

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT, dated as of the ____th day of December, 2013, (the "Reimbursement Agreement"), among the **COUNTY OF DAUPHIN**, Pennsylvania, a third class county and a municipal corporation of the Commonwealth of Pennsylvania (the "County") and the **LANCASTER COUNTY SOLID WASTE MANAGEMENT AUTHORITY**, a body corporate and politic existing under the Pennsylvania Municipality Authorities Act, as amended (the "Act"), of the Commonwealth of Pennsylvania (the "Authority").

WITNESSETH:

WHEREAS, the County is a municipal corporation of the Commonwealth and is a "local government unit" under provisions of the Act of the General Assembly of the Commonwealth, as reenacted, amended and supplemented, from time to time, known as the Local Government Unit Debt Act (the "Debt Act"); and

WHEREAS, the Authority is a body politic and corporate organized and existing under the Act; and

WHEREAS, the Authority pursuant to authority vested in it by law, is acquiring from The Harrisburg Authority a certain mass burn solid waste disposal, resource recovery, steam generation and related facilities, including ash disposal facilities (the Harrisburg Resource Recovery Facility, hereinafter referred to as the "Susquehanna Resource Management Facility"), and related assets, property and machinery (collectively the "Susquehanna Resource Management Complex"); and

WHEREAS, to provide funds to finance a portion of the acquisition price of the Susquehanna Resource Management Complex, the Authority has issued \$24,000,000 aggregate principal amount of its Guaranteed Authority Bonds, Series B of 2013 (the "2013B Bonds"), pursuant to an authorizing resolution adopted by the Authority on _____, 2013 and has entered into a Paying Agent Agreement, dated as of _____, 2013 (the "Paying Agent Agreement") with Fulton Bank, National Association (the "Paying Agent"); and

WHEREAS, concurrently with the issuance of the 2013B Bonds, the Authority will issue its Solid Waste Disposal System Revenue Bonds, Series A of 2013 in the principal amount of \$ _____ (the "2013A Bonds" and collectively with the 2013B Bonds the "2013 Bonds") under and pursuant to an Amended and Restated Trust Indenture dated March 17, 1998, as previously supplemented and amended, and as further supplemented and amended by a Sixth Supplemental Indenture dated as of the date of issuance of the 2013A Bonds (such Amended and Restated Trust Indenture as so supplemented and amended being referred to as the "Indenture") for the benefit of the holders of the 2013A Bonds; and

WHEREAS, the 2013 Bonds are not being issued under or secured by the Indenture; and

WHEREAS, the County heretofore determined that it was in the public interest and welfare of its citizens that the Authority undertake the purchase of the Susquehanna Resource Management Complex, and in confirmation of its recognition of the County-wide benefits of such purchase by the Authority in light of the County's responsibilities under the Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P.S. Section 4000.101 *et seq.* ("Act 101"), the County on October 23, 2013 entered into a Cooperation Agreement (as amended, the "Cooperation Agreement") and pursuant to the Cooperation Agreement intends to provide a guarantee of payment of the principal of and interest on the

2013B Bonds by the incurrence of lease rental debt under the Debt Act by entering into a Guaranty Agreement (the "County Guaranty"), among the County, the Authority and the Paying Agent; and

WHEREAS, capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the County Guaranty and the Cooperation Agreement unless the context clearly requires otherwise:

NOW, THEREFORE, intending to be legally bound, the parties hereto agree as follows:

1. **Execution and Delivery of Guaranty.** Subject to the terms and conditions hereinafter set forth, the County hereby agrees to execute, attest, seal and deliver to the Authority and the Paying Agent the County Guaranty. The County Guaranty, substantially in the form approved by the County Commissioners, is incorporated herein by reference.

2. **Reimbursement and Other Payments.**

(a) The Authority covenants and agrees that it shall pay to the County, on demand, but solely from moneys generated in connection with the Susquehanna Resource Management Complex Facility: (i) an amount equal to any amount at any time paid by the County under the County Guaranty, and (ii) interest on any such amounts from the dates which such amounts accrue until payment in full, at an interest rate per annum equal to the interest rate on the 2013B Bonds.

