

INTERMUNICIPAL AGREEMENT FOR
LEASE OF THE SRMC ELECTRICAL PLANT AND
STEAM SALE AND PURCHASE

This Intermunicipal Agreement for the Lease of the Susquehanna Resource Management Complex Electrical Plant and Steam Sale and Purchase (this “Agreement”) is entered into as of the ____ day of _____, 2013, by and between the **LANCASTER COUNTY SOLID WASTE MANAGEMENT AUTHORITY** (“LCSWMA”), a Pennsylvania municipal authority, and the **BOROUGH OF COLUMBIA** (the “Borough”), a Pennsylvania borough.

Background. LCSWMA owns an 800 ton-per-day, three unit, mass burn, waste-to-energy facility (the “Susquehanna Resource Management Complex” or “SRMC”) located in the City of Harrisburg and Swatara Township, Dauphin County, Pennsylvania. For purposes of this Agreement the SRMC has two major components: (1) burners which incinerate waste to create heat used to generate steam (the “Mass Burn Facility”) and (2) a turbine which uses the steam to generate electricity for sale (the “Electrical Plant”).

The Borough desires to lease from LCSWMA, and LCSWMA desires to lease to the Borough, the Electrical Plant for the Borough’s use to generate and sell electricity and capacity consistent with the Borough’s obligations under the Intergovernmental Power Purchase and Sale Agreement (the “DGS PPA”) between the Borough and the Department of General Services of the Commonwealth of Pennsylvania. The DGS PPA is attached to this Agreement as **Exhibit A**. The Borough desires to purchase, and LCSWMA desires to sell, all the steam generated at the Mass Burn Facility for the purpose of the Borough’s operation of the Electrical Plant.

Capitalized terms when used in this Agreement shall have the meaning set forth in this Agreement.

With the foregoing Background paragraphs incorporated by reference as a material part of this Agreement, and for and in consideration of the mutual promises set forth below, the Parties agree, with the intention of being legally bound, as follows:

1. Lease of Electrical Plant.

(a) The assets constituting the Electrical Plant (the “Leased Assets”) shall include all the assets necessary to the operation of the Electrical Plant and shall include those assets set forth on the Schedule of Leased Assets attached hereto as **Exhibit B**. Notwithstanding the foregoing, the Leased Assets shall not include the assets set forth on the Schedule of Excluded Assets attached hereto as **Exhibit C**.

(b) In consideration of the rents and covenants to be paid and performed by the Borough and upon the terms and conditions specified in this Agreement, beginning

on the Commencement Date, for the Initial Term, LCSWMA leases the Leased Assets, to the Borough, and the Borough leases the Leased Assets from LCSWMA.

(c) The rent for the Leased Assets shall be Sixty-Five Thousand Dollars (\$65,000) per month (the “Plant Rent”), payable in arrears per the terms of Section 5 of this Agreement. The Plant Rent shall be paid from the Escrow Account as defined in Section 5 of this Agreement. The Borough’s obligation to pay the Plant Rent shall be non-recourse except as to the Escrow Account.

(d) LCSWMA shall retain rights in and to the Leased Assets to the extent necessary for LCSWMA to maintain and operate the SRMC and to meet all requirements imposed upon LCSWMA and the SRMC in accordance with all applicable laws. Operation of the Leased Assets shall not unreasonably interfere with any other operations of the SRMC.

(e) The Leased Assets shall be used solely for the purpose of the generation of electricity and capacity, using the Steam generated by the Mass Burn Facility, for resale consistent with the DGS PPA. All uses of the Leased Assets must also be in accordance with the Borough’s obligations under this Agreement, including, without limitation, its obligations under Section 4.

(f) LCSWMA shall pay all taxes, assessments, levies, water and sewer rents, tapping and connection fees and other charges, license and permit fees, charges for all utilities serving the SRMC, and all other governmental charges, general and special, ordinary and extraordinary, which are, at any time during the term hereof, imposed or levied upon the SRMC, whether or not applicable to the Leased Assets. LCSWMA shall be responsible for the costs of the repair, replacement and maintenance of the Leased Assets.

(g) LCSWMA shall maintain at its sole cost and expense insurance or a reasonable policy of self-insurance with respect to the SMRC, whether or not applicable to the Leased Assets. The Borough shall not be entitled to any recovery, in whole or in part, obtained by LCSWMA from insurance proceeds related to the SRMC, whether or not applicable to the Leased Assets.

