

ORDINANCE NO. _____

AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT AND RELEASE IMPLEMENTING THE TERMS OF THE SETTLEMENT IN LITIGATION STYLED “*CITY OF DENTON V. JESSE RAY EAKERS, JR., PENSKE TRUCK LEASING CO. L.P., FLEETCO INC., THE CINCINNATI INSURANCE COMPANIES, AND SOUTHERLAND TRANSPORT, L.L.C.*” CAUSE NO. 23-6616-431, PENDING IN THE 431ST JUDICIAL DISTRICT COURT, DENTON COUNTY, TEXAS; AND DIRECTING THE CITY MANAGER OR DESIGNEE AND THE CITY’S ATTORNEYS TO EFFECTUATE AS NECESSARY AND APPROPRIATE THE TERMS OF A SETTLEMENT AGREEMENT AND RELEASE TO EFFECTUATE THIS APPROVAL; AND DECLARING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Council hereby ratifies and approves the proposed settlement of litigation styled “*City of Denton v. Jesse Ray Eakers, Jr., Penske Truck Leasing Co. L.P., Fleetco Inc., The Cincinnati Insurance Companies, and Southerland Transport, L.L.C.*” Cause No. 23-6616-431, pending in the 431st Judicial District Court, Denton County, Texas, under terms set forth in the attached Settlement Agreement and Release.

SECTION 2. The City Manager or designee 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 [____ - ____]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: *Devin Q. Alexander*

EXHIBIT “A”

Settlement Agreement and Release

CAUSE NO. 23-6616-431

CITY OF DENTON

Plaintiff,

v.

JESSE RAY EAKERS JR.,
PENSKE TRUCK LEASING CO. L.P.,
FLEETCO INC., THE CINCINNATI
INSURANCE COMPANIES, and
SOUTHERLAND TRANSPORT L.L.C.

Defendants.

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IN THE DISTRICT COURT

431st JUDICIAL DISTRICT

DENTON COUNTY, TEXAS

COMPROMISE SETTLEMENT AGREEMENT AND RELEASE

STATE OF TEXAS)

COUNTY OF DENTON)

) KNOW ALL MEN BY THESE PRESENTS:

1. That I, Sara Hensley, whose title is City Manager, the undersigned authorized representative of City of Denton for and in consideration of the sum of FORTY-FIVE THOUSAND DOLLARS AND 00/100 (\$45,000.00) cash paid to the City of Denton (hereinafter the "City") by the Cincinnati Insurance Companies, the receipt of which is hereby acknowledged, do by these presents acknowledge the full and complete settlement of the City's subrogation claim against the Cincinnati Insurance Companies, Southerland Trucking, LLC, Penske Truck Leasing Co. L.P., Jesse Ray Eakers, Jr., and Fleetco, Inc. (the "Defendants"), and hereby releases and forever discharges Defendants, from any and all damages sustained by the City resulting from the automobile accident on or about August 2, 2021, at or near Denton, Texas, which allegations are set out more fully in the City's live Petition in this matter filed in the 431st Judicial District Court in Denton County, Texas.

2. It is the intention of the undersigned to acknowledge the satisfaction in full of all damages of any nature whatsoever which have occurred to the City as a result of the above-described accident, whether fully developed at this time or not. It is understood that the considerations stated cover the contingency of a greater or lesser damage to the City, whether known or unknown at this time, fully developed or otherwise.

3. The undersigned must deliver settlement payment to the office of the City Attorney 215 E. McKinney St., Denton, Texas 76201 - within three weeks of receipt of the original fully executed Agreement to the Office of the City Attorney, 215 E. McKinney, Denton, Texas 76201. To be considered fully executed, the Agreement must be signed and dated by the City's representative before a notary public, signed and dated by the City's legal counsel, signed and dated by Defendants' representatives listed below before a notary public, and signed and dated by Southerland Trucking, LLC and Penske Truck Leasing Co.'s legal counsel after formal City Council approval. The City's legal counsel shall promptly provide Defendants' counsel with notice confirming receipt of the Settlement Payment on behalf of the City and declaring the exact amount received.

4. The City warrants and represents that it is the sole owner of the claims and causes of action asserted and such claims have not been further assigned, sold, pledged or otherwise encumbered in any way.

5. It is further understood that this settlement is a compromise of a disputed claim, and that payment is not to be construed as an admission of liability on the part of the Defendants, and their officers, agents, or employees by whom liability are expressly denied.

