

AGREEMENT

THIS AGREEMENT, made and entered on this 17th day of March, 2015, by and between the **MUNICIPALITY OF NORRISTOWN**, a home rule municipality situate in Montgomery County, Pennsylvania (hereinafter "Municipality"), and **SOLID WASTE SERVICES, INC. d/b/a J. P. MASCARO & SONS**, with offices located at 2650 Audubon Road, Audubon, Pennsylvania 19403 (hereinafter "Collector").

SUMMARY:

Specifications for Residential Solid Waste Collection and Recycling Collection in the Municipality of Norristown ("Specifications"), a copy of which is attached hereto as *Exhibit A*, were made available to interested parties for the purpose of obtaining firm bids for the performance of the various services contemplated by the Specifications.

Collector responded with an acceptable bid and was awarded the contract (see Collector's Bid attached as *Exhibit B*), which has caused the parties to be desirous of setting out the terms of the contract for the performance of the contemplated service.

In consideration of the exchange of covenants and agreements hereinafter set forth, and intending to be legally bound hereby, the parties do hereby agree as follows:

I. GENERAL PROVISIONS

1.1. In the event of any conflict between the language contained in this Agreement and the language contained in the Specifications, the language in this Agreement shall control.

1.2. Notwithstanding the provisions of Paragraph 1.1., if any provision of the Specifications of this Agreement shall be held to be unenforceable or unconstitutional, such provision shall be stricken from such document even if the result is to reestablish the language contained in another document (provided it is not also unenforceable or unconstitutional) which would have been overridden by the provisions contained in Section 1.1.

1.3. The terms of this Agreement may only be amended, modified or supplemented by a writing duly signed by the parties to be affected thereby. This Agreement may be simultaneously executed in several identical counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

II. SERVICES TO BE PERFORMED

2.1. Collector does hereby covenant and agree that it will perform all of the services and carry out each and every act contemplated by the Specifications in a timely and workmanlike manner, employing competent workers to do so.

2.2. Collector shall be responsible to keep all of its equipment in a clean and well-maintained and repaired condition and shall be responsible for training and supervising its employees to conduct themselves in a proper manner.

2.3. Collector shall take all reasonable steps to be responsive to complaints brought to its attention by the appropriate personnel of the Municipality and shall, during the hours set forth in Section 2.3.1 hereinbelow, designate a specific employee to receive and accept such calls or complaints with the ability to expedite corrections where necessary (hereinafter called the "Specified Employee").

2.3.1. During those hours that Collector is engaged in the collection of residential solid waste pursuant to *Exhibit A*, the Specified Employee shall be available to

receive and respond to comments and complaints of any resident(s) of the Municipality (hereinafter "Resident"), and the Specified Employee shall have a suitable vehicle to facilitate such responses. There shall be a specific phone number whereby the Resident may contact the Specified Employee. The Specified Employee shall engage in immediate communication with Collector's refuse truck driver and/or its supervisors and make personal inspections as are reasonable and necessary. This will enable Collector to respond to the comments and/or complaints of Resident at the time that the truck in question is in close proximity to the Resident.

2.4. In the event Collector determines that a Resident is not in compliance with the local regulations for preparation of refuse for collection, it shall notify said Resident of such deficiency. Such notification shall occur regardless of whether or not Collector accepts the refuse in question. The notification should be in a form to attach in a noticeable fashion to the refuse container in question. It should include information as to the deficiency in the Resident's refuse preparation and a phone number where additional information can be obtained.

2.5. Collector acknowledges that it, its employees and agents are responsible for the careful handling of property belonging to each Resident. This property includes, but is not limited to, the containers used by each Resident to store refuse and which containers are handled by Collector's agents and employees. Collector and its agents and employees shall be jointly and severally liable for any and all such damage to Resident's property, including, but not limited to, refuse containers. Collections must be done in a manner which minimizes (a) damage to Residents' property; (b) noise; and (3) traffic congestion.

III. PAYMENT

3.1. Municipality shall be responsible for the timely payment of costs related to the performance of the services as set forth in Collector's Bid (see *Exhibit B*) attached hereto.

Adjustments in payments resulting from a change in the number of residences to be serviced shall apply in accordance with the Specifications.

3.2. In the event that the Municipality shall, for any reason, be tardy in payment of the contract price or shall withhold payment for any reason, such tardiness or failure to pay shall not relieve Collector from providing all of its services and performing all of its commitments under this Agreement.

IV. DISPUTES

4.1. Any disputes shall be discussed as soon as possible in order to effectuate a satisfactory resolution thereto.

V. TERM OF AGREEMENT

5.1. The term of this Agreement shall be for a period of five (5) years, commencing April 1, 2015 ("Commencement Date") and terminating at 11:59 p.m. on March 31, 2020. Municipality has the right under the Specifications to extend this Agreement for an additional two (2) years.