(h) If the Leased Assets, or a substantial part thereof, is taken by or under the threat of the exercise of the power of eminent domain, or if a portion thereof is taken and the remainder of the Leased Assets are unsuitable for continued use consistent with this Agreement, or if the Leased Assets are damaged or destroyed by fire or other casualty and such damage or destruction cannot be repaired or restored within one hundred twenty (120) days, LCSWMA shall deliver to the Borough, within ninety (90) days after the occurrence of such condemnation or casualty, LCSWMA’s election to (i) terminate this Agreement or (ii) rebuild, repair and restore the Leased Assets. If LCSWMA shall elect to rebuild, repair and restore the Leased Assets, the Borough’s

obligations under this Agreement shall continue with appropriate abatement or adjustment.

(i) The Borough may not sublet any of the Leased Assets or assign its interest under this Agreement without the prior written consent of LCSWMA. The Borough shall not mortgage or otherwise encumber this Agreement and/or its interests under this Agreement, nor shall the Borough mortgage or pledge any of the Leased Assets.

2. Steam Sale and Purchase.

(a) Commencing on the effective date of the Lease set forth above in Section 1, LCSWMA will make available to the Borough at the Electrical Plant up to the maximum steam output of the Mass Burn Facility (the “Steam”) and the Borough will purchase the Steam at a rate of Two Dollars and Seven Cents per one thousand pounds (\$2.07/1,000 lbs.) of steam (the “Steam Fee”).

(b) Steam provided to the Electrical Plant shall be continuously metered at the point of delivery between the Mass Burn Facility and the Electrical Plant. The meters shall be installed, paid for, and maintained by LCSWMA. The meters shall meet all applicable industry standards. Nothing contained herein shall preclude the Borough from installing its own meters for the purpose of verifying LCSWMA’s meter reads.

(c) LCSWMA shall record on an hourly basis the amount and rate of steam withdrawn, and shall determine the applicable Steam Fees on a monthly basis.

(d) The Steam Fees shall be paid from the Escrow Account as defined in Section 5 of this Agreement. The Borough’s obligation to pay the Steam Fees shall be non-recourse except as to the Escrow Account.

3. Term. The initial term of this Agreement shall be for a period of twenty (20) years date (the “Initial Term”) on the date LCSWMA acquires the SRMC (the “Commencement Date”), and ending on the 20th anniversary of the Commencement Date. Subsequent to the Initial Term, this Agreement shall automatically renew for additional five (5) year renewal periods (each a “Renewal Term”), unless written notice of an intent not to renew this Agreement is provided by either Party to the other not less than two (2) years prior to the start of a Renewal Term. In the event notice of non-renewal is provided consistent with this Section 3, this Agreement shall end on the last day of the then-effective Initial Term or Renewal Term.

4. Electricity Generation and Sale. The Borough will or has:

(a) entered into a Management and Professional Services Agreement with Covanta to operate the Electrical Plant (the “Electrical MPSA”) in the form attached as **Exhibit D** for a service fee paid in accordance with Section 5 (LCSWMA’s

Management and Professional Services Agreement with Covanta to operate the Mass Burn Facility is attached as **Exhibit E**);

(b) become a PJM Interconnection, L.L.C. (“PJM”) member and obtain an Electrical Generation Supplier (“EGS”) license from the Pennsylvania Utility Commission, with the costs of such membership and license to be paid by LCSWMA;

(c) enter into contract (the “EM Contract”) in the form attached as **Exhibit F** with and utilize a third party (the “Electric Manager”) as provided in Section 2.2(b) of the DGS PPA to administer the transmission, invoicing and related Borough services under the DGS PPA for a reasonable administration fee; and

(d) enter into the DGS PPA with the Department of General Services of the Commonwealth of Pennsylvania (“DGS”).

5. Payments and Escrow.

(a) LCSMWA shall establish a bank deposit account in the name of LCSWMA and the Borough (the “Escrow Account”). LCSWMA may select the Escrow Account bank subject to the requirements that the bank has a branch in Lancaster County, Pennsylvania and is a legally permissible depository for Borough funds. LCSWMA will provide the Borough with a monthly statement of all deposits into the Escrow Account and all payments from the Escrow Account.

