

SOLID WASTE MANAGEMENT AUTHORITY

Solid Waste Management Authority Board Meeting  
10:00 A.M.

October 20, 2016

M I N U T E S

PRESENT: Chairman Jeffrey E. Turner (SWMA Member), Vice-Chairman Sonna Gregory (SWMA Member), Tax Commissioner Terry Baskin (SWMA Member), Mary-Ann Carp (SWMA Member), Earl Randall (SWMA Member), Victor Lett, Sr., (SWMA Member) and Andrew Love (SWMA Member). Also present were Jeff Metarko (Director of Transportation and Development), Tim Gilliam (Landfill Manager), Dennis Johnson (Budget Manager), Jack Hancock (Interim Chief Staff Attorney), Josh Lawson with Jacobs Engineering and Sandra T. Davis (Clerk).

I. CALL MEETING TO ORDER

Chairman Turner called the meeting to order.

II. ADOPTION OF JULY 7, 2016 MEETING MINUTES

Motion by Tax Commissioner Baskin to approve the July 7, 2016 Meeting minutes, second by Vice Chairman Gregory. The motion passed 4-0-3 with Earl Randall (SWMA Member), Andrew Love (SWMA Member) and Victor Lett, Sr. (SWMA Member) abstaining due to being absent from the meeting.

{Documents provided to authority members: On-Call Solid Waste Professional Engineering Services for the Clayton County Georgia Solid Waste Management Authority Agreement, Task Order No. 1 and Task Order No. 2}

III. CONSULTANT CONTRACT

First, Transportation and Development Director Mr. Jeff Metarko spoke in general on the matters to be addressed by Interim Chief Staff Attorney Jack Hancock. He said that there a some legal aspects or insurance liabilities aspect that Interim Chief Staff Attorney Hancock needs some direction on.

At this time, Interim Chief Staff Attorney Jack Hancock arrived at the meeting. He then reported on the issues that the Legal staff has that needs to be decided by this authority. He said there are only four issues and addressed each one as follows:

In Section 2.5 of the Agreement that reads “The budget for the initial term of this Agreement shall not exceed \_\_\_\_\_”. Interim Chief Staff Attorney Hancock explained that there is a requirement for an annual budget and it just needs to be established; since, there is none. Mr. Metarko added that the initial thought was that the contract would have no budget value in it. Therefore, each task order, which would be required to be approved by this authority, would establish the budget for the task. Jacobs is not seeking any funding to sign the contract. Interim Chief Staff Attorney Jack Hancock continued that the provision deals with a cap. He then asked if the authority has a cap to put in there or just take that out. Mr. Metarko recommended taking it out. There was then a consensus of the board to take that part out.

The second item is in Section 4.17 Additional Insured Endorsements Form CG 20 26 07 04 or equivalent. This deals with subrogation and indemnification and requires the consultant to indemnify the county; all of the county employees, elected officials, etc. from any claims that arise as a result of third parties relating to the work they perform. Also, it has a provision that provides for subrogation, which is a right to claim back against the county for any damages that Jacobs may be sued for; they are saying their insurer will not permit that. Interim Chief Staff Attorney Hancock said we are asking that they waive any and all subrogation rights against the authority or the county arising out of any claims that may be brought as a result of the work that is performed pursuant to the agreement. He said there are insurance carriers that permit that; therefore, his recommendation is that it remain in the contract, and the authority members agreed.

The next section is 10.2 Termination for Convenience. In that section, they are requesting payment for the termination of the contract. This contract does allow them to receive payment for any work they have done. This contract does not require any “wrap up” on their part for them to put equipment on site that they may have to incur expenses to come down from; it is a consultant contract. In this instance, Interim Chief Staff Attorney Hancock explained that as long as they would get paid for the work that has been done, he thinks this just creates a question that we do not know the answer to. He just does not think it is necessary and recommends taking out the very last phrase in that section that reads “as determined by mutual agreement between the Authority and the Consultant.” Chairman Turner asked if anyone opposed, to which, the authority members expressed none.

