U.S. Department of Transportation
Federal Transit Administration

Headquarters

1200 New Jersey Avenue, SE
Washington, DC 20590

August 26, 2025

Edna DeVries, Mayor
Matanuska-Susitna Borough
350 E. Dahlia Avenue
Palmer, AK 99645

Dear Mayor DeVries:

I write regarding the outstanding debt owed by Matanuska-Susitna Borough (Borough) to the Federal Transit Administration (FTA), which has remained unresolved since FTA first identified the debt in 2014 (letter attached). This letter establishes a new, further reduced amount of the Borough's debt, and restarts the clock for further processing.

As you are aware, the debt arises from FTA funding the Borough spent in pursuit of a never-completed capital project to initiate ferry service between Port MacKenzie and Anchorage. The Borough performed environmental and feasibility studies, engineering work, and constructed a vessel and infrastructure improvements on the Port MacKenzie side. However, the Borough did not complete the boarding facility in Port MacKenzie to allow for loading and offloading vehicles and was not able to find a site in Anchorage to allow for ferry operations.

After ten years of working to bring the project to fruition, the Borough was unable to implement ferry service in accordance with the requirements of the grant agreements. In 2013, the Borough informed FTA that completing the project was not feasible and decided to terminate the project and sell the vessel.[1] On August 5, 2014, FTA initially demanded the Borough repay the entire amount of FTA funds spent on the project, which exceeded $12.3 million.

After information exchanges between FTA and the Borough, FTA agreed to reduce its demand (letter attached). On February 7, 2017, FTA agreed that "Insofar as [the Borough's] grants funded design, engineering, and environmental work, [the Borough] satisfactorily completed these non-construction activities. Accordingly, upon reconsideration, FTA will not demand return of Federal funds applied to these costs." FTA's February 2017 letter calculated the Borough's reduced debt to be $9,287,929.

Upon a further review of the record and accounting information supplied by the Borough, FTA has identified additional non-construction costs relating to the ferry vessel the Borough is not required to repay for the reasons stated in FTA's February 2017 letter.[2] The corrected amount of the Borough's debt is $5,762,074.

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[1] In 2015, the Borough did sell the vessel. The Borough says the net sale proceeds were approximately $1.5 million, which the Borough says it still holds in escrow for the purpose of satisfying this debt.

[2] Sub-projects 7611 ferry engineering & design, 7614 ferry project admin & oversight, and 8405 eng & design ferry vessel from "FTA Grants Life-to-Date To: 9/2/2014", Exhibit 6 to the Borough's January 15, 2015, letter to FTA.

The Borough has 30 days from the date of this letter to pay the required amount. If the debt is not paid in full within 30 days, the outstanding portion of the debt will become delinquent.

FTA will charge interest on the delinquent portion of the debt at the Treasury Current Value of Funds Rate published by the Secretary of the Treasury in accordance with Title 31 of the United States Code Section 3717, unless FTA determines a higher rate is necessary to protect the interest of the United States. FTA will charge a late payment penalty at a rate of six percent per year on any portion of the debt more than 90 days delinquent. FTA will assess administrative charges to cover costs incurred in processing and handling the debt beyond the delinquency date. FTA is required by law to refer any debt more than 120 days delinquent to the Department of the Treasury for purposes of collection by administrative offset.

FTA may refer the debt to the Department of Justice for litigation if the debt cannot be collected and collection activity cannot be suspended or terminated.

Before the debt becomes delinquent, the Borough may propose to pay the debt in installments. Payment by installments requires FTA's agreement.

The Borough may request a compromise of the debt if it is unable to pay the full amount in a reasonable time agreed upon by FTA. If the principal balance of a debt exclusive of interest, penalties, and administrative costs exceeds $100,000, the authority to accept the compromise rests with the Department of Justice.[3]

If you have any questions, concerns, or comments regarding this matter, please contact me at adam.schildge@dot.gov.

Sincerely,

Adam Schildge
Associate Administrator / Chief Financial Officer (Acting)
Office of Budget and Policy

Attachment

[3] I acknowledge the Borough submitted an April 21, 2017, request to compromise the debt as assessed by FTA in February 2017. However, FTA does not have financial information about the Borough's current ability to pay the new, reduced amount of the debt.

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FEB 0 7 2017

Dismas N. Locaria, Esq.
Malanie J. Totman, Esq.
Venable, LLP
575 Seventh Street, NW
Washington, DC 20004

Re: *Matanuska-Susitna Borough and Grant Nos. AK-03-0037, AK-04-0007, and AK-55-0002*

Dear Mr. Locaria and Ms. Totman:

This letter responds to your submission of January 15, 2015, and subsequent correspondence on behalf of Matanuska-Susitna Borough, Alaska ("MSB" or the "Borough"), and includes the final decision of the Federal Transit Administration ("FTA") with regard to FTA's claim against the Borough. For the reasons described below, FTA has determined that our original assessment of $12,319,299 should be amended. FTA's final determination is that the amount owed by the Borough is $9,287,929.

