

STATE OF MARYLAND  
DEPARTMENT OF THE  
ENVIRONMENT  
1800 Washington Boulevard  
Baltimore, Maryland 21230,

v.

MAYOR AND CITY COUNCIL  
OF BALTIMORE, MARYLAND  
250 City Hall  
Baltimore, Maryland 21202,

SECRETARY OF THE  
ENVIRONMENT

\* \* \* \* \*

**CONSENT ORDER**

This Consent Order is made 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”) with regard to the operation of the Back River Wastewater Treatment Plant (“Back River WWTP” or the “Plant”).

**STATUTORY AUTHORITY**

The Secretary of the Environment (the “Secretary”) has authority under § 9-252(a) of the Environment Article to issue orders to regulate the operation of public sewerage systems for the public health and comfort and has additional authority under § 3-109 of the Natural Resources Article to direct the Maryland Environmental Service (“MES” or “Service”) to provide services to abate pollution from sewerage systems.

### **FACTUAL ALLEGATIONS**

WHEREAS, Baltimore City applied for, and the Department established conditions and requirements and authorized Baltimore City, pursuant to NPDES Discharge Permit Number MD0021555, State Discharge Permit Number 15-DP-0581A (effective May 1, 2018; modified January 1, 2020; expires April 30, 2023) (“Back River Discharge Permit”) to discharge from the Back River WWTP, located at 8201 Eastern Avenue, Baltimore, Maryland.

WHEREAS, On March 24, 2022, as a result of issues observed by the Department at the Back River WWTP over several months and, most recently, on March 22, 2022, the Secretary of the Department issued an order (“March 24 Order”) to Baltimore City pursuant to § 9-252(a) of the Environment Article, to operate the Back River WWTP in compliance with all terms of the Back River Discharge Permit. The allegations supporting the issuance of the March 24 Order are memorialized in that order.

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

WHEREAS, On April 1, 2022, Baltimore City filed a petition for judicial review in the Circuit Court for Baltimore City, Case No. 24-C-22-001666, to vacate or set aside the March 24 Order and the Directive (“Petition”). On May 6, 2022, Baltimore City filed an Amended Complaint, which remains pending.

WHEREAS, MDE alleges that Baltimore City failed to comply with the March 24 Order.

Baltimore City, in its Amended Complaint, asserts that the Order was unreasonable. In order to avoid litigation over the March 24 Order and the March 27, 2022 Directive, and to address the updated activities and improvements necessary to bring the Back River WWTP back into full compliance, (i) the Department is issuing, and Baltimore City consents to issuance of, this Consent Order; (ii) Baltimore City agrees to withdraw its Petition and Amended Complaint; (iii) the Department agrees to withdraw the March 24 Order and the Directive; and (iv) Baltimore City consents to the issuance by the Department of a revised directive to MES pursuant to § 3-109 of the Natural Resources Article, in the form attached hereto (“Revised Directive”), which clarifies that MES has not taken charge of and operated the Back River WWTP, but instead has and will perform activities and projects necessary to support Baltimore City in abating pollution at the Back River WWTP and making necessary improvements at the Back River WWTP in collaboration with Baltimore City.

WHEREAS, Baltimore City has reviewed the Revised Directive and agrees that the work described therein is necessary for the Back River WWTP to be able to meet the terms of the Back River Discharge Permit.

NOW THEREFORE, in recognition and consideration of the above recitals, and pursuant to § 9-252 of the Environment Article, in order to prevent or correct pollution of the waters of the State and to ensure the Back River WWTP is operated in a manner that will protect public health and comfort, the Secretary ORDERS Baltimore City, and Baltimore City CONSENTS, to:

1. Refrain from contesting the issuance of the Revised Directive;
2. Permit MES to make repairs and/or improvements to the Back River WWTP and its operations in order for MES to comply with the Revised Directive, and collaborate with MES on identification and performance of such repairs and/or improvements;



3. Cooperate fully with MES and provide MES' staff and personnel access to all areas of Back River WWTP to implement the abatement projects and services as set forth in the Revised Directive;

4. Avail itself of projects and services provided by MES that MES believes are necessary to abate pollution that may be occurring as a result of operations at the Back River WWTP, including, without limitation, those specific projects set forth in the Revised Directive;

5. Contemporaneously with the execution of this Consent Order, enter into the Reimbursement Agreement with MES attached hereto, and fully comply with such Reimbursement Agreement;

6. Participate in weekly meetings with MES and MDE regarding ongoing progress as well as upcoming activities to return the Plant to full compliance, and memorialize the substance of these meetings in writing, unless it is mutually agreed that a meeting is unnecessary;

7. Provide MDE with a monthly report for each of the next six months on the City's progress toward bringing the Plant back into full compliance;

8. Within 5 days after BoE (defined below) approval of this Consent Order, voluntarily dismiss the Petition and Amended Complaint; and

9. Submit this Consent Order and the Reimbursement Agreement to the Baltimore City Board of Estimates (the "BoE") for approval at the next regularly-scheduled meeting of the BoE following the execution of this Consent Order; provided, that, notwithstanding anything herein to the contrary:

- A. This Consent Order (except for this paragraph 9) and the Reimbursement Agreement shall not be effective until approved by the BoE;
- B. If the BoE votes not to approve the Consent Order or Reimbursement Agreement, or if the BoE fails to approve the Consent Order or

Reimbursement Agreement on or before June 29, 2022, this Consent Order and the Reimbursement Agreement shall be null and void;

- C. Unless and until this Consent Order and the Reimbursement Agreement are approved by the BoE, the Order and the Directive shall remain in effect;
- D. When this Consent Order and Reimbursement Agreement are approved by the BoE, (i) this Consent Order and the Reimbursement Agreement shall automatically come fully into force, without the need for any further act by any person; and (ii) MDE shall issue the Revised Directive to MES;
- E. Baltimore City shall refrain from effecting service of the summons in Baltimore City Circuit Court Case no. 24-C-22-001666; and
- F. Baltimore City represents and warrants that, except for the BoE's approval of this Consent Order and the Reimbursement Agreement, no approval, authorization, or consent of any person or governmental entity is necessary for the execution and performance of this Consent Order and the Reimbursement Agreement by Baltimore City.

The parties acknowledge and agree that the terms of this Consent Order supersede the March 24 Order.

The parties acknowledge and agree that the terms of the Revised Directive supersede the Directive. Notwithstanding the foregoing, the City acknowledges it is obligated to fully reimburse MES for all costs MES incurred in implementing the Directive.

The parties acknowledge and agree that by entering into this Consent Order the parties are only resolving litigation over the March 24 Order and Directive, and compliance with this Consent Order has no impact on Baltimore City's liability for claims under Title 9, Subtitle 3, of the

Environment Article for injunctive relief and penalties for violations of the Back River Discharge Permit, including those claims brought by the Department in *State of Maryland, Department of the Environment v. Mayor and City Council of Baltimore, Maryland*, Case No. 24-C-22-000386, filed in the Circuit Court for Baltimore City.

The parties further acknowledge and agree that nothing in this Consent Order shall be construed to limit any authority of the Department pursuant to § 9-252 of the Environment Article to issue any order or to take any action it deems necessary to protect public health or the environment, or to limit any authority the Department now has or may hereafter be delegated.

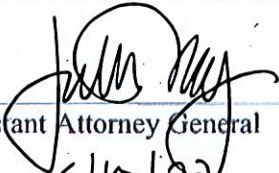
This Consent Order will remain in effect until it is either superseded by further order, terminated by mutual agreement, or the Back River WWTP has for a period of three months maintained compliance with its Back River Discharge Permit effluent limits, including (i) the ENR monthly average concentration 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.

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

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

Date: 6/10/2022

Approved as to Form and Legal Sufficiency:

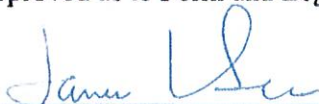
  
\_\_\_\_\_  
Assistant Attorney General  
Date: 6/10/22

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

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

Date: 6/9/2022

Approved as to Form and Legal Sufficiency:

  
\_\_\_\_\_  
City Solicitor  
Date: 6/9/2022

Approved by the Board of Estimates:

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



## REIMBURSEMENT AGREEMENT

**THIS REIMBURSEMENT AGREEMENT** (this “Agreement”) is made as of \_\_\_\_\_, 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 have entered into a Consent Order with regard to the operation of the Back River Wastewater Treatment Plant (the “Consent Order”), which Consent Order supersedes the March 24 Order;

**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 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 has agreed in the Consent Order to permit MES to make repairs and/or improvements to the Back River WWTP, and has 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, and the Revised Directive. 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, 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 Million Two Hundred Fifty Thousand Dollars (\$2,250,000) (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 Million Two Hundred Fifty Thousand Dollars (\$2,250,000) (“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.

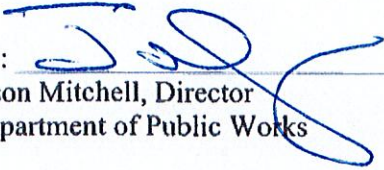
3. Notices required or permitted under this Agreement may be given by electronic mail or by reputable overnight delivery service (e.g., UPS or FedEx). A notice given by electronic mail shall be deemed to have been given on the day it is sent. A notice given by overnight delivery service shall be deemed 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 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. This 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 Reimbursement Agreement as of the date first set forth above.

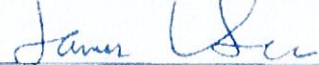
MAYOR AND CITY COUNCIL OF BALTIMORE

By:   
Jason Mitchell, Director  
Department of Public Works


Approved by the Board of Estimates:

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

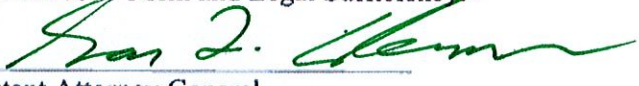
Approved as to Form and Legal Sufficiency:

  
\_\_\_\_\_  
City Solicitor  
Date: 6/9/2022

MARYLAND ENVIRONMENTAL SERVICE

By:   
\_\_\_\_\_  
Charles Glass, Ph.D., P.E.  
Executive Director

Approved as to Form and Legal Sufficiency:

  
\_\_\_\_\_  
Assistant Attorney General  
Date: 6/10/2022