(b) All payments at any time made by a party hereunder shall be made in lawful currency of the United States of America in immediately available funds in such manner and at such place as the payee may direct.

(c) The Authority and the County hereby acknowledge that payments by the Authority to the County pursuant to this Reimbursement Agreement are subordinate to the Authority's payment of all priority obligations, including any payments with respect to the 2013A Bonds or required by the Indenture with respect to additional and/or outstanding bonds issued under the Indenture, Operating Expenses, and other obligations under the Indenture.

(d) Any other provision of this Reimbursement Agreement notwithstanding, the Authority is not required to reimburse the County for, and shall have no obligation with respect to, any payments made by the County pursuant to the Cooperation Agreement, including but not limited to any payments with respect to the 2013B Bonds, whether principal, interest or otherwise.

(e) The County covenants and agrees that it shall pay to the Authority, on demand: (i) an amount equal to any amount at any time paid by the Authority under the 2013B Bonds to the extent the County was required to pay such amount under the Cooperation Agreement, and (ii) interest on any such amounts from the dates which such amounts accrue until payment in full, at an interest rate per annum equal to the interest rate on the 2013B Bonds.

(f) The County further acknowledges and agrees that any payment of amounts under the 2013B Bonds made by the Authority by reason of the failure of the County to pay such amounts as due by the County under the Cooperation Agreement, shall not act as a release or modification of the obligations of the County under the County Guaranty.

3. **Conditions Precedent.** As conditions precedent to the obligation the County to execute and deliver its County Guaranty, it shall have received each of the following in form and substance satisfactory to it:

(a) Copies of the resolutions adopted by the Authority authorizing, among other things, the issuance of the 2013 Bonds and execution and delivery of the Indenture;

(b) Copies of the executed counterparts of the 2013 Bonds, the Indenture, this Reimbursement Agreement and all related documentation delivered in connection therewith;

(c) A certificate of duly authorized officers of the Authority stating that: (i) the representations and warranties of the Authority set forth in this Reimbursement Agreement and the Sixth Supplemental Trust Indenture are true, correct and complete as of the date of execution of such documents; and (ii) no event of default under this Reimbursement Agreement or the 2013 Bonds and the Indenture has occurred and is continuing, and no event has occurred and is continuing which, to the best of the Authority's knowledge, with the giving of notice or lapse of time or both, would constitute an event of default under this Reimbursement Agreement or the 2013 Bonds and the Indenture;

(d) An opinion of solicitor to the Authority regarding: (i) the due existence of the Authority; (ii) the power of the Authority to enter into and perform its obligations under this Reimbursement Agreement, the Indenture and all other agreements, documents, instruments or collateral security documents executed and delivered by or on behalf of the Authority in connection therewith; and (iii) the due validity, binding effect and enforceability of this Reimbursement Agreement, the 2013 Bonds and the Indenture and all other agreements, documents, instruments or collateral security documents executed and delivered by or on behalf of the Authority in connection with issuance of the 2013 Bonds, subject, however, in each case, to laws and equitable principles affecting the enforcement of creditors' rights generally;

(e) An opinion of special counsel to the County regarding: (i) the due existence of the County; (ii) the valid incumbency of the officers of the County; and (iii) the legal, valid and binding enactment of the ordinances approving, among other things, the County Guaranty and this Reimbursement Agreement, and authorizing and directing, among other things, the execution, attestation and delivery thereof by proper officers of the County;

(f) The approvals of the Department of Community and Economic Development of the Commonwealth ("DCED"), as required by the Debt Act, with respect to the execution and delivery the County Guaranty and the incurrence of lease rental debt by the County.

4. **Obligations Absolute.** The obligations of each party under this Reimbursement Agreement shall be absolute, unconditional and irrevocable, and shall be fully performed strictly in accordance with the terms and conditions of this Reimbursement Agreement, under all circumstances whatsoever, including, without limitation, the foregoing: (a) any lack of validity or enforceability of the County Guaranty, the 2013 Bonds, the Indenture or any other agreement or document relating thereto; (b) any amendment or waiver of or any consent to or departure from the terms and conditions of the County Guaranty, the 2013 Bonds, the Indenture or any documents relating thereto; or (c) the existence of any claim, setoff, defense or other right which any party hereto may have at any time against any party hereto or any other person or entity, whether in connection with this Reimbursement Agreement, the transactions described herein or any unrelated transaction.

