

**CONTRACT FOR THE COLLECTION AND DISPOSAL OF
SOLID MUNICIPAL WASTE AND CERTAIN RECYCLABLE MATERIALS
WITHIN THE BOROUGH OF ALBURTIS**

This Agreement is made the ____ day of December, 2024, by and between:

The Borough of Alburdis, a Pennsylvania municipal corporation and Borough with offices located at Borough Hall, 260 Franklin Street, Alburdis, Pennsylvania 18011 (“**Borough**”); and

Solid Waste Services, Inc. d/b/a J.P. Mascaro & Sons, with offices located at 2650 Audubon Road, Audubon, PA 19403 (“**Contractor**”).

Witnesseth, that the parties, for and in consideration of the agreements contained herein and their mutual promises, covenants, and forbearances, and intending to be legally bound, do hereby agree, for themselves, their heirs, personal representatives, successors, and assigns, as follows:

§ 1 Definitions.

When used in this Agreement, all terms not defined herein which are defined in Chapter 67 of the Alburdis Codified Ordinances (as attached to the bid documents, with modifications to conform to the bid options chosen for this contract and for rate changes to property owners/tenants) (the “**Ordinance**”), the Municipal Waste Planning, Recycling and Waste Reduction Act, 53 PA. STAT. ANN. § 4000.101 *et seq.*, or the Solid Waste Management Act, 35 PA. STAT. ANN. § 6018.101 *et seq.*, shall have the same meaning as provided therein. When the same term is defined in more than one of the foregoing, the definition provided in the Ordinance shall take precedence over the definition provided in either Act, and the definition provided in the Municipal Waste Planning, Recycling and

Waste Reduction Act shall take precedence over the definition provided in the Solid Waste Management Act.

§ 2 Scope of Work.

(a) The Contractor shall furnish all labor and equipment and do all work necessary to collect collectible municipal waste (including riff-raff, without any special prior notice) from all of the residences and business, nonprofit, municipal, and community establishments in the Borough of Alburtis, Lehigh County, Pennsylvania (other than those exempted under § 67-305 of the Ordinance), and to transport and dispose of such materials outside of the Borough of Alburtis, all in a careful and workmanlike manner and in accordance with the Ordinance and regulations thereunder, and all applicable provisions of federal, state, and local statutes, rules, regulations, rulings, determination, permits, licenses, ordinances, and resolutions (including all properly-adopted, applicable, and enforceable provisions of municipal waste management plans adopted pursuant to the Municipal Waste Planning, Recycling, and Waste Reduction Act).

(b) The Contractor shall furnish all labor and equipment and do all work necessary to collect newspapers and newsprint separately bundled and placed for collection, and co-mingled mandatory collectible recyclable materials (as described in Ordinance § 67-401(d)) which are placed in containers identified for separate collection, from all the residences and business, nonprofit, municipal, and community establishments in the Borough of Alburtis, and to dispose of such materials by either (1) processing and/or recycling them, (2) transporting, processing, marketing, selling, and/or delivering them to dealers in those materials (which shall be documented and certified to the Borough in writing), or (3) disposing of them in some other manner, but only to the extent that a market for those materials does not exist at any given time (as documented and certified to the Borough in writing).

At Contractor's option, Contractor may also collect and dispose of magazines, junk mail, corrugated paper/cardboard (flattened and bundled), high grade office paper, and/or phone books in the same manner as newsprint, and other recyclable materials which the Contract permits to be separated from collectible municipal waste and collected by the Contractor for recycling, *provided*

that Contractor gives sufficient notice of the commencement or discontinuance of such collection to the Borough so that the Borough may inform its residents and businesses.

Hereinafter, all materials identified for collection in this subsection (b) may be referred to as “**Separated Collectible Recyclables**”. All collection, transportation, and disposition of Separated Collectible Recyclables shall be in a careful and workmanlike manner and in accordance with the Ordinance and regulations thereunder, and all applicable provisions of federal, state, and local statutes, rules, regulations, rulings, determination, permits, licenses, ordinances, and resolutions (including all properly-adopted, applicable, and enforceable provisions of municipal waste management plans adopted pursuant to the Municipal Waste Planning, Recycling, and Waste Reduction Act).