(b) All payments by DGS under the DGS PPA will be paid directly into the Escrow Account. The Borough hereby irrevocably assigns its rights to payments to be received under the DGS PPA to the Escrow Account.

(c) The Escrow Account shall be used to pay all obligations to the Borough arising from this Agreement, the DGS PPA, or otherwise relating to the Electrical Plant as follows. LCSWMA will authorize monthly payments from the Escrow Account in the following order of priority (“Priority Order”): (i) to the extent not otherwise paid by DGS, payments due under the EM Contract; (ii) payments required under the Electrical MPSA; (iii) Four Thousand One Hundred Sixty Seven Dollars and Sixty Seven Cents (\$4,167.67) to the Borough; (iv) Plant Rent to LCSWMA; and (v) Steam Fees to LCSWMA.

(d) In the event that the Escrow Account, in any give month, contains insufficient funds to pay all of the amounts set forth in the preceding Section 5(c), then payments shall be made in the Priority Order and any unpaid amounts shall be carried over to the next month. All unpaid amounts, whether applicable to a particular month or carried over from a previous month, shall be subject to be paid, to the extent Escrow Account Funds are available, in the Priority Order. The Borough shall not be liable for

any payments due under the EM Contract, payments required under the Electrical MPSA, Plant Rent, or Steam Fees which were not paid from the Escrow Account.

(e) In the event that insufficient funds remain in the Escrow Account at the end of any twelve (12) month period during the term of this Agreement to meet the Fifty Thousand Dollar (\$50,000) annual obligation due to be paid to the Borough, it shall be the responsibility of LCSWMA to ensure that the difference between this obligation and the amounts paid to the Borough under Sections 5(c) and (d), above, is otherwise satisfied.

(f) Funding and maintaining the Clawback Account, as that term is defined in the DGS PPA, shall be the responsibility of LCSWMA and will not be paid from the Escrow Account.

6. Insurance. LCSWMA and the Borough each shall maintain for the duration of this Agreement commercial general liability insurance that covers their respective liability and obligations hereunder, including property damage and personal injury. The liability limits under these policies shall be at least One Million Dollars (\$1,000,000) per occurrence, with a combined single limit for bodily injury and property damage liability. LCSWMA and the Borough shall be permitted to satisfy any obligation to provide or maintain insurance coverage by a commercially reasonable program of self-insurance. With respect to any policy maintained by or on behalf of the Borough related to or arising from the operation of the Electrical Plant, LCSWMA shall be named as an insured. The cost of the Borough's insurance, to the extent separate from the Borough's other insurance coverage, shall be paid by LCSWMA.

7. Conditions to this Agreement. The Commencement Date under this Agreement is subject to the fulfillment of the following conditions precedent:

(a) LCSWMA shall have acquired the SRMC;

(b) The Borough shall have taken all the actions contemplated by Section 4 of this Agreement; and

(c) LCSWMA shall have agreed to indemnify and hold harmless the Commonwealth from any and all costs of operation, or liabilities associated with, the Electrical Plant or Borough. The parties do not anticipate that any transfer tax will be incurred by review of this Agreement, but any transfer tax due shall be the responsibility of LCSWMA.

8. Covenants. During the Initial Term and any Renewal Term:

(a) The Borough shall maintain, comply with and not terminate the DGS PPA, the Electrical MPSA, the EM Contract, a PJM membership, and an EGS license. All costs of licenses and permits shall be paid either from the Escrow Account or directly

by LCSWMA. LCSWMA shall pay the Borough actual legal expenses incurred by the Borough in connection with this Agreement, or incurred with respect to any claims arising from this Agreement. LCSWMA shall reimburse the Borough for all license or permit fees applicable to the Electrical Plant and the sale of Electricity. Legal expenses in connection with the drafting of this Agreement and in connection with licenses and permits are estimated to be between Thirteen Thousand Dollars (\$13,000) and Sixteen Thousand Dollars (\$16,000) , exclusive of any additional costs necessary to litigate or defend the license application before the Pennsylvania Public Utility Commission.

(b) LCSWMA shall provide DGS with LCSWMA's guaranty of all obligations of the Borough to DGS.

(c) LCSWMA shall continue to own and operate the SRMC.

(d) In the event LCSWMA elects to amend, modify or terminate the LCSWMA Management and Professional Services Agreement, the Borough will cooperate with LCSWMA in entering into a new Electrical MPSA as appropriate.

