

**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, 2008, by and among:

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 Waster Services Inc. d/b/a J.P. Mascaro & Sons, a Pennsylvania business corporation with offices located at 2650 Audubon Road, Audubon, Pennsylvania 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 to be in effect as of January 1, 2009 (a true and correct copy of which is attached hereto) (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 Alburdis, 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 Alburdis, 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 also 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 Alburdis, 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 Bor-

ough so that the Borough may inform its residents and businesses. (Hereinafter, all materials identified 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) Except as provided in subsection (d) below, the Contractor shall furnish all labor and equipment and do all work necessary to collect leaf waste and grass clippings from a single drop-off location in the Borough of Alburdis designated from time to time by Borough Council, and to transport and dispose of such materials at the Lehigh County yard waste disposal facility, 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). The Contractor shall supply one receptacle (dumpster) for the collection of grass clippings and one receptacle (dumpster) for the collection of leaf waste. Each such receptacle shall be at least 6.5 feet high, 22 feet long, and 8 feet wide, and shall be designed to prevent the escape of noxious odors or putrescent liquids. The Contractor shall empty each receptacle as often as necessary to insure that all grass clippings and leaf waste generated in the Borough between collections by the Contractor can be placed within the appropriate receptacles. The Borough shall be responsible for the disposal charges of the Lehigh County facility.

(d) The Borough may, from time to time, make arrangements permitting persons to drop off leaf waste and grass clippings generated in the Borough at a yard waste composting center. For any period in which such an arrangement is in effect, the Contractor’s obligations under subsection (c) shall be suspended, and any receptacles supplied under subsection (c) shall be removed. The Borough shall notify the Contractor at least one month in advance of the date any

such period begins and at least one month in advance of the date any such period ends. The contract prices to be paid to the Contractor under this Contract include the cost for one installation of the receptacles for grass clippings and leaf waste, and one removal of such receptacles. If any additional installations or removals shall be required, the Borough shall pay the Contractor one hundred five percent (105%) of the direct labor costs incurred by the Contractor for installing or removing the receptacles. (For example, if the receptacles are supplied at the beginning of the contract, are then removed because a yard waste composting arrangement goes into effect, and then must be reinstalled because such an arrangement comes to an end, the Borough must pay for the labor costs of the second installation and for the removal of the receptacles at the end of the Contract term.)

(e) All work included in this Contract is to be performed under the direction of the Executive Secretary of the Borough. The Executive Secretary'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.

§ 3 Term.

The Contractor shall perform all work contemplated by this Contract during the period of five years, commencing January 1, 2009, and ending December 31, 2013. At the option of the Borough, this Agreement may be extended for an additional year commencing January 1, 2014 and ending December 31, 2014. 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:

2009: \$255,228.00
2010: \$257,940.00
2011: \$261,456.00
2012: \$265,308.00
2013: \$270,072.00
2014: \$274,716.00 (if the term is extended for 2014).

(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 as of September 18, 2008 (937 equivalent dwelling units (“EDU”)). The parties recognize that additional residences and establishments may begin to generate refuse after that date which is within the scope of the work contemplated by this Agreement, that some other residences or establishments may cease to generate refuse after that date, and that the amount of refuse generated by some establishments may increase or decrease after that date. 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 increased by an amount equal to 1/937 of those prices for each EDU added to the collection responsibilities of the Contractor between September 18, 2008 and the last day of that particular month, and reduced by an amount equal to 1/937 of those prices for each EDU deleted from the collection responsibilities of the Contractor between September 18, 2008 and the first day of that particular month. 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 reason-

able 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 937 and further divided by 52 (or the price for the year divided by 48,724). 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 937 and further divided by 104 (or the price for the year divided by 97,448).

(f) For any calendar month in which an arrangement described in § 2(d) (relating to yard waste composting center) is in effect, the Contractor's obligations under § 2(c) (relating to drop-off location receptacles and collection of leaf

waste and grass clippings) shall be suspended, grass clippings shall be considered “unacceptable waste” so that Contractor shall not be required to collect any grass clippings as part of collectible municipal waste, and the monthly payment due to Contractor under this § 4 shall be reduced by Three Hundred Dollars (\$300.00).

(g) 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 to time by mutual consent of the Borough and 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 other week throughout the year, on dates and routes determined from time to time by mutual consent of the Borough and the Contractor. (The regular collection day shall be on the same day of the week.)

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 15, 2008. 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 Executive Secretary 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 2:00 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 15, 2008, 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 local 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 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 \$25.00 for **each** residence and nonresidential 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 2:00 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 2:00 P.M.

(c) In the event that the Contractor fails to collect any refuse covered by this Agreement from any residence or nonresidential establishment on a day when regular collections are otherwise made, without cause under the Ordinance or the regulations thereunder, 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** such residence and nonresidential establishment.

(d) 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 \$25.00 for **each** such complaint.

(e) 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.

(f) 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.

(g) 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.

(h) 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 Alburdis, 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 and each individual 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 cer-

tificates 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 requirements 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 hereto, 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 Albury 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 Albury letterhead purportedly signed by an authorized officer stating as follows: "I certify that this sight draft is presented because the Borough of Albury deems Solid Waste Services, Inc., d/b/a J.P. Mascaro & Sons to be in default or violation of its obligations under a certain Contract dated December ____, 2008." *{Insert date of the Contract in the blank.}* 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 \$1,584,720.00, and shall be for a term which does not expire before March 31, 2010.

(4) For calendar year 2010 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 cal-

endar 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 2010 shall be effective January 1, 2010 and not expire before March 31, 2011). 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 requirements 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>
2010	\$ 1,329,492.00
2011	\$ 1,071,552.00
2012	\$ 810,096.00
2013	\$ 544,788.00
2014	\$ 274,716.00.

(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, 2008, 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 (except the charges for disposal of leaf waste and grass clippings at the Lehigh County yard waste facility which are to be paid by the Borough under § 2(c) of this Contract). 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, age, or disability discriminate against any citizen of the Commonwealth of Pennsylvania who is qualified and available to perform the work to which the employment relates.

§ 23 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.

§ 24 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.

§ 25 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.

§ 26 Modification.

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

§ 27 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 assign or delegate any of its rights, obligations, or duties under this Agreement without the prior consent of the other party.

