

FIRST AMENDMENT TO JUNE 22, 2022  
BACK RIVER WASTEWATER TREATMENT PLANT CONSENT ORDER

10/19/2022

THIS AMENDMENT TO THE BACK RIVER WASTEWATER TREATMENT PLANT CONSENT ORDER (“Amendment”) is made as of September \_\_, 2022, by and between the State of Maryland, Department of the Environment (“Department” or “MDE”), and the Mayor and City Council of Baltimore, Maryland (“Baltimore City,” and together with MDE, the “Parties”).

WHEREAS, reference is made to that certain Consent Order, issued to Baltimore City by MDE and made effective June 22, 2022, upon the approval of the Baltimore City Board of Estimates (“BoE”);

WHEREAS, the Consent Order provides that it will remain in effect until it is either superseded by further order, terminated by mutual agreement, or the Back River WWTP has, for a period of at least three months, maintained compliance with its Back River Discharge Permit effluent limits, including (i) the ENR monthly average concentration standards in the Back River Discharge Permit (i.e., 4.0 mg/L for total nitrogen and 0.2 mg/L for total phosphorus) for each month in a three consecutive month period; and (ii) all annual and seasonal loading limits in the Back River Discharge Permit calculated on a pro-rata basis for the same three-month period; and

WHEREAS, discharge monitoring reports demonstrate that the Back River WWTP has maintained compliance with its Discharge Permit effluent limits during the months of June and July, 2022, including (i) ENR monthly average concentration standards of 4 mg/L for total nitrogen and 0.2 mg/L for total phosphorus; and (ii) all annual and seasonal loading limits calculated on a pro-rata basis.

WHEREAS, assuming that the discharge monitoring report for the month of August 2022, submitted to MDE on August 28, 2022 and currently under MDE review, demonstrates that the Back River WWTP has continued to maintain compliance with its Discharge Permit effluent limits for a third month, which will trigger the termination of the Consent Order, the Parties seek to extend the

term of the Consent Order until December 31, 2022, to ensure the continued support of the Maryland Environmental Service (“MES”) at the plant.

NOW THEREFORE, in recognition and consideration of the above recitals, MDE and Baltimore City agree to amend the Consent Order. Accordingly, pursuant to § 9-252 of the Environment Article, the Secretary hereby ORDERS Baltimore City, and Baltimore City CONSENTS, that:

1. AMENDMENT. The provisions of the Consent Order, on page 6, lines 9 through 15, stating the period the Consent Order will remain in effect, are hereby stricken and replaced with the following: “This Consent Order will remain in effect until seven days following the earliest occurrence of any of the following (each being a “Termination Event”): (1) it is superseded by further order of MDE or judicial consent decree to which MDE is a party; (2) it is terminated by mutual agreement of the parties; or (3) December 31, 2022, provided that verified discharge monitoring reports demonstrate that the Back River WWTP has for the immediately preceding three months maintained compliance with its Back River Discharge Permit effluent limits, including (i) the ENR monthly average concentration standards in the Back River Discharge Permit (i.e., 4 mg/L for total nitrogen and 0.2 mg/L for total phosphorus) for each month in the three consecutive month period; and (ii) all annual and seasonal loading limits in the Back River Discharge Permit calculated on a pro-rata basis for the same three-month period. If no Termination Event has occurred as of December 31, 2022, this Consent Order will remain in effect after that date, until seven days after verified discharge monitoring reports demonstrate that the Back River WWTP has for a period of three months maintained compliance with its Back River Discharge Permit effluent limits, including (i) the ENR monthly average concentration standards in the Back River Discharge Permit (i.e., 4 mg/L for total nitrogen and 0.2 mg/L for total phosphorus) for each month in a three consecutive month period; and (ii) all annual and seasonal loading limits in the Back River Discharge Permit calculated on a pro-

rata basis for the same three-month period (“Extended Termination Event”).”

2. AMENDMENT. The following is hereby added to page 6 of the Consent Order: “The parties acknowledge and agree that following receipt of notice of a Termination Event or the Extended Termination Event MES will require up to seven days in order to disengage and demobilize the activities it has been performing pursuant to the Revised Directive. During such period of time the Revised Directive and the Reimbursement Agreement will remain in effect solely for the purpose of disengagement and demobilization, and the parties acknowledge that MES is not authorized to undertake any new activities under the Revised Directive.”

3. Contemporaneously with the execution of this Amendment, the City and MES shall enter into a Revised Reimbursement Agreement, attached hereto, which shall replace the Reimbursement Agreement attached to the Consent Order effective on June 22, 2022.