6. For the aforesaid consideration, the City further agrees to dismiss with prejudice Cause No. 23-6616-431, pending in the 431st District Court in Denton County, Texas, styled

"The City of Denton v. Jesse Ray Eakers, Jr., et al." All claims the City has in such suit being hereby released by the undersigned as authorized representative of the City.

7. It is understood and agreed that this Release contains the entire agreement between the parties and supercedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Release exists. This Release cannot be changed or terminated orally.

8. In making this agreement of compromise and settlement, the City has not relied upon any statement or representation pertaining to this matter made by the persons, firms, organizations or corporations who are hereby released, or by any person or persons representing them.

9. It is understood and agreed that this Release shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns.

10. It is understood and agreed that this Release shall be governed by, construed and enforced in accordance with, and subject to, the laws of the State of Texas.

11. It is understood and agreed that this Release may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

12. The undersigned, as authorized representative of the City, further states that in entering into this Settlement Agreement and Release, the City has relied upon the legal advice of its attorney, who is the attorney of its own choice, and that the terms of this Settlement Agreement have been completely read and explained to the undersigned by the City's attorney and that the terms are fully understood and voluntarily accepted by the undersigned, as authorized representative of the City.

DEFENDANT SIGNATURE:

[Signature]
AUTHORIZED REPRESENTATIVE OF
SOUTHERLAND TRUCKING, LLC

Date of Signature: 2/27/24

BEFORE ME, the undersigned authority, on this day personally appeared Ross Kepesky, 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 27th DAY OF February, 2024.



Miguel Alvarado
Notary Public - State of Texas

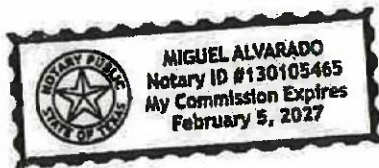
DEFENDANT SIGNATURE:

[Signature]
AUTHORIZED REPRESENTATIVE OF
PENSKE TRUCK LEASING CO.

Date of Signature: 2/27/24

BEFORE ME, the undersigned authority, on this day personally appeared Ross Kepesky, 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 27th DAY OF February, 2024.



Miguel Alvarado
Notary Public - State of Texas

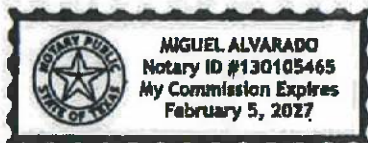
DEFENDANT SIGNATURE:

[Signature]
AUTHORIZED REPRESENTATIVE OF
JESSE RAY EAKERS, JR.

Date of Signature: 2/27/24

BEFORE ME, the undersigned authority, on this day personally appeared Ross Kepesky, 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 27th DAY OF February, 2024.



Miguel Alvarado
Notary Public - State of Texas

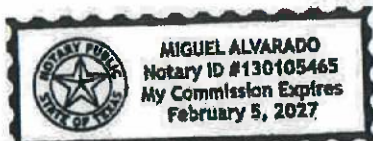
DEFENDANT SIGNATURE:

[Signature]
AUTHORIZED REPRESENTATIVE OF
THE CINCINNATI INSURANCE
COMPANIES

Date of Signature: 2/27/24

BEFORE ME, the undersigned authority, on this day personally appeared Ross Kepesky, 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 27th DAY OF February, 2024.



Miguel Alvarado

Notary Public – State of Texas

APPROVED AS TO LEGAL FORM:



ATTORNEY FOR DEFENDANT


APPROVED AS TO LEGAL FORM:

ATTORNEY FOR DEFENDANT

APPROVED AS TO LEGAL FORM:

ATTORNEY FOR DEFENDANT

CITY OF DENTON, TEXAS
SIGNATURE:

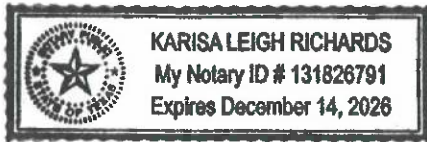


SARA HENSLEY, CITY MANAGER
On behalf of the City of Denton, Texas
Per delegated authority

Date of Signature: 2/27/24

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 27th DAY OF February, 2024.



Karisa Leigh Richards
Notary Public – State of Texas

APPROVED AS TO LEGAL FORM
MACK REINWAND, CITY ATTORNEY

BY: *Devin Q. Alexander*
Devin Q. Alexander