

Thursday, May 20, 2010

MEMORANDUM

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

From: Garry White, Director

Subject: Cove Partners LLC water rates

Background

The SCIP Board discussed water rates for Cove Partners LLC bottling plant at their September 21, 2009 meeting. The proposed water purchase contract was submitted to Cove Partners for their consideration. Cove has responded with the attached letter requesting a lower water rate.

Additional Information

Attached are the following:

- Minutes from the 09/21/09 SCIP meeting regarding Cove water rate discussion.
- CBS proposed water purchase contract drafted based on points discussed at 09/21/09 meeting.
- Sitka Commercial Water Rates established in Sitka General Code
- Water rates in other communities

Action

Discussion on Cove Partners LLC request to lower water rates.

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March 22, 2010

Garry White, Director
Sawmill Cove Industrial Park
329 Harbor Dr, Suite 212
Sitka, AK 99835

RE: **Cove Partners LLC**
Water Rates

Dear Mr. White:

Cove Partners LLC requests that the Sawmill Cove Industrial Park Board of Directors reconsider the bulk water rate schedule set forth in the Water Purchase Agreement between the City and Borough of Sitka and Cove Partners LLC. The proposed rate schedule greatly impairs the economic viability of the future water bottling operation. Cove Partners LLC request that the bulk rate be priced below the rate that the City and Borough of Sitka sells water to the seafood processing industry. That rate is set at \$0.26 per 1,000 gallons of capacity. While Cove Partners LLC recognizes that this is a special rate used to subsidize the seafood processing industry in Sitka, it is also important to recognize that the water bottling plant shouldn't be placed at a disadvantage to other industrial users in Sitka. Water provided to the seafood processing industry is filtered and treated, whereas water supplied to Cove Partners LLC is raw water that must be processed prior to bottling.

There is a cost to the City and Borough of Sitka to chlorinate and filter raw water so that it is potable. The City and Borough of Sitka bears no cost of treating the water supplied to the bottling plant. Further, the City and Borough of Sitka disclaims responsibility for the quality, suitability, and adequacy of the water supply.

There may be a fundamental misunderstanding as to the bottling operation proposed by Cove Partners LLC. This is not a bulk sales operation where raw, untreated water is placed in a bulk tanker for export with minimal loading costs and few jobs created.

To the contrary, Cove Partners is a much more complex and labor intensive operation. The bottling plant water supply requires filtration and purification. Extensive capital investment is needed to produce the plastic bottles, along with production line and bottling machinery. It is necessary to have a laboratory that provides monitoring and testing of the product. The water processing and bottling costs are a substantial impediment to the profitable operation of the bottling plant, as long as the raw water supply is so costly.

Having conducted a thorough review of the bulk water purchase agreement, the terms pose an onerous cost and greatly impair the economic viability of the water bottling business. Please

consider several factors that are currently inhibiting a successful startup of the bottling plant. These factors include:

1. The United States is in a deep national recession and new business creation is high risk.
2. Consumers have cut back on discretionary purchases, which include bottled water.
3. Cove Partners LLC is faced with well capitalized competitors, which places them at a market disadvantage.
4. There are wholesale and retail barriers to entering the bottled water market and developing customers.
5. Financial institutions are unwilling to fund startup businesses, provide lines of credit and working capital.

Cove Partners LLC seeks to establish a viable bottling plant operation in Sitka; however, there are many logistical obstacles that are faced. These obstacles include:

1. The high cost of obtaining supplies from the Lower 48 as well as shipping costs to the domestic and foreign markets.
2. Higher costs of facilities, machinery, and equipment.
3. Higher labor costs.
4. High cost of bulk water purchases relative to the other cost disadvantages of the Sitka plant.

The only advantage to operating in Sitka is the availability of a bulk water supply.

For these reasons, we request that the Sawmill Cove Industrial Park Board of Directors reconsider the proposed rate structure.

Respectfully Submitted,
ALASKA APPRAISAL ASSOCIATES, INC.



