

**LETTER OF INTENT**  
**By and Among**  
**The City of Cleveland**  
**and**  
**Landsong Environmental, Inc. and Ty Incorporated**

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This Letter of Intent is entered into and effective the last date noted below, by and between the following (collectively referred to as the "Parties"):

- The City of Cleveland, 601 Lakeside Avenue, Cleveland, OH 44114 ("the City");

-and-

- Landsong Environmental, Inc., an Ohio corporation, and Ty Incorporated, an Ohio corporation, the primary address of each being 7603 Old Rockside Road, Independence, OH 44131 (collectively "Landsong").

WHEREAS, Landsong desires to undertake continued activities associated with the use of certain real property including but not limited to activities associated with removal of soil and construction and demolition debris ("C&D") landfill operations, and other authorized activities (hereinafter referred to as the "Landsong Business Operations"). Such real property commonly known as the "Bradley Road Landfill" (the "Property") is located in the City of Cleveland, County of Cuyahoga and State of Ohio. The Property is further described as Cuyahoga County Permanent Parcel Numbers 009-33-022, 009-34-002, 009-36-004, 009-36-001, 009-36-005, 009-36-006, 009-36-007, as well as, when it so applies, the prospective use of the ODOT parcel described herein.

WHEREAS, pursuant to the terms of a certain Operator Agreement entered into on the 30<sup>th</sup> day of July, 2009, Landsong Environmental, Inc. maintains that it was granted authority to proceed to undertake the Landsong Business Operations.

WHEREAS, the City of Cleveland, as set forth in the City of Cleveland's codified ordinances, maintains that it has certain regulatory and permitting powers associated with the Landsong Business Operations.

WHEREAS, both Landsong and the City desire to set forth their mutual understanding as to the current status of the Property as well as describe their intentions associated with the future use of the Property including the commencement of the Landsong Business Operations.

WHEREAS, both Landsong and the City recognize the interests of the citizens and businesses located in the Old Brooklyn area of the City of Cleveland, the Property being located in such geographic area.

WHEREAS, on the 18th day of April, 2011, Landsong shall appear before the City of Cleveland Board of Zoning Appeals (“BZA”) on BZA Calendar Nos. 10-194, 10-259, and 10-260, which relates solely to Landsong’s proposed surface mining activities on the Property.

WHEREAS, to facilitate consideration of Landsong’s pending BZA applications, the City has requested and Landsong provides herewith a detailed description of its operational plan associated with the surface mining activity, a general description of the current status of the Property, as well as a general statement of its intentions associated with the other Landsong Business Operations (including those related to prospective C&D landfill operations) in order to permit a greater understanding of its current and future plans and to provide disclosure of such current and future plans to the citizens of the Old Brooklyn Community of the City of Cleveland.

NOW THEREFORE, as an expression of their mutual intent to cooperate and work together while addressing their respective interests and the interests of the Old Brooklyn Community, the City and Landsong have hereafter set forth their intentions in this Letter of Intent.

### **Purpose of the Letter of Intent**

The purpose of this Letter of Intent is to set forth the understanding of the City and Landsong regarding the activities addressed above and hereinafter stated which shall, initially, relate to the Landsong Business Activities associated with surface mining activities as well as, prospectively, those future Landsong Business Activities in the event a C&D landfill facility license is issued and Landsong is permitted to operate a C&D landfill on the Property.

### **Effect and Intentions as to this Letter of Intent**

This Letter of Intent reflects the mutual intentions of the Parties related to the matters described herein and is not intended to be a legally binding document. Accordingly, no party to this Letter of Intent shall have any liability to any other person or party having or claiming to have any interest in the subject matter of this Letter of Intent based upon, arising from, or relating to the statements set forth herein.

### **Description of Current Status of the Property and Corrective Measures Already Accomplished**

**Current Status of the Property:** While the Property has historically been operated as a C&D landfill, landfill operations are currently in abeyance. Prior to Landsong’s involvement with the Property, violations of environmental regulations occurred, including unauthorized impacts to wetlands, unpermitted installation of culverts, and storm water violations. In addition, there exist slope stability concerns near Sky Lane Drive. As described below, Landsong performed certain activities which corrected violations and improved site conditions. However, the Parties believe the slope stability concerns near Sky Lane Drive can only be remedied through natural-stream relocation and placement of construction and demolition fill as described herein.

