

**Agreement  
Between  
Town of Southwest Ranches  
And  
SUN-BERGERON SOLID WASTE SERVICES, JV**

**FOR SOLID WASTE DISPOSAL  
AND RECYCLABLES PROCESSING SERVICES**



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## AGREEMENT FOR SOLID WASTE DISPOSAL AND RECYCLABLES PROCESSING SERVICES

Town of Southwest Ranches, Florida

This Contract is made and entered into this 15<sup>th</sup> day of May, 2013, between the Town of Southwest Ranches, a municipal corporation of the State of Florida, Broward County, Florida, hereinafter referred to as "TOWN," and Sun-Bergeron Solid Waste Services, JV, authorized to do business in the State of Florida, hereinafter referred to as "CONTRACTOR."

Now, therefore, in consideration of the mutual covenants, agreements and consideration contained herein, the TOWN and CONTRACTOR hereby agree as hereinafter set forth:

### SECTION 1. EFFECTIVE DATE, COMMENCEMENT DATE, AND TERM

- A. Effective and Commencement Dates The Effective Date of this Contract is the date this Contract is executed and signed by both the TOWN and CONTRACTOR. The Commencement Date is the date that services required pursuant to this Contract commence, or July 3, 2013.
- B. Initial Term The term of this Contract shall be for a five (5) year period beginning on the Commencement Date, July 3, 2013, and terminating July 2, 2018.
- C. Renewal Option At the option of the TOWN and with the concurrence of the CONTRACTOR, this Contract may be renewed for two (2) additional five (5) year terms under the same terms and conditions as the initial term, including amendments, subject to approval by the Town Council.

### SECTION 2. DEFINITIONS

For the purpose of this Solid Waste Disposal and Recyclables Processing Agreement, hereinafter referred to as "Contract," the definitions contained in this Section shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Section, the definition of such word or phrase as contained in the "Solid Waste Ordinance" as contained in the TOWN Code shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender. The word "shall" is always mandatory and not merely discretionary.

- A. Average Market Value (AMV) means a market index used to determine the revenue paid by the CONTRACTOR to the TOWN for Program Recyclables delivered to the Designated Recycling Facility based on monthly fluctuations in the commodity market as defined herein.
- B. Biohazardous or Biomedical Waste means any waste that may cause disease or reasonably be suspected of harboring pathogenic organisms, including waste resulting from the operation of medical clinics (veterinary or otherwise), hospitals (veterinary or otherwise), and other facilities processing waste that may consist of, but are not limited to, human and animal

parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing, and surgical gloves.

- C. Bulk Trash means those non-vegetative waste items that have not been containerized, bagged, or bundled, and that may require special handling and management including, but not limited to, furniture, white goods, refrigerators, ranges, pool heaters, water softeners, pianos, washers, dryers, water heaters, and other similar appliances, bicycles, electronics, mattresses, household goods, large boxes, barrels, crates, concrete, rubble, mixed roofing materials, rock, gravel and other earthen materials, equipment, wire and cable, materials resulting from home improvements, and any and all household goods that are customary to ordinary housekeeping operations of a residential service unit.
- D. Bulk Waste means the combination of Bulk Trash and Yard Trash collected by the Town's Contract Hauler.
- E. Commencement Date means the date services pursuant to this Contract commence, or July 3, 2013.
- F. Contract means this agreement, including all attachments, schedules, and amendments thereto, between the TOWN and the CONTRACTOR, governing the provision of services as defined herein.
- G. Contract Administrator means the person designated by the Town Administrator to administer and monitor the provisions of this Contract.
- H. Contract Year means twelve (12) consecutive months beginning on the Commencement Date and every twelve (12) months thereafter for the term of the Contract.
- I. CONTRACTOR means that person or entity that has obtained from the TOWN a Contract to provide the services set forth herein.
- J. Contractor-Generated Waste means Bulk Trash and/or Yard Trash generated by builders, building contractors, privately employed tree trimmers and tree surgeons, landscape services, lawn or yard maintenance services, and nurseries.
- K. Designated Disposal Facility means the facility designated in this Contract for disposal of the TOWN'S Solid Waste.
- L. Designated Processing Facility means the facility designated in this Contract at which the CONTRACTOR will process Program Recyclables, which facility may be the same as or different than the Designated Recycling Facility.
- M. Designated Recycling Facility means the facility designated in this Contract at which the CONTRACTOR will receive delivery of Program Recyclables, whether such facility is a materials recovery facility, recovered materials processing facility, or a transfer station.
- N. Designated Receiving Facility means the facility at which Solid Waste is received by the CONTRACTOR.



- O. Drop-Off Bulk Waste means Bulk Waste generated from residential sources within the TOWN and accepted by the CONTRACTOR at a drop-off location as specified in this Contract. For the purposes of this Contract, Drop-Off Bulk Waste shall include residential Bulk Trash and Yard Trash, but not any putrescible waste, commercially generated waste, Contractor-Generated Waste, or Unacceptable Waste, with the exception of tires.
- P. Effective Date means the date this Contract is executed by both the TOWN and CONTRACTOR.
- Q. Electronic Waste or E-Waste means end-of-life or discarded electronic devices or component parts. For the purposes of this Contract, E-Waste includes computers, monitors, laptops, mice, printers, televisions, DVD, Blue Ray, CD or VCR players, copiers, fax machines, cell phones, chargers, rechargeable batteries, scanners, keyboards, stereos, speakers, small appliances, and auto/boat batteries from residential sources, as well as other items mutually agreed upon by the TOWN and CONTRACTOR.
- R. Hazardous Waste means any solid waste that is defined as a hazardous waste by the Florida Department of Environmental Protection in the State of Florida Administrative Code, or by any current or future Federal, State, or local law.
- S. Holiday means a designated holiday on which the CONTRACTOR shall not be required to provide service. For the purposes of this Contract, Holiday shall only mean Christmas Day unless additional Holidays are approved by the Contract Administrator.
- T. Household Hazardous Waste or HHW means a waste produced in the home containing hazardous substances that may pose a threat to the environment, wildlife, and/or human health. For the purposes of this Contract, HHW includes aerosol products, ammonia, ammunition, anti-freeze, auto fluids, auto batteries, boat batteries, boat fluids, charcoal starter, compact fluorescent bulbs (CFLs), drain cleaner, fertilizers, fire extinguishers, fireworks, flares, fluorescent tubes, gasoline, herbicides, household cleaners, insect killer, kerosene, lawn chemicals, lighter fluid, mercury thermometers, motor oil, nail polish remover, paint, pesticides, photo chemicals, pool chemicals, propane tanks, rechargeable batteries, rust remover, solvents, spot remover, tires, turpentine, weed killer, wood stains, and wood stripper from residential sources, as well as other items mutually agreed upon by the TOWN and CONTRACTOR.
- U. Program Recyclables means Recyclable Materials collected by or on behalf of the TOWN and over which the TOWN has control, including newspapers (including inserts), corrugated cardboard, mixed paper (including brown paper bags, magazines, phonebooks, junk mail, white and colored paper, shredded paper in a bag, and paperboard), aluminum cans, plastic containers and bottles marked with SPI codes 1-7, glass bottles and jars, tin and ferrous cans, polycoated cartons, and other materials added by mutual agreement of the TOWN and CONTRACTOR.
- V. Recovered Materials means Recyclable Materials which have been processed to market specifications.
- W. Recyclable Materials or Recyclables means those materials that are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

- X. Rejects means materials, other than Residue, that cannot be recycled and that cannot be processed into Recovered Materials.
- Y. Residue means the portion of the Recyclable Material stream accepted by the CONTRACTOR that is not converted to Recovered Materials due to breakage and/or transportation or processing inefficiencies.
- Z. Single Stream means a recycling process that allows for Recyclable Materials to be collected commingled with no sorting required by residents, businesses, or haulers.
- AA. Solid Waste means rubbish, refuse, trash, or other similar discarded material resulting from domestic, industrial, commercial, agricultural, or governmental operations. For the purposes of this Contract, Solid Waste does not include Recyclable Materials, Unacceptable Waste, residential Bulk Waste, or Solid Waste not controlled by the TOWN.
- BB. Ton means a unit of weight equal to 2,000 pounds, also referred to as a short ton.
- CC. TOWN means the Town of Southwest Ranches, Florida.
- DD. Town's Contract Hauler means the firm that is presently, or that may in the future, contract with the TOWN to collect and transport Solid Waste and Program Recyclables.
- EE. Town Council or Council means the governing body of the Town of Southwest Ranches, Florida.
- FF. Unacceptable Waste means Biohazardous or Biomedical Waste, Hazardous Waste, sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, used oil and tires, and those wastes under the control of the Nuclear Regulatory Council.
- GG. Work Day means any day, Monday through Saturday, which is not a Holiday as set forth in this Contract.
- HH. Yard Trash means any vegetative matter resulting from normal yard and landscaping maintenance. Yard Trash must be generated from residential sources. Yard Trash includes Christmas trees, but does not include Contractor-Generated Waste.

### **SECTION 3. CONTRACTOR'S DISPOSAL RESPONSIBILITIES**

#### **A. Designated Facilities**

- (1) The following facility is the Designated Receiving Facility at which Solid Waste will be received by the CONTRACTOR pursuant to this Contract: Sun 12, 2380 College Avenue, Davie, FL 33319, or such other facility that may be approved in writing by the Town.
- (2) The following facility is the Designated Disposal Facility at which Solid Waste will be disposed pursuant to this Contract: JED Solid Waste Management Facility, 1501 Omni Way, Saint Cloud, FL 34773, or such other facility that may be approved in writing by the Town.

- (3) The Designated Receiving Facility and Designated Disposal Facility may be changed only with prior written approval by the Contract Administrator. The CONTRACTOR shall not take the TOWN'S Solid Waste to any other disposal facility than the Designated Disposal Facility unless prior written approval is given by the Contract Administrator.
- (4) The CONTRACTOR shall be fully responsible for all aspects of the management, operations, and maintenance of the Designated Receiving Facility and Designated Disposal Facility.
- (5) The CONTRACTOR shall ensure that the Designated Receiving Facility and Designated Disposal Facility are operated at all times in full compliance with all applicable local, State and Federal laws, regulations, permits and similar requirements.
- (6) The TOWN shall have the right, during the CONTRACTOR'S hours of operation, to inspect both the operating and maintenance practices of the Designated Receiving Facility and Designated Disposal Facility. Operating practices shall include, but not be limited to, the receipt, loading, storage, transport, and disposal of Solid Waste. The CONTRACTOR shall reasonably accommodate the TOWN'S inspection rights described herein, provided it does not create a safety hazard.

