

Resolution 99-70

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY AUTHORIZING ITS CHAIR TO SIGN AN INTERLOCAL AGREEMENT WITH THE CITY OF ST. AUGUSTINE, FLORIDA ALLOWING FOR THE DISPOSAL OF THE CITY'S MUNICIPAL SOLID WASTE TRANSFER STATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, St. Johns County has designed, constructed and has established a contract for the operation. A Solid Waste Transfer Station for the immediate and continue availability of Solid Waste Disposal Capacity; and

WHEREAS, The City of St. Augustine wishes to dispose of all solid waste generated in the municipal boundary of the City at the Tillman Ridge Solid Waste Transfer Station; and, the County is willing to receive certain disposable wastes from the City at the Tillman Ridge Transfer Station for the term of this agreement; and

WHEREAS, Section 403.706(8), Florida Statutes, authorizes St. Johns County and the City to enter into written agreements with others, to meet their solid waste disposal needs, in whole or in part; and

WHEREAS, St. Johns County and the City desire to enter into a direct contractual relationship hereby to provide for the processing, transportation and disposal of all Solid Waste City of St. Augustine's Waste at the Tillman Ridge Transfer Station and set forth the formal terms, conditions rights and remedies of the parties thereunto appertaining.

WHEREAS, the St. Johns County and the City desire to enter into a direct contractual relationship hereby to provide for the disposal of all solid waste generated in St. Johns County, and to receive St. Johns County's waste at the Trail Ridge Landfill and to set forth terms, conditions, rights, and remedies of the parties thereunto appertaining.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA that:

Section 1. The Chairman of the Board of County Commissioners is authorized to sign an Interlocal Agreement pertaining to Solid Waste, substantially in the form attached as Exhibit A, attached hereto and incorporated herein, with the City of St. Augustine, Florida.

Section 2. This resolution shall take effect upon passage.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, State of Florida, this 27 Day of April, 1999.

BOARD OF COUNTY COMMISSIONERS OF ST.
JOHNS COUNTY, FLORIDA

BY: Marc A. Jacalone

Marc A. Jacalone, Chairman

ATTEST: Clerk of Court

BY: Cheryl Strickland

Cheryl Strickland, Clerk

**INTERLOCAL AGREEMENT
FOR SOLID WASTE DISPOSAL BY AND BETWEEN
THE CITY AND ST. JOHNS COUNTY**

THIS INTERLOCAL AGREEMENT (the Interlocal Agreement), is made and entered into by and between the City of St. Augustine, a municipal corporation (the City), and St. Johns County, a political subdivision of the State of Florida (St. Johns County).

WHEREAS, it is the design, purpose, and intention of the parties hereto to permit said parties, individually and collectively, to make the most efficient use of their respective powers, resources and capabilities in regard to solid waste disposal services and facilities in a manner most consistent with the geographic, economic, demographic and other factors influencing their respective needs and the development of their respective and joint communities; and,

WHEREAS, St. Johns County expects to close its landfill; and,

WHEREAS, Section 403.706(8), Florida Statutes, authorizes the City to enter into a written agreement with St. Johns County to accommodate its solid waste disposal needs, in whole or in part; and,

WHEREAS, St. Johns County has currently contracted with Seaboard Waste Systems, Inc., a Florida corporation, to operate in St. Johns County a solid waste transfer station, and to transport solid waste from the transfer station to a permitted and licensed Solid Waste Management Facility; and,

WHEREAS, the parties desire to enter into a direct contractual relationship for an initial period of seven years, with the ability through mutual consent to extend the Interlocal Agreement for an additional seven year period, to provide for the disposal of all Solid Waste generated within

the municipal limits of the City of St. Augustine, and to set forth the terms, conditions, rights, and remedies of the parties thereunto appertaining.

WITNESSETH

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and for other good and valuable consideration, the receipt of which and the adequacy of which are mutually acknowledged, with each party accordingly waiving any challenge to the sufficiency of such consideration, it is mutually covenanted, promised and agreed by the parties hereto as follows:

1. AUTHORITY; GENERAL RESPONSIBILITIES; CONDITIONS PRECEDENT.

This Interlocal Agreement is entered into pursuant to the provisions of Section 163.01, Florida Statutes, commonly known as the "Florida Interlocal Cooperation Act of 1969" (the Act), and all applicable portions of the Act are made a part hereof and incorporated herein as if set forth at length herein, including but not limited to the following specific provisions:

- (a) All of the privileges and immunities and limitations from liability, exemptions from laws, ordinance and rules, and all pensions and relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents, or employees of the parties hereto when performing their respective functions within their respective territorial limits for their respective agencies, shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents or employees extra-territorially under the provisions of this Interlocal

Agreement.

- (b) This Interlocal Agreement does not and shall not be deemed to relieve any of the parties hereto of any of their respective obligations or responsibilities imposed upon them by law except to the extent of the actual and timely performance of those obligations or responsibilities by one or more of the parties to this Interlocal Agreement, in which case performance provided hereunder may be offered in satisfaction of the obligation or responsibility.
- (c) As a condition precedent to its effectiveness, this Interlocal Agreement and any subsequent amendments hereto shall be filed with the Clerk of the Court of St. Johns County.

2. DEFINITIONS.

As used herein the following terms shall have the meanings attributed thereto, unless the context clearly indicates otherwise:

- (a) “Class I Solid Waste Disposal Facility” means any Class I landfill so classified under Rule 62-701.340(3)(a) and (c), Florida Administrative Code, or any successor rule or regulation thereto.
- (b) “Contractor” means Seaboard Waste Systems, Inc., or any other corporation(s) or entity authorized in writing by St. Johns County to operate the Transfer Station, and transport Solid Waste from the Transfer Station to a permitted or licensed Solid Waste Management Facility accepting Class I Solid Waste.
- (c) “Department” means the Florida Department of Environmental Protection, and any successor agency thereto.

- (d) "Disposal Fee" means the fee charged to the City of St. Augustine by St. Johns County for the processing, transportation and disposal of Class I Solid Waste.
- (e) "Effective Date" means June 1, 1999.
- (f) "FAC" means the Florida Administrative Code.
- (g) "Hazardous Waste" means hazardous waste, as defined in Section 403.703(21), Florida Statutes, or any successor statute thereto, or agency rules(s) promulgated thereunder.
- (h) "Notice" means a written notice delivered by certified or registered mail, return receipt requested, or by hand delivery, or by overnight delivery service.
- (i) "Permit" means the written authorization issued by a regulatory agency with jurisdiction for the siting, construction and/or operation of a Transfer Station provided all procedural standards, performance standards and conditions set forth therein are met.
- (j) "Permit Modification" means a change or alteration to the procedural standards, performance standards or conditions of a Permit.
- (k) "Scales" means a platform truck scale weighing device which meets with the design specifications and performance accuracy requirements of the scale code in the National Institute of Standards and Technologies Handbook 44, and is certified by the Florida Department of Agriculture, or any successor agency thereto.
- (l) "Solid Waste" means solid waste, as defined by Rule 62-701.200(102), FAC., or any successor agency rule promulgated thereunder, which can lawfully be disposed of in

a permitted Class I Solid Waste Disposal Facility.

- (m) "Solid Waste Disposal Facility" means a Class I Solid Waste Disposal Facility.
- (n) "Solid Waste Management Facility" means the permitted or licensed Class I Solid Waste Disposal Facility chosen by St. Johns County in its absolute discretion, and which may be changed at the County's discretion from time to time, contracted to accept Class I Solid Waste from the St. Johns County Transfer Station.
- (o) "Special Waste" means waste materials which are not Hazardous Waste but do require special processing. Special Waste includes, but is not limited to, Waste Tire, White Goods, euthanized animals, and asbestos.
- (p) "Ton" means two thousand pounds.
- (q) "Transfer Station" means the Solid Waste processing and transportation facility that is located in St. Johns County at the Tillman Ridge Landfill.
- (r) "Waste Screening Program" means a program for detecting and preventing Hazardous Waste from entering the Transfer Station, and includes random inspection of incoming loads of Solid Waste, record keeping, training, and procedures to notify the proper regulatory agency(s) when Hazardous Waste has entered the Transfer Station.
- (s) "Waste Tire" is as defined by Rule 62-701.200(122), FAC.
- (t) "White Goods" is as defined by Rule 62-701.200(129), FAC.

