

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

CITY OF FORT MEADE, a municipal
corporation of the State of Florida,

Plaintiff/Counter-Defendant,

v.

Case No.: 2016CA-003891

BIOSOLIDS DISTRIBUTION SERVICES, LLC,
a foreign limited liability company,

Defendant/Counter-Plaintiff.

STIPULATED SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS STIPULATED SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement") is entered into between the City of Fort Meade, Florida (the "City") and Biosolids Distribution Services, LLC ("BDS") (the City and BDS are collectively referred to as the "Parties"), on the following terms:

WITNESSETH:

WHEREAS, the Parties entered into a Stipulated Settlement Agreement and Limited Release on June 12, 2015, to resolve a protracted dispute between the parties, which included among other issues the appropriate utility rates to charge;

WHEREAS, on March 15, 2016, the City adopted Ordinance 16-06, which BDS claimed improperly modified the utility rates to an amount beyond that agreed to in the Stipulated Settlement Agreement and Limited Release of June 12, 2015;

WHEREAS, the City filed a lawsuit against BDS in the Circuit Court of the Tenth Judicial Circuit in and for Polk County Florida, in the matter styled *City of Fort Meade, Florida v. Biosolids Distributions Services, LLC*, Case No. 2016CA-003891 (the "Action"), seeking to recover disputed amounts owed for unpaid utilities services;

WHEREAS, on September 28, 2018, a Final Summary Judgment was entered in the Action, in the City's favor and against BDS, in the principal sum of \$294,656.74, which is bearing interest at the rate provided by section 55.03, Florida Statutes (the "Final Judgment");

WHEREAS, on October 26, 2018, BDS filed a Notice of Appeal of the Final Summary Judgment;

WHEREAS, on January 22, 2020, the Second District Court of Appeal entered its *per curium* affirmance of the Final Summary Judgment in favor of the City, and entered its Order Granting the City's Motion for Appellate Attorney's Fees in an amount to be determined by the Circuit Court;

WHEREAS, the City filed a Motion for Attorney's Fees and Costs seeking \$39,655.00 in attorney's fees and \$1,063.39 in costs incurred in the Action, and a Motion to Determine Amount of Appellee's Attorney's Fees seeking \$20,685.00 in attorney fees incurred on appeal. The City also claims it is entitled to recover additional attorney's fees, costs, and expenses incurred to collect the sums awarded in the Final Judgment;

WHEREAS, the City initiated and continues to pursue post-judgment collection efforts to satisfy the Final Judgment, including the scheduling of the deposition duces tecum in aid of execution of BDS's corporate representative, issuing discovery in aid of execution, causing the issuance of writs of garnishment, and to collect the attorney's fees, costs, and expenses incurred to date;

WHEREAS, to avoid further time, effort, and expense associated with ongoing post judgment litigation and discovery in aid of execution on the Final Judgment, the Parties desire to compromise and fully and finally resolve and settle the Final Judgment, including all attorneys' fees, costs, and expenses incurred to date by the City;

NOW THEREFORE, IN CONSIDERATION of the mutual promises and covenants set forth below, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. **Recitals**. The above Recitals are true and correct and are hereby incorporated by reference in this Agreement as a material part hereof.
2. **Effective Date**. The Effective Date shall be the last day set forth on the signature pages below. The Effective Date is not contingent on the Court's entry of an order approving this Agreement.
3. **Court Approval**. The Parties agree to file with the Court a stipulated motion and agreed order approving this Agreement, a copy of which stipulated motion and agreed order are attached to this Agreement as Exhibit "A."
4. **Terms of Settlement**. The Parties acknowledge and agree that:
 - a. In consideration of the promises and other considerations and representations set forth in this Agreement, including without limitation the mutual releases contained in paragraph 6 below, and as a material inducement for the City to compromise and enter into this Agreement, BDS shall pay to the City the total sum of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) (the "Settlement Payment"), in immediately available funds via wire transfer to the GrayRobinson, P.A.

Trust Account ("GR Trust Account") pursuant to the wiring instructions set forth on **Exhibit "B"** hereto, which shall be paid within three business days after the City provides BDS a fully executed and approved copy of the Agreement, in full and complete settlement of the Final Judgment, and the City's claims for attorney's fees, expenses, and costs related thereto.