(c) All work included in this Contract is to be performed under the direction of the Borough Manager. The Borough Manager’s reasonable construction of the meaning of this Contract and the advertisement for bids, instructions to bidders, proposal/bid, and other documents presented in connection with the placement of this Contract for bid, the bidding for this Contract, and the awarding of this Contract, shall be final.

(d) Nothing in this Contract prohibits the Contractor and property owners or occupants from making separate arrangements between themselves for additional products or services (under whatever terms and prices they may agree), such as for more frequent collections, etc., so long as the Contractor collects all collectible municipal waste and collectible recyclable materials from each property in the Borough at a frequency and level of service no less than required under this Contract. Such arrangements are beyond the scope of this Contract. No amount for such products or services shall be collected by the Borough from the property owners or occupants, or paid by the Borough to the Contractor.

§ 3 Term.

The Contractor shall perform all work contemplated by this Contract during the period of five years, commencing January 1, 2025, and ending December 31, 2029. At the option of the Borough, this Agreement may be extended for an

additional year commencing January 1, 2030 and ending December 31, 2030. At the option of the Borough, this Agreement may be extended after the end of the initial term or after the end of the one-year extension term on a month-to-month basis for a period not exceeding three (3) months, at the same monthly payment in effect for the preceding December.

§ 4 Payment.

(a) Subject to modification under other provisions of this Agreement, the Borough agrees to pay Contractor the following sums for all services provided under this Agreement in the following calendar years:

2025: \$592,152

2026: \$612,877

2027: \$637,392

2028: \$666,075

2029: \$699,379

2030: \$737,845 (if the term is extended for 2030)

(b) The amount due under subsection (a) for any given calendar year shall be payable in equal monthly installments. The payment for services rendered in any given calendar month shall be due on the fifteenth (15th) day of the following month.

(c) The parties agree that the prices set forth in subsection (a) are the prices for the number and types of residences and establishments in the Borough estimated as of January 1, 2025 (985 equivalent dwelling units (“**EDU**”)). The parties recognize that the actual number of residences and establishments which generate refuse which is within the scope of the work contemplated by this Agreement, from time to time, may be higher or lower than those currently estimated as of January 1, 2025, and the amount of refuse generated by some establishments may be higher or lower than is currently estimated as of January 1, 2025. It is therefore agreed that the monthly prices computed under subsection (b) for any given month based on the annual prices set forth in subsection (a) will be multiplied by a fraction whose numerator is the actual number of EDUs as of the first

day of that particular month, and whose denominator is 985. For purposes of this Agreement, each residential dwelling unit is deemed to represent one EDU, and the number of EDUs attributable to each nonresidential establishment is equal to the Borough's reasonable estimate of the typical amount of refuse collected from the establishment divided by the typical amount of refuse collected from the average residential dwelling unit, and rounded to the nearest whole number. Either party may submit a list of additions, deletions, and EDU computations to the other party at any time, and both parties agree to review and make reasonable attempts to come to an agreement on such additions, deletions, and EDU computations.

(d) The Contractor shall not be responsible to collect any collectible municipal waste from any individual residence not served by a dumpster at any one collection in excess of ten (10) Garbage Units, unless requested in advance by the Borough. If so requested, the Contractor shall be entitled to an additional payment for each additional group of up to ten (10) Garbage Units of collectible municipal waste from a given residence at a single collection in an amount equal to the price set forth in subsection (a) for the given year divided by 985 and further divided by 52 (or the price for the year divided by 51,220). For purposes of this provision, each of the following shall constitute one "Garbage Unit":

- (1) a plastic garbage bag described in Ordinance § 67-302(b)(1)(A);
- (2) the contents of a garbage can described in Ordinance § 67-302(b)(1)(B);
- (3) a bundle of construction and/or demolition debris described in Ordinance § 67-219(h)(3);
- (4) a single item of riff-raff.

Accordingly, each "C/D Unit" under Ordinance § 67-219(h) (relating to construction and demolition debris) and each "GC Unit" under Ordinance § 67-219(j.1) (relating to grass clippings) shall constitute one "Garbage Unit".

(e) The Contractor shall not be responsible to collect more than one item of riff-raff from any individual residence at any one collection, unless requested in advance by the Borough. If so requested, the Contractor shall be entitled to an additional payment for each additional item of riff-raff from a given residence at

a single collection in an amount equal to the price set forth in subsection (a) for the given year divided by 985 and further divided by 52 (or the price for the year divided by 51.220).