3. TERM AND SPECIAL CONDITIONS.

- (a) Unless sooner terminated as provided herein, the term of this Interlocal Agreement shall commence on the Effective Date of this Agreement and shall continue thereafter

for a period of eighty-four (84) consecutive calendar months ending on the last day of the eighty-fourth month..

- (b) (1) Except as otherwise provided herein, if either party commits a default (the “defaulting party”) and continues or fails to cure such default for or during thirty (30) days after the other party has given the defaulting party Notice of such default, the other party may, at its option, (i) terminate this Agreement in the manner and on the conditions provided in paragraph (c) below; (ii) cure the default at the expense of the defaulting party; and/or (iii) have recourse to any other right or remedy to which it may be entitled at law or in equity. The non-defaulting party’s selection of any remedy specified herein shall not be construed as a waiver of any other specified options or any other rights at law or in equity related to the defaulting party’s default.
- (2) If a default does not endanger the health, safety, or welfare of the parties or their respective citizens, and with the exercise of due diligence a cure cannot reasonably be effected during the aforesaid thirty (30) day period, but can be cured within a reasonable time thereafter, such thirty (30) day period shall be extended for such reasonable time to allow the cure of the default during the extended cure period. In the event either party waives a default by the other party, such waiver shall not be construed or determined to be a continuing waiver of the same or any subsequent default.
- (3) The persistent, repeated, or substantial failure or refusal by either party to substantially fulfill any of its material obligations in accordance with this Agreement, unless excused or justified by a default by the other party, or other legally recognized

cause customarily justifying or excusing non-performance shall constitute a “default” as such word is used in this Agreement; provided, however, that failure or refusal shall not constitute a default unless and until the failing or refusing party has been given Notice by the other party that a failure or refusal is deemed to exist, which will, unless corrected within thirty (30) days, or within such additional time as may be allowed under paragraph 3(b)(2), constitute a default on the part of the failing or refusing party.

- (4) If there is a disagreement between the parties about whether a default has occurred, or the appropriate action to cure any default, a meeting of the two parties or their representatives shall be promptly held.
- (c) In the event either party shall fail or refuse to cure a default as required by paragraph (b) above, this Interlocal Agreement may be terminated for such cause by a majority vote of either the Board of County Commissioners of St. Johns County or the City Commission of the City of St. Augustine. Should this Agreement be terminated for cause by St. Johns County, the City shall have the right to continue to deliver Solid Waste to the Transfer Station in accordance with the terms of this Agreement for a period of six (6) months from the date of receiving Notice of termination. If this Agreement is terminated for cause by the City, the City may discontinue the delivery of Solid Waste to the Transfer Station on a date selected by the City, provided such date shall occur no earlier than thirty (30) days and no later than twelve (12) months after delivery of a Notice of termination to St. Johns County.
- (d) Either party may terminate this Agreement without cause by Notice to the other party

provided that the effective date of the termination shall not be prior to the expiration of twelve (12) months from the date of receipt of such Notice by the other party.

4. RIGHTS AND OBLIGATIONS OF THE CITY OF ST. AUGUSTINE

(a) Commencing on the Effective Date of this Interlocal Agreement, the City shall cause, either by use of its employees or its own contractor(s), to be delivered to the Transfer Station all of the Solid Waste generated within the municipal limits of the City of St. Augustine.

(b) All Solid Waste delivered to the Transfer Station must conform to all applicable federal, state and local laws, regulations and orders relating at any time to the transportation and disposal of waste. The City will exercise reasonable care and diligence to prevent Hazardous Waste, or any other waste material which is not permitted for disposal in a Class I Solid Waste Disposal Facility under rules promulgated by the Department, from being included in or co-mingled with the Solid Waste. The City shall in all matters relating to the transportation and disposal of the Solid Waste comply with all applicable federal, state and local laws, rules, regulations, and orders relating to such activities.

5. RIGHTS AND OBLIGATIONS OF ST. JOHNS COUNTY.

(a) Commencing on the Effective Date of this Interlocal Agreement, St. Johns County or its Contractors shall accept at the Transfer Station for disposal at the contracted Solid Waste Management Facility all of the Solid Waste transported by the City to the Transfer Station, provided all such Solid Waste has been generated exclusively within the geographic boundaries of the City of St. Augustine.

- (b) St. Johns County shall use its best efforts to prevent the acceptance of Hazardous Waste at the Transfer Station. As used herein, the term “best efforts” shall mean the implementation, rigorous enforcement, and continuous updating of a Waste Screening Program. Upon request, St. Johns County shall furnish to the City a copy of the Department of Environmental Protection approved Waste Screening Program Plan.
- (c) St. Johns County shall maintain Scales at the Transfer Station as may be required by law and any regulatory agency with jurisdiction, and shall cause all Solid Waste delivered by the City to the Transfer Station to be weighed thereon. The results of each such weighing shall be permanently and accurately recorded. St. Johns County, at its cost and expense, shall test and recalibrate the Scales as often as may be required by applicable laws and/or any regulatory agency with jurisdiction.
- (d) St. Johns County shall maintain a weight record containing the weight, date, time, and vehicle identification number of each City delivery vehicle transporting Solid Waste to the Transfer Station, and also a description of any items of Special Waste and the date delivered and vehicle identification number of the delivery vehicle.
- (e) St. Johns County shall provide to the City a copy of its year-end summary of tonnage of all Solid Waste and quantities and kinds of Special Waste delivered by the City to the Transfer Station for the preceding fiscal year. Such reporting shall occur for each fiscal year in which Solid Waste and Special Waste is delivered to the Transfer Station. For purposes of this Interlocal Agreement, each fiscal year for each party shall run from October 1 through the following September 30.

- (f) St. Johns County, for the duration of this Interlocal Agreement: (1) shall have the continuing obligation, and shall take all actions necessary, to apply for, timely seek renewal of, and maintain in good standing any and all Permits, including but not limited to those pertaining to environmental matters, as may be necessary for the continuous and lawful operation of the Transfer Station; and (2) shall take no actions which would adversely affect the retention of any and all Permits, including but not limited to those pertaining to environmental matters, as may be necessary for the continuous and lawful operation of the Transfer Station.
- (g) St. Johns County, for the duration of this Interlocal Agreement, shall have the continuing obligation to promptly give Notice to the City of each occasion that St. Johns County (1) applies for any Permit or Permit Modification issued by any regulatory agency pertaining directly or indirectly to the Transfer Station; (2) receives a notice of violation, or any similar notification from any regulatory agency with respect to the Transfer Station; or (3) receives direction from any regulatory agency to implement a contamination assessment plan approved by the Department with respect to the Transfer Station. St. Johns County shall furnish to the City copies of each Permit received (exclusive of attachments thereto), of each notice of intent to issue or deny a Permit or Permit Modification, and of each notice pertaining to a Permit or Permit Modification published by it in a newspaper pursuant to a requirement of law or of the regulatory agency issuing the same. Such copies shall be delivered to the City within five business days following receipt of publication thereof. The City shall also be entitled to receive a copy of any application for

Permit or Permit Modification made by the St. Johns County (exclusive of attachments thereto).

