

Request for Board of Commissioners' Action

From: Faye Hughes, County Administrator Date: May 14, 2019

Subject: GEFA Loan Agreement & Resolution Item Number: VIII-B

Attached are the loan documents for the GEFA Second Modification Loan Agreement No. GF2017009, \$1,540,000, for landfill cells 15-18. This modification is needed for funds to be moved from Georgia Water State Revolving Fund to Georgia fund.

The Chairman will need a motion to adopt the Resolution for GEFA Second Modification Loan Agreement in the amount of \$1,540,000 and authorize the chair's endorsement on the Second Modification of Promissory Note and Loan Agreement along with supporting loan documents.

Motion made by _____

Second made by _____

Any discussion: _____

Votes _____ yes _____ no

Motion carried/ failed



Brian P. Kemp **Kevin Clark**
Governor Executive Director

May 9, 2019

Ms. Faye Hughes
County Administrator
Cook County Board of Commissioners
1200 Hutchinson Ave
Adel, GA 31620

RE: Modification for Loan No. GF2017009

Dear Ms. Hughes:

Enclosed are the second modification documents for the Georgia Fund loan agreement between the Georgia Environmental Finance Authority (GEFA) and the Cook County Board of Commissioners. GEFA is pleased to provide you with the following materials:

1. Three copies of the Second Modification of Promissory Note and Loan Agreement, including:
 - a. Exhibit A – Description of Project (Scope of Work, Budget, and Schedule)
 - b. Exhibit E – Opinion of Borrower's Counsel
 - c. Exhibit F – Resolution of Governing Body

In order to execute this second modification in a timely manner, please read the following instructions:

SECOND MODIFICATION OF PROMISSORY NOTE AND LOAN AGREEMENT

Three copies of the second modification are enclosed. Each copy is an original counterpart and each must be executed. **Please do not date page one of these copies of the second modification.** This date will be completed by GEFA at the time of execution of this second modification. Please have the appropriate official sign each copy and the appropriate person attest the signature. Once signed, **return all three copies of the second modification with any other documents for our review and execution.** GEFA will send your counterpart to you after execution.

EXHIBIT E – OPINION OF BORROWER'S COUNSEL

Exhibit E is a letter that must be **prepared by your local government's attorney.** This letter ensures that the second modification documents and other documents have been properly reviewed and approved by the borrower's counsel. On page 4 of the second modification, the borrower's counsel must also sign where indicated that second modification is "Approved as to form."

EXHIBIT F – RESOLUTION OF GOVERNING BODY

This resolution gives authorization to the chief elected official to execute the second modification documents, and any and all other documents. This resolution must be submitted along with the signed second modification documents. The same elected official authorized to sign the second modification documents within the resolution must also sign the second modification documents.



8038-G AND TAX CERTIFICATE

Please complete the 8038-G form for Tax-Exempt Governmental Obligations and have the appropriate official sign the form. Also, please have the appropriate official sign the Tax Certificate and the appropriate person attest the signature. **Refer to the enclosed sheet for further instructions concerning the completion of these forms.**

GEFA is glad to assist you with the modification of this loan agreement and promissory note. Please do not hesitate to let us know if we can answer any questions or be of assistance in any other way.

Sincerely,

Dana Eldridge
Project Manager

Enclosures

cc: Hofstadter & Associates, Inc. (w/o enclosures)

8038-G AND TAX CERTIFICATE

Please complete the 8038-G form for Tax-Exempt Governmental Obligations and have the appropriate official sign the form. Also, please have the appropriate official sign the Tax Certificate and the appropriate person attest the signature. **Refer to the enclosed sheet for further instructions concerning the completion of these forms.**

GEFA is glad to assist you with the modification of this loan agreement and promissory note. Please do not hesitate to let us know if we can answer any questions or be of assistance in any other way.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana Eldridge". The signature is fluid and cursive, with the first name "Dana" and last name "Eldridge" clearly distinguishable.

