

DATE: *May 30, 2018*
TO: Mayor and City Council
FROM: Assistant City Manager 
SUBJECT: Resolution – Landfill Expense Reimbursement



RECOMMENDED ACTION

Approve the reimbursement resolution under our existing Agreement Governing Expenditures for State & Local Government Costs.

BUDGET IMPACT

The request is for budgeted expenses to maintain the city's landfill during the most recent year of the 30-year closure and monitoring period. The amount of the request is 34,168.97.

DISCUSSION

The Appling Road landfill was closed in 1999 with a state-issued permit, requiring ongoing monitoring and closure procedures. The City has been monitoring conditions at the landfill since, some of which will qualify for reimbursement under the Hazardous Waste Trust Fund. These expenses are eligible for reimbursement under the program upon approval of the resolution. Staff recommends approval of the resolution and execution of the agreement.

Attachment – Resolution



RESOLUTION

Authorization to Execute Agreement Governing Expenditures for State & Local Government Costs

WHEREAS, the City of Sugar Hill, Georgia has submitted an application to the Georgia Department of Natural Resources, Environmental Protection Division ("EPD") in order to receive funds from the Hazardous Waste Trust Fund; and

WHEREAS, EPD has submitted an Agreement Governing Expenditures for State & Local Government Costs to the City of Sugar Hill for execution;

NOW, THEREFORE, BE IT RESOLVED by the City Council that the proposed Agreement is hereby approved and the Mayor is hereby authorized to execute, on behalf of the City of Sugar Hill the referenced Agreement and any other related documents necessary to obtain the funding as provided therein; and

BE IT FURTHER RESOLVED that the Mayor is hereby authorized to take any and all other action, without further approval or action of this Council, which may be necessary or appropriate in order to fully consummate and carry out the intent of the Agreement.

This 11th Day of June, 2018.

ATTEST:

Steve Edwards, Mayor

Jane Whittington, City Clerk

FEDERAL ID# 580950853

CERTIFICATION

I do hereby certify that the above is a true and correct copy of the Resolution duly adopted by the City of Sugar Hill on the date so stated in said Resolution. I further certify that I am the City Clerk and that said Resolution has been duly entered in the official records of the City of Sugar Hill and remains in full force and effect this the 11th day of June, 2018.

Jane Whittington, City Clerk



GEORGIA

DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION DIVISION

Richard E. Dunn, Director

EPD Director's Office

2 Martin Luther King, Jr. Drive
Suite 1456, East Tower
Atlanta, Georgia 30334
404-656-4713

MAY 3 2018

Paul Radford
City of Sugar Hill
5039 West Broad Street
Sugar Hill, GA 30518

RE: Hazardous Waste Trust Fund Application for Reimbursement
HSI# 10718 Appling Road Landfill

Dear Mr. Radford:

This letter is in response to your request for reimbursement from the Hazardous Waste Trust Fund for costs spent investigating and cleaning up your landfill. Our review shows that you have \$34,168.97 in eligible costs.

In order for you to receive this funding, please return the following items to EPD thirty (30) days from the date of the letter:

- One signed and certified copy of a resolution, authorizing the City Manager to execute the contract. You may use the attached model resolution or draft one of your own; and
- Three signed and attested originals of the contract, "Agreement Governing Expenditures for State & Local Government Costs", including its attachments.

Once EPD receives both items back in proper form, we will execute the contract, and return an original copy to you.

If you have any questions regarding the enclosed documents, please contact Ms. Kelly Kitchens at (404) 657-0491.

Sincerely,

Richard E. Dunn
Director

Enclosures: 3 Original Contracts
1 Model Resolution

AGREEMENT GOVERNING EXPENDITURES FOR STATE & LOCAL GOVERNMENT COSTS

This Agreement made and entered into this _____ day of _____, 20__ by and between the Georgia Department of Natural Resources, Environmental Protection Division (hereinafter, "EPD"), and City of Sugar Hill, Georgia, by and through its Board, pursuant to Resolution passed _____, 20__ (hereinafter, "APPLICANT").