- (h) St. Johns County reserves the right to make and enforce reasonable rules and regulations concerning the operation of the Transfer Station, the conduct of the drivers and others on the Transfer Station premises, quantities and sources of Solid Waste and Special Waste and any other matters necessary or desirable for the safe, legal and efficient operation of the Transfer Station. Such rules and regulations include, but are not limited to, speed limits imposed within the Transfer Station, the wearing of safety equipment by all individuals allowed on the Transfer Station, and the admittance order of vehicles arriving at the Transfer Station.
- (i) St. Johns County shall have the right to refuse to accept any Solid Waste which does not conform to the requirements of this Agreement, the conditions of the Transfer Station Permit, the conditions of the permit for the Solid Waste Management Facility, or to any applicable law, regulation, rule or regulation, even if only a part of the waste load is non-conforming. In the event the City delivers any Solid Waste containing Hazardous Waste or any waste which is not permitted for delivery to the Transfer Station or for disposal in a Class I Solid Waste Disposal Facility by rule or permit requirement, then the City will immediately remove all of said unacceptable waste from the Transfer Station. Additionally, for any loads delivered by the City containing Class I waste mixed with other classifications of waste, the City agrees to pay St. Johns County a fee for sorting and/or cleanup of \$25.00 per hour for labor and \$100.00 per hour for equipment with operator with a minimum one (1) hour

charge if the City has been notified and is unable to reclaim the unacceptable materials.

- (j) St. Johns County shall have the right to inspect all trucks carrying City Solid Waste to determine whether it is conforming or non-conforming. It is understood that any failure to inspect or, upon inspection, to detect unacceptable waste shall in no way relieve the City of its obligations to dispose of only Solid Waste which is acceptable under the law and this Agreement.
- (k) Disposal shall be from vehicles appropriately identified as City vehicles and/or any contractor(s) of the City.
- (l) In the event that a vehicle delivering Solid Waste for the City should become incapacitated or unable to move while at the Transfer Station, St. Johns County may, but shall not be obligated to, provide assistance in moving the vehicle. In such circumstances, the operator of the disabled vehicle shall make the necessary connections with any vehicle that may be provided to assist, and the City expressly agrees that neither St. Johns County nor its Contractor shall have any liability for damage to the disabled vehicle while providing such assistance
- (m) The City may remove any Special Waste which the City has inadvertently delivered to the Transfer Station. Such removal shall be performed in accordance with rules and regulations of St. Johns County which will reasonably allow the City to reclaim such Special Waste provided the City does so promptly and in a manner which does not interfere with the normal operation of the Transfer Station.

6. DISPOSAL FEES.

- (a) Commencing on the Effective Date of this Agreement and continuing through December 31, 1999, the fee to be charged by St. Johns County (the "Disposal Fee") for receiving Solid Waste delivered by the City to the Transfer Station shall be Thirty-six Dollars (\$36.00) per Ton. Commencing on January 1, 2000, and on January 1 of each year thereafter, the Disposal Fee shall be adjusted upwards or downwards on an annual basis as provided in paragraph 6(c).
- (b) The City shall pay to St. Johns County the Disposal Fee on all Solid Waste and the Disposal Fee on any Special Waste delivered by the City to the Transfer Station.
- (c) The Disposal Fee is Thirty-Six Dollars (\$36.00) per Ton of Solid Waste from the Effective Date through December 31, 1999. Commencing on January 1, 2000, and on January 1 of each year thereafter, the current Disposal Fee for Solid Waste shall be adjusted upwards or downwards by a factor which shall be the preceding twelve-month change in the Consumer Price Index (CPI), said change being expressed as a decimal fraction (the "Adjustment Factor"). The twelve-month change in the CPI shall be the percentage of change in the CPI for the most current twelve-month period immediately preceding each annual adjustment date for which published final figures are available. The Disposal Fee for Solid Waste as adjusted on January 1 of each year shall be equal to the then current Disposal Fee plus (or minus in the case of a decrease in the CPI) the product of the then current Disposal Fee times the Adjustment Factor. The adjusted Disposal Fee shall be expressed correct to the nearest whole cent (\$0.01), and shall apply to Solid Waste delivered to the Transfer Station on or after January 1 of each year. The Consumer Price Index used herein

shall be the Consumer Price Index for the South Urban Size C-50,000 to 450,000 population as published by U.S. Department of Labor, Bureau of Labor Statistics. In the event that the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the said Index, the parties shall substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available so as to carry out the intent of this paragraph 6(c).

- (d) St. Johns County shall invoice the City monthly for the amount of the Disposal Fee owed by the City under the terms of this Interlocal Agreement. Each invoice shall cover the period of the immediately preceding one (1) calendar month, and shall be mailed to the City no later than the tenth (10th) day of following month. The City shall pay each invoice in thirty (30) days of the receipt of said invoice from the County. If the invoice includes any adjustment in the Disposal Fee, a written calculation or explanation of the basis for the adjustment shall accompany the invoice.
- (e) It is not intended by the parties that Special Waste generated in the City will be regularly delivered to the Transfer Station. However, for so long as the City transports Solid Waste to the Transfer Station pursuant to this Agreement, it is agreed that Special Waste may be delivered to the Transfer Station. The Disposal Fee for Special Waste is contained on Exhibit A attached hereto as the Special Waste Disposal Fee Schedule. The Special Waste Disposal Fee may be changed from time to time by St. Johns County upon thirty (30) days advance Notice to the City.

7. MISCELLANEOUS.

- (a) Limitations Upon Consent. Whenever, under the terms of this Interlocal Agreement, either party is called upon to give its written consent, and except as provided under paragraph 7 (g), such written consent will not be unreasonably withheld.
- (b) Form of Consent. All consents and approvals of any kind required under this Interlocal Agreement shall be in writing. Whenever, under the terms of this Interlocal Agreement, either party is authorized to give consent, such consent may be given and shall be conclusively evidenced by a writing executed by an appropriate officer.
- (c) Notices, Documents, and Consents. All notices required to be given or authorized to be given by any party pursuant to this Interlocal Agreement shall be in writing and shall be deemed delivered when received, either by the United States Postal Service by certified mail (return receipt requested), or by hand delivery, or delivered by an overnight delivery service:

To the City:

City of St. Augustine
 City Manager
 P.O. Box 210
 St. Augustine, Florida 32085-0210

To St. Johns County:

St. Johns County
 County Administrator
 P.O. Drawer 349
 St. Augustine, FL 32085-0349

- (d) Amendments. This Interlocal Agreement may be amended from time to time only by written agreement duly authorized and executed by the parties hereto.
- (e) Severability. If any provisions of this Interlocal Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Interlocal

Agreement, and this Interlocal Agreement shall be enforced as if such invalid and unenforceable provision had not been contained herein.

- (f) Execution of Documents. Each party agrees that it will execute any and all documents or other instruments, and take such other action as is necessary to give effect to the terms and intent of this Interlocal Agreement.
- (g) Assignment. Neither party may assign, transfer, or otherwise vest in any other person, any of its rights or obligations under this Interlocal Agreement without the prior written consent of the other party. Except as otherwise expressly provided elsewhere in this Interlocal Agreement, such consent may be withheld for any or no reason, the provisions of paragraph 7(a) to the contrary notwithstanding.
- (h) Successors and Assigns. This Interlocal Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.
- (i) Waiver. No waiver by either party of any term or condition of this Interlocal Agreement will be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different paragraph, subparagraph, clause, phrase, or other provision of this Interlocal Agreement. Making payment pursuant to this Interlocal Agreement during the existence of a dispute shall not be deemed to and shall not constitute a waiver of any of the claims or defenses of the party making such payment.
- (j) Governing Law and Venue. This Interlocal Agreement shall be governed and

construed under and pursuant to the laws of the State of Florida, and the United States of America. Unless the parties otherwise agree, the venue of any action or proceeding brought under the provisions of this Interlocal Agreement shall be in St. Johns County, Florida.