Kim M. Wold
Licensed General Appraiser

jw

Mr. Dinley informed the Board that there is absolutely no funding available at the city level, not even to develop the plan. Mr. Dinley pointed out that since the bulkhead is already on the Assembly approved legislative list, why even bring it up again.

Mr. White stated that the bulkhead is #2 on the CBS priority list that was sent to the State Legislature. However projects are not necessarily funded in priority order.

Ms. Hillhouse suggested that the SCIP Board should get Assembly confirmation for the Strategic Plan and that funding is a separate issue. Preparing a Strategic Plan is part of the Assembly ordinance related to management of SCIP.

Mr. White advised the Board that they had approved the current Strategic Plan for presentation to the Assembly, however there is an addendum related to the dock that has not been approved by the Board and needs to be discussed.

Mr. Horan stated that the memo is an addendum to a portion of the Strategic Plan, specifically Strategy number 2, Plan A.

MOTION: M/S Horan/Harang moved to submit the memorandum to the Assembly as an addendum to the Strategic Plan, via email, before the meeting.

Ms. Hillhouse recommended amending bullet point number 3 on page 1 to add the following sentence in bold: **“However, this proposition did not bar the City from retaining the property and operating a dock.”**

MOTION to Amend: M/S Horan/Harang moved to add, the sentence **“This proposition does not require a vote if the City and Borough of Sitka retains ownership of the dock property.”**

ACTION: Motion to Amend PASSED 4/0 on a roll call vote
Grant Miller – Yes Trevor Harang – Yes Charles Horan - Yes
Lowell Frank – Yes Chris Fondell – Absent

MOTION: Main Motion PASSED as Amended 4/0 on a roll call vote
Grant Miller – Yes Trevor Harang – Yes Charles Horan - Yes
Lowell Frank – Yes Chris Fondell – Absent

I. NEW BUSINESS

1. Cove Partners/Starwest LLC Water Rates

Mr. Greg Miller joined the meeting at 3:55 via teleconference.

Mr. White referred to a Memorandum dated September 10, 2009 (included in packet) regarding Cove Partners/Starwest LLC water rates. The memo lists the suggested parameters for an agreement with Cove/Starwest based upon the prior agreement between TAB and CBS.

The bullet points listed on the first page were quickly reviewed and discussion moved on to the issue of water rates and terms.

Mr. White read the three points related to water rates:

- Water Payment shall begin at \$0.005 per gallon and rise uniformly each year to \$0.01 per gallon on the earlier of (i) October 1, 2014 or (ii) when purchaser’s production reaches 100 million gallons.

- Between October 1, 2019, and October 2024 water rates shall raise uniformly each year from \$0.01 per gallon to \$0.0125 per gallon.
- Beginning October 1, 2024, and at the beginning of each succeeding year, water rates shall be adjusted based on the average of the most recent published "Consumer Price Index for All Urban Consumers," using the "All Items" figure for Anchorage, Alaska, and the "All Items" figure for Seattle Washington.

Mr. Miller stated that he would like to keep the new contract as simple as possible.

Ms. Hillhouse stated that the water contract can be executed upon Assembly approval if the other issues are resolved. The agreement regarding reverters still needs to be fulfilled. Ms. Hillhouse suggested drafting the water agreement based on the parameters in the September 10, 2009 memo, bring the draft back to the SCIP Board for approval and then take it to the Assembly. However, the effective date of the water contract cannot be until after the \$170k is posted to fulfill the other agreement. Also some term limit on the water needs to be included. A perpetual agreement is not legally viable.

Mr. Greg Miller stated that he wants to have the same deal that TAB was given. In order to compete and raise capital, Cove/Starwest, cannot have limitations on the availability of water. A ten-year term would not work.

Ms. Hillhouse stated that the City would work with Cove on a water agreement, but there are legal constraints against a contract in perpetuity. The TAB agreement ended in 20 years.

Mr. Greg Miller suggested a term of 99 years.

Mr. Horan suggested forty years.

Mr. Greg Miller stated that a 40 to 50 year term would be fine.

Mr. Horan emphasized that there would be a CPI price adjustment over the term of the agreement.

Mr. Horan suggested a start-up term of 15 years, with three 10-year options to renew.