**B. Solid Waste Acceptance and Disposal**

- (1) Beginning on the Commencement Date, the TOWN shall direct the Town's Contract Hauler to deliver all Solid Waste over which the TOWN has control to the Designated Receiving Facility during the scheduled receiving hours specified herein. The TOWN makes no assurances or guarantees regarding the quantity of Solid Waste that will be delivered to the Designated Receiving Facility.
- (2) Beginning on the Commencement Date, the CONTRACTOR shall accept deliveries of Solid Waste at the Designated Receiving Facility between the hours of 6:00 a.m. and 6:00 p.m. Monday through Friday and 6:00 a.m. and 4:00 p.m. on Saturday or other hours, approved in writing, by the Contract Administrator. The Designated Receiving Facility may be closed on Holidays as defined herein. No reduction in scheduled receiving hours shall be made without the prior written approval of the Contract Administrator.
- (3) The Designated Receiving Facility shall be operated to facilitate delivery vehicle access during operations. The daily average delivery vehicle turnaround time from arrival at the Designated Facility site to exit from the facility site shall not exceed twenty (20) minutes. Delays caused by equipment failure not due to negligence of the CONTRACTOR or other fault of the delivery vehicle shall not be included in the turn-around time computation. The CONTRACTOR will provide the TOWN with access to its records to verify vehicle turnaround time within twenty-four (24) hours' notice.
- (4) The Designated Receiving Facility shall be equipped with adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and recording all incoming Solid Waste delivery vehicles. Such scales shall be inspected and approved for use prior to placing them into service. CONTRACTOR shall calibrate and certify scales no less frequently than annually.



- (5) The CONTRACTOR shall weigh all trucks transporting Solid Waste, by or on behalf of the TOWN, that enter the Designated Receiving Facility, record such weights separate from all other materials, and generate reports of incoming Solid Waste as required herein or requested by the TOWN. The CONTRACTOR may use tare weights. If the CONTRACTOR chooses to use tare weights, all tare weights must be recalibrated at least every sixty (60) calendar days.
- (6) Upon acceptance of Solid Waste at the Designated Receiving Facility, the CONTRACTOR shall assume ownership of such Solid Waste. The CONTRACTOR shall bear all costs associated with transporting and disposing of the TOWN'S Solid Waste, including transport to the Designated Disposal Facility, if applicable.
- (7) If Unacceptable Waste is found within a load of Solid Waste delivered by the TOWN or its agents to the Designated Receiving Facility, the CONTRACTOR shall immediately notify the Contract Administrator and note the incident by taking a photograph of the Unacceptable Waste and the truck, including the truck number, and the truck driver's information that delivered the Unacceptable Waste. The CONTRACTOR is responsible for properly isolating, containerizing, and disposing of such Unacceptable Waste in accordance with all applicable laws. The cost of managing and disposing of such Unacceptable Waste shall be borne by the TOWN, provided that the CONTRACTOR has adequately documented that such waste was delivered by or on behalf of the TOWN.
- (8) In the event the CONTRACTOR fails, refuses, or is unable to accept Solid Waste on the Commencement Date or thereafter during the term of the Contract, the CONTRACTOR will be liable for all hauling, processing, transportation, disposal charges, and any other related costs in excess of the Disposal Fee paid to the CONTRACTOR that may be incurred by the TOWN with respect to the disposal of such Solid Waste.

C. Ancillary Services

- (1) The CONTRACTOR shall provide four (4) HHW and E-Waste collection events per year (one per calendar year quarter), hereinafter referred to as "HHW Collection Events." Such events shall be conducted within the TOWN limits at a location to be provided by the TOWN and on dates to be approved by the Contract Administrator. Such HHW Collection Event shall be limited to TOWN residents who show official proof of residency.
  - (a) Each HHW Collection Event shall occur on a Saturday and shall last at least six (6) hours in duration or until all residents that have arrived at the location during those hours have been serviced. CONTRACTOR shall arrive at a minimum of one and one-half (1.5) hours prior to the event start time for setup and a pre-event safety meeting.
  - (b) The CONTRACTOR shall be responsible for providing all staff, equipment, and resources needed for the collection, quantifying, packaging and removal of HHW and E-Waste received at each HHW Collection Event.

- (c) The CONTRACTOR shall accept, quantify, log, transfer, recycle, reuse and/or dispose of HHW and E-Waste delivered by TOWN residents to the HHW Collection Event.
- (d) The CONTRACTOR shall provide traffic control, adequate ingress and egress, and adequate staff to prevent long waits for TOWN residents.
- (e) The CONTRACTOR shall ensure that HHW and E-Waste is accepted from TOWN residents only, via valid identification or other means. No commercially generated waste or Contractor-Generated Waste shall be accepted.
- (f) The CONTRACTOR is solely responsible for complying with all local, State, and Federal regulations regarding packaging, recycling, demanufacturing, and transporting E-Waste and HHW, including any and all requirements mandated by federally permitted facilities.
- (g) Upon acceptance of HHW and E-Waste at the HHW Collection Event, the CONTRACTOR shall bear all costs associated with processing, transporting, recycling, reusing, and/or disposing of such materials.
- (h) For invoicing purposes, the CONTRACTOR shall quantify and weigh all materials received during the Drop-Off HHW Collection Event. If any weighing is to be conducted at the HHW Collection Event site, the CONTRACTOR shall utilize a portable scale capable of accurately weighing from one (1) pound to two hundred fifty (250) pounds. The CONTRACTOR is responsible for maintenance, servicing, and certification of scales annually. Copy of scale certifications shall be provided to the TOWN within twenty-four (24) hours after calibration. If weighing is to be done offsite, the facility shall be equipped with a similarly certified portable scale or an adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and recording all incoming HHW delivery vehicles. Such scales shall be inspected and approved for use prior to placing them into service. CONTRACTOR shall calibrate and certify scales no less frequently than annually.
- (i) At least sixty (60) days prior to the Commencement Date, the CONTRACTOR shall provide the TOWN with an Operations Plan detailing the following:
- Number of staff personnel and minimum level of training of such staff. Drop-Off HHW Site Manager shall receive training in accordance with OSHA 29 CFR §1910.120.
  - List of onsite equipment.
  - Set up of site, including traffic control, ingress and egress, and restricted areas.
  - Methodology detailing how materials will be received and logged and a sample log sheet.
  - Methodology detailing how materials will be managed, collated, containerized and/or palletized, tracked, weighed, and/or transported from the HHW Collection Event site to final disposal/recycling facilities.

- Site safety, chemical containment, and spill containment plans.
- Methodology detailing how the CONTRACTOR will ensure accurate invoicing to the TOWN. Methodology shall detail where and how materials will be weighed for invoicing purposes and how the weight of pallets, drums, and other packaging materials will be deducted from gross weight.
- Sample invoice for TOWN review.

The Operations Plan is subject to approval by Contract Administrator.

- (j) Within thirty (30) days of the Commencement Date, the CONTRACTOR shall provide documentation of end markets for all HHW and E-Waste. Documentation may be in the form of (1) letter of agreements/contracts on subcontractor letterhead; (2) copies of agreements/contracts indicating scope of agreement, dates and signatures; or (3) sworn affidavit from CONTRACTOR on contractor letterhead. Such documentation shall specify the materials involved, time period for which agreement or affidavit is valid, and a general description of the material disposition (precious metal recovery, sale to repair facility, resale to public, secondary lead smelter, etc.). The CONTRACTOR shall keep this information current throughout the term of the Contract. Should the environmental or regulatory compliance record of an end market warrant, the TOWN reserves the right to require the CONTRACTOR to change end markets.
- (2) The CONTRACTOR shall provide four (4) drop-off collection events per year (one per calendar year quarter) for Drop-Off Bulk Waste, hereinafter referred to as "Drop-Off Collection Events." Such events shall be conducted within the TOWN limits at a location to be provided by the TOWN and on dates to be approved by the Contract Administrator. Such Drop-Off Collection Events shall be limited to TOWN residents who show official proof of residency.
- (a) Each Drop-Off Collection Event shall occur on a Saturday and shall last at least six (6) hours in duration or until all residents that have arrived at the location during those hours have been serviced. Such events may be scheduled in conjunction with or separate from the HHW Collection Events, as approved by the Contract Administrator.
- (b) The CONTRACTOR shall be responsible for providing all staff, equipment, and resources needed to conduct each Drop-Off Collection Event.
- (c) The CONTRACTOR shall accept, transfer, recycle, reuse and/or dispose of Drop-Off Bulk Waste delivered by TOWN residents to the Drop-Off Collection Events.
- (d) The CONTRACTOR shall ensure that Drop-off Bulk Waste is accepted from TOWN residents only, via valid identification or other means. No commercially generated waste or Contractor-Generated Waste shall be accepted.
- (e) Upon acceptance of Drop-Off Bulk Waste at the Drop-Off Collection Event, the CONTRACTOR shall bear all costs associated with processing, transporting, recycling, reusing, and/or disposing of such materials.

- (f) The CONTRACTOR shall weigh all Drop-Off Bulk Waste materials transferred from Drop-Off Collection Site upon entering the final disposal/recycling facility and record the net weight of the materials by subtracting the weight of the empty vehicle upon exit of the facility. No vehicle tare weights shall be used for Drop-Off Bulk Waste deliveries. The final disposal facility shall be equipped with adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and recording all incoming Drop-Off Bulk Waste delivery vehicles. Such scales shall be inspected and approved for use prior to placing them into service. CONTRACTOR shall calibrate and certify scales no less frequently than annually.
- (g) At least sixty (60) days prior to the Commencement Date, the CONTRACTOR shall provide the TOWN with an Operations Plan detailing the following:
- Number of staff personnel to be on site during operating hours.
  - Set up of site, including traffic control and restricted areas.
  - List of onsite equipment.
  - Logistics of how materials will be received, quantified and logged and a sample log sheet.
  - Site Safety Plan.
  - Methodology detailing how materials will be received, managed, containerized, tracked, weighed, and/or transported from the Drop-Off Collection Event site to final disposal/recycling facilities.
  - Details regarding any processing of Drop-Off Bulk Waste that will take place at Drop-Off Collection Event Site or elsewhere.
  - Methodology detailing how the CONTRACTOR will ensure accurate invoicing to the TOWN. Methodology shall detail where and how materials will be weighed for invoicing purposes.
  - Sample Invoice.