(f) The Contractor may bill and collect from the Borough the amount of any Statutory Surcharge in addition to the other amounts payable to Contractor under this Contract. The prices set forth in subsection (a) were bid by the Contractor and accepted by the Borough with the understanding that the Contractor must pay for all costs for collection, transportation, disposal, and other work under this Contract, and may not pass any of those costs through to the Borough *except* for a Statutory Surcharge. For purposes of this Contract, the term “Statutory Surcharge” means any fee or charge, such as the surcharge for recycling fee currently in effect under 53 PA. STAT. ANN. § 4000.705, which the Contractor is authorized by law to collect from the Borough in addition to and notwithstanding the contractually agreed fee schedule set forth in the preceding provisions of this Contract.

§ 5 Collection Days and Times.

Regular collections of all collectible municipal waste to be collected under this Agreement at the residences and nonresidential establishments of the Borough of Alburtis shall be made once per week throughout the year on dates and routes determined from time by the Contractor. (The regular collection day shall be the same day in each calendar week.)

Regular collections of all Separated Collectible Recyclables (as defined in § 2(b)) to be collected under this Agreement at the residences and nonresidential establishments of the Borough of Alburtis shall be made once every week throughout the year, on dates and routes determined from time to time by the Contractor. (The regular collection day shall be on the same day of the week.)

The Contractor shall establish the initial collection days by December 20, 2024, and may only change a regular collection day upon sixty (60) days notice to the Borough Manager.

Contractor must propose, in writing, the detailed routes he will follow each collection day, from start to finish, and the starting time of collection and

approximate completion time, no later than December 20, 2024. If a regular day for collection is in a week which contains a federal or state holiday observed by the Contractor, collection may be made on the business day either immediately preceding or following the regular day for collection. Contractor shall notify the Borough Manager of the alternate day no less than ninety (90) calendar days in advance in order to permit the Borough to publicize the change. Collection shall not begin prior to 5:00 A.M. on the day scheduled for collection, and shall be completed by 4:00 P.M. on the day scheduled for collection.

§ 6 Collection Equipment.

The Contractor shall provide an adequate number of vehicles for regular collection services. All vehicles, dumpsters provided by the Contractor, and other equipment utilized in the performance of this Agreement shall be kept in good repair, appearance, and in a sanitary condition at all times, and neither objectionable odors, noxious gasses, nor putrescent liquid shall escape therefrom during or after the process of collection, transportation, disposal, or recycling. Each vehicle shall have the identity and telephone number of the Contractor clearly visible on each side.

§ 7 Dumpsters.

The Contractor may supply dumpsters or other large receptacles, at its own expense, to multi-family residential properties and/or nonresidential establishments willing to accept such dumpsters or other receptacles, to assist the Contractor in collecting refuse to be collected under this Agreement. If the Contractor does not believe that supplying a special dumpster or other large receptacle will be cost-efficient for Contractor in performing its duties hereunder, but the owner or occupant of any property in the Borough desires such a dumpster or other receptacle for its own convenience, the Contractor may sell or lease such a dumpster or other receptacle directly to the owner or occupant at such price as they may agree, *provided* that the owner or occupant may purchase or lease a dumpster or other receptacle from any other party, rather than the Contractor, and the Contractor must accept collection of refuse from such dumpster or other receptacle, if the dumpster or other receptacle is substantially equivalent to one proposed for

use by the Contractor and is placed in a location which would be acceptable to Contractor if it were supplied by the Contractor. The Contractor shall supply, at no cost to the Borough, all dumpsters reasonably requested by the Borough for disposal of collectable municipal waste generated or present on property owned or leased by the Borough.

§ 8 Foreman.

By December 20, 2024, Contractor shall provide the Borough with a written statement identifying the foreman or other person(s) who shall have personal supervision over the Contractor's employees who shall collect refuse under this Agreement, including his name, address, and telephone number. Contractor agrees to provide the Borough with a similar written statement whenever there is a change in such foreman or other supervisory person(s).

§ 9 Transportation.

All refuse transported by Contractor shall be so contained, tied, or enclosed, that leaking, spilling, or blowing are prevented.

