

AGREEMENT

THIS AGREEMENT is entered into by and between the City of Deerfield Beach (CITY) and SUN RECYCLING, LLC (SUN), as follows:

WHEREAS, on or about December 2009, the CITY sought proposals from qualified firms to provide recycling processing services for the CITY's yard waste, bulk, construction demolition debris, and hurricane/storm generated debris collections programs, in accordance with the terms, covenants and specifications set forth in the Request for Proposal (Bulk Recycling Processing and Disposal Services #2009-10/16), a copy of which is attached hereto and made a part hereof as Exhibit A (the RFP, including Addendum #1); and

WHEREAS, the CITY received six responses to the RFP, and pursuant to the requirements of the RFP, conducted a selection process; and

WHEREAS, as a result of the selection process, the proposal of SUN was ranked the highest by the Evaluation Committee and City, and pursuant to the RFP, CITY staff was directed to negotiate a contract with SUN as the highest firm; and

WHEREAS, as a result of these negotiations, this contract has been presented to the City Commission and has been approved thereby; and

WHEREAS, the response to the RFP, attached hereto as Exhibit B, contains the response that forms the basis for the City Commission's approval of this contract, and, except as otherwise specifically set forth in the RFP, SUN shall be bound by all the terms of the response to the RFP;

NOW, THEREFORE, BE AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

SECTION 1. The above referenced "Whereas" clauses are true and correct and made a part hereof.

SECTION 2. DEFINITIONS AND IDENTIFICATIONS

For purposes of this Agreement, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:

2.1 **Agreement** - means this document, Sections 1 through 11, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.

2.2 Contract Administrator - The Contract Administrator shall be designated by the City Manager. The City Manager initially designates Carl Peter Director, Public Works & Environmental Services Department and Chad Crecek, Assistant Director, Public Works & Environmental Services Department, but may change this designation in his sole discretion. The primary responsibilities of the Contract Administrator are to coordinate and communicate with SUN and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

SECTION 3. TERM OF AGREEMENT

The initial term of this Agreement shall begin on the date it is fully executed by both parties and shall end three years from that date; provided, however, if the term of this Agreement extends beyond a single fiscal year of the CITY, the continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 166.241, Florida Statutes. The City reserves the right to extend the contract for three (3) additional one (1) year 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. Automatic contract renewals are prohibited.

SECTION 4. SCOPE OF SERVICES

4.1 Section 2.1, 2.2, 3.2, 3.4 through 3.26 and 4.01 (not including storm generated debris), 4.2 through 4.8 of the RFP, attached hereto as Exhibit A, as terms and conditions of the contract shall be binding upon the parties except to the extent as specifically set forth herein. When the provisions set forth herein adds additional terms and conditions which may be read as consistent with the RFP, then and in that respect, the terms of both the RFP and this Agreement shall be read as being consistent and shall be binding on both parties. Where terms and conditions of this Agreement contradict anything as set forth in the RFP or the response to the RFP, then the terms and conditions of this Agreement shall be binding and in full force and effect to the extent of any inconsistency. The City will deliver materials to the following sites by City equipment or City contractor, by mixed load or clean load for yard waste: Vegetative Materials, Clean Wood, Storm Debris (Vegetative and Horticultural and Sumps Exceeding 24") shall be delivered to SUN VII located at 1815 S. Powerline Road, Deerfield Beach, FL 33442. Bulk Materials, Construction & Demolition Debris, Source Separated Materials (ISS), and Street and Earth Debris shall be delivered to SUN II located at 2241 NW 16th Street, Pompano Beach, FL 33069.

4.2 SUN agrees that all non-processable, non-recyclable solid waste material shall be disposed at an approved Solid Waste Facility pursuant to the terms and conditions of SUN's operating permits. SUN agrees and acknowledges that processable waste as defined in the current Solid Waste Disposal Service Agreement between Wheelabrator South Broward Inc., Wheelabrator North Broward Inc. and Broward County shall be disposed of in accordance with the terms of that Agreement except for diminimus amounts of processable waste. SUN acknowledges that the CITY may propose an amendment to this Agreement in the event that a new Solid Waste Disposal Service Agreement is entered into and the City of Deerfield Beach enters into the Interlocal Agreement for the Resource Recovery System. That amendment shall include any additional terms or conditions required by those Agreements. In the event SUN does not agree to the additional terms and conditions, the CITY shall have the option to terminate this Agreement upon thirty (30) days notice.

4.3 SUN agrees not to invoice for tires. Should any tires be delivered to one of SUN's facilities, either the driver will pick up the tires on site and return them to Public Works or the City crews will pick up the tires from SUN.

4.4 SUN agrees that it will not invoice CITY for disposal of non-recyclable waste.

4.5 SUN will provide CITY with the necessary documentation to support CITY's Leadership in Energy and Environmental Design (LEED) certification for CITY projects so designated.

4.6 SUN, through its sister corporation, All Star Toilets, will provide at no cost to the CITY portable restrooms for up to three special events sponsored by the CITY, including the Mango Festival, Founder's Day, and Independence Day.

4.7 SUN will provide at no cost to the CITY for its own use nonstructural fill material (RSM) that is permitted for unrestricted use in residential, industrial, or commercial areas. Additionally, SUN will provide at no cost to the CITY for its own use its 10" minus stone that CITY has used in the past.

