

RESOLUTION NO. 2019-05

A RESOLUTION AUTHORIZING A CONTRACT OF OBLIGATION

WHEREAS Sevier County, Arkansas, deems it necessary and proper to enter into a Contract of Obligation with the Division of Environmental Quality as authorized by Arkansas Code Annotated § 8-6-1603.

NOW, THEREFORE, BE IT RESOLVED by the above named county that Greg Ray, as the Signatory Agent of Sevier County, is hereby authorized to enter into the Contract of Obligation affixed hereto and to sign the Contract of Obligation on behalf of the above named county.

In addition, this Resolution is intended to replace Resolution No. 2019-02 dated July 8, 2019, in order to reflect a change in the name of the Department of Environmental Quality to the Division of Environmental Quality.

PASSED, APPROVED, AND ADOPTED this 14th day of October, 2019.

APPROVED: _____

Greg Ray
Greg Ray, Sevier County Judge

DATED: 10-14-2019

ATTEST: Deborah K. Akin
Deborah K. Akin, Sevier County Clerk

Recorded
Book 5 Pages

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 available to meet the costs of closure or post closure;

WHEREAS, county governments as owners or operators of solid waste management facilities may utilize an alternate method of providing financial assurance for closure and post-closure care 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 SEVIER COUNTY (hereinafter "COUNTY"), Arkansas have reached mutually agreed terms and conditions for providing financial assurances through a Contract of Obligation.

TERMS AND CONDITIONS

COUNTY 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. COUNTY is a county government of the State of Arkansas.
3. COUNTY is the owner or operator of the solid waste management facility pursuant to DEQ Permit No. **0288-S4-R1** (hereinafter "Permit").
4. This Contract is for one fiscal year of COUNTY and shall automatically renew for four additional fiscal years unless the COUNTY 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 COUNTY.
5. COUNTY shall provide written notice not less than 60 days prior to the expiration of the fiscal year to the Director if COUNTY will not appropriate funds in the COUNTY'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 the last day of the fiscal year subject to appropriation by COUNTY.
6. COUNTY'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. COUNTY 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 and

post-closure care 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 FIFTY SEVEN THOUSAND SEVEN HUNDRED SEVENTY-ONE DOLLARS (157,771.00)** for Closure and Post-Closure Care 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 COUNTY 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, COUNTY hereby grants and pledges its rights and interest in the general revenues being disbursed, or that may be disbursed, to COUNTY by or from the State of Arkansas to DEQ for the express purposes and terms provided by this Contract.

11. COUNTY 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 COUNTY to properly perform a closure or post-closure 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 COUNTY 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 COUNTY, the Arkansas State Treasury, and the Department of Finance and Administration to commence the capture of revenues pledged by this Contract.

14. Effective upon default, COUNTY 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. COUNTY 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. COUNTY 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, COUNTY 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 COUNTY subsequent fiscal year. This amount may be increased or decreased as required to reflect estimated costs for closure and post-closure care.

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 COUNTY 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. COUNTY has completed post-closure care in compliance with the law; or
- c. COUNTY 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. COUNTY 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, Secretary
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317

Sevier County, Arkansas
Attn: Greg Ray, County Judge
115 North 3rd Street - #101
De Queen, AR 71832

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. COUNTY represents and affirms that the surrender and tender of funds to DEQ contemplated by this Contract shall not cause COUNTY 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 COUNTY.

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 COUNTY provided:

- a. COUNTY 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. COUNTY 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 COUNTY.

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

27. Nothing herein is construed to relieve COUNTY from any closure or post-closure 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 COUNTY for any closure or post-closure 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 COUNTY in a duly called and convened meeting with a quorum present.

31. The governing body of the COUNTY has authorized the COUNTY JUDGE to sign this Contract of Obligation on the behalf of COUNTY 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
Secretary

Date

COUNTY


Greg Ray, County Judge

10-14-2019
Date

Attest:


Deborah K. Akin, County Clerk