

RESOLUTION NO. 95 OF 2018

Moved by: \_\_\_\_\_



Resolution approving the Third Addendum to Assignment, Amendment and Restatement of Municipal Waste Disposal Agreement between the City of Harrisburg and the Lancaster Solid Waste Management Authority.

**WHEREAS**, the City of Harrisburg (the "City") and the Lancaster County Solid Waste Management Authority ("LCSMWA") are parties to an Assignment, Amendment and Restatement of Municipal Waste Disposal Agreement (the "Disposal Agreement"), approved by Resolution 27 of 2013, on September 16, 2013; an

**WHEREAS**, an Addendum to the Assignment, Amendment and Restatement of Municipal Waste Disposal Agreement (the "First Addendum") was agreed upon and approved by Resolution 43 of 2013, on November 11, 2013;

**WHEREAS**, a Second Addendum to Assignment, Amendment and Restatement of Municipal Waste Disposal Agreement (the "Second Addendum") was agreed upon and approved by Resolution 59 of 2013; and

**WHEREAS**, the foregoing Agreements to arose in relation to transfer the ownership and operation of the Harrisburg Resource Recovery Facility (RRF) from The Harrisburg Authority (THA), now known as Capital Region Water (CRW), to LCSWMA, in accordance the judicially approved terms of Agreements entered under an Act 47 Recovery Plan in the course of Receivership, undertaken as a necessary element of the global financial recovery of the City of Harrisburg (the "City") under The Harrisburg Strong Plan; and

**WHEREAS**, the prior Addendums to the Disposal Agreement provided mechanisms to provide financial security to LCSWMA at a time when historical defaults on the payment of Revenue Bonds, General Obligation Bonds and Guaranty Agreements had occurred over several years directly related to the RRF; and

**WHEREAS**, the City and LCSWMA have agreed to a Third Addendum to the Assignment, Amendment and Restatement of Municipal Waste Disposal Agreement (the "Third Addendum"), which provides for the return of the sum of \$850,000 to the City from funds

provided by the City as payment security and to otherwise continue the maintenance of financial security for the City's timely payment of disposal fees to LCSWMA, a true and correct copy thereof being attached hereto as Exhibit A; and

**WHEREAS**, City Council has determined that approval of the Third Addendum to be in the best interest of the City and its ratepayers.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG, PENNSYLVANIA** that a that the Third Addendum is hereby approved and authorized by the City Council, which shall be substantially in the form attached hereto as Exhibit "A," subject to such non-material changes, insertions, or omissions as may be approved by the City signatories and the City Solicitor, and such execution shall be conclusive evidence of such approval in order to fulfill the intent of the Agreement.

**BE IT FURTHER RESOLVED** that the Mayor, City Controller, City Treasurer, Business Administrator, City Solicitor and all other appropriate City officials are authorized, directed and instructed to take all steps necessary or appropriate to effectuate the purposes of this Resolution.

I second this Resolution Ben J Allatt

Passed the City Council December 18, 2018

Walter D. Williams  
President of City Council

Attest [Signature]  
City Clerk

YEAS	NAYS
<input checked="" type="checkbox"/> MR. ALLATT	
<input checked="" type="checkbox"/> MS. BOWERS	
<input checked="" type="checkbox"/> MS. DANIELS	
<input checked="" type="checkbox"/> MS. GREEN	
<input checked="" type="checkbox"/> MR. MADSEN	
<input checked="" type="checkbox"/> MR. MAJORS	
<input checked="" type="checkbox"/> MS. WILLIAMS	
Yeas <u>7</u>	
Nays <u>0</u>	

Approved

Returned to City Council with objections

# **Exhibit "A"**

**THIRD ADDENDUM TO**  
**ASSIGNMENT, AMENDMENT AND RESTATEMENT OF**  
**MUNICIPAL WASTE DISPOSAL AGREEMENT**

THIS THIRD ADDENDUM (this "Third Addendum") to the Assignment, Amendment, and Restatement of Municipal Waste Disposal Agreement between the City of Harrisburg and the Lancaster County Solid Waste Management Authority (the "Disposal Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Harrisburg (the "City"), a Third Class City of the Commonwealth of Pennsylvania, and the Lancaster County Solid Waste Management Authority ("LCSWMA"), a municipal authority incorporated under the Municipality Authorities Act.

Background. By Resolution 27-2013, City Council on September 16, 2013 approved the Disposal Agreement. Section 4.04(c) of the Disposal Agreement provided that: (i) LCSWMA would create a segregated Deposit Account (the "Deposit Account") and that the City would ensure that at all times the Deposit Account contained a minimum balance of One Million Dollars (\$1,000,000); and (ii) the City would pledge and grant LCSWMA a continuing security interest in the Parking Revenues to secure the City's obligations to LCSWMA.

In lieu of providing a pledge of the Parking Revenues, by Resolution No. 43-2013 the Council of the City on November 11, 2013 approved an Addendum to the Disposal Agreement (the "First Addendum"). The First Addendum contemplated that, in lieu of the security set forth in Section 4.04(c) of the Disposal Agreement, under Section 2(b)(i) of the First Addendum the City would transfer to a Sanitation Trust Account maintained by The Harrisburg Authority (now Capitol Region Water (the "THA Trust Account") a sum not less than an amount (the "Transfer Amount") equal to approximately two months of municipal waste disposal fees, and that under Section 2(b)(ii) of the First Addendum, City sanitation fee collections would be deposited into a "Lockbox Account" and then transferred to the THA Trust Account, from which LCSWMA's City disposal fees and the City's collection fees would be paid (the "Lockbox Arrangement").

