

THIS CONTRACT, made this 1ST day of JANUARY, 2017,
between the **BOROUGH OF MIDLAND PARK**, a municipal corporation created
and existing under the laws of the State of New Jersey hereinafter referred to as
the "Borough" and **STERLING CARTING, INC.**, maintaining offices at 99 Sterling
Mine Road, Sloatsburg, New York, (hereinafter referred to as the "Contractor").

W I T N E S S E T H:

WHEREAS, the Governing Body of the Borough has deemed it more
advantageous to contract with an independent contractor for the collection and
disposal of solid waste and recyclable materials from the Borough than to provide
for such work with its own employees and equipment; and,

WHEREAS, the Governing Body of the Borough has, before the making of
this Contract, adopted specifications for the doing of such work in a sanitary and
proper manner.

NOW, THEREFORE, the Borough and the Contractor, intending to be
legally bound and in consideration of the promises contained herein agree as
follows:

1. The term of this Contract is for the period commencing January 1, 2017
and terminating December 31, 2021, all dates.
2. The Contractor will provide curbside solid waste/recycling collection and
disposal services for residential and municipal properties, and churches
within the Borough as set forth in the Specifications annexed and made a
part of this contract.
3. The Borough will pay the Contractor the total sum of 1,699,980
Dollars, for the performance of this Contract at the prices set forth in the
Bid Proposal of the Contractor, annexed hereto and made a part hereof
(Proposal Form par. 20) of this Contract at the prices set forth in the Bid
Proposal of the Contractor, annexed hereto and made a part hereof, for the

work actually performed. The Contractor shall be paid by the Borough in equal monthly installments by the 15th day of the month following the month in which such services have been rendered, upon the submission and approval of properly signed vouchers.

4. The Contractor shall provide solid waste collection/recycling service in the Borough **on the days of the week** and along the geographic boundaries as shown on the street map of the Borough in the Specifications, or in accord with all applicable schedules, **within the hours as provided in the Specifications**. The days of collection shall be changed if necessary, by the Borough in order to provide more efficient sanitary and effective service to the residents of the Borough. **The Borough Council of the Borough of Midland Park may, upon applications of the Contractor, and if good cause shall appear therefore, permit collections to be commenced and carried out during times other than hereinabove set forth (i.e. holidays, etc.).**

5. The Contractor will furnish all the materials and perform all of the work as described in the Specifications and Contract Documents, and the following shall be deemed a part of this Contract:

- a. Advertisement
- b. Instructions to Bidders
- c. Specifications
- d. Corporation or Partnership Forms
- e. Bid Form
- f. Consent of Surety
- g. Bid Bond
- h. Bidder's Affidavit
- i. Questionnaire
- j. This Contract
- k. Performance Bond
- l. Exhibits A and B
- m. All Addenda issued by the Borough Administrator prior to the receipt of bids
- n. Affirmative Action Affidavit & Certificate of Employee Information Report
- o. Insurance Certificates

In the event of any inconsistency between the terms, conditions and obligations of this Contract and the terms, conditions and obligations referred to and set forth in such Specification and Rules and Regulations, the provisions most favorable to the Borough of Midland Park and its residents and taxpayers shall be determinative of the Contractor's obligations hereunder.

6. All work performed under this Contract shall be done in a good and workmanlike manner. The Contractor shall see that its agents and employees shall render courteous and reasonably quiet service in the performance of their duties hereunder.

- 7.** Schedules of operation and regulations as shall be prescribed, from time to time, by the Borough Council or its duly authorized agent. The entire service shall be conducted and managed subject to, and in compliance with, all present or future ordinances and laws of the Borough, the Board of Health and the State Department of Environmental Protection and the provisions of the New Jersey Public Utilities Law (N.J.S.A. 48:2-1 et seq.) and the Rules and Regulations now or hereafter issued pursuant to such Public Utilities Law. Any and all permits required to be obtained from any Borough Board of Health or other municipal agency shall be obtained by the Contractor at his expense. The Contractor shall furnish all labor, material and equipment for the collection and disposal in a sanitary and proper manner, of solid waste mentioned and referred to in the Specifications and Contract Documents. The Contractor shall remove such solid waste from the Borough and dispose of them at an approved solid waste disposal facility in accordance with Bergen County solid Waste Management Plan or any waste flow order referred to in the Specifications and Contract.
- 8.** The Contractor and all sub-contractors shall be required to obtain Certificates of Insurance covering Workman's Compensation and Employer's Liability Insurance; Comprehensive Automobile Liability and Property Damage Insurance including contractual coverage All policies will be written with an acceptable company authorized to do business in the State of New Jersey. The insurance will be written not less than a period of one (1) year from the date of issue in such an amount as set forth in the Specifications. The Contractor will be required to renew said policies and furnish evidence thereof at least thirty (30) days prior to the date on which said renewal policies are to become effective.
- 9.** The Contractor shall deliver a Performance Bond in a sum not less than one hundred (100%) percent of the Contract for a one year period, to be renewed yearly, and in the form annexed hereto, and made in accordance with the sections entitled "PERFORMANCE BOND" of the Specifications and Instructions to Bidders. The Contractor shall renew the Performance Bond annually during the term of the Contract and file with the Borough Clerk the renewal of the Performance Bond at least ninety (90) days prior to the date upon which the Renewal Bond is to take Effect. The insurance or bonding company must have a rating of at least "A" from Best's Key Rating Guide.
- 10.** It is mutually agreed between the Borough and the Contractor that, in the event of any non-compliance of any terms of this Specification/Contract and/or default thereunder, the section entitled "Violation of Contract Requirements" shall be controlling. It is expressly agreed that the amount set forth as deductions therein are equitable and reasonable and does not

