

WASTE TIRE PROCESSING AGREEMENT
WITH ST. LUCIE COUNTY, FLORIDA

This Waste Tire Processing Agreement (the "Agreement") is made and entered into as of this 13th day of March, 1990, by and between St. Lucie County, Florida, a political subdivision of the State of Florida (the "County"), and Florida Tire Recycling, Inc., a Florida corporation (the "Contractor").

RECITALS

The statutes of the State of Florida and the regulations promulgated thereunder recognize the growing threat to the environment arising out of the handling and disposition of all types of wastes, including solid wastes. As part of this State's solid waste management program, each county is given responsibility to provide a solid waste disposal facility to permit the disposal of solid wastes, including certain "special (solid) wastes", such as tires. The disposition of unwanted tires ("waste tires") requires specialized handling (or processing) prior to their disposition in a landfill. The Contractor herein possesses specialized equipment which enables it to reduce each whole tire into many smaller pieces, sized as prescribed by law, for ultimate disposition in landfills as daily cover located in this State. This Agreement is intended to finalize and define the terms and conditions between the County and the Contractor regarding the disposition of tires collected by the County.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:

Section 1. Term.

This Agreement shall commence on April 1, 1990 as set forth above, and shall continue through and include March 31, 1992. Such two year period through March 31, 1992, shall be referred to as the "Initial Contract Year". Thereafter, this Agreement may be renewed at the County's option for one (1) additional one (1) year period, upon the same terms and conditions as this agreement provided, however, that the level of compensation set forth in Section 3 shall be renegotiated. The option to renew must be

exercised in writing at least thirty (30) days prior to the date of termination.

Section 2. Project Manager.

The Project Manager for the County is Ron Sigmon at (407) 468-1768. The Project Manager for the Contractor is John J. Wilson at (407) 465-0477.

The parties shall direct all matters arising in connection with the performance of this Contract, other than invoices and notices, to the attention of the Project Managers for attempted resolution or action. The Project Managers shall be responsible for overall resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of this Contract.

Section 3. Contract Documents.

The Contract Documents which comprise the Contract between the County and the Contractor are attached hereto and made part hereof and consist of the following:

- A. This Contract, pages 1 through 10 inclusive.
- B. Insurance Certificates, which shall be provided by the Contractor, along with the return of this executed Contract.
- C. Any Modifications, including change orders, duly delivered after execution of this Contract.

Section 4. Services.

(a) Contractor agrees to accept for disposal all tires, whether whole or in parts and whether commercial or automobile, from the County. Contractor agrees there shall be no minimum number of tires required to be delivered at any one time. The County agrees that no more than fifteen (15) eighteen (18) yard capacity dumptruck loads of tires shall be delivered for disposal in any 24 hour period of time.

(b) Contractor's services described above shall be provided during the normal business hours of the Contractor.

(c) County agrees that the Contractor may recycle, shred, sell or otherwise dispose of the tires in any way Contractor sees fit provided all federal, state and local rules and regulations are complied with.

Section 5. County Responsibility.

(a) County agrees to collect the tires in such a way that they are delivered to the Contractor reasonably free from accumulated seed and or water. Contractor understands that the County occasionally collects tires illegally placed on the landfill face or in ditches and that therefore some tires may have sand or water in them.

(b) County agrees to be solely responsible for the delivery of the tires to Contractor's facility.

Section 6. Compensation.

The County agrees to pay the Contractor at the rate of \$47.50 per short ton of tires. Tonnage shall be based upon the actual weight of tires as weighed by the Contractor at the Contractor's facility. After the tires have been weighed, the County shall sign the weight receipts and then the Contractor will deliver copies of the actual weight receipts to the Finance Department. Contractor shall invoice the County on or before the 5th day of each month for tires delivered during the immediately preceding prior month. If the County does not object to the Contractor's invoices within ten (10) days after receipt thereof, County shall remit payment to the Contractor (at its office at the address set forth in Section 18 herein), within thirty (30) calendar days after the receipt of such invoice.

Section 7. Audit.

The Contractor agrees that the County or any of its duly authorized representatives shall, until the expiration of three years after expenditure of funds under this Contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Contract. The Contractor agrees that payment(s) made under this Contract shall be subject to reduction for amounts charged thereto which are found on the basis of audit examination not to constitute allowable costs under this Contract. The Contractor shall refund by check payable to the County the amount of such reduction of payments. All required records shall be maintained until an audit is

completed and all questions arising therefrom are resolved, or three years after completion of the project and issuance of the final certificate, whichever is sooner.

Section 8. Public Records.

The Contractor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County in conjunction with this Contract.

Section 9. Contractor Responsibility.