Operations Plan is subject to approval by Contract Administrator.

- (h) Within thirty (30) days of the Commencement Date, the CONTRACTOR shall provide the Contract Administrator with the name of the facility or facilities at which Drop-Off Bulk Waste will be recycled or disposed, including the facility location, contact person, phone number, and email address. The CONTRACTOR shall keep this list current throughout the term of the Contract.

#### D. Record Keeping

- (1) The CONTRACTOR shall create, maintain, and make available records as defined herein; as required by all applicable local, State, and Federal laws, rules and regulations; or as are reasonably necessary to document and track the performance of work pursuant to this Contract.

- (2) The CONTRACTOR shall maintain records of the amounts of the TOWN'S Solid Waste received at the Designated Receiving Facility. Such records shall be kept separate and apart from all other records maintained by the CONTRACTOR. Records shall distinguish between residential Solid Waste and commercial Solid Waste, and shall provide delivery date and time, vehicle number, and net weight.
- (3) The CONTRACTOR shall maintain such records in accordance with generally accepted management principles and practices. The TOWN shall have access to such books, records, documents, and other evidence for inspection, review, and copying during normal business hours. The CONTRACTOR will provide proper facilities for such access and inspection. The Florida Public Records Act, Chapter 119 of the Florida Statutes, may have application to records or documents pertaining to this Contract, and CONTRACTOR acknowledges that such laws have possible application and agrees to comply with all such laws.
- (4) The CONTRACTOR shall complete and maintain log sheets, the format of which must be approved by the Contract Administrator, regarding the HHW and E-Waste received at each HHW Collection Event. At a minimum, the CONTRACTOR shall record the number and types (e.g., automobile, pickup truck, trailer, etc.) of vehicles delivering materials, the name and the address of the resident dropping off the HHW and E-Waste, the types of HHW and E-Waste delivered by each resident, and the total amount of HHW and E-Waste collected at each event by type. The log sheets must be verified and signed by the CONTRACTOR and the TOWN and each provided with a copy before any HHW and E-Waste are transported from the collection site.
- (5) The CONTRACTOR shall complete and maintain log sheets regarding the Drop-Off Bulk Waste received at each Drop-Off Collection Event. At a minimum, the CONTRACTOR shall record the number and types (e.g., automobile, pickup truck, trailer, etc.) of vehicles delivering Bulk Waste, the name and the address of the resident dropping off the Drop-Off Bulk Waste, the types and estimated quantities, in cubic yards, of Bulk Waste delivered by each resident, and the total amount (in cubic yards) of Bulk Waste collected at each event.
- (6) The CONTRACTOR will maintain and allow access to books, records, data, documents, and reports relating to this Contract in accordance with the records retention requirements set forth in Florida Law.

#### E. Reporting

- (1) Prior to the fifteenth (15<sup>th</sup>) calendar day of each month during the term of this Contract, the CONTRACTOR shall submit a report electronically to the Contract Administrator, in a format approved by the Contract Administrator. The report shall provide the total tonnage of residential Solid Waste and commercial Solid Waste received at the Designated Receiving Facility during the previous month, as well as a breakdown by delivery date and time, vehicle number, and quantity. If applicable, the report shall include any tonnage diverted from disposal by the CONTRACTOR.
- (2) Within thirty (30) calendar days after each HHW Collection Event and Drop-Off Collection Event, the CONTRACTOR shall submit a report electronically to the Contract



Administrator, in a format approved by the Contract Administrator. The report shall provide the information collected at the HHW Collection Event and Drop-Off Collection Event.

- (3) Within ninety (90) days after each HHW Collection Event and Drop-Off Collection Event, the CONTRACTOR shall provide documentation of disposal and/or recycling, indicating the recycling/demanufacturing/disposal location and certifying that all HHW, E-Waste, and Bulk Waste was handled in accordance with State, Federal, and international rules as they apply.
- (4) Within thirty (30) days after the end of each Contract Year, the CONTRACTOR shall provide the Contract Administrator with a report summarizing the total Tons of residential Solid Waste and commercial Solid Waste delivered to the Designated Receiving Facility during the Contract Year and the net tonnage diverted from disposal (if applicable).
- (5) At least fifteen (15) days prior to the end of each Contract Year during the term of this Contract, the CONTRACTOR shall ensure and certify to the TOWN that all required documents are current and on file with the TOWN. Such documents include, but are not limited to, certificates of insurance and performance bond.

#### **SECTION 4. CONTRACTOR'S RECYCLABLES PROCESSING RESPONSIBILITIES**

##### **A. Designated Facilities**

- (1) The following facility is the Designated Recycling Facility at which Program Recyclables will be received by the CONTRACTOR pursuant to this Contract: Sun 2, 2281 NW 16<sup>th</sup> Street, Pompano Beach, FL, or such other facility that may be approved in writing by the Town.
- (2) The following facility is the Designated Processing Facility at which Program Recyclables will be processed pursuant to this Contract: Sun 2, 2281 NW 16<sup>th</sup> Street, Pompano Beach, FL, or such other facility that may be approved in writing by the Town.
- (3) The Designated Recycling Facility and Designated Processing Facility may be changed only with prior written approval by the Contract Administrator.
- (4) The CONTRACTOR shall be fully responsible for all aspects of the management, operations, and maintenance of the Designated Recycling Facility and Designated Processing Facility.
- (5) The CONTRACTOR shall ensure that the Designated Recycling Facility and Designated Processing Facility are operated at all times in full compliance with all applicable local, State and Federal laws, regulations, permits and similar requirements.
- (6) The TOWN shall have the right, during the CONTRACTOR'S hours of operation, to inspect both the operating and maintenance practices of the Designated Recycling Facility and Designated Processing Facility. Operating practices shall include, but not be

limited to, the receipt, separation, processing, loading, storage, and transport of Recyclable Materials and Recovered Materials. The CONTRACTOR shall reasonably accommodate the TOWN'S inspection rights described herein, provided it does not create a safety hazard.

B. Materials Acceptance

- (1) Beginning on the Commencement Date, the TOWN shall direct the TOWN'S Contract Hauler to deliver all Program Recyclables to the Designated Recycling Facility during the scheduled receiving hours specified herein. Program Recyclables will be delivered Single Stream. The TOWN makes no assurances or guarantees regarding the quantity of Program Recyclables that will be delivered to the Designated Recycling Facility.
- (2) Beginning on the Commencement Date, the CONTRACTOR shall accept deliveries of Program Recyclables at the Designated Recycling Facility between the hours of 6:00 a.m. and 6:00 p.m. Monday through Friday and 6:00 a.m. and 4:00 p.m. on Saturday or other hours, approved in writing, by the Contract Administrator. The Designated Recycling Facility may be closed on Holidays as defined herein. No reduction in scheduled receiving hours shall be made without the prior written approval of the Contract Administrator.
- (3) Program Recyclables are as defined in Section 2.U. The TOWN reserves the right to designate or remove other Recyclable Materials as Program Recyclables if the contracting parties agree it is technically feasible.
- (4) The Designated Recycling Facility shall be operated to facilitate delivery vehicle access during operations. The daily average delivery vehicle turnaround time from arrival at the facility site to exit from the facility site shall not exceed twenty (20) minutes. Delays caused by equipment failure not due to negligence of the CONTRACTOR or other fault of the delivery vehicle shall not be included in the turn-around time computation. The CONTRACTOR will provide the TOWN with access to its records to verify vehicle turnaround time within twenty-four (24) hours notice.
- (5) The Designated Recycling Facility shall be equipped with adequately-sized legal-for-trade truck scales and computerized recordkeeping systems for weighing and recording all incoming Program Recyclables delivery vehicles. Such scales shall be inspected and approved for use prior to placing them into service. CONTRACTOR shall calibrate and certify scales no less frequently than annually.
- (6) The CONTRACTOR shall weigh all trucks transporting Program Recyclables that enter the Designated Recycling Facility, record such weights separate from all other materials, and generate reports of incoming Program Recyclables as required herein or requested by the TOWN. The CONTRACTOR may use tare weights. If the CONTRACTOR chooses to use tare weights, all tare weights must be recalibrated at least every sixty (60) calendar days.
- (7) If Hazardous Waste is found within a load of Program Recyclables delivered by the TOWN or its agents to the Designated Receiving Facility, the CONTRACTOR shall immediately notify the Contract Administrator and note the incident by taking a

photograph of the Hazardous Waste and the truck, including the truck number and the truck driver's information, that delivered the waste. The CONTRACTOR is responsible for properly isolating, containerizing, and disposing of such Hazardous Waste in accordance with all applicable laws. The cost of managing and disposing of such Hazardous Waste shall be borne by the TOWN, provided that the CONTRACTOR has adequately documented that such waste was delivered by or on behalf of the TOWN.

- (8) In the event the CONTRACTOR fails, refuses, or is unable to accept Program Recyclables on the Commencement Date or thereafter during the term of the Contract, the CONTRACTOR will be liable for all hauling, processing, transportation, disposal charges and any other related costs, in excess of payments that would have been made under this Contract, which may be incurred by the TOWN with respect to recycling and marketing such materials.

#### C. Transport, Processing, Marketing, and Disposal

- (1) Upon acceptance of Program Recyclables at the Designated Recycling Facility, the CONTRACTOR shall bear all costs associated with processing or transporting Program Recyclables and marketing and transporting Recovered Materials. The CONTRACTOR is responsible for all costs of transporting and disposing of non-recyclable materials, including Rejects and Residue, resulting from the processing of Program Recyclables.
- (2) Unless the CONTRACTOR has prior written permission from the TOWN, the CONTRACTOR shall not dispose of and/or landfill any Program Recyclables or Recovered Materials resulting from the processing of Program Recyclables. The CONTRACTOR shall not knowingly, or without reasonable assumption, sell Program Recyclables or Recovered Materials resulting from processing of Program Recyclables to another agent that landfills or disposes of material other than through recycling. This does not apply to Rejects and Residue.

