

**Authority Meeting Minutes
354th Meeting (via Conference Call)
November 2, 2020**

Members Present: Joseph J. Siemek
Jeffrey D. Castonguay
Guillermo (“Willie”) Wainer
Rhody Holthaus
Charles Glass, Ph. D. (Director, MES)
Michael G. Marschner

Other Participants: Chris Skaggs (NMWDA)
Andrew Kays (NMWDA)
Kim Gordon (NMWDA)
Mark Deluca (Howard County)
D’Andrea Walker (Baltimore County)
Michael Beichler (Baltimore County)
Matthew Garbark (Acting Director, Baltimore City DPW)

Public access via livestream at the following link: <https://youtu.be/lxAmn1tc16I>. *This stream was turned on at 11:58 a.m. local time.*

Board Chairman, Joseph Siemek opened the meeting at 12:03 p.m. local time. Mr. Siemek noted that the instructions for the public to view the meeting were provided in advance and that there were no plans to go into a closed session.

ACTION ITEM NO. 2020-7-1 – Contract Amendment for ARM Group Regarding Design and Construction Work for Water Intake at the RRF and Additional Efforts

A motion was made by Jeff Castonguay and seconded by Michael Marschner to approve this item. Chris Skaggs explained that this contract amendment is to provide the remaining funds to ARM Group for the design and construction work for water intake at the Montgomery County RRF. GenOn Mid-Atlantic, LLC will close its coal operations at its Dickerson, Maryland facility. As such, the water source for the RRF is being eliminated on January 14, 2021. The work is required to maintain water access for operations at the RRF after such closure. The original scope for this effort was provided at the Board Meeting on September 1, 2020. Additional information regarding the need for the additional funds for this effort was provided in the Board package. Chris Skaggs further explained that funds were being requested to provide for an increase in the utilization of ARM as an on-call engineer by the Member Jurisdictions, resulting in a need for the contract amendment.

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nmwda.org / Business-to-Business Recycling: mdrecycles.org
Tower II – Suite 402, 100 S. Charles Street, Baltimore, MD 21201-2705

Comprehensive Waste Management Through Recycling, Reuse, Resource Recovery and Landfill

MEMBERS: Rhody R. Holthaus, Anne Arundel County / Vacant, Baltimore City / Vacant, Baltimore County / Jeffrey D. Castonguay, Carroll County
Michael G. Marschner, Frederick County / Joseph J. Siemek, Harford County / Vacant, Howard County / Guillermo Wainer, Montgomery County
Charles Glass, Maryland Environmental Service / Christopher Skaggs, Executive Director



Staff is requesting an increase in ARM's contract of \$860,000 (\$500,000 of the increase is for the water intake effort and the remaining \$360,000 is for anticipated additional efforts for the Member Jurisdictions).

Joseph Siemek asked if there were any questions or matters for discussion. There being none, a vote was taken, and the item was unanimously approved.

ACTION ITEM NO. 2020-7-2 – Budget Amendment to the Montgomery County RRF Account

A motion was made by Willie Wainer and seconded by Dr. Charles Glass to approve this item. Chris Skaggs explained that in support of Action Item 2020-7-2, an increase of \$500,000 to the Authority's budget account for the RRF was being requested. This budget amendment increases the Montgomery County RRF Account to \$3,836,258 for Fiscal Year 2021.

Joseph Siemek asked if there were any questions or matters for discussion. There being none, a vote was taken, and the item was unanimously approved.

ACTION ITEM NO. 2020-7-3 – Contract Amendment for Gershman, Brickner & Bratton, Inc.

A motion was made by Rhody Holthaus and seconded by Jeff Castonguay to approve this item. Andrew Kays explained that this contract amendment is to allow Gershman, Brickner & Bratton, Inc. (GBB) to provide strategic planning work with respect to the tactical plan for Baltimore County. Additionally, there has been an increase in the utilization of GBB as an on-call engineer by the Member Jurisdictions, resulting in the need for a contract amendment. Staff is requesting a total increase in GBB's contract of \$125,000 (\$24,509.50 of the increase is for the Baltimore County tactical plan effort and the remaining \$100,490.50 is for anticipated upcoming efforts for other Member Jurisdictions). The scope for the Baltimore County tactical plan effort was provided in the Board package for reference.

Joseph Siemek asked if there were any questions or matters for discussion. There being none, a vote was taken, and the item was unanimously approved.

ACTION ITEM NO. 2020-7-4 – Budget Amendment to the Baltimore County Accounts

A motion was made by Willie Wainer and seconded by Rhody Holthaus to approve this item. Andrew Kays explained that in support of Action Item No. 2020-7-3, an increase of \$175,000 to the Authority's budget account for Baltimore County was being requested. This budget amendment increases the Baltimore County Account to \$200,000 for Fiscal Year 2021. Andrew Kays further explained that in further support of anticipated work under the Baltimore County Landfill Account, an increase of \$25,000 was being requested. This budget amendment increases the Baltimore County Landfill Account to \$75,000 for Fiscal Year 2021.