- (k) Confidentiality. All written materials and oral communications between either party shall be deemed public information and shall remain a matter of public record in perpetuity unless otherwise provided or allowed by law.
- (l) Time is of the Essence. Time is of the essence with respect to this Interlocal Agreement and each of its terms and provisions.
- (m) Remedies. Each party shall have the right to seek the judicial enforcement and interpretation of this Interlocal Agreement, and to avail itself of all remedies available to it arising at law or in equity for the breach of this Interlocal Agreement. Remedies are mutually available, and include damages and specific performance, as appropriate.
- (n) Attorneys' Fees and Costs. In the event of any action or administrative proceeding between the parties arising under this Interlocal Agreement, the prevailing party will be entitled to an award of reasonable attorneys' fees and costs, including such fees and costs incurred by it in the pursuit of any appellate proceedings, regardless of whether such action or administrative proceeding is pursued before any state or federal court or agency.
- (o) Non-ad valorem obligation. Both parties understand and intend that the obligations of the City to make payments hereunder shall constitute a current expense payable

solely from non-ad valorem funds of the City, and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of an indebtedness by the City, nor shall any thing contained herein constitute a pledge of the ad valorem tax revenues or other funds or assets of the City, other than moneys lawfully appropriated by the City Commissioners of the City of St. Augustine from time to time in its annual budget for the purpose of paying any payment or other amounts coming due hereunder. However, any non-ad valorem special assessment or any other fee or charge collected by the City from its residents, citizens or customers for the purpose of paying for the costs of disposal of Solid Waste shall be applied to the extent necessary to pay the sums due from the City under this Interlocal Agreement.

- (p) The City's Indemnification. Subject to and within the limits set forth in Section 768.28, Florida Statutes, and as otherwise limited or prohibited by law, the City shall indemnify, defend and hold harmless St. Johns County, and its Contractor, and their respective officers, directors, employees and agents, from any and all claims, suits, losses, liabilities, assessments, damages, costs and expenses, including reasonable attorney's fees, arising under federal, state or local laws, ordinances, rules, regulations and orders relating to (a) pollution or protection of the environment, (b) transportation or content of the waste, (c) any violation of the operation Permit(s) issued by the Department for the Transfer Station, and (d) injury (including death) to the person or damage to or loss of the property of anyone (including St. Johns County and its Contractor, and employees of both) arising out of or in connection

with any breach or violation of any term or provision of this Agreement by the City or any negligent act or omission by the City or its officers or employees, or the City's contractor(s), or its officers or employees. However, such indemnification shall not apply to claims for loss, damage, injury or death if caused by the sole negligence of St. Johns County or its Contractor who operates the Transfer Station and transports Solid Waste to the permitted or licensed Solid Waste Management Facility.

- (q) The City shall be responsible for and shall pay or reimburse St. Johns County for any and all expenses incurred by St. Johns County as a result of any breach or violation by the City or its officers or employees of any of its obligations under this Agreement, or any negligent act or omission by the City or its officers or employees, or its contractor(s), or its officers or employees, including, but not limited to, fines and clean-up expenses resulting from Hazardous Waste delivered by the City.
- (r) Each party represents to the other party that the execution of this Interlocal Agreement and performance hereunder will not violate the terms of its own comprehensive plan or Chapter 163 of the Florida Statutes.
- (s) This Interlocal Agreement shall not take effective unless it is executed by both parties no later than May 15, 1999.

IN WITNESS WHEREOF, the parties hereto have executed this Interlocal Agreement as of the dates set forth below.

ST. JOHNS COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners

By: _____
Its Chair

Executed on behalf of St. Johns County on
_____, 1999

Attest:

Cheryl Strickland, Clerk of the
Circuit Court of St. Johns County

CITY OF ST. AUGUSTINE

By: _____
Its Mayor

Executed on behalf of the City of St. Augustine on
_____, 1999

Attest:

Paula Owens, City Clerk

Acceptable as to form:

Jim Wilson, City Attorney

EXHIBIT "A"
SPECIAL WASTE DISPOSAL FEE SCHEDULE

Consent
#10

MEMORANDUM



TO: Ben Adams, County Administrator
FROM: John Schwab, Director of Solid Waste
DATE: April 26, 1999
SUBJECT: Minor Changes to the Interlocal Agreement Between the City of
St. Augustine and St. Johns County

The Interlocal Agreement between the City of St. Augustine and St. Johns County which was presented during the April 20th Workshop has been modified to give a clearer meaning to the document. I have prepared a complete new Interlocal Agreement and copied the pages which have received changes. The changes on these pages are outlined in (yellow) for you to review. The pages receiving changes are 14, 15, 16, and 17.

This final document has been reviewed and accepted by the City and your legal staff.

JS/pjb

contain provisions allowing an increase or decrease in the cost to St. Johns County for those services based on changes in the consumer price index (CPI) or similar cost of living index intended to measure the change in the purchasing power of the U.S. dollar. In order to pass on to the City increases or decreases in the costs incurred by St. Johns County, the Disposal Fee is hereby apportioned by allocating seven dollars and 25/ths (\$7.25) of it to the cost charged by the Contractor for processing and transporting of Solid Waste, twenty-five dollars (\$25.00) thereof to the disposal cost at the Solid Waste Management Facility, and three and 75/ths dollars (\$3.75) thereof to administrative services and recovery of capital investment by St. Johns County. Commencing on January 1, 2000, and on January 1 of each year thereafter, said portion of the current Disposal Fee for Solid Waste allocated to the cost of processing and transporting Solid Waste shall be adjusted upwards or downwards by a factor which shall be the same percentage of change in the CPI as that percentage change in cost incurred by St. Johns County under its contract with the Contractor at any time in the preceding twelve months through and including the effective date (January 1) of the adjustment (the "Processing Adjustment Factor"). Commencing on January 1, 2000, and on January 1 of each year thereafter, said portion of the current Disposal Fee for Solid Waste allocated to the cost of disposal at the Solid Waste Management Facility shall be adjusted upwards or downwards by a factor which shall be the same percentage of change in the CPI as that percentage change in cost incurred by St. Johns County under its contract with the owner of the Solid Waste Management Facility at any time in the preceding twelve months through and including the effective

date (January 1) of the adjustment (the "Disposal Adjustment Factor"). The Disposal Fee for Solid Waste as adjusted on January 1 of each year shall be equal to the sum of: (i) the then current portion of the Disposal Fee allocated to processing and transporting Solid Waste plus (or minus in the case of decrease in the CPI) the product of the then current Disposal Fee allocated to processing and transporting Solid Waste times the Processing Adjustment Factor, plus (ii) the then current portion of the Disposal Fee allocated to the cost of disposal of Solid Waste at the Solid Waste Management Facility, plus (or minus in the case of a decrease in the CPI) the product of the current Disposal Fee allocated to disposal of Solid Waste at the Solid Waste Management Facility times the Disposal Adjustment Factor, plus (iii) the then current portion of the Disposal Fee allocated to administrative services and recovery of capital investment by St. Johns County. The adjusted Disposal Fee shall be expressed correct to the nearest whole cent (\$0.01), and shall apply to Solid Waste delivered to the Transfer Station on and after January 1 of each year. Subject to paragraph (f) below, the amount of \$3.75 allocated to administrative services and recovery of capital investment by St. Johns County is not subject to any CPI adjustment. The Disposal Fee shall also be adjusted based on cost increases or decreases to St. Johns County under its contracts with the Contractor and/or the owner of the Solid Waste Management Facility which occur for reasons other than changes in the CPI, and the amount of the adjustment to be passed on to the City shall correspond dollar-for-dollar to the increase or decrease in cost for processing, transporting and/or disposing per Ton of Solid Waste incurred by St. Johns County under said contracts, and each

such adjustment to the rates charged to the City shall become effective on the date each such increase or decrease takes effect and is incurred by St. Johns County. However, any increase or decrease that occurs prior to January 1, 2000, shall not take effect as to the City until January 1, 2000. The preceding two sentences shall apply only to increases or decreases incurred by St. Johns County after the Effective Date of this Agreement.