#### D. Record Keeping

- (1) The CONTRACTOR shall create, maintain, and make available records as defined herein; as required by all applicable local, State, and Federal laws, rules and regulations; or as are reasonably necessary to document and track the performance of work pursuant to this Contract.
- (2) The CONTRACTOR shall maintain records of the amounts of Program Recyclables received at the Designated Recycling Facility. Such records shall be kept separate and apart from all other records maintained by the CONTRACTOR.
- (3) The CONTRACTOR shall maintain such records in accordance with generally accepted management principles and practices. The TOWN shall have access to such books, records, documents, and other evidence for inspection, review, and copying during normal business hours. The CONTRACTOR will provide proper facilities for such access and inspection. The Florida Public Records Act, Chapter 119 of the Florida Statutes, may have application to records or documents pertaining to this Contract, and CONTRACTOR acknowledges that such laws have possible application and agrees to comply with all such laws.

- (4) The CONTRACTOR will maintain and allow access to books, records, data, documents, and reports relating to this Contract in accordance with the records retention requirements set forth in Florida Law.

#### **E. Reporting**

- (1) Prior to the fifteenth (15<sup>th</sup>) calendar day of each month during the term of this Contract, the CONTRACTOR shall submit a report electronically to the Contract Administrator, in a format approved by the Contract Administrator. The report shall provide the total tonnage of Program Recyclables received at the Designated Recycling Facility during the previous month, as well as a breakdown by delivery date and time, vehicle number, and quantity.
- (2) Within thirty (30) days of the end of each Contract Year, the CONTRACTOR shall provide the Contract Administrator with a report summarizing the total Tons of Program Recyclables delivered to the Designated Facility during the Contract Year and the net tonnage diverted from disposal. Additionally, the CONTRACTOR shall submit a copy of the annual report submitted to FDEP summarizing Recyclable Materials deliveries by type, quantity, and source.
- (3) At least fifteen (15) days prior to the end of each Contract Year during the term of this Contract, the CONTRACTOR shall ensure and certify to the TOWN that all required documents are current and on file with the TOWN. Such documents include, but are not limited to, certificates of insurance and performance bond.

#### **F. Public Education and Information**

- (1) The CONTRACTOR shall, at no cost to the TOWN, provide an educational presentation at up to two (2) events per Contract Year as requested by the TOWN.
- (2) The CONTRACTOR shall, at no cost to the TOWN, provide tours of the Designated MRF upon at least seven (7) calendar days notice by the TOWN. The CONTRACTOR shall provide personnel (bilingual upon request) to lead the tour and all necessary personal safety equipment. Designated areas for tour-group participants to safely observe the operations of the facility will be jointly agreed to by both the TOWN and the CONTRACTOR prior to conducting any tours.

### **SECTION 5. RATES AND BILLING FOR DISPOSAL SERVICE**

#### **A. Disposal Fee**

- (1) The per-Ton fee for receipt, management, and disposal of the TOWN's residential and commercial Solid Waste, and providing all related services as specified herein, is as specified in Exhibit 1 of this Contract. This fee is hereinafter referred to as the "Disposal Fee."

- (2) The TOWN shall be responsible for payment of the Disposal Fee for residential Solid Waste, as specified in Section 5.E. The CONTRACTOR shall collect payment for disposal of commercial Solid Waste from the Town's Contract Hauler.
  - (3) The Disposal Fee shall remain the same through the first Contract Year. At the beginning of the second Contract Year and each subsequent Contract Year during the term of the Contract, the Disposal Fee shall be adjusted based on eighty percent (80%) of the percentage change in the Consumer Price Index (CPI) between the month of March in the previous year and the month of March in the current year, rounded to the nearest tenth, for all Urban Consumers (CPI-U), All Items, Not Seasonally Adjusted for the South Region (series ID #CUUR0300SA0) as determined and recorded by the United States Department of Labor, Bureau of Labor Statistics. In no event shall the annual Disposal Fee adjustment exceed three percent (3%) of the Disposal Fee paid by the TOWN during the previous Contract Year.
- B. Contract Preparation and Administration Expenses. The CONTRACTOR understands and agrees that the cost of the bid process is a part of the cost of providing disposal service and thus a responsibility of the CONTRACTOR, and even though such costs in the amount of thirty thousand dollars (\$30,000) were initially expended by the TOWN, the expenditure was for the benefit of the CONTRACTOR. Accordingly, CONTRACTOR agrees that any and all monies due CONTRACTOR for the provision of services under this Contract, up to an amount of thirty thousand dollars (\$30,000), will be credited against the CONTRACTOR'S monthly invoices, as follows, as reimbursement for these expenditures:
- (1) Ten thousand dollars (\$10,000) will be credited against payment to the CONTRACTOR for the first month of service.
  - (2) The remaining twenty thousand dollars (\$20,000) will be credited against the CONTRACTOR'S monthly invoices at two thousand dollars (\$2,000) per month for ten (10) months, beginning the second month of the Contract term.
- C. HHW Collection Event Fees
- (1) The per-event fee for providing all staff, equipment, and resources needed for the HHW Collection Event and the per-item disposal/recycling fees for each type of HHW and E-Waste are as specified in Exhibit 1 of this Contract. These fees are hereinafter referred to as the "HHW Collection Event Fees."
  - (2) The TOWN shall be responsible for payment of the HHW Collection Event Fees, as specified in Section 5.E.
  - (3) The HHW Collection Event Fees shall remain the same through the first Contract Year. At the beginning of the second Contract Year and each subsequent Contract Year during the term of the Contract, the HHW Collection Event Fees shall be adjusted based on eighty percent (80%) of the percentage change in the Consumer Price Index (CPI) between the month of March in the previous year and the month of March in the current year, rounded to the nearest tenth, for all Urban Consumers (CPI-U), All Items, Not Seasonally Adjusted for the South Region (series ID #CUUR0300SA0) as determined and recorded by the United States Department of Labor, Bureau of Labor Statistics. In



no event shall the annual HHW Collection Event Fees adjustment exceed three percent (3%) of the HHW Collection Event Fees paid by the TOWN during the previous Contract Year.

**D. Drop-Off Collection Event Fees**

- (1) The per-event fee for providing all staff, equipment, and resources needed for the Drop-Off Collection Event and the per-Ton disposal fee for Drop-Off Bulk Wastes are as specified in Exhibit 1 of this Contract. These fees are hereinafter referred to as the "Drop-Off Collection Event Fees."
- (2) The TOWN shall be responsible for payment of the Drop-Off Collection Event Fees, as specified in Section 5.E.
- (3) The Drop-Off Collection Event Fees shall remain the same through the first Contract Year. At the beginning of the second Contract Year and each subsequent Contract Year during the term of the Contract, the Drop-Off Collection Event Fees shall be adjusted based on eighty percent (80%) of the percentage change in the Consumer Price Index (CPI) between the month of March in the previous year and the month of March in the current year, rounded to the nearest tenth, for all Urban Consumers (CPI-U), All Items, Not Seasonally Adjusted for the South Region (series ID #CUUR0300SA0) as determined and recorded by the United States Department of Labor, Bureau of Labor Statistics. In no event shall the annual Drop-Off Collection Event Fees adjustment exceed three percent (3%) of the Drop-Off Collection Event Fees paid by the TOWN during the previous Contract Year.

**E. Invoicing and Payment**

- (1) The CONTRACTOR shall submit a monthly invoice, in a form acceptable to the TOWN, detailing the total fees due to the CONTRACTOR for disposal of residential Solid Waste during the previous month. The invoice shall be sent to the following address:  
  
Town of Southwest Ranches  
Attn: Contract Administrator (to be named by the Town)  
13400 Griffin Road  
Southwest Ranches, FL 33330
- (2) Following each HHW Collection Event, the CONTRACTOR shall submit an itemized invoice, which shall provide the following information:
  - (a) Date and location of HHW Collection Event.
  - (b) Quantities, in pounds, by category, of waste collected.
  - (c) Cost per pound of waste collected by category.
  - (d) Total amount due for the HHW Collection Event.

- (3) Following each Drop-Off Collection Event, the CONTRACTOR shall submit an itemized invoice, which shall provide the following information:
  - (a) Date and location of Drop-Off Collection Event.
  - (b) Quantities, in Tons, of Bulk Waste collected.
  - (c) Cost per Ton of Bulk Waste collected.
  - (d) Total amount due for the Drop-Off Collection Event.
- (4) The TOWN shall remit payment within thirty (30) days of invoice receipt.

## **SECTION 6. REVENUE AND PAYMENT FOR RECYCLABLES**

### **A. Program Recyclables Revenue**

- (1) The CONTRACTOR shall pay the TOWN monthly for each Ton of inbound Program Recyclables delivered to the Designated Recycling Facility, as determined by the Designated Recycling Facility's scales. The payment per Ton shall be calculated as follows and as in Exhibit 2:
  - (a) Each month, the CONTRACTOR shall calculate the Average Market Value (AMV) of the Program Recyclables, defined as the sum of the Southeast USA regional average commodity prices (U.S. Dollars per Ton) first posted in the month for which payment is being made in RecyclingMarkets.net multiplied by the composition percentages as defined in Exhibit 2. If at any time during the term of this Agreement RecyclingMarkets.net no longer posts or otherwise fails to provide the applicable market indices, then the parties shall mutually select an appropriate replacement source for the required information from among the sources recycling industry professionals utilize to obtain reliable Recovered Material pricing information.
  - (b) A Contractor's Fee of fifty dollars (\$50.00) per Ton shall be deducted from the AMV. This fee shall be adjusted as specified in Section 6.A.(2).
  - (c) The CONTRACTOR shall pay the TOWN a percentage, as provided in Exhibit 2, of the remaining amount, for each Ton of inbound Program Recyclables delivered to the Designated MRF during that month.
  - (d) If the AMV is less than the Contractor's Fee of fifty dollars (\$50.00), the CONTRACTOR shall make no payment to the TOWN and the TOWN shall make no payment to the CONTRACTOR. At no time shall the TOWN make payment to the CONTRACTOR for accepting, processing, or marketing Program Recyclables, regardless of the AMV.
- (2) The Contractor's Fee of fifty dollars (\$50) shall remain the same through the first Contract Year. At the beginning of the second Contract Year and each subsequent Contract Year during the term of the Contract, the Contractor's Fee shall be adjusted based on seventy-five percent (75%) of the percentage change in the Consumer Price

Index (CPI) between the month of March in the previous year and the month of March in the current year, rounded to the nearest tenth. The CPI will be the Consumer Price Index for the South Urban Region, All Items – All Urban Wage Earners and Clerical Workers, (series ID #CWURO300SA0) published by the United States Department of Labor, Department of Labor Statistics. The total adjustment to the Contractor's Fee in any given year shall not exceed two percent (2%) of the previous year's Contractor's Fee. If the CPI is discontinued or substantially altered, the TOWN may select another relevant price index published by the United States Government or by a reputable publisher of financial and economic indices.

