

Ord.

2014-0100

**INTRODUCED BY: V.J. ST. PIERRE, JR., PARISH PRESIDENT
(DEPARTMENT OF LEGAL SERVICES)**

ORDINANCE NO. 14-4-7

An ordinance to authorize the Parish President to make full and final settlement in the matter entitled **Progressive Waste Solutions of LA, Inc., v. St. Charles Parish**, in the 29th Judicial District Court for the Parish of St. Charles, State of Louisiana, Case No. 77,770-D.

WHEREAS, the attached settlement agreement, mutual release agreement and amendment to the contract represents the terms and monetary amounts agreed to by the parties to finally settle this matter.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. That the Parish President is hereby authorized to sign the settlement, mutual release, and contract amendment and perform the terms contained therein as final compromise of all claims between and among the parties in connection with the above referenced litigation

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

- YEAS: SCHEXNAYDRE, TASTET, WILSON, WOODRUFF, HOGAN, FLETCHER, FISHER-PERRIER
- NAYS: NONE
- ABSENT: BENEDETTO, COCHRAN

And the ordinance was declared adopted this 21st day of April, 2014, to become effective five (5) days after publication in the Official Journal.

CHAIRMAN: [Signature]
 SECRETARY: [Signature]
 DLVD/PARISH PRESIDENT: 4-22-14
 APPROVED: _____ DISAPPROVED: _____
 PARISH PRESIDENT: [Signature]
 RETD SECRETARY: 4-23-14
 AT: 4-40am RECD BY: [Signature]

REFERENCE
Ord. 10-12-12

**SETTLEMENT AGREEMENT, MUTUAL GENERAL RELEASE & AMENDMENT TO
CONTRACT**

THIS SETTLEMENT AGREEMENT, MUTUAL GENERAL RELEASE, & AMENDMENT TO CONTRACT ("this Agreement") is made as of April 21, 2014 with an effective date of May 1, 2014 ("the Effective Date") by and between **St. Charles Parish, Louisiana**, (the "Parish"), and **Progressive Waste Solutions of LA, Inc.**, a Delaware corporation ("Progressive"). Parish and Progressive each shall be referred to individually as a "Party" and collectively as "the Parties." Unless otherwise specified, all references to Sections refer to sections of this Agreement and all capitalized terms have the meanings as defined in this Agreement.

RECITALS:

WHEREAS, Progressive is Plaintiff and Parish is Defendant in that certain litigation known as, namely, **Progressive Waste Solutions of LA, Inc., v. St. Charles Parish**, in the 29th Judicial District Court for the Parish of St. Charles, State of Louisiana, Case No. 77,770-D ("the Lawsuit"); and

WHEREAS, on or about September 23, 2010, the Parish caused to be advertised the 2011 Contract Documents and Specifications for Solid Waste Collection for St. Charles Parish, Louisiana (the "RFP"); and

WHEREAS, on or about October 20, 2010, the Parish issued Addendum No. 1 and Addendum No. 2 to the 2011 Contract Documents and Specifications for Solid Waste Collection; and

WHEREAS, on or about December 6, 2010, Parish issued a resolution proposing to accept the proposal of SDT Waste & Debris Services, LLC and the Parties executed a Memorandum of Understanding in which the Parish awarded the work described in the RFP to SDT and SDT agreed to perform that work as described in the RFP and subsequent Addenda No. 1 and 2 (the "Contract"); and

WHEREAS, SDT began performing its obligations under the Contract on March 1, 2011; and

WHEREAS, on or about June 1, 2011, IESI LA Corporation purchased (1) all of the issued and outstanding membership interests of SDT Waste and Debris Services, LLC and (2) certain assets owned or held by SDT, Inc.; and

WHEREAS, on December 20, 2011, SDT Waste and Debris Services, LLC was merged into IESI LA Corporation, with IESI LA Corporation being the surviving entity; and;

WHEREAS, on January 12, 2012, IESI LA Corporation changed its name to Progressive Waste Solutions of LA, Inc.; and

WHEREAS, the Parish and Progressive are in disagreement about the Parties' obligations under the Contract; and

WHEREAS, the Parish withheld from payment to Progressive for services rendered under the Contract an amount equal to \$29,448.81; and

WHEREAS, the Parties desire to amend the Contract as further described herein and settle the Lawsuit upon the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements and the releases contained herein and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Parish's Payment to Progressive.** On or before the fifteenth (15th) calendar day following the execution of this Agreement, the Parish agrees to pay to Progressive the sum of ***Twenty Nine Thousand Four Hundred Forty Eight and 81/100 Dollars (\$29,448.81)*** ("Parish's Payment"), by check made out to Progressive Waste Solutions of LA, Inc. When the funds representing Parish's Payment are deposited into Progressive Waste Solutions of LA, Inc.'s bank account, such funds shall be in full and complete settlement and satisfaction of the Lawsuit.

