

Final 6-18-12(1)

AGREEMENT
BETWEEN
SUN-BERGERON SOLID WASTE SERVICES (SUN-BERGERON) JV,
A FLORIDA JOINT VENTURE
AND
BROWARD COUNTY
FOR
SOLID WASTE DISPOSAL SERVICES

This Agreement is made and entered into this 26th day of June, 2012, by and between Bergeron Environmental and Recycling, LLC, a Florida limited liability company AND Sun Recycling, LLC, a Florida limited liability company, doing business as SUN-BERGERON SOLID WASTE SERVICES ("Sun-Bergeron") JV, a Florida Joint Venture (hereinafter referred to as "Contractor"), and BROWARD COUNTY, a political subdivision of the State of Florida (hereinafter referred to as the "County").

WHEREAS, On March 27, 2012, Broward County Board of County Commissioners unanimously voted to authorize negotiations with Wheelabrator Technologies, Inc. and Sun-Bergeron for a solid waste disposal agreement; and

WHEREAS, Contractor and the County desire to enter into this Agreement (the "Agreement") to provide for the disposal of solid waste generated within certain geographic boundaries of Broward County and to set forth how such solid waste disposal services will be provided; and

WHEREAS, it is the intent of the parties Agreement may function as either (i) a form agreement for Broward municipalities to use as a basis for a solid waste contract with Contractor independent of County and independent of the proposed Interlocal Agreement, or alternatively (ii) this Agreement may serve as the basis for an Interlocal Agreement, whereby Participating Communities executing the Interlocal Agreement shall agree, among other things, to be bound by the terms of this Agreement; and

WHEREAS, the County is desirous of securing and maintaining a high level of professional, safe and environmentally sound solid waste disposal services in conjunction and harmony with its environmental protection and conservation polices and fiscal policies of sound, economical management; and

WHEREAS, the County has determined that it is beneficial and in the best interest of the public to enter into this Agreement.

NOW THEREFORE, In consideration, among other things, for County enabling municipalities to Piggyback on this Agreement immediately, for County's commitment to draft and present an Interlocal Agreement offering centralized billing and other services to Participating Communities and the mutual covenants, promises, terms and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, Contractor and the County do hereby agree as follows:

ARTICLE 1 DEFINITIONS

For the purpose of this Agreement, the following definitions shall apply, unless otherwise specifically stated:

"Bulk Waste" shall refer to any non-vegetative item that cannot be containerized, bagged, or bundled including, but not limited to, white goods, discarded refrigerators, ranges, pool heaters, water softeners, pianos, washers, dryers, water heaters, bicycles, and other similar appliances, electronics, mattresses, household goods, furniture, large boxes, barrels and crates, and shall not be commingled with vegetative waste or any other type of refuses and as otherwise defined under Section 403.703, Florida Statutes or applicable regulations promulgated thereunder (Class III Waste).

"Broward Waste" shall refer to Commercial Waste and Residential Waste generated within the unincorporated portions of Broward County and those governmental entities listed in Exhibit "D" attached hereto and made a part hereof

"Centrally Billed Participating Community(ies)" shall refer to municipalities which have executed the Interlocal Agreement and have elected to have the County perform centralized billing services and are indicated as such on Exhibit "D."

"Commercial Waste" shall refer to all waste, refuse, garbage, trash and rubbish generated within the unincorporated portions of Broward County and the Participating Communities listed on Exhibit "D" from non-residential property and that is capable of being processed at the Waste Processing Facility(ies), but shall not include Residential Waste as defined herein, construction and demolition debris, tropical storm or hurricane related debris, recyclable material that is source separated (removed from the waste stream at the point of generation) and recycled, or Unacceptable Waste.

"Commencement Date" shall refer to the date upon which the Interlocal Agreement has either terminated or expired.

"Construction and Demolition Debris" shall refer to discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and includes rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from

construction of structures at a site remote from the construction or demolition project site as defined under Section 403.703, Florida Statutes, or applicable regulations promulgated thereunder.

"Directly Billed Participating Community(ies)" shall refer to municipalities which have executed the Interlocal Agreement and perform their own billing services and are indicated as such on Exhibit "D."

"Disposal Services" refers to everything required to be furnished and done by the Contractor pursuant to this Agreement. Disposal Services include, but are not limited to, the employment and furnishing of all labor, materials, equipment, supplies, tools, storage, transportation, insurance, sales, delivery and other things and kinds of services whatsoever necessary for the receipt, processing, transferring, transporting and disposal of Broward Waste or Additional Waste, as defined in Section 3.1, and any associated residual materials.

"Disposal Services Fee" shall mean the per-ton (or per cubic yard as appropriate) rate charged by the Contractor for providing the Disposal Services in accordance with this Agreement and set forth on Exhibit "A" attached hereto and made a part hereof.

"Disposal Services Fee Adjustment Factor" shall refer to the adjustment that shall be applied to the Disposal Services Fee on an annual basis, as calculated pursuant to Section 6.2.

"Effective Date" shall refer to the date that this Agreement has been executed by both the County and the Contractor.

"Force Majeure" means any event or condition having a material and adverse effect on the rights, duties and obligations of a party hereunder that is beyond the reasonable control, and not the result of willful or negligent action or omission or a lack of reasonable diligence, of the party relying thereon as justification for not performing. Such events or conditions may include, but shall not be limited to: an act of God, epidemic, hurricane, earthquake, fire, explosion, storm, flood or similar occurrence, an act of war, effects of nuclear radiation, blockade, insurrection, riot, labor unrest (other than with respect to employees of the party claiming relief), civil disturbance, restraint of government or people or similar occurrences, or damage caused by Hazardous Waste, explosives or radioactive waste entering a Waste Processing Facility or Materials Recovery Facility unless knowingly accepted by Contractor. In any event, Force Majeure shall not include the following:

- (a) the failure of any subcontractor or any supplier to furnish labor, services, materials or equipment, unless caused by an event of Force Majeure;
- (b) the suspension, termination, interruption, denial or failure of renewal of any permit, license, consent, authorization or approval relating to the operation of a Waste Processing Facility or Materials Recovery Facility, or Solid Waste

Disposal Facility which is the result of any action or inaction or failure of compliance by Contractor or any affiliate;

(c) any change in law (other than to the extent that Contractor's physical ability to process Broward Waste is eliminated due to a change in law);

(d) loss or unavailability of personnel desired by Contractor to operate or maintain a Waste Processing Facility or Materials Recovery Facility;

(e) wear and tear or obsolescence of any parts or equipment utilized in or at a Waste Processing Facility or Materials Recovery Facility; or

(f) except as a result of an independent event of Force Majeure, the loss of or inability to obtain or retain any utility services, including water, sewerage, fuel oil, gasoline and electric power necessary for the operation of the Waste Processing Facility or Materials Recovery Facility.

"Hazardous Waste" means any waste, substance, object or material deemed hazardous under (i) Section 403.703, Florida Statutes; (ii) RCRA, 42 U.S.C.A § 6901, et seq.; (iii) CERCLA, 42 U.S.C.A. § 9601, et seq; (iv) Toxic Substances Control Act, 15 U.S.C. §2601, et seq., and in each case, applicable regulations promulgated thereunder.

"Interlocal Agreement" shall refer to the Agreement to be entered into among County and Participating Communities which provides, at a minimum, a requirement for the County and Participating Communities to be bound by the terms of this Agreement and to perform such obligations as contemplated therein, provides Participating Communities the option to choose from the two approved vendors and vendors price proposals and the option to receive, at the Participating Communities expense, additional County services, including but not limited to, centralized billing services by County, flow control enforcement by County, and other County waste disposal related services.

"Licensed Commercial Waste Hauler(s)" shall refer to the private haulers that are permitted to conduct collection and hauling of Commercial Waste generated from non-residential property within the Participating Communities and to deliver the Commercial Waste to the Waste Processing Facility(ies).

"Licensed Residential Waste Hauler(s)" shall refer to the private haulers that are permitted to conduct collection and hauling of Residential Waste within the Participating Communities and that are directed to dispose of Residential Waste pursuant to this Agreement.

"Licensed Waste Haulers" shall refer to Licensed Commercial Waste Haulers and Licensed Residential Waste Haulers.