§ 10 Borough Regulations.

Borough agrees that it will not, without the consent of Contractor, promulgate any regulations under the Ordinance which would alter the rules set forth in Ordinance §§ 67-302(b) and 67-404(b) to make them less restrictive.

§ 11 Ownership.

All refuse collected under this Agreement shall become the property of the Contractor when collected.

§ 12 Complaints.

The Contractor shall maintain an office through which the Contractor can be contacted directly by Borough residents and business, nonprofit, and community establishments through a toll-free telephone number. The office shall be equipped with sufficient telephones, and shall have a responsible person in charge from 7:00 A.M. until 5:00 P.M. on collection days. An answering machine or service shall be provided at all other hours. The Contractor shall also provide the Borough with the name and home and office telephone number of at least one (1) officer of the Contractor who shall be available “on call” for communication with Borough officials at all times, twenty-four (24) hours per day, seven (7) days per week. In cases where it is alleged that a scheduled collection was missed, the Contractor shall investigate immediately and, if such allegations are verified, shall arrange for the collection of missed refuse within twenty-four (24) hours after the time the complaint was made.

§ 13 Clean-up and Repairs.

The Contractor shall be responsible for, and shall perform, all clean-up and repairs necessary due to the actions or inactions of Contractor or its agents or employees, at its own cost.

§ 14 Liquidated Damages.

(a) In the event that the Contractor fails to collect refuse from one or more locations on the day such collection is required (including, without limitation, the late collection of refuse or the failure to collect refuse at or near a holiday), the Contractor shall pay the Borough, as liquidated damages for costs incurred in cleaning streets and other tangible and intangible losses incurred by the Borough for violation of this Agreement, the sum of \$50.00 for each residence and non-residential establishment from which refuse was not collected on the appropriate day, for each day that collection was delayed.

(b) In the event that the Contractor collects refuse prior to 5:00 A.M. on the day such collection is required, or after 4:00 P.M. on such day, the Contractor shall

pay the Borough, as liquidated damages for costs incurred in cleaning streets and other tangible and intangible losses incurred by the Borough for violation of this Agreement, the sum of \$25.00 for each residence and nonresidential establishment from which refuse was collected prior to 5:00 A.M. or after 4:00 P.M.

(c) In the event that the Contractor fails to attend to any complaint within twenty-four hours after such complaint is made to the Contractor, the Contractor shall pay the Borough, as liquidated damages for costs incurred in cleaning streets and other tangible and intangible losses incurred by the Borough for violation of this Agreement, the sum of \$50.00 for each such complaint.

(d) In the event that the Contractor spills any refuse in conveying it into its collection vehicles, and fails to immediately clean up the spill, or otherwise permits or suffers the escape of objectionable odors, noxious gasses, or putrescent liquid in connection with the performance of this Agreement, the Contractor shall pay the Borough, as liquidated damages for costs incurred in cleaning streets and other property, and other tangible and intangible losses incurred by the Borough for violation of this Agreement, the sum of \$25.00 for each such spill or other incident.

(e) In the event that the Contractor leaves any containers or receptacles in the cartway or shoulder of any street, road, or alley, the Contractor shall pay the Borough, as liquidated damages for costs incurred in removing such containers or receptacles, and other tangible and intangible losses incurred by the Borough for violation of this Agreement, the sum of \$25.00 for each container or receptacle left in the cartway or shoulder.

(f) In the event that the Contractor or his agents or employees creates any unnecessary noise after 9:00 P.M. and before 7:00 A.M. (such as music, shouting, and/or excessive banging of containers, receptacles, or dumpsters, but not including noises necessarily incident to the work required hereunder, such as truck brakes, compactor, engine, and ordinary container clatter), the Contractor shall pay the Borough, as liquidated damages for tangible and intangible losses incurred by the Borough for violation of this Agreement, the sum of \$25.00 for each valid complaint of such noise received by the Borough or the Contractor.

(g) In lieu of payment of liquidated damages by the Contractor to the Borough, the Borough may deduct the amount of liquidated damages from the monthly payments due to the Contractor under this Agreement.

§ 15 Reporting Noncompliance By Owners or Occupants.