Mr. White suggested adding a provision that if the plant closed for 18-24 months the contract would be null and void.

Mr. Grant Miller agreed that there should be something included about non-performance that would negate the contract, and asked why the contract could not simply be for 50 years up front.

Ms. Hillhouse responded that the State permit for water allocation has a time limit of 40 to 50 years. The prior agreement with TAB coincided with the SOA allotment.

Mr. Greg Miller asked for the support of the SCIP Board and the best option the City could provide.

Mr. White suggested the City Attorney draft the contract based on the parameters in the memo with the addition of time limits.

Ms. Hillhouse stated that to the best of her recollection, the SOA permit runs to 2020 and suggested the initial term end on June 30, 2020. June 30 is the end of the City and State fiscal year and this would make things simpler. Ms. Hillhouse suggested all effective dates be changed to June 30 in the contract. The City is limited by the SOA ADL appropriation of the water permit. The current allotment is a maximum of 400 million gallons per year.

Mr. Dinley stated that CBS has no problem with the upper limit, but there should be some lower limit.

Mr. Horan suggested that the contract go away if Cove/Starwest has 36 months of non-production.

Discussion continued regarding the appropriate time limits to include in the contract.

Discussion yielded the following amendments to the draft parameters of the water contract regarding water rates:

1. Water Payment shall begin at \$0.005 per gallon and rise uniformly each year to \$0.01 per gallon on the earlier of (i) ~~October 1, 2014~~, **June 30, 2014** or (ii) when PURCHASER'S production reaches 100 million gallons.
2. Between ~~October 1, 2019~~, **June 30, 2019** and ~~October 1, 2024~~, **June 30 2024** water rates shall raise uniformly each year from \$0.01 per gallon to \$0.0125 per gallon.
3. Beginning ~~October 1, 2024~~, **June 30, 2024**, and at the beginning of each succeeding year, water rates shall be adjusted based on the average of the most recent published "Consumer Price Index for All Urban Consumers," using the "All Items" figure for Anchorage, Alaska, and the "All Items" figure for Seattle Washington.
4. **The initial term shall be fixed to June 30, 2020.**
5. **Four 10-year options to renew at the adjusted price shall be granted.**
6. **This contract is void if there are 36 months of no water sales under this agreement.**

MOTION: **M/S Horan/Harang** Moved to approve the bullet points presented in the September 10, 2009 memo as amended.

ACTION: **Motion PASSED** 4/0 on a roll call vote
Grant Miller – Yes Trevor Harang – Yes Charles Horan - Yes
Lowell Frank – Yes Chris Fondell – Absent

I. 2. CBS Electric Department – Lot 7

MOTION: **M/S Harang/Frank** Moved to approve the Electric Department short-term lease as presented.

ACTION: **Motion PASSED** 4/0 on a roll call vote
Grant Miller – Yes Trevor Harang – Yes Lowell Frank – Yes
Charles Horan – Yes Chris Fondell – Absent

I. 2. Marine Services RFP

Mr. White reported that only one proposal was received. The Fairhaven Shipyard proposal would not create direct competition for current local business as their target market would be vessels in the 60' to 225' range. The Shipyard has contracts with NOAA, AMHS, and USCG, etc... An estimate for the cost to install a 600 ton capacity boat lift (Rolls Royce Syncrolift) is \$5 million installed. One option in the proposal is for the Shipyard to put up the money for infrastructure in exchange for lease considerations. The proposal is a detailed concept plan with a more comprehensive plan to be developed if this goes ahead.

Mr. Harang stated that this is a good initial proposal.

Mr. Miller agreed, stating that is was well detailed for a concept plan and would take up a large portion of the park.

