

AMENDMENT AND RENEWAL AGREEMENT

This Amendment and Renewal Agreement (the "Amendment") is entered into this ____ day of _____, 2014, by and between Progressive Waste Solutions of FL, Inc. (the "Contractor") and the Town of Eatonville, Florida (the "Town").

RECITALS:

WHEREAS, the Town and Waste Services of Florida, Inc. entered into a Solid Waste and Recyclable Collection Service dated as of November 6, 2008 (the "Original Agreement");

WHEREAS, on June 4, 2013 Waste Services of Florida, Inc. changed its name to Progressive Waste Solutions of FL, Inc.;

WHEREAS, on October 15, 2013, the Town and the Contractor entered into a six-month letter extension agreement whereby the termination of the Original Agreement was extended by six months to April 30, 2014 with all other terms and conditions of the Original Agreement remaining in effect (the "First Extension");

WHEREAS, the Original Agreement together with the First Extension is hereby collectively referred to as the "Amended Agreement";

WHEREAS, on February 28, 2014 the Town and the Contractor entered into another six-month letter extension agreement whereby the termination of the Amended Agreement was extended for an additional six months, terminating on October 31, 2014 (the "Second Extension");

WHEREAS, the Amended Agreement together with the Second Extension is hereby collectively referred to as the "Agreement"; and

WHEREAS, the Contractor and the Town mutually desire to amend and renew the Agreement as further described herein.

AGREEMENT:

NOW, THEREFORE, and in consideration of the premises and such other lawful consideration, the receipt and sufficiency of which each of the parties hereto acknowledge, the parties agree as follows:

1. Terms of Agreement. Effective November 1, 2014, Section One of the Agreement is hereby deleted in its entirety and replaced as follows:

"The term of the Agreement shall be for a period of five (5) years, commencing on November 1, 2014 and terminating on October 31, 2019.

At the expiration of the term of this Agreement, the Agreement will be extended for successive periods of five (5) years; provided, that neither party provides the other party with written notice of intent to terminate this Agreement at least 180 days prior to the expiration date of this Agreement or 180 days prior to any of the then applicable individual five year extension periods. If either party provides such notice, this Agreement will cease to be renewed and will terminate at the end of either this five (5) year Agreement, or at the end of the subsequent five (5) year extension period, as applicable.”

2. Definitions and Interpretations. The following definitions are hereby added to Section Two of the Agreement:

- A. “Contract Year. Any one year period of time beginning on November 1 and ending the following October 31st during the term of this Agreement.”
- B. “Roll-Off. An open top dumpster with between twenty (20) and forty (40) cubic yards of capacity that is utilized by the Town or a Consumer for the collection of Solid Waste or Construction and Demolition Debris.”

3. Title to Waste. The second sentence of the seventh paragraph of the sub-section titled “Contracted Service” in Section Four of the Agreement is hereby deleted in its entirety and replaced as follows:

“All title to and liability for any Hazardous Waste and/or Special Waste shall not pass to the Contractor and shall remain with the Generator of such Hazardous Waste and/or Special Waste.”

4. Excess or Misplaced Garbage, Trash and Recyclables. The following is hereby added to the Agreement as paragraph 8 of the sub-section titled “Contracted Service” in Section Four of the Agreement:

“The Contractor shall only be responsible for collecting, hauling and recycling or disposing of Garbage, Trash and Recyclables placed inside the Containers and Recycling Containers provided by the Contractor. Garbage, Trash and Recyclables in excess of the Containers’ and/or Recycling Containers’ limits, or placed outside or adjacent to the Containers or Recycling Containers, will not be collected by the Contractor. However, such excess or misplaced Garbage, Trash and Recyclables may be collected on occasion and within reason due to holidays or other extraordinary circumstances as determined by the Contractor in its sole discretion. If the excess or misplaced Garbage, Trash and/or Recyclables continues, the Town shall require the Residential Premise to utilize an additional Container or Recycling Container so that

the excess or misplaced Garbage, Trash and/or Recyclables will be regularly contained. The Contractor shall be compensated for these additional services as provided for on the attached Rate Sheet, marked as Exhibit "A".

5. MLK Festival Clean-Up. The third paragraph of the sub-section titled "Additional Contracted Service" in Section Four of the Agreement is hereby deleted in its entirety and replaced as follows:

"Each Contract Year the Contractor will make a donation to the Town of \$5,000.00 (each, a "Donation") for the MLK festival as provided for in this paragraph. The Contractor shall provide the Town with a Roll-Off(s) for use at the MLK festival and shall deduct \$500.00 from a Donation for each haul of a Roll-Off provided by the Contractor for the MLK festival during such Contract Year. By the end of the month, following the month in which the MLK festival ends each Contract Year, the Contractor shall pay the Town the amount remaining in the Donation for such Contract Year.

Example:

Assume the MLK Festival ends in February 2015 and Contractor hauls 5 Roll-Offs for the Town during the MLK Festival.

$$\$5,000.00 - (\$500.00 \times 5) = \$2,500.00$$

The Contractor would pay the Town a \$2,500.00 donation by March 31, 2015."