I. RECITALS

WHEREAS, the Hazardous Waste Trust Fund ("HWTF") has been continued in existence by law for the fulfillment of certain environmental purposes and declared public policy for the State of Georgia (O.C.G.A. Section 12-8-90 et seq.); and

WHEREAS, the Director of EPD is authorized and directed by law to serve as Trustee of the HWTF; and

WHEREAS, the Director of EPD, in his capacity as Trustee of the HWTF, is authorized by law to expend moneys deposited in the HWTF, in accordance with rules promulgated by the Board of Natural Resources, for financing of the state and local share of the costs associated with the investigation, remediation, and postclosure care and maintenance of sites placed on the National Priority List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or sites placed on the Hazardous Site Inventory pursuant to O.C.G.A. Section 12-8-97; and

WHEREAS, APPLICANT is a "local government" as defined in the Rules of the Georgia Department of Natural Resources, Environmental Protection Division (hereinafter, "EPD Rules"), Rule number 391-3-19-.09; and

WHEREAS, APPLICANT has, in accordance with EPD Rule 391-3-19-.09(2)(f), submitted an application for financial assistance in the form of reimbursement of "eligible costs" [as described in EPD Rule 391-3-19-.09(4)(a)] heretofore expended in connection with that certain site more particularly described the HWTF Application: Request for Reimbursement dated March 6, 2018, incorporated herein and made a part hereof (hereinafter, "the SITE"); and

WHEREAS, APPLICANT is in compliance with the Georgia Local Government Services Delivery statutes; and

WHEREAS, APPLICANT has met all financial assistance eligibility requirements as set forth in EPD Rule 391-3-19-.09(2); and

WHEREAS, EPD has completed its review of APPLICANT'S application for financial assistance as above-referenced; and,

WHEREAS, EPD is ready and willing to extend financial assistance to APPLICANT in the form of reimbursement to cover certain eligible costs, and APPLICANT is willing to accept same, upon the terms and conditions set forth in Part II below; and

WHEREAS, the parties hereto are authorized by law to enter into this agreement at this time;

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable consideration set forth below (the receipt and sufficiency of which is acknowledged by the respective parties), the parties hereby agree as follows:

II. TERMS AND CONDITIONS

A. SCOPE OF FINANCIAL ASSISTANCE

EPD hereby agrees APPLICANT is eligible to receive reimbursement from the Hazardous Waste Trust Fund, pursuant to O.C.G.A. 12-8-95 and EPD Rule 391-3-19-.09. The maximum amount APPLICANT may receive from the HWTF for "eligible costs" expended for the SITE, pursuant to this or any other Agreement, or combination of agreements, is \$2,000,000. APPLICANT'S eligibility for future funding from the Hazardous Waste Trust Fund for the SITE shall be reduced by the amount of funds actually disbursed to APPLICANT pursuant to this Agreement.

(1) "Reimbursed Costs"

(a) EPD hereby agrees to reimburse APPLICANT for those "eligible costs" heretofore expended by APPLICANT, as set forth and described in Exhibit "B" attached hereto (and incorporated herein and made a part hereof); for a total sum of **\$34,168.97** (said total sum hereinafter being referred to as the "REIMBURSED COSTS").

(b) Payment of the REIMBURSED COSTS to APPLICANT shall be made as funds are made available.

(2) The REIMBURSED COSTS actually paid to APPLICANT shall hereinafter be referred to as "the FINANCIAL ASSISTANCE".

B. PAYMENT

The following person(s) are hereby designated as being authorized to receive payments of FINANCIAL ASSISTANCE on behalf of APPLICANT:

NAME: Steve Edwards TITLE: Mayor

ADDRESS: City of Sugar Hill
5039 West Broad Street
Sugar Hill, GA 30518

TELEPHONE#: (770) 945-0281

The above person(s) may be substituted or changed by APPLICANT upon written notice to EPD pursuant to paragraph below.