Mr. Horan commented that the proposal appeared to be to operate a facility that does not yet exist and does not include feasibility and market information. How many 60' to 225' vessels are within the market area and

**WATER PURCHASE AGREEMENT BETWEEN
CITY AND BOROUGH OF SITKA AND COVE PARTNERS, LLC**

This WATER PURCHASE AGREEMENT BETWEEN CITY AND BOROUGH OF SITKA AND COVE PARTNERS (hereinafter referred to as "Agreement") is entered into between the CITY AND BOROUGH OF SITKA ("SELLER"), a home rule municipality and municipal corporation whose address is 100 Lincoln St., Sitka, Alaska 99835, and COVE PARTNERS, LLC (hereinafter referred to as "PURCHASER"), an Oregon limited liability corporation, whose address is _____, Alaska, collectively referred to as "Parties."

In consideration of the terms, conditions and covenants described below, the SELLER and PURCHASER agree as follows:

1. WATER PURCHASE. PURCHASER and SELLER agree as follows regarding the access to and purchase of water for operation of water bottling only by PURCHASER at Sawmill Cove Industrial Park (SCIP), in accordance with ADL 43826, as provided in **EXHIBIT A**:

(a) SELLER shall sell to PURCHASER Blue Lake water in the amounts requested by PURCHASER in accordance with this Agreement for bottling water. The total maximum amount of water to be provided by SELLER to PURCHASER based on the requirements of this Agreement is four hundred million (400,000,000) gallons per year.

(b) PURCHASER shall comply with all applicable federal, Alaska and local laws, as well as all applicable federal and State governmental administrative agency decisions, related to the appropriation, use, and bottling of the water.

(c) PURCHASER shall be wholly responsible and liable for the quality or suitability of the water it bottles. SELLER shall not be responsible or liable for the quality or suitability of the water provided to PURCHASER, including the suitability or condition of the water pipelines or other related infrastructure owned by SELLER.

(d) SELLER shall not be responsible nor liable for SELLER'S inability to provide water or regarding the quality of the water to PURCHASER due to circumstances that are beyond the reasonable control of SELLER, or if the availability of Blue Lake water for sale to PURCHASER is superseded by the present and future potable water allocations of the SELLER, the SELLER'S hydroelectric allocation and future allocation, state fish rearing needs in Sawmill Creek, or by modification of its Blue Lake water appropriation by the State of Alaska or the federal government or expansion of Blue Lake hydroelectric expansion project.

(e) Water rates to be paid by PURCHASER to SELLER for the Blue Lake water for bottling water shall be as follows:

i. Water Payment shall begin at \$.005 per gallon and rise uniformly each year to \$.01 per gallon on the earlier of (A) June 30, 2014 or (B) when PURCHASER'S production of bottled water reaches 100 million gallons.

ii. Between June 30, 2014 and June 30, 2019, water rates shall raise uniformly each year from \$.01 per gallon to \$.0125 per gallon.

iii. Beginning July 1, 2019, and at the beginning of each succeeding year, subject to extension of this Agreement, water rates shall be adjusted based on the average of the most recent published "Consumer Price Index for All Urban Consumers," using the "All Items" figure for Anchorage, Alaska, and the "All Items" figure for Seattle, Washington.

(f) SELLER shall provide access to all existing underground water piping to PURCHASER without any additional charge.

2. AGREEMENT TERM AND CONDITIONS FOR EXTENSION OF AGREEMENT

(a) This Agreement expires on June 30, 2019, with the PURCHASER having the option to extend the Agreement four (4) times for a period of 10 years for each four (4) extension periods. Any extension of the Agreement based on the PURCHASER exercising any option to extend shall be at an adjusted price, and as provided under this Agreement.

(b) This Agreement is void if no water purchases occur under this Agreement for a continuous period of 36 months.

(c) Beginning July 1, 2012, PURCHASER shall be required to purchase at least \$7,200 of water annually or make payment in that amount to the SELLER.

(d) Beginning July 1, 2014, PURCHASER shall be required to purchase at least \$9,000 of water annually or make payment in that amount to SELLER.

(e) Beginning July 1, 2019, PURCHASER shall be required to purchase at least \$22,500 annually or make payments in that amount to SELLER.

(f) This minimum amount will be adjusted if option to extend contract are exercised based on Section 1 (e) iii.

3. SELLER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS. SELLER represents, warrants and covenants to and with PURCHASER that:

(a) SELLER now has and will have on the Closing Date access to and ability to provide the water subject to this Agreement, based on the limitations set out in this Agreement.