Dana Eldridge
Project Manager

Enclosures

cc: Hofstadter & Associates, Inc. (w/o enclosures)

SECOND MODIFICATION OF PROMISSORY NOTE AND LOAN AGREEMENT

THIS SECOND MODIFICATION OF PROMISSORY NOTE AND LOAN AGREEMENT (this "Second Modification") dated _____, 20____, by and between COOK COUNTY BOARD OF COMMISSIONERS, a Georgia public body corporate and politic (the "Borrower"), and the GEORGIA ENVIRONMENTAL FINANCE AUTHORITY, a Georgia public corporation (the "Lender")

**DO NOT
DATE THIS
PAGE**

Statement of Facts

A. The Lender and the Borrower are parties to that certain Loan Agreement, dated **OCTOBER 6, 2017**, as amended prior to the date hereof (as so amended, the "Loan Agreement"; all capitalized terms used in this Second Modification but not defined herein have the meanings given in the Loan Agreement), pursuant to which the Lender made a loan to the Borrower in accordance with the terms and conditions thereof. The Borrower's obligation to repay such loan is evidenced by that certain Promissory Note, dated **SEPTEMBER 18, 2017**, as amended prior to the date hereof (as so amended, the "Note").

B. The Lender and the Borrower desire to modify the Loan Agreement and Note in certain respects in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises, the covenants and agreements contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Lender and the Borrower further agree as follows:

Statement of Terms

1. Amendments of Note - Subject to the fulfillment of the conditions precedent to the effectiveness of this Second Modification that are set forth below, the Note is hereby amended as follows:

FOR VALUE RECEIVED, the undersigned (hereinafter referred to as the "Borrower") promises to pay to the order of the **GEORGIA ENVIRONMENTAL FINANCE AUTHORITY** (hereinafter referred to as the "Lender") at the Lender's office located in Atlanta, Georgia, or at such other place as the holder hereof may designate, the principal sum of **ONE MILLION FIVE HUNDRED FORTY THOUSAND DOLLARS AND ZERO CENTS (\$1,540,000)**, or so much thereof as shall have been advanced hereagainst and shall be outstanding, together with interest on so much of the principal balance of this Note as may be outstanding and unpaid from time to time, calculated at the rate or rates per annum indicated below.

The unpaid principal balance of this Note shall bear interest at a rate per annum equal to **ZERO AND 67/100 PERCENT (0.67%)**, (1) calculated on the basis of actual number of days in the year and actual days elapsed until the Amortization Commencement Date (as hereinafter defined), and (2) calculated on the basis of a 360-day year consisting of twelve 30-day months thereafter.

Accrued interest on this Note shall be payable monthly on the first day of each calendar month until the first day of the calendar month following the earlier of (1) the Completion Date (as defined in the hereinafter defined Loan Agreement), (2) **MAY 1, 2020**, or (3) the date that the loan evidenced by this Note is fully disbursed (the "**Amortization Commencement Date**"). Principal of and interest on this Note shall be payable in **FIFTY-NINE (59)** consecutive monthly installments equal to the Installment Amount (as hereinafter defined), commencing on the first day of the calendar month following the Amortization Commencement Date, and continuing to be due on the first day of each succeeding calendar month thereafter, together with a final installment equal to the entire remaining unpaid principal balance of and all accrued interest on this Note, which shall be due and payable on the date that is **5** years from the Amortization Commencement Date (the "**Maturity Date**").

2. Amendments of Loan Agreement - Subject to the fulfillment of the conditions precedent to the effectiveness of this Second Modification that are set forth below, the Loan Agreement is hereby amended as follows:

Section 1 of the Loan Agreement is hereby amended and restated to read as follows: "**Background** - The Lender desires to loan to the Borrower **ONE MILLION FIVE HUNDRED FORTY THOUSAND DOLLARS AND ZERO CENTS (\$1,540,000)** from the **GEORGIA FUND** (the "**Fund**") to finance the costs of acquiring, constructing, and installing the environmental facilities described in Exhibit A attached hereto (the "**Project**"). The Environmental Protection Division ("**EPD**") of the Department of Natural Resources of the State of Georgia has completed all existing statutory reviews and approvals with respect to the Project, as required by Section 50-23-9 of the Official Code of Georgia Annotated, and has approved or will approve the detailed plans and specifications (the "**Plans and Specifications**") for the Project prepared or to be prepared by the Borrower's engineer (the "**Engineer**"), which may be amended from time to time by the Borrower but subject to the approval of the EPD."