Joseph Siemek asked if there were any questions or matters for discussion. There being none, a vote was taken, and the item was unanimously approved.

ACTION ITEM NO. 2020-7-5 – Contract Amendments for On-Call Engineers

A motion was made by Michael Marschner and seconded by Dr. Charles Glass to approve this item. Andrew Kays explained that the Authority is requesting contract amendments to the on-call consultant contracts in the indicated amounts as set forth below. The Authority has issued numerous work orders to these on-call consultants this Fiscal Year and continue to need contract amendments to increase the applicable not to exceed amounts. As the Authority anticipates a continued need for its on-call consultants with respect to various work efforts, staff requests additional funds for such consultant contracts as follows:

- EA Engineering - \$400,000 (Howard County design work for composting and work in Montgomery County)
- Geosyntec Inc. - \$200,000 (Harford County Landfill Masterplan)
- HDR Engineering Inc. - \$100,000 (Additional support for the Montgomery County RRF)
- SCS Engineers - \$550,000 (Work at the Montgomery County Transfer Station, Gude Landfill, and support for work in Baltimore City)

Joseph Siemek asked if there were any questions or matters for discussion. There being none, a vote was taken, and the item was unanimously approved.

ACTION ITEM NO. 2020-7-6 – Contract Amendment for Gordon Feinblatt LLC Regarding Ash Residue Matter

A motion was made by Rhody Holthaus and seconded by Charles Glass to approve this item. Chris Skaggs explained that the Authority retained Gordon Feinblatt LLC, one of its on-call law firms, as outside counsel in the matter of Covanta Montgomery Inc. v. Northeast Maryland Waste Disposal Authority (Case No. 482900-V) regarding Covanta's claim for breach of contract with respect to the calculation of the ash reduction penalty under the Service Agreement for the Montgomery County Resource Recovery Facility (RRF). A preliminary budget prepared by Gordon Feinblatt was provided in the Board package for reference. This work comes under the current Authority budget item for legal fees for the RRF. Staff is requesting an increase in Gordon Feinblatt's contract of \$150,000 for a new upset limit of \$200,000 to fund the above-referenced matter.

Joseph Siemek asked if there were any questions or matters for discussion. There being none, a vote was taken, and the item was unanimously approved.

ACTION ITEM NO. 2020-7-7 – Contract Amendment for Hogan Lovells

A motion was made by Jeff Castonguay and seconded by Michael Marschner to approve this item. Chris Skaggs explained that this contract amendment is to provide additional funds for Hogan

Lovells to provide on-call legal services. Hogan Lovells currently is assisting with the Baltimore City/BRESCO contract extension matter (Action Item 2020-7-10). Staff is requesting an increase in Hogan Lovells' contract of \$50,000.

Joseph Siemek asked if there were any questions or matters for discussion. There being none, a vote was taken, and the item was unanimously approved.

ACTION ITEM NO. 2020-7-8 – Budget Amendment for Baltimore City/BRESCO Account

A motion was made by Michael Marschner and seconded by Rhody Holthaus to approve this item. Chris Skaggs explained that in support of Action Item No. 2020-7-7, an increase of \$80,000 to the Authority's budget account for Baltimore City/BRESCO was being requested. This budget amendment increases the Baltimore City/BRESCO account to \$100,000 for Fiscal Year 2021.

Joseph Siemek asked if there were any questions or matters for discussion. Michael Marschner asked if Action Items Nos. 2020-7-7, 2020-7-8 and upcoming 2020-7-10 were contingent on each other or were to be considered individually. Chris Skaggs explained that the Action Items should be considered individually. Joseph Siemek asked if there were any additional questions or matters for discussion. There being none, a vote was taken, and the item was unanimously approved.

ACTION ITEM NO. 2020-7-9 – Budget Amendment for Montgomery County LFGE Account

A motion was made by Willie Wainer and seconded by Charles Glass to approve this item. Chris Skaggs explained that in support of Action Item No. 2020-7-5, an increase of \$200,000 to the Authority's budget account for the Montgomery County LFGE was being requested for the demolition of the Gude Landfill LFGE facility. This budget amendment increases the Montgomery County LFGE Account to \$1,613,195 for Fiscal Year 2021.

Joseph Siemek asked if there were any questions or matters for discussion. There being none, a vote was taken, and the item was unanimously approved.

