DATE: July 25, 2017

FROM: Fred Paley

CC: Andy Argent
Chuck Cartier

SUBJECT: Bulk Water Purchase Agreement

The following information is to provide the Sawmill Cove Board of Directors a brief summary of the current and future activities of Arctic Blue Waters (Alaska) Inc. This company has been formed by combining Arctic Blue Waters (UK) Ltd., and Alaska Fresh Water Inc., with the objective to secure pure bulk water supplies and through an aggressive marketing and sales program execute long-term foreign "Bulk Water Sales Agreements".

Arctic Blue Waters (Alaska) Inc., is comprised of entrepreneurs with a successful track record in the water bottling business and other retail ventures in Alaska and England. The company is working with professionals from the world of shipping and logistics who have over 25 years' experience in order to assist the buyers with their transportation requirements.

It is the intent of the company to raise \$22,300,000 through private equity investors, a public trading company listed on the OTC, NASDAQ Exchange and Immigration EB-5 funds. The company has entered into an MOU/Letter of Intent with the targeted public company and has been assured that the first \$20,000,000 immigration funds are available. Management have arranged for three meetings in Vancouver on August 2nd, 2017 to meet with equity investors to raise the first \$130,000. These funds will be used to provide a \$10,000 deposit to Sitka, place a deposit for the purchase of the loading facility from Terry Trapp, and conduct sales meetings in India and the Middle East. Two of these investors will seek an additional \$1.0 million from their business associates for the project. Once the public trading company has established a trading pattern on the Exchange the EB-5 funds will be released. Arctic will become an operating subsidiary to the public company.

The Board of Directors of Arctic Blue Waters (Alaska) Inc., hope that Sawmill Cove Board Members will take into consideration the numbers of years and millions spent by the shareholders of Arctic in regards to the potential shipment of bulk water from Blue Lake. We have not given up and continue to make progress in our efforts to make this project a success.

The Time For Bulk Water Is Now

Visit www.arcticbluwaters.com or email fred.paley@arcticbluwaters.com

**PURCHASE AGREEMENT
FOR RAW WATER IN BULK FOR EXPORT**

BETWEEN: City and Borough of Sitka, Alaska (“Sitka”)
100 Lincoln Street
Sitka, Alaska 99835

AND: Arctic Blue Waters Alaska, Inc. (“ABWAI”)
78 C Street
Fairbanks, Alaska 99701

1. Term and Documents Comprising this Agreement.

1.1 The initial term of this Agreement shall commence upon ABWAI making a non-refundable payment of Ten Thousand Dollars (\$10,000.00) on the total payment of One Hundred Thousand Dollars (\$100,000.00), payable upon signing this Agreement, to the Administrator of Sitka (“Administrator”), and shall end at 11:59 p.m. Alaska Standard Time on September 15, 2037. The balance owing of Ninety Thousand Dollars (\$90,000.00) is to be paid within One Hundred Twenty (120) days of the signing of this Agreement. Sitka hereby grants to ABWAI, 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, on the terms and conditions set forth herein.

1.2 At the conclusion of the initial term of this Agreement, four (4) additional terms of five (5) years may be exercised upon the written consent of both parties. ABWAI must notify the Administrator in writing no earlier than one (1) year and no later than four (4) months before the end of the initial term of its desire to add an additional five-year term, and shall thereafter notify the Administrator no earlier than one (1) year and no later than four (4) months prior to the expiration of each exercised additional term of its desire to exercise the next five-year term. If ABWAI does not so timely notify the Administrator, this Agreement shall terminate at the expiration of the then-current term. If ABWAI does so timely notify the Administrator, Sitka has thirty (30) days to notify ABWAI in writing of its consent to the additional term. As initiated in writing by Sitka after notice is given by ABWAI of its desire to add an additional five-year term, Sitka's raw water price is subject to re-negotiation before the commencement of each additional term. If a price is not agreed upon in writing, this Agreement shall terminate at the expiration of the then-current term.

