



Thursday, January 03, 2008

MEMORANDUM

To: Sawmill Cove Board of Directors

From: Hugh Bevan, Director

Subject: True Alaska Bottling (TAB)

On December 20, 2007 the City sent TAB a letter demanding payment of \$200,261.70 in past due bills for TAB's holdings at Sawmill Cove. The letter placed a December 31, 2007 deadline on payment.

On December 31, 2007 the City received a letter from an Oregon attorney who claims to represent TAB. The attorney requests an extension of 30 to 45 days for TAB's payment of the amounts owed.

The total owed by TAB is broken down as:

Bottling plant utilities (through November 2007)	\$ 17,068.98
Past due lease rent on about 7.5 acres of undeveloped land	\$158,805.03
Property taxes	<u>\$ 24,387.69</u>
Total	\$200,261.70

There are three contracts involved.

Contract 1 – Bulk Water

TAB has until December 7, 2008 to move 20 million gallons of water. It does not appear to me that they will be in default of this contract until that date.

Contract 2 – Bottling Building and 3.0 Acres of Land

About a year ago TAB purchased the bottling building and 3.0 acres of land. The deed for the property contains a number of very specific reverter clauses. The First Condition(s) of Reversion must be completed by June 7, 2008. Until that date it does not appear to me that TAB is in violation of the Purchase Agreement. However, it also appears unlikely TAB will be able to complete the list of conditions by the agreed date in June.

The bottling plant is behind by 3 months in payment of utility bills. (Two months are listed in the total above). While we do not have a breakdown of the delinquent property tax payments, a portion is probably associated with the bottling plant property.

Contract 3 – Land Lease of 7.5 Acres

TAB is clearly behind on lease payments for the portion of its original lease area that remained after the sale of the bottling building. The lease area contains a substantial amount of personal property some of which is TAB's and some of which belongs to S & S Construction Company.

TAB has also accumulated a lot of junk on portions of its lease. The roof of the former auto shop collapsed due to snow loading last winter and TAB has not demolished the building.

A rough estimate to clean up TAB's lease area is \$30,000.

The City Administrator requests input from the Board on this matter.

C: John Stein  
Theresa Hillhouse  
Terry Trapp, TAB



Bwan



# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

December 20, 2007  
Regular and Certified Mail

C.R. Kearns, President  
True Alaska Bottling Co.  
4500 Sawmill Creek Road  
Sitka, Alaska 99835

RE: Utility Bills, Leases, Property Taxes, Bounced Check and Miscellaneous Bills

Dear Mr. Kearns:

True Alaska Bottling Co. ("TAB") owes for utility services for the previous two months in the amount of \$17,068.98. Your last payment of \$23,881.98 was received on October 5, 2007. The past due amounts are for the months of October and November, 2007.

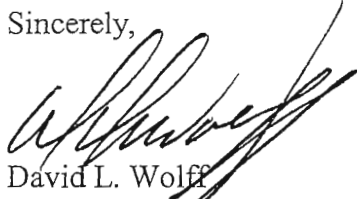
TAB is also past due on the lease for the property located in Sawmill Cove Industrial Park in the amount of \$158,805.03. This amount includes the remainder (\$80,000) of the \$100,000 check that was returned to the City and Borough. TAB has breached Subsection 5.1 of its Lease Agreement and Water Sales Contract ("Agreement"), for which it is an assignee. The City and Borough of Sitka ("CBS") gives notice under Subsection 25.1(a) of the Agreement that full payment from TAB must be received within 45 days of receipts of this letter, as calculated according to the Agreement at Subsection 37.4, or TAB will be in default. The CBS will then be entitled to take any and all legal remedies in accordance with the Agreement, including terminating the Agreement. Actually the 45 day cure of default has elapsed when the \$100,000 check that was sent for the March 19, 2007 default letter was returned to the City and Borough from the bank.

Also owed to the City and Borough of Sitka is the real and personal property taxes that were due August 31, 2007 in the amount of \$24,387.69. Bringing the total due to the City and Borough of Sitka, \$200,261.70.

I was hopeful that the need to terminate the Agreement will not occur, because you were to call me yesterday afternoon stating that TAB will make the required payments or have proof that funds are finally available to pay the outstanding debts to the City and Borough. I did not receive a response to this matter as you assured me in the morning. I am requesting that the Administrator place on the next Assembly agenda for the 8<sup>th</sup> of January, a vote by the Assembly to cancel all contracts with True Alaska Bottling Company. If you wish to preserve the leases and water contract with the City and Borough, total payment of \$200,261.70, either wired to the

City and Borough or a certified check received, not mailed by the 31<sup>st</sup> of December, 2007 is needed. Failure to do so will terminate all contracts. If you need to contact me, please call me at (907) 752-1836, my cell phone, otherwise, the City and Borough of Sitka's Assembly will proceed with default remedies.

Sincerely,



David L. Wolff  
Finance Director

cc: John Stein, Administrator  
Theresa Hillhouse, Municipal Attorney  
Hugh Bevan, SCIP Manager

LAW OFFICE OF

**Jeffrey S. Salisbury**

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December 31, 2007

Via Fax & Mail

David L. Wolff

Finance Director

City and Borough of Sitka

100 Lincoln Street

Sitka, Alaska 99835

Re: True Alaska Bottling Co.

