

City of Delta Junction

Prison Lawsuit - Settlement Agreement - April 16, 2001

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

The City of Delta Junction (the "City"), an Alaska municipal corporation, and Allvest, Inc. ("Allvest"), an Alaska corporation, and Delta Corrections Group, LLC ("DCG"), an Alaska limited liability company, have agreed to a full settlement of all claims arising out of the proposed construction and operation of a private prison on portions of Fort Greely, located near the City, as more specifically discussed in this Settlement Agreement and Mutual Release of All Claims (the "Agreement"). In addition, in consideration of the terms of this settlement, the City and Allvest/DCG are hereby mutually releasing one another from all claims which were or could have been raised in that certain litigation entitled Allvest, Inc. and Delta Corrections Group, LLC v. City of Delta Junction, 4FA-99-2173 CI, in the Superior Court for the Fourth Judicial District at Fairbanks, Alaska (the "Lawsuit").

A. SETTLEMENT TERMS

1. The City and Allvest/DCG hereby mutually agree to mutually release one another from all claims that were or could have been raised in the Lawsuit, as more particularly discussed in the Section B, Mutual Release, below. The parties hereby agree that this mutual release is being entered without any admission of fault or liability by either party, any such fault or liability being expressly denied.
2. The City and Allvest/DCG hereby mutually agree to execute the Stipulation for Dismissal with Prejudice for the Lawsuit which is attached as Exhibit 1, pursuant to which the Lawsuit will be dismissed with prejudice, each of the parties to bear its own costs and attorney fees.
3. The City and Allvest/DCG hereby mutually agree that they will respond, individually and collectively, to any and all inquiries about this settlement by stating that events beyond the parties' control overtook efforts to construct a private prison at Ft. Greely, and that the parties have mutually agreed to move forward in different directions. In addition to such a statement, or in the alternative to such a statement, either party may describe the terms of the settlement or may provide copies of this Agreement and the Exhibits hereto in response to any inquiries regarding this settlement.
4. The City and Allvest/DCG hereby agree that the City and Allvest/DCG will attempt to obtain from the United States of America payment to Allvest/DCG of \$2,500,000 and payment to the City of \$500,000. These two sums represent the amounts which the parties hereby mutually agree should appropriately be recovered from the United States of America to reimburse Allvest/DCG and the City for their expenditures in attempting to develop a private prison reuse for Ft. Greely based on their justifiable belief that Ft. Greely would be realigned. The parties mutually agree that these amounts represent funds expended as part of a "false start" by the City and Allvest/DCG based on that anticipated realignment. The City will designate a liaison for this effort to obtain these two payments, however Allvest/DCG agree that they will have the lead role in that effort, and that the City is not required to expend any financial resources in assisting in the effort by Allvest/DCG to obtain these payments.
5. The City hereby agrees to pay to DCG within 30 days after this Agreement is fully executed the sum of \$75,000, and the City further hereby agrees to pay to DCG within six months after this Agreement is fully executed the sum of \$25,000. The City agrees to execute the recourse revenue anticipation note to DCG in the amount of \$100,000 in the form which is attached as Exhibit B?1 to Resolution 2001-12 attached as Exhibit 2 hereto in order to secure this payment obligation. The parties hereby mutually agree that each of these payments are being made without any admission of fault or liability by the City, any such fault or liability being expressly

denied.

6. The parties mutually agree that the City will be reimbursed the amounts described in paragraph 5 above if and when Allvest/DCG recover the \$2,500,000 from a third party as discussed in paragraph 4.

7. The City hereby agrees to execute the non-recourse interest free revenue anticipation note to DCG in the amount of \$1,500,000 in the form which is attached as Exhibit B?2 to Resolution 2001-12 attached as Exhibit 2 hereto (the "Non-Recourse Note"). The Non-Recourse Note will mature on June 30, 2002 (the end of the City's next fiscal year) to comply with AS 29.47.010. The Non-Recourse Note is intended to ensure that DCG receives this amount if the payment from the third party discussed in paragraph 4 above is made directly to the City. If the City as has obtained funding for the Non-Recourse Note and such funds are available in an account controlled by the City as of July 1, 2002, and the City is unable to disburse that amount, then any interest actually earned by the City on that amount until it is disbursed to DCG will be paid to DCG. The parties mutually agree that the Non-Recourse Note is being provided to DCG without any admission of fault or liability, any such fault or liability being expressly denied.

8. The City hereby agrees to execute the recourse interest free until July 1, 2002 revenue anticipation note to DCG in the amount of \$1,000,000, in the form which is attached as Exhibit B?3 to Resolution 2001-12 attached as Exhibit 2 hereto (the "Recourse Note"). The Recourse Note is intended, in part, to ensure that DCG receives this amount if the payment from the third party discussed in paragraph 4 above is made directly to the City.