The Contractor is an independent contractor and is not an employee or agent of the County. Nothing in this Contract shall be interpreted to establish any relationship other than that of an independent contractor, between the County and the Contractor, its employees, agents, subcontractors, or assigns, during or after the performance of this Contract. The Contractor shall take the whole responsibility of the work and shall bear all losses resulting to him, or it, on account of the amount or character of the work, or except as otherwise provided in the Contract Documents because of any other causes whatsoever.

Neither the County nor its officers, employees or agents assume any responsibility for collection of indemnities or damages from any person or persons causing injury to the work of the Contractor.

At his, or its expense, the Contractor shall take all necessary precautions for the safety of and the prevention of injury, loss and damage to persons and property (including without limitation) in the term persons, members of the public, the County and its employees and agents, the Project Manager and his employees, Contractor's employees, his or its subcontractors and their respective employees, other contractors, their subcontractors and respective employees, on, about or adjacent to the premises where said work is being performed, and shall comply with all applicable provisions of safety laws, rules, ordinances, regulations and orders of duly constituted public authorities and building codes.

The Contractor assumes all risk of loss, damage and destruction to all of his or its materials, tools, appliances and property of every description and that of his or its subcontractors if any and of their respective employees or agents, and injury to or death of the Contractor, his or its employees, subcontractors or their respective employees or agents, including legal fees, court costs or other legal expenses, arising out of or in connection with the performance of this Contract.

The Contractor agrees to forever save and keep harmless and fully indemnify the County, its Officers, employees and agents of and from all liabilities, damages, claims, recoveries, costs and expense because of loss of, or damage to, property, or injury to or deaths of persons in any way arising out of or in connection with the performance of this Contract to the extent of the insurance provisions set out in Section 10 in this Agreement.

The County agrees to forever save and keep harmless and fully indemnify the Contractor, its officers, employees, and agents of and from all liabilities, damages, claims, recoveries, costs, and expense because of loss of, or damage to, property, or injury to or deaths of persons in any way arising out of or in connection with any act or omission of the County or its agents, servants, employees, customers, patrons, or invitees, whether on the Contractor's facilities or surrounding area. The County's indemnification is subject to the limitations set forth in Section 768.28, Florida Statutes.

Section 10. Insurance.

(a) The Contractor shall procure and maintain, through the term of this Contract, Worker's Compensation insurance in accordance with the laws of the State of Florida and in amounts sufficient to secure the benefits of the Florida Workmen's Compensation law for all employees of the Contractor and all subcontractors. The Worker's Compensation insurance policy required by the Contract shall also include Employer's liability.

(b) The Contractor shall procure and maintain, through the term of this Contract, public liability and property damage insurance in the minimum amount of one million and 0/100 (\$1,000,000.00) dollars per occurrence for personal injury and five hundred thousand and 0/100 (\$500,000.00) dollars per occurrence for property damage.

(c) Certificates to all insurance required from the Contractor shall be subject to the County's approval for adequacy.

Section 11. Default; Termination.

(a) FOR CAUSE. If either party fails to fulfill its obligations under this Contract in a timely and proper manner, the other party shall have the right to terminate this Contract by giving written notice of any deficiency and by allowing the party in default seven (7) calendar days to correct the deficiency. If the defaulting party fails to correct the deficiency within this time, this Contract shall terminate at the expiration of the seven (7) calendar day time period.

With regard to the Contractor, the following items including without limitation shall be considered a default under this Contract:

(1) If the Contractor should be adjudged bankrupt, or if he, or it, should make a general assignment for the benefit of his, or its, creditors, or if a receiver should be appointed on account of his, or its, insolvency.

(2) If the Contractor shall lose or not obtain any permit or other authorization required by federal, state or local laws, rules or regulations.

(3) If the Contractor disregards laws, ordinances, or otherwise be guilty of a substantial violation of the provisions of the Contract.

In the event of termination, the Contractor shall only be entitled to receive payment for work satisfactorily completed prior to the termination date. The expense incurred by the County as herein provided, shall be certified by the Project Manager.

(b) WITHOUT CAUSE.

Either party may terminate the Contract without cause at any time upon thirty (30) calendar days prior written notice to the other party. In the event of termination, the County shall compensate the Contractor for all authorized work performed through the termination date.

Section 12. Laws, Permits and Regulations.

Prior to the performance of any work hereunder, the Contractor shall obtain and pay for all licenses, permits and inspection fees as required to perform the services described in Section 4 of this Agreement. Contractor shall at all times comply with all appropriate laws, regulations and ordinances applicable to the services to be provided under this Agreement.

Section 13. Non Discrimination.

Contractor covenants and agrees that Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of the Contract with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex or physical handicaps (except where based on a bona fide occupational qualification); or because of marital status, race, color, religion, national origin or ancestry.

Section 14. Verification of Employment Status.