Contractor shall report all instances of apparent noncompliance with the provisions of the Ordinance or any regulations promulgated thereunder by any owner or occupant of property within the Borough of Alburtis, to the Borough within seventy-two (72) hours after becoming aware of such apparent noncompliance.

§ 16 Tonnage Information.

Contractor shall provide the Borough with a written statement of the tonnage of refuse collected in each month (including separately stated tonnages for collectible municipal waste, single stream collected recyclable materials, and each separately-collected collectible recyclable material), in the form and manner requested by the Borough, on or before the fifteenth (15th) day of the following month.

§ 17 Insurance and Security.

Contemporaneously with the execution of this Contract, the Contractor shall furnish the Borough with bonds or letters of credit, and certificates of insurance, sufficient to satisfy the following requirements, and Contractor shall maintain such bonds, letters of credit, and insurance, or equivalent bonds, letters of credit, and insurance, throughout the term of this Agreement (including any extensions) at Contractor's cost. Contractor shall furnish the Borough with certificates or other evidence of compliance with the requirements of this Section from time to time during the term of this Agreement upon the request of the Borough:

(a) Security for the performance of all the Contractor's obligations under this Contract in the form of either a performance bond described in paragraph (1) below or a letter of credit described in paragraph (2) below. Additional require-

ments for the bond or letter of credit are described in paragraphs (3) through (5) below:

(1) A performance bond shall be in the form attached to the bid documents for this project, executed by the Contractor and a reputable surety company authorized to provide such a bond in the Commonwealth of Pennsylvania and rated A- or better by the A.M. Best Company (or the equivalent).

(2) A letter of credit shall be an irrevocable standby letter of credit issued by a financial institution authorized to do business in Pennsylvania and issue such letters of credit, maintaining an office within twenty (20) miles of the Borough of Alburtis at which the letter of credit may be presented for payment, and reasonably acceptable to the Borough. The letter of credit shall be in form acceptable to the Borough Solicitor, and payable by a sight draft drawn on the issuer and accompanied by the original letter of credit and all amendments, if any, and a statement on Borough of Alburtis letterhead purportedly signed by an authorized officer stating as follows: "I certify that this sight draft is presented because the Borough of Alburtis deems _____ *{name of Contractor}* to be in default or violation of its obligations under a certain Contract dated _____, 2024 *{insert date of the Contract}*." Partial drawings must be permitted under the letter of credit, and in that event the issuer will endorse the original letter of credit and all amendments, if any, and return the same to the Borough for possible future claims.

(3) The initial performance bond or letter of credit shall be in an amount equal to \$3,945,720, and shall be for a term which does not expire before March 31, 2026.

(4) For calendar year 2026 and each subsequent calendar year during the term of this Agreement, the Contractor shall provide an amended or substitute performance bond or letter of credit on or before January 1 of the given calendar year, which shall be effective as of January 1 of the given calendar year and shall be for a term which does not expire before March 31 of the first calendar year after the given calendar year (*e.g.*, the bond or letter of credit for 2026 shall be effective January 1, 2026 and not expire before March 31, 2027). If the Contractor shall elect to provide an amended bond or letter of credit under this paragraph (4), the Borough shall consent to the amendment if it conforms to the require-

ments of this Agreement. If the Contractor shall elect to provide a substitute bond or letter of credit, the Borough shall return the previous bond or letter of credit to the Contractor at the later of the date the Borough shall receive a substitute bond or letter of credit which conforms to the requirements of this Agreement, or January 1 of the given calendar year. The amount of the amended or substitute performance bond or letter of credit shall be:

<u>For calendar year</u>	<u>Amount</u>
2026	\$3,353,568
2027	\$2,740,691
2028	\$2,103,299
2029	\$1,437,224
2030	\$ 737,845

(5) If Contractor fails to satisfy its obligation under paragraph (4) for any given year in a timely fashion (time being of the essence of this Agreement), the Borough may draw against the current bond or letter of credit previously provided under paragraph (3) or paragraph (4) and hold the amount as cash security for the performance of all the Contractor's obligations under this Agreement.

(b) Acceptance of the provisions of the Pennsylvania Workmen's Compensation Act, and insurance of the Contractor's full liability thereunder. Contractor hereby agrees to indemnify, defend, and save the Borough harmless from all claims for workmen's compensation which may be made by Contractor's employees. In addition, employer's liability insurance in the minimum amount of \$100,000 for each accident, and \$500,000 (policy limit)/\$100,000 (per employee) for disease.

