

ORD

2016-0358

**INTRODUCED BY: LARRY COCHRAN, PARISH PRESIDENT
(DEPARTMENT OF LEGAL SERVICES)**

ORDINANCE NO. 16-10-6

An ordinance to authorize the Parish President to make full and final settlement in the matter entitled "Wallace C. Drennan, Inc. vs. St. Charles Parish, et al", 29th Judicial District Court, Parish of St. Charles, No. 80,506 consolidated with 77453 and 77452-E.

WHEREAS, Judgment and Incorporated Reasons were rendered by the Honorable Timothy Marcel, Judge, on July 29, 2016, in connection with the St. Charles Parish Public Works Project known as Canal #10 Drainage Improvements, Project No. P090201.2, for the full contract price, as amended by change order, in the amount of \$1,228,946.14, subject to credit for any sums previously paid to Wallace C. Drennan, Inc., leaving an unpaid balance of \$100,000.00, together with interest on any outstanding unpaid sums at the legal rate from June 7, 2013 until paid, and all costs; and,

WHEREAS, Additionally, the Court awarded \$5,827.25 to Wallace C. Drennan, Inc. for labor, materials and equipment costs incurred in the performance of the work performed outside the scope of the plans and specifications of the contract, together with interest thereon at the legal rate from June 7, 2013 until paid; and,

WHEREAS, Wallace C. Drennan, Inc. was also awarded attorneys' fees in the amount of \$50,000.00 together with interest at the judicial rate from the date of the judgment until paid; and,

WHEREAS, the total payoff of the Judgment is \$171,632.00; and,

WHEREAS, the parties have agreed to compromise and make full and final settlement for the sum of \$160,000.00.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION 1. That the President of St. Charles Parish is hereby authorized to execute a Full and Final Settlement Agreement, and pay to Wallace C. Drennan, Inc. the sum of **ONE HUNDRED SIXTY THOUSAND AND NO/100THS (\$160,000.00) DOLLARS.**

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

- YEAS: HOGAN, WILSON, CLULEE, GIBBS, WOODRUFF, BELLOCK, FLETCHER, FISHER-PERRIER
- NAYS: NONE
- ABSENT: BENEDETTO

And the ordinance was declared adopted this 17th day of October, 2016, to become effective five (5) days after publication in the Official Journal.

ACTING

CHAIRMAN: [Signature]
 SECRETARY: [Signature]
 DLVD/PARISH PRESIDENT: [Signature]
 APPROVED: _____ DISAPPROVED: _____
 PARISH PRESIDENT: [Signature]
 RETD/SECRETARY: [Signature]
 AT: 8:30a RECD BY: [Signature]

FULL AND FINAL SETTLEMENT AND RELEASE AGREEMENT

This Full and Final Settlement and Release Agreement (referred below as the "Settlement and Release Agreement or Agreement") is entered into and executed (along with the initials at the end of each page) in multiple originals on the dates set forth below by the following parties:

PARTIES:

PLAINTIFF AND DEFENDANT-IN- RECONVENTION: WALLACE C. DRENNAN, INC.

DEFENDANTS AND PLAINTIFFS-IN- RECONVENTION (REFERRED BELOW AS "DEFENDANTS OR RELEASED PARTIES"): ST. CHARLES PARISH, V.J. ST. PIERRE IN HIS CAPACITY AS PRESIDENT OF ST. CHARLES PARISH HAVING BEEN SUBSTITUED WITH LARRY COHCAN IN HIS CAPACITY AS PRESIDENT OF ST. CHARLES PARISH.

1. ORIGINS OF THE SETTLEMENT AND RELEASE AGREEMENT:

This Settlement and Release Agreement arises from the allegations and claims asserted in the various pleadings captioned **WALLACE C. DRENNAN, INC. VERSUS ST. CHARLES PARISH AND V.J. ST. PIERRE IN HIS CAPACITY AS PRESIDENT OF ST. CHARLES PARISH, CASE NUMBER 80506 C/W 77543 C/W 77452, 29th Judicial District Court, Parish of St. Charles, State of Louisiana, including that of a Writ of Mandamus (80506) filed September 29, 2015, a Petition for Damages and an Amended and Restated Petition for Damages (77453) filed on October 13, 2013, an Answer and Reconventional Demand filed on February 14, 2014 and the appeal taken to the Louisiana Court of Appeals, 5th Circuit, # 16CA177. The allegations are incorporated herein as if the allegations had been restated and included in the documents as set forth in the pleadings listed in the suit numbers above or as if the pleadings have been attached herein. For reference, the Pleadings can be found in the Clerk of Court's office for the Parish of St. Charles and the Clerk of Court's office for the Court of Appeal, 5th Circuit.**

2. PAYMENTS AND CONSIDERATION:

In consideration of this Settlement and Release Agreement, the Defendants and Plaintiffs-in-Reconvention hereby agrees to pay One Hundred Sixty Thousand Dollars and 00/100 cents (\$160,000.00) to Wallace C. Drennan, Inc. who acknowledges and accepts the receipt of payment of the funds.