C. TERM

Unless earlier terminated by EPD pursuant to Paragraph J below, the initial term of this Agreement shall be for two (2) years from the date of execution.

D. ACCOUNTING RECORDS/RIGHT TO INSPECT

(1) Accounting System/Records Retention Requirements

APPLICANT shall maintain an accounting system, which meets the requirements of the Government Accounting Standards Board (hereinafter "GASB"). The accounting system shall maintain books, records, documents, and other evidence, which pertain to and sufficiently support (in accordance with GASB) the FINANCIAL ASSISTANCE provided to APPLICANT pursuant to this Agreement (hereinafter collectively, the Records). Accounting procedures, policies, and the Records shall be completely open to State audit at any time during and for a period of five (5) years from the date of payment of any respective item of FINANCIAL ASSISTANCE, and APPLICANT shall preserve and make available such accounting procedures, policies and the Records during such time period. APPLICANT may, with the prior written consent of EPD, and in fulfillment of its obligation to retain the Records as required by this paragraph, substitute photographs, microphotographs or other authentic reproductions of the Records, after the expiration of two (2) years following the date of payment of the respective item of FINANCIAL ASSISTANCE to which such Records relate, unless a shorter period is authorized by EPD with the concurrence of the State Auditor or his duly authorized representative. Permission to substitute the Records as provided herein shall be within the sole discretion of EPD.

(2) Audit Requirements

The State standards for audits of contractors, and programs conducted under this Agreement are applicable to this section and are incorporated by reference as though fully set out herein.

E. RIGHT TO INSPECT WORK

EPD, the State Auditor of Georgia, or their authorized representatives shall, during normal business hours, have the right to enter into the premises of APPLICANT and/or all subcontractors, or such other places where the work for which the FINANCIAL ASSISTANCE is provided herein has been performed, for the purpose of inspecting, monitoring, or otherwise evaluating such work. All inspections and evaluations shall be performed in such a manner as will not unduly delay work.

F. DUTY TO COMMUNICATE

APPLICANT warrants that it has fully disclosed to EPD any and all information or knowledge currently within its possession or control relating to the sources of, and potentially responsible parties for the release of "regulated substances" [as those terms are defined in EPD Rule 319-3-19-.02(2)] at the SITE. APPLICANT agrees that in the event any such additional information or knowledge comes to its attention, or otherwise becomes available to it in the future, it will promptly provide same to EPD in writing.

G. RELATIONSHIP OF THE PARTIES

Neither APPLICANT nor any of its agents, servants, employees or subcontractors shall become or be deemed to become an agent, servant or employee of the State of Georgia or EPD as a result of this Agreement. Provided further, this Agreement shall not be construed so as to create a partnership or joint venture between APPLICANT and EPD or the State of Georgia.

H. TRADING WITH STATE EMPLOYEES

The parties certify that this Agreement does not and will not violate the provisions of O.C.G.A. 45-10-20 et seq. in any respect.

I. INDEMNIFICATION

APPLICANT hereby waives, releases, relinquishes, discharges and agrees to indemnify, protect and save harmless the State of Georgia (including the State Tort Claims Trust Fund and any other self-insurance fund established and/or maintained by the Georgia Department of Administrative Services on behalf of the State), EPD and its Director, their officers and employees (hereinafter collectively referred to as "Indemnities"), of and from any and all claims, demands, liabilities, loss, costs or expenses for any loss or damage (including bodily injury or personal injury including death, property damage, workers' compensation benefits, employment benefits, libel, slander, defamation of character, and invasion of privacy) and attorneys' fees, caused by, growing out of, or otherwise happening in connection with this Agreement, due to any act or omission (whether intentional or negligent, through theft or otherwise) on the part of APPLICANT, its agents, employees, subcontractors, or others working at the direction of APPLICANT or on its behalf; or due to any breach of this Agreement by APPLICANT; or due to the application or violation of any pertinent Federal, State or local law, rule or regulation by APPLICANT, its agents, employees, subcontractors, or others working at the direction of APPLICANT or on its behalf; or caused by any other person.