**Site Improvements and Corrected Violations:** Landsong submits that the following activities have already been accomplished correcting certain alleged violations pre-dating Landsong's interests in the Property, therefore constituting a betterment to the condition of the Property and the surrounding area:

Wetlands Restoration: Landsong has restored certain wetlands which were damaged during a prior operator's operation of the landfill. This remedial work is now complete and the Army Corps of Engineers has officially acknowledged the wetland impact violations have been properly addressed.

Culvert Removal: A prior operator installed culverts in an attempt to reroute the natural stream, below Skylane Drive, located on the Property. The culvert was installed without permission from the Army Corps of Engineers or the OEPA, as required. Landsong removed the non-permitted culverts and restored the natural stream to its original location. Ohio EPA and the Army Corps of Engineers have acknowledged this violation has been corrected.

Culvert Replacement: Landsong has removed pre-existing and undersized culverts that were in poor condition, and installed properly sized culverts just past where the two streams meet on the Property. These replacements did not require permits or permissions from any governmental authority because they were existing culverts. The undersized culverts impeded flow of storm water run-off, resulting in stagnant water and erosion. The previously-affected stream now has sufficient capacity and ability to flow in an unobstructed fashion and has eliminated problems affecting neighboring areas where water was backing up and causing flooding. The Northeast Ohio Regional Sewer District inspected the Property and has determined that the remedial work conducted by Landsong has proven to be beneficial to the surrounding area and shall likely prevent future flooding. Restoration of the stream bed has greatly decreased the amount of stagnant water and, in turn, eliminated conditions that had been conducive to pests.

Slope Stability Issues: As set forth in the Federal Consent Decree entered into in Case Number 1: 04 CV 1757, prior to Landsong's involvement with the Property, there were slope stability concerns in proximity to Gino Lane and Skylane Drive as identified by governmental authorities. The Parties concur that all work required under the Federal Consent Decree associated with the slope stability issues in proximity to Gino Lane has been properly performed. Regarding the slope stability issues in proximity to Skylane Drive, the Parties acknowledge that the stability issues cannot be properly addressed without the relocation of the stream in the ravine closest to Skylane Drive. In order to relocate the stream, a Section 404 Permit and 401 Water Quality Certification will be required from the Army Corps of Engineers and Ohio EPA, respectively. Landsong's plans for obtaining the Section 404 and 401 authorizations are discussed below.

Aluminum Dross: Ohio EPA has indicated the possibility exists that aluminum dross may have been disposed of at the Property prior to Landsong's involvement. Ohio EPA has requested a subsurface investigation be performed to determine whether dross

was disposed of at the Property and whether the material is reactive. Despite having no legal responsibility for performing a subsurface investigation, Landsong has obtained storm water permits from the Ohio EPA necessary to perform the investigation and has collected information to determine the potential location of the dross. Landsong intends to perform a subsurface investigation to inspect an area of the Property where the dross is suspected to be located and will investigate further remedial actions if the dross is located. Landsong's environmental consultant, Hull & Associates, has already completed a comprehensive investigation using thermal imaging which concluded there was no reactive dross located at the Property. The subsurface investigation will supplement the thermal imaging analysis.

### **Description of Landsong's Surface Mining Operational Plan**

Landsong has obtained all requisite permits necessary for removal of dirt from the Property, including but not limited to a Dust Control Permit (from OEPA); a Storm Water Permit (from OEPA and the City); City Development Permits (from the City); and an ODNR Mining Permit (from ODNR Permit #14028). Landsong will comply with such permits and with any other applicable governmental rules and regulations associated with removal of soils from the Property. Following the BZA's review, Landsong shall commence removal of soil from the Property in accordance with all lawfully issued permits, a quantity anticipated to be approximately 500,000 yd.<sup>3</sup>, same to be performed over the course of 2 to 3 years.

The following is offered without prejudice to the scope of lawful activities authorized by the permits Landsong has obtained:

- A. Commits that the commercial truck traffic and equipment accessing the Property will enter and exit only through the Bradley Road access area located in the Northeast portion of the Property and shall proceed along the appropriate truck route selected to minimize the impact to neighboring properties.
- B. Commits that the hours of operation of the site will be 7:30 a.m. to 5 p.m. on Monday through Saturday, excluding employee arrivals and departures. No operation shall be conducted on Sundays or national holidays.
- C. States that the vehicles involved in the Landsong Business Operations shall be generally limited to, the following:
  1. Excavators
  2. Bulldozers
  3. Off-road Dump trucks
  4. On-road Dump trucks
  5. Miscellaneous complementary equipment such as loaders, rollers and dust control equipment.
- D. States that a secure, lockable gate will be used reasonably to restrict access to the Property during non-business hours.
- E. States that there are currently no plans to build any inhabitable structures on the Property.
- F. States that employee parking shall be limited to a designated location on the Northeast corner of the Property adjacent to the entrance of the site from Bradley Road.