Background

As we have discussed in previous correspondence, MSB's debt arises from the cancelled MSB ferry project. The MSB ferry was a congressionally earmarked project to provide ferry service between Anchorage and Port MacKenzie, Alaska.

Beginning in 2002, FTA awarded three earmarked grants to the MSB ferry project. Grant AK-03-0037 primarily supported design, engineering, environmental work, and construction of shore improvements at Anchorage and Port MacKenzie. Grants AK-04-0007 and AK-55-0002 funded the design and construction of the vessel. While FTA and MSB each contributed to the vessel, the majority of funding for the vessel was provided by the U.S. Navy's Office of Naval Research. The Office of Naval Research dictated the vessel's design requirements to serve as a scale demonstration of a catamaran-style landing craft, with the vessel's subsequent use in ferry service incidental to that primary purpose. The design of the vessel consequently was unique.

MSB successfully constructed the vessel and made some progress towards constructing improvements on the Port MacKenzie side, including a landing and terminal building. After approximately 10 years, however, MSB never secured a route for the ferry or a landing site on the Anchorage side. Disagreements or opposition from the Anchorage municipal government, the U.S. Coast Guard, the local Pilot's Association, Cook Inlet Tug and Barge, Federal resource agencies, and other local interests and property owners prevented MSB from obtaining a permit for an Anchorage landing site.

At the same time, the estimated cost to complete ferry landings at both locations increased from an estimated $47 million in 2008 to an estimated $65 million in 2012. The costs of operating the one-of-a-kind vessel also grew beyond MSB's estimates, to an estimated $2.5 million annually. With no landing site and insufficient funding to complete the facilities, progress halted.

In January 2012, FTA demanded a project recovery plan. MSB's response lacked satisfactory detail related to revenues and costs or plans for operations after construction. It was evident that MSB could not gain local support for an Anchorage landing site and MSB's ability and willingness to supply the remaining project funding was diminished. Recovery of the project was not viable, and in May 2012, FTA directed MSB to make no further withdraws from the remaining FTA grant money.

Acknowledging that the project could not be completed, MSB turned its attention towards disposing of the vessel, which was costing between $30,000 and $70,000 each month just to berth. MSB pursued transferring the vessel to another public agency or the Navy, and finding a commercial purchaser for the vessel, but the vessel's unique design and operating costs made it difficult to find a buyer. MSB sent solicitations to hundreds of ship brokers worldwide and demonstrated the vessel to several potential buyers. I therefore was especially pleased to learn from you that on June 1, 2016, MSB successfully closed on the sale of the vessel to the Philippine Red Cross for approximately $1.5 million after deducting expenses related to the sale.

<u>FTA's Demand</u>

When MSB accepted FTA grant money, it agreed that FTA may terminate any grant for, among other reasons, "failure to make reasonable progress on the Project," and further, that FTA may require the return of Federal grant funds expended on the project if the "Recipient has willfully misused Federal assistance by failing to make adequate progress, by failing to make reasonable and appropriate use of Project property, or by failing to comply with the terms of the Grant Agreement". Master Agreement § 11 (2006); Master Agreement § 11 (2008).[1] Elsewhere, the Master Agreement contains a corresponding provision that "[s]hould the Recipient unreasonably delay or fail to use Project property during the useful life of that property, the Recipient agrees that it may be required to return the entire amount of the Federal assistance expended on that property." Master Agreement § 19(a) (2006); Master Agreement § 19(a) (2008). As with Section 6, under Section 19 of the Master Agreement MSB agreed that if it failed to use Project property for transit purposes, FTA could require it to repay all of the Federal funds that it had drawn down from the various FTA grants.

Based on these clauses, in August 2014 FTA demanded that MSB repay the entire $12,319,299 it had drawn for the ferry project, because MSB never used the ferry vessel or passenger terminal facilities for transit purposes. According to MSB, however, neither Section 6 nor Section 19 of

[1] Grants AK-04-0007 and AK-55-0002 were both awarded under the 2008 edition of FTA's Master Agreement. Grant AK-03-0037 originally was awarded under the 2002 edition and its subsequent amendments successively incorporate the 2003, 2004, and finally the 2006 editions of the Master Agreement.

the Master Agreement should apply because MSB did not willfully or unreasonably delay in making project progress. To the contrary, MSB argues that it would have built and operated the ferry, but for the lack of a landing site in Anchorage. As MSB's submissions discuss, the proposed ferry faced significant local opposition and disagreements in Anchorage that, combined with the concerns of Federal environmental agencies, prevented permitting by the U.S. Army Corps of Engineers.