§ 28 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 permit-

ted by applicable law, the parties hereby waive any provision of law which renders any provision of this Agreement prohibited or unenforceable in any respect.

§ 29 Governing Law.

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

§ 30 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

Sharon Trexler, Executive Secretary

By: _____
Steven R. Hill, President of Borough
Council

Attest:

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

Michael Mascaro, Secretary

By: _____
Pasquale N. Mascaro, President

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS, that Solid Waste Services, Inc., d/b/a J.P. Mascaro & Sons, as PRINCIPAL, and Safeco Insurance Company of America, as SURETY, are held and firmly bound unto the Borough of Alburtis, Lehigh County, Pennsylvania (“OBLIGEE”) in the sum of ONE MILLION FIVE HUNDRED EIGHTY-FOUR THOUSAND SEVEN HUNDRED TWENTY DOLLARS (\$1,584,720.00), lawful money of the United States of America, for the payment which sum well and truly to be made, we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally by these presents.

WHEREAS, OBLIGEE, on December 3, 2008, accepted the bid of the PRINCIPAL in the amount of ONE MILLION FIVE HUNDRED EIGHTY-FOUR THOUSAND SEVEN HUNDRED TWENTY DOLLARS (\$1,584,720.00), to furnish all tools, employees, and materials to do and perform all work required for the Collection and Disposal of Solid Municipal Waste and Certain Recyclable Materials in the Borough of Alburtis for the Five Year Period Commencing January 1, 2009, with an option for the OBLIGEE to extend the term for one additional year (the “**Contract**”), and awarded the work to the PRINCIPAL; and

WHEREAS, it is required that a Bond with sufficient surety and conditioned as hereinafter set forth should be given; and

WHEREAS, the advertisement for bids, specifications, award, and other contract documents for the Contract are made a part hereof, with the same effect as though set out herein at length;

NOW, THEREFORE, the condition of this obligation is such that if the said PRINCIPAL shall well, truly, and faithfully perform and comply with all the terms, covenants, and conditions on its part to be kept and performed, according to the true intent and meaning of the contract documents for the Contract, through March 31, 2010, *then this obligation shall be void*; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, the Principal and the Surety have executed this Performance Bond on the dates set forth below. (This Bond shall not be executed until after the Principal has executed the Contract.)

PRINCIPAL:

Solid Waste Services, Inc.,
d/b/a J.P. Mascaro & Sons

Date: _____

By: _____
Pasquale N. Mascaro, President

SURETY:

Safeco Insurance Company of
America

Date: _____

By: _____

CHAPTER 67 OF THE ALBURTIS CODIFIED ORDINANCES

(As to be in effect January 1, 2009)

(Not including Appendix)

Chapter 67 — Municipal Solid Waste, Recyclables, and Other Refuse

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Article I – Title

§ 67-101 Short Title.

This Chapter shall be known, and may be cited, as the “Alburtis Municipal Solid Waste, Recyclables, and Other Refuse Ordinance.”

Article II – Definitions

§ 67-201 In General.

For purposes of this Chapter, the terms defined in the remaining sections of this Article II shall have the meanings indicated, whether with or without initial capital letters, unless the context in which they are used clearly indicates a different meaning.

§ 67-202 Borough.

The term “Borough” shall mean the Borough of Alburtis, Lehigh County, Pennsylvania. Depending on the context, the term shall either refer to the geographic area included within the boundaries of the Borough, or the municipal corporation.

§ 67-203 Collectible Municipal Waste.

The term “collectible municipal waste” shall mean all municipal waste except:

- (a) Unacceptable waste; and
- (b) Source-separated recyclable materials, whether separated for recycling under a program operated or contracted by the Borough or under any other recycling program.

§ 67-204 Collectible Recyclable Materials.

The term “collectible recyclable materials” shall mean any recyclable materials included in a voluntary or mandatory recycling program established by the Borough and operated by or on behalf of the Borough or its Contractor.

§ 67-205 Construction and Demolition Debris.

The term “construction and demolition debris” shall mean wastes generated by construction or demolition operations, which may include, without limitation, concrete, dirt, stones, bricks, plaster, wood, shingles, and pipe.

§ 67-206 Contractor.

The term “Contractor” shall mean the person serving, at any given time, as the contractor of the Borough for the collection, transportation, and disposition of collectible municipal waste and/or other refuse under the provisions of this Chapter.

§ 67-207 Hazardous Waste.

The term “hazardous waste” shall mean any material or substance which, by reason of its quantity, concentration, composition, or characteristics, is:

(a) “hazardous waste” within the meaning of the Solid Waste Management Act, 35 PA. STAT. ANN. § 6018.101, *et seq.*;

(b) toxic or hazardous waste as defined in the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.*, and the regulations thereunder;

(c) material regulated by the Toxic Substance Control Act, 15 U.S.C. § 2601, *et seq.*, and the regulations thereunder; or

(d) special nuclear by-products material within the meaning of the Atomic Energy Act of 1954, 42 U.S.C. § 2011, *et seq.*, and the regulations thereunder.

§ 67-208 Household Hazardous Waste.

The term “household hazardous waste” shall mean any waste that would be considered hazardous under the Solid Waste Management Act, 35 PA. STAT. ANN. § 6018.101, *et seq.*, but for the fact that it is produced in quantities smaller than those regulated under that Act and is generated by persons not otherwise covered by that Act (*e.g.*, household paints, antifreeze, bleach, cleaners, polishes, insecticides, pesticides, disinfectants, chemicals, and batteries).

§ 67-209 Infectious or Chemotherapeutic Waste.

The term “infectious or chemotherapeutic waste” shall mean any waste considered as “infectious” or “chemotherapeutic” waste under the Act of July 13, 1988, No. 93, 1988 Pa. Laws 525, as amended, 35 PA. STAT. ANN. § 6019.1, *et seq.*

§ 67-210 Leaf Waste.

The term “leaf waste” shall mean leaves, garden residues, shrubbery, and tree trimmings, and similar material, but not including grass clippings.

§ 67-211 Municipal Waste.

The term “municipal waste” shall mean any garbage, refuse, and other material, including solid, liquid, semisolid, or contained gaseous material resulting from operation of residential, municipal, commercial, or institutional establishments, or from community activities, including grass clippings which are not being composted or used for mulch; any industrial lunchroom or office waste; and any sludge (other than sludge considered residual waste or hazardous waste) from a municipal, commercial, or institutional water supply treatment plant, waste water treatment plant, or air pollution control facility.