(b) There are no actions, suits (condemnation or otherwise), claims, assessments or proceedings pending or to SELLER'S knowledge threatened against the SELLER regarding the water subject to this Agreement that would adversely affect SELLER'S ability to perform under this Agreement.

(c) From the Execution Date until the earlier of the Closing Date or the expiration or termination of this Agreement, SELLER will not further encumber access to the water subject to this Agreement without first obtaining the written consent of PURCHASER, which consent shall not be unreasonably withheld or delayed.

(d) Except as provided in this Agreement and in the attached exhibits, SELLER makes no warranties or representations as to the water subject to this Agreement. It is understood and agreed that SELLER is selling the water "AS IS" and with all faults, and without any warranty, expressed or implied, as to fitness, use, merchantability, quality, quantity, title (other than SELLER's warranty as set out in this Agreement), tax consequences, physical or environmental conditions (including the presence of asbestos), operating history or projections, valuations, governmental approvals, the compliance of the water with governmental laws, or any other matter regarding the water, except as expressly provided out in this Agreement. PURCHASER shall be responsible for determine the condition of the water and whether the water is fit for PURCHASER'S intended use.

(e) AS OF THE CLOSING DATE, PURCHASER SHALL ACCEPT THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INVESTIGATIONS, AND EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PURCHASER AS OF THE CLOSING DATE, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH PURCHASER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER AT ANY TIME BY REASON OF OR ARISING OUT OF ANY CONSTRUCTION DEFECTS, PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY. PURCHASER ACKNOWLEDGES THAT THE PURPOSE OF THIS SECTION IS FOR PURCHASER, TO THE FULLEST EXTENT POSSIBLE AT LAW, TO WAIVE, RELINQUISH, RELEASE AND DISCLAIM, AND INDEMNIFY SELLER FROM ANY CLAIM OR LIABILITY OF OR AGAINST SELLER AS THE RESULT OF ANY CONDITION OR STATE OF FACTS RELATING OR PERTAINING TO THE PROPERTY ON THE CLOSING DATE EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING DATE.

(f) All required action necessary to authorize SELLER to enter into this Agreement and to carry out SELLER'S obligations under this Agreement has been taken or will be taken by the Closing Date.

(g) The representations and warranties set forth above are made as of the Execution Date and shall be deemed made also as of the Closing Date. If PURCHASER knows prior to Closing that any representation or warranty above is untrue, then PURCHASER shall give SELLER written notice of such fact. If (a) such representation and warranty is not remedied by SELLER prior to Closing, or (b) the representation and warranty, as remedied, has an adverse affect on any decision made by PURCHASER to proceed with this transaction, or (c) any representation or warranty made by SELLER is untrue and such fact is not disclosed to PURCHASER until Closing, and same has a material and adverse affect on PURCHASER'S decision to purchase the Property, then PURCHASER may either (i) terminate this Agreement, and neither Party shall have any further rights, duties or obligations pursuant to this Agreement except as expressly provided herein, or (ii) waive its objections to any such untrue representation or warranty and this Agreement shall remain in full force and effect. PURCHASER shall have a period of one (1) year and one (1) day from the Closing Date to bring any action against SELLER for the breach of any such representation or warranty.

(h) The terms, conditions and covenants regarding the purchase of water are subject to the applicable provisions and conditions in **EXHIBITS B, C, AND D**, which are entitled as follows and attached to this Agreement:

- EXHIBIT B -** Prospective Purchaser Agreement between the State of Alaska and the City-Borough of Sitka for the Former Alaska Pulp Corporation Pulp Mill Property
- EXHIBIT C -** Agreement to Convey between Alaska Pulp Corporation and the City and Borough of Sitka
- EXHIBIT D -** Management Requirements at Sawmill Cove Industrial Park

(i) This Agreement is also subject to all applicable federal, state, and municipal laws, including zoning laws and Sawmill Cove Industrial Park rules and regulations, as provided in the Sitka General Code.

