

## SETTLEMENT AGREEMENT AND RELEASE

The City of Mansfield, Texas, a Texas Home-Rule Municipality (the "City"), RedAway, LLC, a Texas Limited Liability Company ("RedAway"), and David Cook, in his capacity as Mayor of the City and in his individual capacity as a resident of the City ("David Cook"), enter into this Settlement Agreement and Release (this "Settlement Agreement") in consideration for the mutual promises, agreements, covenants, and undertakings specified in this Settlement Agreement. Each of the City, RedAway, and David Cook will sometimes be individually referred to as a "Party" and collectively as the "Parties." The "Effective Date" of this Settlement Agreement shall be the date it is executed by the last Party to execute it.

**SECTION A. DEFINITIONS.** Except where otherwise defined in this Settlement Agreement, the following terms shall have the meanings given to them in this Section A.

1. "RedAway Lease" means that certain *Commercial Lease Agreement* effective September 3, 2013, between Stepp/WCJ Investments, LLC as the Landlord and RedAway as the Tenant.

2. "RedAway Lease Guaranty" means that certain *Lease Guaranty* dated September 3, 2013, executed by Antal Desai and Robert Dobrient (the "Guarantors") related to RedAway's obligations under the RedAway Lease.

3. "Termination Agreement" means that certain *RedAway Lease And Guaranty Termination Agreement* executed by Stepp/WCJ Investments, LLC in the form attached as **Exhibit A**.

4. "Property" means the Premises as defined in the RedAway Lease, consisting of a portion of the building located at 208 Sentry Drive, Mansfield, Texas 76063 and containing approximately 15,880 rentable square feet.

5. "Lawsuit" means Cause No. D-1-GN-15-000999, styled *City of Mansfield and Mayor David Cook, Plaintiffs, vs. The Texas Commission on Environmental Quality, Defendant*, currently pending in the 98th Judicial District Court of Travis County, Texas.

6. "TCEQ" means the Texas Commission on Environmental Quality.

## **SECTION B. RECITALS.**

1. WHEREAS, on February 11, 2015, Richard K. Hyde, Executive Director of TCEQ, approved Registration No. 40272 which allows RedAway to operate a Type V municipal solid waste facility at the Property (the "Registration"); and

2. WHEREAS, on March 12, 2015, the City and David Cook filed with the TCEQ a Motion to Overturn the Decision of the Executive Director approving the Registration (the "Motion to Overturn"), which motion was denied; and

3. WHEREAS, the City and David Cook filed the Lawsuit seeking to reverse the TCEQ approval of the Registration and the denial of the Motion to Overturn; and

4. WHEREAS, the Parties desire to compromise and settle all issues related to the Registration and the Lawsuit.

#### **SECTION C. TERMS OF SETTLEMENT AGREEMENT.**

1. Withdrawal of the Registration. For purposes of this Settlement Agreement, the Registration shall be considered withdrawn on the first business day after the last to occur of the following: (1) the payment by the City to RedAway by wire transfer the sum of \$475,000.00 (from funds currently and legally available to the City for such purpose), and (2) the delivery to RedAway of the fully executed Termination Agreement ((1) and (2), collectively, the "City Settlement Conditions"). If the City fails to satisfy the City Settlement Conditions by 5:00 pm on Thursday, June 4, 2015, RedAway, in its sole option, may either: (i) give written notice to the City's attorney that this Settlement Agreement is terminated, whereupon this Settlement Agreement shall be null and void ab initio, and the Parties shall have no further rights, duties, obligations, or remedies under this Settlement Agreement ("Option One"); or (ii) give written notice to the City's attorney that RedAway is granting the City an extension of time to satisfy the City Settlement Conditions ("Option Two"). If the City fails to satisfy the City Settlement Conditions by 5:00 pm on Thursday, June 4, 2015 and RedAway does not give the City a written notice selecting Option One or Option Two before 5:00 p.m. on Friday, June 5, 2015, then RedAway will be deemed to have selected Option One. Expressly subject to and conditioned on the City satisfying the City Settlement Conditions, RedAway will within ten (10) days make all filings required by the TCEQ to either revoke the Registration or amend it to revise the approved location to a site outside the corporate limits and extraterritorial jurisdiction of the City as they exist on the Effective Date of this Settlement Agreement (the "RedAway Settlement Condition"); and after such revocation or amendment, RedAway will not do any of the following: (1) apply to the TCEQ for the right to operate a Type V municipal solid waste facility anywhere within the corporate limits or extraterritorial jurisdiction of the City as they exist on the Effective Date of this Settlement Agreement; or (2) operate, purchase, own, or seek to acquire a Type V municipal solid waste facility anywhere within the corporate limits or extraterritorial jurisdiction of the City as they exist on the Effective Date of this Settlement Agreement. Nothing in this Settlement Agreement shall prevent RedAway from applying to the TCEQ for the right to operate a Type V municipal solid waste facility outside the corporate limits and extraterritorial jurisdiction of the City as they exist on the Effective Date of this Settlement Agreement, and any such application may include all or any portion of the materials submitted to the TCEQ to obtain the Registration. If RedAway seeks to apply to the TCEQ for the right to operate a Type V municipal solid waste facility outside the corporate limits and extraterritorial jurisdiction of the City (as they exist on the Effective Date of this Settlement Agreement), neither the City nor David Cook (whether in his individual capacity or his capacity as the Mayor) shall object to or interfere with such application.