3. GENERAL RELEASE AND DISCHARGE

In consideration of the payments stipulated in Section 2 herein, Wallace C. Drennan, Inc. completely releases, acquits and forever discharges the Defendants, the Released Parties, their predecessors, successors, parents, affiliates, subsidiaries, divisions, agents, assigns and anyone else acting or purporting to act on their behalf, as well as any and all others for whose acts or omissions any of the said parties might be responsible (collectively referred to as the "Released Parties") from any and all rights, claims, demands, damages, liabilities, responsibilities or actions of any kind or nature whatsoever which Wallace C. Drennan, Inc., now has, or may have in the future, in whole or in part arising out of, related to, resulting from, or contributed to by the allegations referenced in Section 1, Origins of the Settlement and Release, whether asserted or not asserted, and by Defendants' allegations contained in the pleadings in Section 1, Origins of Settlement and Release. As part of this Settlement and Release Agreement, Wallace C. Drennan, Inc., hereby authorizes and directs its attorney to dismiss its lawsuit in the District Court with full prejudice against Defendants and Plaintiffs-in-Reconvention forever barring any action in the future involving the claims and defenses as asserted in Section 1 above. Defendants and Plaintiffs-in-Reconvention will dismiss with prejudice its claims against Wallace C. Drennan, Inc. with prejudice.

This Settlement and Release Agreement shall be a full, binding final and complete settlement and release of all existing claims and of all claims which may arise in the future between the parties regarding the allegations incorporated and found in Section 1, Origins of Settlement and Release Agreement. This Settlement and Release Agreement shall serve as the only evidence necessary to prove complete compromise of all claims regarding the claims stated above, and to support and prove any obligation thereunder, and may be offered into evidence and pled in support thereof without objection.

Page 1 of 4
INITIAL WCD, INC.  DATE 11/7/16
INITIAL SCP  DATE 11/3/16

Wallace C. Drennan, Inc. hereby agrees that this Settlement and Release Agreement is a general release, and that it waives and assumes the risk of any and all claims for damage, loss or injury that exist as of this date, whether through ignorance, oversight, error, negligence, or otherwise, and that if known would materially affect Wallace C. Drennan, Inc.'s, decision to enter this Settlement and Release Agreement. It is, nonetheless, Wallace C. Drennan, Inc.'s intention and agreement that any claims it may have against the Released Parties for any such injury or claims for damages as set forth as allegations in the pleadings referenced in Section 1, are the subject of this Settlement and Release Agreement and are hereby completely released, acquitted and forever discharged.

Wallace C. Drennan, Inc. further agrees to accept payment of the sum specified in Section 2 of this Settlement and Release Agreement in complete compromise of any rights, claims, demands or actions of any kind or nature whatsoever that may arise in the future including, but not limited to claims that it may have at any time in the future and that in any way arise out of the claims or allegations asserted in Section 1 above. It is Wallace C. Drennan, Inc.'s intention and desire that this Settlement and Release Agreement be as broad and comprehensive as possible so that the Released Parties are never to be liable, directly or indirectly, to Wallace C. Drennan, Inc. or its successors, or assigns or any person or entity claiming by, through, under or on behalf of it for any claims, demands, actions or causes of action of whatsoever nature or character regarding Wallace C. Drennan, Inc.'s claims against Released Parties as set forth in Section 1 above. It is understood and agreed by and among the parties that this Settlement and Release Agreement is a compromise of disputed claims and disputed issues of law and fact, and the payments made in connection therewith are not to be construed as an admission of liability or fault on the part of the Released Parties, all of whom expressly deny any liability in connection herewith or on the part of Wallace C. Drennan, Inc.

4. ATTORNEY'S FEES

Wallace C. Drennan, Inc. and the Released Parties shall bear their own attorneys' fees arising from the action of their own counsel in connection with the Lawsuit, this Settlement and Release Agreement, and the matters and documents referred in Section 1 above.