1.3 The Agreement consists of the 23 sections 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 ABWAI 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 untreated non-potable water sold by Sitka to ABWAI under this Agreement, and delivered by Sitka to ABWAI in the measured quantities specified in this Agreement.
- f) "deliver" or "to deliver" or "delivered" means Sitka making a specific quantity of water available to ABWAI at the point of delivery.
- g) "export" means the transportation by ABWAI of bulk water to a destination outside the hydrological unit of the Blue Lake drainage.
- h) "gallon" means one US gallon or 3.785 liters.
- i) "loading" means transporting the raw water which is the subject of this Agreement from Blue Lake through pipelines and other conveyances into the ABWAI-chartered ship for export outside Alaskan waters.
- j) "MG" or "mg" means millions of gallons.
- k) "MGD" means millions of gallons per consecutive 24-hour period.
- l) "per day" means calendar day starting at midnight.
- m) "per week" means during a period of seven (7) consecutive days.
- n) "per year" means during a period of 12 consecutive months.
- o) "point of delivery" means that physical location at which the Sitka-owned physical facilities and equipment, employed in the transportation of Sitka's bulk water for delivery to ABWAI, terminates.
- p) "raw water" means untreated non-potable water delivered by Sitka to the point of delivery 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.

q) “rule curve” means the relationship between the elevation of the water surface of Blue Lake and the volume of water contained in Blue Lake, which regulates the reservation of water for fish, wildlife, and habitat protection.

r) “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.

s) “Stage Anniversary Date” means the day starting a 12-month period in a Stage.

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

u) “unforeseen” means an exceptional event, not contemplated by the parties in negotiating this Agreement. Performance made more difficult or expensive than expected is not “unforeseen.” The burden of proving that an event is unforeseen is on the party that advances it as a reason for non-performance.

v) “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 ABWAI from Sitka.

3.1 Sitka will make available to ABWAI a total of 6,138 acre-feet of raw water for a period of 60 months after the effective date of this Agreement (the “60-month period”). At the conclusion of the 60-month period, ABWAI's access to such water will be governed by the stages set out in subsection 3.2 below, provided that ABWAI has met the minimum export volumes set out in this section. During the 60-month period, ABWAI must take delivery of and export at least 50 million gallons of raw water. If ABWAI does not take delivery of and export at least 50 million gallons of raw water from Sitka during the 60-month period, this Agreement shall, at Sitka’s election, terminate and expire without further action by Sitka on the forty-fifth (45th) day after Sitka’s sending of the Administrator’s notice to ABWAI, in accordance with section 23 below, that ABWAI has failed to comply with this subsection, unless within said 45-day period ABWAI cures its failure to take delivery of and export at least 50 million gallons of raw water from Sitka.

3.2 The Stages described in this subsection start 60 months after the effective date of this Agreement. The maximum quantity of raw water in bulk available for export by ABWAI from Sitka under this Agreement and the minimum export requirements are set forth below 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 (50mg)	12-month period

Stage 2	33.6 MG	2,000 af	306.9 af (100mg)	230.2 af (75mg)	12-month period
Stage 3	33.6 MG	4,000 af	920.7 af (300mg)	306.9 af (100mg)	12-month period
Stage 4	33.6 MG	10,000 af	3,068.9 af (1bg)	920.7 af (300mg)	12-month period
Stage 5	33.6 MG	() ¹	N/A	3,068.9 af (1bg)	12-month period

Stage 1: Stage 1 begins 60 months after the effective date of this Agreement. Sitka will make available to ABWAI 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, ABWAI must have taken delivery of and exported from Sitka a minimum of 153.4 af (50 MG) of raw water within the 12-month period immediately preceding the most recent Stage Anniversary Date of Stage 1. If ABWAI does not take delivery and export the said minimum, this Agreement shall, at Sitka’s election, terminate and expire without further action by Sitka on the forty-fifth (45th) day after Sitka’s sending of the Administrator’s notice to ABWAI, in accordance with section 23 below, that ABWAI has failed to meet such requirement, unless within said 45-day period ABWAI cures such failure, as determined by Sitka in its sole discretion.