9. The parties mutually agree that the \$1,000,000 amount of the Recourse Note will be in addition to the cash payments described in paragraph 5 above if Allvest/DCG are unable to obtain the \$2,500,000 amount from a third party discussed in paragraph 4 above. However, if Allvest/DCG are able to obtain part, but not all, of that \$2,500,000 amount, the City's liability under the Recourse Note, plus the two cash payments discussed in paragraph 4 will be reduced by the amount necessary to make the total payment to Allvest/DCG equal \$2,500,000. For example, if Allvest/DCG obtain \$2,000,000 from a third party, the total remaining liability of the City on this recourse note would be \$400,000 (i.e. \$2,500,000 - \$2,000,000 - \$75,000 - \$25,000 = \$400,000).

10. The parties mutually agree that the Recourse Note is being provided to DCG without any admission of fault or liability, any such fault or liability being expressly denied.

11. The Recourse Note represents a recourse obligation of the City which will mature on June 30, 2002 (the end of the City's next fiscal year) to comply with AS 29.47.010. The Recourse Note will be payable by the City to DCG at that time if Allvest/DCG has not already been paid \$2,500,000 directly or indirectly from a third party. As discussed in paragraph 9, the Recourse Note will be reduced to the extent Allvest/DCG have received some, but not all, of the \$2,500,000 from a third party, such that the total payment to Allvest/DCG will equal no more than \$2,500,000.

12. The Recourse Note will be interest free for the period until it matures on June 30, 2002. The Recourse Note will accrue simple interest at a rate of 8% per year thereafter only on whatever portion of the Recourse Note is actually necessary to be paid in order for Allvest/DCG to receive a total payment of not more than \$2,500,000. For example, if Allvest/DCG received \$1,500,000 or less from a third party, then the 8% interest on the \$1,000,000 principal amount would be due only for the period after June 30, 2002 until that amount is paid by the City. If the City pays on June 30, 2002 then no interest would be owed. Similarly, if Allvest/DCG received \$2,000,000 from a third party, then the 8% interest on \$500,000 (i.e. \$2,500,000 - \$2,000,000) would be due only for the period of time after June 30, 2002 until that \$500,000 principal amount is paid. If the City pays on June 30, 2002 then no interest would be owed. If Allvest/DCG received \$2,500,000 from a third party, then no principal balance would remain, no interest would ever be due, and the City would be repaid its two cash payments by Allvest/DCG as discussed in paragraph 6 above.

13. The Recourse Note will have no prepayment penalty. If the City prepays all or a portion of the Recourse Note, no interest will accrue on whatever amount is so prepaid by the City. In addition, if the City prepays all or a portion of the Recourse Note, and Allvest/DCG obtains reimbursement of all or a portion of such prepaid amount from a third party, then such prepaid amount will be repaid to the City to the extent necessary to provide Allvest/DCG with a total recovery of no more than \$2,500,000 including the City's prior cash payments to Allvest/DCG.

14. Allvest/DCG hereby agree that the City is free to attempt to obtain funding from third parties for the Recourse Note from sources other than the United States of America. If the City is successful in doing so, then Allvest/DCG agree that any funds the City so obtains will be applied first against the \$1,000,000 Recourse Note, second against the City's two cash payments, and last to the \$1,500,000 Non-Recourse Note. In addition, the City's ability to attempt to seek funding as described in this paragraph is not intended in any way to prevent the City from seeking funding for its other obligations, and any such funding for such other obligations will not be deemed to be used for funding the Recourse Note.

15. The parties mutually agree that the authorizing legislation for this Agreement will be in the form of Resolution 2001-12 attached as Exhibit 2 hereto.

16. The City Attorney will provide an opinion that with respect to the obligations set forth by the Recourse Note and the Non-Recourse Note that:

A. The City has undertaken all necessary actions and has the full right, power and authority to execute, deliver and carry out the terms and provisions of the Recourse Note and the Non-Recourse Note;

B. Neither the execution and delivery of, nor compliance with the provision of any of the Recourse Note and the Non-Recourse Note will (i) contravene any law, judgment, order or regulation to which the City is subject, (ii) conflict with, result in the breach of, or constitute a default under, any indenture, mortgage, agreement or other instrument by which the City may be found, or (iii) violate any provision of the applicable law of the City;

C. There are no legal actions, suits or proceedings pending or, to the best of the City Attorney's knowledge, after due inquiry, threatened against or affecting the City which, if determined adversely to the City, might adversely affect the performance of the City of its obligations under the Recourse Note and the Non-Recourse Note;

D. The Recourse Note and the Non-Recourse Note constitute the legal, valid and binding obligation of the City, enforceable against the City in accordance with each of their terms; and

E. No consent of any federal, state or local governmental body or of any other person is required to be obtained by the City for the execution and delivery of the Recourse Note and the Non-Recourse Note.