"Participating Community(ies)" shall refer to the municipalities which are listed on Exhibit "D" and have signed the Interlocal Agreement. Participating Communities may also include the County, as to the unincorporated area of Broward County, in the event County elects to deliver its Broward Waste to Contractor as evidenced by indicating County as a Participating Community on Exhibit "D," in which event the County shall be deemed a Participating Community for the purposes of this Agreement.

"Person" means any individual or business entity, including, without limitation, any corporation, limited liability companies, partnership, business trust or partnership.

"Residential Waste" shall refer to all waste, refuse, garbage, trash and rubbish generated within the unincorporated portions of the County and Participating Communities listed on Exhibit "D" from "residential property" as such term or equivalent term is defined by the County with respect to the unincorporated County and by each Participating Community with respect to waste generated within such Participating Community) and that is capable of being processed at the Waste Processing Facility(ies), but shall not include construction and demolition debris, tropical storm or hurricane related debris, recyclable material that is source separated (removed from the waste stream at the point of generation) and recycled, or Unacceptable Waste.

"Solid Waste Disposal Facility(ies)" shall refer to any solid waste management facility that is the final resting place for solid waste, including landfills and incineration facilities that produce ash from the process of incinerating municipal solid waste, under Section 403.703, Florida Statutes, or applicable regulations promulgated thereunder.

"Unacceptable Waste" shall refer to (a) Hazardous Waste, (b) cleaning fluids, hazardous paints, acids, caustics, poisons, radioactive materials, fine powdery earth used to filter cleaning fluid, and refuse of similar nature; (c) any item of waste exceeding six feet in any one of its dimensions or being in whole or in part a solid mass, the solid mass portion of which has dimensions such that a sphere with a diameter of eight inches could be contained within such solid mass portion; (d) all large household appliances, commonly referred to as "white goods" including, without limitation, refrigerators, stoves, washing machines, drying machines, water heaters, and the like; (e) any controlled substances regulated under the Controlled Substances Act, 21 USC 801 et seq., or any equivalent state law; (f) small appliances containing chlorofluorocarbons (CFCs) including, without limitation, air conditioners, water coolers, and dehumidifiers; and (g) all other items of waste which a Company reasonably believes would be likely to pose a threat to health or safety or the acceptance and disposal of which may cause damage to the Waste Processing Facility(ies) or be in violation of any judicial decision, order, action, permit, authorization, license, approval or registration of any federal, state or local government or any agency thereof, or any other regulatory authority or applicable law or regulations. For purposes of the disposal of Bulk Waste as provided for in Article 3 of this Agreement, any solid waste that otherwise meets the definition of Bulk Waste, may be delivered to Contractor even if it would be otherwise classified as Unacceptable Waste.

"Waste Processing Facility(ies)" shall refer to the facilities set forth on Exhibit "B" attached hereto and made a part hereof.

"Yard Trash" shall refer to any waste, substance, object or material deemed yard trash under Section 403.703, Florida Statutes or applicable regulations promulgated thereunder, including vegetative matter resulting from landscaping maintenance and land clearing operations and includes associated rocks and soils.

ARTICLE 2
DISPOSAL SERVICES FOR BROWARD WASTE

- 2.1 Selection of Waste Services. While Contractor must offer to provide disposal services for Broward Waste under this Agreement, each Participating Community may select Contractor's disposal services for any individual component of its solid waste to be disposed of under this Agreement, including its Broward Waste or individual components of Additional Waste. For example, a Participating Community may select Contractor to provide disposal services for its Additional Waste, or only its Construction and Demolition Debris portion for Additional Waste without also selecting Contractor to provide disposal services for its Broward Waste.
- 2.2 Contractor Services for Broward Waste. Contractor shall, at the option of each Participating Community, provide solid waste Disposal Services to the Participating Communities and shall accept and weigh all Broward Waste delivered by the Participating Communities, and the Licensed Waste Haulers for processing at the Waste Processing Facility(ies) and disposal at the Solid Waste Disposal Facility(ies) during the Initial Term or any Renewal Term of, and in accordance with, this Agreement.
- 2.3 Delivery of Broward Waste. Participating Communities shall deliver or cause to be delivered to the Waste Processing Facility(ies) all Broward Waste collected by the Participating Communities, and the Licensed Waste Hauler(s). The Interlocal Agreement shall include an obligation by the Participating Communities to comply with the applicable provisions of Articles 2 and 3.
- 2.3.1 Residential Waste delivered by Participating Communities. If Participating Communities collect the Residential Waste and haul the Residential Waste to Contractor, Participating Communities, shall be responsible for Unacceptable Waste brought to the Waste Processing Facility(ies).
- 2.3.2 Residential Waste delivered by Licensed Residential Waste Hauler. Waste hauling contracts for the collection of Residential Waste, including any renewal of existing waste hauling contracts, entered into by Participating Communities and a Licensed Residential Waste Hauler after the Effective Date of this Agreement shall include the following: (a) the definition of Residential Waste set forth in this Agreement, (b) Licensed Residential Waste Hauler's obligation to be responsible for Unacceptable Waste brought to Waste Processing Facility(ies), (c) Licensed Residential Waste Hauler's obligation to indemnify Contractor and add Contractor as additional insured for all losses for death, personal injury, and property damage caused by the negligence or intentional misconduct of Licensed Residential Waste Hauler delivering waste on behalf of the Participating Communities, (d) a requirement for the Licensed Residential Waste Hauler(s) to deliver all collected Residential Waste to the Waste Processing Facility(ies) or as

otherwise provided pursuant to Section 7.3, and (e) hours of operation for the Waste Processing Facility(ies) during which the Licensed Residential Waste Hauler shall be authorized to deliver Broward Waste to the Waste Processing Facility(ies).

2.3.3 Commercial Waste delivered by Licensed Commercial Waste Haulers. Each Participating Communities shall require Licensed Commercial Waste Haulers to execute a License Agreement that sets forth the payment procedure in Article 6 for Commercial Waste Disposal Services and requires the Licensed Commercial Waste Hauler(s) to deliver all collected Commercial Waste to be processed at the appropriate Waste Processing Facility(ies) or as otherwise provided pursuant to Section 7.3. In addition, each Directly Billed Participating Community shall require the Licensed Commercial Waste Hauler(s) to provide a performance and payment bond (in a form and from an issuer reasonably acceptable to Contractor) in favor of Contractor in an amount that covers a ninety (90) day Disposal Services Fee payment period for Commercial Waste Disposal Services for such Directly Billed Participating Community calculated pursuant to Article 6 and based on the sixty (60) day average tonnage of Commercial Waste delivered by the Licensed Commercial Waste Hauler(s) to Contractor during the twelve (12) month period immediately preceding the execution of the License Agreement between County and/or Participating Communities and Licensed Commercial Waste Hauler(s) entered into after the Effective Date of this Agreement. The sufficiency of the value of the performance and payment bond shall be reviewed on an annual basis and the required bond value may be increased or decreased based on an increase or decrease in a Licensed Commercial Waste Haulers' Commercial Waste delivery obligations hereunder. A licensed Commercial Waste Hauler providing services for multiple Directly Billed Participating Communities may provide one aggregate bond meeting the requirement set forth herein.

2.3.4 For purposes of enforcing the obligations of the Licensed Residential Waste Hauler(s) and Licensed Commercial Waste Hauler(s) in Sections 2.2.2 and 2.2.3 of the Agreement, Contractor shall be considered a third party beneficiary as to any of the Participating Communities.

2.4 Weighing Waste. Contractor shall utilize and maintain motor truck scales at the Waste Processing Facility(ies) to weigh the Licensed Waste Haulers' vehicles delivering Broward Waste to the Waste Processing Facility(ies). Contractor shall weigh the Licensed Waste Haulers' vehicles upon entering and exiting the Waste Processing Facility(ies) site, with the weight difference resulting in the tons of Broward Waste actually delivered. Contractor will keep and regularly maintain accurate and calibrated motor truck scales for the weighing of all Broward Waste. The motor truck scales shall be recalibrated from time to time during the Initial Term and any Renewal Term(s) of this Agreement, in accordance with the requirements of the Florida Department of Agriculture.