(e) In event DGS selects a new Electricity Provider under Section 2.2(b) of the DGS PPA, the Borough will cooperate with DGS in entering into a new EM Contract as appropriate.

(f) Any environmental, energy or similar credits arising under this Agreement or the DGS PPA shall be for the benefit of LCSWMA.

(g) In the event DGS defaults under the DGS PPA, the Borough will, so long as indemnified by LCSWMA, cooperate fully with LCSWMA in enforcing the rights of the Borough and LCSWMA under the DGS PPA, as provided in the DGS PPA, and upon request shall assign the Borough's rights under the DGS PPA to LCSWMA.

(h) Except to the extent caused by a material breach by the Borough of this Agreement, LCSWMA shall protect, defend, indemnify and hold harmless the Borough and its agents, officers, directors, contractors, employees, parents, subsidiaries, successors and assigns from any claims arising from this Agreement, including, without limitation, claims related to or arising from: (i) the operation of the Electrical Plant; (ii) the Borough's obligations under the Electrical MPSA; (iii) the Borough's obligations pursuant to the DGS PPA; (iv) failures or other work stoppages of the SRMC; (v) infringement or violation of any rights relating to any intellectual property interests used in the operation of the Electrical Plant; and (vi) environmental compliance, claims, and losses.

(i) The Borough shall protect, defend, indemnify and hold harmless LCSWMA and its agents, officers, directors, contractors, employees, parents,

subsidiaries, successors and assigns from and against any claims arising from the Borough's material breach of this Agreement.

9. Default.

(a) After thirty (30) days prior written notice, with a reasonable opportunity to cure, LCSWMA may, in addition to its other rights under this Agreement, declare a Borough Default by written notice to the Borough, for any of the following reasons:

- (i) material breach of the DGS PPA by the Borough;
 - (ii) failure to maintain any licenses or permits required to provided Electricity to the Commonwealth;
 - (iii) insolvency or bankruptcy of the Borough;
 - (iv) assignment made for the benefit of creditors by the Borough;
- or
- (v) material breach of any provision of this Agreement.

(b) After thirty (30) days prior written notice, with a reasonable opportunity to cure, the Borough may, in addition to its other rights under this Agreement, declare a LCSWMA Default by written notice to LCSWMA, for any of the following reasons:

- (i) failure to make payment consistent with Section 5; or
- (ii) material breach of any provision of this Agreement.

(c) The rights and remedies of the parties provided in this Section 9 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

(d) The failure of either party to exercise any rights or remedies provided in this Section 9 shall not be construed to be a waiver by the party of its rights and remedies in regard to such Default or any succeeding Default.

10. Termination.

(a) LCSWMA may terminate this Agreement: (i) upon ninety (90) days prior written notice after a Borough Default; or (ii) upon one hundred twenty (120) days prior written notice for its convenience if LCSWMA, in its sole discretion, determines termination to be in its best interests. In the event LCSWMA elects to terminate this Agreement for convenience pursuant to this Section 10(a)(ii), LCSWMA shall take

reasonable actions to minimize any losses sustained by the Borough as a result of such termination, including, without limitation, negotiating in good faith with Covanta and DGS regarding the Borough's obligations related to this Agreement.

(b) The Borough may terminate this Agreement upon ninety (90) days prior written notice with an opportunity to cure after a LCSWMA Default.

11. Notice. Notices to the Parties shall be given as follows:

To LCSWMA:

James D. Warner, CEO
Lancaster County Solid Waste Management Authority
1299 Harrisburg Pike, P.O. Box 4425
Lancaster, PA 17604

With a copy to:

Alexander Henderson, III, Esquire
Hartman Underhill & Brubaker, LLC
221 East Chestnut Street
Lancaster, PA 17602

To the Borough:

Sam Sulkowski
Borough of Columbia
308 Locust Street
Columbia, PA 17512

12. Miscellaneous.

(a) Immunity. Nothing in this Agreement shall be deemed a direct or indirect waiver of or limitation to any sovereign or governmental immunity, in any respect, applicable to LCSWMA or the Borough or impose liability, directly or indirectly, on LCSWMA or the Borough from which it would otherwise be immune under applicable law.