2. Dismissal of Lawsuit. Within ten (10) days after the date the Registration is revoked or amended as provided above by order of the TCEQ in accordance with this Settlement Agreement, the City and David Cook shall dismiss the Lawsuit without prejudice by filing a Nonsuit of the Lawsuit and all claims in the Lawsuit in accordance with Rule 162 of the Texas Rules of Civil Procedure by filing the Notice of Nonsuit in the form attached hereto as **Exhibit B.**

3. Release of Claims by RedAway.

a. RedAway acknowledges and agrees that this Settlement Agreement is in compromise and settlement of all claims arising out of or in any way based on the Registration and/or the Lawsuit, whether previously asserted or not, and shall be in full satisfaction and accord, and in full release and discharge of the Benefited City Parties (as defined below). Expressly subject to and conditioned on the City satisfying the City Settlement Conditions, RedAway agrees to, and by these presents does, fully, finally and completely release and forever discharge the Benefited City Parties (as defined below) from any and all claims, demands, damages, liability and causes of action of any nature or kind in connection with or arising from or to arise from the Registration and/or the Lawsuit, including costs, expenses, and attorneys' fees which RedAway has incurred or may incur on account of or in any way growing out of or resulting from the Registration and/or the Lawsuit. The Benefited City Parties (as defined below) are not, however, released from claims that arise from a breach of this Settlement Agreement.

b. The Benefited City Parties are: (1) the City; (2) David Cook, individually and in his capacity as Mayor of the City; (3) members of the City Council; (4) officers, employees, and attorneys of the City; (5) City boards and commissions and their respective members, officers, employees, and attorneys; and (6) the Mansfield Economic Development Corporation and its board members, officers, employees, and attorneys.

4. Release of Claims by the City and David Cook.

a. The City and David Cook (individually and in his capacity as the Mayor of the City), acknowledge and agree that this Settlement Agreement is in compromise and settlement of all claims arising out of or in any way based on the Registration and/or the Lawsuit, whether previously asserted or not, and shall be in full satisfaction and accord, and in full release and discharge of the Benefited RedAway Parties (as defined below). Expressly subject to and conditioned on RedAway satisfying the RedAway Settlement Condition, the City and David Cook (individually and in his capacity as the Mayor of the City), agree to, and by these presents do, fully, finally and completely release and forever discharge the Benefited RedAway Parties (as defined below) from any and all claims, demands, damages, liability and causes of action of any nature or kind in connection with or arising from or to arise from the Registration and/or the Lawsuit, including costs, expenses, and attorneys' fees which the City or David Cook (individually and in his capacity as the Mayor of the City) has incurred or may incur on account of or in any way growing out of or resulting from the Registration and/or the Lawsuit. The Benefited RedAway Parties (as defined below) are not, however, released from claims that arise from a breach of this Settlement Agreement.

b. The Benefited RedAway Parties are: (1) RedAway and its successors and assigns; (2) RedAway's affiliates (being any person or entity that is controlled by, that controls, or that is under common control with RedAway); and (3) for all of the foregoing persons or entities, their respective investors, officers, employees, and attorneys.