Stage 2: ABWAI shall take delivery and pay for a minimum of 230.2 acre feet of raw water within a 12-month period during this Stage. If ABWAI takes delivery of and exports a total of at least 230.2 acre-feet (75 MG) of bulk water in a 12-month period, then the amount of raw water Sitka will make available for delivery to ABWAI will be increased to 2,000 acre-feet of water in a 12-month period, provided at that time that the Administrator has determined in his/her sole discretion that Sitka still has adequate water quantities available and uncommitted. To remain at Stage 2 for the next 12 months ABWAI must have taken delivery of and exported from Sitka at least 230.2 af (75 MG) within the 12-month period immediately preceding the most recent Stage 2 Anniversary Date. If ABWAI does not meet the requirement to remain at Stage 2 set out in the previous sentence, ABWAI shall revert to Stage 1 thereby establishing a new Stage 1 Anniversary Date.

Stage 3: ABWAI shall take delivery and pay for a minimum of 306.9 acre feet of raw water in a 12-month period during this Stage. If ABWAI takes delivery of and exports a total of at least 306.9 acre-feet (100 MG) of raw water per 12-month period, then the amount of water Sitka will make available for delivery to ABWAI will be increased to 4,000 acre-feet per year, provided at that time that the Administrator has determined in his/her sole discretion that Sitka still has adequate water quantities available and uncommitted. To remain at Stage 3 for the next 12 months ABWAI must have taken delivery of and exported from Sitka at least 306.9 af (100 MG) within the 12-month period preceding the most recent Stage 3 Anniversary Date. If ABWAI does not meet the requirement set out in the previous sentence to remain at Stage 3, ABWAI shall revert to Stage 2 thereby establishing a new Stage 2 Anniversary Date.

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

Stage 4: ABWAI shall take delivery and pay for a minimum of 920.7 acre feet of raw water in a 12-month period during this Stage. If ABWAI takes delivery of and exports a total of at least 920.7 acre-feet (300 MG) per 12-month period, then the amount of raw water Sitka will make available for delivery to ABWAI will be increased to 10,000 acre-feet per 12-month period, provided at that time that Sitka's Administrator has determined in his/her sole discretion that Sitka still has adequate water quantities available and uncommitted. To remain at Stage 4 for the next 12 months ABWAI must have taken delivery of and exported from Sitka at least 920.7 af (300 MG) within the 12-month period immediately preceding the most recent Stage 4 Anniversary Date. If ABWAI does not meet the requirement set out in the previous sentence to remain at Stage 4, ABWAI shall revert to Stage 3 thereby establishing a new Stage 3 Anniversary Date.

Stage 5: ABWAI shall take delivery and pay for a minimum of 3,068.9 acre feet of raw water in a 12-month period during this Stage. If ABWAI takes delivery of and exports a total of 3,068.9 acre feet (1 billion gallons) of raw water per 12-month period, then ABWAI may request from Sitka additional raw water in a volume to be determined by the Administrator in his/her sole discretion at that time, provided that the Administrator has determined in his/her sole discretion that Sitka still has adequate water quantities available and uncommitted. To remain at Stage 5 for the next 12 months ABWAI must have taken delivery of and exported from Sitka at least 3,068.9 af (1 BG) within the 12-month period immediately preceding the most recent Stage 5 Anniversary Date. If ABWAI does not meet the requirement set out in the previous sentence to remain at Stage 5, ABWAI shall revert to Stage 4 thereby establishing a new Stage 4 Anniversary Date.

3.3 If ABWAI fails to take delivery of and export the required minimum volume specified in Stages 2 through 5 within the time periods specified for those Stages as set out in Subsection 3.2, the respective obligations of Sitka to make raw water available, and of ABWAI to take delivery of and accept and export such volume shall be reduced to the next lower Stage for the next 12-month period. If ABWAI meets the minimum performance requirement of that lower Stage within the time period specified, then the next higher Stage shall again be in effect during the next 12-month period. The date upon which Sitka moves ABWAI 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 raw water quantities available and uncommitted for export.

3.4 Notwithstanding any other provision of this Agreement, if raw water delivered by Sitka to ABWAI and exported by ABWAI falls below 50 million gallons during any period of 12 consecutive months after 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 (45th) day after Sitka's sending of the Administrator's notice to ABWAI, in accordance with section 23 below, that ABWAI has failed to comply with this subpart, unless within said 45-day period ABWAI cures its failure to take delivery of and export at least 50 million gallons of water from Sitka.

