

RESOLUTION NO. 2004- 236

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AMENDING THE 1999 SETTLEMENT AND INTERLOCAL AGREEMENT BY SPECIFICALLY AMENDING SECTION 2 OF SUCH AGREEMENT, IN ORDER TO TERMINATE THE CAPACITY PURCHASE OF WATER AND WASTE WATER, AND AUTHORIZING THE CHAIRPERSON OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY TO EXECUTE THE AMENDMENT TO THE SETTLEMENT AND INTERLOCAL AGREEMENT ON BEHALF OF THE COUNTY

WHEREAS, the parties hereto entered into a Settlement and Interlocal Agreement (hereinafter referred to as "Agreement") dated August 13, 1999, relating to the establishment of water and wastewater service territories for the City of St. Augustine, Florida (hereinafter referred to as "CITY") and providing for St. Johns County (hereinafter referred to as "COUNTY") to purchase one million (1,000,000) gallons per day of potable water capacity and one million (1,000,000) gallons per day of wastewater treatment capacity from CITY for a period of five (5) years, commencing October 1, 1999, and terminating September 30, 2004, and

WHEREAS, said Agreement provided that the parties would have the option of renewing the Agreement for an additional five (5) year term of phasing out the wholesale purchase portion of the Agreement; and

WHEREAS, each party is in full compliance with all covenants contained within such Agreement; and

WHEREAS, the parties mutually agree that the COUNTY will not have any further need for CITY'S water and wastewater capacity after September 30, 2004; and

WHEREAS, the COUNTY has determined that terminating the capacity purchase from the CITY will serve in the interests of the COUNTY.

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

1. That the portion of Section 2 of the Settlement and Interlocal Agreement (attached and incorporated as Exhibit A) providing for COUNTY to purchase one million (1,000,000) gallons per day of potable water capacity and one million (1,000,000) gallons per day of wastewater treatment capacity from CITY is hereby terminated, effective September 30, 2004.

2. That the CITY shall continue to provide water and wastewater capacity for Eagle Creek subdivision, at a rate calculated based on the formula set forth in Paragraphs 2 and 14 of the Settlement and Interlocal Agreement.
3. That all remaining portions of said Settlement and Interlocal Agreement, which remain to be carried out or followed by the parties hereto not amended or changed herein shall remain in full force and effect and shall remain binding on each party.
4. The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of the Amendment to the Settlement and Interlocal Agreement (attached and incorporated as Exhibit B) between St. Johns County, Florida, and the City of St. Augustine, Florida, and authorizes the Chairperson of the Board of County Commissioners to execute the Amendment on behalf of the County.

PASSED AND ADOPTED this 15th day of September, 2004.

**BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA**

ATTEST: Cheryl Strickland, Clerk

By: Cheryl Strickland
Clerk of the Board of County
Commissioners of St. Johns County,
Florida
(SEAL)

By: Karen R. Stern
Karen R. Stern, Chairperson

Date: 9-17-04

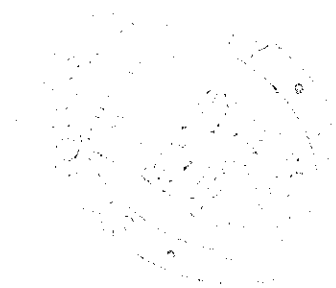
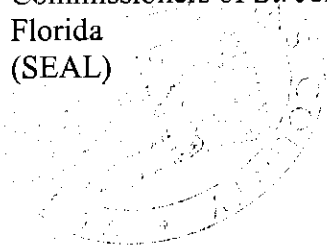


Exhibit A

SETTLEMENT AND INTERLOCAL AGREEMENT

THIS AGREEMENT is made and entered into as of August 13, 1999, by and between the CITY OF ST. AUGUSTINE, a municipal corporation, organized under the laws of the State of Florida, hereinafter called "City" and ST. JOHNS COUNTY, a political subdivision of the State of Florida, hereinafter called "County".

WHEREAS, the governing bodies of the City and the County recognize the need to work cooperatively to delineate and establish water and wastewater service territories for the City and County; and

WHEREAS, the City and County recognize the importance of defined service areas for each governmental body and the long-term planning and financial considerations related thereto; and

WHEREAS, the City and County each intend to plan, construct and maintain utility facilities to provide water and wastewater services to customers within each governmental body's respective service territories; and

WHEREAS, the City and County each believe that reaching a mutually satisfactory resolution of the territorial issues raised by both parties in Case No. CA99-899, St. Johns County, Florida, a political subdivision of the State of Florida v. City of St. Augustine, Florida, is in the best interests of both parties;

NOW, THEREFORE, in consideration of the above and based on the covenants contained herein, it is agreed by and between the parties

as follows:

1.A. The City shall have the water and wastewater service territories as awarded to the City on the attached Exhibit "A".