4. Paragraph 7 of the Consent Order is stricken and replaced with “Provide MDE with a monthly report for each month through November 2022, due on the 10th day of the following month.”

5. Baltimore City shall submit this Amendment and the Revised Reimbursement Agreement to the BoE for approval at the next regularly scheduled meeting of the BoE following the execution of the Amendment and the Revised Reimbursement Agreement; provided, that, notwithstanding anything herein to the contrary:

- A. The Amendment (except for this paragraph 5) and the Revised Reimbursement Agreement shall not be effective until approved by the BoE;
- B. If the BoE votes not to approve the Amendment and the Revised Reimbursement Agreement, or if the BoE fails to approve the Amendment and the Revised Reimbursement Agreement on or before October 5, 2022, this Amendment and the Revised Reimbursement Agreement shall be null and void;
- C. When this Amendment and the Revised Reimbursement Agreement are approved by

the BoE, they shall automatically come fully into force, without the need for any further act by any person; and

D. Baltimore City represents and warrants that, except for the BoE's approval of this Amendment and the Revised Reimbursement Agreement, no approval, authorization, or consent of any person or governmental entity is necessary for the execution and performance of this Amendment and the Revised Reimbursement Agreement by Baltimore City.

6. CONTINUING EFFECT OF CONSENT ORDER. Except as expressly amended hereby, the Consent Order remains in full force and effect in accordance with its original terms. The Consent Order, as amended by this Amendment, shall be construed as one order.

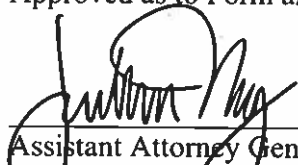
(signatures on the following page)

IT IS SO ORDERED BY THE  
STATE OF MARYLAND,  
DEPARTMENT OF THE ENVIRONMENT

  
\_\_\_\_\_  
Horacio Tablada, Secretary

Date: September 30, 2022

Approved as to Form and Legal Sufficiency:

  
\_\_\_\_\_  
Assistant Attorney General


Date: September 30, 2022

IT IS SO CONSENTED TO BY THE  
MAYOR & CITY COUNCIL  
OF BALTIMORE CITY

  
\_\_\_\_\_  
Jason Mitchell, Director  
Department of Public Works

Date: September 30, 2022

Approved as to Form and Legal Sufficiency:

  
\_\_\_\_\_  
City Solicitor

Date: 9/30/22

Approved by the Board of Estimates:

  
\_\_\_\_\_  
Clerk By Celeste Amato at 3:45:22 PM, 10/19/2022

Date: \_\_\_\_\_

**REVISED REIMBURSEMENT  
AGREEMENT**

10/19/2022

**THIS REVISED REIMBURSEMENT AGREEMENT** (“Revised Agreement”) is made as of September 30, 2022 by and between the Mayor and City Council of Baltimore (“Baltimore City”) and the Maryland Environmental Service, a body politic and corporate of the State of Maryland (“MES”).

**WHEREAS**, on March 24, 2022, as a result of issues observed by the Department at the Back River Wastewater Treatment Plant (the “Plant”), the Secretary of the Environment (the “Secretary”) issued an order (the “March 24 Order”) to Baltimore City pursuant to § 9-252(a) of the Environment Article, to operate the Plant in compliance with all terms of the Back River Discharge Permit;

**WHEREAS**, on March 27, 2022, the Secretary issued a directive pursuant to § 3-109 of the Natural Resources Article (the “Directive”) to MES, directing it to provide additional staff for and to take certain actions to provide assistance at the Plant;

**WHEREAS**, the State of Maryland, Department of the Environment (“MDE”) and Baltimore City entered into a Consent Order with regard to the operation of the Back River Wastewater Treatment Plant (the “Consent Order”), effective June 22, 2022, which Consent Order superseded the March 24 Order, and which remains in effect except as specifically amended;

**WHEREAS**, MDE and the City have entered into a First Amendment of the June 22, 2022 Back River WWTP Consent Order (the “Amendment”);

**WHEREAS**, in accordance with the Consent Order, the Secretary issued a revised directive pursuant to § 3-109 of the Natural Resources Article (the “Revised Directive”) to MES, directing it to provide projects necessary to abate pollution resulting from operations at the Plant, and to work with Baltimore City on the Plant’s operations, maintenance, and improvements functions, which Revised Directive supersedes the Directive;

**WHEREAS**, this Revised Agreement constitutes the agreement of Baltimore City and MES regarding the costs, rental, charges, and other fees to be paid by Baltimore City to MES for the projects provided by MES pursuant to the Revised Directive, as contemplated by § 3-109(b)(2) of the Natural Resources Article; and

**WHEREAS**, Baltimore City agreed in the Consent Order to permit MES to make repairs and/or improvements to the Back River WWTP, and further agreed to cooperate fully with MES and provide MES’ staff and personnel access to all areas of the Back River WWTP to implement abatement projects and services.