5. WARRANTY OF CAPACITY TO EXECUTE AGREEMENT

Wallace C. Drennan, Inc. warrants that no other person or entities have any interest in the claims referred to in this Settlement and Release Agreement, and that it has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or actions referred to in this Agreement. Further, Wallace C. Drennan, Inc. and the Released Parties warrant that their representatives signing on Wallace C. Drennan, Inc.'s and the Released Parties' behalf have the full authority to enter into this Agreement.

6. ENTIRE AGREEMENT AND SUCCESSORS IN INTEREST

This Settlement and Release Agreement contains the entire agreement between Wallace C. Drennan, Inc. and the Released Parties with regard to the matter set forth Section 1 above, and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each. Wallace C. Drennan, Inc. thereby agrees that this Settlement and Release Agreement shall be construed in the broadest possible sense in favor of the Released Parties.

It is also the intention of the parties entering into this Settlement and Release Agreement that the various provisions of this Settlement and Release Agreement be considered as separate and distinct. Further, if any portion or portions of this Settlement and Release Agreement are deemed invalid or ineffective, the otherwise valid portion or portions of the Settlement and Release Agreement shall remain valid and in full effect and, further, that any invalid portion or portions of the Settlement and Release Agreement may be severed without invalidation of the Settlement and Release Agreement as a whole.

7. REPRESENTATION OF COMPREHENSION OF SETTLEMENT AND RELEASE AGREEMENT:

In entering into this Settlement and Release Agreement, Wallace C. Drennan, Inc. represents that the terms of this Settlement and Release Agreement has been completely explained to its officers of the corporation by their attorney, and that those terms are fully understood and accepted by its officers of the corporation. The Released Parties represent that the terms and conditions of this Settlement and Release Agreement have been fully vetted at a public hearing as required by law.

Page 2 of 4
INITIAL WCD, INC. SD DATE 11/7/16
INITIAL SCP WAL DATE 11/3/16

This Settlement and Release Agreement is the product of arm's-length negotiations between parties represented by counsel. No party shall be deemed to be the drafter of this Settlement and Release Agreement or any of its provisions. No presumption shall be deemed to exist in favor for or against any party as a result of the preparation or negotiation of this Settlement and Release Agreement.

8. CONFIDENTIALITY:

The terms of this Settlement and Release Agreement shall remain confidential upon the execution of the agreement except should there be a FOIA or Public Records Request under State Law, then the terms and conditions of the Settlement and Release Agreement may be released as required by law. Further, nothing in this agreement shall prevent the parties from disclosure to those parties that may be required to have the information such as any taxing authority. The Parties recognize that certain public officials will be privy to the terms and conditions of this Settlement and Release Agreement and will make every effort to assure the Wallace C. Drennan, Inc. that the terms and conditions are not released after the execution of this Settlement and Release Agreement. Nothing in this provision shall create a separate and distinct cause of action for damages.

9. GOVERNING LAW:

This Settlement and Release Agreement shall be construed and interpreted in accordance with the substantive law of the State of Louisiana, excluding its choice of law rules.

10. ADDITIONAL DOCUMENTS

All parties agree to cooperate fully and execute any and all documents and supplemental documents and to take all additional action that may be necessary or appropriate to give full force and effect to the basic terms and intent of the Settlement and Release Agreement.

AS AGREED:

PLAINTIFF AND DEFENDANT-IN-RECONVENTION, WALLACE C. DRENNAN, INC.
BY

Wallace C. Drennan, IN HIS OFFICIAL CAPACITY
AND AUTHORIZATION TO ENTER INTO THE AGREEMENT ON BEHALF OF
WALLACE C. DRENNAN, INC.

Loretta G. Mince
LORETTA G. MINCE

ATTORNEY FOR WALLACE C. DRENNAN, INC.
EXECUTED AS OF THIS 7 DAY OF November, 2016.

DEFENDANTS AND PLAINTIFFS-IN-RECONVENTION, ST. CHARLES PARIS, AND V.J.
ST. PIERRE IN HIS CAPACITY AS PRESIDENT OF ST. CHARLES PARISH HAVING
BEEN SUBSTITUED WITH LARRY COCHRAN IN HIS CAPACITY AS PRESIDENT OF
ST. CHARLES PARISH.

Larry Cochran
LARRY COCHRAN IN HIS CAPACITY AS PRESIDENT OF ST. CHARLES PARISH

Charles M. Raymond
CHARLES M. RAYMOND
ATTORNEY FOR DEFENDANTS AND PLAINTIFFS-IN-RECONVENTION

EXECUTED AS OF THIS 1 DAY OF November, 2016.