- 2.5 **Monthly Reports.** Contractor shall provide monthly reports to the County, within ten (10) days after the end of the subject month, that include the number of tons of Broward Waste actually delivered to the Waste Processing Facility(ies) for the subject month listing the delivering party's name (County or Licensed Waste Hauler(s)) and the number of transactions for each delivering party. Such reports shall be provided in a form reasonably acceptable to the County which form shall be agreed upon by the County and Contractor prior to the Commencement Date. Upon request, Contractor shall provide monthly reports to Participating Communities detailing deliveries of Broward Waste made by or on behalf of such Participating Communities.

ARTICLE 3

DISPOSAL SERVICES FOR BULK, YARD, AND C&D (ADDITIONAL WASTE)

- 3.1 **Contractor Services for Additional Waste.** Contractor may, at the option of each Participating Communities, provide solid waste disposal services for Bulk Waste, Yard Trash, or Construction and Demolition Debris (C&D) (collectively "Additional Waste"), to the County or Participating Communities and shall accept and weigh all Additional Waste delivered by the County, Participating Communities, or the Licensed Waste Haulers for processing at the Material Recovery Facility(ies) during the Initial Term or any Renewal Term of, as set forth in Exhibit B.
- 3.2 **Delivery of Additional Waste.** Participating Communities may deliver or cause to be delivered to the Materials Recovery Facility(ies) Additional Waste collected by the Participating Communities, or the Licensed Waste Hauler(s).
- 3.2.1 If a Participating Community collects the Additional Waste and hauls the Additional Waste to Contractor, the Participating Community shall be responsible for Unacceptable Waste brought to the Materials Recovery Facility(ies).
- 3.2.2 **Additional Waste by Licensed Residential Haulers.** Should the Participating Communities desire to use Contractor for solid waste disposal services for Additional Waste, then Participating Communities' waste hauling contracts for the collection of Residential Additional Waste, including any renewal of existing Additional Waste hauling contracts, entered into by the Participating Communities and a Licensed Residential Waste Hauler after the Effective Date of this Agreement shall include the following: (a) the definition of Additional Waste set forth in this Agreement, (b) Licensed Residential Waste Hauler's obligation to be responsible for Unacceptable Waste brought to Additional Waste Processing Facility(ies), (c) Licensed Residential Waste Hauler's obligation to indemnify Contractor and add Contractor as additional insured for all loses for death, personal injury, and property damage caused by the negligence or intentional misconduct of Licensed Residential Waste Hauler delivering Additional Waste on behalf of the County or Participating Communities, (d) a requirement for the Licensed Residential Waste Hauler(s) to deliver all collected Additional Waste to the Materials Recovery Facility(ies) or as otherwise provided

pursuant to Section 7.2, and (e) hours of operation for the Materials Recovery Facility(ies) during which the Licensed Residential Waste Hauler shall be authorized to deliver Additional Waste to the Materials Recovery Facility(ies).

3.2.3 Additional Waste. Should a Participating Community desire to use Contractor solid waste disposal services for Additional Waste, then the Participating Community shall require Licensed Commercial Waste Haulers to execute a License Agreement with the Participating Community that sets forth the payment procedure in Section 6.5 for Additional Waste Disposal Services, and requires the Licensed Commercial Waste Hauler(s) to deliver all collected Additional Waste to the appropriate Materials Recovery Facility(ies) or as otherwise provided pursuant to Section 7.2. In addition, each Directly Billed Participating Community shall require the Licensed Commercial Waste Hauler(s) to provide a performance and payment bond (in a form and from an issuer reasonably acceptable to Contractor) in favor of Contractor in an amount that covers a ninety (90) day Disposal Services Fee payment period for Commercial Waste Disposal Services for such Directly Billed Participating Community calculated pursuant to Article 6 and based on the sixty (60) day average tonnage of Commercial Waste delivered by the Licensed Commercial Waste Hauler(s) to Contractor during the twelve (12) month period immediately preceding execution of the license agreement between Participating Community and Licensed Commercial Waste Hauler(s) entered into after the Effective Date of this Agreement. The sufficiency of the value of the performance and payment bond shall be reviewed on an annual basis and the required bond value may be increased or decreased based on an increase or decrease in a Licensed Commercial Waste Haulers' Commercial Waste delivery obligations hereunder. A licensed Commercial Waste Hauler providing services for multiple Directly Billed Participating Communities may provide one aggregate bond meeting the requirements set forth herein.

3.2.4 For purposes of enforcing the obligations of the Licensed Residential Waste Hauler(s) and Licensed Commercial Waste Hauler(s) in Sections 3.2.2 and 3.2.3 of the Agreement, Contractor shall be considered a third party beneficiary as to any of the Participating Communities.

3.3 Weighing or Measuring Waste. Contractor shall utilize and maintain motor truck scales at the Materials Recovery Facility(ies) to weigh the Licensed Waste Haulers' vehicles delivering Additional Waste to the Materials Recovery Facility(ies). Contractor shall weigh (or measure, if appropriate) the Licensed County Waste Haulers' vehicles upon entering and exiting the Materials Recovery Facility(ies) site, with the weight difference resulting in the tons (or cubic yards, if appropriate) of Additional Waste actually delivered. Contractor will keep and regularly maintain accurate and calibrated motor truck scales for the weighing of all Additional Waste. The motor truck scales shall be recalibrated from time to time during the Initial Term and any Renewal Terms of this Agreement, in accordance with the requirements of the Florida Department of Agriculture.

- 3.4 **Monthly Reports.** Contractor shall provide monthly reports to the County, within ten (10) days after the end of the subject month, that include the number of tons (or cubic yards, if appropriate) of each category of Additional Waste actually delivered to the Materials Recovery Facility(ies) for the subject month listing the delivering party's name (County or Licensed County Waste Hauler(s)) and the number of transactions for each delivering party. Such reports shall be provided in a form reasonably acceptable to the County which form shall be agreed upon by the County and Contractor prior to the Commencement Date. Upon request, Contractor shall provide monthly reports to a Participating Communities detailing deliveries of Additional Waste made by or on behalf of such Participating Communities.

ARTICLE 4 RECYCLING PERCENTAGES

- 4.1 The State of Florida has established a statewide goal to recycle at least 75% of all solid waste that would otherwise be disposed of in waste management facilities, landfills, or incineration facilities. As the State recognizes that it will take a comprehensive program to achieve the 75% recycling goal by 2020, Participating Communities may use the disposal services of Contractor for some or all of the disposal services for solid waste under this Agreement, including for Broward Waste, Bulk Waste, Yard Trash, or Construction and Demolition Debris.
- 4.2 Contractor guarantees that it shall achieve an annual recycling rate for all Solid Waste, including Broward Waste and Additional Waste, in excess of 75 percent as defined by Chapter 403, Florida Statutes, and its applicable regulations promulgated thereunder. Such recycling rate shall be verified based upon the policies and procedures of the State of Florida Department of Environmental Protection.
- 4.3 Contractor shall provide evidence of such recycling rate monthly by providing copies of materials required to be submitted to the State of Florida Department of Environmental Protection for such purposes. Should Contractor fail to comply with this recycling guarantee of 75 percent of Contractor's operations on an annual basis, then it shall pay County an annual penalty of \$250,000 within thirty (30) days of the end of the applicable 12 month period, regardless of the number of municipalities or other government entities that may participate under this Agreement. This amount shall not increase based on the participation of other municipalities to this Agreement.

ARTICLE 5 TERM OF AGREEMENT

- 5.1 **Initial Term.** This Agreement shall take effect upon the Effective Date, and the term of the Agreement shall begin upon the Commencement Date and continue

for a five (5) year period of time ("Initial Term"), unless renewed pursuant to Section 5.2 or terminated pursuant to Section 7.