**NOW, THEREFORE**, for good and valuable consideration, the sufficiency and receipt of which is acknowledged, Baltimore City and MES agree as follows:

1. Baltimore City shall reimburse MES pursuant to § 3-109 of the Natural Resources Article and the terms of the Consent Order for all costs incurred under the Consent Order, the

Directive, the Revised Directive, and the Amendment. Within thirty (30) days after receipt of each monthly invoice from MES, Baltimore City shall pay the full amount specified therein.

2. Except as set forth below, after September \_\_, 2022, MES shall not, in connection with the performance of the Revised Directive, (a) begin any project requiring the construction or installation of a new asset at the Plant, or the repair of an existing asset at the Plant, for which MES determines the total cost to procure and complete such construction, installation, or repair will exceed Two Hundred and Fifty Thousand Dollars (\$250,000) (a "Capital Improvement"); or (b) engage the services of a third party contractor if the total cost of the services stated in contractor's proposal exceeds Two Hundred and Fifty Thousand Dollars (\$250,000) ("Significant Third Party Services"). Notwithstanding the foregoing:

A. If MES determines that a Capital Improvement or Significant Third Party Services (each, a "Major Expense Item") are necessary to comply with the Revised Directive, MES shall give written notice to the Director of Baltimore City's Department of Public Works containing the words "NOTICE OF PROPOSED MAJOR EXPENSE ITEM" in the subject line, describing in reasonable detail the Major Expense Item, and providing MES's estimate of the cost to procure and complete the Major Expense Item (a "Major Expense Notice").

B. Baltimore City may object to a Major Expense Item described in any Major Expense Notice only on the basis that the Major Expense Item (i) taking into account all reasonably foreseeable scenarios (including, without limitation, equipment failures and the increasing frequency and intensity of major storm events), would not reasonably be expected to (a) improve the Plant's ability to consistently achieve compliance with the Back River Discharge Permit or (b) reduce the likelihood of future noncompliance with the Back River Discharge Permit; (ii) would reasonably be expected to materially adversely affect the ability of the Plant to operate or be operated in accordance with the Back River Discharge Permit; or (iii) could reasonably be procured and completed, on substantially the same schedule and at substantially the same level of quality proposed by MES, at a total cost that is at least twenty percent (20%) less than MES's estimate of such cost set forth in the Major Expense Notice. If Baltimore City elects to make such an objection, Baltimore City shall give written notice to the Executive Director of MES (1) containing the words "OBJECTION TO PROPOSED MAJOR EXPENSE ITEM" in the subject line; (2) describing in reasonable detail the basis for Baltimore City's objection to the Major Expense Item; (3) if the basis for the objection is clause (iii) above, stating the cost at which Baltimore City asserts that the Major Expense Item could be procured and completed, with supporting documentation therefor (an "Objection Notice"); and (4) if the basis for the objection is clause (i) or (ii) above, describing in reasonable detail the basis for the City's objection to the Major Expense Item. If Baltimore City does not deliver an Objection Notice to the Executive Director of MES by 5:00 p.m. on the fifteenth (15<sup>th</sup>) business day following the date on which the Major Expense Notice was given, Baltimore City shall be deemed to have approved such Major Expense Notice and agreed to reimburse MES for all costs incurred to procure and complete the Major Expense Item described therein.

C. If Baltimore City gives an Objection Notice with respect to any Major Expense Item:

i. MES may nonetheless proceed with undertaking such Major

Expense Item (and, for avoidance of doubt, Baltimore City shall cooperate fully with MES and provide MES' staff, personnel, and contractors access to all areas of Back River WWTP to undertake such Major Expense Item).

ii. The Objection Notice shall in the first instance be the subject of informal negotiations between MES and Baltimore City in an attempt to resolve the dispute in good faith and an expeditious manner. If such informal negotiations are successful, the agreed-upon resolution of Baltimore City's objections shall be memorialized in writing by MES and Baltimore City.