ACKNOWLEDGEMENT

STATE OF LOUISIANA
PARISH OF Jefferson

BEFORE ME, the undersigned authority and in the presence of the undersigned witnesses and Notary Public, personally came and appeared WALLACE C. DRENNAN, on behalf of and as PRESIDENT of WALLACE C. DRENNAN, INC., a Louisiana corporation domiciled and doing business in the Parish of Jefferson, State of Louisiana, who, being by me first duly sworn, did depose and say:

That He has read and fully understands the above and foregoing Full and Final Settlement and Release Agreement, and that HE has executed this instrument in multiple counterparts in his official capacity as President of WALLACE C. DRENNAN, INC. and has complete authority to enter into this Settlement and Release Agreement on behalf of and forever binding WALLACE C. DRENNAN, INC. for the purposes herein set forth.

Wallace C. Drennan
WALLACE C. DRENNAN, AS PRESIDENT OF WALLACE C. DRENNAN, INC.

WITNESSES:

[Signature]

PRINT NAME: Teresa S. Deemer
ADDRESS: 1500 Nine Mile Point Rd. Westwego, LA 70094

Pam Lauser
PRINT NAME: Pam Lauser
ADDRESS: 1500 Nine Mile Point Rd Westwego, LA 70094

SWORN TO AND SUBSCRIBED before me,
this 7 day of November,
2016.

[Signature]

NOTARY PUBLIC
PRINTED NAME: _____
ADDRESS: _____
COMMISSION NUMBER: _____

SEAL



OFFICIAL SEAL
LORETTA G. MINCE
BAR ROLL # 25796
STATE OF LOUISIANA
PARISH OF ORLEANS
My Commission is for Life

29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. CHARLES

STATE OF LOUISIANA

NO.: 80,506 c/w 77453 and 77452

DIVISION: "E"

WALLACE C. DRENNAN, INC.

VERSUS

ST. CHARLES PARISH, ET AL

FILED: _____

DEPUTY CLERK

JOINT MOTION TO DISMISS ALL CLAIMS WITH PREJUDICE

NOW INTO COURT, through undersigned counsel, come **Plaintiff, Wallace C. Drennan, Inc. and Defendants, St. Charles Parish and Larry Cochran**, (having been substituted for V.J. St. Pierre who is no longer the Parish President due to term limit) who now represent to the Court that all matters have been compromised and resolved in full and complete satisfaction and in particular but not exclusively the following judgments rendered in cases # 80506 on November 16, 2015 in which \$2000 for attorney's fees was awarded, and in case #77453 on July 29, 2016 in which \$155,827.25 with interest was awarded and in case #16 CA 177 on September 22, 2016 in which \$2500 was awarded for attorney's fees and who now move the Court for a Judgment dismissing all claims with prejudice and for all parties to pay their respective costs.

WHEREFORE PLAINTIFF AND DEFENDANTS PRAY THAT the District Court dismiss all claims with prejudice with all parties to pay their respective costs.

RESPECTFULLY SUBMITTED,

Loretta G. Mince
Benjamin D. Reichard
FISHMAN HAYGOOD, L.L.P.
201 St. Charles Ave. 46th Floor
New Orleans, LA 70170-4600
Steven Griffith
13358 River Road
P.O. Box 999
Destrehan, Louisiana 70047

Attorneys for Wallace C. Drennan, Inc.

Charles M. Raymond (Bar No.: 11407)
S. Eliza James (Bar No.: 35182)
LAW OFFICES OF CHARLES M. RAYMOND,
LLC
13551 River Road
Luling, Louisiana
Phone: (985) 308-1509
Fax: (985) 308- 1521

*Attorneys for St. Charles Parish
and Larry Cochran (formerly V.J. St. Pierre) in his
capacity as Parish President*

29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. CHARLES

STATE OF LOUISIANA

NO.: 80,506 c/w 77453 and 77452

DIVISION: "E"

WALLACE C. DRENNAN, INC.

VERSUS

**ST. CHARLES PARISH AND V.J. ST. PIERRE, IN HIS CAPACITY AS PRESIDENT OF
ST. CHARLES PARISH**

FILED: _____

DEPUTY CLERK

JUDGMENT

Considering the foregoing Motion by the Parties;

IT IS HEREBY ADJUDGED AND DECREED that the above captioned consolidated cases are and be dismissed with prejudice.

IT IS FURTHER ADJUDGED AND DECREED all parties to pay their respective costs.

Hahnville, Louisiana, this ____ day of _____, 2016.

**HONORABLE TIMOTHY E. MARCEL
JUDGE, 29 JUDICIAL DISTRICT**