2. **Joint Stipulation of Dismissal.** Within five (5) days after receipt of Parish's Payment, the Parties shall execute and submit to the Court: (a) a **Joint Stipulation of Dismissal** with Prejudice ("the Joint Stipulation"); and (b) a proposed Order of Dismissal with Prejudice "the Proposed Order").

The Joint Stipulation shall state:

1. "Plaintiff and Defendant, through their respective undersigned counsel, have fully and completely settled this matter.
2. "Plaintiff and Defendant, therefore, move to dismiss this matter with prejudice, with each Party to bear its own attorneys' fees and costs, with the Court's retention of jurisdiction to enforce the Parties' Settlement Agreement, General Mutual Release, & Amendment to Contract dated April 21, 2014;" and

The Proposed Order shall state:

"Considering the Joint Stipulation of Dismissal with Prejudice herein and the record, IT IS HEREBY ORDERED AND ADJUDGED that all claims in this matter are DISMISSED WITH PREJUDICE, with each Party to bear its own attorneys' fees and costs, with the Court's retention of jurisdiction to enforce the Parties' Settlement Agreement dated April 21, 2014.

3. **Mutual Releases.**

(a) **General Release by Progressive.** In exchange for the Parish's Payment provided for by Section 1 and the General Release provided for by Section 3(b), and other than the obligations created by this Agreement, Progressive, on its own behalf and on behalf of its current and former principals, members, officers, directors, agents, servants, employees, affiliates successors and assigns, and all other persons, attorneys (collectively, the "Progressive Releasor's"), releases, remises, acquits, satisfies and forever discharges the Parish and all of its current and former council members, administration members, directors, agents, servants, employees, attorneys, successors, and assigns, and all other persons, firms, entities or corporations in any way connected therewith (collectively, the "Parish Releasees") of and from any and all claims, debts, accounts, reckonings, bonds, bills, specialties, covenants, manner of action and actions, torts, sums of money, contracts, controversies, agreements, promises, demands, causes of action, damages, judgments, executions, demands or suits at law and/or equity of whatsoever kind or nature, cause or thing from the beginning of the world to the day of these presents, whether due or not, direct or contingent, liquidated or unliquidated, latent or patent, including, without limitation, arising out of or relating in any way to the complaint filed in the Lawsuit and the underlying facts and events related thereto.

(b) **General Release by Parish.** In exchange for the General Release provided for by Section 3(a), and other than the obligations created by this Agreement, Parish, on its own behalf and on behalf of its principals, shareholders, officers, directors, agents, servants, employees, affiliates, successors and assigns, and all other persons, attorneys, firms, entities or corporations in any way connected therewith (collectively, the "Parish Releasers"), releases, remises, acquits, satisfies and forever discharges Progressive and all of its principals, officers, directors, agents, servants, employees, attorneys, affiliates successors, and assigns, and all other persons, firms, entities or corporations in any way connected therewith, (collectively, the Progressive Releasees") of and from any and all claims, debts, accounts, reckonings, bonds, bills, specialties, covenants, manner of action and actions, torts, sums of money, contracts, controversies, agreements, promises, demands, causes of action, damages, judgments, executions, demands, or suits at law and/or equity of whatsoever kind or nature, cause or thing from the beginning of the world to the day of these presents, whether due or not, direct or contingent, liquidated or unliquidated, latent or patent, including, without limitation, arising out of or relating in any way to the Lawsuit and the underlying facts and events related thereto.

4. **Amendment to Contract.** It is hereby understood and agreed by the parties that the following provisions shall amend the Contract accordingly. In the event of any conflict between the provisions of this Agreement and the Contract, the provisions of this Agreement shall control.

(a) Section 1.02 of the Contract "Definition of Bulky Waste" is hereby deleted in its entirety and replaced with the following: "Bulky Waste – Stoves, refrigerators, water heaters, washing machines, furniture, window air conditioning units, and other large similar household items, other than Construction Debris, Dead Animals, Hazardous Waste or Stable Matter with weights or volumes greater than those allowed for Containers.

(b) Section 1.03 of the Contract "Definition of Bundle" is hereby deleted in its entirety and replaced with the following: "Bundle – Newspapers and magazines securely tied together forming an easily handled package not exceeding 1 foot stacked in height or 70 pounds in weight that are not located in a container."

(c) Section 1.19 of the Contract "Definition of Rubbish" is hereby deleted in its entirety and replaced with the following: "Rubbish – All waste wood, wood products, Christmas trees, tree trimmings, grass cuttings, dead plants, weeds, leaves, dead trees or branches thereof that has parts having a circumference of less than thirty-six inches (36") at the cut line and cut limbs measuring less than six (6) feet in length."