- G. Estimates that on average between 5 and 10 employees will be on the Property during the hours of operation, subject to work volume demands. The number of employees does not take into account truck drivers entering upon the Property to receive loads of soil removed.
- H. States that, at its sole expense, it shall, using commercially reasonable means, clean Bradley Road (in both directions) on an as-necessary basis.
- I. States that the boundary of the area which will be subject to surface mining is clearly designated under the ODNR surface mining permit; in this instance surface mining activities being limited to an area at least 250 feet away from residential properties and limiting excavation to 50± feet below the present surface level. Landsong expects that the soil will be used for local/regional projects such as residential and commercial development and improvements.
- J. States that sufficient quantities of excavated soil will be stored on the Property for later use in reclamation activities associated with the surface mining activities or, in the event the landfill is re-opened, reclamation and closure in accordance with the guidelines applicable to the landfill operations phase of the Landsong Business Operations. In the event that a landfill facility license is not obtained by Landsong, Landsong shall perform (and has already committed to follow through with) reclamation activities outlined and mandated by issuance of the Surface Mining Permit by the Ohio Department of Natural Resources.
- K. States that dust will be controlled in accordance with the provisions set forth in the Ohio EPA Dust Control Permit.
- L. States that during soil removal activities under its ODNR Surface Mining Permit, Landsong will comply with OAC 3745-400-11(B)(15), applicable to C&D landfill operations, which prohibits the creation of a nuisance or health hazard from insects, rodents and other vectors. If any resident in the Old Brooklyn area adjacent to the Property believes they are experiencing unusual insect, rodent or other vector activity at their residence attributable to the soil removal activities, they should notify Landsong by contacting the following designated representative:

Landsong Environmental, Inc.  
Attn: Thomas Simich, President  
7603 Old Rockside Road  
Independence, OH 44131  
Phone Number: (216) 509-4057

### **Agreement to Provide Easements to Residents in Old Brooklyn**

As more fully and particularly addressed in the letter submitted to the residents of the Skylane Drive adjacent to the Property, Landsong has extended to the applicable residents of Skylane Drive easements to address encroachment issues discussed in the letter. Upon request of the affected Skylane Drive residents addressed in the letter, Landsong will take the steps outlined in the letter to establish appropriate easements. Landsong's conditions associated with the granting of easements is subject exclusively to the terms and conditions more fully set forth in its aforementioned letter, which offer is only valid for a period of twenty-four (24) months after the commencement of surface mining activities. (A copy of the above-referenced letter is attached hereto as Exhibit A.)

### **Agreement to Support Board of Zoning Appeals Approval**

In consideration for Landsong's statement of its intentions and specific commitments within this Letter of Intent, the City agrees to appear before the Board of Zoning Appeals on April 18, 2011 and tender evidence of its support for the BZA's approval of Landsong's proposed surface mining operations as authorized under the ODNR Mining Permit. At that time, the City shall additionally be permitted to tender this Letter of Intent to the BZA members as a further explanation and statement of the reasons for the City's support of Landsong's surface mining activities.

### **Relocation of Streams Necessary for Stabilization and City's Agreement to Support Issuance of 404 Permit and 401 Certification**

The stream located in the ravine closest to Skylane Drive continues to cause erosion and create soil instability issues which will become more severe over time. The erosion and soil instability issues threaten to detrimentally impact residential backyards as well as residential improvements on the portion of the Property closest to the ravine. The Parties believe that moving the stream and the placement of fill in the ravine is the best method for providing long-term bank stabilization. In order to move the stream and place fill in this area, Landsong must obtain a Section 404 Permit from the Army Corps of Engineers and a Section 401 Water Quality Certification from Ohio EPA. Landsong is seeking the Section 404 Permit and 401 Water Quality Certification in conjunction with its facility license which will allow recommencement of construction and demolition debris landfill operations at the Property.

In recognition that moving the stream and filling the ravine closest to Skylane Drive provides the best possible long term solution for the erosion and stabilization issues, the City agrees to support the issuance of a Section 404 Permit and a Section 401 Water Quality Certification.