The last section is 14.9 Limitation of Liability. Interim Chief Staff Attorney Hancock explained that there was a concern raised about Section 14.8 Hazardous Materials.; he has no issues with the language in Section 14.8. However, he does have a problem with Section 14.9. He explained that it basically reads that Jacob’s liability, under this agreement, for a breach of the agreement by them would be limited to the greater of how much the county pays them or \$500,000. His thought is that they have more than \$500,000 worth of insurance and if they breached the contract in some manner and created liability for the county, damages such as: hazardous material and advising could easily exceed \$500,000. He does not believe that is a provision that needs to be there and that would be his recommendation. Mr. Randall added that it also reads “regardless of fault...”.

As a recap, Interim Chief Staff Attorney Hancock noted that what he is hearing from the authority is to take Section 2.5 out and leave the rest of them alone. Chairman Turner recalled the striking of the last sentence in Section 10.2 Termination for Convenience. Which reads, “as determined by mutual agreement between the Authority and the Consultant.” Tax Commissioner Baskin added to strike the \$500,000 in Section 14.9 Limitation of Liability.

When Chairman Turner asked about the next step, at which time, Interim Chief Staff Attorney Hancock asked Mr. Lawson if the agreement would need to go back up the chain with Jacobs Engineering. Mr. Josh Lawson with Jacobs Engineering Group, Inc. said he does not think so. He then determined that he does not envision these to be big issues, but with the LOL (Limitation of Liability), we would like to know what our liability is and oftentimes when it comes to an LOL, we would negotiate a bigger number if the \$500,000 is not a suitable number. He said he does know in talking to their attorney that if the authority does not want an LOL at all; then, we were requesting some language to waive consequential damages; something that would not leave it completely wide open. Therefore, if the authority’s request is to remove the LOL completely with no cap; then, we would want to revisit some language on some potential waiver of consequential damages. Interim Chief Staff Attorney Hancock pointed out there is no need to talk about an LOL if Jacobs Engineering Group, Inc. has insurance. Therefore, if we are limiting it to items in which Jacobs has no coverage; then, the question would be what is the potential risk if we are going to increase the LOL. With regards to the second alternative, he maintained that he would have no problems with consequential damages. Interim Chief Staff Attorney Hancock then recommended that we take the LOL out of it and put a provision in there with its liability for consequential damages, if this would resolve it. Mr. Lawson suggested that we pursue that path first.

Interim Chief Staff Attorney Hancock then recommended that the authority members authorize the Chairman to execute this agreement in the form that it is in with the changes and the changes are as follows:

~ Section 2.5 would be deleted.

~ No change to Section 4.17

~ Section 10.2- the last phrase dealing with the termination expenses would be deleted.

~ Section 14.19- would be modified to delete any limit of liability but to exclude consequential damages from something that could be recovered.

Under these circumstances, Interim Chief Staff Attorney Hancock determined that it would be unlikely that we would incur consequential damages in this type of an operation. Therefore, it would be a safe alternative for the authority. If the authority members are comfortable with that, it would just keep the authority from having to get together again; particularly, if we can finalize it under those terms.

Vice Chairman Gregory made the motion to accept the agreement with the modifications and deletions, second by Ms. Carp. Vote unanimous.

Transportation and Development Director Metarko called attention to Task Order 1 and 2. Interim Chief Staff Attorney Hancock advised that the legal staff does not have any comments on the Task Orders. Transportation and Development Director Metarko then explained that Task Order 1 is basically what Jacobs has been doing for twenty years now to include; environmental compliance and regulatory compliance for EPD (Environmental Protection Division). He reported that the money is budgeted in either the Landfill Enterprise Fund or General Fund for the closed portion of the landfill. This is just the authority members approving them to move forward on those tasks.

Transportation and Development Director maintained that Task Order 2 is not budgeted yet and must be done by the Board of Commissioners. This is the initiative to start the process of implementing an unincorporated county collection system. He recalled that the authority gave us the direction to propose something and this is a three phase plan. Jacobs Engineering has laid out the in-task order and provides the high points of what is involved. The budget that is identified is for Phase I and Jacobs is committed to keeping the overall framework for a 2019 implementation. He advised that the overall budget for the entire process is approximately \$400,000, which could be higher or lower depending on the decisions the authority makes. In response to a question of Chairman Turner, Transportation and Development Director Metarko noted that right now, all we need is what is in the Task Order 2 value of \$178,000. He pointed out that, in discussions with Budget Manager Dennis Johnson, we may be able to accomplish this with line item transfers in the existing budget to make it happen. Budget Manager Johnson agreed with the comment. He then explained that because of the scale down operations, some of the expenses are going to be lower than were originally budgeted, and that would allow us the opportunity to lower those expenses and transfer them up to the consultant fees and allow the authority to fund this project without increasing the budget at this time.