- 5.2 **Renewals.** This Agreement may be renewed for up to three (3) additional five (5) year terms (each renewal is a "Renewal Term") upon mutual written consent by the County and Contractor at least eight (8) months prior to the expiration of the Initial Term or subsequent Renewal Term.
- 5.3 **Termination and Extension.** This Agreement shall only be terminated as provided in Section 5.4 of this Agreement. In the event that this Agreement is terminated as a result of Contractor's material breach or County's material breach not due to County's non-payment, County shall have the right to an extension of Disposal Services for up to twelve (12) months provided that the County specifies the desired length of the extension in the termination letter, or extension request letter, transmitted to Contractor. In the event County exercises its right to an extension, this Agreement shall be deemed automatically extended for the period specified in the notice transmitted to Contractor. The remunerations to be paid to the Contractor during this extension period shall be based upon the Disposal Services Fees in effect at the time of such termination. County shall not be entitled to an extension of Disposal Services if Contractor terminates this Agreement due to County's material breach for failure to make payment to Contractor in accordance with this Agreement. Notwithstanding any language herein to the contrary, County and Contractor retain their rights during any such extension to seek damages for material breach of this Agreement by either party.
- 5.4 **Material Breach.** In the event there should occur any material breach in the performance of any covenant or obligation of a party hereunder that has not been remedied within thirty (30) days after receipt of notice from the non-breaching party specifying such breach, the non-breaching party may, if such breach is continuing, terminate this Agreement upon thirty (30) days' notice to the party in breach; provided that if such breach is not a payment breach and can be cured, and the party in breach shall have commenced to take reasonably appropriate steps to cure such breach within a reasonable period of time, the same shall not give rise to a right of termination on behalf of the non-breaching party for so long as the breaching party is continuing to take reasonable steps to cure such breach.

ARTICLE 6 SERVICE FEE

- 6.1 **Disposal Services Fee.** Ten (10) days after the last day of each operating month, the Contractor shall invoice the County for Centrally Billed Participating Communities and Participating Community for Directly Billed Participating Community for Residential Waste Disposal Services and the County for Centrally Billed Participating Communities or the Licensed Commercial Waste Hauler(s)

for Commercial Waste Disposal Services based upon the per ton (or per cubic yard, as appropriate) Disposal Services Fee, as set forth in attached Exhibit "A."

6.2 Disposal Services Fee Adjustment Factor. On the first March 1 after the one year anniversary of the Commencement Date of this Agreement and on each March 1 thereafter, the Disposal Services Fee shall be subject to adjustment with a cap not to exceed 5% and a floor of not less than 1% effective the following October 1, by multiplying the Disposal Services Fee by the Disposal Services Fee Adjustment Factor as set forth in this Section 6.2. The result of the calculation shall become the maximum Disposal Services Fee permitted to be charged by Contractor to County for the twelve (12) months following the Disposal Services Fee adjustment. The twelve (12) month change (using the month of the Commencement Date of each year as the base month) in the Bureau of Labor Statistics Index Series ID CWUR0000SAO, Consumer Price Index – Urban Wage Earners and Clerical Workers, shall be used to calculate the Disposal Services Fee Adjustment Factor subject to and not to exceed the 5% cap and 1% floor for any year.

6.3 Most Favored Price Provision.

6.3.1 In the event that Contractor subsequently enters into an agreement for a term of more than twelve (12) months (including renewal and option periods) for the disposal of solid waste, excluding Additional Waste, generated anywhere within Broward, Miami-Dade or Palm Beach County (an "Eligible Agreement"), Contractor shall provide the County with a copy of the Eligible Agreement within sixty (60) days of execution thereof. If the County determines that the contract includes a Net Disposal Fee that is less than the Disposal Services Fee set forth herein, the County may provide written notice to Contractor of such determination, and, if the County does so, the Disposal Services Fee shall automatically be reduced for all Participating Communities to the Net Disposal fee set forth in the Eligible Agreement, such change to be effective retroactively as of the effective date of Eligible Agreement. Thereafter, the parties shall proceed under this Agreement in accordance with the lower Net Disposal Fee (subject to annual adjustments as provided in Section 6.2). Excluded from the definition and calculation of Net Disposal Fee for the purposes of this subsection shall be revenue share, not to exceed \$2 (two) per ton, payable solely to the City of Miramar pursuant to any agreement entered into between Contractor and City of Miramar as a result of Miramar RFP # 11-03-10 ("RFP") so long as the agreement includes an "Unusual Conditions" clause in substantially the form contained in the RFP.

6.3.2 For the purposes of this Agreement, the "Net Disposal Fee" offered under the Eligible Agreement shall be the actual per-ton cost offered by Contractor to the other party to the Eligible Agreement. In calculating the Net Disposal Fee all "Economic Incentives" which are defined to mean monies, economic benefits and consideration received by the other party of whatever nature (e.g. signing bonus, revenue sharing, other credits, etc.) shall be taken into account by reducing the

per-ton cost by the amount of the Economic Incentives to determine the Net Disposal Fee. Any actual costs associated with disposal which are required to be paid by the other party (e.g. pass throughs, etc.) shall be included in the calculation of Net Disposal Fee.

6.3.3 Discriminatory Tax Adjustments. If the State of Florida, Broward County, or any City within Broward County, enacts a tax or fee applicable only to solid waste, or specifically targets Contractor as the owner or operator of one of its Facilities being used under this Agreement, then the Disposal Services Fee shall be increased by the pro-rata amount (or the "net disposal fee" shall be increased, if applicable) (based upon the amount of Broward Waste or Additional Waste as a proportion of all waste delivered to the Facility) of the tax or fee attributable to the disposal of solid waste pursuant to this Agreement. No adjustments shall be made under this Section for any County or City wide ad valorem real or personal property taxes.

6.4 Payment Procedure.

6.4.1 County shall pay for Centrally Billed Participating Communities and Participating Community shall pay for Directly Billed Participating Communities Contractor, on a monthly basis, commencing on the 25th day of the month following the first full month of the Initial Term, and the 25th day of each month, the Disposal Services Fee for Residential Waste (based on actual weights from certified scales) for all Residential Waste that passes over the certified scales during the immediately preceding month.

6.4.2 On the 10th day of each month commencing the month following the first full month of the Initial Term, Contractor shall deliver to County for Centrally Billed Participating Communities and Participating Community for Directly Billed Participating Community a Disposal Services Fee invoice, in substantially the form attached hereto as Exhibit "E," together with a monthly report reflecting the tonnage of Residential Waste for the immediately preceding month. The report shall cover (for each month) from the first day of the month to the last day of the month. The monthly report and the monthly invoices shall be delivered to on the 10th day of each month. All payments due hereunder shall be paid to Contractor without demand, offset or deduction by the 25th day of each month.

6.4.3 Any monthly payment or other payments shown to be due and owing to Contractor in the monthly invoices described herein shall be paid on the 25th day of such monthly invoice. Interest on untimely monthly payments shall be made consistent with the Florida Prompt Payment Act, Florida Statutes 218.70-218.80.

6.4.4 On a bi-weekly basis, Contractor shall calculate the amount of Disposal Services Fee owed to the Contractor by the Licensed Commercial Waste Hauler(s) for Commercial Waste Disposal Services, based on the provisions of this Agreement, and shall submit an invoice to the Licensed Commercial Waste

Hauler(s) for payment. The invoice to the Licensed Commercial Waste Hauler(s) shall be due within fifteen (15) days of receipt.

6.4.5 Residential Waste Disposal Services. If the County or Directly Billed Participating Community, as applicable disagrees with the amount stated in the invoice for Residential Waste Disposal Services, the County or Directly Billed Participating Community, as applicable shall notify the Contractor of such dispute. The County or Directly Billed Participating Community, as applicable shall make payment to Contractor of undisputed invoiced amounts within thirty (30) days after receipt of the invoice. In the event of a disputed amount, the parties shall reasonably attempt to discover the cause of any discrepancy between the parties, and if a resolution is not reached within forty-five (45) days of receipt of the invoice, the parties agree to work in good faith to settle the dispute (for amounts greater than \$25,000) by mediation before a mutually acceptable mediator. In the event that the parties are not able to resolve the dispute through mediation within forty-five (45) days, then the parties may resolve the dispute by availing themselves to litigation. The existence of a dispute shall not delay payment of undisputed amounts to Contractor, or relieve Contractor of its obligations under this Agreement.