(c) Commercial general liability, contractual liability, personal injury and property damage liability insurance in the minimum amount of \$1,000,000 for each occurrence, \$1,000,000 products aggregate, \$1,000,000 general aggregate, \$50,000 fire damage, and \$5,000 medical expense.

(d) Commercial auto liability, bodily injury, and property damage liability insurance for all vehicles utilized by the Contractor in the performance of this Agreement in the minimum amount of \$1,000,000 for each accident.

(e) Commercial umbrella liability insurance, in excess of (c), (d), and (e) above, in the minimum amount of \$3,000,000 for each occurrence and \$3,000,000 aggregate.

§ 18 Licenses and Permits.

Prior to December 15, 2024, the Contractor shall furnish the Borough with copies of the governmental licenses, permits, and other certifications necessary for the Contractor to perform the work contemplated by this Agreement, including, without limitation, all licenses, permits, and certifications issued with regard to the disposal facilities to be used by the Contractor for the disposal of collectible municipal waste collected hereunder. Contractor shall furnish the Borough with additional or up-to-date copies of such governmental licenses, permits, and other certifications from time to time during the term of this Agreement upon the request of the Borough.

§ 19 Fees; Recycling Profits.

Contractor shall pay all charges and fees for permits and licenses necessary or convenient to the due and lawful prosecution of the work covered by this Agreement, and shall pay all charges, fees, taxes, and expenses, including, without limitation, tipping fees, labor, equipment, tools, supervision, insurance, and bonds, necessary to collect, transport, and properly dispose of all refuse collected under this Agreement. The Contractor shall be entitled to retain any profits realized from the sale or processing of collectible recyclable materials or other refuse collected under this Agreement.

§ 20 Indemnification of Borough.

Contractor agrees to indemnify, defend, and save harmless the Borough, its Council members, officers, agents, servants, engineers, solicitors, and employees from and against any and all actions or causes of action, claims, demands, suits, proceedings, liabilities, loss, damage, or expense of whatever kind or nature, including attorney's fees, which may be asserted against or incurred by the Borough by reason or in consequence, directly or indirectly, of Contractor's performance

or non-performance of this Agreement, or the actions or inactions of Contractor's officers, agents, employees, subcontractors.

§ 21 Strike Clause.

Contractor shall remain responsible for the performance of all work required under this Agreement regardless of any strike or other labor action by personnel employed by the Contractor or at any disposal or processing facility.

§ 22 Fair Employment Practices.

In the hiring, promotion, demotion, termination, compensation, and other terms and conditions of employment of employees who perform or are to perform any work under this Agreement or any subcontract hereunder, the Contractor, any subcontractor, or any person acting on behalf of Contractor or any subcontractor, shall not by reason of race, creed, color, national origin, sex, sexual orientation, age, familial status, genetic information, handicap/disability, or any other protected classification under the employment discrimination laws of the United States of America or the Commonwealth of Pennsylvania, discriminate against any citizen of the Commonwealth of Pennsylvania who is qualified and available to perform the work to which the employment relates.

§ 23 Right to Know Law.

(a) The Pennsylvania Right-to-Know Law, 65 PA. STAT. ANN. § 67.101 *et seq.*, ("RTKL") applies to this contract. If the Borough needs the Contractor's or a subcontractor's assistance in any matter arising out of the RTKL related to this contract, it shall notify the Contractor using the legal contact information provided in this contract and any affected subcontractor using the best available contact information. The Contractor and each subcontractor, at any time, may designate a different contact for such purposes upon reasonable written notice to the Borough.

(b) Upon written notification from the Borough that it requires Contractor's or a subcontractor's assistance in responding to a request under the RTKL

for information related to this contract that may be in the Contractor's or a subcontractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor or Subcontractor shall:

(1) Provide the Borough, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's or subcontractor's possession arising out of this contract that the Borough reasonably believes is Requested Information and may be a public record under the RTKL; and

(2) Provide such other assistance as the Borough may reasonably request, in order to comply with the RTKL with respect to this contract.