5. **Representations and Warranties.**

(a) The Authority hereby represents and warrants as follows:

(i) The Authority is a municipal authority duly organized and validly existing under the Act. Each of the individuals executing and delivering this Reimbursement Agreement, each Guaranty, the 2013 Bonds, the Indenture and all related documents and instruments possesses full power and authority to execute and deliver such documents and such execution and delivery does not contravene the terms or provisions of any document, agreement or instrument to which the Authority or any of its properties or assets is or may be bound;

(ii) The execution, delivery and performance by the Authority of this Reimbursement Agreement, the County Guaranty, the 2013 Bonds, the Indenture and related documents and instruments have been duly authorized by all necessary action, do not contravene the provisions of the Articles of Incorporation or By-Laws of the Authority or of any other agreement or instrument binding on or affecting the Authority or any of its assets or properties, and do not result in or require the creation of any lien, security interest or other charge or encumbrance (other than pursuant to this Reimbursement Agreement, the County Guaranty, the 2013 Bonds, the Indenture, or any other collateral security document or instrument executed and delivered in connection with the same) upon or with respect to any of the Authority's assets or properties;

(iii) No authorization, approval or other consent or action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the Authority of this Reimbursement Agreement, the County Guaranty, the 2013 Bonds, the Sixth Supplemental Trust Indenture or any related document or instrument, except such as have been obtained;

(iv) This Reimbursement Agreement, the County Guaranty, the 2013 Bonds, the Indenture and any related document or instrument executed and delivered by or on behalf of the Authority constitute the legal, valid and binding obligations of the Authority enforceable against the Authority in accordance with their respective terms; and

(v) There is no pending action or proceeding before any court, governmental agency or arbitrator against or directly involving the Authority and, to the best of the knowledge of the Authority, there is no threatened action or proceeding against the Authority before any court, governmental agency or arbitrator which, in any case, may materially and adversely affect the financial condition or operations of the Authority or any other material contingent liability of any kind (which has not heretofore been disclosed to the County).

(b) The County hereby represents and warrants as follows:

(i) The County is a municipal corporation of the Commonwealth. Each of the individuals executing and delivering this Reimbursement Agreement, the County Guaranty and all related documents and instruments possesses full power and authority to execute and deliver such documents and such execution and delivery does not contravene the terms or provisions of any document, agreement or instrument to which the County or any of its properties or assets is or may be bound;

(ii) The execution, delivery and performance by the County of this Reimbursement Agreement, the County Guaranty, the Cooperation Agreement and related documents and instruments have been duly authorized by all necessary action, do not contravene the provisions of the organizational documents of the County or of any other agreement or instrument binding on or affecting the County or any of its assets or properties, and do not result in or require the creation of any lien, security interest or other charge or encumbrance (other than pursuant to this Reimbursement Agreement, the County Guaranty, or any other collateral security document or instrument executed and delivered in connection with the same) upon or with respect to any of the County's assets or properties;

(iii) No authorization, approval or other consent or action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the County of this Reimbursement Agreement, the County Guaranty, the Cooperation Agreement or any related document or instrument, except such as have been obtained;

(iv) This Reimbursement Agreement, the County Guaranty, the Cooperation Agreement and any related document or instrument executed and delivered by or on behalf of the County constitute the legal, valid and binding obligations of the County enforceable against the County in accordance with their respective terms; and

(v) There is no pending action or proceeding before any court, governmental agency or arbitrator against or directly involving the County and, to the best of the knowledge of the County, there is no threatened action or proceeding against the County before any court, governmental agency or arbitrator which, in any case, may materially and adversely affect the financial condition or operations of the County or any other material contingent liability of any kind (which has not heretofore been disclosed to the Authority).