6.4.6 Commercial Waste Disposal Services. If the Licensed Commercial Waste Hauler(s) disagrees with the amount stated in the invoice for Commercial Waste Disposal Services, the Licensed Commercial Waste Hauler(s) shall notify the Contractor of such dispute. The Licensed Commercial Waste Hauler(s) shall make payment to Contractor of undisputed invoiced amounts within thirty (30) days after receipt of the invoice. In the event of a disputed amount, the parties shall reasonably attempt to discover the cause of any discrepancy between the parties, and if a resolution is not reached within forty-five (45) days of receipt of the invoice, the parties agree to work in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association and appoint a mutually acceptable mediator. In the event that the parties are not able to resolve the dispute through mediation, then the parties may resolve the dispute by availing themselves to litigation. The existence of a dispute shall not delay payment of undisputed amounts to Contractor, or, except as set forth herein, relieve Contractor of its obligations to County under this Agreement. In the event the Licensed Commercial Waste Hauler(s) fails to make payment to Contractor for Commercial Waste Disposal Services as required by this Agreement, Contractor shall notify the County of such non-payment and Contractor shall have the right to make a claim for payment under the performance and payment bond (required by Article 2.2.3(c)) for the properly invoiced outstanding amounts due for Commercial Waste Disposal Services pursuant to this Agreement. If the unpaid amount exceeds 80% of the performance and payment bond provided by the Licensed Commercial Hauler pursuant to Section 2.2.3 and then available to Contractor, Contractor shall be entitled to reject any Commercial Waste delivered by such Licensed Commercial Waste Hauler until such time as all unpaid amounts have been received by

Contractor and the Contractor is in possession of a performance and payment bond meeting the requirements of Section 2.2.3.

6.4.7 Contractor shall pay any Participating Community the amounts due for revenue share under Exhibit "A" to this Agreement within 5 days of receipt of payment from County or Participating Community for the Disposal Service Fee relating to the Additional Waste processed that causes such revenue share to become due. Payment of such amounts from County or Participating Community is a condition precedent to Contractor being liable for and making any payment of the related revenue share. If such payment of the Disposal Services Fee is being paid by the Participating Community entitled to the revenue share amount, then such Participating Community may deduct such revenue share amount directly from the actual payment to Contractor and the amount of such deduction should be reflected on the payment receipt.

ARTICLE 7 OPERATION OF WASTE PROCESSING AND MATERIALS RECOVERY FACILITY(IES)

- 7.1 Personnel and Equipment Requirement. Contractor shall provide, at its sole expense, all necessary personnel, materials and equipment for the operation, maintenance and repair of the Waste Processing and Materials Recovery Facility(ies).
- 7.2 Alternative Waste Processing or Materials Recovery Facility(ies). It is the intent of this Agreement that Broward Waste and Additional Waste shall be disposed at the most conveniently located Waste Processing or Materials Recovery Facility(ies) of Contractor as identified in Exhibit "B" so as to reduce transportation costs for County. In the event that any of these Waste Processing or Materials Recovery Facility(ies) are rendered incapable, for any reason, to receive the Broward Waste or Additional Waste that is to be delivered under this Agreement for any length of time, the Contractor must identify an alternative Waste Processing or Materials Recovery Facility for the disposal of Broward Waste or Additional Waste (the "Alternative Waste Processing or Materials Recovery Facility"). At the option of the County or Participating Community, rather than deliver its Broward Waste or Additional Waste to an Alternative Waste Processing or Materials Recovery Facility, the County or Participating Community may deliver Broward Waste or Additional Waste to another facility that is more conveniently located than such Alternative Facility. Reimbursements for any incremental tipping fee amount paid that exceed the Disposal Services Fee and for any actual and documented incremental cost for transportation of the Broward Waste or Additional Waste necessitated by the incapacity of any of the Waste Processing or Materials Recovery Facility shall be determined in accordance with Section 7.3 below.
- 7.3 Alternative Waste Processing or Materials Recovery Facility Associate Costs.

7.3.1 In the event that any designated Waste Processing or Materials Recovery Facility is rendered incapable to receive Broward Waste or Additional Waste for any length of time for any reason except for Force Majeure or the negligence or intentional misconduct of a Participating Communities or County's Licensed Waste Hauler, Contractor shall reimburse the Participating Communities or the Licensed Waste Hauler, as applicable, for any incremental tipping fee amount paid at the Alternative Waste Processing or Materials Recovery designated by Contractor pursuant to Section 6.2 that exceeds the Disposal Services Fee, and for any actual and documented incremental cost for transportation of the Broward's Waste or Additional Waste to such facility necessitated by the incapacity of Contractor's Waste Processing or Materials Recovery Facility.

7.3.2 In the event that the designated Waste Processing or Materials Recovery Facility(ies) is rendered incapable to receive the Broward Waste or Additional Waste for any length of time for any reason due to Force Majeure or the negligence or intentional misconduct of Participating Communities or Licensed Waste Hauler, the Participating Communities and the Licensed Waste Hauler shall not receive any reimbursement for any additional tipping fee paid at the Alternate Waste Processing or Materials Recovery Facility(ies) or transportation costs necessitated by the incapacity of Contractor's Waste Processing or Materials Recovery Facility(ies).

- 7.4 Solid Waste Disposal Facility(ies). Contractor shall utilize any of the Solid Waste Disposal Facility(ies) set forth on Exhibit "C" to this Agreement. Further, Contractor shall be able to add any other legally permitted Solid Waste Disposal Facility to Exhibit "C" during the Initial Term and any Renewal Term of this Agreement with the consent of the Participating Communities, which may not be unreasonably withheld or delayed.
- 7.5 Dates and Hours of Operation. Contractor shall keep its Waste Processing Facility and Materials Recovery Facility(ies) open for the receipt of Broward Waste and Additional Waste from the County and/or Licensed Waste Hauler from 6:00 a.m. to 6:00 p.m., Monday through Friday, and from 6:00 a.m. to 4:00 p.m. on Saturday, during every day of the year, excluding Christmas and Sundays. To the extent permitted by law and to the extent that capacity is available, Contractor shall use all reasonable efforts to keep the Waste Processing and Material Recovery Facility(ies) open for additional hours to accept Broward Waste or Additional Waste.
- 7.6 Good Working Order Requirement. Contractor shall operate and maintain its Waste Processing and Additional Waste Facility(ies) in good working order, and shall timely make all necessary repairs and replacements, consistent with the prevailing practices and standards in waste disposal industry and consistent with all applicable laws.

7.7 Unacceptable Waste.

7.7.1 The Participating Communities shall institute all reasonable procedures to prevent the delivery to the Waste Processing or Materials Recovery Facility(ies) of Unacceptable Waste by the Participating Communities, or its agents or contractors. To the extent such procedures would affect the operation of the Waste Processing or Material Recovery Facility(ies), such procedures shall be reasonably acceptable to the Contractor.

7.7.2 The Contractor shall cooperate with the Participating Communities in connection with all matters regarding Unacceptable Waste under this Agreement. The Contractor shall use all reasonable efforts to identify the source of any Unacceptable Waste delivered to the Waste Processing or Materials Recovery Facility(ies).

7.7.3 Should any Unacceptable Waste be delivered to a Waste Processing or Materials Recovery Facility(ies), such Unacceptable Waste shall be removed, transported and disposed of by the Contractor in accordance with applicable law governing such wastes, and the Contractor shall clean up the Waste Processing or Materials Recovery Facility(ies) to the extent required as a result of any such delivery of Unacceptable Waste. The costs of such removal, transport, disposal and clean-up shall be allocated in the following manner:

a. Should the Person delivering such Unacceptable Waste be known or identified, and should such Person be a Person delivering waste to the Waste Processing or Materials Recovery Facility(ies) by or on behalf of the Participating Community, the costs associated with such removal, transport, disposal, and Waste Processing or Materials Recovery Facility(ies) clean-up shall be borne by the Participating Community, provided that Contractor shall use all commercially reasonable efforts to collect such amounts from the Person delivering Unacceptable Waste to the Waste Processing or Materials Recovery Facility(ies) before seeking recovery.

b. Should the Person delivering such Unacceptable Waste be known or identified, and should such Person be a Person delivering waste to the Waste Processing or Materials Recovery Facility(ies) other than by or on behalf of the Participating Communities, the costs associated with such removal, transport, disposal and Waste Processing or Materials Recovery Facility(ies) clean-up shall be borne by Contractor.

c. Should the Person delivering such Unacceptable Waste be unknown or unidentifiable, the costs associated with such removal, transport, disposal and Waste Processing or Materials Recovery Facility(ies) clean-up shall be borne by the Contractor.

