

**CONTRACT**

THIS CONTRACT is entered into by and between the CITY OF DEERFIELD BEACH (CITY), a municipal corporation and Sun-Bergeron Solid Waste Services, JV (CONTRACTOR), as follows

**WITNESSETH:**

**WHEREAS**, pursuant to ITB #2012-13/22 (the ITB) the CITY accepted competitive Bids for and Recycling Processing Services (the Services); and

**WHEREAS**, the Services are delineated in the ITB; and

**WHEREAS**, this Contract, the ITB and related addenda, and the CONTRACTOR's Response constitute the entire Contract and describe the Services to be provided; and

**WHEREAS**, after evaluation of price and other qualification criteria specified in the ITB, City Staff and the City Commission of the City of Deerfield Beach, Florida, the CITY has determined that the highest Bid Percentage was submitted by CONTRACTOR and that CONTRACTOR has the necessary resources, experience and ability to perform the contract at a competitive price; and

**WHEREAS**, the CITY has awarded the contract to CONTRACTOR for the Services on June 11, 2013, Resolution No 2013/118;

**NOW THEREFORE**, be it agreed by and between the parties as follows:

ARTICLE 1

INTRODUCTION AND SCOPE OF SERVICES

- 1.1 The above referenced Whereas clauses are true and correct and made a part hereof.
- 1.2 This Contract, the ITB, together with the response to the ITB of CONTRACTOR shall constitute the entire Contract, except to the extent specifically modified on Attachment "A" Additional Terms and Conditions. The parties agree that the scope of services is a description of CONTRACTOR's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by CONTRACTOR impractical, illogical, or unconscionable.
- 1.3 Except as specifically modified herein, CONTRACTOR shall be bound by the terms and conditions and prices as set forth in the ITB and the CONTRACTOR'S Response to the ITB. When the terms and conditions of this Contract may be read as consistent with the ITB, then and in that respect, the terms of both the ITB and this Contract shall be read as being consistent and shall be binding on both parties. Where terms and conditions of this Contract contradict anything as set forth in the ITB or the response to the ITB, then the terms and conditions of this Contract shall be binding and in full force and effect to the extent of any inconsistency.

- 1.4 CONTRACTOR acknowledges and agrees that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Contract.

## ARTICLE 2

### TERM AND TIME OF PERFORMANCE

- 2.1 The initial term of the Contract shall be five (5) years, beginning July 1, 2013 and ending June 30, 2018. The City reserves the right in its sole discretion, and upon mutual consent of both parties, to renew the contract for two (2) additional five (5) year renewal terms.
- 2.2 **Renewal Options**  
The City reserves the right to extend the contract for two (2) additional five (5) year renewal terms providing all terms, conditions and specifications remain the same; both parties agree to the extension; and such extension is approved by the City Commission in their sole discretion.
- 2.3 Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Contract.

## ARTICLE 3

### COMPENSATION

- 3.1 The CONTRACTOR shall compensate the CITY for all Program Recyclables delivered to and processed by the CONTRACTOR, in the manner specified in the ITB, the amounts set forth in the CONTRACTOR's Response for work actually performed and completed pursuant to the Contract, which amount shall be accepted by the CITY as full compensation for all such work. At no time shall the CITY compensate the CONTRACTOR for the processing of the CITY's recyclable materials.
- 3.2 The CONTRACTOR and the CITY shall abide by the Local Government Prompt Payment Act, FL SS. 218.70-218.80.

## ARTICLE 4

### TERMINATION OR SUSPENSION

- 4.1 This Contract may be terminated for convenience by the CITY. Termination for convenience by the CITY shall be effective on the termination date stated in written notice provided by CITY, which termination date shall be not less than ninety (90) days after the date of such written notice. This Contract may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to

protect the public health or safety. The parties agree that if CITY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective ninety (90) days after such notice of termination for cause is provided.

- 4.2 This Contract may be terminated for cause for reasons including, but not limited to, CONTRACTOR's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices; failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Contract.
- 4.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Contract except that notice of termination by the City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Contract.
- 4.4 In the event this Contract is terminated for convenience, CONTRACTOR and/or CITY shall be paid for any services properly performed under the Contract through the termination date specified in the written notice of termination. CONTRACTOR acknowledges and agrees that it has received good, valuable and sufficient consideration from CITY, the receipt and adequacy of which are, hereby acknowledged by CONTRACTOR, for CITY's right to terminate this Contract for convenience.
- 4.5 In the event this Contract is terminated for any reason, any amounts due CONTRACTOR shall be withheld by CITY until all documents are provided to CITY pursuant to Section 6.1 of Article 6.
- 4.6 In the event this Contract is terminated for any reason, any amounts due CITY shall not be withheld by CONTRACTOR for any reason.
- 4.7 Should at any time during the term of this contract, including any option terms, the CONTRACTOR is in violation of any of the terms and conditions of this contract, the City shall have the right to suspend the CONTRACTOR until the violation is resolved to the satisfaction of the City. If the violation is not promptly resolved or is of such serious nature that the City determines that suspension is not adequate, the City reserves the right to terminate for cause.
  - 4.7.1 In the event a CONTRACTOR is terminated, the City may assign the contract to another CONTRACTOR, or seek a new CONTRACTOR, until the contract is re-let, or until the end of the contract term then in effect, at its sole option and shall reserve all legal remedies for damages and other relief.

