

RESOLUTION NO: 2010-024

RESOLUTION OF CITY COUNCIL ACCEPTING SOLID WASTE MANAGEMENT PROGRAM LEACHATE COLLECTION AND REMEDIATION ASSISTANCE GRANT.

WHEREAS, the City of Rapid City applied for a Solid Waste Management Program Regional Landfill Assistance Grant through the South Dakota Board of Water and Natural Resources and administered through the South Dakota Department of Environment and Natural Resources for the design and construction of a landfill gas recovery and treatment project at the Rapid City landfill, and

WHEREAS, the City of Rapid City was notified of the approval of a \$250,000 Solid Waste Management Program Regional Landfill Assistance Grant for the Leachate Collection and Remediation System, and

WHEREAS, the governing body of the City of Rapid City is required to accept the grant by resolution, and

WHEREAS, the City of Rapid City is required to designate, by resolution, a certifying officer for the purpose of signing required documents for the grant.

NOW THEREFORE, BE IT RESOLVED, by the City of Rapid City, that the governing body of the City of Rapid City hereby accepts the \$250,000 grant and that the City Engineer is hereby designated as the City's certifying officer for the purpose of signing correspondence, pay requests, and other required documents and forms.

Dated this ____ day of _____, 2010.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

**South Dakota
Solid Waste Management Program
Funding Agreement**

Recipient	City of Rapid City	Award Type	Grant	ID Number	2010G-SW-404
Address	300 Sixth Street Rapid City, SD 57701	Date of Award	January 8, 2010	Type of Action	New
Certifying Officer (name, title, phone no.)	Alan Hanks Mayor (605) 394 4110	Total Project Cost	\$1,025,271	SWMP Amount	\$250,000

Project Title/Description Leachate Collection and Remediation and Closure of Cell 12

The City of Rapid City is proposing to construct a landfill leachate extraction and remediation system as well as closure of Cell 12. Recent groundwater monitoring indicates leachate impact on groundwater. The system will collect groundwater were it will be treated and subsequently discharged.

Award Conditions

General: The grantee covenants and agrees that it will expeditiously initiate and timely complete the project above described in accordance with this agreement in two years or less from the date of award. The grantee warrants, represents, and agrees that it will comply: (1) with all applicable provisions of SDCL Chapter 34A-6-1.3, SDCL Chapter 34A-6-61 and ARSD 74:05:10; (2) with any special conditions set forth in this agreement; and (3) with the attached Assurances, Terms, and Conditions.

Special:

Offer

The State of South Dakota hereby offers assistance to the city of Rapid City in an amount up to 24.4% of all approved costs incurred up to and not exceeding \$250,000, for the support of the approved project as described above (including all application modifications).

Signature of Award Official

Typed Name and Title

Date

Brad Johnson, Chairman
Board of Water and Natural Resources

January 8, 2010

Acceptance

In accepting this award or amendment and any payment made pursuant thereto, (1) the undersigned represents that he/she is duly authorized to act on behalf of the recipient, and (2) the recipient agrees (a) to comply with the provisions of this agreement, and (b) any payments found by the State of South Dakota to have been overpaid will be refunded or credited in full to the State. To the best of my knowledge and belief, data in this agreement are true and correct.

By and On Behalf of The Recipient

Signature of Designated Official

Typed Name and Title

Date

SOLID WASTE MANAGEMENT PROGRAM
GRANT AGREEMENT
ASSURANCES, TERMS AND CONDITIONS

In consideration of the approval of the Grant described above by the State of South Dakota, acting through its Board of Water and Natural Resources, and Department of Environment and Natural Resources, 523 East Capitol Avenue, Pierre, SD 57501 (the "State"), the Grantee covenants and agrees to comply with the following assurances, terms, and conditions.

