

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between the City of Los Angeles (“City”), County Sanitation District No. 2 of Los Angeles County (“CSD2”), Orange County Sanitation District (“OCSD”), Responsible Biosolids Management, Inc. (“RBM”), R&G Fanucchi, Inc., Sierra Transport, Inc., and the California Association of Sanitation Agencies (“CASA”) (collectively “Plaintiffs”) and the County of Kern and Kern County Board of Supervisors (collectively “Defendants” or “Kern County”). Plaintiffs and Defendants are referred to collectively as “Parties.” For and in consideration of the mutual promises and covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. The Superior Court of the State of California for the County of Tulare (“Court”) in 2016 held a full trial on the merits in *City of Los Angeles et al. v. County of Kern*, Case No. VCU 242057 (“Measure E Case”), and the Court’s March 14, 2017 Final Statement of Decision, attached as Exhibit 1, made findings of fact and conclusions of law invalidating Kern County’s 2006 Measure E Ballot Initiative as preempted by the California Integrated Waste Management Act and in excess of Kern County’s police power. The Court on March 14, 2017, overruled Kern’s filed objections to the Court’s November 28, 2016 Proposed Statement of Decision and entered the Final Statement of Decision.

2. In 2016, the Court also found that the City of Los Angeles has remaining obligations under the California Environmental Quality Act (“CEQA”) pursuant to the following orders entered in *County Sanitation District No. 2 of Los Angeles County, et al. v. County of Kern*, Case No. VCU 189564 (Tulare Co. Super. Ct.) (“CEQA Case”): (1) the “Order After

Appeal and Remand re Cross-Petition for Peremptory Writ of Mandate” entered on December 2, 2005; (2) the “Peremptory Writ of Mandate re First and Fourth Causes of Action of Cross-Petition” entered on December 2, 2005; (3) the corrected Tentative Decision issued on June 2, 2016; and (4) the “Order Sustaining, in Part, and Overruling, in Part, County of Kern’s Objections to City of Los Angeles’ Return on Peremptory Writ of Mandate, and Peremptory Writ of Mandate” and the “Peremptory Writ of Mandate” entered on July 22, 2016. On September 29, 2016, Kern County filed an appeal of the Court’s decision. On October 24, 2016, the City filed a cross-appeal. The appeal and cross-appeal in the CEQA Case are currently pending. (Court of Appeal, Fifth Appellate District Case No. F074483.)

3. The Parties desire to avoid further litigation or controversy regarding the Plaintiffs’ prior land application of biosolids in Kern County, Kern’s regulation thereof, and any CEQA obligations pertaining to the Parties’ past actions in the CEQA case.

4. The Parties agree not to appeal or cross-appeal from the Measure E Judgment entered on March 17, 2017, attached as Exhibit 2, or to file any post-trial motions with respect thereto.

5. The Parties agree that the Final Statement of Decision in the Measure E Case shall be deemed final for purposes of collateral estoppel and res judicata in any future litigation between the Parties.

6. The Stipulated Facts for Trial filed April 12, 2016 is attached as Exhibit 3 and is incorporated into this Agreement. The Parties agree that the stipulated facts set forth therein shall be deemed final for purposes of collateral estoppel and res judicata in any future litigation between the Parties.

7. As specified in the Measure E Judgment, Kern County Ordinance No. G-6931, which became effective January 1, 2003 (the “2003 Ordinance”) currently regulates the land application of biosolids in Kern County, subject to the County’s compliance with the “Order After Appeal and Remand re Petition for Writ of Mandate and Complaint for Injunction and Declaratory Relief” and the “Peremptory Writ of Mandate,” issued on December 2, 2005 in the CEQA Case, and the Court of Appeal’s decision in that case, *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern*, 127 Cal.App.4th 1544 (2005) (“CSD2”).

8. Under the 2003 Ordinance, the Kern County Public Health Services Department issues a Permit for the land application of biosolids (“Permit”) if specific, objective criteria are satisfied. *See* Sections 8.05.050 and 8.05.060. A Permit may be denied only for the reasons identified in Section 8.05.060(G). Kern will issue or reissue Permits under the 2003 Ordinance upon satisfaction of the criteria in Sections 8.05.050 and 8.05.060.

9. Kern County previously issued Permits for Green Acres Farm beginning in 2003 and currently deems Green Acres Farm in compliance with the 2003 Ordinance. Kern County will promptly reissue to the City and/or RBM a Permit for Green Acres Farm upon receipt of the information identified in Section 8.05.060(I)(3).