### **Relocation of the Stream through the ODOT Parcel and the City's Agreement to Support the Acquisition of the ODOT Parcel**

The Parties recognize that the issuance of the Section 404 Permit and Section 401 Water Quality Certification discussed above depend upon providing proper mitigation for the water quality impacts associated with relocation of the stream and filling of the ravine. The Parties recognize that the best alternative for relocation of the stream is through parcels presently owned by the Ohio Department of Transportation ("ODOT") and known as Permanent Parcel #009-36-002. In recognition that use of the ODOT parcel is the best alternative for relocation of the stream, and in accordance with the City's commitment set forth in the Federal Consent Decree, the City agrees to support by all reasonably efficacious means the acquisition of Permanent Parcel #009-36-002 by Landsong or an entity created by Landsong to hold title to the Property.

### **Future Actions Associated with Landsong's Recommencement of C&D Landfill Operations**

Landsong has continuously been and is currently pursuing the authorizations needed to recommence C&D landfill operations at the site, including but not limited to, a C&D license, a City Fill Permit as well as the Section 404/401 authorizations discussed above. The improvement to the current site conditions discussed herein, including wetland mitigation, removal of unauthorized culverts, installation of the properly sized culverts and the initiation of the dross investigation demonstrate Landsong's commitment to be a reliable operator. Landsong's continued involvement and anticipated site improvements, such as the stabilization of Skylane Drive, are directly tied to Landsong's ability to recommence C&D landfill operations at the Property. Discussed below is the current status of the C&D license and a description of Landsong's intentions with regard to activities associated with commencement of C&D landfill operations.

Current Status of C&D License: Landsong has submitted C&D license applications for 2008, 2009, 2010 and 2011. Due to the pre-existing violations at the site involving wetland impacts and unauthorized installation of the undersized culvert, as well as a change in personnel responsible for reviewing the license, Ohio EPA has yet to approve or provide a Notice of Deficiency as to the license applications. After completion of the dross investigation, Landsong shall have resolved all pre-existing violations which Ohio EPA has asserted delayed review of the license applications. Therefore, Landsong will seek determination of the status of its C&D license application and the license will either be issued or Ohio EPA will issue a written Notice of Deficiency indicating those areas where additional information is need to support issuance of the license.

Adequacy of Current Landfill Cap: There are areas on the Property where landfill cap material was placed by a prior operator over previously-filled portions of the Property. The cap was placed, but never properly certified and OEPA has questioned whether the cap thickness and material can be certified under applicable C&D regulations in its present state. Landsong has voluntarily performed an extensive investigation of the cap by testing the cap material and measuring its thickness using soil borings across the 28± acres where the cap was placed. Landsong's environmental consultant, Hull & Associates, has prepared a written report which compiled the results of its investigation and submitted the report to OEPA for review. Utilizing the data compiled in the report, Landsong is seeking certification of 22 acres of the cap it believes meets quality and thickness requirements. There are an additional six acres where Landsong's investigation determined the cap was possibly inadequate and Landsong will not be seeking immediate certification. Upon commencement of C&D operations, Landsong will place additional cap material in any portion of the six acre area determined to have inadequate cap.

Slope Stabilization: As discussed above, upon issuance of the Section 404/401 permits to relocate the stream and commencement of C&D operations, Landsong will perform activities which will assist in stabilizing the slope bordering the backyards of the residents on Skylane Drive.

Financial Assurance: Landsong will as and when required provide the City with proper financial assurance, in accordance with applicable OEPA guidelines and Ohio Administrative Code Section 3745-400-14.

This Letter of Intent shall be governed by and construed in accordance with the internal, substantive laws of the State of Ohio, and the state and federal courts of Cuyahoga County, Ohio shall have exclusive jurisdiction and venue over equitable disputes arising therefrom.

In witness whereof, the parties hereto have executed this Letter of Intent on the dates so noted below.

Landsong Environmental, Inc.

By: \_\_\_\_\_  
Thomas Simich, its President

Date of Execution: April \_\_\_\_\_, 2011

Ty Incorporated

By: \_\_\_\_\_,  
Thomas Simich, its President

Date of Execution: April \_\_\_\_\_, 2011

City of Cleveland

By: \_\_\_\_\_  
Its Authorized Representatives

Date of Execution: April \_\_\_\_\_, 2011