

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

CASE NO. 18-CV-62708-ALTMAN/HUNT

CITY OF FORT LAUDERDALE, a Florida
municipal corporation,

Plaintiff,

v.

CFS FUNERAL SERVICES, INC., a foreign
profit corporation,

Defendant.

_____ /

SETTLEMENT AGREEMENT AND RELEASE

This settlement agreement (“Settlement Agreement”) is entered into between the City of Fort Lauderdale, a municipal corporation (“City”), and CFS Funeral Services, Inc., a Delaware corporation (“CFS” and, collectively with City, the “Parties”).

WHEREAS, CFS is a provider of funeral and cemetery-related merchandise and services.

WHEREAS, for approximately nineteen (19) years, CFS provided cemetery management services at four City-owned cemeteries (“Cemeteries”).

WHEREAS, CFS provided its services to the City pursuant to a series of 5-year contracts, and the most recent contract (“Contract”) between the Parties expired on September 30, 2018.

WHEREAS, disputes have arisen between the Parties relating to the Contract, and claims have been asserted by the City against CFS in the pending lawsuit styled: City of Ft. Lauderdale v. Carriage Funeral Services, Inc., Case No.: 18-CV-62708 pending in the United States District Court for the Southern District of Florida (the “Lawsuit”).

WHEREAS, counterclaims have been asserted by CFS against the City in the Lawsuit.

WHEREAS, City and CFS deny the allegations that each has asserted against the other and maintain that they have acted in conformity with their contractual obligations and in accordance with law.

WHEREAS, the Parties wish to terminate the Lawsuit and to avoid the expense, inconvenience and distraction of further protracted litigation, and do so without any admission of liability whatsoever by either of them.

Now, therefore, in consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

1. The foregoing recitals are incorporated herein by reference.
2. City shall pay to CFS the total sum of one hundred sixty-seven thousand dollars (\$167,000) (“Settlement Sum”), which represents amounts owed prior to this Lawsuit. The Settlement Sum shall be payable as follows:

- a. One lump sum payment, payable no later than thirty (30) days after the Effective Date of this Settlement Agreement. Payment shall be made to “Shook, Hardy & Bacon LLP-Trust Account” and delivered to the trust account of CFS’s counsel of record in the Lawsuit by cashier’s check or wire transfer, as follows:

- i. If by cashier’s check, then payment shall be delivered, via an overnight delivery carrier that provides a tracking number, to the following address:
Carlos Concepción, Esq., Shook, Hardy & Bacon LLP, Citigroup Center,
Suite 3200, 201 S. Biscayne Blvd., Miami, Florida 33131
- ii. If by wire transfer, using the following wiring coordinates:

Commerce Bank

1000 Walnut

Kansas City Mo 64106

ABA Number: 101000019

Account Number: 09700

3. The Parties, individually and for each of their respective affiliates, partners, subsidiaries, parent corporations, shareholders, directors, policyholders, trustees, elected officials, employees, officers, principals, agents, attorneys, insurers, reinsurers, sureties, predecessors, successors, assigns, subrogees and subrogors (collectively the “Released Parties”), do hereby mutually remise, release, acquit, satisfy and forever discharge, each other and each other’s respective Released Parties from any and all past, present or future claims, demands, wages, attorney’s fees, liens, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation of any nature whatsoever, whether known or unknown, and whether fixed or

contingent, which arise from the alleged acts or omissions of City and CFS arising out of the Contract or pleaded in support of the Parties' respective claims and counterclaims asserted in the Lawsuit. This is not a general release, and the Parties release only claims and counterclaims of the nature described in this paragraph.

4. The Parties have mutually drafted this Settlement Agreement, and to the extent that there are any ambiguities or uncertainties contained herein, they will not be construed for or against either party hereto as the drafter of the Settlement Agreement.

5. Each party represents and warrants that it has the full right, and legal capacity and authority to enter into this Settlement Agreement and carry out the obligations noted herein and that the natural person or persons executing this Settlement Agreement on its behalf have full authority and capacity to execute this Settlement Agreement.

6. If any part of this Settlement Agreement is adjudicated invalid, unenforceable or illegal by a court of competent jurisdiction, such adjudication will not affect or impair, in whole or in part, the validity, enforceability, or legality of any remaining portions of this Settlement Agreement. All remaining portions remain in full force and effect as if the original Settlement Agreement had been executed without the invalidated, unenforceable or illegal part.

7. Notwithstanding its place of execution or performance, this Settlement Agreement will be governed by and construed in accordance with the laws of the State of Florida without regard to its conflict of laws principles.

8. Venue for any proceeding related to this Settlement Agreement shall be exclusively in the United States District Court, Southern District of Florida, or, in the absence of federal subject matter jurisdiction, the Circuit Court of the Seventeenth Judicial Circuit Court in and for Broward County, Florida. This venue provision is mandatory, not permissive.

9. All terms, covenants, and conditions of this Settlement Agreement are set forth herein and there are no warranties, agreements, or understandings, expressed or implied, except as are expressly set forth herein. This Settlement Agreement, including any exhibit(s) attached hereto, constitutes the entire agreement and understanding between the parties hereto and supersedes any prior agreement or understanding relating to the subject matter of this Settlement Agreement. This Settlement Agreement may only be modified or amended by a written instrument executed by the Parties hereto.

10. The Parties also acknowledge the contested and adversarial nature of the Lawsuit, and the disputes and disagreements described in the recitals of this Settlement Agreement, and stipulate that in executing this agreement they are not relying on any representation by any other party or

its agents, representatives or attorneys, with regard to: (1) facts underlying the Lawsuit, (2) the subject matter or effect of this Settlement Agreement, and (3) any other facts or issues which might be deemed material to the decision to enter into this agreement, other than as specifically set forth in this Settlement Agreement.

11. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This Settlement Agreement may be delivered by facsimile transmission or electronic transmission in PDF or substantially equivalent format of signed counterparts. Facsimile or electronic signatures will be treated in all respects as having the same effect as an original signature.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be duly executed the day and year last written.

ATTEST:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida.

JEFFREY A. MODARELLI
City Clerk

By: _____
DEAN J. TRANTALIS, Mayor

Date: _____

By: _____
CHRISTOPHER J. LAGERBLOOM,
ICMA-CM, City Manager

(CORPORATE SEAL)

Approved as to form:

By: _____
ALAIN E. BOILEAU, City Attorney

ATTEST:

CFS FUNERAL SERVICES, INC., a Delaware corporation.

By: _____

Date: _____

(CORPORATE SEAL)

Approved as to form:

By: _____
Print Name: _____
Shook Hardy & Bacon, LLP