- b. Within ninety-one (91) days of BDS's submittal of the Settlement Payment pursuant to Paragraph 4.a., the City shall file a Satisfaction of the Final Judgment and a Notice of Voluntary Dismissal of pending writs of garnishments in the Action.
5. **Default.** In the event BDS fails to pay the Settlement Payment in the amount specified in Paragraph 4 or within the time provided in Paragraph 4 above, then BDS will be in default of this Agreement. In the event of BDS's default under this paragraph of the Agreement, (a) the City's agreement to accept payment of \$300,000.00 and the Non-Disparagement provision in Paragraph 8 below in satisfaction of the Final Judgment and its pending claims for attorney's fees, costs, and expenses will become immediately null and void; (b) the City shall have the right and entitlement, without the necessity of notice, demand or objection, to the immediate and unilateral entry of a judgment against BDS in the amount of \$61,403.39, representing the City's attorney's fees and costs incurred in the Action and in the appeal ("Consent Fee Judgment"); and (c) the City reserves the right to seek any additional attorney's fees and costs it has incurred, including but not limited to in pursuing post-judgment collection of the Final Judgment or Consent Fee Judgment.
6. **Mutual Release of Claims.**
 - a. In further consideration of the promises and covenants in this Agreement, and as a material inducement for the City to enter into this Agreement and compromise the full amount owed by BDS in the Action, BDS (on behalf of its self and each of its current or former officers, directors, employees, agents, attorneys, affiliates, successors, and assigns) (collectively, the "BDS Releasers"), hereby unconditionally, fully, and forever releases, discharges, and covenants not to sue the City and its current and former officials, commissioners, directors, employees, representatives, attorneys, agents, successors and assigns, and any other individuals or entities acting through or on behalf of any of them (collectively, the "City Releasees"), of and from any and all known or unknown legal or equitable claims, charges, complaints, demands, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, entitlements, costs, losses, debts, and expenses of any nature whatsoever, known or unknown, including without limitation the Action and attorney's fees, costs, and expenses related thereto, which BDS Releasers and/or any of them now have, had, or may hereafter claim to have had against the City Releasees and/or any of them, by

reason of any matter, act, omission, transaction, occurrence, or event that has occurred or is alleged to have occurred up to and including the date of this Agreement.

b. Upon the passage of ninety-one (91) days from the submittal of the Settlement Payment pursuant to Paragraph 4.a., during which ninety-one (91) days no bankruptcy case has been filed by or against BDS nor has BDS made an Assignment for the Benefit of Creditors, in further consideration of the promises and covenants in this Agreement, and as a material inducement for BDS to enter into this Agreement, the City (on behalf of its current and former officials, commissioners, directors, employees, representatives, attorneys, agents, successors and assigns, and any other individuals or entities acting through or on behalf of any of them (collectively, the "City Releasers"), hereby unconditionally, fully, and forever releases, discharges, and covenants not to sue BDS and its current and former officers, directors, members, shareholders, insurers, partners, employees, representatives, attorneys, agents, and BDS's affiliates, successors, predecessors, assigns, parents, and subsidiaries, and the current and former officers, directors, members, shareholders, insurers, partners, employees, representatives, attorneys, agents and any other individuals or entities of each of BDS's affiliates, successors, predecessors, assigns, parents, and subsidiaries acting through or on behalf of any of them (collectively, the "BDS Releasees"), of and from any and all known or unknown legal or equitable claims, charges, complaints, demands, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, entitlements, costs, losses, debts, and expenses of any nature whatsoever, known or unknown, including without limitation the Action and releases, waives, and discharges the court-ordered entitlement to any and all attorneys' fees, costs, and expenses related thereto, which City Releasers and/or any of them now have, had, or may hereafter claim to have had against the BDS Releasees and/or any of them, by reason of any matter, act, omission, transaction, occurrence, or event that has occurred or is alleged to have occurred up to and including the date of this Agreement.

c. Notwithstanding anything to the contrary contained herein, the mutual releases and covenants not to sue in this paragraph 6 shall not extend to any claims arising from or related to an alleged breach of this Agreement.

7. **Time of the Essence:** The Parties agree that time is of the essence with respect to payment of the Settlement Payment and each and every provision hereof.
8. **Non-Disparagement:** For a period of two years from the Effective Date, the Parties, which for purposes of this paragraph includes their officials, commissioners, directors, officers, members, shareholders, partners, managerial employees, representatives, attorneys, agents, successors, and

assigns who are acting through or on behalf of either Party, shall not make any disparaging statements or in any way disparage the other. For purposes of this paragraph “disparage” and “disparaging” mean statements that are false or misleading and tend to cast either Party in a negative light. Nothing in this paragraph shall be construed as preventing the Parties from making truthful statements in response to a subpoena or other legal process, testifying or otherwise making statements in a deposition, hearing, affidavit, or civil or criminal investigation, or advancing or defending their interests in any kind of legal or quasi-judicial proceeding, including but not limited to the enforcement of this Agreement.