1.B. The County shall retain the balance of the unincorporated area of the County as it exists on the date of this Agreement as the County's water and wastewater service territories.

1.C. The delineation of City and County water and wastewater service territories set forth in ^{subparagraphs} 1.A. and 1.B. ^{and Exhibit A} notwithstanding, each party may continue to provide water and wastewater services to those areas that they are serving on the effective date of this Agreement.

2. Commencing October 1, 1999, the County will purchase 1 million gallons per day of potable water capacity and 1 million gallons per day of wastewater treatment capacity from the City at a price and in a manner more fully described in attached Exhibit "B". This capacity purchase will entitle the County to 1 million gallons per day of water and wastewater treatment from the City's entire system. However, this Agreement will not require the City to construct any additional water or sewer facilities. The potable water and wastewater treatment capacity needed for the County to provide service to Eagle Creek shall be included in this water and wastewater capacity purchase. At the request of either party, but no more than once per fiscal year, the operation and maintenance

costs of the City's water and wastewater systems shall be reviewed and adjusted to accurately reflect the actual cost of these expenses. The initial term of this wholesale purchase portion of the Agreement shall be five (5) years from the wholesale purchase commencement date stated above. On or before the fourth anniversary date of the wholesale purchase commencement date stated above, the parties shall have the option of: (i) ^{mutually agreeing} renewing this Agreement for an additional five (5) year term or (ii) phasing out this wholesale purchase portion of the Agreement. If this wholesale purchase portion of the Agreement is to be phased out pursuant to (ii), then this wholesale purchase portion of the Agreement shall continue for two (2) additional years subsequent to the fifth anniversary date of the wholesale purchase commencement date stated above in the amount of 500,000 gallons per day at the rates set forth in Exhibit B. At the end of this two (2) year period, the wholesale purchase portion of this Agreement shall terminate with the exception of the County's ability to continue purchasing wholesale potable water and sewer treatment services for Eagle Creek in the manner described in paragraph 14 below.

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mutually agreeing
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3. This Agreement will terminate in its entirety if the City has not enacted, on or before October 15, 1999, an amendment to City Ordinance 99-14 that amends the City's service area to conform to paragraph 1 above and Exhibit A attached hereto and that amends

Sections 1, 3, 4 and 5 of City Ordinance 99-14 in the manner set forth in Exhibit C attached hereto. The City will promptly initiate and continue the process necessary to bring the ordinance amendment to final hearing.

4. This Agreement will terminate in its entirety if the County has not, on or before October 15, 1999, taken the steps necessary to conform the areas described in County Ordinance 99-36 to the areas awarded to the City in this Agreement. The County will promptly initiate and continue the process necessary to bring such changes to a vote by the County's Board of County Commissioners.

5. The County will file this Agreement with the Clerk of the Court in accord with the provisions of Chapter 163, Florida Statutes.

6. The City will immediately notify Hines Interests Limited Partnership ("Hines") that the City requests Hines to immediately terminate the City-Hines Utility Service Agreement pursuant to section 3.6 therein and as an inducement therefor, the City will waive the \$5000 termination fee set forth in that section. This Settlement and Interlocal Agreement shall automatically terminate in its entirety if the Utility Service Agreement between the City and Hines is not terminated on or prior to Friday, August 20, 1999.

7. It is the intention of the City and the County that the service territories set forth in this Agreement be permanent. However, amendments to the territories set forth in paragraph 1 and Exhibit "A" may be made through the mutual agreement of the parties. In the event that no such amendments shall be made, this Agreement shall continue, indefinitely, in full force and effect. If amendments to the service territories are made in accord with this paragraph, the County shall prepare a revised map to be substituted for Exhibit "A" for submittal to the City. The City Manager and County Administrator shall be authorized to approve such map changes.

8. Upon: (i) the City's amendment of City Ordinance 99-14 in the manner set forth in paragraph 3 above, (ii) the County's modification of its Ordinance 99-36 service areas as contemplated in paragraph 4 above, and (iii) the formal cancellation or termination of the City's Utility Service Agreement, as amended, with Hines Interests Limited Partnership pertaining to Marshall Creek, the County and the City shall submit a joint motion requesting the Court to enter the order set forth in Exhibit D attached hereto.

9. Upon: (i) the City's amendment of City Ordinance 99-14 in the manner set forth in paragraph 3 above, (ii) the County's modification of its Ordinance 99-36 service areas as contemplated

in paragraph 4 above; and (iii) the formal cancellation or termination of the City's Utility Service Agreement with Hines Interests Limited Partnership pertaining to Marshall Creek, the County: (i) will dismiss its Amended Petition For Determination of Consistency, (ii) will cooperate fully with the City in a joint effort to remove the Amended Petition For Determination of Consistency from the Section 163.3213, Florida Statutes, review process and (iii) will refrain from initiating any other Section 163.3213, Florida Statutes, challenge against City Ordinance 99-14 as amended in the manner described in paragraph 3 above.