- (d) St. Johns County shall invoice the City monthly for the amount of the Disposal Fee owed by the City under the terms of this Interlocal Agreement. Each invoice shall cover the period of the immediately preceding one (1) calendar month, and shall be mailed to the City no later than the tenth (10th) day of following month. The City shall pay each invoice within thirty (30) days of the receipt of said invoice from the County. If the invoice includes any adjustment in the Disposal Fee, a written calculation or explanation of the basis for the adjustment shall accompany the invoice.
- (e) It is not intended by the parties that Special Waste generated in the City will be regularly delivered to the Transfer Station. However, for so long as the City transports Solid Waste to the Transfer Station pursuant to this Agreement, it is agreed that Special Waste may be delivered to the Transfer Station. The Disposal Fee for Special Waste is contained on Exhibit A attached hereto as the Special Waste Disposal Fee Schedule. The Special Waste Disposal Fee may be changed from time to time by St. Johns County upon thirty (30) days advance Notice to the City.
- (f) At the request of St. Johns County, the parties shall attempt to negotiate in good faith an adjustment for any increase in the cost of administrative services of St. Johns

County based on salary increases or inflation. Failure to agree on an adjustment shall not affect the continuation of this Agreement or any of its terms and conditions, but may be considered by St. Johns County in connection with a termination without cause under paragraph 3(d).

7. MISCELLANEOUS.

- (a) **Limitations Upon Consent.** Whenever, under the terms of this Interlocal Agreement, either party is called upon to give its written consent, and except as provided under paragraph 7 (g), such written consent will not be unreasonably withheld.
- (b) **Form of Consent.** All consents and approvals of any kind required under this Interlocal Agreement shall be in writing. Whenever, under the terms of this Interlocal Agreement, either party is authorized to give consent, such consent may be given and shall be conclusively evidenced by a writing executed by an appropriate officer.
- (c) **Notices, Documents, and Consents.** All notices required to be given or authorized to be given by any party pursuant to this Interlocal Agreement shall be in writing and shall be deemed delivered when received, either by the United States Postal Service by certified mail (return receipt requested), or by hand delivery, or delivered by an overnight delivery service:

To the City:

City of St. Augustine
City Manager
P.O. Box 210
St. Augustine, Florida 32085-0210

To St. Johns County:

St. Johns County
County Administrator
P.O. Drawer 349
St. Augustine, FL 32085-0349

- (d) **Amendments.** This Interlocal Agreement may be amended from time to time only by

**INTERLOCAL AGREEMENT
FOR SOLID WASTE DISPOSAL BY AND BETWEEN
THE CITY AND ST. JOHNS COUNTY**

THIS INTERLOCAL AGREEMENT (the Interlocal Agreement), is made and entered into by and between the City of St. Augustine, a municipal corporation (the City), and St. Johns County, a political subdivision of the State of Florida (St. Johns County).

WHEREAS, it is the design, purpose, and intention of the parties hereto to permit said parties, individually and collectively, to make the most efficient use of their respective powers, resources and capabilities in regard to solid waste disposal services and facilities in a manner most consistent with the geographic, economic, demographic and other factors influencing their respective needs and the development of their respective and joint communities; and,

WHEREAS, St. Johns County expects to transport and dispose of its Solid Waste in whole or in part outside of the County; and,

WHEREAS, Section 403.706(8), Florida Statutes, authorizes the City to enter into a written agreement with St. Johns County to accommodate the City's solid waste disposal needs, in whole or in part; and,

WHEREAS, St. Johns County has currently contracted with Seaboard Waste Systems, Inc., a Florida corporation, to operate in St. Johns County a solid waste transfer station, and to transport solid waste from the transfer station to a permitted and licensed Solid Waste Management Facility; and,

WHEREAS, the parties desire to enter into a direct contractual relationship for an initial period of seven years, with the ability through mutual consent to extend the Interlocal Agreement for

one or more additional seven year periods, to provide for the disposal of all Solid Waste generated within the municipal limits of the City of St. Augustine, and to set forth the terms, conditions, rights, and remedies of the parties thereunto appertaining.

W I T N E S S E T H

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and for other good and valuable consideration, the receipt of which and the adequacy of which are mutually acknowledged, with each party accordingly waiving any challenge to the sufficiency of such consideration, it is mutually covenanted, promised and agreed by the parties hereto as follows:

1. AUTHORITY; GENERAL RESPONSIBILITIES; CONDITIONS PRECEDENT.

This Interlocal Agreement is entered into pursuant to the provisions of Section 163.01, Florida Statutes, commonly known as the "Florida Interlocal Cooperation Act of 1969" (the Act), and all applicable portions of the Act are made a part hereof and incorporated herein as if set forth at length herein, including but not limited to the following specific provisions:

- (a) All of the privileges and immunities and limitations from liability, exemptions from laws, ordinance and rules, and all pensions and relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents, or employees of the parties hereto when performing their respective functions within their respective territorial limits for their respective agencies, shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents or employees extra-territorially under the provisions of this Interlocal Agreement.

- (b) This Interlocal Agreement does not and shall not be deemed to relieve any of the parties hereto of any of their respective obligations or responsibilities imposed upon them by law except to the extent of the actual and timely performance of those obligations or responsibilities by one or more of the parties to this Interlocal Agreement, in which case performance provided hereunder may be offered in satisfaction of the obligation or responsibility.
- (c) As a condition precedent to its effectiveness, this Interlocal Agreement and any subsequent amendments hereto shall be filed with the Clerk of the Court of St. Johns County.

2. DEFINITIONS.

As used herein the following terms shall have the meanings attributed thereto, unless the context clearly indicates otherwise:

- (a) “Class I Solid Waste Disposal Facility” means any Class I landfill so classified under Rule 62-701.340(3)(a) and (c), Florida Administrative Code, or any successor rule or regulation thereto.
- (b) “Contractor” means Seaboard Waste Systems, Inc., or any other corporation(s) or entity authorized in writing by St. Johns County to operate the Transfer Station, and transport Solid Waste from the Transfer Station to a permitted or licensed Solid Waste Management Facility accepting Class I Solid Waste.
- (c) “Department” means the Florida Department of Environmental Protection, and any successor agency thereto.

- (d) "Disposal Fee" means the fee charged to the City of St. Augustine by St. Johns County for the processing, transportation and disposal of Class I Solid Waste.
- (e) "Effective Date" means June 1, 1999.
- (f) "FAC" means the Florida Administrative Code.
- (g) "Hazardous Waste" means hazardous waste, as defined in Section 403.703(21), Florida Statutes, or any successor statute thereto, or agency rules(s) promulgated thereunder.
- (h) "Notice" means a written notice delivered by certified or registered mail, return receipt requested, or by hand delivery, or by overnight delivery service.
- (i) "Permit" means the written authorization issued by a regulatory agency with jurisdiction for the siting, construction and/or operation of a Transfer Station provided all procedural standards, performance standards and conditions set forth therein are met.
- (j) "Permit Modification" means a change or alteration to the procedural standards, performance standards or conditions of a Permit.
- (k) "Scales" means a platform truck scale weighing device which meets with the design specifications and performance accuracy requirements of the scale code in the National Institute of Standards and Technologies Handbook 44, and is certified by the Florida Department of Agriculture, or any successor agency thereto.
- (l) "Solid Waste" means solid waste, as defined by Rule 62-701.200(102), FAC., or any successor agency rule promulgated thereunder, which can lawfully be disposed of in a permitted Class I Solid Waste Disposal Facility.

