

RESOLUTION NO. 2021 - 05

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND PERFORM CERTAIN AGREEMENTS; AND FOR OTHER PURPOSES

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEARCY, TO-WIT:

WHEREAS, the City of Searcy has been presented a certain agreement associated with the operations of the City of Searcy or that have an impact upon the residents of the City of Searcy, namely an agreement with the Arkansas Department of Environmental Quality for the following:

- A. Contract of Obligation for Compost Center (Permit Number 0009-SWYW \$132,000.00);

(collectively, the “Agreement”) copies of which have been submitted to the Searcy City Council; and

WHEREAS, the City of Searcy wishes to approve the execution of, ratify the terms of and perform under the conditions contained in, the Agreement.

NOW, THEREFORE, be it resolved by the City Council of the City of Searcy, Arkansas, to-wit:

Section 1. That the Searcy City Council approves and ratifies the terms, conditions and obligations of the Agreement.

Section 2. That the Searcy City Council authorizes and directs the Mayor and City Clerk to execute, and perform under the terms of the Agreement.

Section 3. That the Mayor is authorized to take all actions determined to be necessary, in the sole and exclusive determination of the Mayor, in the performance of all obligations, duties and responsibilities associated with the Agreement.

PASSED AND ADOPTED this 9th day of February, 2021.

/s/ Kyle Osborne
Mayor of Searcy

ATTEST:

/s/ Jerry Morris
City Clerk

IRREVOCABLE CONTRACT OF OBLIGATION

RECITALS

WHEREAS, owners/operators of solid waste management facilities are required to provide financial assurances to the Arkansas Department of Energy and Environment, Division of Environmental Quality (hereinafter “DEQ”) to ensure that sufficient funds are on hand to meet the costs of closure, post closure, and corrective actions for known releases;

WHEREAS, municipal and county governments as owners or operators of solid waste management facilities may utilize an alternate method of providing financial assurance for closure, post-closure care and corrective care for known releases as authorized by Ark. Code Ann. § 8-6-1603 through the issuance of a Contract of Obligation (hereinafter “Contract”) to DEQ; and

WHEREAS, DEQ and the City of Searcy, Arkansas (hereinafter “CITY”), Arkansas have reached mutually agreed terms and conditions for providing financial assurances through a Contract of Obligation.

TERMS AND CONDITIONS

As good and sufficient consideration, CITY hereby offers and DEQ hereby accepts this Contract of Obligation as financial assurance pursuant to Ark. Code Ann. § 8-6-1603(d)(4):

1. Pursuant to Arkansas Pollution Control and Ecology Commission (hereinafter “APC&EC”) Reg. 22.1405(n), the contract is a binding, enforceable agreement and is irrevocable unless terminated in accordance with Paragraph 19 herein.
2. CITY is a municipal government of the State of Arkansas.

3. CITY is the owner or operator of the solid waste management facility pursuant to DEQ Permit No. 0009-SWYW (hereinafter "Permit").
4. This Contract is for one fiscal year of CITY and shall automatically renew for four additional fiscal years unless the CITY fails to appropriate funds in its annual budget to perform the terms and conditions required herein. A fiscal year for purposes of this Contract is defined as the fiscal year for CITY.
5. CITY shall provide written notice not less than 90 days prior to the adoption of its budget on February 1 to the Director if CITY will not appropriate funds in the CITY'S upcoming annual budget necessary to perform the terms and conditions of this Contract. In the event of non-appropriation, this Contract shall terminate on February 2.
6. CITY's solid waste management facility is not authorized to transfer, store or dispose of hazardous waste as defined and regulated under Regulation 23 of the Arkansas Pollution Control and Ecology Commission.
7. CITY represents and affirms that the general revenues pledged and secured under this Contract to DEQ shall be equal to but not less than the estimated annual cost for closure, post-closure care and corrective action for known releases to satisfy the financial assurance requirements pursuant to Ark. Code Ann. § 8-6-1603(d)(4)(C).
8. The required amount of financial assurance for the solid waste management facility which is the subject of the Permit is One Hundred Thirty-Two Thousand dollars (\$132,000.00) for Closure, Post-Closure and Corrective action as provided by Ark. Code Ann. § 8-6-1603 (a), (b) and (c).

9. The required amount of financial assurance stated in ¶8 does not exceed the amount currently projected by the State to be disbursed as general revenues during the current fiscal year to CITY as authorized by APC&EC Reg. 22.1405(n)(2).

10. To fulfill the amount of the financial assurances established in ¶8 of this Contract, CITY hereby grants and pledges its rights and interest in the general revenues being disbursed, or that may be disbursed, to CITY by or from the State of Arkansas to DEQ for the express purposes and terms provided by this Contract.

11. CITY hereby acknowledges that upon default, DEQ's rights to the said general revenues during the tenure of this Contract are irrevocable, undisputed, and absolute.

12. For purposes of the Contract, the term "default" is defined as any failure by the CITY to properly perform a closure, post-closure, or corrective action for the solid waste management facility that is the subject of the Permit or required by state law or regulation.