constitute a penalty to the Contractor if claimed equitable and reasonable and does not constitute a penalty to the Contractor if claimed by the Borough pursuant to the terms therein.

11. The Contractor shall not assign, sublet or subcontract the whole or any portion of this contract without prior written consent of the Borough Council.

12. Except as otherwise herein specified, and until further notice by the Borough to the Contractor, **the Borough Administrator of the Borough of Midland Park shall be the agent of the Borough which shall administer this Contract on behalf of the Borough** subject always to the Borough Council's right to supervise the administration of the Contract.

13. In the event that the resolution of the Borough Council of the Borough of Midland Park, adopted authorizing this Contract to be entered into by the Borough and the Contractor should, for any reason, be set aside or voided by a judgment or order of any court having jurisdiction of the matter, or by any order, judgment or determination of the New Jersey Public Utilities Commission or determination of the New Jersey Department of Environmental Protection, or in the event that this Contract should be found and determined in any action or proceeding by whomever brought to determine the validity of the execution of this Contract by the parties hereto (or any provision thereof) to have been improperly or illegally negotiated or executed, then this Contract shall be canceled, terminated, or modified, as the case may be, in accordance with the judgment, order or determination of such Court or such Public Utilities Commission.

14. REPRESENTATIONS AND WARRANTIES. The Contractor further represents and warrants:

A. That it is financially solvent and that it is experienced in and competent to perform the type of work and to furnish the materials, supplies and equipment to be performed or furnished by it;

B. That it is familiar with all Federal, State, County and municipal laws, ordinances and regulations which may in any way affect the work or those employed therein;

C. That the work required hereunder and in the Specifications to be done by it, can be safely done and used for the purposes for which it is intended, and that such work will not injure any person or damage any property.

D. That any subcontractor engaged by it will make the representations and warranties set forth in (A), (B) and (C)

15. RESPONSIBILITY OF CONTRACTOR. The Contractor shall take all of the responsibility of the work, shall bear all losses resulting to or on account of the amount or character of the work, or from unforeseen

circumstances or difficulties which may be encountered, and it shall assume the defense of and indemnify and save harmless the Borough, its officers and agents, from all claims of any kind arising from the performance of this Contract except claims for injuries to or death of employees of the Borough not due to negligence of the Contractor, or any subcontractor performing any portion of the work included in this Contract.

16. REGULATION OF SERVICE. All of the work shall be subject to such reasonable rules, schedule or operation, and regulations shall be prescribed from time to time by the Mayor and Borough Council or their duly authorized agent or committee. The Contractor shall observe and comply with all Federal and State laws rules and regulations, County rules and regulations, and local by-laws, ordinances, rules and regulations that affect the conduct of the work, those engaged or employed on the project, or the materials or equipment used. The Contractor shall indemnify and keep indemnified and save harmless the Borough, all of its respective officers, agents, servants or employees, against any claim, demand, suite, action, detriment, liability, loss, damage, cost and expenses, arising from or based on the violation of any such law, rule, regulation, by-law or ordinance, whether by himself or his employees. In the event a conflict arises as to the rules and regulations promulgated by the above governmental agencies, the contractor shall accept as controlling the rules and regulations specified by the Borough as being such. Said contractor shall submit its bid, taking into consideration the aforementioned as well as all proposed rules and regulations of the above-mentioned governmental agencies.

17. BEHAVIOR OF EMPLOYEES. The Contractor shall empty and replace all garbage cans with the least possible noise, and shall require all drivers and other employees engaged in the performance of this contract to refrain from the use of loud or boisterous language, loud radios or other amplification, and from any other uncalled for conduct which may cause inconvenience or discomfort to the residents of the Borough. Since collections are to be made during the early morning hours, the contractor shall ensure that the work is performed with the minimum amount of noise possible, so that the peace and quiet of the neighborhoods will not be disturbed. In addition, after the contents of a receptacle have been deposited in the truck by the contractor's employee, the receptacle shall be thereafter returned to its original location on the sidewalk with the cover placed upon the receptacle.