- (m) "Solid Waste Disposal Facility" means a Class I Solid Waste Disposal Facility.
- (n) "Solid Waste Management Facility" means the permitted or licensed Class I Solid Waste Disposal Facility chosen by St. Johns County in its absolute discretion, and which may be changed at the County's discretion from time to time, contracted to accept Class I Solid Waste from the St. Johns County Transfer Station.
- (o) "Special Waste" means waste materials which are not Hazardous Waste but do require special processing. Special Waste includes, but is not limited to, Waste Tire, White Goods, euthanized animals, and asbestos.
- (p) "Ton" means two thousand pounds.
- (q) "Transfer Station" means the Solid Waste processing and transportation facility that is located in St. Johns County at the Tillman Ridge Landfill.
- (r) "Waste Screening Program" means a program for detecting and preventing Hazardous Waste from entering the Transfer Station, and includes random inspection of incoming loads of Solid Waste, record keeping, training, and procedures to notify the proper regulatory agency(s) when Hazardous Waste has entered the Transfer Station.
- (s) "Waste Tire" is as defined by Rule 62-701.200(122), FAC.
- (t) "White Goods" is as defined by Rule 62-701.200(129), FAC.

3. TERM AND SPECIAL CONDITIONS.

- (a) Unless sooner terminated as provided herein, the term of this Interlocal Agreement shall commence on the Effective Date of this Agreement and shall continue thereafter for a period of eighty-four (84) consecutive calendar months ending on the last day of the eighty-fourth month.

- (b) (1) Except as otherwise provided herein, if either party commits a default (the “defaulting party”) and continues or fails to cure such default for or during thirty (30) days after the other party has given the defaulting party Notice of such default, the other party may, at its option, (i) terminate this Agreement in the manner and on the conditions provided in paragraph (c) below; (ii) cure the default at the expense of the defaulting party; and/or (iii) have recourse to any other right or remedy to which it may be entitled at law or in equity. The non-defaulting party’s selection of any remedy specified herein shall not be construed as a waiver of any other specified options or any other rights at law or in equity related to the defaulting party’s default.
- (2) If a default does not endanger the health, safety, or welfare of the parties or their respective citizens, and with the exercise of due diligence a cure cannot reasonably be effected during the aforesaid thirty (30) day period, but can be cured within a reasonable time thereafter, such thirty (30) day period shall be extended for such reasonable time to allow the cure of the default during the extended cure period. In the event either party waives a default by the other party, such waiver shall not be construed or determined to be a continuing waiver of the same or any subsequent default.
- (3) The persistent, repeated, or substantial failure or refusal by either party to substantially fulfill any of its material obligations in accordance with this Agreement, unless excused or justified by a default by the other party, or other legally recognized cause customarily justifying or excusing non-performance shall constitute a “default” as such word is used in this Agreement; provided, however, that failure or refusal

shall not constitute a default unless and until the failing or refusing party has been given Notice by the other party that a failure or refusal is deemed to exist, which will, unless corrected within thirty (30) days, or within such additional time as may be allowed under paragraph 3(b)(2), constitute a default on the part of the failing or refusing party.

(4) If there is a disagreement between the parties about whether a default has occurred, or the appropriate action to cure any default, a meeting of the two parties or their representatives shall be promptly held.

- (c) In the event either party shall fail or refuse to cure a default as required by paragraph (b) above, this Interlocal Agreement may be terminated for such cause by a majority vote of either the Board of County Commissioners of St. Johns County or the City Commission of the City of St. Augustine. Should this Agreement be terminated for cause by St. Johns County, the City shall have the right to continue to deliver Solid Waste to the Transfer Station in accordance with the terms of this Agreement for a period of six (6) months from the date of receiving Notice of termination. If this Agreement is terminated for cause by the City, the City may discontinue the delivery of Solid Waste to the Transfer Station on a date selected by the City, provided such date shall occur no earlier than thirty (30) days and no later than twelve (12) months after delivery of a Notice of termination to St. Johns County.
- (d) Either party may terminate this Agreement without cause by Notice to the other party provided that the effective date of the termination shall not be prior to the expiration of twelve (12) months from the date of receipt of such Notice by the other party.

4. RIGHTS AND OBLIGATIONS OF THE CITY OF ST. AUGUSTINE

- (a) Commencing on the Effective Date of this Interlocal Agreement, the City shall cause, either by use of its employees or its own contractor(s), to be delivered to the Transfer Station all of the Solid Waste generated within the municipal limits of the City of St. Augustine.
- (b) All Solid Waste delivered to the Transfer Station must conform to all applicable federal, state and local laws, regulations and orders relating at any time to the transportation and disposal of waste. The City will exercise reasonable care and diligence to prevent Hazardous Waste, or any other waste material which is not permitted for disposal in a Class I Solid Waste Disposal Facility under rules promulgated by the Department, from being included in or co-mingled with the Solid Waste. The City shall in all matters relating to the transportation and disposal of the Solid Waste comply with all applicable federal, state and local laws, rules, regulations, and orders relating to such activities.
- (c) The City shall not deliver any Solid Waste or other materials not generated within the municipal limits of the City of St. Augustine unless prior authorization is obtained in writing from St. Johns County.

5. RIGHTS AND OBLIGATIONS OF ST. JOHNS COUNTY.

- (a) Commencing on the Effective Date of this Interlocal Agreement, St. Johns County or its Contractors shall accept at the Transfer Station for disposal at the contracted Solid Waste Management Facility all of the Solid Waste transported by the City to the Transfer Station, provided all such Solid Waste has been generated exclusively within

the geographic boundaries of the City of St. Augustine.

- (b) St. Johns County shall use its best efforts to prevent the acceptance of Hazardous Waste at the Transfer Station. As used herein, the term “best efforts” shall mean the implementation, rigorous enforcement, and continuous updating of a Waste Screening Program. Upon request, St. Johns County shall furnish to the City a copy of the Department of Environmental Protection approved Waste Screening Program Plan.
- (c) St. Johns County shall maintain Scales at the Transfer Station as may be required by law and any regulatory agency with jurisdiction, and shall cause all Solid Waste delivered by the City to the Transfer Station to be weighed thereon. The results of each such weighing shall be permanently and accurately recorded. St. Johns County, at its cost and expense, shall test and recalibrate the Scales as often as may be required by applicable laws and/or any regulatory agency with jurisdiction.
- (d) St. Johns County shall maintain a weight record containing the weight, date, time, and vehicle identification number of each City delivery vehicle transporting Solid Waste to the Transfer Station, and also a description of any items of Special Waste and the date delivered and vehicle identification number of the delivery vehicle.
- (e) St. Johns County shall provide to the City a copy of its year-end summary of tonnage of all Solid Waste and quantities and kinds of Special Waste delivered by the City to the Transfer Station for the preceding fiscal year. Such reporting shall occur for each fiscal year in which Solid Waste and Special Waste is delivered to the Transfer Station. For purposes of this Interlocal Agreement, each fiscal year for each party shall run from October 1 through the following September 30.

- (f) St. Johns County, for the duration of this Interlocal Agreement: (1) shall have the continuing obligation, and shall take all actions necessary, to apply for, timely seek renewal of, and maintain in good standing any and all Permits, including but not limited to those pertaining to environmental matters, as may be necessary for the continuous and lawful operation of the Transfer Station; and (2) shall take no actions which would adversely affect the retention of any and all Permits, including but not limited to those pertaining to environmental matters, as may be necessary for the continuous and lawful operation of the Transfer Station.
- (g) St. Johns County, for the duration of this Interlocal Agreement, shall have the continuing obligation to promptly give Notice to the City of each occasion that St. Johns County (1) applies for any Permit or Permit Modification issued by any regulatory agency pertaining directly or indirectly to the Transfer Station; (2) receives a notice of violation, or any similar notification from any regulatory agency with respect to the Transfer Station; or (3) receives direction from any regulatory agency to implement a contamination assessment plan approved by the Department with respect to the Transfer Station. St. Johns County shall furnish to the City copies of each Permit received (exclusive of attachments thereto), of each notice of intent to issue or deny a Permit or Permit Modification, and of each notice pertaining to a Permit or Permit Modification published by it in a newspaper pursuant to a requirement of law or of the regulatory agency issuing the same. Such copies shall be delivered to the City within five business days following receipt of publication thereof. The City shall also be entitled to receive a copy of any application for Permit

or Permit Modification made by the St. Johns County (exclusive of attachments thereto).