SECTION 5. METHOD OF BILLING AND PAYMENT

5.1 CITY agrees to pay SUN as follows:

Bulk Materials	\$6.00 per cubic yard
Vegetative Material	\$5.23 per cubic yard

Clean Wood	\$0.00 per cubic yard [should the annual quantity exceed 11,000 cubic yards, then the price per such additional cubic yard shall be \$1.46]
Construction & Debris	\$7.20 per cubic yard
Roofing C & D	\$44.46 per ton
Integrated Source Separated	\$55.90 per ton
Street Debris	\$10.47 per cubic yard

- 5.2 SUN may submit invoices for compensation no more often than on a weekly basis, but only after the services for which the invoices are submitted have been completed. All invoices shall list a total of cubic yards or tons per commodity. The invoice shall also include the truck numbers and the time of arrival at the site.
- 5.3 CITY shall pay SUN within thirty (30) calendar days of receipt of SUN's proper invoice. Payment may be withheld for failure of SUN to comply with a material term, condition, or requirement of this Agreement.
- 5.4 Notwithstanding any provision of this Agreement to the contrary, CITY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by CITY, unless such amount is later determined to have been inappropriately withheld by a Court of competent jurisdiction.
- 5.5 SUN agrees that there will be no increase in the per cubic yard or per ton costs set forth within subsection 5.1 above for the first year of the Contract term. Any adjustment in cost thereafter shall not exceed the Municipal Consumer Pricing Index CPI or 2.5% whichever is less and shall occur on each anniversary date of the contract. At least 45 days before the initiation of any adjustment in cost, SUN will meet with the CITY to negotiate in good faith the deferral or elimination of any such adjustment should the City's financial situation necessitate such a deferral due to economic conditions beyond the City's control. In exchange for any such deferral the City may consider exercising any or all of the option years under this Agreement. If during the contract term unusual circumstances occur that could not have been foreseen and if such circumstances are beyond the control of SUN, the provision set forth within Section 3.25 of the RFP shall apply.
- 5.6 Payment shall be made to SUN at:

Sun Recycling, LLC
790 Hillbrath Drive
Lantana, FL 33462

SECTION 6. INDEMNIFICATION

In addition to all indemnities as set forth in the RFP, SUN shall defend, indemnify and hold CITY, its employees, agents, officers and representatives harmless from any and all causes of action, claims, lawsuits, judgments, penalties or any other liability of any climate whatsoever resulting from the award of this contract to SUN for the execution and implementation of this contract with SUN. This provision shall be liberally construed in favor of the CITY, its employees, agents, officers and representatives so as to assure that no liability will accrue as a result of the award, execution or implementation of this contract by CITY.

SECTION 7. JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, SUN AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

SECTION 8. 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 Agreement and executed by the CITY and SUN or others delegated authority to or otherwise authorized to execute same on their behalf.

SECTION 9. PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement 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 agreement, whether oral or written.

SECTION 10. 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:

City Manager
City of Deerfield Beach
150 N.E. 2ND Avenue
Deerfield Beach, FL 33441

FOR SUN:

Sun Recycling, LLC
Attention: Charles Gusmano and Phillip T. Medico, Jr.
790 Hillbrath Drive
Lantana, FL 33462

SECTION 11. Additional Services

At the option of the CITY and with the consent of SUN, the CITY may include Storm Generated Debris (as defined in Section 4.0.1 of the RFP) in this Agreement under the terms contained in this Agreement.

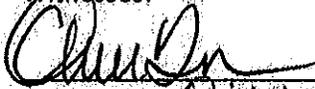
SUN shall charge the following rates for Recycling Processing Disposal Servicing for Storm Debris. These rates shall adjust in the same manner as the rates in Section 5.1 of the Agreement.

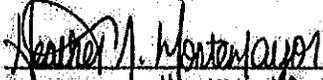
Vegetative Material	\$8.50 per cubic yard
Commingled Construction Debris and Vegetative	\$10.50 per cubic yard
Stumps Exceeding 24"	\$16.50 per cubic yard

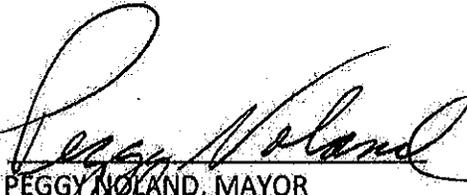
IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: CITY OF DEERFIELD BEACH through its CITY COMMISSION, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Commission action on the 18 day of May, 2010, and SUN RECYCLING, LLC, signing by and through its _____, duly authorized to execute same.

CITY OF DEERFIELD BEACH, FLORIDA

Witnesses:

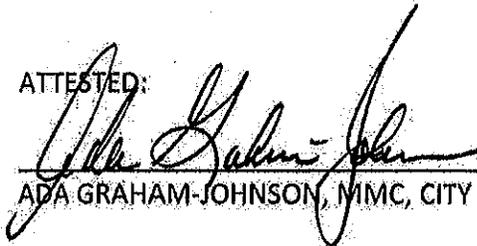

Print Name: Gontella Tross


Print Name: Heather Montemayor

By: 
PEGGY NOLAND, MAYOR

Date: 10-9-10

ATTESTED:


ADA GRAHAM-JOHNSON, MMC, CITY CLERK

APPROVED AS TO FORM:

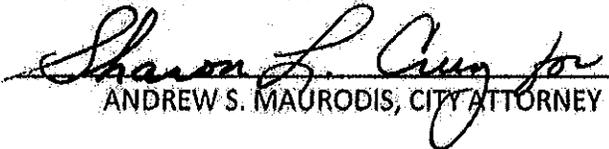

ANDREW S. MAURODIS, CITY ATTORNEY

EXHIBIT "A"
BULK RECYCLING PROCESSING AND DISPOSAL SERVICES RFP #2009-10/16

EXHIBIT "B"
SUN RECYCLING, LLC PROPOSAL

Deerfield/Agreements/SunRecyclingContract