3.5 At no time may ABWAI take delivery of raw water at a rate greater than 33.6 MGD.

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

4.1. Sitka is entering into this Agreement to sell raw water in bulk pursuant to water to Sitka's water export authority contained in Water Appropriation Certificates LAS 19669 and ADL 43826. Sitka's obligation to deliver water to ABWAI in the quantities specified in this Agreement is subject to these conditions and limitations:

a) Notwithstanding any other provision of this Agreement, 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 ABWAI to meet the requirements of its municipal drinking water and hydroelectric systems. Whether there is a sufficient volume of raw water available for these purposes shall be decided in the sole discretion of the Administrator.

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) The Administrator 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 the Administrator shall give not less than 60 days prior notice to ABWAI of any such planned suspension.

d) Sitka shall be relieved of its obligation to deliver raw water in bulk to ABWAI in the event of an interruption in water supply due to circumstances that require repair to or reconstruction of the municipal drinking water, hydroelectric systems, water delivery system, or other of Sitka's facilities. Delivery of raw water in bulk to ABWAI may be reduced to the extent necessary to make such repair(s) or reconstruction, and for so long as the Administrator in his/her sole discretion determined is required to make such repairs or reconstruction.

e) The volumes of Sitka's raw water deliveries in bulk to ABWAI for export are subject to Sitka's overriding obligation to comply with all of the 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 the Administrator's sole discretion.

f) In the event Sitka is relieved of its obligation to make agreed quantities of water available to ABWAI for reasons noted in this paragraph or due to Force Majeure or due to unforeseen circumstances, then ABWAI'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 within which ABWAI is authorized to receive raw water shall be extended for a period equal to the period of time that Sitka has been so relieved of its obligation.

4.2 ABWAI agrees and warrants that the raw bulk water delivered to it by Sitka for export shall be put to one or more beneficial uses by it or by its water purchasers. Breach of this warranty shall be a material breach of this Agreement.

4.3 For that portion of the raw bulk water which is made available for human consumption ABWAI shall, at ABWAI's sole cost, promptly comply with all Government Regulations relating to the condition, use or quality of such water for human consumption. ABWAI shall establish staff and maintain an on-site Water Quality laboratory to perform ABWAI's obligations under Paragraph 13.3.

5. **[This section deliberately left blank.]**

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

6.1 THE WATER CONTRACTED FOR DELIVERY, AND/OR ACTUALLY DELIVERED, TO ABWAI UNDER THIS AGREEMENT IS NON-POTABLE. SITKA DOES NOT WARRANT THE QUALITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY WATER CONTRACTED FOR DELIVERY, AND/OR ACTUALLY DELIVERED, TO ABWAI UNDER THIS AGREEMENT. ABWAI 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 ABWAI OF THE QUANTITIES OF WATER WHICH ARE CONTRACTED FOR UNDER THIS AGREEMENT, AND THAT IT HAS FOUND ALL SUCH ITEMS ADEQUATE AND SATISFACTORY FOR ECKERT'S PURPOSES.

6.2 ABWAI acknowledges and agrees that Sitka's 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 ABWAI's obligations under this Agreement.

6.3 ABWAI acknowledges and agrees that the quality of raw water contracted by Sitka to be delivered in bulk to ABWAI 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 ABWAI's contractual obligations under this Agreement, except that the quantity of water ABWAI is obligated to take delivery of and to export shall be reduced to the quantity Sitka can and does make available for delivery to ABWAI, as a consequence of an occurrence of any of such natural events.

6.4 ABWAI SHALL BE SOLELY RESPONSIBLE AND LIABLE FOR THE QUALITY AND USEFULNESS FOR ANY PARTICULAR PURPOSE, INCLUDING HUMAN CONSUMPTION, OF ALL WATER EXPORTED BY, TRANSPORTED BY, USED BY, OR SOLD BY, OR DELIVERED BY ABWAI.

7. **Purchase Price for Raw Water.**

7.1 ABWAI shall pay the following prices for raw bulk water for export from Sitka:

*Purchase Agreement for Raw Water in Bulk
Between the City and Borough of Sitka and Artic Blue Waters, Inc.*

a. Raw water delivered in bulk to ABWAI for export shall be priced at U.S. \$0.01 (one cent) per gallon.

b. Raw water delivered by Sitka to ABWAI for vessel wash-down, washout and any other non-export application shall be priced at no charge for the first 50,000 gallons per each loading event and US \$0.005 (one-half of a cent) per gallon above 50,000 gallons per each loading event. Such quantities shall be separately metered, and shall not be included in the total quantities of raw water delivered to ABWAI for export.