The parties intended to implement the First Addendum by entering into a Pledge and Trust Account Agreement (the "Pledge") with a financial institution prior to the Acquisition Date. Until the Pledge and Lockbox Arrangement could be put into effect, in lieu of depositing the Transfer Amount (approximately \$950,000) into the THA Trust Account plus depositing sanitation fees into a Lockbox Account, the City and LCSWMA on December 17, 2013 entered into a Second Addendum.

Under the Second Addendum LCSWMA created the Deposit Account contemplated by Section 4.04(c) of the Waste Disposal Agreement and the City would deposit \$1,350,000 in the Deposit Account as security for the City's obligations to LCSWMA under the Disposal Agreement. The Second Addendum provided that the City would pay LCSWMA's tip fees as required by the Disposal Agreement from the general accounts of the City. LCSWMA would draw from the Deposit Account only if the City defaults under the Disposal Agreement. The City now desires not to create the Sanitation Fee Trust Account nor the Pledge contemplated by the Second Addendum.

NOW, THEREFORE, with the Disposal Agreement, the First Addendum, the Second Addendum and the foregoing Background incorporated by reference, and intending to be legally bound, the parties deem it appropriate to implement and fulfill the Disposal Agreement, the First Addendum and the Second Addendum, and for the City and LCSWMA to execute this Third Addendum to the Disposal Agreement as follows:

1. LCSWMA shall maintain the Deposit Account contemplated by Section 4.04(c) of the Waste Disposal Agreement.

2. In exchange for the City's agreements under this Third Addendum, LCSWMA will on or before December 31, 2018, forward \$850,000 to the City from the Deposit Account, which will leave a balance of \$500,000 in the Deposit Account.

3. The City shall at all times until the End Date maintain a minimum deposit \$500,000 in the Deposit Account as security for the City's obligations to LCSWMA under the Disposal Agreement. Upon thirty (30) days prior written notice, with opportunity to cure, LCSWMA may apply funds from the Deposit Account to cure overdue Disposal Agreement obligations of the City to LCSWMA, including but not limited to Tipping Fees and, if any, Shortfall Fees. Upon such application of funds, the City shall, within fifteen (15) days of the date of the application of funds, replenish the Deposit Account.

4. The City has imposed and collected, and shall at all times until the End Date continue to, impose and collect sanitation fees sufficient to pay all costs of collection, transport and disposal of all municipal solid waste generated within the City of Harrisburg, and collected by the City of Harrisburg, at the Susquehanna Resource Management Complex (the "SRMC").

5. The City has required, and shall at all times until the End Date continue to require, by ordinance that all municipal solid waste generated within the City be disposed at the SRMC in accordance with the Dauphin County Solid Waste Management Plan.

6. The City has defended, and shall at all times until the End Date continue to defend, the municipal solid waste disposal system described above.

7. The City has paid, and shall continue at all times until the End Date continue to pay, all obligations of the City under the Disposal Agreement when and as due.

8. If the City fails to comply with the requirements of this Third Addendum during the term of the Disposal Agreement, the City shall, within 45 days of a written demand by LCSWMA, transmit a payment of \$850,000 to LCSWMA for immediate deposit in the Deposit Account until such time as the City complies with the requirements of the Second Addendum.

9. Except as specifically provided in this Third Addendum, all terms and conditions of the Disposal Agreement, as previously amended, shall remain in full force and effect. All terms defined in the Disposal Agreement used in this Third Addendum, shall be defined as defined in the Disposal Agreement.

IN WITNESS WHEREOF, the City and LCSWMA have caused this Third Addendum to be executed in their respective names, have caused their respective corporate seals to be affixed to this Third Addendum, have caused this Third Addendum to be attested, all by their duly authorized officers and representatives, and have caused this Third Addendum to be dated as of the date and year first written above.

CITY OF HARRISBURG:

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Controller

Attest: \_\_\_\_\_  
President, City Council

APPROVED AS TO FORM & LEGALITY:

\_\_\_\_\_  
City Solicitor

LANCASTER COUNTY SOLID WASTE  
MANAGEMENT AUTHORITY

Attest: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Chair

**INTER**

**OFFICE**

# MEMO

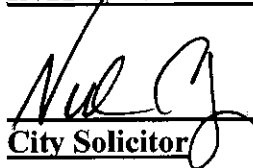
To: HARRISBURG CITY COUNCIL  
From: Kirk Petroski, City Clerk  
LEGISLATIVE APPROVAL FORM

Date:

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2018      RESOLUTION NO. -2018

THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR'S OFFICE ON:

  
\_\_\_\_\_  
City Solicitor

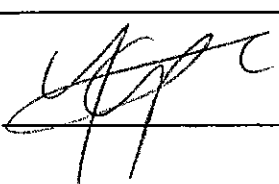
Nov 20, 2018  
\_\_\_\_\_  
Date

Requested by Department/Bureau: BUSINESS ADMINISTRATION

Department/Bureau Contact Person: MARC WOOLLEY

For Action on or before:

The attached was received in the Office of the City Clerk for introduction on

\_\_\_\_\_  
Received by: 

Date: 11-20-18