7.8 Contractor shall ensure that the Waste Processing Facility(ies) and Materials Recovery Facilities will comply at all times with all applicable local, State and

Federal laws, regulations, permits and similar requirements, including all applicable requirements concerning noise, odors, effluent and emissions.

- 7.9 Prior to any Participating Community selecting Contractor to provide disposal services of Broward Waste or Additional Waste, such Participating Community shall request in writing that Contractor identify which Waste Processing Facility(ies) or Materials Recovery Facility(ies) will be the location for delivery of such waste. Contractor shall respond to such request within seven (7) business days by identifying in writing which Facility is available to accept such waste.

final Upon written request from any Participating Community, Contractor shall identify in writing within 7 business days the Solid Waste Disposal Facility(ies) used for disposal of any residual waste after such Participating Community's Broward Waste or Additional Waste is processed by Contractor.

ARTICLE 8 CONDITIONS PRECEDENT

- 8.1 The Contractor will deliver on or before December 31, 2012, to County, the following documents. If Contractor fails to timely comply, then the County may terminate this Agreement without any further rights or obligations as to either party.

8.1.1 The Project Guarantee Agreement in a form reasonably acceptable to County executed by Southern Waste Holdings Management, LLC and Southern Waste Systems Holdings, LP and Bergeron Land Development, Inc., the parent companies of Sun Recycling, LLC and Bergeron Environmental and Recycling, LLC, respectively, guaranteeing the performance and obligations of this Agreement.

8.1.2 A fully executed Irrevocable Letter of Credit in a form reasonably acceptable to County in the amount equal to six (6) months of Disposal Services Fees based on the tonnages of Broward Waste.

8.1.3 Evidence acceptable to the County of all rights and approvals that are necessary for the operation of the Solid Waste Management Facility known as Sun Recycling 12 – 2380 College Avenue Materials Recovery Facility for the receipt of 750 tons per day of municipal solid waste (with a pending permit modification to accept up to 2,000 tons per day), as identified on Exhibit "B." The parties recognize that as of the execution of this Agreement several of Contractor's other Waste Processing Facilities are not operational and in the permitting process. Contractor shall timely advise County of the status of each Facility, including the amount of Broward Waste that it is ready to accept, so that other municipalities may determine whether to participate in this Agreement.

- 8.2 The parties acknowledge that County is relying, to its detriment, upon Contractor's ability to perform all conditions precedent. Should Contractor fail to timely satisfy all conditions precedent, County will suffer damages which may not

be readily calculable. Therefore, Contractor agrees that in addition to the right of termination provided for in Section 8.1, upon Contractor's failure to timely perform all conditions precedent, Contractor shall be obligated to pay to County, the sum of \$250,000.00, Any sums due pursuant to this Section shall be paid to County within thirty (30) days of Contractor's failure to timely perform the conditions precedent.

ARTICLE 9 INSURANCE

9.1 **Policy Limits.** Contractor shall not commence performance under this Agreement until Contractor has obtained all insurance required under this Section 9 and such Certificates of Insurance reflecting evidence of the required insurance have been filed with the County Administrator. Contractor shall maintain insurance with minimum policy limits for each coverage as scheduled below, with such coverage per occurrence, single limit, and commencing prior to the commencement of the work and continuing to provide coverage for claims based on occurrences during the Initial Term and any Renewal Term(s) of this Agreement for a minimum of three years from the date of termination or expiration of this Agreement:

General Liability	\$1,000,000/\$2,000,000
Automobile Liability	\$1,000,000/\$2,000,000
Pollution Liability	\$25,000,000/\$50,000,000
Commercial Umbrella	\$25,000,000
Worker's Compensation	Statutory Amount
Employers' Liability	\$1,000,000

9.2 **County as Additional Insured.** The County shall be named as an additional insured on all insurance policies required under this Agreement, except Workers Compensation.

9.3 **Insurance Company Standards.** Policies required under this Agreement shall be issued by companies authorized to do business under the laws of the State of Florida with a minimum rating from AM Best Company of A- Excellent; F.S.C. VII.

9.4 **Notice of Cancellation.** Contractor agrees to furnish County with at least thirty (30) days prior written notice of any cancellation of any insurance policy required under this Agreement. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, Contractor shall furnish, at least ten (10) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension there under is in effect. Contractor shall not continue to work pursuant to this Agreement unless all required insurance remains in full force and effect.

- 9.5 **Minimum Level of Coverage.** To ensure an adequate level of outstanding insurance coverage for claims that arise from Contractor's performance under this Agreement, Contractor shall maintain a minimum outstanding level of insurance coverage during the Term of this Agreement in the amount of \$25,000,000 after deducting the amount of any claims filed or made against any policy required under this Agreement during the Term of this Agreement and the three year period set forth in Article 9.1 of this Agreement.
- 9.6 **Premium Payment Responsibility.** Contractor shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject.

ARTICLE 10 LIABILITY

- 10.1 The County and the Contractor shall each be separately liable and responsible for the actions of their respective officers, agents and employees in the performance of their respective obligations under this Agreement.
- 10.2 The Contractor shall protect, indemnify and hold the County and each Participating Community, their officials, agents, servants and employees, harmless from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorneys' fees, and shall defend the County in any suit, including appeals, for personal injury to or death of any person(s), or loss or damage to property, or pollution or environmental contamination arising out of the operation of Contractor's Waste Processing Facility(ies), or the performance (or non-performance) of Contractor of its obligations under this Agreement. Contractor is not, however, required by this Article 9.2 to reimburse or indemnify County or any Participating Community for loss or claim due to the negligence or willful misconduct of County.
- 10.3 To the extent that the Joint Venture is liable to the County under this Agreement, in addition to the liability of the Joint Venture itself and the liability under the Project Guarantee Agreement, each of the Joint Ventures shall be jointly and severally liable to the County.

ARTICLE 11 MISCELLANEOUS

- 11.1 **Joint preparation.** The preparation of this Agreement has been a joint effort of the parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 11.2 **Merger/Amendment.** This Agreement incorporates and includes all prior negotiations, correspondence, agreements or understandings applicable to the

matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no change, amendment, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by all parties to this Agreement.

- 11.3 Assignment. Except as provided herein, the Contractor may not assign its obligations as set forth in this Agreement without the prior written consent of the County. The Contractor may (i) without the consent of the County, (a) transfer, assign or pledge Contractor's interest in this Agreement in connection with any financing or re-financing activity or (b) assign this Agreement and performance bond to another affiliate of Contractor (provided that the Project Guarantee Agreement and letter of credit remains in place); and (ii) with the consent of the County, which may not be unreasonably withheld or delayed, assign this Agreement in connection with a sale or assignment of its interest in the Waste Processing or Materials Recovery Facility(ies), provided that Contractor can reasonably demonstrate that the assignee has sufficient financial strength and operating experience reasonably satisfactory to County at the time of the proposed assignment. This Agreement shall be binding on any and all successors to Contractor.
- 11.4 Records. Except as otherwise provided herein, the County and Contractor shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.
- 11.5 Audit and inspection rights and retention of records. Authorized representatives of County, which may also include any municipality which is a third party beneficiary to this Agreement, shall have the right to audit the books, records and accounts of Contractor reasonably required to document and substantiate Contractor's performance under this Agreement, including, but not limited to, records concerning calibration of the motor truck scales and the monthly reports required under Article 2.2 during normal business hours, upon County giving reasonable advance notice to Contractor, provided that each representative shall comply with all reasonable safety rules and regulations adopted by Contractor and shall not interfere with Contractor's options. Contractor agrees to keep and maintain records relating to evidence of each of its Waste Processing Facility(ies) environmental compliance and evidence of final disposal of Broward Waste or Additional Waste at the Solid Waste Disposal Facility(ies) used under this Agreement for a period of twenty (20) years. As an alternative to the twenty (20) year requirement, Contractor may delivery to the County copies of the above records upon the termination of this Agreement.