4. PURCHASER'S REPRESENTATIONS, WARRANTIES AND COVENANTS. PURCHASER represents, warrants, covenants, and agrees with SELLER to the following as of the Execution Date and as of the Closing Date:

(a) PURCHASER has the full right, power, and authority to purchase the water from SELLER as provided in this Agreement and to carry out PURCHASER'S obligations under this Agreement; and all required action necessary to authorize PURCHASER to enter into this Agreement and to carry out PURCHASER'S obligations under this Agreement has been taken. The individual executing this Agreement on behalf of PURCHASER has the authority to do so.

(b) There is no pending, or to the knowledge of PURCHASER threatened, actions, suits, claims, proceedings or litigation against PURCHASER that would prevent PURCHASER from entering into this Agreement, or adversely affect PURCHASER'S ability to perform under this Agreement, or that would in any way result in any liability to SELLER.

(c) There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws contemplated or filed by PURCHASER or to the best knowledge of PURCHASER pending against PURCHASER that impact the ability of PURCHASER to enter into and carry out the provisions in this Agreement.

(d) The representations and warranties set forth above are made as of the Execution Date and shall be deemed made also as of the Closing Date. It shall be a condition of SELLER'S obligation to close that the representations and warranties made hereunder are true on the Closing Date. In the event any representation or warranty made by PURCHASER as of the Closing Date is untrue, SELLER must bring any action with respect to such breach of the representation and warranty within one (1) year and (1) day of the Closing Date.

5. CLOSING DATE. This Agreement shall close only if the following conditions are met:

(a) The PURCHASER shall establish an escrow account under the sole control of the SELLER by January 1, 2010;

(b) ONE HUNDRED AND SEVENTY THOUSAND DOLLARS (\$170,000) shall be deposited in the escrow account by January 1, 2010, to address roof, sewer, electrical and other capital upgrades that shall be made by PURCHASER to the PURCHASER'S water bottling plant at Sawmill Cove Industrial Park, with reimbursement for documented and approved expenses to be paid by SELLER to PURCHASER from the principal deposited in the escrow account;

(c) Any interest that accrues from the escrow account shall remain the property of the SELLER;

(d) The Closing Date must occur no later than January 8, 2010; and

(e) To close, the PURCHASER must be in compliance with this Agreement. If the PURCHASER defaults under the Agreement, this Agreement terminates.

6. DEFAULT AND REMEDIES.

(a) In the event that this Agreement is not consummated by reason of SELLER'S default, PURCHASER shall in PURCHASER'S sole discretion terminate this Agreement.

or upon the fifth (5th) business day after being sent as specified above, whichever is earlier; provided, however, notice given by facsimile transmittal shall be effective upon actual receipt and telephonic confirmation that such notice has been received in its entirety.

10. MODIFICATION OF AGREEMENT; WAIVER. This Agreement may not be modified or amended except by a written instrument signed by SELLER and PURCHASER. PURCHASER and SELLER may waive any of the conditions contained herein or any of the obligations of the other Party, but any such waiver shall be effective only if in writing and signed by the party waiving such condition or obligation.

11. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, legal representatives and, subject to Section 8 regarding assigns.

12. ENTIRE AGREEMENT. This Agreement, including any attached Exhibits, constitutes the entire agreement and understanding between the Parties and supersedes all prior and contemporaneous agreements and undertakings of the Parties in connection herewith. No statements, agreements or understandings, representations, warranties or conditions not expressed in this Agreement shall be binding upon the Parties, or shall be effective to interpret, change or restrict the provisions of this Agreement unless such is in writing signed by both Parties and by reference made a part hereof, as provided in this Agreement.

The terms of this are contractual and not a mere recital. The rule of construction that a document is more strictly construed against the drafter shall not apply in the interpretation of this Agreement. The purpose of this Agreement is to ensure the full, complete, and final resolution of any disputes and claims between the SELLER and PURCHASER. This document shall be liberally construed to accomplish that purpose.

13. GOVERNING LAW. This Agreement shall be construed and interpreted in accordance with the laws of the State of Alaska. Venue for any action regarding the interpretation and enforcement of this Agreement shall be in the Superior Court for the State of Alaska at Sitka, Alaska.