- (h) St. Johns County reserves the right to make and enforce reasonable rules and regulations concerning the operation of the Transfer Station, the conduct of the drivers and others on the Transfer Station premises, quantities and sources of Solid Waste and Special Waste and any other matters necessary or desirable for the safe, legal and efficient operation of the Transfer Station. Such rules and regulations include, but are not limited to, speed limits imposed within the Transfer Station, the wearing of safety equipment by all individuals allowed on the Transfer Station, and the admittance order of vehicles arriving at the Transfer Station.
- (i) St. Johns County shall have the right to refuse to accept any Solid Waste which does not conform to the requirements of this Agreement, the conditions of the Transfer Station Permit, the conditions of the permit for the Solid Waste Management Facility, or to any applicable law, regulation, rule or regulation, even if only a part of the waste load is non-conforming. In the event the City delivers any Solid Waste containing Hazardous Waste or any waste which is not permitted for delivery to the Transfer Station or for disposal in a Class I Solid Waste Disposal Facility by rule or permit requirement, then the City will immediately remove all of said unacceptable waste from the Transfer Station. Additionally, for any loads delivered by the City containing Class I waste mixed with other classifications of waste, the City agrees to pay St. Johns County a fee for sorting and/or cleanup of \$25.00 per man-hour for labor and \$100.00 per hour for equipment with operator with a minimum one (1) hour

charge if the City has been notified and is unable to reclaim the unacceptable materials.

- (j) St. Johns County shall have the right to inspect all trucks carrying City Solid Waste to determine whether the waste is conforming or non-conforming. It is understood that any failure to inspect or, upon inspection, to detect unacceptable waste shall in no way relieve the City of its obligations to dispose of only Solid Waste which is acceptable under the law and this Agreement.
- (k) Disposal shall be from vehicles appropriately identified as City vehicles and/or any contractor(s) of the City.
- (l) In the event that a vehicle delivering Solid Waste for the City should become incapacitated or unable to move while at the Transfer Station, St. Johns County may, but shall not be obligated to, provide assistance in moving the vehicle. In such circumstances, the operator of the disabled vehicle shall make the necessary connections with any vehicle that may be provided to assist, and the City expressly agrees that neither St. Johns County nor its Contractor shall have any liability for damage to the disabled vehicle while providing such assistance
- (m) The City may remove any Special Waste which the City has inadvertently delivered to the Transfer Station. Such removal shall be performed in accordance with rules and regulations of St. Johns County which will reasonably allow the City to reclaim such Special Waste provided the City does so promptly and in a manner which does not interfere with the normal operation of the Transfer Station.

6. DISPOSAL FEES.

- (a) Commencing on the Effective Date of this Agreement and continuing through December 31, 1999, the fee to be charged by St. Johns County (the "Disposal Fee") for receiving Solid Waste delivered by the City to the Transfer Station shall be Thirty-six Dollars (\$36.00) per Ton. Commencing on January 1, 2000, and from time to time thereafter, the Disposal Fee shall be adjusted upwards or downwards as provided in paragraph 6(c).
- (b) The City shall pay to St. Johns County the Disposal Fee on all Solid Waste and the Disposal Fee on any Special Waste delivered by the City to the Transfer Station.
- (c) The Disposal Fee is Thirty-Six Dollars (\$36.00) per Ton of Solid Waste from the Effective Date through December 31, 1999. St. Johns County has a contract with its Contractor for the processing of Solid Waste at the Transfer Station and to transport it to the Solid Waste Management Facility. Said contract may be amended from time to time, and further the Contractor may be changed, and new contracts may be entered into by St. Johns County for the performance of those services, all in the absolute discretion of St. Johns County. Also, St. Johns County has a contract with the owner of the Solid Waste Management Facility for the disposal of Solid Waste. Said contract may be amended from time to time, and further a different Solid Waste Disposal Facility may be chosen by St. Johns County, and new contracts may be entered into by St. Johns County for the performance of that service, all in the absolute discretion of St. Johns County. The contracts referenced in the preceding sentences in this paragraph, and renewals thereof or subsequent contracts, may

contain provisions allowing an increase or decrease in the cost to St. Johns County for those services based on changes in the consumer price index (CPI) or similar cost of living index intended to measure the change in the purchasing power of the U.S. dollar. In order to pass on to the City increases or decreases in the costs incurred by St. Johns County, the Disposal Fee is hereby apportioned by allocating seven dollars and 25/ths (\$7.25) of it to the cost charged by the Contractor for processing and transporting of Solid Waste, twenty-five dollars (\$25.00) thereof to the disposal cost at the Solid Waste Management Facility, and three and 75/ths dollars (\$3.75) thereof to administrative services and recovery of capital investment by St. Johns County. Commencing on January 1, 2000, and on January 1 of each year thereafter, said portion of the current Disposal Fee for Solid Waste allocated to the cost of processing and transporting Solid Waste shall be adjusted upwards or downwards by a factor which shall be the same percentage of change in the CPI as that percentage change in cost incurred by St. Johns County under its contract with the Contractor at any time in the preceding twelve months through and including the effective date (January 1) of the adjustment (the "Processing Adjustment Factor"). Commencing on January 1, 2000, and on January 1 of each year thereafter, said portion of the current Disposal Fee for Solid Waste allocated to the cost of disposal at the Solid Waste Management Facility shall be adjusted upwards or downwards by a factor which shall be the same percentage of change in the CPI as that percentage change in cost incurred by St. Johns County under its contract with the owner of the Solid Waste Management Facility at any time in the preceding twelve months through and including the effective

date (January 1) of the adjustment (the "Disposal Adjustment Factor"). The Disposal Fee for Solid Waste as adjusted on January 1 of each year shall be equal to the sum of: (i) the then current portion of the Disposal Fee allocated to processing and transporting Solid Waste plus (or minus in the case of decrease in the CPI) the product of the then current Disposal Fee allocated to processing and transporting Solid Waste times the Processing Adjustment Factor, plus (ii) the then current portion of the Disposal Fee allocated to the cost of disposal of Solid Waste at the Solid Waste Management Facility, plus (or minus in the case of a decrease in the CPI) the product of the current Disposal Fee allocated to disposal of Solid Waste at the Solid Waste Management Facility times the Disposal Adjustment Factor, plus (iii) the then current portion of the Disposal Fee allocated to administrative services and recovery of capital investment by St. Johns County. The adjusted Disposal Fee shall be expressed correct to the nearest whole cent (\$0.01), and shall apply to Solid Waste delivered to the Transfer Station on and after January 1 of each year. Subject to paragraph (f) below, the amount of \$3.75 allocated to administrative services and recovery of capital investment by St. Johns County is not subject to any CPI adjustment. The Disposal Fee shall also be adjusted based on cost increases or decreases to St. Johns County under its contracts with the Contractor and/or the owner of the Solid Waste Management Facility which occur for reasons other than changes in the CPI, and the amount of the adjustment to be passed on to the City shall correspond dollar-for-dollar to the increase or decrease in cost for processing, transporting and/or disposing per Ton of Solid Waste incurred by St. Johns County under said contracts, and each

such adjustment to the rates charged to the City shall become effective on the date each such increase or decrease takes effect and is incurred by St. Johns County. However, any increase or decrease that occurs prior to January 1, 2000, shall not take effect as to the City until January 1, 2000. The preceding two sentences shall apply only to increases or decreases incurred by St. Johns County after the Effective Date of this Agreement.