§ 67-212 Person.

The term “person” shall mean a natural person, firm, copartnership, association, church, school, institution, or corporation.

§ 67-213 Recyclable Materials.

The term “recyclable materials” shall mean any materials whose original use has been completed, and which would otherwise be discarded and disposed of or processed as municipal waste, but which can be processed or treated to create or recover reusable materials that can be sold to or reused by a manufacturer or other person as a substitute for or a supplement to virgin raw materials. Recyclable materials include, without limitation, newsprint, corrugated paper, high grade office paper, plastics, leaf wastes, clear glass, colored glass, steel and bimetal cans, aluminum, and grass clippings.

§ 67-214 Refuse.

The term “refuse” shall mean municipal waste, residual waste, hazardous waste, and source-separated recyclable materials. However, leaf waste and/or grass clippings which are being composted or used for mulch shall not be considered “refuse”.

§ 67-215 Residual Waste.

The term “residual waste” shall mean any garbage, refuse, other discarded material, or other waste, including solid, liquid, semisolid, or contained gaseous materials, resulting from industrial, mining, or agricultural operations, and any sludge from an industrial, mining, or agricultural water supply treatment facility, waste water treatment facility, or air pollution control

facility, provided that it is not hazardous. The term “residual waste” shall not include coal refuse as defined in the Coal Refuse Disposal Control Act, 52 PA. STAT. ANN. § 30.51, *et seq.* “Residual waste” shall not include treatment sludges from coal mine drainage treatment plants, disposal of which is being carried on pursuant to and in compliance with a valid permit issued pursuant to the Clean Streams Law, 35 PA. STAT. ANN. § 691.1, *et seq.*

§ 67-216 Riff-raff.

The term “riff-raff” shall mean all collectible municipal waste which is too large for collection in a twenty-one-gallon container, including, without limitation, Christmas trees, furniture, bedding, tanks, large appliances (such as televisions, stoves, refrigerators, washers, and dryers), large dead animals, tree trimmings, etc.

§ 67-217 Source-separated Recyclable Materials.

The term “source-separated recyclable materials” shall mean recyclable materials that are separated from municipal waste at the point of origin for the purpose of recycling.

§ 67-218 Special Handling Waste.

The term “special handling waste” shall mean any municipal waste for which any governmental agency or unit having appropriate jurisdiction requires special approval (other than that generally required for municipal waste) prior to disposal in a permitted municipal waste disposal facility, including, without limitation, asbestos, sludge, and infectious or chemotherapeutic waste.

§ 67-219 Unacceptable Waste.

The term “unacceptable waste” shall mean any of the following materials, except for trace amounts normally found in household or commercial waste:

- (a) Hazardous waste;
- (b) Residual waste;
- (c) Special handling waste;
- (d) Infectious or chemotherapeutic waste, or any wearing apparel, bedding or refuse from premises where highly infectious or contagious diseases have prevailed;
- (e) Used motor oil;
- (f) Used lead acid batteries;

(g) Used tires, *but only* if the Borough Council shall adopt an Ordinance or Resolution finding that there is a reasonably accessible on-going program for recycling used tires generated in the Borough *and only* during the period that such an Ordinance or Resolution shall remain in force;

(h) Construction and demolition debris in excess of one C/D Unit from a given property on any single collection day. For purposes of this subsection, each of the following items shall constitute one “C/D Unit”:

(1) a plastic sack (plastic garbage bag) which is designed to store solid waste, has sufficient wall strength to maintain physical integrity when lifted by the top, does not weigh more than thirty-five (35) pounds, including the contents, and contains only construction and demolition debris or such debris mixed with other collectible municipal waste;

(2) a receptacle (garbage can) with a capacity less than thirty-five (35) gallons, constructed of plastic, metal, or fiberglass, having handles of adequate strength for lifting, having a tight fitting lid which is securely in place, having a mouth whose diameter is equal to or greater than that of the base, which does not weigh more than sixty (60) pounds, including the contents, and which contains only construction and demolition debris or such debris mixed with other collectible municipal waste. Only the contents of the receptacle shall constitute a “C/D Unit”; the receptacle itself shall not be collected from the property;

(3) a single bundle of construction and demolition debris securely tied together and forming an easily handled package not exceeding four (4) feet in length, two (2) feet in width, and two (2) feet in height, and not exceeding sixty (60) pounds in weight;

(4) one single item of construction or demolition debris which is not placed in any container and which constitutes riff-raff;

(i) Free liquids, or liquids which are likely to be released from their containers during ordinary handling;

(j) Leaf waste;

(j.1) Grass clippings, during any period for which the Borough has made arrangements permitting persons to drop off grass clippings generated in the Borough at no cost at a yard waste composting center located within five (5) miles of the Borough. During any period for which such an arrangement is not in effect, grass clippings in excess of one GC Unit from a given property on any single collection day shall be considered “unacceptable waste.” For purposes of this subsection, each of the following items shall constitute one “GC Unit”:

(1) a plastic sack (plastic garbage bag) which is designed to store solid waste, has sufficient wall strength to maintain physical integrity when lifted by the top, does not weigh more than thirty-five (35) pounds, including the contents, and contains only grass clippings or grass clippings mixed with other collectible municipal waste;

(2) a receptacle (garbage can) with a capacity less than thirty-five (35) gallons, constructed of plastic, metal, or fiberglass, having handles of adequate strength for lifting, having a tight fitting lid which is securely in place, having a mouth whose diameter is equal to or greater than that of the base, which does not weigh more than sixty (60) pounds, including the contents, and which contains only grass clippings or grass clippings mixed with other collectible municipi-

pal waste. Only the contents of the receptacle shall constitute a “GC Unit”; the receptacle itself shall not be collected from the property;

(k) Newsprint;

(l) Collectible recyclable materials which the Borough Council, by Ordinance or Resolution, *requires* to be recycled (as opposed to those materials included in a purely voluntary recycling program operated by the Borough or its Contractor);

(m) Household hazardous waste, *but only* with respect to those wastes included in a household hazardous waste collection program established by the County of Lehigh, or within Lehigh County, which may be utilized by residents of the Borough, *and only* with respect to those household hazardous wastes designated as “unacceptable waste” by Ordinance or Resolution of Borough Council;