Section 2 (a) of the Loan Agreement is hereby amended and restated to read as follows: "The Lender agrees to advance to the Borrower, on or prior to the earlier of (1) the Completion Date (as hereinafter defined), (2) **MAY 1, 2020**, or (3) the date that the loan evidenced by this Note is fully disbursed, the Loan in a principal amount of up to **\$1,540,000** which Loan may be disbursed in one or more advances but each such disbursement shall reduce the Lender's loan commitment hereunder and any sums advanced hereunder may not be repaid and then re-borrowed."

Exhibit A is amended and restated to read as written in the attached Exhibit A.

3. No Other Waivers or Amendments - Except for the amendments expressly set forth and referred to in Section 1 and 2 above, the Note and the Loan Agreement shall

remain unchanged and in full force and effect. Nothing in this Second Modification is intended, or shall be construed, to constitute a novation or an accord and satisfaction of any of the obligations created by the Note.

4. Representations and Warranties - To induce the Lender to enter into this Second Modification, the Borrower does hereby warrant, represent, and covenant to the Lender that: (a) each representation or warranty of the Borrower set forth in the Loan Agreement is hereby restated and reaffirmed as true and correct on and as of the date hereof as if such representation or warranty were made on and as of the date hereof (except to the extent that any such representation or warranty expressly relates to a prior specific date or period), and no Event of Default has occurred and is continuing as of this date under the Loan Agreement; and (b) the Borrower has the power and is duly authorized to enter into, deliver, and perform this Second Modification, and this Second Modification is the legal, valid, and binding obligation of the Borrower enforceable against it in accordance with its terms.

5. Conditions Precedent to Effectiveness of this Second Modification - The effectiveness of this Second Modification is subject to the truth and accuracy in all material respects of the representations and warranties of the Borrower contained in Section 4 above and to the fulfillment of the following additional conditions precedent:

a. the Lender shall have received one or more counterparts of this Second Modification duly executed and delivered by the Borrower; and

b. the Lender shall have received (1) a signed opinion of counsel to the Borrower, substantially in the form of Exhibit E attached hereto, and (2) a certified copy of the resolution adopted by the Borrower's governing body, substantially in the form of Exhibit F attached hereto.

6. Counterparts - This Second Modification may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Second Modification to be duly executed and delivered as of the date specified at the beginning hereof

COOK COUNTY BOARD OF COMMISSIONERS

Approved as to form:

Signature: _____

By: _____

Print Name: _____

Borrower's Attorney

Title: _____



(SEAL)



Attest Signature: _____

Print Name: _____

Title: _____

**GEORGIA ENVIRONMENTAL FINANCE
AUTHORITY**

Signature: _____

Kevin Clark
Executive Director

(SEAL)

DESCRIPTION OF THE PROJECT

SCOPE OF WORK

Recipient: COOK COUNTY BOARD OF COMMISSIONERS

Loan Number: GF2017009

This project consists of constructing four solid waste cells at the Cook County municipal solid waste landfill and all appurtenances.



DESCRIPTION OF THE PROJECT**PROJECT BUDGET****Recipient: COOK COUNTY BOARD OF COMMISSIONERS****Loan Number: GF2017009**

ITEM	TOTAL	GA FUND	CWSRF
Construction	\$3,364,099	\$1,245,560	\$2,118,539
Contingency	322,355	100,000	222,355
Engineering & Inspection	544,546	194,440	350,106
Administrative/Legal	-	-	-
TOTAL	\$4,231,000	\$1,540,000	\$2,691,000

*The amounts shown above in each budget item are estimates. Borrower may adjust the amounts within the various budget items without prior Lender approval provided Borrower does not exceed the loan amount contained in Section 1 of the Loan Agreement. In no event shall Lender be liable for any amount exceeding the loan amount contained in Section 1 of the Loan Agreement.