7.2 ABWAI shall pay for each volume of water loaded no later than twenty-five (25) days after the presentation of an invoice by the Administrator to ABWAI for such water. Failure by ABWAI to make timely payment shall be a material breach of this Agreement and be cause for the Administrator to suspend water delivery to ABWAI until payment is made or other action is taken under this Agreement.

7.3 Beginning July 1, 2021 and every calendar year thereafter, the prices charged by Sitka for raw water delivered to ABWAI under this Agreement shall be adjusted by the Administrator 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 ABWAI shall pay Sitka for the volume of water delivered to ABWAI as measured by flow meters owned, operated, and documented by Sitka at or near the point of delivery. One year after the first delivery of water, the Administrator shall arrange for an independent third party to calibrate the flow meters after which they will calibrated every other year during the term of this Agreement.

7.5 The non-refundable payment of \$100,000 made by ABWAI to commence this Agreement will be credited toward export of water payments over the term of this Agreement.

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

8.1 Notwithstanding any other provision of this Agreement, this Agreement shall, at Sitka's Administrator's election, terminate and expire without further action by Sitka on the forty-fifth (45th) day after the Administrator mails notice to ABWAI by certified mail that ABWAI has breached or failed to comply with one or more of the conditions or requirements of this Agreement, or become insolvent, or abandoned the project unless within said 45-day period, ABWAI 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 ABWAI under this Agreement shall cease, except that ABWAI's obligations to Sitka under Sections 13, 14, 15, 16, and 17 of this Agreement shall survive termination.

9. Sitka's Permitting Actions.

The Administrator shall take any and all actions which she/he determines, in the exercise of her/his sole discretion, to be reasonable, necessary, and economically feasible to maintain in good standing any permit, license, certificate, allocation, appropriation or other authorization required for Sitka to fulfill its obligations under this Agreement.

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

10.1 The parties agree that ABWAI shall be solely responsible for the costs of acquisition, construction and installation, maintenance and repair of any structure, facility or vessel downstream of the point of delivery 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 must comply with all Federal, State, and local law, including zoning requirements.

10.2 Sitka shall retain the right to own, and operate a raw bulk water delivery pipeline that serves the Gary Paxton Industrial Park. In such event, Sitka may require ABWAI to use Sitka's facilities and may change the point of delivery to the point at which Sitka's facilities end. Unless and until Sitka provides such new facilities, ABWAI shall be fully responsible, at its own cost and expense, for arranging and accomplishing transport of raw bulk water from the point of delivery established by Sitka.

10.3 ABWAI 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 ABWAI MUST ASSURE THE ADMINISTRATOR OF THE FEASIBILITY OF A PARTICULAR USE BEFORE ENGAGING IN SUCH USE.

10.4 ABWAI shall be solely responsible for arranging the transportation of all water delivered to it by Sitka for export.

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

10.6 Sitka's flow meter which is used to calculate the quantities of water delivered to ABWAI shall be located near the point of delivery.

11. Ballast Water and Wash Water Discharges.

11.1 ABWAI 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 raw bulk water from 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 ABWAI shall comply with all applicable federal, state and local requirements regarding the use and disposal of any raw or treated water delivered to ABWAI 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 ABWAI loads any bulk water delivered to it by Sitka, ABWAI shall submit to the Administrator a written Water Loading Plan. This Plan shall be deemed approved by the Administrator unless no later than fourteen days after its submission the Administrator in his or her sole discretion rejects—or requires ABWAI to resubmit—any portion of the Plan. Such action by the Administrator shall be in a writing to ABWAI that states the deficiency. Sitka shall deliver no bulk water to ABWAI and ABWAI shall not load any bulk water delivered to it by Sitka as long as any portion of the Plan has been rejected and not approved after re-submittal. ABWAI 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 administrative, environmental, and logistical matters 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) identify and provide information requested by the Administrator regarding any vessel to be used by ABWAI in the loading or transport of raw bulk water;
- b) steps to be taken to insure the safety of persons in any way involved in the loading of bulk water;
- c) certification that ABWAI has a Contingency Plan that meets all of the requirements of State law applicable to the vessel that is being loaded;
- d) steps to be taken to insure the safety of the public before, during, and after loading of raw bulk water;
- e) steps to be taken to address the effects of wind and tidal conditions on the loading;
- f) steps to be taken concerning moorage and access to vessels during loading;
- g) steps to assure communication before, during, and after loading between those loading and the Administrator or his/her designee;