5. Additional Provisions.

a. Each Party represents and warrants that it has read the terms and conditions of this Settlement Agreement, that it has discussed them fully and completely with its attorney, and that it fully and completely understands and voluntarily accepts such terms and conditions.

b. Each Party represents and warrants that it has the authority to execute this Settlement Agreement, to make the commitments, promises, and representations contained in this Settlement Agreement, and to fulfill them. Each Party further represents and warrants that it is the sole owner of all of its claims, demands, obligations, or causes of action referred to in this Settlement Agreement and has not sold, assigned, transferred, conveyed, or otherwise disposed of any of such claims, demands, obligations, or causes of action.

c. Each Party represents and warrants it has consulted with its attorney about the terms and conditions of this Settlement Agreement and completely understands that the disputes and issues raised in this Settlement Agreement could be presented to a court or a jury to decide, and that as a final result, said court or jury might rule differently than as agreed herein.

d. This Settlement Agreement shall not be considered nor construed as an admission by any Party of any fault, liability, culpability or wrongdoing, all of which are expressly denied, but is instead an agreement entered into to resolve disputes and avoid the expense, inconvenience, and uncertainty of litigation.

e. This Settlement Agreement contains the entire agreement between the Parties with regard to the matters addressed herein, and there are no understandings or agreements, verbal or otherwise, among the Parties except as expressly stated in this Settlement Agreement. The Parties acknowledge that they are not relying upon any representations of any opposing Party or any opposing Party's counsel in deciding to enter into this Settlement Agreement, and that any such reliance would be unintended, unjustified, and unreasonable.

f. The Parties agree to extend reasonable cooperation executing any and all supplementary documents and taking such additional actions as may be necessary or appropriate to give full force and effect to the terms, conditions and intent of this Settlement Agreement.

g. Each person who executes this Settlement Agreement represents and warrants that he or she has the authority to do so, both individually and on behalf of the Party for which it is executed.

h. It is further understood and agreed that each Party will bear its own attorneys' fees.

i. This Settlement Agreement is performable in Tarrant County, Texas, and venue for any dispute or litigation arising out of or relating to this Settlement Agreement shall be in Tarrant County, Texas.

j. This Settlement Agreement shall be interpreted in accordance with the substantive laws of the State of Texas.

k. The Parties agree that this Settlement Agreement may be executed in multiple counterparts, each having the same force and effect.

l. This Settlement Agreement has been negotiated by the Parties and their respective attorneys, and shall be deemed drafted equally by all Parties. The language of

this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and shall not be construed for or against any Party.

m. None of the rights, obligations, or remedies of the Parties under this Settlement Agreement may be assigned without the written consent of all the Parties.

n. Should any provision of this Settlement Agreement be unenforceable, the remaining provisions will not be affected but will remain enforceable, and any unenforceable provisions shall be excluded from this Settlement Agreement.

o. In all instances in which a Party to this Settlement Agreement is required under this Settlement Agreement to do any act at a particular time or within a particular period of time, time is of the essence in the performance of such act.

p. Any communication required or contemplated by this Settlement Agreement shall be in writing and shall be deemed given when delivered to the following notice addresses by a national delivery service (e.g., FedEx and UPS):

To the **CITY**:  
Attn: City Manager  
1200 E. Broad Street  
Mansfield, Texas 76063  
Fax: (817) 473-1342

With a copy to:  
E. Allen Taylor, Jr.  
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107  
Fax: (817) 332-4740

To **DAVID COOK**:

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To **REDAWAY**:  
Attn: Justin Smith,  
Chief Executive Officer  
9503 Loma Vista Drive  
Dallas, Texas 75243-7611

q. The Parties agree, to the maximum extent permitted by the Texas Public Information Act (Open Records Act) and the Texas Open Meetings Act, Chapters 551 and 552 of the Texas Government Code, to keep this Settlement Agreement, and its terms and conditions, **CONFIDENTIAL**.

r. This Agreement is binding on and inures to the benefit of the parties and their respective heirs, representatives, successors, assigns, and RedAway's affiliates (being any entity that controls, is controlled by, or is under common control with RedAway).

**CITY OF MANSFIELD, TEXAS**

By: David Cook

*David Cook, Mayor*

Date: 6/3/15

David Cook

**David Cook, Individually**

Date: 6/3/15

David Cook

**David Cook, Mayor**

Date: 6/3/15

**REDAWAY, LLC**

By: Justin Smith

*Justin Smith,*

Chief Executive Officer

Date: \_\_\_\_\_