

RESOLUTION NO. 53 - 2020

Moved by: _____

A Resolution authorizing the City of Harrisburg to negotiate and enter into an intergovernmental cooperation agreement with the Township of Swatara for the purpose of allowing the City to use a compost facility owned and operated by the Township of Swatara.

WHEREAS, the City and the Township of Swatara desire to enter into an intergovernmental agreement to allow the City to continue using the compost facility owned and operated by the Township of Swatara (the "Township"), the form of which is attached hereto as "Exhibit A;" and

WHEREAS, the effective date of the agreement shall be January 1, 2021; and

WHEREAS, the agreement exists to govern the terms and conditions under which the City will use the compost facility, and support the Township's efforts to obtain grants to fund the compost facility; and

WHEREAS, this agreement authorizes an annual payment from the City to the Township of two thousand nine hundred forty-five dollars and ten cents (\$2,945.10); and

WHEREAS, no new organizational structure is necessary to implement the agreement; and

WHEREAS, any real property acquired, managed, licensed, or disposed of as a result of this agreement shall be acquired, managed, licensed, or disposed of by the Township; and

WHEREAS, no entity is created pursuant to this agreement.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG, that the City of Harrisburg is hereby authorized to negotiate and enter into an intergovernmental cooperation agreement with Township of Swatara for the purpose of allowing the City to use a compost facility owned and operated by the Township of Swatara.

BE IT FURTHER RESOLVED that the Mayor, City Controller, and other appropriate City officials are authorized and directed to take all steps necessary to further effectuate the purpose of this Resolution.

I second this resolution _____

EXHIBIT A

**INTERGOVERNMENTAL COOPERATION AGREEMENT FOR USE OF
SWATARA TOWNSHIP'S COMPOST FACILITY**

THIS AGREEMENT is made this _____ day of _____, 2020, by and between the Township of Swatara (the "Township"), a First Class Township with its principal place of business at 599 Eisenhower Blvd, Harrisburg, PA 17111, and the City of Harrisburg, a Pennsylvania Municipality with its principal place of business at 10 N. 2nd Street, Harrisburg, PA 17101 (the "Participating Municipality"), to authorize the Participating Municipality to use the Township's Compost Facility (the "Agreement") (collectively, the parties will sometimes be referred to as the "Parties").

This Intergovernmental Cooperation Agreement is authorized and required pursuant to applicable law including, but not limited to, 53 Pa.C.S.A. § 2301, *et seq.*

RECITALS

WHEREAS, the Parties recognize that the growth and development within their municipalities have increased the need for certain municipal services to their residents; and

WHEREAS, the Parties also recognize that establishing an intermunicipal agreement to allow the Participating Municipality to use the Township's Compost Facility would provide efficient and economic services that are mutually beneficial to the Parties and their residents; and

WHEREAS, the Township owns and operates the Swatara Township Yard Waste Composting Facility (the "Facility" or "Compost Processing Facility") located at 780 Kelker Street, Harrisburg, PA 17104; and

WHEREAS, the development of separate compost processing facilities to perform similar or identical tasks to the Township's Facility would result in a duplication of effort and resources to the detriment of the residents of the municipalities; and

WHEREAS, the Participating Municipality desires to use the Compost Processing Facility and the Township wishes to authorize the Participating Municipality to use the Compost Processing Facility in accordance with the terms and conditions of this Agreement; and

NOW, THEREFORE, the Parties hereto, in consideration of the mutual promises, covenants, and undertakings herein contained, each binding itself and representing that it has proper legal authority to enter into this Agreement, and intending to be legally bound, agree as follows:

1. **Recitals**. All of the Recitals hereto are incorporated herein by reference as if fully set forth at length.
2. **Authorization of Delivery to Facility**.

- a. The Township hereby authorizes the Participating Municipality to deliver Compost Material to the Facility during the term of this Agreement.
- b. The Facility's general management, including day-to-day operations of the Facility, shall be the sole and exclusive responsibility of Swatara Township.
- c. Hours of Operation. Compost Material may be delivered to the Facility on Weekdays from 8:00 a.m. to 3:00 p.m. and on Saturday from 8:00 a.m. to 2:00 p.m.
- d. "Compost Material" shall be limited to yard waste, leaf waste, grass clippings, garden residue, tree trimmings, chipped shrubbery, or other vegetative material. Materials must be delivered in bulk and, to the extent practical, segregated. The Compost Processing Facility will accept only organic materials as specified above and the Township reserves the right to reject any unacceptable materials or materials containing contaminants. The Facility will not accept plastic bags, metal, tree stumps, construction debris or municipal waste or rubbish of any kind.
- e. The Participating Municipality's disposal of Compost Material at the Compost Processing Facility shall be limited to residents of, and businesses located within the Participating Municipality.
- f. The Participating Municipality shall be permitted to transport and deliver an unlimited amount of Compost Material to the Facility during its normal hours of operation. In the event the Township is required to reduce the amount of Compost Material accepted at the Facility for any reason, the Participating Municipality will cooperate and correspondingly decrease deliveries as needed. In the event any regulatory agency should impose or enforce new or more stringent regulations that impact the design and/or operation of the Facility which would be affected by the volume or quality of Compost Material delivered to the Facility by the Participating Municipality, the Parties shall modify this Agreement to address such regulations.