10. The Parties recognize that current law provides Kern as a California county the ability to enact lawful ordinances within its jurisdiction, including the adoption or amendment of valid ordinances and regulations, and Plaintiffs have the right to challenge the adoption or amendment of any such legislation on any available ground, including without limitation, any grounds based on the Stipulated Facts, Statement of Decision, or Judgment in the Measure E Case. The County recognizes that the City would be entitled to continue land application in the

future as a legal nonconforming use, in the event the zoning of Green Acre Farms is changed after the Effective Date of this Agreement.

11. Within ten days after this Settlement Agreement is signed by all parties, the Parties to the CEQA Case will file a Notice of Settlement in the Court of Appeal for the Fifth Appellate District pursuant to Rule 8.244(a) and will file in the appropriate court an abandonment or request for dismissal of their respective appeals pursuant to Rule 8.244(b) or (c), as appropriate. If the Court of Appeal denies a request for dismissal, the Parties agree to promptly file with the Court of Appeal a joint application for limited remand to enable the Parties to ask the Court to enter the Order Discharging Writ of Mandate attached hereto as Exhibit 4.

12. Within ten days after filing the abandonments or approval by the Court of Appeal of requests for dismissals of the appeal and cross-appeal in the CEQA Case, or the issuance by the Court of Appeal of a limited remand of that case, pursuant to Paragraph 11, the Parties will file a joint application in the CEQA Case asking the Court to enter the Order Discharging Writ of Mandate attached hereto as Exhibit 4. If the Court does not enter the Order Discharging Writ of Mandate, the Parties agree to jointly ask the Court of Appeal for the Fifth Appellate District, pursuant to Code of Civil Procedure Section 128, subdivision (a)(8), to enter an order in conformity with the Order Discharging Writ of Mandate. The failure of the Court or the Court of Appeal to issue any of the orders requested by the Parties pursuant to this Paragraph or the preceding Paragraph shall not affect the enforceability or validity of the provisions of this Settlement Agreement other than this Paragraph, and such other provisions shall all remain in full force and effect.

13. Nothing in Paragraphs 11 or 12 is intended to affect Kern County's obligations under the "Order After Appeal and Remand re Petition for Writ of Mandate and Complaint for Declaratory Relief" and the "Peremptory Writ of Mandate," which were both entered in the CEQA Case on December 2, 2005. Plaintiffs reserve all rights regarding the County's compliance with these orders and any future action taken by the County pertaining to land application of biosolids. In the event that Kern County undertakes further environmental review under CEQA of the 2003 Ordinance or any ordinance regulating biosolids, Kern shall collaborate with Plaintiffs during the CEQA process, including as follows: (1) Kern agrees that a County representative shall offer to meet with CASA and City of Los Angeles Bureau of Sanitation ("LASAN") representatives to discuss CEQA scoping at least thirty days prior to any public release of CEQA scoping documents and shall make himself or herself available for that purpose within the thirty days (unless Kern agrees to a longer timeframe); (2) Kern agrees to provide CASA and LASAN with administrative draft versions of any and all CEQA documents slated for public release and comment at least 30 days in advance of the public release, and agrees that a County representative shall make himself or herself available to meet and discuss said documents with CASA and LASAN representatives within the 30 days (unless Kern agrees to a longer timeframe for review) and consider CASA's and LASAN's input prior to any release of said documents for public comment; and (3) Kern agrees that a County representative shall meet with CASA and LASAN to discuss the CEQA process and the County's evaluation upon the reasonable request of CASA or LASAN for setting up such a meeting. The foregoing sentence shall neither limit nor expand Plaintiff's rights or Kern's obligations under CEQA. Any meetings pursuant to this Paragraph will be in Bakersfield at the offices of the Kern County Planning and Natural Resources Department, unless otherwise agreed in advance by CASA,

LASAN, and Kern. CASA and LASAN agree to keep all information provided by Kern pursuant to this Paragraph confidential until it is publicly disclosed by Kern.

14. Mutual Release and Full Resolution of Dispute. The Parties hereby release and discharge each other, and each of their past and present predecessors, successors, affiliates, subsidiaries, parents, insurers, officers, directors, employees, heirs, assigns, and agents from any and all known and unknown claims, disputes, demands, debts, liabilities, obligations, contracts, agreements, causes of action, suits, or claims for attorneys' fees and costs, of whatever nature, character or description, which were, or could have been, asserted by any party in the Measure E Case or the CEQA Case, including any claims for environmental or physical injury, or nuisance relating to past land application of Class A or Class B biosolids in Kern County by the Plaintiffs, and claims under CEQA regarding the City's environmental review for the purchase and ongoing application of biosolids at Green Acres Farm, including as currently implemented by Responsible Biosolids Management, Inc. Notwithstanding the prior sentence, Kern agrees to not oppose Plaintiffs' filed bill of costs incurred in the Measure E case totaling \$54,055.89, and to pay those costs to Plaintiff City of Los Angeles within 60 days of entry by the Court.