6. **Covenants of the Authority.** So long as any Guaranty shall remain in full force and effect, or any amount is due and owing to the County under the provisions of this Reimbursement Agreement, the Authority covenants and agrees that it shall, unless the County has otherwise consented in writing:

(a) Preserve and maintain its due existence, and its right to do business and its good standing in the Commonwealth;

(b) Comply in all material respects with all applicable laws, rules, regulations and orders of any governmental authority, the non-compliance with which would materially and adversely affect its operations or condition;

(c) Keep or cause to be kept proper, accurate and complete books of record and account, in which full and correct entries shall be made of financial transactions and the assets and operations of the Authority; and

(d) Observe, in all material respects, its obligations under the County Guaranty, the 2013 Bonds and the Indenture.

7.1 **Defaults.** Each of the following shall constitute an event of default ("Event of Default") hereunder unless waived by the Affected Party hereunder. "Affected Party" may mean one or more parties, insofar as any party is directly affected by the Event of Default in question.

(a) Failure by a party to make any payment hereunder when due and payable;

(b) Failure by a party to perform or comply with any of the other terms, conditions or covenants contained in this Reimbursement Agreement, the County Guaranty, the Cooperation Agreement, the 2013 Bonds or the Indenture and continuance of such failure uncured for 30 days after such party has knowledge that such failure has occurred, or such longer period to which each Affected Party may agree in the case of a default not curable by the exercise of due diligence within such 30-day period, provided that the party shall have commenced to cure such default within such 30-day period and shall complete such cure as quickly as reasonably possible with the exercise of due diligence;

(c) Any of the representations or warranties of the party set forth in this Reimbursement Agreement or the County Guaranty or the Cooperation Agreement, or in any other certificate, document, statement, instrument or agreement furnished to the Affected Party pursuant to the terms hereof or the County Guaranty proves to have been materially false when made;

(d) The validity or enforceability of any material provision of this Reimbursement Agreement, the Cooperation Agreement, the 2013 Bonds or the Indenture shall at any time be contested by a party, or a party shall deny that it has any or further liability or obligation under this Reimbursement Agreement, the 2013 Bonds or the Indenture; or

(e) A party shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian or the like for its property, or (ii) admit in writing its inability to pay its debts generally as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) be adjudicated a bankrupt or insolvent, or (v) commence a voluntary case under the United States Bankruptcy Code (or any successor to such code) or file a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against such corporation in any bankruptcy, reorganization or insolvency proceeding, or to take any action for the purpose of effecting any of the foregoing, or (vi) if without the application, approval or consent of a party, a proceeding shall be instituted in any court of competent jurisdiction, under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking an order for relief or an adjudication in bankruptcy, reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like or of all or any substantial part of the assets of such party or other like relief in respect thereof under any bankruptcy or insolvency law, and, if such proceeding is being contested in good faith, the same shall (A) result in the entry of an order for relief or any such adjudication or appointment or (B) remain undismissed and unstayed for a period of 60 days.

7.2 **Remedies.** If an Event of Default has occurred and is continuing each Affected Party may exercise, or cause to be exercised, any and all such remedies as it may have at law or in equity.

8. **Cumulative Remedies; Waiver.** No failure on the part of the County to exercise, and no delay in exercising, any right hereunder or elsewhere shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder or elsewhere preclude any other or further exercise thereof or the exercise of any other right.

9. **Entire Agreement; Multiple Counterparts.** This Reimbursement Agreement, and the other agreements referenced in this Reimbursement Agreement, constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof; and this Reimbursement Agreement may be executed, simultaneously, in multiple counterparts, each of which counterparts, together, shall constitute but one and the same instrument. Nothing in this Reimbursement Agreement is intended to, or shall, supersede or override the terms and conditions of the Cooperation Agreement or the County Guaranty.

10. **Severability.** The provisions of this Reimbursement Agreement shall be severable; and in the event of the invalidity or unenforceability of any one or more phrases, sentences, clauses, Articles, Sections or parts contained in this Reimbursement Agreement, such invalidity or unenforceability shall not affect the validity or enforceability of remaining portions of this Reimbursement Agreement or any remaining parts thereof.

11. **Amendment.** No amendment, waiver or consent of any provision of this Reimbursement Agreement shall be effective unless the same shall be in writing and executed by the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

12. **Choice of Law.** This Reimbursement Agreement shall be construed in accordance with and shall be governed by the laws of the Commonwealth.

