

**AGENDA**

**BOARD OF ESTIMATES**

**11/4/2020**

Department of Public Works/ - Extension of Subdivision User  
Department of Law and Hawkins Point Disposal  
Agreements and Approval of  
Emissions Control Agreement

**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of the following:

1. Extension of the Subdivision User Agreement with the Northeast Maryland Waste Disposal Authority (NMWDA) for the City to dispose of waste materials at the Wheelabrator Waste-to-Energy (WTE) Plant;
2. Extension of the Hawkins Point Disposal Agreement with the NMWDA for the City to accept the ash produced at the WTE plant at the Quarantine Road Landfill; and
3. Approval of an Emissions Control Agreement with Wheelabrator Baltimore, L.P.

The period of the extensions is January 1, 2022 and through December 31, 2031.

**AMOUNT OF MONEY AND SOURCE:**

\$106,078,400.00 - 1001-000000-5161-389700-603097  
Subdivision User Agreement - Estimated  
Expense by City

(\$38,722,248.00) - Hawkins Point Disposal Agreement - Estimated  
Revenue to City

\$ 39,900,000.00 - Estimated Expense by Wheelabrator, L.P. in  
emissions upgrades

**BACKGROUND/EXPLANATION:**

The NMWDA was established by Maryland law in 1980 to help coordinate regional solid waste disposal issues. They constructed a WTE incinerator on City-owned property, which

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opened in 1985. The incinerator is owned by NMWDA and formally called the Baltimore Refuse Energy Systems Company (BRESKO). Wheelabrator Baltimore, L.P. operates BRESKO. Incineration reduces the overall volume of waste by nearly 90%. The ash created by the incineration is then deposited at the Quarantine Road Landfill, which is owned and operated by the City.

In 2019, Council Bill 18-0306 Health Code - Clean Air Regulations, was passed by the City Council and signed into law by the Mayor. This bill imposed strict emissions standards on commercial solid waste incinerators in Baltimore City.

Wheelabrator Baltimore, L.P. filed suit against the City in federal court. In late March 2020, U.S. District Court Judge George L. Russell III ruled the bill was superseded by federal regulations. The City has noted an appeal to the U.S. Court of Appeals for the 4th Circuit. Given the uncertainty of the outcome of the appeal, Wheelabrator Baltimore, L.P. and the City have reached a compromise where the City will extend its user and disposal agreements and Wheelabrator Baltimore, L.P. will invest in significant emissions control upgrades at BRESKO.

By entering into these agreements, Baltimore will be able to effectively implement its Zero Waste Plan while also delivering critical waste management services to the City of Baltimore.

**Subdivision User Agreement**

The City has utilized the Wheelabrator WTE plant through contracts with the NMWDA since 1984. The current agreement with Wheelabrator through the NMWDA for waste disposal expires on December 31, 2021. The extension will commence on January 1, 2022 and end on December 31, 2031, a total of ten years. There is no minimum amount of waste required to be taken to BRESKO. Specifically, there is no "put or pay" term in the agreement. The tipping fees the City pays per ton continue to increase by 2.5% each year.

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Baltimore City has adopted plans committed to maximizing waste reduction and diversion. However; the investment needed for these efforts in both funding and time to convince residents is significant. Baltimore City residents produce extensive refuse, most of which ends up at the Quarantine Road Landfill. Given the landfill and its expansion have limited capacity, it is necessary to extend this agreement to preserve that capacity and to allow more waste diversion initiatives to be implemented.

**Hawkins Point Disposal Agreement**

This agreement also dates to the early 1980's and will lapse on December 31, 2021. The proposed agreement would mirror the Subdivision User Agreement in start and end dates. This agreement is for the City to accept the ash generated at the Wheelabrator WTE plant for disposal. This agreement is a revenue source only. The City pays nothing to receive the ash, but rather is paid a per ton ash fee. The revenues projected from the ash acceptance agreement are expected to exceed \$38,000,000.00 over the term of the contract. A 2.5% escalator is similarly applied to these tipping fees each year.

**Emissions Control Agreement**

Under this agreement, Wheelabrator Baltimore, L.P. agrees to fund improvements to its emissions control system. By December 31, 2023, Wheelabrator agrees to achieve the more stringent of: 1) the air emissions limits set forth in its permit to construct the Facility Improvements; 2) the air emissions limits set forth in its Title V/Part 70 Permit; or 3) the air emissions limits set forth in this Agreement, as follows:

<u>Pollutant</u>	<u>Emissions Limit</u>
Nitrogen Oxides (NOX)	105 parts per million dry volume (PPMVD) corrected at 7% O2 (30-day rolling average)
Sulfur Dioxide (SO2)	18 parts per million dry volume (PPMVD) corrected at 7% O2 (24 hour block geometric mean)

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Dioxins/Furans (PCDD/F)	2 nanograms TEQDF-WHO98* per dry standard cubic meter (ng/dscm), corrected at 7% O2
Dioxins/Furans (PCDD/F)	15 nanograms per dry standard cubic meter (ng/dscm), corrected at 7% O2
Mercury	15 micrograms per dry standard cubic meter corrected at 7% O2
Cadmium	25 micrograms per dry standard cubic meter corrected at 7% O2
Lead	250 micrograms per dry standard cubic meter corrected at 7% O2

All limits specified in this agreement with the exception of the nitrogen oxides (NOX) meet or exceed the limits imposed by Council Bill 18-0306. The NOX limits will be reduced by nearly 50% of its current permitted levels. Wheelabrator Baltimore, L.P. is contractually agreeing to reduce NOX levels below the levels allowed in its permit. These improvements will make BRESCO one of the two cleanest WTE facilities on the East Coast. Its limits will be consistent with those of Montgomery County's WTE facility. Importantly, stack emissions will be tested three times per year to assure compliance with the agreed upon reduced emissions levels.

**STATEMENT OF PURPOSE AND RATIONALE FOR NON-COMPETITIVE PROCUREMENT:**

BRESCO is the only WTE facility in the Baltimore metropolitan area.

Therefore, it is hereby certified that these above procurements are of such a nature that no advantage will result in seeking nor would it be practicable to obtain competitive bids. Therefore, pursuant to Article VI, Section 11 (e)(i) of the City Charter, the procurements of the equipment and/or service are recommended.

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**MBE/WBE PARTICIPATION:**

N/A

**APPROVED FOR FUNDS BY FINANCE**

(The Extension of Subdivision User and Hawkins Point Disposal Agreements and Emissions Control Agreement have been approved by the Law Department as to form and legal sufficiency.)