- h) details about the precise location and proposed use of any structure, facility, pipe, pipeline, or other infrastructure to be used in the loading of raw bulk water and details describing how ABWAI intends to address the risks associated with a catastrophic event arising from ABWAI's loading activities or ABWAI's failure to adhere to the proposed Water Loading Plan;
- i) steps to be taken to avoid conflicts with other vessel traffic and industrial park users;
- j) details on proposed handling of any ballast water in any vessel to be used in the loading of raw bulk water, including plans to respond to the unauthorized discharge of such water;
- k) 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;
- l) the days and the periods of time within each day that raw bulk water is proposed to be loaded; and,
- m) details describing how the proposed Water Loading Plan shall be made consistent with 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)." The details describing such consistency must include any and all specific steps to be taken to avoid anchoring in prohibited areas and in any way disturbing the sea bottom in the "No Disturbance" zone described in the last-referenced documents.

12.3 ABWAI shall comply with all provisions of each Water Loading Plan after all of such provisions have been 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'S ADMINISTRATOR OF ANY WATER LOADING PLAN SHALL NOT IMPOSE 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 CREATE OR CONFER BENEFITS ON ANY THIRD PARTY.

13. Indemnification of Sitka.

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

- a) any defect or flaw in the quality of raw bulk water supplied under this Agreement;

- b) any delays on the part of Sitka in the delivery of raw bulk water under this Agreement as the result of the mechanical or physical breakdown of equipment or facilities owned or operated by the Sitka or other unforeseen event;
- c) claims arising from the transportation or shipment of raw bulk water after such water has left Sitka's water delivery system and the point of delivery;
- d) injuries to employees of ABWAI or any of its contractors or their employees;
- 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;
- f) violations and claims of violations related to the water loading plan described in section 12.2; and,
- g) harm, including illness and death, to persons who consume the raw bulk water caused by the failure of ABWAI to comply with section 6.3 of this Agreement.

13.2 ABWAI shall at all times during this Agreement maintain insurance policies providing umbrella coverage against matters including but not limited to those covered by this Agreement in an amount not less than U.S. \$5,000,000, with Sitka named as an additional insured, and with a waiver of subrogation against Sitka. ABWAI shall provide a copy of the certificate insurance ABWAI to Sitka within sixty (60) days after the effective date of this Agreement.

13.3 ABWAI shall be responsible for ensuring that each of its contractors is qualified to do business in Alaska and refrains from activities for which insurance cannot be obtained. ABWAI shall assure that any contractor for ABWAI which 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 ABWAI shall deliver a certificate of such insurance to the Administrator within 30 days of such hiring.

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.

Should Sitka form a Port Authority, or similar entity, 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 ABWAI to purchase water other than those restrictions set out in this Agreement.

15. Waiver and Integration.

This Agreement integrates the entire Agreement between the parties regarding the sale and purchase of raw water. 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 ABWAI is relieved of an obligation under this Agreement due to Force Majeure, time periods under this Agreement shall be adjusted accordingly. The party asserting a Force Majeure event must demonstrate by clear and convincing evidence that the failure or delay in performance is directly and proximately caused by a Force Majeure event.

17. Applicable Law.

ABWAI shall comply with all provisions of law applicable to its obligations under this Agreement. This Agreement shall be construed in accordance with the laws and procedures of the State of Alaska.

18. Dispute Resolution.

18.1 Good Faith Efforts of the Parties. Upon notice by either party to the other party of any dispute or claim arising out of or related to this Agreement the parties shall first make a good-faith endeavor to resolve the dispute or claim by meeting informally "face-to-face" within 15 days of such notice to mediate the dispute or claim in good faith without a third-party mediator.

18.2 Jurisdiction and Venue. Should any party hereto institute any action or proceeding to enforce any provision hereof or for damages by reason of any alleged breach of any section of this Agreement or for any other remedy, such an action shall be brought in the Superior Court for the State of Alaska. Venue for any such action or lawsuit shall lie exclusively in Sitka, Alaska. The parties specifically agree not to remove jurisdiction to federal courts on the grounds of diversity of citizenship.

18.3 Attorney's Fees and Legal Expenses. Should any party hereto institute any action or proceeding to enforce any provision hereof or for damages by reason of any alleged breach of any section of this Agreement or for any other remedy, the party that is successful in such action shall be entitled to receive from the losing party all of its reasonable legal costs and expenses, including without limitation, reasonable attorneys' fees and all arbitration costs.

19. Effective Date.

This Agreement shall become effective upon ABWAI making a non-refundable deposit of \$10,000 to Sitka, no later than September 19, 2017. The date on which ABWAI makes such a payment will be the "effective date" for the purpose of any time period which incorporates that term in this Agreement. Should ABWAI fail to make such a payment by September 15, 2017 this Agreement is null and void.

20. 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. ABWAI acknowledges that this Agreement is only effective against Sitka if the City and Borough of Sitka Assembly votes to authorize the Administrator to execute this Agreement on behalf of Sitka. By affixing his signature to this Agreement, the Administrator represents and warrants that the Assembly has so voted.

21. 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.

22. Time of Essence.

Time is of the essence in this Agreement.

23. Notices.

Any notices required or authorized to be given by this Agreement shall be in writing and shall be sent by **email and** by either **commercial courier, facsimile, or by certified U.S. mail**, postage prepaid and return receipt requested, addressed to the proper party at the address stated below or such address as the party shall have designated to the other parties in accordance with this section. Such notice shall be effective three (3) days after sending through the mails or after receipt by courier or facsimile by the addressee party, except that any facsimiles received after 5:00 p.m. of the addressee's local time shall be deemed delivered the next day.

If to ABWAI: Charles Cartier
Arctic Blue Waters Alaska, Inc.
78 C Street
Fairbanks, Alaska 99701

If to Sitka: Administrator
City and Borough of Sitka, Alaska
100 Lincoln Street
Sitka, Alaska 99835

IN WITNESS THEREOF, the parties have executed this Agreement as of the dates shown below.

ARCTIC BLUE WATERS ALASKA INC.

THE CITY AND BOROUGH OF SITKA

DATE _____
CHARLES CARTIER, PRESIDENT
ARCTIC BLUE WATER ALASKA INC.

DATE _____
KEITH BRADY, ADMINISTRATOR
THE CITY AND BOROUGH OF SITKA

ATTEST:

DATE _____
SARA PETERSON CMC
Municipal Clerk
THE CITY AND BOROUGH OF SITKA

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

THIS CERTIFIES that on this _____ day of _____, 2016, before me, a Notary Public in and for the State of Alaska personally appeared **CHARLES CARTIER** to me known and known to me to be the person whose name is subscribed to the foregoing **PURCHASE AGREEMENT FOR RAW WATER IN BULK FOR EXPORT** and after being first duly sworn according to law, he stated to me under oath that he is the **PRESIDENT of ARCTIC BLUE WATERS ALASKA INC.**, that he has been authorized by said company to execute the foregoing **PURCHASE AGREEMENT FOR BLUE LAKE RAW BULK WATER** on its behalf and he executed the same freely and voluntarily as the free act and deed of said corporation.

*Purchase Agreement for Raw Water in Bulk
Between the City and Borough of Sitka and Artic Blue Waters, Inc.*

Notary Public
My Commission Expires:

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

THIS CERTIFIES that on this ____ day of _____, 2016 before me, a Notary Public in and for the State of Alaska, personally appeared **KEITH BRADY** to me known and known to me to be the person whose name is subscribed to the foregoing **PURCHASE AGREEMENT FOR RAW WATER IN BULK FOR EXPORT**, and after being first duly sworn according to law, he stated to me under oath 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 by said municipality to execute the foregoing **PURCHASE AGREEMENT FOR BLUE LAKE RAW BULK WATER** on its behalf and he executed the same freely and voluntarily as the free act and deed of said corporation.

WITNESS my hand and official seal the day and year in this certificate first above written.

Notary Public for Alaska
My Commission Expires:
Residing at Sitka, Alaska