(b) Force Majeure. Neither LCSWMA nor the Borough shall be responsible for delays or failures in performance resulting from matters beyond their reasonable control, including, without limitation, acts of God, strikes, lockouts, labor disruptions, riots, war, terrorist strikes, utility or supply interruptions, vandalism, epidemics, changes to governmental regulations, fire, flood or other casualty, communication line failures, power failures or surges, earthquakes, etc.

(c) Independent Contractor. In performing the obligations required by this Agreement, the Borough will act as an independent contractor and not as an employee or agent of LCSWMA.

(d) Entire Agreement and Modification. This Agreement constitutes the full and entire understanding and agreement between the parties hereto with regard to the subject matter hereof, and supersedes all prior agreements, understandings, inducements or conditions, express or implied, oral or written, except as contained herein. LCSWMA and the Borough further agree that the Agreement shall not be modified, except by a written instrument signed by both LCSWMA and the Borough. All exhibits attached to the Agreement are incorporated by reference and are a part hereof.

(e) Cost of Enforcement. If either LCSWMA or the Borough is required to engage in any proceedings, legal or otherwise to enforce its rights under the Agreement, the prevailing party shall be entitled to recover from the other, in addition to any other sums due, its reasonable attorneys' fees, costs, and disbursements involved in said proceedings.

(f) Notices. All notices and other communications under the Agreement shall be in writing and shall be deemed to have been given one (1) day after being sent by reputable overnight courier or sent by fax or email to the party at the address (or fax number) such party may indicate in writing.

(g) Survival. The provisions of the Agreement imposing restrictions on the Borough shall survive the termination or expiration of this Agreement.

(h) Successors and Assigns. The Agreement shall inure to the benefit of and be binding upon LCSWMA and the Borough and their respective successors and permitted assigns. The Agreement may not be assigned by either Party without the express written approval of the other Party.

(i) Severability. If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect and in no way be affected, impaired or invalidated.

(j) Governing Law and Jurisdiction. The Agreement and its validity, interpretation, performance, and enforcement shall be governed by the internal laws of the Commonwealth of Pennsylvania, notwithstanding any conflict-of-law rules. Any disputes hereunder shall be litigated exclusively in the state or federal courts having jurisdiction over such disputes in Lancaster County, Pennsylvania, by non-jury trial, and LCSWMA and the Borough each hereby agree to such exclusive jurisdiction and waive all rights to a jury trial. The Borough and LCSWMA also each hereby agree that all service of process, including any instrument to initiate suit, shall be effective if served in accordance with Pennsylvania law.

(k) Waivers and Amendments. No waiver by any party of any condition, or the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition. No provisions of the Agreement may be changed or modified except by a written instrument signed by LCSWMA and the Borough.

(l) Interpretation. Headings contained in the Agreement are for convenience of reference only and are not to be considered in construing the respective language of those documents. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context indicates is appropriate. The word “including” when used herein is intended to be exemplary and inclusive of the word or phrase it modifies, and is not intended to be exclusive or limiting.

(m) Mutual Drafting. Both the Borough and LCSWMA have been represented or have had the opportunity to be represented by counsel in connection with the Agreement, and thus the Agreement shall not be construed against either party by reason of such party or its counsel having drafted the Agreement.

(n) Counterparts. The Agreement may be executed in several counterparts of which shall be deemed an original part which together shall constitute one and the same instrument.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed as of the date first above written.

LANCASTER COUNTY SOLID WASTE
MANAGEMENT AUTHORITY

Date: _____

By: _____

BOROUGH OF COLUMBIA

Date: _____

By: _____

Exhibits:

- A. DGS PPA
- B. Schedule of Leased Assets
- C. Schedule of Excluded Assets
- D. Electrical MPSA
- E. LCSWMA Management and Professional Services Agreement
- F. Electric Manager Contract

EXHIBIT A – DGS PPA

EXHIBIT B – SCHEDULE OF LEASED ASSETS

[diagram]

EXHIBIT C – SCHEDULE OF EXCLUDED ASSETS

The Mass Burn Facility and any assets of the SRMC not shown on Exhibit B.

EXHIBIT D -- Electrical MPSA

To Follow

EXHIBIT E – LCSWMA Management and Professional Services Agreement

To Follow

EXHIBIT F – Electric Manager Contract

To Follow

EXHIBIT G -- Administrator Contract

To Follow