(c) If the Contractor or a subcontractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information (as those terms are defined in the RTKL), or other information that the Contractor or subcontractor considers exempt from production under the RTKL, the Contractor or subcontractor must notify the Borough and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor or subcontractor explaining why the requested material is exempt from public disclosure under the RTKL.

(d) The Borough will rely upon the written statement from the Contractor or subcontractor in denying a RTKL request for the Requested Information unless the Borough determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Borough determine that the Requested Information is clearly not exempt from disclosure, the Contractor or subcontractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Borough's determination.

(e) If the Contractor or subcontractor fails to provide the Requested Information within the time period required by this § 23, the Contractor shall indemnify and hold the Borough harmless for any damages, penalties, costs, detriment, or harm that the Borough may incur as a result of the Contractor's or subcontractor's failure, including any statutory damages assessed against the Borough, and

any costs (including attorney's fees) incurred for participating in administrative and/or judicial proceedings.

(f) The Borough will reimburse the Contractor or subcontractor for any costs associated with complying with this § 23 only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

(g) The Contractor or subcontractor may file a legal challenge to any Borough decision to release a record to the public with the Office of Open Records, or in the Pennsylvania courts; however, the Contractor or subcontractor shall indemnify the Borough for any legal expenses incurred by the Borough as a result of such a challenge, and shall hold the Borough harmless for any damages, penalties, costs, detriment, or harm that the Borough may incur as a result of the Contractor's or subcontractor's failure, including any statutory damages assessed against the Borough, regardless of the outcome of such legal challenge. As between the parties, the Contractor and each subcontractor agrees to waive all rights or remedies that may be available to it as a result of the Borough's disclosure of Requested Information pursuant to the RTKL.

(h) The Contractor's and subcontractor's duties relating to the RTKL are continuing duties that survive the expiration or termination of this contract and shall continue as long as the Contractor or subcontractor has Requested Information in its possession.

(i) Contractor and each subcontractor shall insert the provisions of this § 23 in each subcontract of the Contractor or subcontractor

§ 24 Waivers and Indulgences.

A party shall not by any act of omission or commission be deemed to waive any of its rights or remedies under this Agreement unless such waiver be in writing and signed by the party, and then only to the extent specifically set forth in the writing. Further, a waiver on one event shall not be construed as continuing or as a bar to or waiver of such right or remedy on a subsequent event.

§ 25 Headings.

All section, subsection, and other headings in this Agreement are included solely for reference purposes, are not considered a part of this Agreement, and shall not control or affect the construction or interpretation of this Agreement in any respect.

§ 26 Gender and Number.

In construing this Agreement, unless the context clearly indicates otherwise, the singular shall include the plural and vice versa, and any reference to the masculine, feminine, or neuter genders shall include a reference to the other genders.

§ 27 Modification.

This Agreement shall only be amended by a written document executed by all of the parties hereto.

§ 28 Succession; Assignment.

This Agreement, and all the rights and obligations hereunder, shall inure to the benefit of and be binding upon the successors and assigns of the parties. No party may subcontract, assign, or delegate any of its rights, obligations, or duties under this Agreement without the prior consent of the other party.

§ 29 Severability.

Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provision of this Agreement prohibited or unenforceable in any respect.

§ 30 Governing Law.

This Agreement shall be interpreted under and governed by the laws of the Commonwealth of Pennsylvania.


§ 31 Representations.


All representations and statements made in the Bid submitted by the Contractor with respect to this Contract shall survive the execution of this Agreement and shall be deemed incorporated herein.

In Witness Whereof, the parties hereto have executed this Agreement as of the day and year first above written, intending to be legally bound.

Attest:


BOROUGH OF ALBURTIS

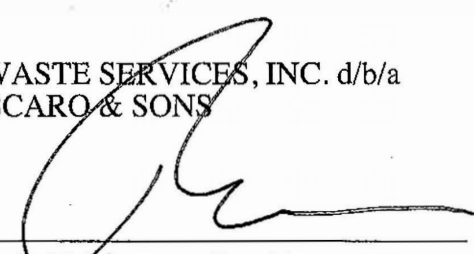

Stephen Nemeth, Borough Manager

By: 
Ronald J. DeIaco, President of Borough Council

Attest:

SOLID WASTE SERVICES, INC. d/b/a
J.P. MASCARO & SONS


Michael Mascaro, Secretary

By: 
Pasquale N. Mascaro, President