(n) Any highly flammable or explosive materials;

(n.1) Any item which must be specially prepared for disposition in accordance with applicable statutes, regulations, determinations, orders, rulings, ordinances, resolutions, plans, and/or permits, *unless* all required preparations have been completed at the expense of the person desiring to dispose of the item. (*E.g.*, Freon must be removed from refrigerators, air conditioners, and similar appliances, and an appropriate sticker must be applied to indicate that the Freon has been drained and disposed of properly.);

(o) Any material that, by reason of its composition, characteristics, quantity, or concentration, is ineligible for disposal at the disposal facility(ies) selected by the Borough and/or the Contractor, pursuant to:

(1) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*, and the regulations thereunder;

(2) the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136, *et seq.*, and the regulations thereunder;

(3) the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.*, and the regulations thereunder;

(4) the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*, and the regulations thereunder;

(5) the Hazardous Sites Cleanup Act, 35 PA. STAT. ANN. § 6020.101, *et seq.*, and the regulations thereunder; or

(6) any other applicable statute, regulation, determination, order, ruling, ordinance, resolution, plan, or permit; and

(p) Any other material that presents an endangerment to the disposal facility described in subsection (o), the employees of the Borough or the Contractor, or to the public health or safety.

Article III — Collection and Disposition of Collectable Municipal Waste

§ 67-301 Municipal Collection Program.

Except as provided in § 67-305, all collectible municipal waste generated or present within the Borough shall be collected, transported, and disposed of by the Borough or its Contractor. All persons within the Borough of Alburdis shall dispose of collectible municipal waste by the municipal collection service only.

§ 67-302 Receptacles.

(a) **In General.** All collectible municipal waste placed for collection by the Borough or its Contractor, other than riff-raff, shall be placed in bags, garbage cans, or other receptacles, which comply with all applicable regulations promulgated hereunder. Without limitation, such regulations may include requirements relating to size, weight, materials, and closure. In addition, Borough Council may require, by Resolution, that any or all collectible municipal waste, other than riff-raff, be placed for collection in special bags or other receptacles sold or supplied by the Borough or its agents, and/or that any or all receptacles and/or riff-raff placed for the collection of municipal waste bear a special tag, sticker, or similar device, sold or supplied by the Borough or its agents. These special receptacles or devices may be required to assist in implementing a “per bag” fee program, to accommodate any handling, collection, transportation, or disposition concerns, to reduce the costs of collection, transportation, or disposition, or to accomplish any other proper purpose related to the municipal waste collection program.

(b) **Initial Rules.** Until changed by regulations authorized under this Chapter, the following rules apply to collectible municipal waste placed for collection by the Borough or its Contractor:

(1) Except for riff-raff and bundles of construction and demolition debris described in § 67-219(h)(3), all collectible municipal waste must be placed for collection in one or more of the following containers:

(A) a plastic sack (plastic garbage bag) which is designed to store solid waste, has sufficient wall strength to maintain physical integrity when lifted by the top, and does not weigh more than thirty-five (35) pounds, including the contents;

(B) a receptacle (garbage can) with a capacity less than thirty-five (35) gallons, constructed of plastic, metal, or fiberglass, having handles of adequate strength for lifting, having a tight fitting lid capable of preventing entrance into the container by vectors which is securely in place, having a mouth whose diameter is equal to or greater than that of the base, and which does not weigh more than sixty (60) pounds, including the contents. The receptacle itself shall not be collected from the property;

(C) a dumpster of a type and size reasonably acceptable to the Borough or its Contractor, and actually accepted by the Borough or its Contractor. Any such dumpster shall be

kept in good repair, appearance, and in a sanitary condition at all times, and such that neither objectionable odors, noxious gasses, nor putrescent liquid shall escape therefrom.

(2) Collectible municipal waste for a given property must be placed for collection on the property or an abutting public right-of-way (but not within a street cartway or in any fashion which blocks the use of a sidewalk), and at a point which is no more than ten (10) feet from a public street or alley curb line and is accessible to the Borough or its Contractor at ground level.

(3) Notwithstanding paragraph (2), if a dumpster is utilized for the collection of collectible municipal waste, the dumpster may be placed in any location accessible by and acceptable to the Borough or its Contractor, and which is not otherwise prohibited under any applicable statute, regulation, rule, ordinance, resolution, ruling, order, decision, decree, deed, lease, contract, deed restriction, recorded plan, or other legally-binding limitation.

§ 67-303 Amount of Waste to be Collected.

Borough Council may establish, by Resolution or by the terms of a contract with a Contractor under § 67-601, the maximum amount and/or types of collectible municipal waste which will be collected by the Borough or its Contractor from any given property, over the course of a year and/or at any particular collection, in consideration for the payment of any specific fee established under § 67-701. The Borough or its Contractor will collect all of the collectible municipal waste generated or present on that property upon the payment of proper fees, but may refuse, at any time, to collect any collectible municipal waste which is in excess of the maximum amount for which a fee has been paid and/or of a different type than that for which a fee has been paid.

§ 67-304 Refusal to Collect Waste.

The Borough or its Contractor may refuse, at any time, to collect any collectible municipal waste if that waste is presented in such a way as to violate any of the provisions of this Chapter and/or the regulations promulgated hereunder. The refusal of the Borough or its Contractor to collect any collectible municipal waste from any particular property at any particular time, whether under this section or under § 67-303, shall in no manner relieve the property owner or the person generating the waste from his/her/its obligations under this Chapter, including, without limitation, his/her/its obligations to dispose of all collectible municipal waste through the municipal collection system, to not allow any accumulations of refuse other than for the purpose of collection in a timely manner, and to not permit or engage in any actions or inactions prohibited under Article VIII.

§ 67-305 Permits for Private Disposal of Collectable Municipal Waste.