- (d) St. Johns County shall invoice the City monthly for the amount of the Disposal Fee owed by the City under the terms of this Interlocal Agreement. Each invoice shall cover the period of the immediately preceding one (1) calendar month, and shall be mailed to the City no later than the tenth (10th) day of following month. The City shall pay each invoice within thirty (30) days of the receipt of said invoice from the County. If the invoice includes any adjustment in the Disposal Fee, a written calculation or explanation of the basis for the adjustment shall accompany the invoice.
- (e) It is not intended by the parties that Special Waste generated in the City will be regularly delivered to the Transfer Station. However, for so long as the City transports Solid Waste to the Transfer Station pursuant to this Agreement, it is agreed that Special Waste may be delivered to the Transfer Station. The Disposal Fee for Special Waste is contained on Exhibit A attached hereto as the Special Waste Disposal Fee Schedule. The Special Waste Disposal Fee may be changed from time to time by St. Johns County upon thirty (30) days advance Notice to the City.
- (f) At the request of St. Johns County, the parties shall attempt to negotiate in good faith an adjustment for any increase in the cost of administrative services of St. Johns

County based on salary increases or inflation. Failure to agree on an adjustment shall not affect the continuation of this Agreement or any of its terms and conditions, but may be considered by St. Johns County in connection with a termination without cause under paragraph 3(d).

7. MISCELLANEOUS.

- (a) **Limitations Upon Consent.** Whenever, under the terms of this Interlocal Agreement, either party is called upon to give its written consent, and except as provided under paragraph 7 (g), such written consent will not be unreasonably withheld.
- (b) **Form of Consent.** All consents and approvals of any kind required under this Interlocal Agreement shall be in writing. Whenever, under the terms of this Interlocal Agreement, either party is authorized to give consent, such consent may be given and shall be conclusively evidenced by a writing executed by an appropriate officer.
- (c) **Notices, Documents, and Consents.** All notices required to be given or authorized to be given by any party pursuant to this Interlocal Agreement shall be in writing and shall be deemed delivered when received, either by the United States Postal Service by certified mail (return receipt requested), or by hand delivery, or delivered by an overnight delivery service:

To the City:

City of St. Augustine
City Manager
P.O. Box 210
St. Augustine, Florida 32085-0210

To St. Johns County:

St. Johns County
County Administrator
P.O. Drawer 349
St. Augustine, FL 32085-0349

- (d) **Amendments.** This Interlocal Agreement may be amended from time to time only by

written agreement duly authorized and executed by the parties hereto.

- (e) Severability. If any provisions of this Interlocal Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Interlocal Agreement, and this Interlocal Agreement shall be enforced as if such invalid and unenforceable provision had not been contained herein.
- (f) Execution of Documents. Each party agrees that it will execute any and all documents or other instruments, and take such other action as is necessary to give effect to the terms and intent of this Interlocal Agreement.
- (g) Assignment. Neither party may assign, transfer, or otherwise vest in any other person, any of its rights or obligations under this Interlocal Agreement without the prior written consent of the other party. Except as otherwise expressly provided elsewhere in this Interlocal Agreement, such consent may be withheld for any or no reason, the provisions of paragraph 7(a) to the contrary notwithstanding.
- (h) Successors and Assigns. This Interlocal Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.
- (i) Waiver. No waiver by either party of any term or condition of this Interlocal Agreement will be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different paragraph, subparagraph, clause, phrase, or other provision of this Interlocal Agreement. Making payment pursuant to this

Interlocal Agreement during the existence of a dispute shall not be deemed to and shall not constitute a waiver of any of the claims or defenses of the party making such payment.

- (j) **Governing Law and Venue.** This Interlocal Agreement shall be governed and construed under and pursuant to the laws of the State of Florida, and the United States of America. Unless the parties otherwise agree, the venue of any action or proceeding brought under the provisions of this Interlocal Agreement shall be in St. Johns County, Florida.
- (k) **Confidentiality.** All written materials and oral communications between either party shall be deemed public information and shall remain a matter of public record in perpetuity unless otherwise provided or allowed by law.
- (l) **Time is of the Essence.** Time is of the essence with respect to this Interlocal Agreement and each of its terms and provisions.
- (m) **Remedies.** Each party shall have the right to seek the judicial enforcement and interpretation of this Interlocal Agreement, and to avail itself of all remedies available to it arising at law or in equity for the breach of this Interlocal Agreement. Remedies are mutually available, and include damages and specific performance, as appropriate.
- (n) **Attorneys' Fees and Costs.** In the event of any action or administrative proceeding between the parties arising under this Interlocal Agreement, the prevailing party will be entitled to an award of reasonable attorneys' fees and costs, including such fees and costs incurred by it in the pursuit of any appellate proceedings, regardless of whether such action or administrative proceeding is pursued before any state or

federal court or agency.

- (o) Non-ad valorem obligation. Both parties understand and intend that the obligations of the City to make payments hereunder shall constitute a current expense payable solely from non-ad valorem funds of the City, and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of an indebtedness by the City, nor shall any thing contained herein constitute a pledge of the ad valorem tax revenues or other funds or assets of the City, other than moneys lawfully appropriated by the City Commissioners of the City of St. Augustine from time to time in its annual budget for the purpose of paying any payment or other amounts coming due hereunder. However, any non-ad valorem special assessment or any other fee or charge collected by the City from its residents, citizens or customers for the purpose of paying for the costs of disposal of Solid Waste shall be applied to the extent necessary to pay the sums due from the City under this Interlocal Agreement.
- (p) The City's Indemnification. Subject to and within the limits set forth in Section 768.28, Florida Statutes, and as otherwise limited or prohibited by law, the City shall indemnify, defend and hold harmless St. Johns County, and its Contractor, and their respective officers, directors, employees and agents, from any and all claims, suits, losses, liabilities, assessments, damages, costs and expenses, including reasonable attorney's fees, arising under federal, state or local laws, ordinances, rules, regulations and orders relating to (a) pollution or protection of the environment, (b) transportation or content of the waste, (c) any violation of the operation Permit(s) issued by the

Department for the Transfer Station, and (d) injury (including death) to the person or damage to or loss of the property of anyone (including St. Johns County and its Contractor, and employees of both) arising out of or in connection with any breach or violation of any term or provision of this Agreement by the City or any negligent act or omission by the City or its officers or employees, or the City's contractor(s), or its officers or employees. However, such indemnification shall not apply to claims for loss, damage, injury or death if caused by the sole negligence of St. Johns County or its Contractor who operates the Transfer Station and transports Solid Waste to the permitted or licensed Solid Waste Management Facility.

- (q) The City shall be responsible for and shall pay or reimburse St. Johns County for any and all expenses incurred by St. Johns County as a result of any breach or violation by the City or its officers or employees of any of its obligations under this Agreement, or any negligent act or omission by the City or its officers or employees, or its contractor(s), or its officers or employees, including, but not limited to, fines and clean-up expenses resulting from Hazardous Waste delivered by the City.
- (r) Each party represents to the other party that the execution of this Interlocal Agreement and performance hereunder will not violate the terms of its own comprehensive plan or Chapter 163 of the Florida Statutes.
- (s) This Interlocal Agreement shall not take effect unless it is executed by both parties no later than May 15, 1999.

IN WITNESS WHEREOF, the parties hereto have executed this Interlocal Agreement as of the dates set forth below.

ST. JOHNS COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners

By: _____
Its Chair

Executed on behalf of St. Johns County on _____, 1999

Attest:

Cheryl Strickland, Clerk of the Circuit Court of St. Johns County

CITY OF St. AUGUSTINE

By: _____
Its Mayor

Executed on behalf of the City of St. Augustine on _____, 1999

Attest:

Paula Owens, City Clerk

Acceptable as to form:

Jim Wilson, City Attorney

EXHIBIT "A"
SPECIAL WASTE DISPOSAL FEE SCHEDULE

1. Used Tires: \$1.50 per Used Tire for up to 10 used Tires (16" or less auto tires).
2. Used Tires: More than 10 Used Tires delivered at the same time to the Tillman Ridge Landfill shall be charged per ton cost: \$125.00 per ton.
3. Flourescent Bulbs: \$.50 per bulb.
4. Commercial rate for:
 - a. Empty plastic paint containers: \$.50 each (5 gallon)
 - b. Containers containing paint: \$3.00 per gallon