- 11.6 Access. Authorized representatives of County, which may also include any municipality which is a third party beneficiary to this Agreement, shall have access and the ability to inspect the Waste Processing or Materials Recovery Facilities during normal business hours, upon County giving reasonable advance notice to Contractor, provided that each representative shall comply with all reasonable safety rules and regulations adopted by Contractor and shall not interfere with Contractor's options.
- 11.7 Permits and Licenses. Contractor shall be responsible for the maintenance of all permits and licenses associated with the operations of the Waste Processing or Materials Recovery Facilities. Contractor shall at its sole cost and expense conduct such tests at such Facilities from time to time as shall be required by such permits and licenses, and shall send copies of the test results to County, when the test results are submitted to the state or federal regulatory agencies. Contractor also shall make such test results available for review and copying by County during normal business hours. Contractor shall not be deemed to have breached its obligations under the two preceding sentences in respect of any period during which it may in good faith be contesting the necessity of obtaining any such permit or license, or the validity or application of any requirement of or condition contained in any such permit or license, provided that during such period Contractor shall not otherwise be relieved from performing its obligations under this Agreement. Contractor also shall promptly furnish to County copies of any complaint, notice of violation or regulatory action upon receipt by Contractor regarding any permit, license or relating in any manner to Contractor's operations or Waste Processing or Materials Recovery Facilities pursuant to this Agreement.
- 11.8 Contractor shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement, unless Contractor is notified in writing by County of the need to extend the retention period. Such retention of such records and documents shall be at Contractor's expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for disallowance and recovery of any payment upon such entry.
- 11.9 Governing Law and Venue. This Agreement shall be governed, construed and controlled according to the laws of the State of Florida. Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida. The parties expressly waive all rights to trial by jury for any disputes arising from or in any way connected with this Agreement. The parties understand and agree that this waiver is a material contract term. If either party is required to enforce this

Agreement by court proceedings or otherwise, whether or not formal action is required, each party shall pay its own attorney's fees and costs.

- 11.10 Severability. In the event a non-material portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provision shall continue to be effective.
- 11.11 Independent contractor. Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees or agents of the County. This Agreement shall not constitute or make the parties a partnership or joint venture.
- 11.12 Notices. Whenever either party desires to give notice to the other, such notice must be in writing and sent by United States mail, return receipt requested, courier, evidenced by a delivery receipt or by an overnight express delivery service addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice. Notice shall be effective upon delivery.

FOR CONTRACTOR:

Sun-Bergeron Solid Waste Services (Sun-Bergeron) JV
c/o Sun Recycling, LLC
3251 SW 26th Terrace
Dania Beach, FL 33312
Attention: Anthony Lomangino;
Charlie Gusmano; Philip T. Medico, Jr.

With a copy to:

Sun-Bergeron Solid Waste Services (Sun-Bergeron) JV
c/o Bergeron Environmental and Recycling, LLC
19612 SW 69th Place
Pembroke Pines, FL 33332
Attention: Ronald M. Bergeron, Sr.; Ronald M. Bergeron, Jr; and Lonnie Bergeron

FOR THE COUNTY:

Broward County Governmental Center,
Room 409
115 South Andrews Avenue,

Fort Lauderdale, FL 33301
Attention County Administrator

With a copy to:
Solid Waste and Recycling Division
1 N. University Drive
Suite 400
Plantation, FL 33324
Attention: Director Solid Waste and Recycling Services

- 11.13 **Third Party Beneficiaries.** Neither the County nor Contractor intends that any person shall have a cause of action against either of them as a third party beneficiary under this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement unless as provided herein. The parties expressly acknowledge that is not their intent to create any rights or obligations in any third person or entity under this Agreement. Notwithstanding the foregoing, any Participating Communities under this Agreement shall have the same rights of that of the County, unless otherwise stated herein. The County acknowledges and agrees that the ILA shall include (i) an obligation on each Participating Community to comply with the applicable provisions of this Agreement and (ii) a provision making Contractor an express third party beneficiary of the ILA entitled to assert any rights available to the County related to a Participating Communities performance of the obligations specified in this Agreement.
- 11.14 **Priority of Provision.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 14 of this Agreement shall prevail and be given effect.
- 11.15 **Compliance with Laws.** The parties shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing their duties, responsibilities, and obligations pursuant to this Agreement.
- 11.16 **Further Assurances.** The County and the Contractor agree to execute and deliver any instruments and perform any acts that may be reasonably necessary or reasonably requested in order to give full effect to this Agreement.
- 11.17 **Multiple Originals.** This Agreement may be fully executed in five (5) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

- 11.18 Security. Contractor may request County to reduce, modify or eliminate the Parental Guaranty or Letter of Credit. County may consider such request and the approval or denial of such request shall be in the absolute and sole discretion of County.

ARTICLE 12 PIGGYBACK

- 12.1 Municipalities may elect to Piggyback on in this Agreement upon the written consent of the Contractor. For the purposes of this Agreement "Piggyback" shall mean a procedure whereby municipalities may utilize this County procurement and Agreement as the basis for entering into a solid waste services agreement on substantially the identical terms with Contractor subject to the applicable rules of the municipality. Municipalities which elect to Piggyback shall not be deemed third party beneficiaries to this Agreement or have any rights hereunder. Those municipalities shall have first party rights under such independent Piggyback contracts.

ARTICLE 13 REPRESENTATIONS

- 13.1 County is duly organized and valid existing under the constitution and laws of the State of Florida, with full legal right, power and authority to enter into and perform its obligations hereunder; and County is further duly authorized to execute and deliver this Agreement without further approval or authorizations.
- 13.2 Contractor is duly organized and validly existing under the laws of the State of Florida, with full legal right, power and authority to enter into and perform its obligations hereunder; and Contractor is further duly authorized to execute and deliver this Agreement without further approval or authorizations.
- 13.3 Except as otherwise disclosed in writing to County prior to the execution of this Agreement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court or governmental agency, public board, regulatory agency or body pending or, the best of its knowledge, threatened against or affecting the Contractor (pending or threatened litigation) with regard to any issue relating to environmental compliance or the operation, permit or licenses of Contractor at any of the facilities utilized to provide services pursuant to this Agreement. Contractor further agrees to a continuing disclosure requirement for the term of this Agreement to notify County with thirty (30) days of any subsequent pending or threatened litigation with regard to any issue relating to environmental compliance or the operations, permits or licenses of any facilities utilized to provide services pursuant to this Agreement.

ARTICLE 14
CRIMINAL BACKGROUND DISCLOSURE

- 14.1 Prior to the execution of this Agreement Contractor shall provide a description of all past (within the last five (5) years) and pending litigation and legal claims where the Contractor, or an officer, director, executive partner or a shareholder (excluding shareholders of a publicly traded corporation) is a named party, whether in the State of Florida or in another jurisdiction, involving allegations that the Contractor has violated or otherwise failed to comply with environmental laws, rules, or regulations or committed a public entity crime as defined by Chapter 287, Florida Statutes, or theft-related crime such as fraud, bribery, smuggling, embezzlement or misappropriation of funds or acts of moral turpitude, meaning conduct or acts that tend to degrade persons in society or ridicule public morals
- 14.2 Prior to the execution of this Agreement, Contractor shall disclose, in writing, to County whether in the last five (5) years the Contractor or an officer, director, executive, partner, or a shareholder (excluding shareholders of a publicly traded corporation), who is or was (during the time period in which the illegal conduct or activity took place) active in the management of the Contractor was charged, indicted, found guilty or convicted or illegal conduct or activity (with or without an adjudication of guilt) as a result of a jury verdict, nonjury trial, entry of a plea of guilty or nolo contendere where the illegal conduct of activity (1) is considered to be a public entity crime as defined by Chapter 287, Florida Statutes, as amended from time to time, or (2) is customarily considered to be a white-collar crime or theft-related crime such as fraud, smuggling, bribery, embezzlement, or misappropriation of funds, etc. or (3) results in a felony conviction where the crime is directly related to the business activities for which the franchise is sought.