13. **Headings.** Section headings in this Reimbursement Agreement are included herein for convenience of reference only and shall not constitute a part of this Reimbursement Agreement for any other purpose.

14. **Continuing Obligation.** This Reimbursement Agreement and the County Guaranty are continuing obligations and shall: (a) be binding upon the parties thereto and their respective successors and assigns; and (b) inure to the benefit of and be enforced by the parties thereto and their respective successors and assigns; provided that neither party may assign all or part of this Reimbursement Agreement without the prior written consent of the other party.

15. **Indemnification.** Each party hereby indemnifies and holds harmless the other party from and against any and all damages, losses, liabilities, costs or expenses whatsoever which the other party may incur (or which may be claimed against the other party by any person or entity whatsoever) by reason of or in connection with such party's default under the County Guaranty or the Cooperation Agreement; provided that a defaulting party shall not be required to indemnify a non-defaulting party for such claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by: (a) the willful misconduct or gross negligence of the non-defaulting party; or (b) the willful failure of the non-defaulting party to comply with this Reimbursement Agreement, the County Guaranty, or the Cooperation Agreement. Nothing in this Paragraph is intended to limit the reimbursement obligations contained in Paragraph 2 hereof.

16. **No Recourse.** No recourse under or upon any obligation, covenant or agreement contained herein shall be had against any past, present or future member, officer or employee of the Authority or the County or of any successor of the Authority or the County under any rule of law, statute or constitutional provision, or by enforcement of any assessment, or by any legal or equitable proceeding or otherwise, it expressly being agreed and understood that the obligations of the Authority hereunder are solely corporate obligations of the Authority and that no personal liability whatsoever shall attach to or shall be incurred by such members, officers or employees of the Authority or of any successor of the Authority, or any of them, because of such indebtedness or by reason of any obligation, covenant or agreement contained herein, or elsewhere, or implied therefrom, unless as a result of willful misconduct.

17. **Conflicts.** Insofar as possible the provisions of this Reimbursement Agreement shall be deemed complementary to the terms of the County Guaranty but in the event of conflict the terms hereof shall control to the extent such are enforceable under applicable law, provided, however, that nothing herein contained shall limit or alter the County's obligations under the County Guaranty. Insofar as possible the provisions of this Reimbursement Agreement shall be deemed complementary to the terms of the Cooperation Agreement but in the event of conflict the terms of the Cooperation Agreement shall control to the extent such are enforceable under applicable law.

18. **Notice.** All notices or other communications provided for in this Reimbursement Agreement shall be in writing and shall be delivered personally, or sent by certified or registered mail or overnight delivery service providing receipt against delivery (such as Federal Express), to the respective parties as follows:

if to the Authority:

Lancaster County Solid Waste Management Authority
1299 Harrisburg Pike
Lancaster, PA 17603-2515
Attention: Chief Executive Officer

with a copy to:

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

if to the County:

Board of County Commissioners
County of Dauphin
2nd & Market Streets
Harrisburg, PA 17101
Attention: Chairman

with a copy to the County Solicitor:

Joseph A. Curcillo, III, Esquire
Solicitor
Dauphin County Board of Commissioners
Dauphin County Courthouse
Front & Market Streets
Harrisburg, PA 17101

with another copy to County Special Counsel:

Charles B. Zwally, Esquire
Mette, Evans & Woodside
3401 North Front Street
Harrisburg, PA 17110

Any party may change the designated recipient or address by written notice delivered to the other parties as required by this Section.

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IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound, pursuant to proper authorization of their respective governing bodies, each causes this Reimbursement Agreement to be executed by its respective duly authorized officer or officers and to be attested by its respective duly authorized officer and its respective official or corporate seal to be affixed to this Reimbursement Agreement, all as of the day and year first above written.

COUNTY OF DAUPHIN, PENNSYLVANIA

Attest:

Chief Clerk/Chief of Staff

Chairman, Board of Commissioners

Member, Board of Commissioners

Member, Board of Commissioners

(SEAL)

**LANCASTER SOLID WASTE
MANAGEMENT AUTHORITY**

Attest:

Secretary

By: _____
Chair

(SEAL)