MSB's argument is unpersuasive. It ignores the plain language of Section 6 of the Master Agreement, which defines willful misuse of Federal funds as: (1) failing to make adequate progress on a Project; (2) failing to make reasonable and appropriate use of Project property; or (3) failing to comply with the terms of the Grant Agreement. Similarly, under Section 19, a grant recipient may be required to return all of the Federal funding expended if it: (1) unreasonably delays the project; or (2) fails to use Project property during the useful life of that property.

MSB argues that it was not unreasonable for it to spend millions of dollars of FTA funds to construct a landing and terminal building in Port MacKenzie, before having secured a landing site in Anchorage, and its inability to secure an Anchorage site was beyond its control. But that is not the test under either clause. On its face, the demonstrated inability of MSB to secure an Anchorage landing site and finance completion and operation of the project --after 10 years -- for whatever reason, constitutes failure to make adequate progress on the Project, and an unreasonable delay in the project. Moreover, there is no dispute that, regardless of the reasons why, MSB failed to use either the ferry vessel or the landside terminal facility for transit purposes.

As MSB points out in its response, however, a portion of the effort and expense it invested into the Project was for planning, environmental, and design work preliminary to the construction of the vessel and shore improvements. MSB incurred additional environmental costs because the elapsed time while pursuing an Anchorage landing site necessitated updating the environmental assessment for the Project. Insofar as MSB's grants funded design, engineering, and environmental work, MSB satisfactorily completed these non-construction activities. Accordingly, upon reconsideration, FTA will not demand the return of Federal funds applied to these costs.

FTA maintains its demand for the return of Federal funds applied to the construction of the vessel and the Port MacKenzie shore improvements. FTA's Regional Office in Seattle calculated the amount of FTA funds spent on these costs to be $9,287,929.

Federal Claims Collection Procedures and Next Steps

MSB's January 15, 2015 and June 8, 2015 submissions request that FTA forgive portions of MSB's debt. The June submission, in particular, lays out MSB's arguments for equitable relief and proposes a "settlement offer" to resolve the debt. MSB argues, in part, that due to the State budget deficit and the size of MSB's general fund operating budget, repayment of the approximately $12 million that FTA originally demanded would be a financial hardship for MSB. MSB proposed to return all proceeds from the sale or disposal of the vessel to resolve all debts and release the Federal interest in the property funded by the FTA grants, provided that MSB would guarantee FTA at least $2 million regardless of the sale/disposal proceeds. Pursuant to discussions between Mr. Locaria and Dana Nifosi, FTA's Deputy Chief Counsel, our understanding is that in June 2016, MSB sold the vessel to the Philippine Red Cross, netting approximately $1.5 million in the transaction.

As we have discussed previously, FTA has no independent legal authority to compromise a debt of this size. Under the Federal Claims Collection Standards, FTA may not grant forgiveness of any debt greater than $100,000; the authority to compromise larger debts belongs to the U.S. Department of Justice. 31 C.F.R. § 902.1(a). Factors for consideration include the inability of the debtor to pay the full amount within a reasonable time. *Id.* at 902.2(a)(1).

Based on the foregoing, FTA has reached a final determination that MSB owes a debt in the amount of $9,287,929 to FTA. MSB has 30 days from the date of this decision to either: (1) pay the debt in full; (2) propose a repayment plan subject to FTA approval; or (3) make a submission to FTA regarding why it is unable to repay the full amount of the debt within a reasonable time, substantiated by financial information, and an offer to compromise the debt. If MSB makes a compromise offer, FTA will evaluate the offer and sufficiency of the supporting documentation, and forward it to the Civil Division of the Department of Justices for consideration if FTA recommends acceptance of the compromise offer.

If MSB fails to make any of the above submissions, the debt will become delinquent. If the debt becomes delinquent, FTA will charge interest on the delinquent portion of the debt at the Treasury Current Value of Funds Rate published by the Secretary of the Treasury in accordance with 31 U.S.C. § 3717, unless FTA determines that a higher rate is necessary to protect the interest of the United States. FTA will charge a late payment penalty at a rate of six percent per year on any portion of the debt that is more than 90 days past due. FTA will assess administrative charges to cover costs incurred in processing and handling the debt beyond the delinquency date identified above.

If the debt becomes delinquent, FTA may report this claim to commercial credit bureaus and consumer reporting agencies. FTA may forward this claim to a collection agency, the U.S. Department of Justice, the U.S. Department of the Treasury, or a private contractor for collection of the debt.

Please continue to address correspondence regarding this matter to FTA Deputy Chief Counsel Dana C. Nifosi and myself at FTA's Office of Budget and Policy, 1200 New Jersey Avenue, Southeast, Fifth Floor, Washington, DC 20590, or at (202) 366-4050.

Sincerely,

Robert J. Tuccillo

Robert J. Tuccillo
Associate Administrator/Chief Financial Officer
Office of Budget and Policy