10. The County hereby acknowledges that with regard to the City's service territory identified in Ordinance 99-14, as amended in the manner described in paragraph 3 above, the City has the first perfected right to provide new service to that area.

11. The City hereby acknowledges that with regard to the County's service territory identified in Ordinance 99-36, as conformed in the manner described in paragraph 4 above, the County has the first perfected right to provide new service to that area.

12. This Agreement does not address or effect the County's right, if any, to contest the legality of the City's water and sewer rates, charges, unit connection fees and/or surcharges.

13. To the extent that subsequent to the effective date of this Agreement the City annexes areas in which the County is

already providing water and sewer service, the City shall have no right to provide water and sewer service to that annexed area. However, if the County is not providing water and sewer service to such annexed area at the time of annexation, the City may provide such services to such area.

14. If and when the County ceases to purchase wholesale water and sewer services from the City pursuant to paragraph 2 above, the City shall nevertheless ^{at the County's request continued to} provide sufficient wholesale potable water and sewer treatment services to the County to enable the County to provide retail water and sewer services to all consumers within the Eagle Creek subdivision. The wholesale prices shall be 65% of the respective retail prices that the County charges for its Eagle Creek customers. *See
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15. Consistent with the County's current ordinances, resolutions and regulations, the County will adopt and implement a policy that will notify the City of a construction permit application and advise County construction permit applicants of the availability of City water and sewer services within City service territories delineated in this Agreement and their responsibility to connect to same.

16. The effective date of this Agreement is August 13, 1999.

IN WITNESS WHEREOF, the parties hereto have set their hand and seals on the dates written below.

ATTEST:

CITY OF ST. AUGUSTINE

Mascha M. Parton
City Clerk

Lerrn Jacobs
Mayor-Commissioner

(SEAL)

Date: 8/13/99

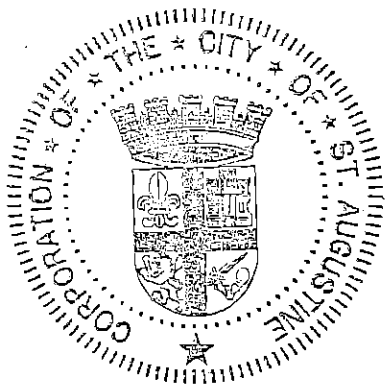
ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

Uwanna King
Deputy Clerk to the Board of County
Commissioners of St. Johns
County, Florida

Mare Jacobs
Chairman

Date: 8-13-99



CHERRYL STRICKLAND
CLERK COUNTY COMMISSION
ST. JOHNS COUNTY FL

99 AUG 13 PM 12:59

FILED

Exhibit B

INTERLOCAL AGREEMENT

This Agreement is made and entered into by and between the **CITY OF ST. AUGUSTINE, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter referred to as "CITY"), and **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as "COUNTY"):

WHEREAS, the parties hereto entered into a Settlement and Interlocal Agreement (hereinafter referred to as "Agreement") dated August 13, 1999, relating to the establishment of water and wastewater service territories for CITY and providing for COUNTY to purchase one million (1,000,000) gallons per day of potable water capacity and one million (1,000,000) gallons per day of wastewater treatment capacity from CITY for a period of five (5) years, commencing October 1, 1999, and terminating September 30, 2004; and

WHEREAS, said Agreement provided that the parties would have the option of renewing the Agreement for an additional five (5) year term or phasing out the wholesale purchase portion of the Agreement; and

WHEREAS, each party is in full compliance with all covenants contained within such Agreement; and

WHEREAS, the parties mutually agree that the COUNTY will not have any further need for CITY'S water and wastewater capacity after September 30, 2004;

NOW, THEREFORE, the parties hereto agree:

1. That the portion of Section 2 of the Agreement providing for COUNTY to purchase one million (1,000,000) gallons per day of potable water capacity and one million (1,000,000) gallons per day of wastewater treatment capacity from CITY is hereby terminated, effective September 30, 2004.

2. That the CITY shall continue to provide water and wastewater capacity for Eagle Creek subdivision, at a rate calculated based on the formula set forth in Paragraphs 2 and 14 of the Agreement.

3. That all remaining portions of said Agreement which remain to be carried out or followed by the parties hereto not amended or changed herein shall remain in full force and effect and shall remain binding on each party.

ATTEST:

Clerk of the Board of County
Commissioners of St. Johns
County, Florida
(SEAL)

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: _____
Karen Stern, Chairperson

Date: _____

ATTEST:

City Clerk
(SEAL)

**CITY OF ST. AUGUSTINE, FLORIDA,
a municipal corporation**

By: _____
George Gardner, Mayor

Date: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

CITY ATTORNEY

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

COUNTY ATTORNEY