IN WITNESS WHEREOF, the parties have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 26th date of June, 2012, and CONTRACTOR, signing by and through its _____, duly authorized to execute same.

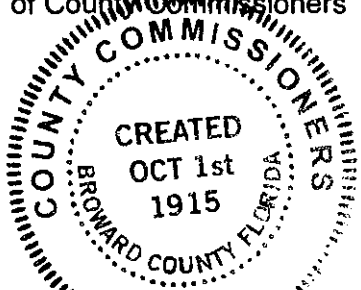
BROWARD COUNTY, by and through its Board of County Commissioners

ATTEST:

for [Signature]
Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By: [Signature]
Mayor

26th day of June, 2012



Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Office of the County Attorney
for Broward County, Florida
JONI ARMSTRONG COFFEY, County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By [Signature] 6/21/12
(Date)

Risk Management Division

Jacqueline A. Binns
Risk Insurance and
Contracts Manager

By [Signature] 6/21/12
Purvi A. Bhogaita (Date)
Assistant County Attorney

By [Signature] 6/21/12
Noel M. Pfeffer (Date)
Deputy County Attorney

AGREEMENT BY AND BETWEEN SUN-BERGERON SOLID WASTE SERVICES (SUN-BERGERON) JV, A FLORIDA JOINT VENTURE AND BROWARD COUNTY FOR SOLID WASTE DISPOSAL SERVICES

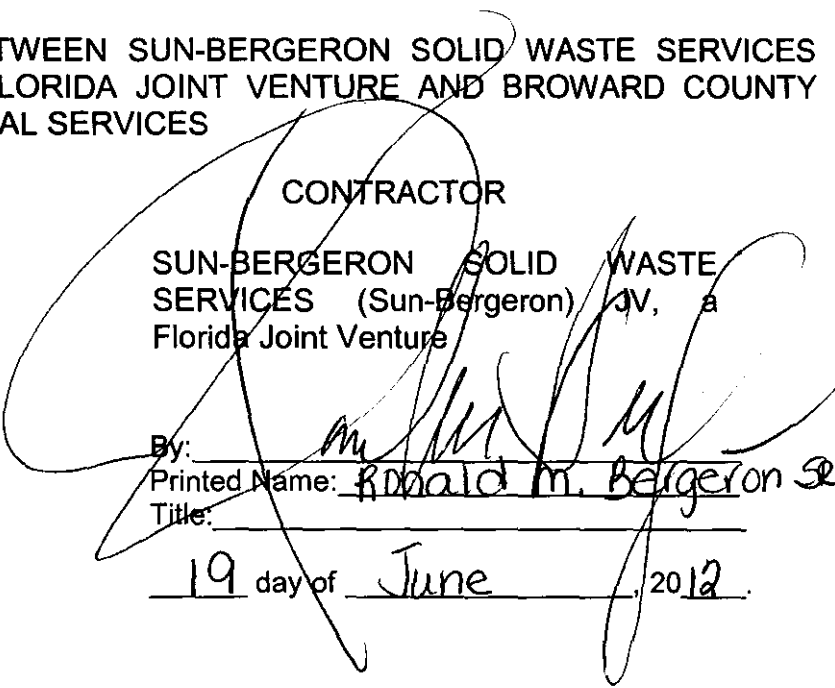
CONTRACTOR

SUN-BERGERON SOLID WASTE SERVICES (Sun-Bergeron) JV, a Florida Joint Venture

ATTEST:

Secretary

(SEAL)

By: 
Printed Name: Ronald M. Bergeron SE
Title: _____

19 day of June, 2012.

OR

WITNESSES:

Jana M. Garcia
Witness 1 Signature

Tina M. Garcia
Witness 1 Print/Type Name

Carole A Woolley
Witness 2 Signature

Carole A Woolley
Witness 2 Print/Type Name

NMP:PAB:slw
6/18/12
Sun-BergeroNDisposSrvcFinal6-18-12

INDEX OF EXHIBITS

Exhibit "A" - Disposal Services Fee

Exhibit "B" - Waste Processing and Materials Recovery Facility(ies)

Exhibit "C" - Solid Waste Disposal Facility(ies)

Exhibit "D" - Participating Communities

Exhibit "E" – Disposal Services Fee Invoice

EXHIBIT "A"
DISPOSAL SERVICES FEE

INITIAL TERM

Municipal Solid Waste

Broward Solid Waste on a per ton basis at \$45.25 per ton.

Additional Waste

Bulk Waste on a per ton basis at \$52.00 per ton.

Revenue share for Bulk Waste of \$0.50 on a per ton basis with no minimum annual guarantee.

Construction and Demolition Debris on a per cubic yard basis at \$8.75 per cubic yard or on a per ton basis of \$37 per ton, at the option of each Participating Community.

Revenue share for Construction and Demolition Debris of \$0.25 on a per cubic yard basis or on a 1.00\$ per ton basis , depending on the method of measure by each Participating Community with no minimum annual guarantee.

Yard Trash on a per cubic yard basis at \$6.00 per cubic yard or on a per ton basis of \$28.00 per ton, at the option of each Participating Community.

Revenue share for Yard Trash \$0.25 on a per cubic yard basis or on a \$1.00 per ton basis, depending on the method of measure selected by each Participating Community with no minimum annual guarantee.

County, Participating Communities or Piggyback Communities may select any or all of these disposal services under this Agreement.

EXHIBIT "B"
WASTE PROCESSING FACILITY(IES)

<p>Sun 12 College Avenue Waste Processing Facility 2380 College Avenue, Davie, FL 33317 Currently Permitted</p>
<p>Sun 11 1750 SW 43rd Terrace, Deerfield Beach, FL 33442 Permit Pending</p>
<p>Bergeron Park of Commerce & Industry - North 5904 SW 202 Avenue Pembroke Pines Permit Pending</p>
<p>Choice Environmental Services 1899 SW 31 Ave. Pembroke Park, FL 33009</p>

MATERIALS RECOVERY FACILITY(IES)

<p>Sun 1 2241 NW 15TH Court Dania Beach, FL 33069 Currently permitted and operational for Construction and Demolition Debris, but in process of converting to a Dedicated Metal Processing Facility</p>
<p>Sun 2 2281 NW 16TH Street Pompano Beach, FL 33069 Currently permitted and operational for Construction and Demolition Debris</p>
<p>Sun 3 3251 SW 26th Terrace, Dania Beach, FL 33312 Currently permitted and operational for Construction and Demolition Debris and Yard Trash</p>
<p>Sun 7 1850 S. Powerline Road Deerfield Beach, FL 33462 Currently permitted and operational for Yard</p>

Trash and Bulk Waste

Bergeron Park of Commerce - South

19820 Sylvan Pass

Pembroke Pines, FL 33332

Currently permitted and operational for Yard
Trash

EXHIBIT "C"
SOLID WASTE DISPOSAL FACILITY(IES)

- Monarch Hill Landfill (Central Landfill), 2700 Wiles Road, Pompano Beach, Florida 33073 (Owner: Waste Management Inc. of Florida)
- Okeechobee Landfill Facility, 10800 N.E. 128th Avenue, Okeechobee, Florida 33972 (Owner: Okeechobee Landfill, Inc.)
- The Solid Waste Authority of Palm Beach County (landfill/waste to energy facility), 7501 North Jog Road, West Palm Beach, Florida 33416 (Owner: Solid Waste Authority)
- J.E.D. Landfill, 1501 Omni Way, St. Cloud, Florida 34773 (Owner: Omni Waste of Osceola County, LLC)
- Resources Recovery Center operated by Covanta, 6990 NW 97th Avenue, Doral, Florida 33178 (Owner: Miami-Dade County)
- Wheelabrator North, 2600 NW 48th Street, Pompano Beach, Florida 33073 (Owner: Wheelabrator North Broward, Inc., a Waste Management Company)
- Wheelabrator South, 4400 South State Road 7, Fort Lauderdale, Florida 33073 (Owner: Wheelabrator South Broward, Inc., a Waste Management Company)
- Glades County Landfill, 1940 E State Road 78 NW, Moore Haven, Florida 33471

EXHIBIT "D"
PARTICIPATING COMMUNITIES

EXHIBIT "E"