17. Allvest/DCG each hereby represent that:

A. They each have undertaken all necessary actions and have the full right, power and authority to execute, deliver and carry out the terms and provisions of this Agreement;

B. Neither the execution and delivery of, nor compliance with this Agreement will (i) contravene any law, judgment, order or regulation to which Allvest/DCG are subject, (ii) conflict with, result in the breach of, or constitute a default under, any indenture, mortgage, agreement or other instrument by which Allvest/DCG may be found;

C. There are no legal actions, suits or proceedings pending or, to the best of their knowledge, after due inquiry, threatened against or affecting Allvest or DCG which, if determined adversely to them, might adversely affect the performance of them of their obligations under this Agreement;

D. This Agreement constitutes the legal, valid and binding obligation of Allvest and DCG , enforceable against them in accordance with its terms; and

E. No consent of any federal, state or local governmental body or of any other person is required to be obtained by Allvest or DCG for the execution and delivery of this Agreement.

18. The parties hereby mutually agree that neither the City nor Allvest/DCG has made any representations to the other to induce them into this Agreement, other than what has been set forth in writing, that no party has represented to the other anything regarding the ability or certainty of one or either of them to obtain any of the monies due under the Recourse Note or the Non-Recourse Note from third-party funding, and that the City waives any and all rights to contest the enforceability of the obligations under the Notes arising from any performance called for under the Agreement by Allvest/DCG as those covenants are separate and independent from the City's obligation to pay under the Notes.

19. Allvest/DCG each hereby represent that no one other than DCG is entitled to any of the amounts contemplated to be paid in this settlement of the Lawsuit. Specifically, Allvest/DCG represent that Stonebraker & Associates, Inc., Livingston Slone, Inc., VECO Alaska, Inc. and Cornell Corrections, Inc., and any subcontractors and consultants of these entities in connection with the proposed private prison project at Ft. Greely, are not entitled to the amounts contemplated to be paid under this Agreement, and Allvest/DCG will defend, indemnify and hold the City harmless from any such claims by such third parties.

20. The City and Allvest/DCG hereby agree that upon the complete execution of this Agreement, they will immediately abandon any and all efforts to construct a private prison at Ft. Greely or in the Delta Junction area, and that they will not oppose House Bill 149, which proposes to repeal authority for a private prison at Ft. Greely and authorize a private prison in Kenai.

21. Allvest/DCG hereby agree that they will not oppose efforts to have Ft. Greely become the site for a ground based National Missile Defense system, such anticipated use being one of the events which overtook the parties efforts to develop a reuse for Ft. Greely if it had been realigned.

B. MUTUAL RELEASE

FOR AND IN CONSIDERATION of the above described consideration, the receipt and adequacy of which is hereby acknowledged by the City and Allvest/DCG:

The City, on behalf of itself, its successors or assigns; Allvest, on behalf of itself, its subsidiaries, parents, owners, agents, employees, successors, or assigns; and DCG, on behalf of itself, its subsidiaries, parents, owners, agents, employees, successors or assigns, hereby mutually release and discharge one another from all claims and causes of action of whatsoever nature, if any, which they have or had against one another arising out of proposed construction and operation of a private prison at Ft. Greely, including all claims which were or could have been raised in the Lawsuit. This Mutual Release expressly releases, but is not limited to, any and all claims and causes of action for breach of contract, misrepresentation, or any other civil cause or action arising out of the proposed private prison at Ft. Greely, and it also releases any right to recovery of damages, including, lost profits, reliance damages, or any other form or nature of damages, as well as any costs and attorney fees, arising therefrom, including, but not limited to, any claims or damages which were raised or could have been raised in the lawsuit.

As to the release from City, this Mutual Release and discharge of liability extends to, but is not limited to, the following persons, corporations and entities (hereinafter the "Allvest/DCG Releasees"):

1. Allvest, and its subsidiaries, parents, owners, attorneys, agents, employees, officers, representatives, successors in interest, or assigns;
2. DCG, and its subsidiaries, parents, owners, attorneys, agents, employees, officers,

representatives, successors in interest, or assigns;

As to the release from Allvest and DCG, this Mutual Release and discharge of liability extends to the City, and its attorneys, agents, employees, officers, representatives, elected officials, successors in interest, or assigns.