- (3) The TOWN or CONTRACTOR may conduct a composition study of Program Recyclables delivered to the Designated Recycling Facility. The party requesting such study shall pay for the study unless otherwise agreed upon. The final methodology and selection of a qualified entity to conduct the study must be approved by the TOWN. The TOWN reserves the right to have a representative onsite throughout the recycling composition study. Study results are subject to final approval by the TOWN, which shall not be unreasonably withheld. If approved by the TOWN, adjustments to the composition percentages provided in Exhibit 2 shall be made and shall become effective for the following month and the remainder of the Contract, or until further adjusted in a future composition study.
- (4) The CONTRACTOR acknowledges and accepts that the formula outlined in Section 6.A shall be used for calculating revenue throughout the term of the Contract. It is intended to reflect the current value of Program Recyclables, but might not be an exact calculation of that value. If the commodity revenue received by the CONTRACTOR differs from the market index or the Contractor's Fee does not accurately reflect the CONTRACTOR'S cost for accepting, processing, and marketing Program Recyclables, the CONTRACTOR shall have taken such items into consideration when bidding the percentage of the AMV less the Contractor's Fee that it will pay to the TOWN. Any and all costs associated with accepting, processing, marketing, and transporting Program Recyclables shall be the responsibility of the CONTRACTOR.

#### B. Invoicing and Payment

- (1) No later than the fifteenth (15<sup>th</sup>) day of each month, the CONTRACTOR shall submit a monthly report, in a form acceptable to the TOWN, detailing the total revenue due to the TOWN for the Program Recyclables delivered to the Designated Recycling Facility during the previous month. The report shall be sent to the following address:

Town of Southwest Ranches  
Attn: Contract Administrator (to be named by the Town)  
13400 Griffin Road  
Southwest Ranches, FL 33330

- (2) The CONTRACTOR shall remit payment of said revenue, as detailed in the monthly report, within thirty (30) calendar days from the end of the month for which the payment is due. Payment shall be remitted to the following:

Town of Southwest Ranches  
Attn: Contract Administrator (to be named by the Town)  
13400 Griffin Road  
Southwest Ranches, FL 33330

**SECTION 7. CHANGE IN LAW**

The CONTRACTOR may petition the TOWN for an additional rate adjustment resulting from a change in law. The CONTRACTOR'S request shall contain substantial proof and justification to support the need for the rate adjustment. The TOWN may request from the CONTRACTOR such further information as may be reasonably necessary in making its determination. Within sixty (60) calendar days of receipt of the request and all other additional information required by the TOWN, the Town Administrator shall make a determination regarding the fairness of the request, and shall make a recommendation to the Town Council. The Town Council shall consider the request at a regular meeting. If the Town Council approves the request, adjusted rates shall become effective upon the Town Council's approval.

**SECTION 8. LIQUIDATED DAMAGES**

- A. Assessment of Liquidated Damages The Contract Administrator may assess liquidated damages pursuant to this Section on a monthly basis in connection with this Contract and shall, at the end of each month during the term of this Contract, notify the CONTRACTOR in writing of the liquidated damages assessed and the basis for each assessment. In the event the CONTRACTOR wishes to contest such assessment, it may request in writing a meeting with the Contract Administrator to resolve the issue. The TOWN shall notify the CONTRACTOR in writing of any action taken with respect to CONTRACTOR'S claims. The Town Administrator's decision shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by competent evidence.
- B. Liquidated Damages for Disposal Service The TOWN may assess liquidated damages against the CONTRACTOR for failing to provide disposal and/or ancillary services in compliance with requirements of this Contract. It is hereby agreed that the TOWN may deduct from any monies due, or which may become due to the CONTRACTOR, liquidated damages, and not as a penalty, in the following amounts:
- |  |                             |
|--|-----------------------------|
| 1. Failure to accept Solid Waste during scheduled receiving hours (Section 3.B.)   | \$500 per unaccepted load   |
| 2. Failure to provide a daily average delivery vehicle turnaround time that does not exceed 20 minutes (Section 3.B.)                          | \$100 per day               |
| 3. Failure to appear at HHW or Drop-Off Collection Events in a capacity satisfactory to accept and transfer materials received. (Section 3.C.) | \$2,500 per instance        |
| 4. Failure to submit timely records and reports (Section 3.E.)   | \$100 per calendar day late |

C. Liquidated Damages for Recyclables Processing Service. The TOWN may assess liquidated damages against the CONTRACTOR for failing to provide recyclables processing services in compliance with requirements of this Contract. It is hereby agreed that the TOWN may deduct from any monies due, or which may become due to the CONTRACTOR, liquidated damages, and not as a penalty, in the following amounts:

- |    |  |                             |
|----|--|-----------------------------|
| 1. | Failure to accept Recyclable Materials during scheduled receiving hours (Section 4.B.)                                   | \$500 per unaccepted load   |
| 2. | Failure to provide a daily average delivery vehicle turnaround time that does not exceed 20 minutes (Section 4.B.)       | \$100 per day               |
| 3. | Disposing of Recyclable Materials or Recovered Materials without prior approval of the Executive Director (Section 4.C.) | \$1,000 per occurrence      |
| 4. | Failure to submit timely records and reports (Section 4.E.)  | \$100 per calendar day late |
| 5. | Failure to make timely payment to the TOWN (Section 6.B.)  | \$100 per calendar day late |

#### **SECTION 9. EMERGENCY SERVICE PROVISIONS**

In the event of a hurricane, tornado, major storm, natural disaster, or other such event, the Contract Administrator may grant the CONTRACTOR a variance from regular service. However, CONTRACTOR shall make its best effort to resume regular service as soon as possible, and no later than resumption of collection service by the Town's Contract Hauler. As soon as practicable after such event, the CONTRACTOR shall advise the Contract Administrator when it is anticipated that normal service can be resumed.

#### **SECTION 10. PERFORMANCE BOND**

- A. Prior to commencing services, the CONTRACTOR shall furnish to the TOWN, and keep current for the full duration of the Contract and any renewal, a Performance Bond for the faithful performance of this Contract and all obligations arising hereunder in the amount below.
- (1) The Performance Bond for disposal services shall be in the amount of one hundred twenty-five thousand dollars (\$125,000).
  - (2) The Performance Bond for recyclables processing services shall be in the amount of ten thousand dollars (\$10,000).
- B. The Performance Bond shall be executed by a surety company licensed to do business in the State of Florida; having an "A" or better rating by A.M. Best or Standard and Poors; included on the list of surety companies approved by the Treasurer of the United States; and in a form acceptable to the TOWN.



**SECTION 11. INSURANCE**

11.1 *Policy limits.* CONTRACTOR shall not commence performance under this agreement until Contractor has obtained all insurance required under this section and such Certificates of Insurance reflecting evidence of the required insurance have been filed with the Town 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 of this Agreement (except for Pollution Liability, which may be provided on a claims made basis) for a minimum of three years from the date of termination or expiration of this Agreement:

<i>General Liability</i>	<i>\$1,000,000/\$2,000,000</i>
<i>Automobile Liability</i>	<i>\$1,000,000/\$2,000,000</i>
<i>Pollution Liability</i>	<i>\$1,000,000/\$2,000,000</i>
<i>Worker's Compensation Statutory Amount</i>	

11.2 TOWN as additional insured. The TOWN shall be named as an additional insured on all insurance policies required under this Agreement, except Workers Compensation. All Insurance Policies shall be endorsed to provide that (a) Contractor's Insurance is primary to any other Insurance available to TOWN or any other additional insured with respect to claims covered under the policy and (b) Contractor's Insurance applies separately to each insured against who claims are made or suit is brought, and (c) that the inclusion of more than one insured shall not operate to increase the Insurer's limit of liability. Self-insurance by CONTRACTOR shall not be acceptable as providing any of the required insurance coverages required in this Agreement.

11.3 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 A.M. Best Company of A- Excellent: FSC VII.

11.4 Notice of cancellation. Contractor agrees to furnish TOWN with at least 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 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.

11.5 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 twenty-five million dollars (\$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 five-year period following the term of this Agreement.

- 11.6 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. CONTRACTOR shall ensure that any company issuing insurance to satisfy the requirements contained in this Agreement, agrees that they shall have no recourse against TOWN for payment or assessments in any form on any policy of insurance.
- 11.7 If Contractor's Insurance policy is a "claims-made" policy, then CONTRACTOR shall maintain such Insurance Coverage for a period of five (5) years after the expiration or termination of the agreement or any extensions or renewals of the agreement. Applicable coverages may be met by keeping the policies in force, or by obtaining an extension of coverage commonly known as a reporting endorsement of tail coverage.
- 11.8 If any of Contractor's Insurance policies includes a general aggregate limit and provides that claims investigation or legal defense costs are included in the general aggregate limit, the general aggregate limit that is required shall be at least five (5) times the occurrence limits specified above in this article.
- 11.9 The official title of the owner is Town of Southwest Ranches. This official title shall be used in all insurance policies and documentation.
- 11.10 All required insurance policies shall preclude any insurer's or underwriter's rights of recovery or subrogation against TOWN with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.
- 11.11 The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which TOWN is named as an additional named insured shall not apply to TOWN in any respect. TOWN shall use its best efforts to provide written notice of occurrence within thirty (30) working days after TOWN'S actual notice of such event.
- 11.12 Notwithstanding any other provisions of this Agreement, CONTRACTOR'S obligation to maintain all required insurance as specified in this Section of the Agreement shall survive the expiration or termination of this Agreement.