3. Day-to-Day Operation of the Compost Processing Facility.

- a. Day-to-day operation of the Facility shall be the responsibility of the Township. The Township shall employ personnel to appropriately staff operations at the Compost Processing Facility. The Township shall own and maintain the Facility and all equipment used at the Facility.
- b. All persons employed in the operation of the Facility shall be employees of the Township and not the Participating Municipality.

4. Financial Terms and Conditions.

- a. Fiscal Year. The fiscal year shall be the calendar year.
- b. Participating Municipality's Contributions for Operating Costs. The Participating Municipality shall contribute to the Township's overall annual operating costs of the Facility. The contribution amount shall be based on the Participating Municipality's estimated pro rata share of the total Compost Material delivered to the Facility annually as agreed upon by the Parties. During the Term of this Agreement, the Participating Municipality's annual share shall be \$2945.10

The Township and the Participating Municipality may from time to time negotiate an adjustment to the Participating Municipality's estimated cost of contribution.

- c. Participating Municipality's Contributions for Capital Costs. Costs of capital items for the Facility, such as equipment, shall be paid by either (i) grant monies received for such items or (ii) in accordance with Section 6, Non-Grant Asset Purchases, of this Agreement.
- d. Budget Submission. Each year the Township shall prepare and approve by majority vote a proposed annual budget for the operation of the Facility, a copy of which shall be provided to the Participating Municipality upon request.
- e. Payment Schedule. The Township shall send quarterly invoices to the Participating Municipality of the amount due under this Section 4. The Participating Municipality shall make payment of its amount due and owing within thirty (30) days of the invoice's receipt. Payments not made within thirty (30) days of the invoices receipt will be charged a late fee of an, additional 1.5% per month.

5. Grants. The Township shall take every reasonable step to obtain from federal, state and other agencies such grants and aid as may be from time to time available. If grants may be obtained for the purchase of processing equipment for dedicated use at the Compost Processing Facility, the Township shall coordinate the application and shall take title to any such equipment. The Participating Municipality shall cooperate and assist the Township in obtaining any grants available to the Participating Municipality.

6. Non-Grant Asset Purchases. The Participating Municipality acknowledges and agrees that if grants are not obtained for the purchase of processing equipment for dedicated use at the Compost Processing Facility, then the Participating Municipality will be responsible to contribute an amount equal to the extent of its estimated contribution in Section 4(b), Participating Municipality's Contributions for Operating Costs, of this Agreement.

7. Insurance and Immunity.

- a. Insurance and Waiver of Claims. The Parties shall maintain adequate liability insurance against claims arising out of or relating to this Agreement. In the event of a dispute as to the appropriate level of insurance, the level shall be determined by a consultant engaged by the Township. Swatara Township shall be named as an additional insured on all of the Participating Municipality's liability insurance policies.
- b. Immunity. The services performed and the expenditures incurred under this Agreement shall be deemed for public and governmental purposes, and all immunities from liability enjoyed by each of the Parties shall extend to its participation in services outside its boundaries.
- c. Indemnity. Participating Municipality agrees to indemnify, defend and save harmless the Township against all costs, losses or damage, including payment of reasonable attorneys fees, on account of any injury to persons or property occurring in the performance of this Agreement due to its negligence or the negligence of its agents or employees; provided, however, that Participating Municipality does not waive any rights or immunities arising out of any applicable governmental immunity laws and statutes. Further, Participating Municipality shall defend, indemnify and hold harmless the Township and its respective elective and appointive officers, and their duly authorized agents, members, servants, and employees from and against any claims, charges, damages, fines, judgments, penalties, costs, liabilities, or losses arising out of, based upon or in connection with federal, state, or local laws, regulations, and requirements, arising out of or relating to Participating Municipality's use of the Facility.

Additionally, Participating Municipality shall be solely responsible for and shall indemnify and hold harmless the Township from and against any and all charges, damages, fines, penalties, costs, liabilities, or losses incurred by the Township due to the Participating Municipality's violation of this agreement including, but not limited to, damages resulting from the Participating Municipality's delivery of unacceptable material to the Facility and any resultant disruption or termination of operations at the Facility.