The City intends this Mutual Release to constitute a full release, discharge, and extinguishment of any and all liability from it to the Allvest/DCG Releasees. The City agrees that it will not individually or jointly, or in concert with others, by virtue of further judicial or nonjudicial proceedings of any kind whatsoever, make or cause to be made, acquiesce in, or assist in bringing of any future action or claim for damages, losses or injuries arising out of the proposed private prison at Ft. Greely, including, but not limited to, any claims which were or could have been brought in the Lawsuit. The City acknowledges that it understands that this settlement is made as a compromise of disputed claims, and that the terms of this settlement are not to be construed as an admission of liability of any kind by any of the parties.

Allvest and DCG intend this Mutual Release to constitute a full release, discharge, and extinguishment of any and all liability from them to the City Releasees. Allvest and DCG agree that they will not individually or jointly, or in concert with others, by virtue of further judicial or nonjudicial proceedings of any kind whatsoever, make or cause to be made, acquiesce in, or assist in bringing of any future action or claim for damages, losses or injuries arising out of the proposed private prison at Ft. Greely, including, but not limited to, any claims which were or could have been brought in the Lawsuit. Allvest and DCG acknowledge that they understand that this settlement is made as a compromise of disputed claims, and that this settlement is not to be construed as an admission of liability of any kind by any of the parties.

The City, Allvest and DCG recognize and realize that losses or damages not now known may be subsequently discovered, and that known losses or damages may prove to be greater than presently believed. The City intends to discharge the Allvest/DCG Releasees, and Allvest and DCG intend to discharge the City Releasees, from all liability and for all losses and damages arising out of the proposed private prison at Ft. Greely, including, but not limited to, any claims which were or could have been brought in the Lawsuit. The City, Allvest and DCG each assume all risks, chance or hazard that its or their damages may be greater or more extensive than is now known, anticipated or expected.

In executing this Mutual Release, the City, Allvest and DCG do not rely on any statements or representations made by their respective Allvest/DCG Releasees or City Releasees concerning: (1) the nature or extent of its or their damages or losses; or (2) the legal liability of any party for its or their damages or losses.

The City, Allvest and DCG understand that this Agreement and the Exhibits hereto contain the entire agreement between themselves and their respective Allvest/DCG Releasees or City Releasees, and that the terms of the Agreement and the Exhibits thereto constitute a contract whereby it or they releases all of its or their claims regarding their respective Allvest/DCG Releasees or City Releasees in exchange for the consideration contained in this Agreement and the Exhibits hereto. The City, Allvest and DCG hereby acknowledge the adequacy of this consideration for the release of all claims arising out of the proposed private prison at Ft. Greely, including, but not limited to, any claims which were or could have been brought in the Lawsuit.

The City, Allvest and DCG declare that they have each carefully read the provisions of this Agreement and that they each understand that they are making a full and final settlement and release of any and all claims for damages, losses or relief of whatsoever nature arising out of the proposed private prison at Ft. Greely, including, but not limited to, any claims which were or could have been brought in the Lawsuit. The City, Allvest and DCG also declare that they have each had the opportunity to confer with their respective attorneys to advise each of them concerning the nature and purpose of this Agreement, including, but not limited to, this Mutual Release.

**CAUTION: THIS IS A COMPLETE SETTLEMENT AGREEMENT AND MUTUAL RELEASE
READ CAREFULLY BEFORE SIGNING**

DATED: _____ **City of Delta Junction**

By Roy Gilbertson, Mayor

Attest

By: Pamela R. Ellis, City Clerk

**STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)**

The foregoing instrument was acknowledged before me this _____ day of April, 2001, by its
of the City of Delta Junction, an Alaska municipal corporation, on behalf of the corporation.

**Notary Public in and for Alaska
My Commission Expires:**

**CAUTION: THIS IS A COMPLETE SETTLEMENT AGREEMENT AND MUTUAL RELEASE
READ CAREFULLY BEFORE SIGNING**

DATED: _____ **Allvest, Inc**

By _____
Its: _____

**STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)**

The foregoing instrument was acknowledged before me this _____ day of April, 2001, by the
of Allvest, Inc., an Alaska corporation on behalf of the corporation.

**Notary Public in and for Alaska
My Commission Expires:**

**CAUTION: THIS IS A COMPLETE SETTLEMENT AGREEMENT AND MUTUAL RELEASE
READ CAREFULLY BEFORE SIGNING**

DATED: _____ Delta Corrections Group, LLC

By _____
Its: _____

**STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)**

The foregoing instrument was acknowledged before me this _____ day of April, 2001, by the of Delta Corrections Group, LLC, an Alaska limited liability company, on behalf of the limited liability company.

**Notary Public in and for Alaska
My Commission Expires:**

[Resolution of Settlement](#)