(d) It is understood and agreed by the Parties that Progressive shall only be responsible for collecting a maximum of up to an aggregate of ten (10) cubic yards (every other week) of Rubbish and Bulky Waste per Residential Unit that is placed curbside in front of the residence. It is acknowledged and agreed that Progressive shall not be responsible for any Rubbish and Bulky Waste in excess of an aggregate of ten (10) cubic yards per Residential Unit or any pile of Rubbish and Bulky Waste in excess of ten (10) cubic yards, and the Residential Unit shall be solely responsible for removal of such waste; provided, however, the Residential Unit may contact Progressive for the removal of any pile of Rubbish and Bulky Waste in excess of ten (10) cubic yards for a cost of \$14.78 per cubic yard. Progressive shall invoice the Residential Unit directly for any pile of Rubbish and Bulky Waste in excess of ten (10) cubic yards that is picked up by Progressive and Parish shall pay the cost of disposal for any such Rubbish and Bulky Waste pile. Progressive will run enough boom trucks (or other equipment sufficient to satisfy the obligations contained herein) in order to ensure that any

pile of Rubbish and Bulky Waste shall be picked up within two (2) weeks of the earlier of (i) Progressive identifying a pile of Bulky Waste and/or Rubbish placed curbside for pickup, (ii) notice from the Parish of a pile of Bulky Waste and/or Rubbish needing to be picked up, or (iii) notice from a Residential Unit of a pile of Bulky Waste and/or Rubbish needing to be picked up. Notwithstanding anything to the contrary contained herein, Progressive shall continue to pickup one (1) small hand pile of Rubbish from each Residential Unit on such Residential Unit's collection day. A "small hand pile" is one that may be easily picked up at one time by one person with his hands.

(e) It is understood and agreed by the Parties that Progressive shall receive additional compensation in the amount of \$1.57 per Residential Unit per month for the additional services provided herein.

(f) It is hereby agreed by the Parties that the term of the Contract is extended for an additional one-year and two-month period, taking into consideration the Effective Date, such that the Contract will terminate on April 30, 2017. Upon mutual agreement between the Parish Council and Progressive, the Contract may be extended for an additional five (5) year period, beginning on May 1, 2017 and terminating on April 30, 2022.

5. **Acknowledgments.** Parish and Progressive acknowledge that: (i) they may hereafter discover claims or facts in addition to or different from those they now know or believe to exist with respect to the subject matter of the Lawsuit, which, if known or suspected at the Effective Date, may have materially affected the settlement embodied herein; (ii) each Party's Release provided herein applies to any such additional or different claims or facts; and (iii) the significance and consequences of the Release contained herein has been explained to each Party by its respective counsel and that each Party understands the significance and consequences of this Release.

6. **Costs and Expenses.** Except for Parish's Payment, each of the Parties shall bear its/their own costs, expenses, and attorneys' fees in connection with this Agreement and the Lawsuit, including any right to obtain attorneys' fees or costs from the opposing party that may have existed in the Lawsuit.

7. **Representations & Warranties.** Each Party represents and warrants that it: (a) has the requisite power and legal authority to make, enter into and deliver this Agreement and to fully perform its or his duties and obligations under this Agreement; (b) has not transferred or assigned to any person or entity any right, interest, claim or cause of action being settled, compromised or released by this Agreement; and (c) has executed this Agreement in reliance solely upon its or his own independent analysis and judgment. Parish represents and warrants that this Agreement and its Release has been duly and validly executed and delivered and constitutes its valid and binding obligation, enforceable in accordance with its terms. Progressive represents and warrants that this Agreement and its Release has been duly and validly executed and delivered and constitutes its valid and binding obligation, enforceable in accordance with its terms.

8. **No Bankruptcy.** Neither Parish nor Progressive is insolvent; is unable to pay its bills as they become due, in the ordinary course of business; has liabilities that exceed its assets; nor presently contemplates or intends to file any petition in bankruptcy within one year and one day after the Effective Date; nor is aware of any statements, plans or threats by any entity or person to commence bankruptcy or insolvency proceedings against any of them within one year and one day after the Effective Date.

9. **No Oral Amendment or Modification.** This Agreement may not be altered, amended or modified except by a further writing signed by all of the Parties. No course of dealing, course of performance or usage of trade shall modify or change any express term of this Agreement.

10. **Interpretation.** The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party because of the authorship of any provision of this Agreement.

11. **No Waiver of Breach.** The waiver of any provision of this Agreement shall not be construed or operate as a waiver of any subsequent breach.

12. **Severability.** If any of the provisions, terms or clauses of this Agreement is declared illegal, unenforceable or ineffective by an authority of competent jurisdiction, such provision, term and clause shall be deemed severable, such that all other provisions, terms and clauses of this Agreement shall remain valid and binding upon all Parties, except that any promise given expressly in exchange for any provision, term or clause of this Agreement shall be considered discharged.