If a property owner has compelling reasons (other than purely financial) for desiring to dispose of any or all of his/her/its collectible municipal waste by a means other than the municipal collection system, he/she/it may apply for a permit from Borough Council for this privilege. Borough Council shall only grant such a permit if it finds that the reasons advanced are truly compelling and that the property owner's proposed method of collection, transportation, and dis-

posal is acceptable, considering the Borough's obligations and potential liability with respect to municipal waste under applicable state and/or federal law. At a minimum, the property owner shall provide proof to Borough Council that all necessary licenses have been obtained and that capacity is available for the property owner in a permitted disposal facility. The decision to grant or deny a permit under this section shall be purely discretionary on the part of Borough Council, and may be conditioned in any relevant manner. No permit shall be for a period in excess of one (1) year, and all permits may be revoked or suspended at any time for cause. (The Borough Secretary is hereby authorized to suspend any such permit for cause in exigent circumstances until the next regularly scheduled meeting of Borough Council.) Borough Council may, by Resolution, establish an application fee and/or a permit fee to cover the Borough's reasonable expenses in reviewing permit applications and/or administering permits under this section. All or part of the fees established under § 67-701 *may* be waived by Borough Council, in its absolute discretion, as one of the terms of the permit, *but only* if and to the extent that the costs to the Borough of operating the municipal collection system are expected to be reduced as a result of the diversion of collectible municipal waste in accordance with the permit.

§ 67-306 Disposal Facilities.

All collectible municipal waste generated, collected, and transported from within the jurisdictional limits of the Borough shall be disposed of in accordance with all applicable provisions of law, including the then-applicable Solid Waste Management Plan of the County of Lehigh. (If any person believes that any provision of law, regulation, or the Solid Waste Management Plan is unenforceable, he shall nonetheless comply with such provision until a final order is entered declaring the provision unenforceable, except during any period for which temporary relief from the enforcement of the provision is granted by a court of appropriate jurisdiction.) No such collectible municipal waste may be transported to or disposed of in any disposal facility without the prior written approval of that disposal facility by the Borough (which approval will not be unreasonably withheld).

Article IV — Collection and Disposition of Collectable Recyclable Materials

§ 67-401 Collectible Recyclable Materials.

(a) **Newsprint.** Newsprint is hereby declared to be a mandatory collectible recyclable material.

(b) **Leaf Waste.** Leaf waste is hereby declared to be a mandatory collectible recyclable material. The Borough encourages composting of leaf waste by property owners to remove leaf waste from both the waste stream and recycling collection.

(c) **Grass Clippings.** During any period for which the Borough has made arrangements permitting persons to drop off grass clippings generated in the Borough at no costs at a yard waste composting center located within five (5) miles of the Borough, grass clippings are hereby declared to be a mandatory collectible recyclable material. During any period for which such an arrangement is not in effect, grass clippings are not required to be recycled, but shall be a voluntary collectible recyclable material. The Borough encourages composting and/or mulching of grass clippings by property owners to remove grass clippings from the waste stream.

(d) **Other Mandatory Collectible Recyclable Materials.** The following items are hereby designated as mandatory collectible recyclable materials: aluminum, steel, tin, or bi-metallic food or beverage containers (not including aerosol cans, pots or pans, or aluminum foil); clear or colored glass food or beverage containers (not including ceramics, drinking glasses, window glass, or mirror glass); and #1 (PET or PETE) or #2 (HDPE) plastic containers for food, beverages, laundry, or cleaning items (not including styrofoam, clay pots, or plastic bags).

(e) **Voluntary Collectible Recyclable Materials.** Council hereby designates as voluntary collectible recyclable materials any recyclable materials (other than mandatory collectible recyclable materials) which the Contractor permits to be separated from collectible municipal waste and collected by the Contractor for recycling. These materials may include, but are not limited to, magazines, junk mail, phone books, high grade office paper, and corrugated paper/cardboard. Borough Council may, from time to time, by Ordinance or Resolution, designate other recyclable materials as voluntary collectible recyclable materials.

§ 67-402 Collection Time and Location.

The Borough or its Contractor will collect mandatory and voluntary collectible recyclable materials at such times and in such locations as may be established by regulations promulgated under this Chapter. Until changed by such regulations:

(a) All mandatory or voluntary collectible recyclable materials, other than leaf waste and grass clippings, shall be collected at curbside every other week.

(b) During any period for which the Borough has made arrangements permitting persons to drop off leaf waste and grass clippings generated in the Borough at no cost at a yard waste composting center located within five (5) miles of the Borough, the leaf waste and grass clippings shall be collected at such composting center during its regular operating hours.

(c) During any period for which an arrangement described in subsection (b) is not in effect, grass clippings which are to be placed for voluntary recyclable collection, and leaf waste, shall be collected in separate dumpsters at a location(s) within the Borough designated by the Borough.

§ 67-403 Separation or Commingling.

Mandatory collectible recyclable materials shall be separated from collectible municipal waste and stored until collection or other disposition. Voluntary collectible recyclable materials which are to be recycled shall also be separated from collectible municipal waste and stored until

collection or other disposition. Regulations promulgated under this Chapter may require the separation of certain collectible recyclable materials from other collectible recyclable materials, or permit the commingling of certain collectible recyclable materials. Until changed by such regulations:

(a) the mandatory collectible recyclable materials under § 67-401(d) may be commingled, but otherwise they must be separated from all other materials;

(b) newsprint and the voluntary collectible recyclable materials under the first sentence of § 67-401(e) which are to be placed for recyclable collection may be commingled, but otherwise they must be separated from all other materials;

(c) leaf waste shall be separated from all other materials; and

(d) grass clippings which are to be placed for mandatory or voluntary recyclable collection shall be separated from all other materials.

§ 67-404 Receptacles.

(a) **In General.** All collectible recyclable materials placed for collection by the Borough or its Contractor shall be placed in bags, garbage cans, or other receptacles, which comply with all applicable regulations promulgated under this Chapter. Without limitation, such regulations may include requirements relating to size, weight, materials, and closure. In addition, Borough Council may require, by Resolution, that any or all collectible recyclable materials placed for collection by the Borough or its Contractor be placed for collection in special bags or other receptacles sold or supplied by the Borough or its agents, and/or that any or all receptacles or bundles placed for the collection of collectible recyclable materials by the Borough or its Contractor bear a special tag, sticker, or similar device, sold or supplied by the Borough or its agents. These special receptacles or devices may be required to assist in implementing a “per bag” fee program, to accommodate any handling, collection, transportation, or disposition concerns, to reduce the costs of collection, transportation, or disposition, or to accomplish any other proper purpose related to the municipal recyclable material collection program.