15. Waiver of Civil Code § 1542. Each of the Parties acknowledges and warrants that its signing representatives have read and understand the provisions of California Civil Code section 1542 and each of the Parties expressly, voluntarily, and knowingly waives any and all rights it may have under Civil Code section 1542 with respect to the release set forth in Paragraph 14 above. Section 1542 provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

16. Binding of Successors and Assigns. This Agreement is binding on the Parties' successors and assigns.

17. Dispute Resolution. The Court shall have jurisdiction over and be the venue for any dispute related to the Agreement or proceeding to enforce the Agreement. The parties shall undertake mediation prior to filing any action related to the Agreement.

18. Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties with respect to the subject matter hereof and therefore supersedes all prior discussions, negotiations, and agreements between the Parties. There are no representations, warranties (express or implied), covenants, or agreements between the Parties concerning the subject matter of the Agreement except as expressly provided in this Agreement, and any and all prior agreements or understandings within the subject matter of this Agreement are, upon the effective date of this Agreement, superseded, null, and void.

19. Choice of Laws. This Agreement shall be construed in accordance with and governed by the laws of the State of California.

20. Modification. This Agreement shall not be amended except by mutual written consent of all the Parties. Nothing prohibits any Plaintiff from entering into additional agreements or contracts with Kern County so long as those agreements do not impact or change the obligations of Parties to this Settlement Agreement who are not signatories to the additional agreements or contracts.

21. Multiple Originals. This Agreement may be executed by the Parties in multiple original counterparts, which together shall constitute the entire agreement.

22. Authorization. Each Party warrants and represents to the other Parties that the undersigned representative of each Party is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this Agreement.

23. Notice. All notices requested by this Agreement, and all other correspondence between the Parties pertaining to this Agreement, will be sent to the Parties' representatives who are identified below:

*Plaintiff City of Los Angeles*  
Valerie Flores  
Managing Assistant City Attorney  
CITY OF LOS ANGELES  
1800 City Hall, 200 N. Main Street  
Los Angeles, CA 9002-4110

*Plaintiffs Responsible Biosolids Management, Inc., R&G Fanucchi, Inc. and Sierra Transport, Inc.*  
James B. Slaughter  
BEVERIDGE & DIAMOND, P.C.  
1350 I Street, N.W.  
Suite 700  
Washington, DC 20005-3311

*Plaintiff County Sanitation District No. 2 of Los Angeles County*  
Paul J. Beck  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
633 West Fifth Street, Suite 4000  
Los Angeles, CA 90071

*Plaintiff Orange County Sanitation District*  
Brad Hogin  
WOODRUFF SPRADLIN & SMART  
555 Anton Blvd., Suite 1200  
Costa Mesa, CA 92626

*Plaintiff California Association of Sanitation Agencies*  
Theresa Dunham  
SOMACH SIMMONS & DUNN  
500 Capital Mall, Suite 1000  
Sacramento, CA 95814

*Defendants County of Kern and Kern County Board of Supervisors*  
Steven L. Mayer



ARNOLD & PORTER KAYE SCHOLER LLP  
Three Embarcadero Center, 10<sup>th</sup> Floor  
San Francisco, CA 94111-4024

Mark Nations, Interim County Counsel  
Charles F. Collins, Chief Deputy County Counsel  
Office of County Counsel  
1115 Truxtun Ave., Fourth Floor  
Bakersfield, CA 93301

Any Party may designate a new person or persons to receive notice. All written communications between the Parties required by this Agreement will be sent by email and first-class mail unless agreed otherwise. Any change of address will be communicated in the same manner.

24. Confidentiality. The Parties will maintain the confidentiality of any documents marked confidential in in the Measure E case or the CEQA case. This Agreement and its terms are not confidential.

25. Effective Date. This Agreement is effective on the date it is signed by all Parties.

Dated: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Attorneys for COUNTY OF KERN and  
KERN COUNTY BOARD OF SUPERVISORS

Dated: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Attorney for Plaintiff City of Los Angeles

Dated: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Plaintiff Responsible Biosolids Management, Inc.

Dated: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Plaintiff R&G Fanucchi, Inc.

Dated: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Plaintiff Sierra Transport, Inc.

DATED: \_\_\_\_\_, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: \_\_\_\_\_

PAUL J. BECK

Attorneys for Plaintiff County Sanitation District No. 2  
of Los Angeles County

DATED: \_\_\_\_\_, 2017

WOODRUFF SPRADLIN & SMART

By: \_\_\_\_\_

BRAD HOGIN

Attorneys for Plaintiff Orange County Sanitation  
District

DATED: \_\_\_\_\_, 2017

SOMACH SIMMONS & DUNN

By: \_\_\_\_\_

THERESA A. DUNHAM

Attorneys for Plaintiff California Association of  
Sanitation Agencies