13. **Counterparts.** This Agreement may be executed in counterpart originals, each of which shall be an original with the same effect as if the signatures thereto were on the same instrument.

14. **Strict Adherence.** The failure of any Party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of the Agreement.

15. **Notices.** Any notices to be given with respect to this Agreement shall be given by reputable overnight delivery service, certified United States mail, or international courier. Such notice shall be addressed as follows:

If to Parish:

Leon Vial
St. Charles Parish, Dept. of Legal Services
P.O. Box 302
Hahnville, LA 70057

If to Progressive:

Guice Giambrone
Blue Williams, L.L.P.
3421 North Causeway Blvd., Suite 900
Metairie, LA 70002

With a copy to:

Amy J. Hochberger
Progressive Waste Solutions of LA, Inc.

2301 Eagle Parkway, Suite 200
Fort Worth, TX 76177

16. **Choice of Law; Choice of Forum.** This Agreement shall be governed by the substantive law of the State of Louisiana, and any dispute hereunder shall be governed by the substantive law of the State of Louisiana irrespective of choice of law principles. Any dispute, controversy or claim in any way arising out of or relating to this Agreement shall be brought before the Judicial District Court in and for St. Charles Parish, Louisiana, to whose exclusive jurisdiction the Parties expressly consent.

17. **Attorneys' Fees.** If any Party commences an action against any other Party to enforce any of the terms, covenants, conditions or provisions of this Agreement, including the Mutual Releases agreed to herein, the prevailing Party in any such action shall be entitled to recover reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action from the losing Party.

18. **No Third Party Beneficiaries.** This Agreement is made for the sole and exclusive benefit of the Parties, persons or entities identified herein. The Parties do not intend to benefit any person or entity not a Party to this Agreement unless identified by name herein. For the sake of clarity, the Progressive Releasees and the Parish Releasees are intended third party beneficiaries of this Agreement.

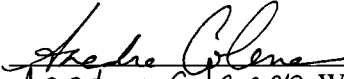
19. **Entire Agreement; Merger.** This Agreement and the Contract constitute the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior oral and written agreements between them. Each of the Parties has relied upon the advice of its own counsel in counsel in determining whether to enter into this Agreement, and not on any statement made by any other Party or counsel for any other Party. In the event of any conflict between the terms of the Contract and the Agreement, the terms of this Agreement shall control.

20. **No Admission of Liability.** Any release, warranty or payment contained herein is not to be construed as an admission of liability by any Party to any other Party, the same being expressly denied. This Agreement is a compromise of doubtful and disputed claims and nothing herein is to be construed as an admission, either in whole or in part, of any disputed liability on the part of any of the settling Parties or their representatives. It is understood and agreed that all releasing Parties expressly deny any liability to one another.


[Signatures and Acknowledgements Continue on Following Pages]

In Witness Whereof, the Parties have executed this Agreement as of the Effective Date.

Signed, Sealed and Delivered
in the presence of:

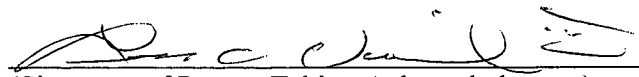

Anedra Coleman Witness
(Print Name)

St. Charles Parish

By: 
Name: V.J. ST. PIERRE
Title: PARISH PRESIDENT

State of Louisiana
Parish of St. Charles

The foregoing instrument was acknowledged before me, this 23rd day of April 2014, by
V.J. St. Pierre, Jr. as President of St. Charles Parish, by and on
behalf of the Parish. He is personally known to me or has produced self as
identification.


(Signature of Person Taking Acknowledgment)

Leon C. V. J.
(Name of Acknowledger Typed, Printed or Stamped)

5825 (Notary Commission Number)

Settlement Agreement, Mutual General Release, & Amendment to Contract
St. Charles Parish / Progressive Waste Solutions of LA, Inc.

Signed, Sealed and Delivered
in the presence of:

Billie G. Souder
Billie G. Souder, Witness
(Print Name)

[Signature]
ECYATER, Witness
(Print Name)

Progressive Waste Solutions of LA, Inc.,

By: *[Signature]*
John Gustafson, Vice President
Amy J. Hochberger, Legal Counsel &
Assistant Secretary

State of Texas
County of DENTON

The foregoing instrument was acknowledged before me, this 29 day of April 2014, by ~~John Gustafson~~, as ~~Vice President~~ Asst. Secretary of Progressive Waste Solutions of LA, Inc., a Delaware corporation, by and on behalf of the corporation. He is personally known to me or has produced _____ as identification.

Amy Hochberger

Gina Engler
(Signature of Person Taking Acknowledgment)

GINA ENGLER
(Name of Acknowledger Typed, Printed or Stamped)
N/A (Notary Commission Number)