When Tax Commissioner Baskin asked about the schedule, Transportation and Development Director Metarko outlined the schedule that has been broken down into six tasks. At this point, there would not be much public involvement or notice, because it would occur in Phase II. In Phase I, Transportation and Development Director Metarko advised that the authority would define the service offerings to be provided in the program. In Phase II, which would occur in six or so months, this is when we really start getting in front of the public about what has been proposed and to provide some feedback. Most of the decisions this authority would be making would come in the next year, because the latter part of this is the RFP (Request For Proposal) process, implementing the fees on the tax schedule and collecting those fees so the program is front loaded on revenue. Chairman Turner maintained that it is vitally important to get out into the community to let them know what is going on, getting their input and keeping it close to what their desires are. Transportation and Development Director Metarko then asked how the authority wanted to get the information to the public and provided some options: direct mailings, robo calls, public input meetings, etc.

When Chairman Turner asked about meetings of the authority, Transportation and Development Director Metarko called attention to the schedule for monthly meetings and explained the need for the monthly meetings.

Tax Commissioner Baskin seeking clarification asked questions regarding the first tax bill with the solid waste fee, Mr. Lawson explained that those are 2018 dates. Tax Commissioner Baskin then reiterated that 2018 is when the tax bill would have these fees and not 2019. He contended that his date has been moved up by one year, and we are looking at a whole new system or infrastructure for the county. Transportation and Development Director Metarko recalled that this is consistent with discussions from two or three meetings ago when we proposed three different types of schedules. He explained that the longer schedule was chosen with a 2019 “go live” date. He said if this is a concern; then, it would have to be taken into consideration what the authority members want to see as the “go live” date and Jacobs is willing to do what it takes within reason with 2019 being obtainable. Tax Commissioner Baskin recalled that he is being asked to engage and do all of this. He is asking the authority to work with him and the timeline. Tax Commissioner Baskin then posed a question to Budget Manager Johnson relating to the infrastructure, at which time, Transportation and Development Director Metarko noted that Jacobs is knowledgeable about the concerns; therefore, they are aware that they have to get your schedule nailed down. At this time, Mr. Lawson pointed out that Task 5 lists to engage the Tax Commissioner as a continuous involvement with Baskin through the decision making process. Budget Manager Johnson advised that we are soon going to bring forward to the board the selected vendor as part of that system for SPLOST- the County-Wide Enterprise System and the Tax Commissioner’s system is included in that. Then, we would have some sort of implementation schedule that might give a little more clarity around the first of the year.

Vice Chairman Gregory made the motion to approve Task Order 1 and Task Order 2, second by Tax Commissioner Baskin. Interim Chief Staff Attorney Hancock suggested amending the motion for Task Order 2 to provide that it is only applicable once the money is budgeted. If the Finance Department does not find enough money to fund it; then, it would have to go before the Board of Commissioners to move money from a budget standpoint, and we do not want to get into an agreement unless the money is there. Vice Chairman Gregory then amended her motion to include the necessary changes as outlined by Interim Chief Staff Attorney Hancock, second by Mr. Love. Vote unanimous.

#### IV. OTHER BUSINESS

Transportation and Development Director Metarko asked about meeting dates, at which time, Chairman Turner asked that he get with Ms. Slone Williams- Assistant to the Chairman and get some dates together to send out to the board to check for the members’ availability. Vice Chairman Gregory suggested looking into some evening meeting times after 4:00 p.m. or 5:00 p.m. Transportation and Development Director Metarko then asked if there is a guidance on how long

a meeting might be pallable not to go over. Chairman Turner suggested no more than an hour and a half.

There being no further business to discuss, motion by Tax Commissioner Baskin, second by Chairman Turner, to adjourn the Solid Waste Management Authority Board Meeting of October 20, 2016 at 10:39 a.m. Vote unanimous.