(b) **Initial Rules.** Until changed by regulations authorized under this Chapter, the following rules apply to collectible recyclable materials to be placed for collection by the Borough or its Contractor:

(1) Newsprint and the voluntary collectible recyclable materials under the first sentence of § 67-401(e) which are to be placed for recyclable collection shall be bundled into bundles, and not otherwise placed in bags or other receptacles. Each bundle shall be securely tied together to form an easily handled package not exceeding three (3) feet in length, two (2) feet in height, or sixty (60) pounds in weight.

(2) (A) During any period for which the Borough has made arrangements permitting persons to drop off leaf waste and grass clippings generated in the Borough at no cost at a yard waste composting center located within five (5) miles of the Borough, the leaf waste and grass clippings shall be deposited at such composting center in accordance with the rules of the composting center.

(B) During any period for which the arrangement described in subparagraph (A) is not in effect:

(i) Leaf waste shall only be deposited at the single location specified by the Borough for the collection of leaf waste, and only in a dumpster identified for leaf waste.

(ii) Grass clippings which are not being composted, mulched, or placed with collectible municipal waste, shall only be deposited at the single location specified by the Borough for the collection of grass clippings, and only in a dumpster identified for grass clippings.

(3) The mandatory collectible recyclable materials under § 67-401(d) shall be placed in authorized recycling containers supplied or sold by the Borough, or in containers to which a recycling sticker supplied or sold by the Borough has been affixed.

(4) Collectible recyclable materials that are to be collected “at curbside” must be placed for collection at a point which is no more than ten (10) feet from a public street or alley curb line, and which is accessible to the Borough or its Contractor at ground level.

§ 67-405 Right to Recycle Outside of the Borough Program.

No person shall be required to place any mandatory or voluntary collectible recyclable materials for collection by the Borough or its Contractor. Any person may arrange to have collectible recyclable materials collected and recycled by others, and may retain any profit realized through such recycling, *provided* that if any person operating a commercial, municipal, institutional, or industrial use or a community activity desires to recycle any mandatory or voluntary collectible recyclable materials outside of the municipal collection system, the person must provide the Borough with quarterly statements of the tonnage of materials so recycled, with accompanying documentation.

§ 67-406 Multi-family Rental Unit Owners.

With respect to any particular item of collectible municipal waste or mandatory collectible recyclable material generated or present on any property in the Borough, the owner(s) of the property, the occupant(s) of the property, and any other persons generating such item, shall be jointly and severally responsible for complying with the provisions of this Chapter and the regulations promulgated hereunder. However, if the owner, landlord, or agent of an owner or landlord of multifamily rental housing properties with four (4) or more units establishes a collection system for all mandatory and voluntary recyclable materials at each property, including suitable containers for collecting and sorting materials, easily accessible locations for the containers, and written instructions to the occupants concerning the use and availability of the collection system, such person shall not be responsible for any violations of the recycling provisions of this Chapter by the occupants of the properties.

Article V — Disposition of Unacceptable Waste

§ 67-501 No Collection by Borough Program.

No unacceptable waste shall be deposited for collection by the Borough or its Contractor, except that mandatory collectible recyclable materials may be deposited for collection in accordance with the regulations concerning the municipal recycling program.

§ 67-502 Responsibility for Disposition.

With respect to any particular item of unacceptable waste generated or present on any property in the Borough, the owner(s) of the property, the occupant(s) of the property, and any other persons generating such item, shall be jointly and severally responsible for transporting and disposing, or arranging for the transportation and disposal, of such item in accordance with all applicable federal, state, county, or local statutes, laws, regulations, rulings, plans, determinations, ordinances, resolutions, orders, licenses, and permits.

Article VI — Administration of Borough Program

§ 67-601 Contractors.

Borough Council is hereby authorized to contract for the performance of any or all of the services to be provided by the Borough under this Chapter, and to award a contract therefor from time to time for such period of time as shall be determined by Borough Council. Separate contracts *may*, but need not, be made for collectible municipal waste and for any or all collectible recyclable materials. Any such contract shall require the contractor to assume all responsibility for the collection of the collectible municipal waste and/or one or more collectible recyclable materials in the Borough of Alburdis in accordance with the provisions of this Chapter and regulations, orders, and specifications provided under the authority of this Chapter, and to transport and dispose of all such refuse beyond and outside the boundaries of the Borough of Alburdis. The contract may fix and regulate, in a manner not inconsistent with the terms of this Chapter, the manner, method, and time of collecting and transporting refuse, the type of equipment required for the purpose, the price to be paid for the performance of said contract, the time or times for the payment thereof, and any other matters germane to refuse collection, transportation, or disposition.

§ 67-602 Regulations.

To the extent not already governed by a current contract with a Contractor, the Borough Council shall have authority to make regulations concerning the days of collection, type and location of waste receptacles, and such other matters described in or relevant to this Chapter or which otherwise pertain to refuse collection, transportation, and disposition, as the Borough Council may deem advisable, *provided* that such regulations are not contrary to the provisions of this Chapter or any other Ordinance or Resolution. Borough Council may modify any of such regulations from time to time, subject to the terms of any current contract with a Contractor. The Borough Secretary is hereby authorized to issue any temporary regulations under this Chapter which may be necessary, to be effective until the second regular meeting of Borough Council following the issuance of the temporary regulations, unless sooner rescinded by motion adopted by Borough Council.

§ 67-603 Supervision.

The collection, transportation, and disposal of collectible municipal waste in the Borough of Alburdis, and collectible recyclable materials presented for disposition by the Borough or its Contractor, shall be under the supervision of the Borough Secretary. The Borough Secretary shall periodically provide notice of the requirements of this Chapter and any regulations promulgated hereunder to the property owners, residents, and occupants of property in the Borough, in any manner deemed effective by the Borough Secretary.

§ 67-604 Ownership of Refuse Set Out or Deposited for Collection Under the Borough Program.

The ownership of all collectible municipal waste and collectible recyclable materials set out or deposited for collection by the Borough or its Contractor shall be vested in the Borough of Alburdis. All profits realized with respect to such materials shall be the property of the Borough or its Contractor (if agreed by the Borough).

Article VII — Fees

§ 67-701 Schedule of Fees.

(a) **In General.** Borough Council is hereby authorized to establish, from time to time, by Resolution, a schedule of fees for the services provided under this Chapter to be imposed with respect to each developed property in the Borough on which solid municipal waste is generated or present (including industrial properties generating lunchroom or office waste), and/or with respect to each bag, receptacle, or other unit of collectible municipal waste or collectible recyclable materials placed for collection by the Borough or its Contractor.