9. **Entire Agreement/Amendment:** Each of the Parties warrants there are no promises, inducements, or agreements not expressed herein, and that this Agreement constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous written or oral communications, understandings and agreements with respect to the subject matter hereof. It is expressly understood and agreed that this Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of each of the Parties. Each of the Parties does hereby agree that it will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind of character.
10. **Successors and Assigns:** This Agreement shall be binding upon and inure to the benefit of each of the Parties, and to all employees, agents, servants, insurers, legatees, attorneys, predecessors, successors, assigns, heirs, executors, affiliates, officers, directors, members, shareholders, and joint venturers of each of the Parties.
11. **Counsel:** Each of the Parties warrants that it has been represented and advised by counsel or has had full opportunity to be independently represented and advised by counsel with respect to this Agreement and all matters covered by it. Each of the Parties further warrants that it has read this Agreement and fully understands its content and binding legal effect, and is signing this Agreement freely and voluntarily.
12. **Construction:** Each of the Parties acknowledges that it has cooperated fully in negotiation, drafting, and preparation of this Agreement, and hence, no rule of construction may be used to construe this Agreement against any Party by virtue of that Party’s role in drafting this Agreement.
13. **Governing Law/Severability:** This Agreement is made in the State of Florida and shall be interpreted under the laws of that State. Should any provision of this Agreement be declared illegal or unenforceable, it shall be severable, leaving the remainder of this Agreement in full force and effect. Venue for any action to enforce this agreement shall be in the Action or, if the Action does not

remain open in such other division of the Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida to which the matter may be assigned.

14. **No Admission of Liability:** The Parties agree that neither this Agreement nor the furnishing of the consideration shall be deemed or construed at any time for any purpose as an admission by any Party of any liability or unlawful conduct of any kind.
15. **No Waiver.** Any failure by any of the Parties hereto to exercise any of their rights, interests, demands, or the options set forth herein at any time shall not result in, or be construed as, a waiver of their right to exercise such rights, interests, demands, or the options at any time in the future. Neither this Agreement nor any of the provisions may be changed, waived, discharged, or terminated except by an instrument in writing signed by all the Parties.
16. **Headings:** The headings of this Agreement are for the purpose and convenience only and are not meant to modify or affect the terms of the paragraph to which they belong.
17. **Fees/Costs:** Subject to paragraph 5 above, each Party shall bear its own attorneys' fees and costs to date. In the event of a dispute between the Parties arising out of or concerning breach of this Agreement, the prevailing party on the significant issue in the legal action or proceeding shall be entitled to recover all necessary and reasonable attorneys' fees and costs associated with enforcement of this Agreement, including attorneys fees and costs of any appeal, in addition to any other remedies available.

[this space is intentionally left blank]

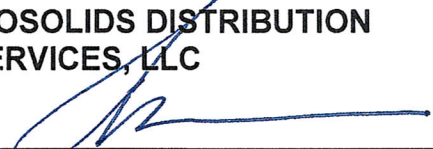
THE UNDERSIGNED PARTIES HAVE CAREFULLY READ THIS "SETTLEMENT AGREEMENT," KNOW AND UNDERSTAND ITS CONTENTS, FREELY AND VOLUNTARILY AGREE TO ABIDE BY ITS TERMS, AND HAVE NOT BEEN COERCED INTO SIGNING IT.

CITY OF FORT MEADE

By _____
JAMES WATTS, MAYOR

Dated: _____


BIOSOLIDS DISTRIBUTION SERVICES, LLC

By  _____
TOM ANDERSON,
as Managing Member

Dated: 4/22/2020

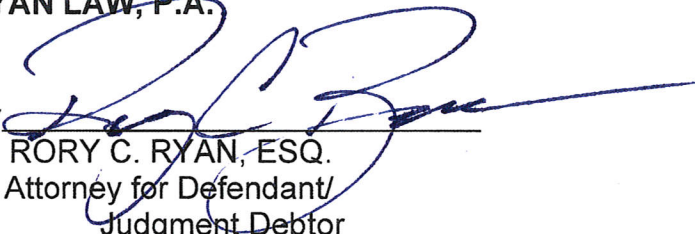
Approved as to form by:

GRAYROBINSON, P.A.

By  _____
THOMAS C. CLOUD, ESQ.
Attorney for Plaintiff/Judgment Creditor

Dated: April 23, 2020

RYAN LAW, P.A.

By  _____
RORY C. RYAN, ESQ.
Attorney for Defendant/
Judgment Debtor

Dated: 4-22-2020

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

CITY OF FORT MEADE, a municipal
corporation of the State of Florida,

Plaintiff/Counter-Defendant,

v.

