

Wednesday, December 9, 2009

## MEMORANDUM

To: Sawmill Cove Industrial Park Board of Directors (SCIP Board)  
From: Garry White, Director  
Subject: True Alaska Bottling Co. Update and Request

### **Background**

True Alaska Bottling Co ("TAB") has failed to take delivery of and export at least 20 million gallons of water in the past 36 months as per Subsection 3.1 of its Amended Purchase Agreement for Raw Water in Bulk for Export between the City and Borough of Sitka and True Alaska Bottling Co. A forty-five day cure letter was sent on 12/09/2009.

### **Request from TAB**

TAB is requesting that CBS extend its contract for a 90 day period to finish negotiations with a pending contract. Please see attached request from TAB.

### **Amended Purchase Agreement Information**

Per Section 3.1 of the Amended Purchase Agreement for Raw Water in Bulk for Export, "Sitka will make available to TAB a total of 8,960 acre-feet of raw water for a period of 36 months after the effective date of this Agreement."

CBS has permits available to export in bulk approximately 28,000 acre-feet of raw water. The remaining 19,040 acre-feet of raw water can be sold to a third party as long as CBS and the third part comply with Section 5.2 of the Purchase Agreement. Please see Section 5.2 on Amended Contract.

The SCIP Director continues to get a steady stream of inquiries regarding bulk water from third parties. The Director has received minimal written notice from TAB in regards to initial inquires.

### **Additional Information**

TAB owes \$58,839.74 to CBS in lease payments that were due to the CBS on 12/1/09 per the Amended contract that have not been received.

## **Action Item**

1. Extension of TAB contract for 90 days?
2. Adjustments to contract?

December 2, 2009

Mr. Garry White  
Executive Director  
Sitka Economic Development Association  
329 Harbor Drive, Suite 212  
Sitka, Alaska 00835

Dear Garry:

As discussed, True Alaska Bottling Company ( TAB ) has worked diligently to develop customers for bulk water export. At this time, we have several customers that are very close to executing contracts for bulk water. Because of the need to maintain confidential information with each customer, we have not disclosed the details of these negotiations with you to date. However, in view of the upcoming date with TAB's bulk water contract next week, it seems appropriate that we share some of these details with you.

As you are aware, in September 2008, TAB formed a business relationship with S2C Global Systems, Inc., a water supply and distribution company located in Canada and traded on the OTC exchange. This business relationship resulted in the formation of Alaska Resources Management, LLC ( ARM ) in which both S2C Global and TAB are members. S2C Global maintains that they have aggressively pursued the bulk water market and had relationships with those countries in need of bulk water. S2C Global expected to have a signed agreement bulk water contract last December but this did not happen. However, recently, S2C Global has made good progress.

ARM now is ready to execute an agreement for bulk water with Iraq. This contract is constructed with the assistance of UAE- Dubai. The contract specifies a minimum purchase of 948 million US gallons per year for five ( 5 ) years. The buyer plans to purchase much more than the minimum amount. We anticipate that the execution of this agreement is imminent. We have redacted the pricing information on this contract, but have left most of the agreement intact for review.

In consideration of this impending bulk water contract, we are requesting a grace period of 90 days to TAB's bulk water contract so that we can conclude this agreement and begin the construction of the loading station in Sitka. We would be glad to discuss this with you and the Sawmill Cove Board at your convenience.

Yours truly,

Terry Trapp  
CEO – True Alaska Bottling Company

## BULK WATER ALLOCATIONS

<u>Permit</u>	<u>Acre Feet</u>	<u>MGD</u>	<u>Gallons</u>
LAS 19669	14,000	12.5	4,561,914,000
<u>ADL 43826</u>	<u>15,235</u>	<u>13.6</u>	<u>4,964,339,985</u>
Total Available	29,235	26.1	9,526,253,985
<u>Bottling Plant</u>	<u>1,228</u>	<u>1.1</u>	<u>400,000,000</u>
Total for Bulk Water Export	28,007	25	9,126,253,985
<u>Current TAB BW Contract</u>	<u>8,960</u>	<u>8</u>	<u>2,919,624,960</u>
Available for other BW Contracts	19,047	17	6,206,629,025

**AMENDMENT NO. 1 TO  
TRUE ALASKA BOTTLING COMPANY PURCHASE AGREEMENT  
FOR RAW WATER IN BULK FOR EXPORT**

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

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

WHEREAS, this agreement to extend TAB's deadline by one additional year at Sections 3.1 and 3.2 is contingent upon TAB agreeing to the following conditions, which were required and approved by the CBS Assembly at its Regular Meeting on January 27, 2009:

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

NOW, THEREFORE, Sitka and TAB, based on TAB agreeing and fulfilling all conditions required by the City and Borough of Sitka Assembly set out above, agree to amend the Agreement as follows, as authorized and pursuant to Section 20 of the Agreement:

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

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

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

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

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

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

\* \* \*

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

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

5. Water Distribution.

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days *OK*

5.2 Provided that TAB is in compliance with all terms of this agreement Sitka agrees to refer all inquiries from third parties for the purchase of bulk water to TAB. TAB shall give written notice to Sitka within seven calendar of any such inquiry, and shall monthly from the date of the initial notice give written status reports to Sitka regarding such inquiries. If TAB reaches agreement with any third party regarding bulk water sales, Sitka shall be given a written notice of such an agreement with three calendar days of the agreement. If TAB is unable to come to terms for sale of bulk water to said third parties within 90 days of the referral by Sitka to TAB, Sitka may proceed with direct negotiations with said third party without further obligation to TAB.

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

TRUE ALASKA BOTTLING COMPANY

*Charles Richard Kearns*

Richard Kearns, President

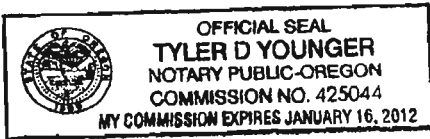
DATE 3-3-09

STATE OF Oregon

Lin JUDICIAL DISTRICT

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) ss. **ACKNOWLEDGMENT**  
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THIS CERTIFIES that on this 3 day of March, 2009, **Richard Kearns**, known to me or who has produced sufficient identification to be the person whose name is subscribed to this document, signed this document, and by signing affirms that he is the President of **TRUE ALASKA BOTTLING COMPANY**, that he has been authorized to execute the foregoing document on its behalf, and executes the document freely and voluntarily.



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