1. Grantee will comply with those federal, state and local laws, regulations, ordinances and permits applicable to the construction, operation, and maintenance of the Project.
2. Grantee will cause its contractors, sub-contractors, agents, and employees to comply with the applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. In the event of conflict between federal, state and local laws and regulations, compliance with the more restrictive laws and regulations shall be deemed compliance with less restrictive laws and regulations.
3. Grantee will submit all changes which would alter the purpose, scope, or the functional layout of the Project to the State for approval and no such changes or modifications may be made without such prior approval in writing. It is agreed that the Application of the Grantee, including those materials attached in support thereof, are by this reference incorporated herein as if set out in full. Grantee will not substantially depart from the description of the Project as set forth therein without the prior written approval of the State.
4. Grantee will construct the Project, or cause it to be constructed, to final completion with reasonable diligence in accordance with the approved plans and specifications and with the approved Project scope for the grant; construction will be completed and funds expended within two years after Grantee's request for grant funds has been approved.
5. Grantee will provide that construction administration and inspection is done by or under the supervision of a professional engineer or architect licensed and registered in the State of South Dakota to help assure that the construction contractor's work conforms with the approved plans and specifications, and to furnish inspection and material testing reports, recommendations and such other information as the State may require. It is recognized and understood that the final responsibility of conformance with the plans and specifications is that of the construction contractor. The State has the right to monitor facility and design through on-site inspections from time to time.
6. Grantee warrants and represents as follows:

Approved
1/8/2008

- a. The Grantee is duly organized and existing under the laws of the State of South Dakota; has taken all proper action, including the adoption of a resolution, to authorize the execution, delivery and performance of its obligations under this Grant Agreement; and has the power and authority to enter into and consummate all transactions contemplated by this Grant Agreement, and to carry out its obligations hereunder.
- b. There is no action, suit, proceeding, inquiry or investigation at law or equity, by or before any judicial or administrative court, agency or body, pending or threatened against the Grantee wherein an unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Grant Agreement.
- c. As of the date of this Grant Agreement, the Grantee has obtained or made all permits, findings and approvals required to the date of this Grant Agreement by any governmental body or officer for the Project or the financing thereof, except as otherwise set forth in this Grant Agreement or disclosed in writing to the State prior to the execution hereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority (other than those, if any, already obtained) is required on the part of the Grantee as a condition to entering into this Grant Agreement and the performance of the Grantee's obligations hereunder.
- d. This Grant Agreement is a legal, valid and binding obligation and agreement of the Grantee, enforceable against the Grantee according to its terms, except as the enforceability thereof may be limited by laws relating to bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity.
- e. The Project consists of the facilities, improvements and activities described in the Application, as approved by the State, which is by this reference incorporated herein, as the same may be from time to time amended pursuant to section 27 hereof.
- f. There is no fact that the Grantee has not specifically disclosed in writing to the State that materially and adversely affects or will materially and adversely affect the properties, operations and finances of the Grantee, its legal status, or its ability to perform its obligations hereunder.
- g. The Grantee certifies that there has been no material adverse change since the date of the Application in the financial condition, organization, operation, property, or the personnel of the Grantee; and that the information contained in the Application, and other information the Grantee provided to the State does not contain any material misrepresentations or misstatements of fact.

h. The Grantee further certifies that it:

(1) has not received any notice or otherwise learned of any Environmental Liability which would individually or in the aggregate constitute a Material Adverse Occurrence arising in connection with (i) any non-compliance with or violation of the requirements of any Environmental Law or (ii) the release or threatened release of any toxic or hazardous waste or other substance into the environment;

(2) does not have any knowledge of any threatened or actual liability in connection with the release or threatened release of any toxic or hazardous waste, substance or constituent, or other substance in the environment which would individually or in the aggregate constitute a Material Adverse Occurrence; or

(3) has not received any notice or otherwise learned of any federal or state investigation evaluating whether any remedial action is needed to respond to a material release or threatened release on any toxic or hazardous waste, substance or constituent into the environment for which the Grantee is or may be liable. The Grantee is in substantial compliance with all Environmental Laws in the respective jurisdictions where it is presently doing business or conducting operations.

(4) Material Adverse Occurrence shall mean any occurrence of any nature whatsoever, including without limitation, any adverse determination in any litigation, arbitration or government investigation or proceeding, which the State shall reasonably determine materially adversely affects the then present or prospective financial condition or operations of the Grantee, or impairs the ability of the Grantee to perform its obligations.

7. Grantee will establish and maintain books and records relating to the construction, operation, and maintenance of the Project and its financial affairs, in a manner prescribed by the State and as promulgated by the Governmental Accounting Standards Board, the Financial Accounting Standards Board, or an Other Comprehensive Basis of Accounting, as applicable. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to the Project at any time. Grantee will retain all books and records, including audits required pursuant to this Grant Agreement, for a period of not less than three years following the issuance of the final grant closeout letter.
8. Grantee will establish safeguards to prevent employees from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain

unrelated to the public benefits from the Project, for themselves or others, particularly those with whom they have family, business, or other ties.