5.2. Municipality warrants that it has adopted ordinances authorizing it to enter into this Agreement with Collector.

VI. UNAUTHORIZED COLLECTIONS

6.1. Collector, and/or any employee of the Collector, is specifically prohibited from making any private arrangements with any Resident within the Municipality for the collection of any solid waste without the written consent of the Municipality.

6.2. Evidence of any unauthorized collections as described in Paragraph 6.1. above shall be, at the sole discretion of the Municipality, construed as a breach of this Agreement and subject to any and all appropriate penalties.

VII. LIABILITIES AND DAMAGES

7.1. **Collector's Indemnity.** Collector agrees to indemnify, defend and hold harmless the Municipality, its officers, directors, employees, agents, affiliates, parent, subsidiaries, successors and assigns from and against any and all claims, counterclaims, suits, demands, actions, causes of action, damages, setoffs, liens, attachments, judgments, debts, expenses or other liabilities of whatsoever kind or nature, resulting from the negligence or willful misconduct of Collector and/or its subsidiaries, affiliates, employees, agents, servants and subcontractors, in the performance of the Services, or breach of this Agreement.

7.2. **Insurance.** Collector shall maintain insurance issued by an insurance carrier reasonably satisfactory to the Municipality to protect the parties hereto from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every kind and nature which may arise or result from or by reason of such loss, injury or damage as covered in Section 2.08 of the Specifications.

Such insurance shall be maintained at Collector's sole expense in the amounts of such coverage as set forth in Section 2.08 of the Specifications. Collector shall provide the Municipality with a Certificate of Insurance evidencing the required coverages so designated to protect the Municipality, as Additional Insured, from all claims and damages, including wrongful death claims, of any kind or nature whatsoever which may arise from the operations controlled by Collector in the performance of the contract, whether such operations are controlled by Collector or by someone else directly or indirectly employed by Collector for the purpose of accomplishing any obligation upon the Collector by the terms of this Agreement.

All insurance policies herein required, including the workers' compensation policy, shall be written with companies reasonably satisfactory to the Municipality

and authorized to do business in the Commonwealth of Pennsylvania, and shall be obtained and properly endorsed before any operations of the Collector are commenced with the Municipality. All of these said policies shall remain in full force and effect until the expiration of the term of this Agreement.

Each and every policy of insurance herein mentioned and required pursuant to the Specifications, including the workers' compensation policy, shall carry with it an endorsement to the effect that the insurance carrier or its agent will convey to the Municipality written notification of cancellation of any such policy or policies or any of the terms thereof, and said written notice shall be dispatched to the Municipal Administrator at least thirty (30) days prior to the effective date of any such cancellation.

VIII. ENFORCEMENT


8.1. The parties hereto acknowledge and agree that the terms and conditions of this Agreement, including the terms and conditions of *Exhibit A* to this Agreement, shall be enforceable as provided at law or in equity, and the parties hereby reserve their right to seek enforcement of the terms, conditions and provisions of this Agreement in the event of default or breach of any term, condition or provision.

8.2. The waiver by any party of any breach of this Agreement shall not constitute a waiver of any subsequent breach, and the parties expressly reserve the right to pursue any and all remedies provided under this Agreement in the event of any breach of the terms provided hereunder.

8.3. The enforcement terms provided hereunder are in addition to the terms provided under Sections 2.09 and 2.10 of the Specifications, including penalties and remedies for default.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

MUNICIPALITY OF NORRISTOWN

ATTEST: 

By: 

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

ATTEST: 
Michael Mascaro, Secretary

By: 
Pasquale N. Mascaro, President

PERFORMANCE BOND

Bond 019-048-817

KNOW ALL BY THESE PRESENTS, That we, SOLID WASTE SERVICES, INC. d/b/a J.P. MASCARO & SONS

2650 Audubon Road, Audubon, PA 19403

(hereinafter called the Principal), as Principal, and LIBERTY MUTUAL INSURANCE COMPANY, a corporation duly organized under the laws of the State of MASSACHUSETTS (hereinafter called the Surety), as Surety, are held and firmly bound unto Municipality of Norristown

235 E. Alry Street, Norristown, PA 19401, (hereinafter called the Obligee),

in the sum of Eleven Million One Hundred Nine Thousand Sixty and 00/100

(\$ 11,109,060.00) Dollars, for the payment of which sum well and truly to be made, we, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 17th day of March, 2015.

WHEREAS, said Principal has entered into a written Contract with said Obligee, dated March 17, 2015,

for Residential Solid Waste and Recycling Collection and Disposal

in accordance with the terms and conditions of said Contract, which is hereby referred to and made a part hereof as if fully set forth herein:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above bounden Principal shall well and truly keep, do and perform each and every, all and singular, the matters and things in said contract set forth and specified to be by said Principal kept, done and performed, at the times and in the manner in said contract specified, or shall pay over, make good and reimburse to the above named Obligee, all loss and damage which said Obligee may sustain by reason of failure or default on the part of said Principal so to do, then this obligation shall be null and void; otherwise shall remain in full force and effect.

