

**NOTE: AS INSTRUCTED IN THE INVITATION FOR BIDS, BIDDERS MUST ACKNOWLEDGE
RECEIPT OF THIS AND ALL OTHER ADDENDUMS IN THEIR BID SUBMISSIONS**

**KETCHIKAN GATEWAY BOROUGH
INVITATION FOR BIDS
PURCHASE OF REAL PROPERTY LOCATED IN WARD COVE**

ADDENDUM NO. 2

THIS IS NOT AN OFFER

RELEASE DATE: March 9, 2011

IFB CHANGES:

1. The Borough received a letter dated March 7, 2011, from the State of Alaska asking the Borough to ensure that prospective buyers of the Ward Cove properties are aware of the likelihood of future ferry traffic in Ward Cove, as well as protections afforded by the Public Trust Doctrine. The letter notes that tidelands conveyed to individuals are subject to the public's right to use the tidelands for navigation, commerce and fishing; while patent holders are free to make such use of their property as will not unreasonably interfere with these continuing public easements, they are prohibited from any general attempt to exclude the public from the property by virtue of their title. A copy of the letter from the State of Alaska is included as Attachment 1 to this addendum.
2. NOTE: The changes in Section 12(d) made by this addendum are illustrated in Attachment 2 to this addendum with new language underlined and deleted language [CAPITALIZED AND BRACKETED].



Dan Bockhorst, Borough Manager
Ketchikan Gateway Borough

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PURCHASE OF REAL PROPERTY LOCATED IN WARD COVE**

ATTACHMENT NO. 1 to ADDENDUM NO. 2

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

TRANSPORTATION SECTION

SEAN PARNELL, GOVERNOR

P. O. BOX 110300
DIMOND COURT HOUSE, 6TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

March 7, 2011

Dan Bockhorst, Borough Manager
Ketchikan Gateway Borough
1900 First Avenue, Suite 210
Ketchikan, AK 99901


Re: Ward Cove

Dear Mr. Bockhorst:

As you know, the State of Alaska purchased property at Ward Cove from the Ketchikan Gateway Borough (KGB) in 2010. As discussed with KGB officials at the time, the State's contemplated uses include construction of vessel-related facilities for Alaska Marine Highway System's (AMHS) ferries. Of course, unimpeded navigation by AMHS ferries in Ward Cove is an essential component of such use.

As KGB markets other Ward Cove properties, please ensure prospective buyers are aware of the likelihood of future ferry traffic in Ward Cove, as well as protections afforded by the Public Trust Doctrine, *i.e.*, tidelands conveyed to individuals are subject to the public's right to use the tidelands for navigation, commerce and fishing; while patent holders are free to make such use of their property as will not unreasonably interfere with these continuing public easements, they are prohibited from any general attempt to exclude the public from the property by virtue of their title. *City of Saint Paul v. State, Dept. of Natural Resources*, 137 P.3d 261, 263 n.8 (Alaska 2006)

Sincerely,
JOHN J. BURNS
ATTORNEY GENERAL

By: 
Richard E. Welsh
Assistant Attorney General

cc: Scott Brandt-Erichsen, Esq.

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ATTACHMENT NO. 2 to ADDENDUM NO. 2

12. Disclaimer and Release

(d) Purchaser acknowledges that the Property is subject to the Environmental Protection Easement and Declaration of Restrictive Covenants, entered into by and between Ketchikan Pulp Company, Grantor, and the State of Alaska Department of Natural Resources, Grantee, according to the terms and provisions thereof, dated October 28, 1999, and recorded October 28, 1999, in Book 305, at Page 772, in the Ketchikan Recording District, First Judicial District, State of Alaska;

Purchaser also acknowledges that the Property is subject to the Environmental Easement and Declaration of Covenants, entered into by and between Ketchikan Gateway Borough, a municipal corporation, Ketchikan Pulp Company, a Washington corporation, and Gateway Forest Products, Inc., an Alaska corporation, according to the terms and provisions thereof, dated July 14, 2003, and recorded July 18, 2003, under Ketchikan Recording District Serial No. 2003-004128-0, Ketchikan Recording District, First Judicial District, State of Alaska.

Purchaser also acknowledges that the Property is subject to, and that Interest conveyed are subject to, **the Acknowledgement That Interests Conveyed are subject to** Environmental Protection Easement and Declaration of Restrictive Covenants, entered into by and between the Ketchikan Gateway Borough, an Alaska municipal corporation, and Ketchikan Pulp Company, according to the terms and provisions thereof, dated August 2, 2003, and recorded August 4, 2003, under Ketchikan Recording District Serial No. 2003-004419-0, in the Ketchikan Recording District, First Judicial District, State of Alaska;

Purchaser also acknowledges that the Property is subject to, and that Interest conveyed are subject to, the Environmental Easement and Declaration of Covenants, entered into by and between the Ketchikan Gateway Borough, an Alaska municipal corporation, and Ketchikan Pulp Company, according to the terms and provisions thereof, dated July 14, 2004, and recorded July 15, 2004, under Ketchikan Recording District Serial No. 2004-002967-0, in the Ketchikan Recording District, First Judicial District, State of Alaska;

[PURCHASER ALSO ACKNOWLEDGES THAT THE PROPERTY IS SUBJECT TO THE ENVIRONMENTAL EASEMENT AND DECLARATION OF COVENANTS, ENTERED INTO BY AND BETWEEN KETCHIKAN GATEWAY BOROUGH, A MUNICIPAL CORPORATION, KETCHIKAN PULP COMPANY, A WASHINGTON CORPORATION, AND GATEWAY FOREST PRODUCTS, INC., AN ALASKA CORPORATION, ACCORDING TO THE TERMS AND PROVISIONS THEREOF, DATED JULY 14, 2003, AND RECORDED JULY 18, 2003, UNDER KETCHIKAN RECORDING DISTRICT SERIAL NO. 2003-004128-0, KETCHIKAN RECORDING DISTRICT, FIRST JUDICIAL DISTRICT, STATE OF ALASKA.]

New wording is underlined—Deleted wording is [CAPITALIZED AND BRACKETED]

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Purchaser in further consideration for, and as a condition to, this Agreement, hereby agrees that the real property interests it is hereby acquiring from the Borough are subject to the same limitations and conditions as the ones applicable to the Borough which are set forth in that certain agreement dated July 13, 2003, a copy of which Purchaser acknowledges having received, incorporated by reference as fully as though fully set forth. In particular, all releases, waivers and limitations on claims against Ketchikan Pulp Company, its agents, servants, employees, officers, directors, partners, principals, shareholders, or any of their insurance companies and contractors, including but not limited to environmental claims, whether arising under CERCLA, 42 USC 9601 et seq.; RCRA, 42 USC 6901 et seq.; AS 46.03.822; or otherwise, as they now exist or hereafter may be amended, to which the Borough concurred, are hereby agreed to be applicable and in full force and effect.

Further, the parties to this Agreement agree that Ketchikan Pulp Company, its shareholders, successors, heirs and assigns, are third party beneficiaries of this Agreement and any future agreements concerning the property.

PURCHASER HEREBY AGREES THAT LANGUAGE IDENTICAL TO THE PREVIOUS TWO PARAGRAPHS SHALL BE INCORPORATED INTO ANY FUTURE LEASE, SALE, OR CONVEYANCE OF ANY INTEREST (INCLUDING DEEDS OF TRUST) IN ALL OR PART OF THIS PROPERTY.