ACTION ITEM NO. 2020-7-10 – Contract Amendments Related to Waste Disposal for Baltimore City

A motion was made by Jeff Castonguay and seconded by Michael Marschner to approve this item. Chris Skaggs explained that the Authority was requested by Baltimore City to extend the term of the waste disposal contract with Wheelabrator Baltimore L.P. ("Wheelabrator") (and related contracts) for delivery of City waste for an additional term of ten (10) years. The original term of the waste disposal contract would have ended December 31, 2021. The amended term of the contract expires December 31, 2031. The extension of the waste disposal contract, and the necessary related contracts, are required as part of the settlement of the lawsuit between Baltimore City and Wheelabrator regarding the Baltimore City Clean Air Act. All documents related to the contract extension and settlement must be approved by the City's Board of Estimates.

Wheelabrator will upgrade the emissions control at the facility to meet the emission standards of the Baltimore City Clean Air Act (with the exception of NOx). Wheelabrator will improve its NOx reduction ability with the installation of an advanced NOx control technology. All such emissions control upgrades will be done at the sole expense of Wheelabrator and without cost to the City. The City will still be able to plan for increased diversion, recycling and composting that will lower the amount of waste that ultimately needs disposal. Chris Skaggs explained that the contracts do not provide for a “put or pay” clause so the City and the Authority are not restricted from improving its diversion, recycling or composting programs through careful planning and public engagement.

Chris Skaggs further explained that the staff is requesting approval, in substantially the form as presented in the Board package for Board review, of the following documents (the "Transaction Documents"):

- (i) Amended and Restated Subdivision User Contract between the Northeast Maryland Waste Disposal Authority and the Mayor and City Council of Baltimore;
- (ii) Amended and Restated Waste Disposal Agreement between the Northeast Maryland Waste Disposal Authority and Wheelabrator Baltimore, L.P.;
- (iii) Amended and Restated Hawkins Point Disposal Contract by and between the Northeast Maryland Waste Disposal Authority and the Mayor and City Council of Baltimore (the "HPDC");
- (iv) Assignment of Hawkins Point Disposal Contract by and between the Northeast Maryland Waste Disposal Authority and Wheelabrator Baltimore, L.P.; and
- (v) Settlement Agreement and Release by and among the Mayor and City Council of Baltimore and Wheelabrator Baltimore, L.P. (the Authority joins in as a party to the Transaction Documents incorporated therein).

All of the Transaction Documents are subject to approval by the Baltimore City Board of Estimates, execution by the City of Transaction Documents (i), (iii) and (v) and the allocation of necessary funds. Approval by the Authority Board constitutes a resolution authorizing the Executive Director or a Authority member to execute (1) the Transaction Documents presented with such changes as do not materially adversely affect the Authority or the substance of the transactions contemplated thereby or are in Transaction Documents approved by the Baltimore City Board of Estimates, and in either case are approved by the executing officer or member, the execution thereof to constitute conclusive evidence of his or her approval of all changes from the form of Transaction Documents hereby approved, and (2) such other guarantees, certificates, documents or agreements as may be necessary or desirable to complete the transactions contemplated by the Transaction Documents, including the assignment of the HPDC.

Joseph Siemek asked if there were any questions or matters for discussion. Michael Marschner asked if Baltimore City facilitated the agreements and was in favor of the agreements. Matthew Garbark responded that the City is in favor of the agreements and recommends approval of same. Joseph Siemek asked if there were any additional questions or matters for discussion. There being none, a vote was taken, and the item was approved by Joseph Siemek, Jeffrey Castonguay, Rhody

Holthaus, Dr. Charles Glass, and Michael Marschner. Willie Wainer abstained. Joseph Siemek noted that with the approval by the majority and one abstention, the item was approved.

ACTION ITEM NO. 2020-7-11 – Approval of Audited Financial Statements (June 30, 2020 and 2019)

A motion was made by Jeff Castonguay and seconded by Rhody Holthaus to approve this item. Andrew Kays explained that the final Audited Financial Statements for June 30, 2020 and 2019 were provided in the Board package. There were no material changes to the audited financials since the draft audited financials were submitted to the Board for review and informal approval, pending finalization by the auditors. Andrew Kays further explained that staff is requesting formal approval of the final Audited Financial Statements for June 30, 2020 and 2019.

Joseph Siemek asked if there were any questions or matters for discussion. There being none, a vote was taken, and the item was unanimously approved.

DISCUSSION ITEM 2020-7-D.1 Telework Policy

Andrew Kays provided a brief update to the Board on the Authority's telework policy. While the Authority staff is current adhering to the State of Maryland guidance on telework, we are preparing the policy for post-emergency conditions. The policy will allow for approved, regular employees to telework with the approval of the Executive Director.

The telework is voluntary and may be canceled by the Executive Director, the employee's supervisor, or the employee. All rules, regulations and policies of regular employment are in place for the telework program. The employee must provide a safe and secure workspace at the remote site and protect Authority issued equipment. Jeff Castonguay noted that we should review the insurance impacts of telework-personnel who live outside of Maryland.

There being no additional comments or discussion items, the meeting adjourned at 12:24 p.m.

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Chris Skaggs, Executive Director