NO SUIT, ACTION OR PROCEEDING by the Obligee to recover on this bond shall be sustained unless the same be commenced within two (2) years following the date on which Principal ceased work on said Contract.

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

Principal

By 

Pasquale N. Mascaro - President

LIBERTY MUTUAL INSURANCE COMPANY

By 

Alan R. Hein

Attorney-in-Fact

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 6768668

American Fire and Casualty Company
The Ohio Casualty Insurance Company

Liberty Mutual Insurance Company
West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Alan R. Hein; David B. Kane; David E. Kells, Jr.; Neil C. Donovan; R.H. Shepherd, Jr.; Robert J. Colman; William Patrick Pondok

all of the city of Fort Washington, state of PA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 27th day of October, 2014.



American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA
COUNTY OF MONTGOMERY

On this 27th day of October, 2014, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2017
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to the authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS - Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Gregory W. Davenport, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 17th day of March, 2015.



By: Gregory W. Davenport
Gregory W. Davenport, Assistant Secretary

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



LIBERTY MUTUAL INSURANCE COMPANY
FINANCIAL STATEMENT — DECEMBER 31, 2013

Assets		Liabilities	
Cash and Bank Deposits	\$1,118,180,550	Unearned Premiums	\$5,940,431,054
*Bonds — U.S Government	1,888,225,943	Reserve for Claims and Claims Expense	17,305,063,560
*Other Bonds	12,039,490,815	Funds Held Under Reinsurance Treaties	212,659,311
*Stocks	9,030,962,112	Reserve for Dividends to Policyholders	1,226,236
Real Estate	251,301,907	Additional Statutory Reserve	63,348,980
Agents' Balances or Uncollected Premiums	4,781,042,931	Reserve for Commissions, Taxes and	
Accrued Interest and Rents	149,855,386	Other Liabilities	5,826,683,629
Other Admitted Assets	<u>15,216,749,451</u>	Total	<u>\$29,349,412,770</u>
		Special Surplus Funds	\$55,686,852
		Capital Stock	11,250,000
		Paid in Surplus	7,898,288,167
		Unassigned Surplus	7,161,171,306
		Surplus to Policyholders	<u>15,126,396,325</u>
Total Admitted Assets	<u>\$44,475,809,095</u>	Total Liabilities and Surplus	<u>\$44,475,809,095</u>



* Bonds are stated at amortized or investment value; Stocks at Association Market Values.
The foregoing financial information is taken from Liberty Mutual Insurance Company's financial statement filed with the state of Massachusetts Department of Insurance.

I, TIM MIKOLAJEWSKI, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the foregoing is a true, and correct statement of the Assets and Liabilities of said Corporation, as of December 31, 2013, to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation at Seattle, Washington, this 20th day of March, 2014.

T. Mikolajewski

Assistant Secretary



COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT

CERTIFICATE OF AUTHORITY

Casualty

Effective Date: April 1, 2014

LIBERTY MUTUAL INSURANCE COMPANY

NAIC NO. 23043

HAS COMPLIED WITH THE REQUIREMENTS OF THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA RELATING TO ADMISSION IN SAID COMMONWEALTH FOR THE PURPOSE OF TRANSACTING INSURANCE BUSINESS IN PENNSYLVANIA AND THAT THE ABOVE NAMED COMPANY IS HEREBY AUTHORIZED TO TRANSACT THE BUSINESS OF:

Accident and Health 40 P.S. s 382(c)(2)	Auto Liability 40 P.S. s 382(c)(11)
Boiler and Machinery 40 P.S. s 382(c)(5)	Burglary and Theft 40 P.S. s 382(c)(6)
Credit 40 P.S. s 382(c)(7)	Elevator 40 P.S. s 382(c)(9)
Fidelity and Surety 40 P.S. s 382(c)(1)	Glass 40 P.S. s 382(c)(3)
Inland Marine and Physical Damage 40 P.S. s 382(b)(2)	Livestock 40 P.S. s 382(c)(10)
Mine and Machinery 40 P.S. s 382(c)(12)	Ocean Marine 40 P.S. s 382(b)(3)
Other Liability 40 P.S. s 382(c)(4)	Personal Property Floater 40 P.S. s 382(c)(13)
Property and Allied Lines 40 P.S. s 382(b)(1)	Water Damage 40 P.S. s 382(c)(8)
Workers Compensation 40 P.S. s 382(c)(14)	

FOR THE YEAR ENDING MARCH 31, 2015, IN ACCORDANCE WITH ITS CHARTER AND IN CONFORMITY WITH THE LAWS OF SAID COMMONWEALTH OF PENNSYLVANIA.



IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL, THE DATE AND YEAR FIRST ABOVE WRITTEN.

MICHAEL CONSEDINE
INSURANCE COMMISSIONER

EXHIBIT A

(See Bid Specifications)

EXHIBIT B

(See Mascaro Bid Submission)