(b) Methods of Imposing Fees. Different methods of imposing fees may be charged with regard to different materials (*e.g.*, a “per bag” fee may be charged for leaf waste while a “per property” fee is charged for collectible municipal waste or other collectible recyclable materials), different methods of collection (*e.g.*, drop-off or curbside), or different volume levels (*e.g.*, a base fee for basic service, plus an additional fee [whether “per bag” or an annual fee] for additional volume).

(c) Differentiation among Properties. Different fees may be charged with respect to properties with different types of use (*e.g.*, residential, commercial, municipal, school, institutional, etc.), properties which generate different volumes of refuse, and/or properties which may be differentiated by any other reasonable criteria.

(d) All Properties Charged for “Per Property” Fees. Any “per property” fee shall be collected with respect to a property regardless of whether the property owner elects to utilize the services provided under this Chapter, except as provided under § 67-305 (relating to permits for private disposal of collectable municipal waste).

(e) Sales of Required Receptacles. A “per bag” fee may be imposed by charging a premium for authorized bags or other authorized receptacles sold for use in the Borough program for collecting collectible municipal waste and/or collectible recyclable materials, in addition to the cost of such bags or receptacles.

(f) Incentives. Any fee schedule may include incentives to encourage the recycling of collectible recyclable materials.

(g) Limitation on Amount of Fees. The aggregate fees charged under this Chapter shall not exceed the reasonably anticipated costs to be incurred by the Borough for collecting, transporting, and disposing collectible municipal waste and collectible recyclable materials (either directly or under contract with the Contractor), and administering and enforcing the provisions of this Chapter and any contract with a Contractor, plus a reasonable contingency.

(h) Current Fee Schedule. Unless and until changed or supplemented by action under the preceding subsections of this § 67-701, the schedule of fees for the services provided under this Chapter shall be as follows:

(1) Residential. The owner of a residential dwelling unit in the Borough shall pay a fee for garbage hauling services of Eighty-four Dollars (\$84.00) each calendar quarter for each residential dwelling unit owned, except for any residential dwelling unit not connected to the Borough water system for the entire quarter. The owner of a residential dwelling unit in the Borough who also conducts a business from the property shall pay a quarterly fee of Eighty-four Dollars (\$84.00) per equivalent dwelling unit for garbage hauling services. Each such property shall be assigned a number of equivalent dwelling units based on an estimate of the amount of garbage hauled from that property divided by the amount of garbage hauled from a typical residential dwelling unit. This number shall be set, from time to time, by the Borough, subject to appeal to the Borough Council. In the absence of any specific action establishing equivalent dwelling units, the quarterly fee for such a residential dwelling unit shall be Eighty-eight Dollars (\$88.00).

(2) Nonresidential. The owner of each nonresidential property in the Borough shall pay a quarterly fee of Eighty-four Dollars (\$84.00) per equivalent dwelling unit for garbage

hauling services. Each nonresidential property shall be assigned a number of equivalent dwelling units based on an estimate of the amount of garbage hauled from that property divided by the amount of garbage hauled from a typical residential dwelling unit. This number shall be set, from time to time, by the Borough, subject to appeal to the Borough Council. In the absence of any specific action establishing equivalent dwelling units, the quarterly fee for a nonresidential property served by one or more dumpsters shall be computed on the basis of three (3) equivalent dwelling units per dumpster.

(3) **Excess Volume.** In addition to the fees payable under paragraphs (1) and (2), if an owner or occupant of a property in the Borough requires the collection and disposal of collectible municipal waste generated on that property in excess of the maximum amount which the Contractor is required to collect from that property under the terms of its contract with the Borough without the payment of an additional fee to the Contractor, then the owner or occupant shall make advance arrangements with the Executive Secretary for the collection of such excess, and shall pay the Borough, in advance, an amount equal to the amount which the Borough must pay the Contractor for the collection of such excess.

§ 67-702 Responsibility for Fees.

The fees imposed under this Chapter with respect to any given property shall be the joint and several responsibility of all record owners of the property, all persons in possession of the property, and all other persons producing or responsible for the existence or disposal of refuse present on such property, or for whom such refuse is removed.

§ 67-703 Billing and Collection of Fees; Penalties.

(a) **Rendering of Bills.** All bills for the fees imposed under this Chapter with respect to any given property shall be rendered at least twenty-five (25) calendar days before the due date, and are payable to the Borough at the Borough Hall. Bills shall be mailed to the address appearing on the tax records of the Borough or to the property itself, unless the owner of the property designates a different address from time to time. Each owner shall provide the Borough with, and thereafter keep the Borough advised of, the owner's current and correct address. The failure of any person to receive a bill shall not be considered an excuse for nonpayment, nor shall such failure result in an extension of the period of time during which the net bill shall be payable.

(b) **Due Date.** Bills shall be due each January 31, April 30, July 31, and October 31 for services rendered during the most recently ended calendar quarter, and shall also include the outstanding balance of unpaid amounts from previous bills and unpaid late payment penalties. Payments are credited on the date they are received at the Borough Hall.

(c) **Late Payment Penalties.** A late payment penalty shall be imposed if there remains an outstanding balance on any bill rendered under subsection (a) as of 12:00 noon on the sixth (6th) calendar day after the due date of that bill. The amount of the late payment penalty is fifteen percent (15%) of the outstanding balance on the bill (including amounts originally billed for previous quarters that remain unpaid, and unpaid late payment penalties) as of the time the penalty is imposed.

(d) **Collection.** If there is an unpaid balance on any bill sixty (60) days after the due date of the bill, the Borough Secretary may file a civil action before the local District Justice to collect the unpaid balance, or may refer the account to the Borough Solicitor to proceed with a civil action or utilize any available procedures for the perfection of a municipal lien and collection of a municipal claim.

§ 67-704 **Receipt of Fees.**

It shall be the duty of the Borough Secretary, *ex officio*, to receive all fees provided under this Chapter and remit them to the Borough Treasurer for deposit in Borough accounts.

Article VIII — Prohibited Acts

§ 67-801 **Unauthorized Collection, etc.**

It shall be unlawful for any person to collect, transport, or dispose of any refuse generated or present in the Borough in violation of this Chapter or any regulations promulgated hereunder.