The Contractor shall be liable for damage caused by its agents, servants, or employees to any building or property, or for any loss of any nature whatsoever sustained by any individuals as the result of any act of omission or commission on the part of the contractor, his agents, servants or employees. If the Contractor fails to satisfactorily settle a claim within a reasonable length of time after being notified, the Mayor and Borough

Council may pay the claim and deduct the amount thereof from the payment due to the Contractor.

18. NO WAIVER OF LEGAL RIGHTS. The Borough shall not be precluded or estopped by reasons of its forbearance of any requirement or provisions of this Agreement at any time either before or after the completion and acceptance of the work and payment therefore, and the Borough shall not be precluded or estopped from demanding from the Contractor and its surety such damages as it may sustain by reason of its failure to comply with the terms and conditions of the specifications and contract.

19. RIGHT OF BOROUGH TO DECLARE CONTRACTOR IN DEFAULT.

The Borough has the right to declare the contractor in default:

- A.** If the Contractor shall fail within the time required to begin the work to be done under this contract;
- A.** If the work to be done under this contract shall be abandoned;
- B.** If the contractor shall be adjudged bankrupt or makes an assignment for the benefits of creditors;
- C.** If a receiver or liquidator shall be appointed for the contractor or for any of its property and shall not be dismissed within twenty (20) days from such appointment, or the proceedings in connection therewith shall not be dismissed within twenty (20) days after such appointment, or the proceedings in connection therewith shall not be stayed on appeal within the said twenty (20) days;
- E.** If the contractor shall fail or refuse to regard laws and ordinances and such orders as may from time to time be given by the Borough;
- F.** If the contractor shall refuse or fail, after notice from the Borough, to supply enough properly skilled workers or proper material;
- G.** If the contractor shall violate any of the provisions or covenants of this contract or shall not perform the same in good faith in accordance with the terms thereof;
- H.** If the contractor shall refuse or fail to prosecute the work or any part thereof with such diligence as will ensure its completion within the period herein specified (or any duly authorized extension thereof), or shall fail to complete the work within said period.
- I.** If the contractor shall fail to make prompt payment to persons supplying labor or materials for the work;
- J.** If the contractor shall assign or sublet the work otherwise than as herein specified.

20. The Contractor shall, promptly upon the execution of the within Contract, cause a copy of the same to be filed with the New Jersey State

Public Utilities Commission and shall simultaneously furnish to the Borough of Midland Park proof of such filing of the Contract. thereof. The Contractor agrees to comply with the provisions of said statute and agrees that upon its failure to comply with the provisions of said statute, said contract shall be voidable at the instance of the Borough.

21. AFFIRMATIVE ACTION REQUIREMENTS.

A. All bids shall comply with the act relating to Affirmative Action Plan as amended per *Chapter 127 P.L. 175* and the discriminating in the hiring of persons who are qualified and available to perform work to which the contract by reason of race, creed, color, national origin or ancestry, or sex in accordance with *N.J.S.A. 10:2-1* through *10:2-4*, with all amendments.

B. The Contractor shall be required to submit, if he has not already done so, one of the following:

1. A photocopy of their federal letter of Affirmative Action Plan approval;

or

2. A photocopy of their certificate of Employee Information Report;

or

3. A completed Affirmative Action Employee Information Report (form AA302) or any amendments thereto.

C. The Mandatory Affirmative Action Language for service Contracts is set forth on Schedule A attached hereto and is incorporated herein.

D. Contractor must also be registered with the Department of Labor and is required to comply with the requirements of *Public Law 1999, C238*, "The Public Works Contractor Registration Act", *N.J.S.A. 34:11-56.48, et seq.*, which became effective on April 11, 2000 and to submit proof such compliance.

E. Additionally, if not already submitted, Contractor must submit proof of its own business registration in accordance with *P.L. 2004, c.57, N.J.S.A. 52:32-44*.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals or caused these presents to be signed by their proper corporate officers and caused their proper corporate seals to be hereto affixed as of the day and year first above mentioned.

BOROUGH OF MIDLAND PARK

BY: Harry Shortway Jr
Harry Shortway, Jr., Mayor

ATTEST:

Adeline M. Hanna
Adeline M. Hanna, RMC
Borough Clerk

STERLING CARTING, INC.

John C. DiBella
Contractor

BY: Ellessa DiBella
v. President

ATTEST:

Stefano DiBella
Secretary

EXHIBIT A

P.L. 1975, C. 127 (N.J.A.C. 17:27)

MANDATORY AFFIRMATIVE ACTION LANGUAGE

PROCUREMENT, PROFESSIONAL AND SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation;

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the Americans With Disabilities Act.

The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).