13. The Director shall initiate the procedure for forfeiture of financial assurance provided in APC&EC Reg.22.1406 should the CITY default on this contract as defined herein. DEQ shall provide a Default Administrative Order, an APC&EC Minute Order, Consent Administrative Order, or other enforceable order directing CITY, Arkansas State Treasury, and the Department of Finance and Administration to commence the capture of revenues pledged by this Contract.

14. Effective upon default, CITY hereby authorizes and instructs the Arkansas State Treasury and the Arkansas Department of Finance and Administration, to capture, re-direct and tender the

general revenues pledged in ¶10 of the Contract to DEQ. Payments made to DEQ shall be delivered to the address appearing below.

15. CITY shall file a copy of this Contract with the Commissioner of Revenues, Department of Finance and Administration and the Local Government Services Division, Arkansas State Treasury, no later than the tenth (10th) calendar day following the effective date of this Contract. CITY shall provide the Director with file-marked copies of this Contract no later than the fifteenth (15th) calendar day following the effective date of this Contract.

16. In the event this Contract is not renewed or is terminated for any reason, CITY shall provide alternate financial assurances pursuant to Ark. Code Ann. § 8-6-1603 and the regulations promulgated pursuant thereto not less than 60 days prior to the termination of this Contract for review and approval by DEQ.

17. The amount of financial assurance required for the solid waste management facility that is the subject of the Permit shall be based upon the latest available annual reporting mechanisms submitted by the facility owner/operator; and as reviewed and approved by DEQ. Such review shall be completed by DEQ prior to the commencement of CITY subsequent fiscal year. This amount may be increased or decreased as required to reflect estimated costs for closure, post-closure care or corrective action for known releases.

18. The total amount of required financial assurance established by ¶17 above shall be approved by DEQ not less than one hundred twenty (120) days prior to the beginning of any CITY fiscal year.

19. This Contract shall terminate upon written approval from the Director that:
 - a. The solid waste management facility has closed in compliance with the law;
 - b. CITY has completed post-closure care in compliance with the law; or
 - c. CITY provides an alternate financial assurance mechanism that is acceptable to DEQ and is in compliance with the terms of this Contract as outlined in ¶ 25.

20. CITY represents and affirms that it has sufficient funds on-hand, appropriated by the annual budget, and available to comply with the terms and conditions of this Contract.

21. All notices required by this Contract shall be made by certified mail, return receipt requested, and addressed as follows:

Arkansas Department of Energy and Environment, DEQ
Attn: Becky W. Keogh, Director
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317

City of Searcy, Arkansas
Attn: Kyle Osborne, Mayor of Searcy, Arkansas

401 West Arch Avenue
Searcy, Arkansas 72143

Arkansas Department of Finance and Administration
Attn: Commissioner of Revenues
P.O. Box 1272
Little Rock, Arkansas 72203

Arkansas State Treasury
Attn: Local Government Services Division
220 State Capitol
Little Rock, Arkansas 72201

22. CITY represents and affirms that the surrender and tender of funds to DEQ contemplated by this Contract shall not cause CITY to expend more than available revenues from all sources for any given fiscal year during which this Contract is effective.

23. Funds collected through this Contract of Obligation will be used for closure and post-closure activities in accordance with Regulation 22. In the event that there are funds remaining after DEQ certifies the necessary closure and post-closure activities are completed then DEQ will return those funds to the CITY.

24. In the event that any provision provided herein is determined to be invalid or void by a court of competent jurisdiction, it shall not affect the validity of the remaining parts thereof.

25. This Contract may be terminated by the substitution of alternate financial assurances by mutual agreement of DEQ and CITY provided:

- a. CITY makes a sixty (60) day written notice by certified mail to DEQ of its intention to provide an alternate form of financial assurance to replace the obligations required by this Contract;
- b. CITY provides a description and specimen of the proposed alternate form of financial assurance;
- c. The proposed alternate form of financial assurance is authorized by law;
- d. DEQ reviews and accepts the alternate form of financial assurance;
- e. An effective date of the alternate form of financial assurance is set by DEQ; and
- f. There is no resulting lapse of financial assurance coverage incurred by CITY.

26. Nothing herein shall prevent DEQ from initiating any enforcement proceeding against CITY.

27. Nothing herein is construed to relieve CITY from any closure, post-closure or corrective action resulting from the solid waste management facility that is the subject of the Permit.

28. Nothing herein is construed to limit the liability of CITY for any closure, post-closure or corrective action for known releases, resulting from the subject solid waste management facility to the amount established by ¶8 of this Contract.

29. This Contract shall be effective upon the Director's signature.

30. This Contract has been reviewed and approved by the governing body of the CITY, Arkansas in a duly called and convened meeting with a quorum present.

31. The governing body of the CITY has authorized the MAYOR to sign this Contract of Obligation on the behalf of CITY as evidenced by the attached resolution.

IN WITNESS WHEREOF the parties hereto have set their hands and seals.

Arkansas Department of Energy and Environment,
Division of Environmental Quality

Becky W. Keogh
Director

Date

CITY

MAYOR

Date

Attest:

[RECORDER/CLERK/DIRECTOR]