6. Containers and Recycling Containers to New Residential Premises. The following is hereby added to the end of the fifth paragraph of the sub-section titled "Additional Contracted Service" in Section Four of the Agreement:

"Notwithstanding anything contained herein to the contrary, title to all Containers and Recycling Containers provided by the Contractor shall at all times remain the property of the Contractor."

7. Manner of Collection. The last sentence of the sixth paragraph of the sub-section titled "Additional Contracted Service" in Section Four of the Agreement is hereby deleted in its entirety.
8. Disaster Response Plan. The sixth paragraph of the sub-section titled "Services During and Following Emergency Conditions" of Section Four of the Agreement is hereby deleted in its entirety and replaced as follows:

“The Contractor shall develop and prepare a disaster preparedness and response plan, and shall provide the Town a copy of such plan upon the written request of the Town.”

9. Complaints. The first paragraph of the sub-section titled “Consumer Services” of Section Four of the Agreement is hereby amended by replacing “resolved” with “responded to” throughout the paragraph.
10. Service Changes for Public Welfare. Section Five of the Agreement is hereby amended by deleting the third sentence of the paragraph in its entirety.
11. Spills of Fluids. The sixth paragraph of Section Seven of the Agreement is hereby deleted in its entirety and replaced as follows:

“Vehicle crews shall immediately place absorbent material onto fluids that are spilled by the Contractor. The absorbent material shall be picked up and disposed of in a manner and facility approved by competent authority. The Contractor shall be responsible for paying all costs associated with the transportation and disposal of the absorbent used to clean up a spill that is caused by the Contractor.”

12. Payment for Services. The first paragraph of Section Twelve of the Agreement is hereby amended by adding the following to the end of the paragraph:

“The Town shall be responsible for billing, collecting and remitting any and all sales, use and service taxes due or payable in connection with the services provided hereunder by Contractor to Consumers.”

13. Rate Adjustments. The second through the sixth paragraph of Section Twelve of the Agreement and the “Consumer Price Index and Fuel Index Price Chart(s)” contained on page 23 of the Agreement are hereby deleted in their entirety and replaced as follows:

“CPI-U Adjustment. Beginning November 1, 2015 and on each November 1 of this Agreement thereafter, the Contractor shall have the right, in its sole discretion and upon giving prior notice to the Town, to increase the rates set forth on the attached Exhibit “A” (the “Initial Rates”), as adjusted under this Section 12, in accordance with the CPI-U. As used herein, “CPI-U” shall mean the revised Consumer Price Index rate for all urban consumers (all items included) for the nearest available metropolitan area, based on the latest available figures from the Department of Labor’s Bureau of Labor Statistics (the “Bureau”). The CPI-U used will be the CPI-U published by the Bureau during the month ninety (90) days preceding the adjustment under this Section 12. The amount of the increase under this Section 12 shall be equal to the

percentage that the CPI-U has increased over the previous twelve (12) month period.

Fuel Adjustment. Beginning November 1, 2015 and on each November 1 of this Agreement thereafter, the Contractor shall have the right, in its sole discretion and upon giving prior notice to the Town, to increase the Initial Rates, as adjusted pursuant to this Section 12, in accordance with the FID. As used herein, "FID" shall mean the U.S. On-Highway Diesel Fuel Price for the Lower Atlantic (PADD 1C) published by the Department of Energy (the "Department") and found at <http://www.eia.gov/petroleum/gasdiesel/> (or any successor website).

The FID used will be the FID published by the Department during the first week of October immediately preceding the adjustment under this Section 12. The amount of the increase under this Section 12 shall be equal to the percentage that the FID has increased over the previous twelve (12) month period.

Example:

Assume the FID for the first week of October in 2014 was \$3.72 per gallon and that the FID for the first week of October in 2015 was \$3.87 per gallon.

$$(3.87 - 3.72) = .15 / 3.72 = 4\%$$

The fuel adjustment beginning on November 1, 2015 would be a 4% increase to all the rates contained on the rate sheet marked as Exhibit "A", attached hereto."

14. Failure to Perform. The second through the ninth paragraphs (ninth paragraph titled "TOWN Repair of Damage") of Section Thirteen of the Agreement (including the chart located between paragraphs six and seven) of the Agreement are hereby deleted in their entirety and replaced as follows:

"Administrative Charges. The following is an inclusive list of all Administrative Charges that may be assessed against the Contractor for the failing to perform in accordance with this Agreement:

- Failure of Contractor to comply with the hours of operation of 6:00 a.m. to 8:00 p.m. and such failure continues or persists for 24 hours or more after receipt of written notice from the Town by Contractor
 - Administrative Charge - \$100.00 per occurrence, per day
- Failure of Contractor to provide or exchange a Bin, Container or Recycling Container to a Consumer within 72 hours of receipt of

notice from Town to provide/exchange such Bin, Container or Recycling Container

- Administrative Charge - \$50.00 per occurrence, per day
- Changing routes or route order by Contractor without proper notification to the Town
 - Administrative Charge - \$100.00 per occurrence, per day
- Failure or neglect of Contractor to complete each route on the regularly scheduled collection day (defined as failing to collect from at least 80% of the Consumers on the route)
 - Administrative Charge - \$250.00 per incomplete route, per day
- Failure or neglect of Contractor to respond to issues within the twenty-four hours of receipt of written notice from Town of such issue
 - Administrative Charge - \$50.00 per occurrence, per day
- Failure of Contractor to clean up spillage caused by Contractor within twenty-four hours of receipt of notice from Town of such spillage
 - Administrative Charge - \$50.00 per occurrence, per day
- Failure of Contractor to maintain office hours of 8:00 a.m. through 5:00 p.m. and such failure continues or persists for 24 hours or more after receipt of written notice from the Town by Contractor
 - Administrative Charge - \$100.00 per occurrence, per day”

15. Interim Collection Services. The last paragraph of Section Thirteen of the Agreement of the Agreement is hereby deleted in its entirety and replaced as follows:

“Except for Uncontrollable Forces, as provided for in Section Four hereof, the failure of Contractor to provide collection service for a period of five consecutive working days, the Town may secure the Contractor’s collection records (at the request of the Town) on the sixth working day in order to provide interim contract collection services until such time as the matter is resolved and the Contractor is able to perform pursuant to this Agreement; provided, however, if the Contractor is unable for any reason or cause to resume performance at the end of thirty working days, all liability of the Town under this Agreement to the Contractor, except for payment for services rendered, shall cease and this Agreement may be deemed immediately terminated by the Town. The Contractor shall not be responsible for any cost associated with alternative collection by the Town where Contractor’s failure is due to an Uncontrollable Force.”

16. Indemnification. Section 15 of the Agreement is hereby deleted in its entirety and replaced as follows:

“To the extent covered by applicable insurance, the Contractor shall defend, indemnify, and hold harmless the Town, its officials, agents and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, cost and expenses (including attorney’s fees) caused by a negligent or willful act or omission of the Contractor, its subcontractors, or their respective officers or employees in their performance of this Agreement. However, the Contractor shall not be liable for any claims, suits, judgments, demands, liabilities, damages, cost and expenses (including attorney’s fees) caused by a negligent or willful act or omission of the Town, its agents, directors, employees, officers and servants.”

17. Right to Require Performance. Section Sixteen of the Agreement is hereby deleted in its entirety and replaced as follows:

“The failure by either party at any time to require performance of any provisions hereunder shall no way affect the right of such party to thereafter enforce the same. Nor shall waiver by either party of any breach of any provisions hereunder be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of any provision itself.”

18. Severability. The first paragraph of Section Twenty of the Agreement is hereby deleted in its entirety and replaced as follows:

“Should any material word, sentence, phrase, or other provision of these sections of the Agreement be stricken by a court of competent jurisdiction, or the occurrence of any court rendering any material provision of the Agreement void, the parties shall renegotiate that portion of the Agreement that has been stricken in order to implement mutually acceptable replacement language consistent with the ruling of the Court. Should the Contractor and Town not be able to agree to a resolution, prior to the effective date of any such termination, the matter shall be presented to the Town Council pursuant to Section 28 hereof, for further attempt at resolution.”

19. Assignment and Subletting. Section Twenty-One of the Agreement is hereby amended by adding the following to the end of the first sentence:

“provided, however, the Contractor may assign this Agreement to any direct or indirect affiliate or subsidiary of the Contractor or to any person or entity succeeding to all or substantially all of the Contractor’s assets

(whether by operation of law, merger, consolidation or otherwise) without the prior written consent of the Town.”

20. Notices. Section Thirty of the Agreement is hereby amended by adding the following to the Contractor Notice provision:

“With a Copy to: IESI Corporation
2301 Eagle Parkway, Suite 200
Fort Worth, TX 76177
Attn: Legal”

21. Exhibit “A”. The Town of Eatonville Commercial and Residential Collection Rate sheet attached to the Agreement as Exhibits “1a, 2a and 2b” is hereby deleted in its entirety and replaced with the attached Town of Eatonville Rate Sheet marked as Exhibit “A”.
22. Reaffirmation. The parties hereby reaffirm their agreement with all the terms and provisions of the Agreement, as amended by this Amendment.
23. Entire Agreement. The Agreement together with this Amendment represents the entire agreement among the parties with respect to the matters that are the subject hereof.
24. Counterparts: Facsimile Signatures. The Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which shall collectively constitute one and the same instrument representing this Amendment between the parties hereto, and it shall not be necessary for the proof of this Amendment that any party produce or account for more than one such counterpart. Facsimile signatures shall be given the same force and effect as original signatures and shall be treated for all purposes and intents as original signatures.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first written above.

TOWN OF EATONVILLE, FL

**PROGRESSIVE WASTE
SOLUTIONS OF FL, INC.**

By: _____
Name: _____
Title: _____

By: _____
Dean DiValerio, Vice President