14. ATTORNEYS' FEES. In the event of a dispute or controversy concerning the agreements that are the subject of this Agreement that results in litigation, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and costs as determined by the court.

15. COUNTERPARTS; FACSIMILE SIGNATURES. This Agreement may be executed in counterparts, each of which shall be deemed an original. Each Party agrees that its signature page may be attached to an identical counterpart of this Agreement so that there are signature pages of each such Party to such counterpart of this Agreement.

16. CAPTIONS. Captions and headings throughout this Agreement are for convenience and reference only, and they shall not define, limit, modify or add to the

Sitka Commercial Water Rates

Sitka General Code

15.05.625 Water and wastewater rates—Sawmill Cove Industrial Park.

A. Water Service—Sawmill Cove Industrial Park.

1. Treated water, domestic use: eighteen dollars and twenty-five cents per unit, per month.
2. Metered water: fifty-seven dollars per month minimum.
 - a. Treated water: one dollar and fourteen cents per one thousand gallons.
 - b. Treated water, fish processing use: eighty-five and one-half cents per one thousand gallons.
 - c. Raw water for heating: forty cents per one thousand gallons.
 - d. Raw water for industrial processing: fifty-seven cents per one thousand gallons.

(Ord. 09-60 § 4 (part), 2009; Ord. 02-1679 § 4, 2002.)

City and Borough

15.05.380 Unusual quantities.

- A. When an abnormally large quantity of water is desired for filling a swimming pool, or for other purposes, arrangements must be made with the environmental superintendent prior to taking such water.
- B. Permission to take water in unusual quantities will be given only if the CBS facilities and other consumers are not inconvenienced.
- C. Payment for unusual quantities of water will be in accordance with the regular schedule for water rates if service is through a meter or will be fixed by the environmental superintendent in the case of non-metered service.

(Ord. 05-15 § 4(C) (part), 2005.)

15.05.620 Rates and Fees

A. Unmetered Water. Base rate: \$18.25/per unit.

** a bottling plant is not covered under the non-metered rate

B. Metered Water Service

Meter Size	Allowance Gallons	Minimum Charge	(*)+ \$0.57 per 1,000 gallons	\$ per Month @ Max Allowance	\$ per gallon @ Max Allowance
Up to 1"	15,000	\$26.00	\$8.55	\$34.55	\$0.00230
2"	50,000	\$57.00	\$28.50	\$88.50	\$0.00177
3"	100,000	\$85.50	\$57.00	\$142.50	\$0.00143
4"	250,000	\$171.00	\$142.50	\$313.50	\$0.00125
6" and above	500,000	\$342.00	\$285.00	\$627.00	\$0.00125

*All over allowance charged at minimum charge plus fifty-seven cents per one thousand gallons. The over allowance charged at minimum charge plus twenty-six cents per one thousand gallons will apply to major fish processing plants (Seafood Producers Cooperative, Sitka Sound Seafoods, Inc., and Stikine Holdings, LLC.).

**Bottled Water – Commercial Water Rates
Summary – May 14, 2010**

Juneau (Alaska Brewing Company)

Large Commercial - Based on 500,000 gallons per month allowance
Base rate for service \$303.45 per month
\$0.00061 per gallon (Volume charge per 1000 gallons \$0.61)

Bulk Water – no monthly allowance
Base rate for service is \$15.78
\$0.00212 per gallon (Volume charge per 1000 gallons \$2.12)

Olympia, WA

Commercial Rate
\$0.0151 per gallon – Winter
\$0.0314 per gallon - Summer

Milwaukee, WI (MillerCoors, Coca-Cola)

\$0.001791 per gallon – First 75,000 gallons (\$1.791 per 1000 gallons)
\$0.001671 per gallon – next 3,675 gallons
\$0.001043 per gallon – next 11,250 gallons
\$0.000976 per gallon – over 15,000 gallons

Macon County, GA (Nestle bottling plant)

\$0.00216563 per gallon (\$1.62 per 100 cubic feet = 748.05 gallons)