## **SECTION 12. INDEMNIFICATION OF TOWN**

- A. CONTRACTOR shall indemnify, defend, and hold harmless TOWN, TOWN'S contractors, and the public officials, officers, directors, employees, agents, and other contractors of each of them, from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals as well as all Court or other dispute resolution costs), liabilities, expenditures or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of the CONTRACTOR, any subcontractor, any supplier, any person or organization directly or

indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), caused by the breach of this Contract, violation of applicable law, and the negligent acts or omissions of the CONTRACTOR in the performance of this Contract. This indemnity includes but is not limited to claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property; provided, however, that nothing herein shall be construed to require the CONTRACTOR to indemnify the TOWN or other indemnitee set forth above, for the sole negligence, or willful, wanton or intentional misconduct of the TOWN or other indemnitee set forth above.

- B. CONTRACTOR further agrees to indemnify, defend, save and hold harmless the TOWN, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against TOWN, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent rights or for the infringement of any and all copyrights or patent claimed by any person, firm or corporation.
- C. CONTRACTOR agrees, at CONTRACTOR'S expense, after written notice from the TOWN, to defend any action against the TOWN that falls within the scope of this indemnity as set forth above in Subsections A and B, or the TOWN, at the TOWN'S option, may elect not to tender such defense and may elect instead to secure its own attorneys to defend any such action and the reasonable costs and expenses of such attorneys incurred in defending such action shall be payable by CONTRACTOR. Additionally, if CONTRACTOR, after receipt of written notice from the TOWN, fails to make any payment due under this Contract to the TOWN or fails to perform any obligation required by this Contract, CONTRACTOR shall pay any reasonable attorneys' fees and costs incurred by the TOWN in securing any such payment from CONTRACTOR, or any reasonable attorneys' fees and costs incurred in the enforcement of this indemnity, or both. Payment of any amount due pursuant to the foregoing indemnity shall, after receipt of written notice by CONTRACTOR from the TOWN that such amount is due, be made by CONTRACTOR prior to the TOWN being required to pay same, or in the alternative, the TOWN, at the TOWN'S option, may make payment of an amount so due and CONTRACTOR shall promptly reimburse the TOWN for same, together with interest thereon at the rate of twelve percent (12%) per annum simple interest from the date of receipt by CONTRACTOR of written notice from the TOWN that such payment is past due at least twenty (20) days .
- D. It is specifically understood and agreed that the consideration inuring to the CONTRACTOR for the execution of this Contract consists of the promises, payments, covenants, rights, and responsibilities contained in this Contract.
- E. The execution of this Contract by the CONTRACTOR shall obligate the CONTRACTOR to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must be also complied with as set forth in Section 23.
- F. The CONTRACTOR shall require all subcontractors to enter into a contract containing the provisions set forth in the preceding subsections in which contract the subcontractor fully indemnifies the TOWN in accordance with this Contract.

**SECTION 13. POINT OF CONTACT**

The day-to-day dealings between the CONTRACTOR and the TOWN shall be between the CONTRACTOR and the Town Administrator or designee.

**SECTION 14. NOTICE**

Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice, sent by certified U.S. mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

As to the TOWN:

Andrew Berns, Town Administrator  
Town of Southwest Ranches  
13400 Griffin Road  
Southwest Ranches, Florida 33330

With a copy to:

Keith M. Poliakoff, J.D., Town Attorney  
Law Offices of Becker and Poliakoff, P.A.  
3111 Stirling Road  
Fort Lauderdale, Florida 33312

As to the CONTRACTOR:

Ron Bergeron, Sr., Manager  
Sun-Bergeron Solid Waste Services, JV  
2380 College Avenue  
Davie, FL 33317

With a copy to:

Joe Goldstein, Esq.  
Shutts & Bowen, LLP  
200 East Broward Boulevard  
Suite 2100  
Fort Lauderdale, FL 33301

Notices shall be effective when received at the address as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time-to-time by written notice. Facsimile transmission is acceptable notice, effective when received; however, facsimile transmissions received (i.e., printed) after 4:30 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of items that are transmitted by facsimile equipment must also be mailed as required herein.

**SECTION 15. TERMINATION OF CONTRACT**

- A. Termination for Cause. The TOWN may cancel this Contract, except as otherwise provided below in this Section, by giving the CONTRACTOR thirty (30) days advance written notice, to be served as provided in Section 26, upon the happening of any one of the following events:
- (1) The CONTRACTOR shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any State thereof or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
  - (2) By order or decree of a Court, the CONTRACTOR shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the CONTRACTOR, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any State thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) days after the entry thereof, any notice of default shall be and become null, void and of no effect; unless such stayed judgment or order is reinstated, in which case, said default shall be deemed immediate; or
  - (3) By, or pursuant to or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver trustee or liquidator shall take possession or control of all or substantially all of the property of the CONTRACTOR, and such possession or control shall continue in effect for a period of sixty (60) days; or
  - (4) The CONTRACTOR has defaulted by failing or refusing to pay in a timely manner the administrative charges or other monies due the TOWN and said default is not cured within thirty (30) days of receipt of written notice by TOWN to do so; or
  - (5) The CONTRACTOR has defaulted by allowing any final judgment for the payment of money to stand against it unsatisfied and said default is not cured within thirty (30) days of receipt of written notice by TOWN to do so; or
  - (6) In the event that the monies due the TOWN under subsection (4) above or an unsatisfied final judgment under subsection (5) above is the subject of a judicial proceeding, the CONTRACTOR shall not be in default if the sum of money is bonded. All bonds shall be in the form acceptable to the Town Attorney; or
  - (7) The CONTRACTOR has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Contract or any of the rules and regulations promulgated by the TOWN pursuant to this Contract or has wrongfully failed or refused to comply with the instructions of the Contract Administrator relative thereto and said default is not cured within thirty (30) days of receipt of written notice by the TOWN to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) days following receipt by the CONTRACTOR of written demand from the TOWN to do so,



the CONTRACTOR fails to commence the remedy of such default within said thirty (30) days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with the CONTRACTOR having the burden of proof to demonstrate, (a) that the default cannot be cured within thirty (30) days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time). However, notwithstanding anything contained herein to the contrary, for the failure of the CONTRACTOR to provide service for a period of three (3) consecutive Work Days, the TOWN may secure the CONTRACTOR'S billing records on the fourth (4<sup>th</sup>) Work Day in order to provide interim Contract service until such time as the matter is resolved and the CONTRACTOR is again able to perform pursuant to this Contract; provided, however, if the CONTRACTOR is unable for any reason or cause to resume performance at the end of thirty (30) Work Days all liability of the TOWN under this Contract to the CONTRACTOR shall cease and this Contract may be deemed terminated by the TOWN.

- B. Habitual Violations Notwithstanding the foregoing and as supplemental and additional means of termination of this Contract under this Section, in the event that the CONTRACTOR'S record of performance shows that the CONTRACTOR has frequently, regularly or repetitively defaulted in the performance of any of the covenants and conditions required herein to be kept and performed by the CONTRACTOR, in the opinion of the TOWN, and regardless of whether the CONTRACTOR has corrected each individual condition of default, the CONTRACTOR shall be deemed a "habitual violator," shall be deemed to have waived the right to any further notice or grace period to correct, and all of said defaults shall be considered cumulative and collectively and shall constitute a condition of irredeemable default. The TOWN shall thereupon issue the CONTRACTOR a final warning citing the circumstances therefore, and any single default by the CONTRACTOR of whatever nature, subsequent to the occurrence of the last of said cumulative defaults, shall be grounds for immediate termination of the Contract. In the event of any such subsequent default, the TOWN may terminate this Contract upon giving of written final notice to the CONTRACTOR, such cancellation to be effective upon the date specified in the TOWN'S written notice to the CONTRACTOR, and all contractual fees due hereunder plus any and all charges and interest shall be payable to said date, and the CONTRACTOR shall have no further rights hereunder. Immediately upon the specified date in such final notice the CONTRACTOR shall cease any further performance under this Contract.
- C. Termination Without Cause In addition to and notwithstanding any other provisions of the Agreement, this Agreement may be terminated by the TOWN for convenience upon providing the CONTRACTOR with six (6) months written notice.
- D. Effective Date of Termination. In the event of the aforesaid events specified in subsections A, B, and C above and except as otherwise provided in said subsections, termination shall be effective upon the date specified in the TOWN'S written notice to the CONTRACTOR and upon said date this Contract shall be deemed immediately terminated and upon such termination all liability of the TOWN under this Contract to the CONTRACTOR shall cease, and the TOWN shall have the right to call the performance bond and shall be free to negotiate with other contractors for the operation of the herein specified services. The CONTRACTOR, for failure to perform, shall reimburse the TOWN all direct and indirect costs of providing interim service.

**SECTION 16. MODIFICATIONS TO THE CONTRACT**

The TOWN shall have the power to make changes in this Contract as the result of changes in law, TOWN Code, or both to impose new rules and regulations on the CONTRACTOR under this Contract relative to the scope and methods of providing the service specified herein as shall from time-to-time be necessary and desirable for the public welfare. The TOWN shall give the CONTRACTOR notice of any proposed change and an opportunity to be heard concerning those matters. If a change is required as a result of an amendment to the TOWN's Code, upon receipt of the proposed change, CONTRACTOR shall have ten (10) business days to either accept the change or to terminate this Agreement by providing the TOWN with ninety (90) days written notice of termination. Failure to provide the TOWN with written notice of termination shall constitute acceptance of the proposed change. The scope and method of providing service as referenced herein shall also be liberally construed to include, but they are not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the CONTRACTOR.

The TOWN and the CONTRACTOR understand and agree that the Florida Legislature has the authority to make comprehensive changes in Solid Waste Management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Contract. The CONTRACTOR agrees that the terms and provisions of any TOWN Code of the TOWN related to Solid Waste services and regulations, as it now exists or as it may be amended in the future as a result of any changes in the law, shall apply to all of the provisions of this Contract. In the event any future change in the TOWN Code materially alters the obligations of the CONTRACTOR, then the fee established in the Exhibits to this Contract shall be adjusted. Nothing contained in this Contract shall require any party to perform any act or function contrary to law. The TOWN and CONTRACTOR agree to enter into good faith negotiations regarding modifications to this Contract which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to this Contract, the TOWN and the CONTRACTOR shall negotiate in good faith a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of the CONTRACTOR due to any modification in the Contract under this Section. The TOWN and the CONTRACTOR shall not unreasonably withhold agreement to such compensation adjustment.