This indemnification applies whether: (i) the activities involve third parties or employees or agents of APPLICANT or Indemnities; (ii) the Indemnities are responsible for the situation giving rise to the claim; or (iii) a claim results in a monetary obligation that exceeds any contractual commitment.

This indemnification extends to the successors and assigns of APPLICANT, and this indemnification and release survives the termination of this Agreement and the dissolution or, to the extent allowed by law, the bankruptcy of APPLICANT.

This indemnification does not apply to the extent of the willful or wanton misconduct of the Indemnities, their officers or employees. This indemnification does not apply to the extent of the sole negligence of the Indemnities, their officers or employees, concerning activities within the scope of O.C.G.A. 13-8-2 (b) relative to the construction, alteration, repair, or maintenance of a building structure, appurtenances, and appliances, including moving, demolition, and excavating connected therewith.

If and to the extent such damage or loss as covered by this indemnification is covered by the State Tort Claims Fund or any other self-insurance fund established and maintained by the Georgia Department of Administrative Services on behalf of the State (collectively, the "Funds"), APPLICANT agrees to reimburse the Funds for such funds paid out by the Funds. To the full extent permitted by the Constitution and the laws of the State of Georgia and the terms of the Fund, APPLICANT and its insurers waive any right of subrogation against the State of Georgia, the Indemnities, and the Fund and insurers participating there under, to the full extent of this indemnification.

APPLICANT shall, at its expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnities. No settlement or compromise of any claim, loss or damage asserted against Indemnities shall be binding upon Indemnities unless expressly approved by the Indemnitee.

J. TERMINATION

This Agreement may terminate or may be terminated by EPD for any or all of the following reasons: for any default by APPLICANT; for the convenience of EPD; in the event of the insolvency of or declaration of bankruptcy by APPLICANT; and in the event sufficient funds no longer exist for the payment of EPD's obligations hereunder. Each of these is described in the following paragraphs.

(a) Termination for Default

The failure of APPLICANT to comply with any term, condition, or provision of this Agreement shall, at the option of EPD, constitute a default by APPLICANT. In the event of default, EPD shall notify APPLICANT in writing by hand-delivery or by certified or registered mail, return receipt requested, of the specific act or omission of APPLICANT which constitutes default. APPLICANT shall have fifteen (15) days from the date of receipt of such notification to cure such default; provided, however, if, in the sole discretion of EPD, APPLICANT'S default poses an imminent danger to the safety and health of the general public, EPD may require in the written notification that APPLICANT cure the default within a time period less than fifteen (15) days. In the event of default, and during the above specified grace period, performance under the Agreement shall continue as though the default had never occurred. In the event the default is not cured in fifteen (15) days (or within such other time period as required by EPD in the written notification of default to APPLICANT), EPD may, at its sole option, terminate the Agreement for default. Such termination shall be accomplished by written notice of termination forwarded to APPLICANT by certified or registered mail and shall be effective at the close of business on the date specified in the notice.

Upon effective termination of this Agreement as provided herein, APPLICANT shall not be entitled to any further payments pursuant to this Agreement (regardless of whether such payments may have previously been approved by EPD), and shall immediately return to EPD all FINANCIAL ASSISTANCE previously paid to APPLICANT. Provided, however, if it is determined, after notice of termination for default, that APPLICANT'S failure was due to causes beyond the control of and without error or negligence of APPLICANT, the termination shall be deemed a termination for convenience under Paragraph (b) below. The remedies provided EPD herein shall be in addition to and not in lieu of any other remedies that EPD may have by reason of APPLICANT'S breach of this Agreement.

(b) Termination for Convenience

EPD may terminate this Agreement in whole or in part whenever, for any reason, EPD determines that such termination is in the best interest of the State of Georgia. In the event that EPD elects to terminate the Agreement pursuant to this provision, it shall so notify APPLICANT by certified or registered mail, return receipt requested. The termination shall be effective as of the date specified in the notice.

