

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A SETTLEMENT AGREEMENT WITH MCCARTHY BUILDING COMPANIES, INC. TO RESOLVE A DISPUTE REGARDING MEASURED MILE CLAIM PROVIDING FOR FINAL PAYMENT AND CLOSEOUT FOR CONSTRUCTION PHASE SERVICES FOR SOUTHEAST DENTON PACKAGE B (SED-B) IMPROVEMENTS FOR THE CAPITAL PROJECTS DEPARTMENTS.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Council hereby ratifies and approves the proposed settlement agreement between McCarthy Building Companies, Inc. and the City of Denton, under terms set forth in the attached Settlement Agreement and Release of Claims.

SECTION 2. The City Manager and the City’s Attorneys are hereby authorized to act on the City’s behalf in approving and executing any and all documents necessary or appropriate to effectuate the terms of the settlement, and to take other actions necessary to finalize the settlement.

SECTION 3. This Ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. This Ordinance was passed and approved by the following vote [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: *Devin Q. Alexander*  
\_\_\_\_\_

**EXHIBIT "A"**

**Settlement Agreement and Release**

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release (the “Agreement”) entered into, by and between McCarthy Building Companies, Inc. (“McCarthy”) and the City of Denton (the “City”) (hereinafter collectively referred to herein as the “Parties” or individually as “Party”).

**WHEREAS**, the City entered into a Construction Manager At Risk – Design Phase Services (“Design Phase Contract”) with McCarthy, dated December 14, 2021, for design and construction-related services for of the Southeast Denton Neighborhood Area B (SED-B) project in Denton, Texas (Project No. 210001-4 (CONTRACT NO. 7714)) (The “Project”); and

**WHEREAS**, the City entered into a Construction Manager At Risk – Construction Phase Services (“Construction Phase Contract”), dated November 15, 2022, with McCarthy for the construction of the Project (the Design Phase Contract and the Construction Phase Contract are hereinafter referred to collectively as the “Contracts”); and

**WHEREAS**, disputes arose between McCarthy and the City concerning the Contracts and the Project; and

**WHEREAS**, McCarthy and the City desire to settle and resolve the disputes and other matters between them in accordance with the terms and conditions herein.

**WHEREAS**, to settle and resolve all disputes, McCarthy proposes to withdraw its measured mile claim in exchange for final closeout of the project resulting in a change order providing an excusable, non-compensable schedule extension to the Substantial Completion date. Specifically, a zero-dollar (\$0) change order with a 32-day time extension be added to the Contract Time, bringing McCarthy’s Contractual Substantial Completion Date of July 31, 2025, into compliance. McCarthy’s substantial completion date shall be calculated as follows: the Notice to Proceed (January 17, 2023) + Contract Time (440 calendar days) + Previously Approved CO Days (89 calendar days) + Proposed Time Extension (32 calendar days ) = Substantial Completion (July 31, 2024). The final payout concerning the above Project from the City to McCarthy in regards to all Contracts shall be \$1,106,351.15.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants contained herein, and for other good, adequate, and sufficient consideration, the receipt and sufficiency of which are hereby expressly acknowledged, McCarthy and the City stipulate and agree to the following settlement:

1. **Incorporation**. The premises and recitations stated above are incorporated by reference in their entirety as if fully set forth herein.

2. **Payment.** The City shall make final payment to McCarthy in the amount of \$1,106,351.15 in accordance with the terms of the Contracts. The City and McCarthy have agreed to “walk away” from claims against each other, other than McCarthy’s right to receive payment under the Contracts, including any retainage. The parties shall execute a separate change order memorializing the time extension that eliminates the assessment of liquidated damages or back charges from the City.
3. **McCarthy Release.** Subject to the right to receive payments under the Contracts, McCarthy hereby releases, remises, and forever discharges the City from all debts, claims, demands, actions, responsibilities, obligations, causes of action, sums of money, controversies, costs, fees, omissions, and liabilities whatsoever, of any and every name and names, both at law or in equity, which McCarthy has, had, or could have had against the City relating to the Project and the Contracts.
4. **City Release.** The City hereby releases, remises, and forever discharges McCarthy and its surety from all debts, claims, demands, actions, responsibilities, obligations, causes of action, sums of money, controversies, costs, fees, omissions, and liabilities whatsoever, of any and every name and names, both at law or in equity, which the City has, had, or could have had against McCarthy and/or its surety, at any time, relating to the Project and the Contracts.
5. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understanding, expectations, and discussions of the Parties, whether oral or written, and there are no representations or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth in this Agreement. No amendment, modification, waiver, or termination of this Agreement shall be binding unless executed in writing and signed by the Party to be bound thereby.
6. **Governing Law.** This Agreement has been and shall for all purposes be deemed to have been, executed and delivered within the state of Texas, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance with, governed by, the laws of the state of Texas.
7. **Authorization.** Each person signing below is an official or representative of the Authority and the Authority warrants that he or she is duly authorized to act for his or her principal as indicated below and that he or she is acting when signing.

8. **Attorneys and Experts' Fees to Date.** The Parties shall bear their own costs, expenses, and attorneys and experts' fees incurred in or arising out of or in any way related to the matters released herein.
9. **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, in whole or part, this determination will not affect any other provision of this Agreement and the provision in question shall be modified by the court so as to be rendered enforceable.
10. **Drafting of Agreement.** For purposes of construction, this Agreement shall not be deemed to be drafted by any Party, and any ambiguity shall not be construed against any Party.
11. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

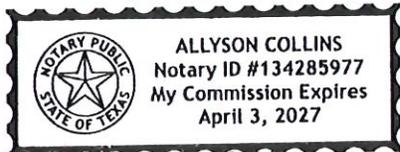
WHEREOF, the Parties have signed and sealed this Agreement, which effective for all purposes as of the day and year first mentioned above.

MCCARTHY BUILDING COMPANIES, INC.  
SIGNATURE:

[Signature] Date of Signature: 05/12/2025  
AUTHORIZED REPRESENTATIVE OF  
MCCARTHY BUILDING COMPANIES, INC.

BEFORE ME, the undersigned authority, on this day personally appeared Jeremy Shaw, who is known to me to be the person whose name is subscribed to the foregoing instrument, who is personally known by me or by providing \_\_\_\_\_ as qualifying identification.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 12<sup>th</sup> DAY OF May, 2025.



[Signature]  
Notary Public – State of Texas

Counsel for McCarthy Building Companies, Inc.

APPROVED AS TO LEGAL FORM:

[Signature]  
ERIC NELSON

CITY OF DENTON, TEXAS  
SIGNATURE:

\_\_\_\_\_  
On behalf of the City of Denton, Texas  
Per delegated authority

Date of Signature:\_\_\_\_\_

BEFORE ME, the undersigned authority, on this day personally appeared Sara Hensley, known to me to be the person whose name is subscribed to the foregoing instrument, who is personally known to me or by providing \_\_\_\_\_ as qualifying identification.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2025.

\_\_\_\_\_  
Notary Public – State of Texas

APPROVED AS TO LEGAL FORM  
MACK REINWAND, CITY ATTORNEY

BY: Devin Q. Alexander  
DEVIN Q. ALEXANDER