Case No.: 2016CA-003891

BIOSOLIDS DISTRIBUTION SERVICES, LLC,
a foreign limited liability company,

Defendant/Counter-Plaintiff.

**UNOPPOSED JOINT MOTION FOR ENTRY OF ORDER APPROVING
STIPULATED SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

Plaintiff, CITY OF FORT MEADE, a municipal corporation of the State of Florida ("Fort Meade), and Defendant, BIOSOLIDS DISTRIBUTION SERVICES, LLC, a foreign limited liability company ("BDS") (collectively, "Parties"), by and through their undersigned counsel, respectfully move this Court to enter the attached Agreed Order approving the Parties' Stipulated Settlement Agreement and Mutual Release. As grounds therefore, the Parties state as follows:

1. On April 14, 2020, the Parties to the foregoing cause reached an agreement to resolve the City's claims stemming from the Final Summary Judgment entered in its favor on September 28, 2018.

2. The Parties have conferred and agreed upon a Stipulated Settlement Agreement and Mutual Release (the "Agreement"), a copy of which will be submitted to the Court via cover letter, and the Agreement along with its exhibits has been approved and executed by all Parties.

WHEREFORE, the Parties move this Court to enter the attached Agreed Order approving the Stipulated Settlement Agreement and Mutual Release.

Respectfully submitted this ____ day of April, 2020.

GRAYROBINSON, P.A.

/s/ Matthew D. Jones

MONTEREY CAMPBELL, ESQ.

Florida Bar No. 011387

monterey.campbell@gray-robinson.com

linda.august@gray-robinson.com

karen.pollard@gray-robinson.com

THOMAS A. CLOUD, ESQ.

Florida Bar No. 293326

thomas.cloud@gray-robinson.com

jan.gordon@gray-robinson.com

MATTHEW JONES, ESQ.

Florida Bar No. 86003

matthew.jones@gray-robinson.com

linda.august@gray-robinson.com

Post Office Box 3

Lakeland, Florida 33802-0003

Telephone: (863) 284-2200

Facsimile: (863) 683-0310

Attorneys for City of Fort Meade, Florida

RYAN LAW, P.A.

/s/ Rory C. Ryan

RORY C. RYAN, ESQ.

Florida Bar No. 862010

rryan@ryan-law.com

awood@ryan-law.com

klessard@ryan-law.com

870 Clark Street, Suite 1000

Oviedo, FL 32765

Telephone (407) 359-0403

Facsimile (407) 359-0416

Attorney for Defendant Biosolids

Distribution Services, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of this Court by using the Florida Courts' E-Filing Portal system which will provide service via electronic mail to all counsel of record on this ____ day of April, 2020.

/s/ Matthew D. Jones

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

CITY OF FORT MEADE, a municipal
corporation of the State of Florida,

Plaintiff/Counter-Defendant,

v.

Case No.: 2016CA-003891

BIOSOLIDS DISTRIBUTION SERVICES, LLC,
a foreign limited liability company,

Defendant/Counter-Plaintiff.

STIPULATED ORDER APPROVING SETTLEMENT AGREEMENT

THIS CAUSE having come before the Court upon the Joint Motion of Plaintiff, CITY OF FORT MEADE, and Defendant, BIOSOLIDS DISTRIBUTION SERVICES, LLC, the Court finding that the parties were authorized to enter into such motion, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. The parties' Stipulated Settlement Agreement and Mutual Release, previously filed with this Court along with the Joint Motion, is hereby approved and ratified;
2. The parties are ordered to comply with the terms of the Stipulated Settlement Agreement and Mutual Release in all respects; and
3. The Court reserves jurisdiction to enforce the terms of the Stipulated Settlement Agreement and Mutual Release and enter such further Orders as it deems necessary and just.

DONE AND ORDERED in Chambers in Polk County, Florida this ____ day of
April, 2020.

JOHN M. RADABAUGH, Circuit Judge

Copies furnished to:

Monterey Campbell, Esq.
Thomas A. Cloud, Esq.
Matthew D. Jones, Esq.
Rory C. Ryan, Esq.

EXHIBIT "B"

GRAY ROBINSON
ATTORNEYS AT LAW

CenterState Bank

**LAKELAND TRUST ACCOUNT
INCOMING WIRING INSTRUCTIONS**

BANK NAME:	CenterState Bank 500 S. Florida Avenue, Ste. 100 Lakeland, FL 33801
BANKING NUMBER/ABA ROUTING:	063114030
NAME OF ACCOUNT:	GrayRobinson, P.A. Trust Account
ACCOUNT NUMBER:	2018554
REFERENCE: <i>(Please provide attorney name and/or client/matter number)</i>	<hr/>

Client/matter number: 40432/32