§ 67-802 **Outdoor Placement of Refuse.**

It shall be unlawful for any person to place any refuse in any street, alley, or other public place in the Borough, or upon any private property in the Borough outside of a completely enclosed building, whether the property is owned by such person or not, unless:

(a) the refuse is placed in proper receptacles for collection (other than riff-raff and bound newsprint placed outside at the proper location for collection by the Borough or its Contractor no earlier than sunset on the day before the scheduled collection thereof); and

(b) the refuse is placed on the property with the permission of the owner of such property, or is placed in a public right-of-way at a location directed or approved by the Borough Secretary or Borough Council for collection by the Borough or its Contractor, no earlier than sunset on the day before the scheduled collection thereof.

§ 67-803 **Dumping.**

(a) **Refuse Generated Off-Site.** It shall be unlawful for any person to place any refuse on any property in the Borough (or in the location designated by the Borough for the collection of refuse generated on the property) unless the refuse was generated on that property, except for—

(1) minor and incidental quantities of refuse generated by an owner or resident of the property elsewhere; and

(2) minor and incidental quantities of refuse generated by a guest or customer of the owner, resident, or operator of the property.

Accordingly, without limitation, it shall be unlawful to dump refuse in the Borough, and it shall be unlawful to transport refuse to a property in the Borough or for the owner of property in the Borough to accept refuse generated off-site, in order to reduce or eliminate any person's costs for disposing of refuse.

(b) Recyclable Materials Generated Off-Site.

(1) **Individual Properties.** It shall be unlawful for any person to place any recyclable materials on any property in the Borough (or in the location designated by the Borough for the collection of refuse or recyclable materials generated on the property) unless the recyclable materials were generated on that property, except for—

(A) recyclable materials authorized by the owner or possessor of the property which are being collected for recycling outside of a recycling program operated by the Borough or its Contractor;

(B) minor and incidental quantities of recyclable materials generated by an owner or resident of the property elsewhere; and

(C) minor and incidental quantities of refuse or recyclable materials generated by a guest or customer of the owner, resident, or operator of the property.

(2) **Borough Recycling Program.** It shall be unlawful for any person to place any recyclable materials generated outside of the Borough in any receptacle or at any location designated by the Borough for the collection of recyclable materials under a recycling program operated by the Borough or its Contractor.

(c) **Public Waste Receptacles.** It shall be unlawful for any person to place any refuse in any public waste receptacle in the Borough other than a minor and incidental quantity of refuse.

(d) **Exceptions.** This section shall not apply to:

(1) the placement of any recyclable materials in locations designated or authorized by the Borough for the collection of such recyclable materials, provided that such placement is in accordance with the regulations of the Borough and the person operating the recycling center; or

(2) any transfer facility licensed under the Solid Waste Management Act, 35 PA. STAT. ANN. § 6018.101 *et seq.*, and operating in conformity with all applicable requirements of Chapter 21 (relating to Zoning).

§ 67-804 Accumulations of Refuse.

It shall be unlawful for any person to allow any accumulation of refuse on any premises in the Borough of Alburty other than for the purpose of collection in a timely manner provided or permitted by this Chapter or by any regulations promulgated hereunder. Any unauthorized accumulation of refuse on any premises is hereby declared to be a nuisance and is prohibited. Any

accumulation of refuse for more than fifteen (15) days shall be presumed to be for a purpose other than collection in a timely manner.

§ 67-805 Removal of Receptacle Covers; Removal of Refuse.

It shall be unlawful for any person other than the occupants of the premises on which refuse receptacles are stored or the authorized collector of such refuse to remove the covers of any of the refuse receptacles or to remove the refuse stored in such containers.

§ 67-806 Removal of Recyclable Materials.

It shall be unlawful for any person to remove any recyclable materials from any drop-off recycling receptacle or from any curbside recycling receptacle after the receptacle has been placed in the designated or approved location for the collection of the recyclable materials, other than the authorized collector of the recyclable materials or the person operating the drop-off recycling center.

§ 67-807 Pollution of Water.

It shall be unlawful for any person to throw or deposit any refuse in any stream or other body of water.

§ 67-808 Attempted Disposal of Unacceptable Waste with Collectible Municipal Waste.

It shall be unlawful for any person to place any unacceptable waste, or any receptacle containing any unacceptable waste, in any location designated for the collection of collectible municipal waste by the Borough or its Contractor in any manner which would suggest, to a reasonable person, that the person so placing the material intends to have the Borough or its Contractor collect the material as collectible municipal waste.

§ 67-809 Adulteration of Drop-Off Recyclables.

It shall be unlawful for any person to place any materials in any drop-off receptacle designated by the Borough for the collection of one or more collectible recyclable materials by the Borough or its contractor, unless the materials so placed consist solely of those collectible recyclable materials designated for collection in that receptacle.

§ 67-810 Adulteration of Curbside Recyclables.

It shall be unlawful for any person to place any receptacle identified for participation in a curbside voluntary or mandatory recycling program of the Borough in any location designated for the collection of collectible recyclable materials by the Borough or its Contractor, unless the materials inside such receptacle consist solely of those collectible recyclable materials designated for collection in that receptacle.

§ 67-811 Diversion of Collectible Municipal Waste from the Borough Collection Program.

Except as provided in § 67-305 (relating to permits for private disposal of collectable municipal waste):

(a) It shall be unlawful for any person other than the Borough or its Contractor to collect, transport, or dispose of any collectible municipal waste generated or present in the Borough; and

(b) It shall also be unlawful for any person to arrange for the collection, transportation, or disposition, of any collectible municipal waste generated or present in the Borough by any means other than the municipal waste system operated by the Borough or its Contractor.

This section shall not apply to any refuse generated outside of the Borough and which is present in the Borough only during transportation to another location outside of the Borough.

Article IX — Enforcement

§ 67-901 Violations and Penalties.

Any person who violates any provision of this Chapter shall, upon being found liable therefor in a civil enforcement proceeding commenced by the Borough, pay a judgment of not more than Three Hundred Dollars (\$300.00), in the discretion of the district justice, plus all court costs, including reasonable attorneys' fees incurred by the Borough as a result thereof. Nothing contained in this section shall be construed or interpreted to grant to any person or entity, other than the Borough, the right to commence any action for enforcement of any provision of this Chapter.