

January 9, 2008

Mary Leith-Dowling, Mayor
City of Delta Junction
P.O. Box 229
Delta Junction, Alaska 99737

Re: City's Note to State of Alaska
A Brief History
Our File No. 11025.001

Dear Mayor Leith-Dowling:

City Administrator Mike Tvenge has asked me to provide a history for the City's obligation to pay the State of Alaska \$1 million. Entire volumes could be written on the subject. This is the short version, and is intended to provide background for those City Council members who were not involved in the events at the time.

In 1995 the Department of Defense and Congress designated the built-up portion of Fort Greely (the cantonment) for closure under the then current law, the Base Realignment and Closure Act, commonly referred to as "BRAC." The BRAC statutes called for deeding the surplus military land to a local reuse organization, then the Delta/Greely Community Coalition, if a financially feasible reuse of the Cantonment property could be demonstrated.

Despite heroic efforts by the Delta/Greely Community Coalition, no potentially financially feasible opportunities presented themselves until a private developer proposed a private prison.¹ The proposal split the community. The Coalition signed an agreement with the developers to turn over title (when achieved) to the property to the private prison developer in return for the developer converting the property into a private prison. The developer would finance the conversion through a

¹ The identity of the developer changed over the course of events. Initially, it was Allvest, Inc., a company owned by William Weimar. Weimar sold his company, with special terms for the Delta project, to Cornell Corrections Corporation. Those "special terms" also changed over the course of events. I will refer to these various entities as "Allvest" or "the private prison developer" in this letter.

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long-term contract with the State of Alaska, Department of Corrections to house state prisoners.

In addition to the controversy in the community, there were other obstacles to the project. The State of Alaska had no authority to enter into such long-term contracts, the Alaska Legislature has generally been unwilling to directly contract with nonprofit community organizations, and the proposed prison in Delta did not fit the State's long-range plans for addressing prison overcrowding. For the Delta project to go forward, enabling legislation was required.

The enabling legislation that was finally enacted by the State of Alaska in 1998 was far different from the initial proposal. Governor Knowles required a "government to government" relationship rather than contracting directly with the private developer. This required the City to take over as reuse authority from the Coalition, to retain ownership of the property, to take the financial risk for 20 years through the issuance of municipal revenue bonds to build the prison, and required the City to contract operation to a private operator. Interestingly, this has been the apparent model for all subsequent private prison legislative proposals.

The City thus became the successor reuse authority (appointed by Governor Knowles) and ultimately chose to deal with the original private developer (under a variety of inducements, not the least of which was the threat to sue the City's pants off if another developer was sought). The City had not signed a contract with the private prison operator at that point; rather, the private prison operator was attempting to leverage the contract with the City's predecessor, the Delta/Greely Community Coalition. That pressure, combined with the existing deep division regarding the prison project itself, created an exceptionally tense atmosphere.

The relationship with the private prison operator went sour in late 1999. The City believed the private prison operator was rushing the project, engaging in heavy-handed pressure tactics and making unauthorized decisions. The City perceived the State Department of Corrections as dragging its collective feet to a certain extent. At the same time, a competing use for the cantonment had arisen through Senator Ted Stevens's office: the missile defense project. The already fragile consensus on the City Council was lost. Amid mutual recriminations, the private prison operator filed a multi-million dollar lawsuit against the City, seeking lost profits, mainly lost construction profits.

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The private prison operator also sought to force the City to continue with the proposed developer.

By 2001, the lawsuit was in its early stages and the signs were not good. The private prison operator's efforts to force the City to proceed were denied, but the City faced a potential claim of millions of dollars, and a very long, very expensive court battle. Matters were still more complex when the City discovered that information was being leaked from executive sessions of the City Council to the private prison developer. The private prison developer was also subsidizing another lawsuit against the City.

Many people believe the City "bailed out" of the private prison project when the missile defense proposal came along. That's inaccurate. The relationship between the City and the private prison developer was damaged beyond repair before Senator Stevens's office contacted the City. The City Council's majority in favor of the private prison project was lost before missile defense decided it had to have the cantonment area to proceed. The economic promise of the missile defense - and the loss of the right to use the cantonment - was undeniably a much more popular solution to Ft. Greely's closure.

Also in 2001, legislation was introduced to repeal Delta's authority to build a private prison and to authorize the Kenai Borough to build one instead. As before, Frank Prewitt and Cornell Corrections Corporation, two of the players in the failed Delta effort, were involved. The Delta trial was scheduled in 2001 at the same time that the Senate was to vote on the Kenai legislation. Representative John Harris contacted the City and indicated that if the City settled the lawsuit prior to the Senate vote, that he believed that the Legislature would fund the settlement up to a million dollars.