(c) Termination for Bankruptcy or Insolvency

In the event that APPLICANT shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of the rights of creditors, EPD may at its option, terminate this Agreement. In the event EPD elects to terminate the Agreement under this provision it shall do so by sending notice of termination to APPLICANT by registered or certified mail, return receipt requested. The effective date of termination shall be deemed to be the date such notice is mailed to APPLICANT, unless otherwise specified. Upon effective termination of this Agreement as provided herein, APPLICANT shall not be entitled to any further payments pursuant to this Agreement (regardless of whether such payments may have previously been approved by EPD).

(d) Termination for Unavailability of Funds

Notwithstanding any other provision of this Agreement, the parties hereto agree that the charges hereunder are payable by EPD from the Hazardous Waste Trust Fund. In the event that the source of payment for the total obligation no longer exists or is insufficient with respect to the matters addressed herein, in the sole discretion EPD and of the State, then this Agreement as to all such matters or, as the case may be, as to any of the matters addressed under this Contract, shall terminate without further obligation of EPD and the State as of that moment. The certification of EPD and the State of the events stated above shall be conclusive. Should funding cease or otherwise become unavailable, this Agreement will immediately become null and void. Upon effective termination of this Agreement as provided herein, APPLICANT shall not be entitled to any further payments pursuant to this Agreement (regardless of whether such payments may have previously been approved by EPD)

K. GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the State of Georgia.

L. FORCE MAJEURE

The parties hereto shall not be responsible for any failure or delay in the performance of any obligations hereunder caused by acts of God, flood, fire, war or public enemy.

M. NOTICES

All notices under this Agreement shall be deemed duly given: Upon delivery, if delivered by hand (against receipt); or three days after posting, if sent by Registered or Certified Mail, Return Receipt Requested; to a party hereto at the address set forth below or to such other address as a party may designate by notice pursuant hereto.

APPLICANT: Paul Radford
City of Sugar Hill
5039 West Broad Street
Sugar Hill, GA 30518

EPD: Ms. Kelly Kitchens
Response and Remediation Program
2 Martin Luther King Jr., SE
Floyd Tower East, Suite 1052
Atlanta, Georgia 30334

N. WAIVER

The waiver by EPD of any breach of any provision contained in this Agreement shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this Agreement. No such waiver or waivers shall serve to establish a course of performance between the parties contradictory to the terms hereof.

O. AUTHORITY

APPLICANT warrants that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of APPLICANT has been properly authorized and empowered to enter into this Agreement. APPLICANT further acknowledges that it has read this Agreement, understands it and agrees to be bound by it.

P. SEVERABILITY

If any term or provision of this Agreement shall be found to be illegal or unenforceable then, notwithstanding, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken here from.

Q. HEADINGS

The paragraph headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

R. AMENDMENTS IN WRITING

No amendment to this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of the parties.

S. ASSIGNMENT

APPLICANT shall not assign its right to receive FINANCIAL ASSISTANCE, or any obligations required of it pursuant to this Agreement without the express written consent of EPD.

T. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter; all prior agreements, representations, statements, negotiations, and undertakings are superseded hereby.

U. IMMIGRATION REFORM AND CONTROL ACT

Each party hereby certifies that it has complied with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act, O.C.G.A. § 13-10-90 et seq., by registering at <https://www.vis-ths.com/EmployerRegistration> and verifying information for all new employees and executing any affidavits required by Ga. Comp. R & Regs. r. 300-10-1-.01 et seq.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

GEORGIA DEPARTMENT OF NATURAL RESOURCES,
ENVIRONMENTAL PROTECTION DIVISION ("EPD")

By:

Richard E. Dunn, Director

City of Sugar Hill, GEORGIA ("APPLICANT")

By

Steve Edwards, Mayor

ATTEST:

Title:

