

## **SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into on this the \_\_\_\_\_ day of October, 2009 (the "Effective Date"), by and between the City of Frisco ("City") and APAC-Texas, Inc. ("APAC").

### **RECITALS**

WHEREAS, APAC has filed for renewal of Air Quality Permit No. 8597 in Collin County, Texas ("Application") with the Texas Commission on Environmental Quality ("TCEQ"); and

WHEREAS, the City has filed a letter with TCEQ wherein it has protested the Application and has requested a contested case hearing; and

WHEREAS, the Collin County Commissioners Court, Representative Ken Paxton, and Carolyn Lis, on behalf of herself and her minor child, Jonathan Lis, ("Protestants") have filed letters with TCEQ wherein they have protested the Application and have requested a contested case hearing; and

WHEREAS, the City and APAC desire to avoid contested case litigation over the Application and to resolve such dispute by executing this Agreement; and

WHEREAS, the Protestants are willing to withdraw their respective contested case hearing requests based upon execution of this Agreement by the City and APAC.

NOW, THEREFORE, it is the intent of the City, APAC, and the Protestants to effectuate a full and complete settlement and resolution regarding the Application through execution of this Agreement.

### **TERMS OF AGREEMENT**

IN CONSIDERATION of the mutual promises and covenants contained in this Agreement, including the recitals set forth above, the City and APAC agree as follows:

#### **ARTICLE I**

##### City Actions

1. The City shall pay Atmos Energy its cost to provide natural gas service line and meter for APAC's Frisco facility up to \$50,000.

2. Any rebates due the City for the amount paid to Atmos to provide service to APAC shall be paid to APAC to reimburse APAC for its expense to change its equipment to use natural gas up to a maximum of \$15,000.

3. The City shall file written notice with TCEQ withdrawing its request for a contested case hearing on APAC's permit renewal.

#### APAC ACTIONS

1. APAC shall request that TCEQ remove used fuel oil from its permit as an allowable burner fuel as soon as a reliable and consistent natural gas supply has been installed and burner conversion and startup has been satisfactorily completed.

2. APAC shall make no other changes in its permit renewal request.

3. APAC shall use natural gas as the primary burner fuel for its Frisco facility after burner conversion to natural gas and as long as the use of natural gas is cost effective in comparison to other burner fuels.

#### Protestant Action

Protestants shall file written notices with TCEQ withdrawing their respective requests for a contested case hearing on APAC's permit renewal.

#### **ARTICLE II**

##### Effective Date

This Agreement is effective and enforceable as between the City and APAC following execution by both parties and the Protestants.

#### **ARTICLE III**

##### Notice

Any notice provided for under the terms of this Agreement by either party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested addressed and delivered to the following:

To City:

City Manager  
City of Frisco  
P.O. Box 1100  
Frisco, TX 75034

With a copy to:

City Attorney  
Abernathy, Roeder, Boyd & Joplin, P.C.  
1700 Redbud, Suite 300  
McKinney, Texas 75069

To APAC:

Steve Koonce  
APAC-Texas, Inc.  
P.O. Box 224048  
Dallas, Texas 75222

With a copy to:

General Counsel  
APAC, Inc.  
900 Ashwood Parkway, Suite 700  
Atlanta, GA 30338

Each party may change the address to which notice may be sent to that party by giving notice of such change to the other parties in accordance with the provisions of this Agreement.

#### **ARTICLE IV**

##### **Miscellaneous**

The obligations and undertakings of each of the parties to this Agreement shall be performed in Collin County, Texas. Except for matters within the jurisdiction of the TCEQ (or its successor), the parties expressly agree that all judicial proceedings to enforce any of the provisions of this Agreement shall take place in Collin County, Texas.

This Agreement shall be governed by, and construed and enforced under, the laws of the State of Texas.

This Agreement contains the entire agreement of the City and APAC with respect to the subject matter thereof. No agreement, statement, or promise made by any party or to any employee, agent, or officer of any party, that is not contained in this Agreement shall be valid, binding, or of any force or effect. Any amendments to this Agreement must be in writing and signed by the parties hereto.

This Agreement shall be binding upon the parties hereto and their respective successors, heirs, representatives, and assigns.

This Agreement shall be deemed drafted equally by the parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply.

Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

This Agreement may be executed in multiple originals. Each original may have multiple counterparts in the form of separate signature pages.

The respective signatories to this Agreement represent that they are authorized to execute this Agreement on behalf of their respective party.

**CITY OF FRISCO**

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

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

ATTEST:

\_\_\_\_\_  
City Secretary

**APAC**

By: \_\_\_\_\_  
\_\_\_\_\_, President

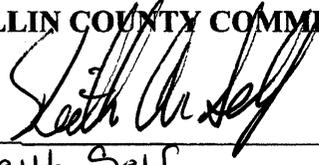
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

**RATIFICATION**

**COLLIN COUNTY COMMISSIONERS COURT**

By:   
Keith Self, County Judge

Date: 12/11/09

ATTEST:

\_\_\_\_\_

**STATE REPRESENTATIVE KEN PAXTON**

\_\_\_\_\_

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

**CAROLYN KRESEK LIS, INDIVIDUALLY  
ON BEHALF OF MINOR CHILD, JONATHAN LIS**

\_\_\_\_\_

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