On that understanding, a settlement was reached between the City and the private prison operator. While a little complicated, the ultimate settlement called for two recourse Notes from the City, one for \$100,000 (paid promptly by the City) and the second one for \$1,000,000 due July 1, 2002.² The second note accrued interest. The Note represented a reasonable estimate of Allvest's claimed losses, although perhaps at the high end of reasonableness. The terms of the settlement gave the City a little over a year to obtain funds.

² There was a third, non-recourse note, but the events that would have required payment under that note never occurred.

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But in 2001 the Legislature did not fund the \$1 million Note. In 2002 the Legislature, still prior to the due date of the Note, passed legislation for a loan to the City at no interest, payments of \$50,000 per year for 20 years, with the remaining balance forgiven whenever Delta was included in a Borough. The business about forgiveness was inserted at the prompting of Senator Wilkins. To the City's surprise, Governor Knowles vetoed the bill (even though he had insisted that the City take over responsibility for the original prison proposal in 1998).

In 2003, a very similar bill was passed and, at the City's request, Governor Murkowski signed the bill into law. The City, out of its pocket, paid the accrued interest of about \$80,000. By the terms of the enacted legislation, the interest-bearing Note to Allvest and the Bankruptcy Trustee, payable in full, would be exchanged for a non-interest bearing note to the State, payable in installments.

Yet another complication arose when Allvest, which by now held all rights to the Note, was forced into bankruptcy in Anchorage. Allvest had lost two major lawsuits. One claim involved allegations of abuse by a woman prisoner in an Allvest-managed facility; the other involved claims of sexual harassment of female employees of Allvest. Both resulted in very large judgments against Allvest. Allegedly, Allvest had insurance for at least portions of the judgments, but Allvest's insurer failed. Allvest's principal, William Weimar, had moved to the Caribbean. So the Note from the City to Allvest ended up in the hands of a Bankruptcy Trustee.

The Bankruptcy Trustee and William Weimar made a put/call arrangement, valuing the Note at \$650,000. The City may have had a brief opportunity to settle the Note for that amount, but the deadlines involved could not be met. The City signed the Note to the State, gave the full \$1 million proceeds to the Bankruptcy Trustee, and they were distributed to Allvest's creditors.³

After a dozen years or so, the situation can be summarized like this:

³ Very serious disputes subsequently arose between the Bankruptcy Trustee, Allvest and Weimar. The Bankruptcy Trustee claimed that Allvest and Weimar had concealed assets and information in events leading up to approval of the agreement that included the City's Note. Those disputes have been only recently settled, and resulted in much larger payments from Allvest and Weimar to the Bankruptcy Trustee and Allvest's creditors.

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1. The City Council made a conscious decision to terminate its original agreement with the private prison developer. The City Council decided the risks associated with going forward were greater than the risks of termination. Subsequent events suggest the City was right.

2. The City Council next decided the risks of a really bad outcome in the subsequent lawsuit were high enough to settle for \$1.1 million. The City's decision was based, in part, on a commitment for payment from the Legislature. That commitment morphed into a loan, but by that time the City had little choice but to accept a loan (coupled with an inducement).

As I said at the beginning, this is the short version. Hundreds of pages would be required to tell the whole story. Perhaps this will serve.

Let me know if you have questions.

Sincerely yours,

GUESS & RUDD P.C.

James D. DeWitt

JDD/bkh

cc: Mike Tvenge, City Administrator
City of Delta Junction

CITY OF DELTA JUNCTION

STATE OF ALASKA \$1,200,000 LOAN

Loan Agreement
Date

29-Sep-2004

Loan

Alaska State Warrant No: 21425373

\$1,200,000.00

Less Payments: City of Delta Junction

1	15-Jul-05	City Check No:209819	50,000.00
2	14-Jul-06	City Check No:210728	50,000.00
3	19-Jul-07	City Check No:211589	50,000.00
4	11-Jul-08	City Check No:212409	50,000.00
5	15-Jul-09	City Check No:213307	50,000.00
6	20-Jul-10	City Check No:214102	50,000.00
7	19-Jul-11	City Check No:214904	50,000.00
8	18-Jul-12	City Check No:215665	50,000.00
9	18-Jul-13	City Check No: 216361	50,000.00

Total Payments on Account

450,000.00

Current Loan Balance

7/31/2013

\$750,000.00