8. **Effective Date.** The Effective Date of this Agreement shall be January 1, 2021.

9. **Term of Agreement.** The term of this Agreement shall be for a period of two (2) years commencing from the Effective Date hereof (the "Term").

10. **Participation of Other Municipalities.** The Township may in its sole and exclusive discretion authorize other parties, including other municipalities to deliver Compost Material to the Facility.

11. **Termination**. The Township may terminate this Agreement at any time, upon sixty (60) days' notice given to the Participating Municipality.

12. **Authorization**. The Parties certify that they are authorized to enter into and execute this Agreement in the exercise and/or performance of their governmental functions, powers, or responsibilities. The Parties further certify that they are not the subject of any pending lawsuits, regulatory fines, consent decrees, or other similar sanction of whatever kind.

13. **Applicable Law**. The Parties agree and affirm that Pennsylvania law applies to this Agreement and all matters covered by and addressed by this Agreement. It is acknowledged and agreed that the sole and exclusive jurisdiction and venue for any dispute relating to any matter covered by this Agreement, and/or regarding any dispute over the enforcement or interpretation of this Agreement, shall rest with the Dauphin County Court of Common Pleas. The Parties hereby submit to the exclusive jurisdiction of that Court.

14. **Integration**. This Agreement contains the entire agreement between the Parties regarding its subject matter. There are no understandings or agreements, verbal or otherwise, in relation hereto, except those expressly and specifically set forth herein. The Parties have not relied upon any statement, projection, disclosure, report, information or any other representation or warranty except for those as may be specifically and expressly set forth in this Agreement.

15. **No Oral Modification**. This Agreement may not be modified except in writing executed by all Parties. This Agreement shall be amended only in writing, by duly authorized representatives of all Parties, and such revision(s) must be approved by official action of each Party, and as required by any applicable law of the Commonwealth.

16. **Severability**. No determination by any court, governmental body, arbitration, or other judicial body, that any provision of this Agreement or any amendment that may be created hereto, is invalid or unenforceable in any instance shall affect the validity or enforceability of any other provision of the Agreement or applicable amendment. Each provision shall be valid and enforceable to the fullest extent permitted by applicable law and shall be construed where and whenever possible as being consistent with applicable law.

17. **Representation by Counsel**. This Agreement has been negotiated by the Parties through their respective legal counsel and embodies terms that were arrived at through mutual negotiation and joint effort, and the Parties shall be considered to have contributed equally to the preparation of this Agreement. The Parties warrant and represent that the terms and conditions of this Agreement have been discussed and negotiated between them, and their respective counsel, and are voluntarily and knowingly accepted for the purpose of making a full and final compromise between the Parties, as referenced herein. The Parties further acknowledge that they understand the facts and their respective legal rights and obligations pursuant to this Agreement.

18. **Counterparts.** This Agreement may be executed in counterparts, each of which will be an original, and all of which taken together shall constitute one and the same instrument.

19. **Assignment.** No transfer or assignment of this Agreement or any right accruing hereunder shall be made by the Participating Municipality without the prior written approval of the Township.

20. **Passage of Ordinance or Resolution.** The Parties to this Agreement will each enact an ordinance or pass a resolution within sixty (60) days from date of execution hereof pursuant to and in accordance with the Pennsylvania Intergovernmental Cooperation Act for the purpose of authorizing and effectuating this Agreement.

21. **Execution by Facsimile or Electronic Scanning.** Delivery of an executed counterpart of this Agreement by facsimile, or by electronically scanning and e-mailing an executed counterpart signature page, while not specifically required, will be acknowledged by the Parties as being equally as effective as delivery of a manually executed counterpart of this Agreement. The use of a signature page received by facsimile, or through an electronic scan and e-mail, shall not affect the validity, enforceability, or binding effect of this Agreement.

22. **Signatures.** The Parties hereto, and the undersigned individuals and/or representatives, represent and warrant that they have the authority to enter into this Agreement and be legally bound hereby.

IN WITNESS WHEREOF, the Parties hereto have caused this Intergovernmental Cooperation Agreement for the Establishment of a Multi-Municipal Compost Processing Facility to be executed and effective on January 1, 2021.

ATTEST:

SWATARA TOWNSHIP

_____ (SEAL)

By:

Title:

ATTEST:

City of Harrisburg

_____ (SEAL)

By:

Title:

INTER

OFFICE

MEMO

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

Date:

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2020 RESOLUTION NO. -2020

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



Deputy City Solicitor

6-19-20

Date

Requested by Department/Bureau: Public Works

Department/Bureau Contact Person: A. Johnson

For Action on or before:

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


Received by: _____

Date: _____