iii. If such informal negotiations are unsuccessful, Baltimore City may submit a written request to the Secretary for a review of the Objection Notice, which request shall include (1) the words "REQUEST FOR REVIEW OF OBJECTION NOTICE" in the subject line; and (2) Baltimore City's proposed resolution of the Objection Notice and relevant facts, analysis, and supporting documentation (a "Request for Review"). If Baltimore City does not submit a Request for Review to the Secretary by 5:00 p.m. on the thirtieth (30th) calendar day following the date on which the applicable Objection Notice was given, Baltimore City shall be deemed to have withdrawn such Objection Notice and agreed to reimburse MES immediately for all costs incurred to procure and complete the Major Expense Item that is the subject of such Objection Notice.

iv. MES shall submit a response to Baltimore City's Request for Review to the Secretary no later than 5:00 p.m. on the thirtieth (30th) calendar day after the date of the Request for Review (an "MES Response").

v. The Secretary (or his/her designee) (the "Reviewer") shall give Baltimore City and MES an opportunity to meet with the Reviewer to discuss each Request for Review (or group of consolidated Requests for Review).

vi. Notwithstanding anything herein to the contrary the Reviewer may, in his/her sole discretion, consolidate multiple Requests for Review and/or extend any time period under this paragraph C.

vii. With respect to each Request for Review, the Reviewer shall deliver to Baltimore City and MES a written decision (a "Statement of Decision") resolving the underlying objections within thirty (30) calendar days after the date of the MES Response. Each Statement of Decision shall be binding on Baltimore City and MES, provided, however, that either Baltimore City or MES may, within fifteen (15) calendar days after the date of the Statement of Decision, appeal such Statement of Decision by initiating an administrative mandamus action in a court of competent jurisdiction pursuant to Maryland Rule 7-401. In any such administrative mandamus action, the party initiating the action shall have the burden of establishing that the Reviewer's decision was arbitrary and capricious.

viii. If Baltimore City does not initiate an administrative mandamus action within fifteen (15) calendar days after the date of the Statement of Decision, then, to the extent the Statement of Decision requires Baltimore City reimburse MES, Baltimore City shall do so immediately.



3. Notices required or permitted under this Revised Agreement may be given by electronic mail or by reputable overnight delivery service (e.g., UPS or FedEx). A notice given by electronic mail shall be deemed to have been given on the day it is sent. A notice given by overnight delivery service shall be deemed to have been given on the next business day following the day it is tendered to the overnight delivery service.

4. If Baltimore City fails to fully reimburse MES in accordance with this Revised Agreement and applicable law, MES may use all legal means available to it to recover all costs it incurs under the Directive and the Revised Directive.

5. Prior to the termination of the Consent Order, MES and Baltimore City will review all contracts, purchase orders, or other agreements to which MES is a party and which were made by MES in furtherance of its duties under the Directive and Revised Directive. If work remains to be performed pursuant to such contracts, purchase orders, or other agreements, MES will, if requested by the City in writing, continue to supervise such work until project completion (or such time as the City requests assignment) and will be fully compensated in accordance with this Revised Agreement. For all other contracts, purchase orders, or agreements made by MES in furtherance of its duties under the Directive and Revised Directive, and which the City does not request that MES continue to supervise the contracted work until completed, MES shall prepare, and Baltimore City shall accept, a full assignment of the rights and obligations of MES under such contracts, purchase orders, or other agreements. Unless otherwise agreed in writing by MES and Baltimore City, the Revised Agreement will survive termination of the Consent Order and Revised Directive, and will continue in effect until MES has completed its supervision of ongoing projects. Furthermore, upon termination of the Consent Order, the Parties acknowledge that MES will require up to seven days in order to disengage and demobilize the activities it has been performing pursuant to the Revised Directive. During such period of time, the Revised Directive and this Revised Agreement will remain in effect solely for the purpose of disengagement and demobilization.

6. This Revised Agreement (a) is the entire agreement of the parties with respect to the subject matter hereof, and supersedes and prior or contemporaneous agreements regarding such subject matter; and (b) may be executed in counterparts, each of which shall constitute an original, but all of which shall together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties have executed this Revised Reimbursement Agreement as of the date first set forth above.

MARYLAND ENVIRONMENTAL SERVICE

By:



Charles Glass, Ph.D., P.E. Executive Director

Approved as to Form and Legal Sufficiency:

Sean L. Coleman

Assistant Attorney General

Date: 09/30/2022

MAYOR & CITY COUNCIL  
OF BALTIMORE CITY

By:

[Signature]

Jason Mitchell, Director  
Department of Public Works

Date: September 30, 2022

Approved as to Form and Legal Sufficiency:

[Signature]

City Solicitor

Date: 9/30/22

Approved by the Board of Estimates:

[Signature]

By Celeste Amato at 3:45:43 PM, 10/19/2022

Clerk

Date: \_\_\_\_\_