DESCRIPTION OF THE PROJECT

PROJECT SCHEDULE

Recipient: COOK COUNTY BOARD OF COMMISSIONERS

Loan Number: GF2017009

ACTION	DATE
Plans and Specifications submitted to EPD	AUGUST 2017
Bid Opening	OCTOBER 2017
Notice to Proceed	DECEMBER 2017
Completion of Construction	JANUARY 2020

OPINION OF BORROWER'S COUNSEL

(Please furnish this form on Attorneys Letterhead)

Date

Georgia Environmental Finance Authority
233 Peachtree St, NE
Harris Tower, Ste 900
Atlanta, GA 30303-1506

Ladies and Gentlemen:

A legal opinion from **BENNETT & CONNELL, LLC** was delivered to you, dated **SEPTEMBER 20, 2017** (the "Closing Opinion"), relating to the Loan Agreement (the "Loan Agreement"), dated **OCTOBER 6, 2017** between **COOK COUNTY BOARD OF COMMISSIONERS** (the "Borrower") and the **GEORGIA ENVIRONMENTAL FINANCE AUTHORITY** (the "Lender"), and the Promissory Note (the "Note"), dated **SEPTEMBER 18, 2017**, of the Borrower. A legal opinion was also delivered to you dated **APRIL 2, 2018** relating to the modification of Promissory Note and Loan Agreement dated **APRIL 16, 2018**. As counsel for the Borrower, I have examined the original of the Second Modification of Promissory Note and Loan Agreement (the "Second Modification"), between the Borrower and the Lender, the proceedings taken by the Borrower to authorize the Second Modification, the Closing Opinion, and such other documents, records, and proceedings as I have deemed relevant or material to render this opinion. Based upon such examination, I hereby reconfirm as of the date hereof the opinions contained in the Closing Opinion, subject to the second modification that all references to the Note and the Loan Agreement (as defined in the Closing Opinion) shall be deemed to include a reference to the Second Modification. Nothing has come to my attention, after due investigation, that in any way might question the continuing validity and accuracy of the Closing Opinion, as modified above.

Very truly yours,

Signature

Printed Name

Date

**EXTRACT OF MINUTES
RESOLUTION OF GOVERNING BODY**

Recipient: COOK COUNTY BOARD OF COMMISSIONERS

Loan Number: GF2017009

At a duly called meeting of the governing body of the Borrower identified above (the "Borrower") held on the _____ day of _____, the following resolution was introduced and adopted.

WHEREAS, the Borrower has borrowed **\$1,400,000** from the **GEORGIA ENVIRONMENTAL FINANCE AUTHORITY** (the "Lender"), pursuant to the terms of the Loan Agreement (the "Loan Agreement"), dated **OCTOBER 6, 2017**, between the Borrower and the Lender; and

WHEREAS, the Borrower's obligation to repay the loan made pursuant to the Loan Agreement is evidenced by a Promissory Note (the "Note"), dated **SEPTEMBER 18, 2017**, of the Borrower; and

WHEREAS, the Borrower desires to increase the loan amount by **\$140,000**, and

WHEREAS, the Borrower and the Lender have determined to amend and modify the Note and the Loan Agreement, pursuant to the terms of a Second Modification of Promissory Note and Loan Agreement (the "Second Modification") between the Borrower and the Lender, the form of which has been presented to this meeting;

NOW, THEREFORE, BE IT RESOLVED by the governing body of the Borrower that the form, terms, and conditions and the execution, delivery, and performance of the Second Modification are hereby approved and authorized.

BE IT FURTHER RESOLVED by the governing body of the Borrower that the terms of the Second Modification are in the best interests of the Borrower, and the governing body of the Borrower designates and authorizes the following persons to execute and deliver, and to attest, respectively, the Second Modification, and any related documents necessary to the consummation of the transactions contemplated by the Second Modification.

(Signature of Person to Execute Documents)

(Print Title)

(Signature of Person to Attest Documents)

(Print Title)

The undersigned further certifies that the above resolution has not been repealed or amended and remains in full force and effect.

Date: _____

(SEAL)



Secretary/Clerk