Contractor agrees that it shall bear the responsibility for verifying the employment status, under the Immigration Reform and Control act of 1986, of all persons it employs in the performance of the contract.

Section 15. Florida Produced Lumber.

Contractor agrees to comply with the provisions of Section 255.20, Florida Statutes, (1987) where pertinent.

Section 16. Assignment.

Contractor shall not assign this Contract to any other persons or firm without first obtaining County's written approval.

Section 17. Attorneys' Fees and Costs.

In the event the Contractor defaults in the performance of any of the terms, covenants and conditions of this Contract, the Contractor agrees to pay all damages and costs incurred by the County, including reasonable attorneys' fees.

Section 18. Notices.

All notices or other communications hereunder shall be in writing and shall be deemed duly given if delivered in person or sent by certified mail return receipt requested and addressed as follows:

If to County:

St. Lucie County Administrator
2300 Virginia Avenue, Annex
Fort Pierce, Florida 34982

with copies to:

St. Lucie County Attorney
2300 Virginia Avenue, Annex
Fort Pierce, Florida 34982

Solid Waste Superintendent
2300 Virginia Avenue, Annex
Fort Pierce, Florida 34982

Public Works Director
2300 Virginia Avenue, Annex
Fort Pierce, Florida 34982

If to Contractor:

John J. Wilson, President
Florida Tire Recycling, Inc.
10151 Rang's Lane Road
Fort St. Lucie, FL 34987

with copies to:

Deniel D. Harrell, Esquire
Gonono and Harrell
1600 S. Federal Highway
Fort Pierce, FL 34950-5178

Section 19. Indulgence Not Waiver.

The indulgence of either party with regard to any breach or failure to perform any provision of this Contract shall not be deemed to constitute a waiver of the provision or any portion of this Contract either at the time the breach or failure occurs or at any time throughout the term of this Contract.

Section 20. Conflict of Interest.

The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Florida Statutes 112.311. The Contractor further represents that no person having any interest shall be employed for said performance.

The Contractor shall promptly notify the County in writing by certified mail of all potential conflicts of interest prohibited by existing state law for any prospective business association, interest or other circumstance which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion of the County as to whether the association, interest or circumstance would, in the opinion of the County, constitute a conflict of interest if entered into by the Contractor. The County agrees to notify the Contractor of its opinion by certified mail within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the County, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the County shall so state in the notification and the Contractor shall, at his/her option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the County by the Contractor under the terms of this agreement.

Section 21. Interpretation: Venue.

This Contract constitutes the entire Agreement between the parties with respect to the subject matter hereof and supercedes all prior verbal or written Agreements between the parties with respect thereto. This Contract may only be amended by written document, properly authorized, executed and delivered by both parties hereto. This Contract shall be interpreted as a whole unit and section headings are for convenience only. All interpretations shall be governed by the laws of the State of Florida. In the event it is necessary for either party to initiate legal action regarding this Contract, venue shall be in the Nineteenth Judicial Circuit for St. Lucie County, Florida, for claims under state law and the Southern District of Florida for any claims which are justiciable in federal court.

IN WITNESS WHEREOF, the County has hereunto subscribed and the Contractor has affixed his, its, or their names, or name, and seal the date aforesaid.

ATTEST:

Mary B. Quinn
DEPUTY CLERK

BOARD OF COUNTY COMMISSIONERS
ST. LUCIE COUNTY, FLORIDA

BY: R.D.T.
CHAIRMAN

APPROVED AS TO FORM AND
CORRECTNESS:

Paul J. Ferguson
Asst. COUNTY ATTORNEY
FLORIDA TIRE RECYCLING, INC.

ATTEST:

John J. Wilson
SECRETARY

BY: S. K. Wilson
PRESIDENT

(SEAL)

6. All reasonable steps have been taken to minimize any adverse effect of the proposed project on the immediate vicinity through building design, site design, landscaping and screening.

7. The proposed project will be constructed, arranged and operated so as not to interfere with the development and use of neighboring property, in accordance with applicable district regulations.

8. The proposed project will be served by adequate public facilities and services.

9. The applicant has obtained from the St. Lucie County - Fort Pierce Fire Prevention Bureau written confirmation that water supply, evacuation facilities, and emergency access are satisfactory to provide adequate fire protection.

10. The proposed project complies with all additional standards imposed on it by the particular provisions of the St. Lucie County Zoning Ordinance authorizing such use and any other requirement of the Code of Ordinances of St. Lucie County.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Lucie County, Florida:

A. Pursuant to Section 5.1.300 of the St. Lucie County Zoning Ordinance, the site plan for the proposed project to be known as Florida Tire Recycling, Inc., be, and the same is hereby, approved as shown on the site plan drawings for the project prepared by Culpepper & Terpening Inc., dated November