**SECTION 17. PERMITS AND LICENSES**

The CONTRACTOR shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect.

**SECTION 18. INDEPENDENCE OF CONTRACT**

It is understood and agreed that nothing herein contained is intended or should be construed as in any way establishing the relationship of co-partners or a joint venture between the parties hereto or as constituting the CONTRACTOR as an agent, representative or employee of the TOWN for any purpose whatsoever. The CONTRACTOR is to be, and shall remain, an independent contractor with respect to all services performed under this Contract.

**SECTION 19. FORCE MAJEURE**

If either party is prevented from or delayed in performing its duties under this Contract by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, hurricanes, severe weather, floods, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or significant threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, State, or Federal government ("Force Majeure"), then the affected party shall be excused from performance hereunder during the period of such disability. The party claiming Force Majeure shall promptly notify the other party in writing when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Contract to the contrary, the term "Force Majeure" does not include, and a party shall not be excused from performance under this Contract for, events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance, or other expenses of performing the services hereunder.

**SECTION 20. EMPLOYEE STATUS**

Persons employed by the CONTRACTOR in the performance of services and functions pursuant to this Contract shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the TOWN'S officers and employees either by operation of law or by the TOWN.

**SECTION 21. EQUAL OPPORTUNITY EMPLOYMENT**

CONTRACTOR shall comply with all Federal, State and TOWN laws applicable to the CONTRACTOR services and specifically those covering Equal Opportunity Employment, the Americans with Disabilities Act ("ADA") and the South Florida Building Code. The CONTRACTOR is expected to fully comply with all provisions of all laws and the TOWN reserves the right to verify the CONTRACTOR'S compliance with them. Failure to comply with any laws will be grounds for termination of the Contract for cause.

**SECTION 22. MEDIATION**

In addition to any other remedy provided by law, the parties may agree to use arbitration or mediation to resolve any controversy or claim arising out of or relating to this Contract. Any controversy or claim arising out of or relating to this Contract, or breach thereof, may be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. In the event arbitration is agreed to by both parties in writing, such controversy or claim shall be submitted to arbitrators selected from the National Panel of The American Arbitration Association.

**SECTION 23. RIGHT TO REQUIRE PERFORMANCE**

The failure of the TOWN at any time to require performance by the CONTRACTOR of any provision hereof shall in no way affect the right of the TOWN thereafter to enforce same, nor shall waiver by the TOWN of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

**SECTION 24. GOVERNING LAW**

The parties agree that this Contract shall be construed in accordance with and governed by the laws of the State of Florida.

**SECTION 25. CONSENT TO JURISDICTION**

The parties agree that the jurisdiction for any legal action arising out of or pertaining to this Contract shall be with the State Courts of Florida, and specifically, the County or Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, depending upon the respective jurisdictional limit. Each party further agrees that venue for any action to enforce this Contract shall be in Broward County, Florida.

**SECTION 26. LITIGATION**

In the event of any litigation which arises out of, pertains to, or relates to this Contract, or the breach of it, including, but not limited to, the standard of performance required in it, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the non-prevailing party, at both trial and appellate levels.

**SECTION 27. COMPLIANCE WITH LAWS**

The CONTRACTOR shall conduct its operations under this Contract in compliance with all applicable Federal, State and local laws and regulations.

**SECTION 28. SEVERABILITY**

If any provision of this Contract or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Contract and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

**SECTION 29. ASSIGNMENT AND SUBLETTING**

No assignment of this Contract or any right occurring under this Contract shall be made in whole or in part by the CONTRACTOR without the express written consent of the Town Council. The TOWN shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment by the CONTRACTOR. Any assignment of this Contract made by the CONTRACTOR without the express written consent of the Town Council shall be null and void and shall be grounds for the TOWN to declare a default of this Contract and immediately terminate this Contract by giving written notice to the CONTRACTOR, and upon the date of such notice this Contract shall be deemed immediately terminated, and upon such termination all liability of the TOWN under this Contract to the CONTRACTOR shall cease, and the TOWN shall have the right to call the performance bond and shall be free to negotiate with other contractors, the CONTRACTOR, or any other person or company for the service which is the subject of this Contract. In the event of any assignment, the assignee shall fully assume all the liabilities of the CONTRACTOR.



**SECTION 30. MODIFICATIONS**

This Contract constitutes the entire Contract and understanding between the parties hereto, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

**SECTION 31. LEGAL REPRESENTATION**

It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Contract and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

**SECTION 32. FUND APPROPRIATION**

The CONTRACTOR understands and agrees that the TOWN, during any fiscal year, is not authorized to expend money, incur any liability or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year and that any contract, verbal or written, made in violation of this subsection is null and void and that consequently, no money may be paid on such contract beyond such limits. Nothing contained in this Contract shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executed only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. CONTRACTOR shall not proceed with services under this Contract without TOWN'S written verification that the funds necessary for CONTRACTOR'S compensation and other necessary expenditures are budgeted as available within the appropriate fiscal year budget. The TOWN does not represent that said budget item will be actually adopted, said determination being the determination of the Town Council at the time of the adoption of the budget.

**SECTION 33. PUBLIC ENTITY CRIME**

CONTRACTOR understands that a person or affiliate as defined in Section 287.133, Florida Statutes, who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the TOWN and may not transact business with the TOWN in an amount set forth in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. CONTRACTOR herein certifies that it is qualified under Section 287.133, Florida Statutes, to provide the services set forth in this Contract.

**SECTION 34. FINANCIAL INTEREST**

CONTRACTOR warrants and represents that no elected official, officer, agent or employee of the TOWN has a financial interest, directly or indirectly, in this Contract or the compensation to be paid under it and, further, that no person who acts in the TOWN as a "purchasing agent" as defined in Chapter 112, Florida Statutes, nor any elected or appointed officer of the TOWN, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the CONTRACTOR and, further, that no such person, purchasing agent, TOWN elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the



CONTRACTOR. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the CONTRACTOR.

**SECTION 35. ALL PRIOR AGREEMENTS SUPERSEDED**

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in this Contract and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Contract that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Contract shall be predicated upon any prior representations or agreements, whether oral or written.

**SECTION 36. AUDIT AND INSPECTION RIGHTS AND RETENTION OF RECORDS**

TOWN shall have the right to audit the books, records and accounts of CONTRACTOR that are related to this Agreement during normal business hours. CONTRACTOR shall keep such books, records, and accounts 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 2.5.

CONTRACTOR shall preserve and make available, at reasonable times for examination and audit by TOWN, 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, Fla. Stat.), 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 TOWN 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. If the Florida Public Records Act is determined by TOWN to be applicable to CONTRACTOR'S records, CONTRACTOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either Federal or State law shall be violated by CONTRACTOR. 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.

**SECTION 37. PIGGYBACK**

It is contemplated that other governmental entities may piggyback upon this Agreement in whole or in part. Such entities may only do so upon the consent of the CONTRACTOR.

**SECTION 38. PAYMENT DISPUTES**

If the TOWN disagrees with any amount stated in any invoice from the CONTRACTOR, the TOWN shall notify the CONTRACTOR of such dispute. The TOWN shall make payment to CONTRACTOR of the 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 the TOWN'S notice of such dispute, the parties shall resolve the dispute in a manner permitted by Florida law. The

existence of a dispute shall not delay payment of undisputed amounts to CONTRACTOR, or relieve CONTRACTOR of its obligations to TOWN under this Agreement.

#### **SECTION 39. RECYCLING GUARANTY**

CONTRACTOR acknowledges the State's seventy-five percent (75%) recycling goal, as defined by Chapter 403, Florida Statutes and applicable regulations promulgated thereunder. In acknowledging the State goal, the CONTRACTOR shall endeavor to divert, as practically feasible, materials for recycling or composting from the Solid Waste delivered by or on behalf of the TOWN, regardless of whether final disposition is a waste-to-energy facility or landfill. Any such diversion shall be recorded and reported to the TOWN on the monthly invoices.

#### **SECTION 40. MOST FAVORED PRICING AND MATERIAL TERMS**

In the event that CONTRACTOR subsequently enters into an agreement for a term of more than 12 months (including renewal and option periods) for the disposal and/or recycling of another governmental entity's waste with a governmental agency (or a private entity that has been delegated to provide the disposal of solid waste and/or recycling for all or substantially all of the solid waste generated within a governmental entity's jurisdiction) generated anywhere within Miami-Dade, Palm Beach, or Broward County (an "Eligible Agreement"), CONTRACTOR shall provide the TOWN with a copy of the Eligible Agreement within sixty (60) days of execution thereof. If the TOWN determines that the Eligible Agreement includes a net disposal charge that is less than the Disposal Services Charge set forth herein, or a recycling payment that is greater than the payment set forth herein, the TOWN may provide written notice to CONTRACTOR of TOWN'S determination, and, if the TOWN does so, the Disposal Services Charge shall automatically be reduced to the net disposal charge set forth in the Eligible Agreement, and the Program Recyclable payments to the TOWN shall be increased to the amount set forth in the Eligible Agreement, and such change to be effective retroactive to the effective date of Eligible Agreement. Thereafter, the parties shall proceed under this Agreement in accordance with the lower net disposal charge and greater recyclable payment (subject to annual adjustments as provided above).

For the purposes of clarification, the "net disposal charge" offered under the Eligible Agreement will be the actual per-ton cost to the counterparty to the Eligible Agreement, and shall be determined net of any costs (e.g., pass-throughs, etc.) paid by such counterparty or economic benefits (e.g., signing bonus, revenue sharing, other credits, etc.) received by such counterparty, except for such economic benefits that are as a result of CONTRACTOR operating a Waste Receiving Facility in such counterparty's jurisdiction.

#### **SECTION 41. HEADINGS**

Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Contract.

#### **SECTION 42. EXHIBITS**

Each exhibit referred to in this Contract forms an essential part of this Contract. Each such exhibit is a part of this Contract and each is incorporated by this reference.

IN WITNESS WHEREOF, the TOWN and the CONTRACTOR have executed this Contract on the respective date(s) below each signature.