9. Grant proceeds will be kept in the state treasury, in the Water and Environment Fund, and shall be disbursed based upon the Grantee's request for disbursements. Grantee will submit signed requests for disbursements using a form prescribed by the State, together with all attachments required by such form. The request for disbursement will be submitted to such person or persons as the State may designate for approval. Disbursements may be obtained only for those Project costs which have been legally incurred, and which are due and payable, or have been paid by the Grantee. The Grantee will designate, by duly adopted resolution, an official to certify on Grantee's behalf that the request submitted is correct and is a valid expenditure for the Project. The Grantee is required to submit a completed "Vendor ACH Authorization Form" which will authorize the State to make electronic payments by direct deposit and provide electronic payment notification to the Grantee. This form is available through the DENR Fiscal Office or it can be downloaded directly from <http://www.state.sd.us/bfm/vendor/ach.htm>. The Grantee must fax the completed form to (605) 773-4068 or mail it to:

DENR Fiscal Office
523 East Capitol
Pierre SD 57501-3182

The State reserves the right, at its option, to disburse the funds directly to the contractor or sub-contractor supplying the service or material for which the payment is sought. Disbursements for travel and subsistence may not exceed the rates established in the rules and regulations of the State Board of Finance relating to travel and subsistence expenses for state employees. No funds will be disbursed until all fees owed by the Grantee to the Department of Environment and Natural Resources are paid.

10. Prior to the drawdown of grant funds, Grantee will supply to the State, in a form satisfactory to the State, evidence of the commitment of funds from other sources for use, together with the funds granted hereby, in construction of the Project.
11. Grantee hereby grants to the State, a security interest pursuant to the South Dakota Uniform Commercial Code (SDCL Ch. 57A-1 et seq.) in the equipment described in the attachment hereto, including all products of, additions to, and replacements thereof, and all accessories, accessions, parts and equipment now or hereafter affixed thereto and used in connection therewith, and the proceeds of all property secured hereby (the "Collateral"). Upon purchase of the equipment, Grantee shall within ten (10) days provide a description to the State, which description is hereby made a part of this Grant Agreement. Grantee agrees that the equipment will remain personal property, and not become a fixture. The State shall have a first lien on the Collateral, unless it expressly agrees otherwise in writing. Grantee agrees to cooperate with the State in signing and filing all documents necessary to perfect the State's security interest in such equipment.

12. Grantee agrees not to sell, lease, convey, assign, transfer, or encumber any equipment purchased, in whole or in part, with funds provided pursuant to this Grant Agreement for a period of five (5) years from the date hereof, without the express prior written consent of the State. In the event the equipment is transferred within the five (5) year period, Grantee agrees to pay the State, within 30 days, an amount equal determined by taking the fair market value of the equipment times the approved percentage of the Project funded by this Grant Agreement.
13. Grantee will submit, if requested, within ten (10) working days of the end of a quarter, on a form provided by the State, an activity status report detailing the progress, operations, and financial condition of the Project and its facilities, which reports may include the entire construction and operation of the Project and all revenues and expenditures of the Project.
14. If the Grantee's financial statements for the grant period are not audited and the grant is for more than \$250,000 dollars, the Grantee agrees to have a final project audit performed by a qualified independent accountant duly licensed in the State of South Dakota. The scope of the required final project audit is detailed in Exhibit A.
15. Grantee will insure that all land surveys are conducted by a land surveyor registered in the State of South Dakota, and that the final plans and specifications are prepared under the supervision of a professional architect or engineer licensed and registered in the State of South Dakota.
16. Grantee will maintain an acceptance certificate completed by the architect or engineer in charge of the Project in the Grantee's files.
17. The Grantee shall at all times during the term of this Grant Agreement keep and maintain property and casualty insurance, workers compensation, and liability insurance with insurers licensed to do business in the State, against such risks and in such amounts as are customary in the State for entities of the same or similar size and type as the Grantee, and similarly situated with facilities of the Project's type, and provide proof of such coverage to the State. Any policy provided pursuant to this section must provide that it cannot be canceled without 30 days prior written notice of cancellation.
18. Grantee agrees to indemnify and hold the State, its officers, agents, employees, assigns and successors in interest harmless from any and all claims or liability of any kind or character whatsoever arising from or connected with the construction, operation, or maintenance of the Project funded herein, provided that nothing herein requires the Grantee to indemnify the State for its own acts or omissions.
19. Prior to the disbursement of funds, Grantee will provide the State with the written opinion of an attorney duly licensed to practice law in the State of South Dakota, said opinion certifying, if applicable:

- a. That the Grantee is a duly organized and existing legal entity under State law, that the Grantee has the legal power to enter into this Grant Agreement both as a matter of State law and according to its enabling documents, and that its governing board has duly authorized these transactions by appropriate resolutions;
 - b. That Grantee, has acquired or will acquire the real property necessary for the construction of the Project, together with those rights-of-way, easements, permits, and licenses necessary for the construction, operation and maintenance of the Project; that the legal instruments evidencing that acquisition are in appropriate and due legal form and adequately confer upon the Grantee the necessary rights for the construction, operation and maintenance of the Project; that such omissions or defects as may exist will in no substantial way or manner endanger the value or operation of the Project and its facilities; and that those legal instruments have been duly and properly recorded in the appropriate public land records of each county in which any land affected thereby is situated; and,
 - c. That there is no action, suit, proceeding, inquiry or investigation at law or in equity, by or before any judicial or administrative court, agency or body, pending or threatened against the Grantee or the Project, wherein an unfavorable decision, ruling, or finding would materially adversely affect the validity or enforceability of this Grant Agreement, or would materially adversely affect the ability of the Grantee to comply with its obligations under this Grant Agreement.
20. In the event the Grantee fails or refuses to perform any covenants or agreements hereunder on Grantee's part made and entered into, or in the event of an improper use of grant funds hereunder, or in the event of the failure of the Grantee to promptly pay, when due, any taxes, charges, liens, assessments, or encumbrances, or in the event of the insolvency of the Grantee, the State may at its option declare this Grant Agreement to be in default and shall provide Grantee with written notice of such default. If such default has not been cured, or if a written plan to correct such default acceptable to the State has not been submitted to the State within thirty (30) days of Grantee's receipt of written notice thereof, the State at its sole option, may cancel this Grant Agreement, and Grantee shall be obligated to reimburse the State for any grant funds therefore expended by or for the benefit of Grantee, or any part thereof, and if not promptly paid the State may pursue any rights and remedies under any applicable laws or regulations. Grantee agrees to pay the State an amount equal to the costs and expenses, including reasonable expert and attorney's fees, incurred by the State in enforcing its rights under this Grant Agreement.
21. The rights and remedies herein conferred upon the State shall be cumulative and not alternative and shall be in addition and not in substitution of or in derogation of rights and remedies conferred by any other agreements between the parties hereto or by any applicable law. The failure of the State to enforce strict performance of any covenant, promise, or condition herein contained, including timely payments due hereunder, shall

not operate as a waiver of the right of the State thereafter to require that the terms hereof be strictly performed according to the tenor thereof.

22. This Grant Agreement, or any part thereof, or the benefits to be received hereunder, shall not be assigned, transferred, or otherwise disposed of to any person, firm, corporation, or other entity by Grantee without the expressed prior written consent of the State.
23. Any notice or other communication required under this Grant Agreement shall be in writing and sent to the address set forth in this Grant Agreement. Notices shall be given by and to the Secretary, Department of Environment and Natural Resources on behalf of the State, and by and to an authorized officer of the Grantee on behalf of the Grantee, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.
24. In the event that any provision of this Grant Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
25. All other prior discussions, communications and representations concerning the subject matter of the Grant are superseded by the terms of this Grant Agreement, and except as specifically provided herein, this Grant Agreement constitutes the entire agreement with respect to the subject matter hereof.
26. This Grant Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Grant Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
27. This Grant Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof or thereof, and which writing will be signed by an authorized representative of each of the parties. No provision stated herein shall be waived without the prior written consent of the State.
28. Time is of the essence in the performance of the covenants, terms and conditions contained in this Grant Agreement. This Grant Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors and assigns

EXHIBIT A

SOLID WASTE MANAGEMENT PROGRAM

All recipients of a Solid Waste Management Program grant of more than \$250,000 who do not have their financial statements audited during the grant period must have a final Project audit performed by a qualified independent accountant duly licensed in the State of South Dakota.

The scope of the audit will include:

- 1) Compliance with federal, state and local laws, regulations, ordinances and permits applicable to the construction, operation, and maintenance of the Project;
- 2) Documentation of all sources of revenue for the Project and all Project costs to include allocation of costs by revenue source;
- 3) An Acceptance Certificate completed by the architect or engineer of the Project.

Landfill Leachate Removal and Remediation Project No LF07-1681