## ARTICLE 5

### EEO AND ADA COMPLIANCE

- 5.1 CONTRACTOR shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, political affiliation or disability in the performance of this Contract, the solicitation for or purchase of goods or services relating to this Contract, or

in subcontracting work in the performance of this Contract. CONTRACTOR shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as CITY deems appropriate.

- 5.2 CONTRACTOR shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Contract. CONTRACTOR shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CONTRACTOR shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

## ARTICLE 6

### MISCELLANEOUS

6.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Contract are and shall remain the property of CITY; and, if a copyright is claimed, CONTRACTOR grants to CITY a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Contract, any reports, photographs, surveys, and other data and documents prepared by CONTRACTOR, whether finished or unfinished, shall become the property of CITY and shall be delivered by CONTRACTOR to the Contract Administrator within seven (7) days of termination of this Contract by either party. Any compensation due to CONTRACTOR shall be withheld until all documents are received as provided herein.

6.2 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right, at its sole expense, to audit the books, records, and accounts of CONTRACTOR and its subcontractors that are related to this Project. CONTRACTOR and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of CONTRACTOR and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CONTRACTOR or its subcontractor, as applicable, shall make same available at no cost to CITY in written form.

CONTRACTOR and its subcontractors shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Contract. 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 CITY to be applicable to CONTRACTOR's and its subcontractors' records, CONTRACTOR and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

CONTRACTOR shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section 6.2.

6.3 COMPLAINTS AND DISPUTES

All complaints concerning misconduct on the part of the Contractor or disputes between City staff and the CONTRACTOR are referred to the City Manager or his designee, who shall conduct investigations and inquiries, including discussions with the CONTRACTOR and involved staff. The determinations of the City Manager or designee shall be binding upon the parties, and failure of the CONTRACTOR to follow any such determination could be considered a material breach and subject the CONTRACTOR to termination for cause. The CONTRACTOR agrees that any complaints received by the City concerning misconduct on the part of the CONTRACTOR, such as excessive charges, poor business practices, etc., will be referred to the Office of the City Manager for appropriate action. The CONTRACTOR agrees to make any complaints concerning the City of Deerfield Beach available to the Office of the City Manager for action as required.

6.4 THIRD PARTY BENEFICIARIES

Neither CONTRACTOR nor CITY intends to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third party beneficiaries to this Contract and that no third party shall be entitled to assert a right or claim against either of them based upon this Contract.

6.5 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR CITY:

Burgess Hanson, City Manager  
City of Deerfield Beach  
401 S.W. 4<sup>th</sup> Street  
Deerfield Beach, FL 33441



FOR CONTRACTOR:

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

COPY TO: Joseph M. Goldstein, Esq.  
Shotts & Bowen, LLP  
200 East Broward Blvd.  
Suite 2100  
Fort Lauderdale, FL 33301

6.6 MATERIALITY AND WAIVER OF BREACH

CITY and CONTRACTOR agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Contract and that each is, therefore, a material term hereof.

CITY's failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Contract.

6.7 SEVERANCE

In the event a portion of this Contract is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CONTRACTOR elects to terminate this Contract. An election to terminate this Contract based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

6.8 JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Contract and acknowledge that the preparation of this Contract has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Contract shall be interpreted as to its fair meaning and not strictly for or against any party.

6.9 WAIVER OF JURY TRIAL

By entering into this contract, CONTRACTOR and CITY hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this contract.

6.10 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Contract and executed by the Board and CONTRACTOR or others delegated authority to or otherwise authorized to execute same on their behalf.

6.11 PRIOR CONTRACTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, Contracts, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, Contract, or understanding concerning the subject matter of this Contract that is not contained in this written document. Accordingly, the

parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or Contract, whether oral or written.

6.12 REPRESENTATION OF AUTHORITY


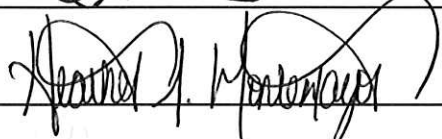
Each individual executing this Contract on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Contract, duly authorized by all necessary and appropriate action to execute this Contract on behalf of such party and does so with full legal authority.

6.13 MULTIPLE ORIGINALS

Multiple copies of this Contract may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

**IN WITNESS WHEREOF** the parties have caused these presents to be executed.

Witnesses:

  
\_\_\_\_\_  
  
\_\_\_\_\_

**CITY OF DEERFIELD BEACH**


By:   
BURGESS HANSON, CITY MANAGER

Date: 6/25/13

ATTEST:

  
for ADA GRAHAM-JOHNSON, MMC, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ANDREW S. MAURODIS, CITY ATTORNEY

CONTRACTOR MUST EXECUTE THIS CONTRACT AS INDICATED BELOW. USE CORPORATION OR NONCORPORATION FORMAT, AS APPLICABLE.

[If incorporated sign below.]

CONTRACTOR


ATTEST:



\_\_\_\_\_  
(Secretary)

\_\_\_\_\_  
(Corporate Seal)

Juan Bergeron Solid Waste Services, JV  
(Name of Corporation)

By   
(Signature)

Louise N Bergeron  
(Type Name/Title Signed Above)

13<sup>th</sup> day of June, 2013.

[If not incorporated sign below.]

CONTRACTOR

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Name)

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type Name Signed Above)

\_\_\_ day of \_\_\_\_\_, 20\_\_\_.

CITY REQUIRES THREE (3) FULLY-EXECUTED CONTRACTS, FOR DISTRIBUTION