

Should this item be pulled from the Consent Agenda the following motion is suggested:

POSSIBLE MOTION

I MOVE TO approve Amendment No. 5 to Alaska Bulk Water, Inc.'s bulk water export contract and authorize the Municipal Administrator to execute the document.

Tuesday, August 4th, 2015

MEMORANDUM

To: Mark Gorman – CBS Administrator
From: Garry White, Director
Subject: Alaska Bulk Water Inc. Amendment #5

Introduction

Alaska Bulk Water Inc. (ABWI) has moved forward with the construction of additional water distribution infrastructure to delivery water to a tanker ship. The GPIIP Director is recommending that an amendment to the Purchase Agreement for Raw Water in Bulk for Export between the CBS and ABWI be executed to address issue with the ABWI connecting to CBS infrastructure.

The GPIIP Board at its June 2015 meeting recommended that the CBS Assembly approve a lease between ABWI and the CBS to meet contractual obligations and define removal of ABWI infrastructure in the event that the water purchase agreement is terminated. Upon further legal review, it has been recommended that an amendment to the original purchase agreement would be a better agreement to accomplish the above than a lease.

The GPIIP Board met again on August 4th and approved the following motion:

MOTION: Jones/McConnell moved to recommend that the Assembly approve Amendment No. 5 to Alaska Bulk Water, Inc.'s bulk water export contract as per the memo dated August 3, 2015.

ACTION: Motion passed 4/0 on a voice vote.

Background

ABWI (formerly True Alaska Bottling) has an agreement with the CBS to export 27,773 acre-feet annually of raw water. Per the agreement between the CBS and ABWI, ABWI is solely responsible for the acquisition, construction, and installation of infrastructure to export water. The CBS has constructed a 36" raw water export pipeline to the edge of the shore of Sawmill Cove. ABWI is working towards the development of a marine raw water export pipeline and loading station.

The CBS has granted ABWI four previous amendments to the Purchase Agreement for Raw Water in Bulk for Export in the past. The main purpose of the previous amendments was to adjust the length of time ABWI had contractual to export water.

Amendment #5

Amendment #5 (please see attached) accomplishes the following:

- It amends Section 10.1 (new language underlined, deleted language bracketed). The language deleted, currently has the GPIIP Board and Assembly approving the connection of infrastructure to the CBS water pipeline. It is recommended that CBS PW staff approve the connections as they will be the most knowledgeable of what will work and be safe and have a better working knowledge of local, state and federal laws. Both GPIIP Board and Assembly will still review ABWI plans.
- Section 10.7 is a new addition to purchase agreement. This section outlines the requirements for ABWI to remove its infrastructure from the end of the CBS pipeline in the event that the purchase agreement is terminate. .

Action

- Assembly approval of Amendment No. 5 to the Purchase Agreement for Raw Water in Bulk for Export.

**AMENDMENT NO. 5 TO
ALASKA BULK WATER, INC.
FOR RAW WATER IN BULK FOR EXPORT**

The City and Borough of Sitka (hereinafter “Sitka”) and Alaska Bulk Water Company, Inc. (hereinafter “ABWI”), the successor in interest to True Alaska Bottling Company, collectively referred to as “the Parties,” agree to this Amendment No. 5 to the October 10, 2006 “True Alaska Bottling Company Purchase Agreement for Raw Water in Bulk for Export” (hereinafter “the Agreement”), which is entered into as of this ___ day of July 2015 pursuant to the terms and conditions set forth herein.

WHEREAS, the Parties have amended the Agreement on four previous times and agree to amend it further by Amendment No.5 as set forth herein;

WHEREAS Amendment No.5 is necessary to ratify and set the terms and conditions for use and removal of a pipeline and other facilities for loading water constructed by ABWI pursuant to Paragraph 10.1 of the Agreement without the necessary authorizations from Sitka; and

WHEREAS a license from Sitka is needed to grant ABWI authority during the term of this Agreement to use the pipeline and other facilities for loading water which ABWI has constructed over Sitka’s property.

NOW THEREFORE In consideration of the premises and the mutual agreements herein contained and for other good and valuable consideration, the parties hereto hereby agree to Amend the Agreement (new language underlined; deleted language bracketed) as provided by Paragraph 20 as follows:

- 10.1 The parties agree that ABWI shall be solely responsible for the cost of acquisition, construction, and installation of any structure, facility or vessel which it determines to be required or convenient for the loading and transportation of bulk water delivered to it by Sitka, and for initiating and completing any such acquisition, construction and installation. All structures and facilities and all structures and facilities constructed pursuant to this paragraph, must comply with all federal, state and local law, including zoning requirements. [and must be reviewed by SMCIP Board for its recommendation to Assembly, subject to assembly approval before construction.]

- 10.7 Sitka hereby grants a license to ABWI to use the pipeline and other facilities for loading water which ABWI has constructed over a portion of Block 4, Lot 9A consisting of approximately 1,875 square feet as pictorially depicted on Exhibit A in accordance with the following terms and conditions:
 - a. In order to bring itself into compliance with paragraph 10.1, within 30 days of the execution of this amendment ABWI shall apply for and diligently pursue

approval of all of the permits and authorizations required by this Agreement to construct and operate the pipeline and other facilities for loading bulk water which it has already constructed within the license area shown on Exhibit A.

- b. The license granted herein is revocable at Sitka's sole discretion, is not assignable, and shall terminate upon the earlier of completion of the work described in subparagraphs c. and d. or termination of this Agreement.
- c. ABWI shall completely remove the pipeline and other facilities for loading bulk water, which it has constructed within the license area as depicted on exhibit A, within 6 months of the termination of this Agreement. Any such materials not removed from the license area within 6 months shall be deemed abandoned and become Sitka's property at Sitka's option.
- d. ABWI shall completely restore the license area as depicted on exhibit A to its original, preconstruction condition to Sitka's sole satisfaction within 6 months of the termination of this Agreement. Should ABWI failed to restore the license area to Sitka's satisfaction, Sitka may contract with third parties to perform the work and ABWI shall pay Sitka for all costs of restoration required to restore the license area to Sitka's satisfaction.
- e. Should ABWI fail to complete the work described in subparagraphs c. and d. above by the fifth month after termination, it shall provide Sitka a written report describing the work that remains to be done and ABWI's plan for completing that work within the next 30 days.

Nothing in this Amendment No.5 supersedes, voids, or modifies this Agreement except as provided in this Amendment No.5.

ALASKA BULK WATER, INC. AND

CITY AND BOROUGH OF SITKA

Terrence Trapp, CEO

Mark Gorman, Municipal Administrator

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

On this ____ day of _____, 2015, Terrence Trapp of Alaska Bulk Water, Inc., whose identity is personally known to me or proved to me on the basis of satisfactory evidence, signs this Lease Agreement on behalf of Alaska Bulk Water, Inc. and affirms by signing this document to be authorized to sign on behalf of Alaska Bulk Water, Inc. and does so freely and voluntarily.

Notary Public for Alaska

My Commission Expires: _____

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

On this ____ day of _____, 2015, MARK GORMAN, 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 Agreement 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: _____