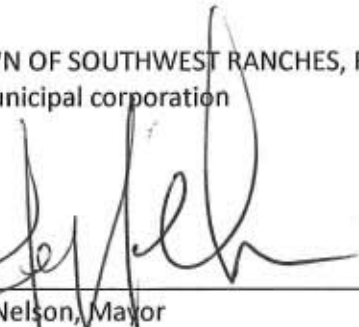
ATTEST:

  
Erica Gonzalez-Santamaria, CMC  
TOWN CLERK

Date: 5/16/13

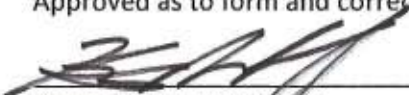
TOWN OF SOUTHWEST RANCHES, FLORIDA  
A municipal corporation

By:

  
Jeff Nelson, Mayor

Date: 5/16/13

Approved as to form and correctness:

  
KEITH M. POLIAKOFF, J.D.  
TOWN ATTORNEY  
Date: 5/16/13  
#4691891

CONTRACTOR:

SUN-BERGERON SOLID WASTE SERVICES  
A general partnership

WITNESSES:


Date: 5/19/13



Print Name: Lennie N. Bergeron

Print Title: Manager

Date: 5/19/2013

**EXHIBIT 1**

**DISPOSAL AND ANCILLARY SERVICES FEES**

TOWN OF SOUTHWEST RANCHES, FLORIDA  
 Invitation for Bids  
 IFB No. 13-003

**PART VI - FORM B**

**DISPOSAL FEE AND ANCILLARY SERVICE FEE PRICE FORM**

Bidders wishing to provide Solid Waste disposal services must complete this form in its entirety in ink or typewritten.

Company Name Sun Bergeron Solid Waste Services, JV

**Solid Waste Disposal Fee**

	A Fee/Ton	B Estimated Tons/Year	C = A x B Estimated Annual Disposal Fees
Solid Waste (residential and commercial)	43.25	x 11,000 tons =	\$47,5750

**Ancillary Service Fees**

All Bidders providing a fee for Solid Waste disposal services must also provide prices for ancillary services. The Town will make a policy decision as to whether these ancillary services will be included in the contract award.

**HHW and E-Waste Collection Events**

	A Fee/Event	B Events/Year	C = A x B Estimated Annual Fee
Flat fee for the mobilization of event staff, equipment, and resources needed to conduct collection event	0	x 4 events =	0

**Itemized Disposal and/or Recycling Fees**

In the table on the following page, Bidders should indicate the fee or revenue to be billed or paid to the Town for each material type. Bidder should clearly indicate whether Bid price is a fee, revenue, or no charge. All quantities are listed for Bid purposes only. Town makes no guarantee as to actual tonnage expected.



TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

	A		B	C = A x B
	Fee	Units	Estimated	Estimated Annual
	Per Pound		Quantity/Year	Fee
			(pounds)	
Televisions (all sizes)	0	Pounds	3,500	0
Computer Monitors/Terminals	0	Pounds	1,100	0
CPU's / Laptops	0	Pounds	1,100	0
Large peripherals (printers, scanners, fax machines, plotters, typewriters, etc.)	0	Pounds	850	0
Small peripherals (keyboards, mice, cables, game hardware, external drives, etc.)	0	Pounds	35	0
Telecommunications devices (desk phones, mobile phones, pagers, handheld devices, etc.)	0	Pounds	125	0
Audio/Video equipment (stereos, VCRs, DVD players, radios, tape players, speakers)	0	Pounds	125	0
Copiers	0	Pounds	125	0
UPS (Uninterrupted Power Supply)	0	Pounds	250	0
Small household electrical appliances (microwaves, power tools, health and beauty, etc.)	0	Pounds	200	0
Laptop Batteries	0	Pounds	125	0
Car/Boat Batteries	0	Pounds	400	0
Rechargeable Batteries	0	Pounds	125	0
Lead Acid Batteries	0	Pounds	200	0
Aerosols	0	Pounds	750	0
Corrosives	0	Pounds	1,250	0
Flammable Liquids	0	Pounds	750	0
Flammable Solids	0	Pounds	250	0
Oxidizers	0	Pounds	1,250	0
Oil Paint	0	Pounds	2,000	0
Latex Paint	0	Pounds	1,500	0
Poisons	0	Pounds	100	0
Used Oil/Oil Filters	0	Pounds	1,100	0
Propane Tanks	0	Pounds	80	0
<b>Total Estimated Annual Fee</b>				<b>0</b>

\* Quantities listed above are for Bid purposes only and are based on 0.7% of the HHW collected in Broward County in FY 2012. The Town makes no guarantee as to actual tonnage expected.

**Total Drop-Off HHW Service Fee**

(Annual Flat Fee + Estimated Annual Itemized Fees ) \_\_\_\_\_ 0 \_\_\_\_\_

TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

**Drop-Off Collection Events**

	A Fee/Event	B Events/Year	C = A x B Estimated Annual Fee
Flat fee for the mobilization of event staff, equipment, and resources need to host collection event	0	x 4 events =	0
	A Fee/Ton	B Estimated Tons/Year*	C = A x B Estimated Annual Bulk Waste Disposal Fees
Bulk Waste Disposal Fee	0	X 200 tons	0

\* Quantity listed for Bid purposes only. Town makes no guarantee as to actual tonnage expected.

I, Lonnie Bergeron (name), the Manager (title)

of Sun Bergeron Solid Waste Services, JV

(bidder) swear or affirm that all information submitted with this bid is true, and that I am authorized to complete this Price Form on behalf of the company.

  
Signature

April 19, 2013  
Date

**EXHIBIT 2**

**PROGRAM RECYCLABLES REVENUE**

## TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

## PART VI - FORM C

## PROGRAM RECYCALBLES REVENUE FORM

Company Name Sun-Bergeron Solid Waste Services, JV

**Bidders wishing to provide Recyclable Materials processing services must complete this form in its entirety in ink or typewritten.**

Bidder shall enter the percentage of the Average Market Value (AMV) less a Contractor's fee of \$50.00 that it will pay the Town for each Ton of inbound Program Recyclables delivered by the Town or its agents to the Designated Recycling Facility, as determined by the Designated Recycling Facility scales.

The payment per Ton shall be calculated as follows:

1. Each month, the Contractor shall calculate the AMV of the Town's Program Recyclables, defined as the sum of the Southeast USA regional average commodity prices (U.S. Dollars per Ton) first posted in the month for which payment is being made in [RecyclingMarkets.net](http://RecyclingMarkets.net) multiplied by the composition percentages of the Town's Program Recyclables, as defined in the table below, which calculates the AMV for March 2013.

## Calculation of the March 2013 Average Market Value

Material	Index Description	Index Value (Mar '13)	Market Value (\$/Ton)	Material %	Average Market Value (\$/Ton)
Newspaper	PS 8 baled, F.O.B. seller's dock	77.5	\$77.50	17.0%	\$13.18
Corrugated containers	PS 11 baled, F.O.B. seller's dock	112.5	\$112.50	10.0%	\$11.25
Mixed paper	PS 1 baled, F.O.B. seller's dock	70	\$70.00	24.5%	\$17.15
Steel cans	\$/Ton, sorted, baled and delivered	115.0	\$115.00	3.7%	\$4.26
Aluminum cans	Cents/lb., sorted, baled and delivered	79.5	\$1,590.00	2.4%	\$38.16
Plastics #3-#7	Commingled (#3-7, cents/lb, baled and picked up)	0.3	\$6.00	5.3%	\$0.32
PET	Cents/lb., baled and picked up	20.8	\$416.00	5.7%	\$23.71
Natural HDPE	Cents/lb., baled and picked up	32.5	\$650.00	2.2%	\$14.30
Colored HDPE	Cents/lb., baled and picked up	25.8	\$516.00	3.2%	\$16.51
Glass (3 Mix)	\$/Ton, delivered	0.0	\$0.00	22.5%	\$0.00
Polycoated Cartons	None at this time	0.0	\$0.00	0.5%	\$0.00
Contamination	N/A	N/A	\$0.00	3.0%	\$0.00
				100.0%	\$138.84

Note: The index values for March 2013 are used for estimation purposes only, and are subject to fluctuation as determined by Secondary Fibers and Material Pricing found on [RecyclingMarkets.net](http://RecyclingMarkets.net). Prices to be used are the first published Regional Average prices for the Southeast USA in the month for which payment is being made. No market index currently exists for polycoated cartons in [RecyclingMarkets.net](http://RecyclingMarkets.net); therefore, the value is set at \$0. When a market index for polycoated cartons or aseptic containers becomes available on [RecyclingMarkets.net](http://RecyclingMarkets.net), it will be utilized.



TOWN OF SOUTHWEST RANCHES, FLORIDA

Invitation for Bids

IFB No. 13-003

- 2. A fifty dollar (\$50.00) Contractor's Fee shall be deducted from the AMV. This fee shall be adjusted as specified in Section 6.A(2) of the draft contract, provided in Attachment A.
- 3. The Contractor shall pay the Town a percentage, as bid below, of the remaining amount (AMV less Contractor's fee) for each Ton of inbound Program Recyclables delivered during that month.

**Bidder shall enter in the yellow cells, below, the percentage amount that it will pay the Town for inbound Program Recyclables.**

The AMV is intended to be used as a market index and does not necessarily reflect the commodity revenue received by the Contractor; therefore, the Bidder should determine the Bid Percentage accordingly. Any and all costs associated with processing, marketing, and transporting Program Recyclables, including costs for rejects and residue disposal, are the responsibility of the Contractor.

**Program Recyclables Revenue Bid\***

\$138.84	-	\$50.00	X	<u>40</u> %	=	<u>\$ 35.54</u>
Jan 2013 AMV		Contractors fee		Bid Percentage		Corresponding revenue per ton based on AMV and Bid Percentage

\* \$/ton based on January 2013 AMV for estimated purposes only, and is subject to monthly market fluctuation, as specified herein.

I, Lonnie Bergeron (name), the Manager (title)

of Sun-Bergeron Solid Waste Services, JV

(bidder) swear or affirm that all information submitted with this bid is true, and that I am authorized to complete this Recyclables Revenue Form on behalf of the company.



Signature

4/19/2013

Date