Dear Mr. Wolff:

I represent Langenburg Research, a water research, processing and bottling company operating out of Eugene, Oregon. Dick Kearns, president of True Alaska Bottling Co. ("TAB"), and Max Langenburg, president of Langenburg Research, have asked me to write to update you on the status of Langenburg's efforts and intentions relative to TAB and the City of Sitka.

As you may know, Langenburg and its affiliated companies have been developing, processing, bottling and marketing ultra-premium water successfully for several years now. The company's water is of the highest quality, its bottles are award-winning, and its processing system is of unparalleled quality.

Langenburg has been eying with keen interest TAB's bottling operation in Sitka for more than two years now. Langenburg is impressed with the quality and quantity of water available through Sitka from Blue Lake. The company also recognizes the substantial value of Sitka's deep water port facility.

In light of this, Langenburg has engaged in substantive discussions with TAB with a view toward acquiring many if not all of its assets. Though there are no guarantees in life, Langenburg is optimistic that an agreement with TAB to carry-out this effort will be struck soon.

Langenburg accordingly has a keen interest in seeing to it that TAB's lease and water rights with Sitka remain in tact and available for commercial exploitation. To that end, Langenburg has completed negotiations for a very substantial sum of capital financing, which it hopes and expects will fund within the next 30 to 45 days.

MEMBER: WEALTH COUNSEL, LLC

• ESTATE PLANNING • BUSINESS LAW • INVESTMENT DISPUTES •

LAW OFFICE OF

**Jeffrey S. Salisbury**

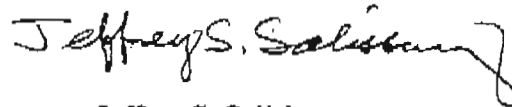
D. Wolff, 12/31/07, Page 2

The point of this letter is to assure you that our intent is to use a portion of those proceeds to pay TAB's utility, lease and property tax obligations now due and owing Sitka. Langenburg understands that the approximate amount owing is \$200,000, and it would intend to pay-off that sum fully upon receipt of its financing.

Langenburg therefore respectfully requests that you defer any enforcement discussions or actions against TAB during the next 45 days to allow this financing effort to be completed. Langenburg believes that by doing so, Sitka will maximize its chances of receiving payment in full of all back sums owed. Langenburg similarly believes that Sitka will thereby increase the likelihood of attracting Langenburg Research to either rebuild TAB's plant or build a brand new facility there in its place, thus producing substantial new jobs for the City and generating significant water right payment revenue for the City.

Naturally, if you have any questions on this important matter, please feel free to call me to discuss it further. Thank you very much.

Very truly yours,



Jeffrey S. Salisbury

cc: John Stein  
Theresa Hillhouse  
Max Langenburg  
Dick Kearns



Monday, December 18, 2006

Summary of TAB Purchase and Sale Agreement based upon a closing date of December 7, 2006.

### First Condition of Reversion

Purchaser must complete Phase 1 of its development plan by June 7, 2008. Phase 1 includes:

- ❖ Clean up loose rubble and remove non-essential debris
- ❖ Complete re-siding of the existing building
- ❖ Install Langenburg water treatment equipment with production capacity of up to 400,000 cases per month.
- ❖ Upgrade the existing water bottling equipment from a capacity of 200,000 cases per month to 400,000 cases per month.
- ❖ Rebuild the east wall of the existing building and construct a container van storage dock.
- ❖ Upgrade the existing building electrical system, abandon the 4160 V temporary connection and make a permanent connection to the Sawmill Cove substation grid.
- ❖ Build a viewing platform and auditorium within the existing building.

### Second Condition of Reversion

Purchaser must construct a new building, approximately 50,000 square feet in size by December 7, 2011.

### Third Condition of Reversion

Until December 7, 2012 the property reverts to Seller if Purchaser fails to operate for 12 consecutive months a water bottling facility or ancillary uses and/or a freight forwarding business that employs at least 25 year round employees.

### Other Conditions

The option to purchase 3.137 additional acres of land expires June 7, 2007. Written notice must be given by TAB by June 7, 2007. Closing will occur 30 days after written notice.

Purchaser has until December 7, 2007 to bring action against Seller for breach of representation in the Purchase and Sale Agreement.

The Seller's option to purchase the property for fair market value of the land only extends to December 7, 2016 and may be exercised during the period December 7, 2012 and December 7,

2016 if Purchaser fails to operate for 12 consecutive months a water bottling facility or ancillary uses and/or a freight forwarding business that employs at least 25 year round employees.

Seller's right of first refusal to purchase the property for a price equal to that offered by a bona fide third party expires December 7, 2026.

#### Bulk Water Agreement

On August 9, 2005 the Assembly approved a bulk water contract for TAB that was based upon the "Quest" contract template and based upon the sale of the bottling building and 3 acres of land to TAB.

The bulk water contract has an Effective Date that is based upon the date of the signatures on that document. However, I will assume that the Assembly's condition of sale prevails.

The Assembly effective date is December 7, 2006. Therefore, TAB has until December 7, 2008 to purchase 20 million gallons of water.