

RESOLUTION NO. 24-010

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "OUT-OF-SCOPE LETTER AGREEMENT" FOR ADDITIONAL SERVICES, PURSUANT TO SECTION 3.2.5 OF THE AMENDED "AGREEMENT FOR OPERATIONS, MAINTENANCE, AND MANAGEMENT SERVICES FOR THE CITY OF KEY WEST, FLORIDA, WASTEWATER FACILITIES" ("Agreement") BETWEEN THE CITY AND OPERATIONS MANAGEMENT INTERNATIONAL, INC. (OMI) TO REPLACE AND INSTALL THE ULTRAVIOLET DISINFECTION SYSTEM AT THE RICHARD A HEYMAN ENVIRONMENTAL POLLUTION CONTROL FACILITY (RAHEPF) IN THE AMOUNT OF \$317,168.00; AUTHORIZING NECESSARY BUDGET TRANSFERS AND ADJUSTMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE NECESSARY PAPERWORK UPON CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 23-043, the City Commission authorized the purchase of a new Ultraviolet Disinfection System (UVDS); and

WHEREAS, the UVDS system has been fabricated and will be delivered by the end of 2023; and

WHEREAS, in Resolution No. 13-304 the City Commission approved an Agreement with OMI to operate, maintain and manage the City's Wastewater Treatment and Collections Facilities, and in Resolution 18-366 the Agreement was extended for five years; and

WHEREAS, City staff and engineering consultant Jacobs have negotiated, and OMI has agreed to perform certain additional services, outside of the Agreement's scope of work, to install the Ultraviolet Disinfection System (UVDS) at RAHEPF; and

WHEREAS, Jacobs/OMI has the availability and expertise to perform the installation of the UVDS; and

WHEREAS, the additional scope of work to be performed by OMI, must be approved and compensated as additional services pursuant to Section 3.2.5 of the Agreement; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1. That the attached "Out-of-Scope Letter Agreement" between the City and OMI, pursuant to Section 3.5.2 of the amended "Agreement for Operations, Maintenance, and Management Services for the City of Key West, Florida, Wastewater Facilities" to install the Ultraviolet Disinfection System at the RAHEPF in the amount of \$317,168.00 is hereby approved.

Section 2. That this project is budgeted in Sewer/Renewal and Replacement Account No. 401-3503-535-6500, Project #SE35032302 and any necessary budget transfers or adjustments are hereby authorized.

Section 3: That the City Manager, upon the advice and consent of the City Attorney, is authorized to execute any necessary documents.

Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

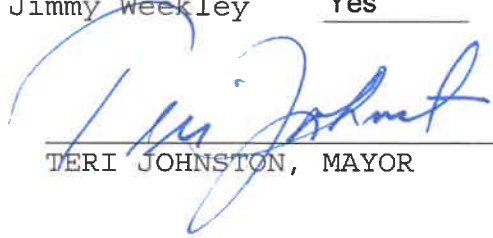
Passed and adopted by the City Commission at a meeting held this 11th day of January, 2024.

Authenticated by the Presiding Officer and Clerk of the Commission on 11th day of January, 2024.

Filed with the Clerk on January 11, 2024.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Lissette Carey	<u>Yes</u>

Commissioner Mary Lou Hoover Absent
Commissioner Clayton Lopez Yes
Commissioner Billy Wardlow Yes
Commissioner Jimmy Weekley Yes



TERI JOHNSTON, MAYOR

ATTEST:



KERI O'BRIEN, CITY CLERK



MEMORANDUM

Date: January 11, 2024

To: Honorable Mayor and Commissioners

Via: Albert P. Childress
City Manager *APC*

From: Kelly M. Crowe, P.E.
Utilities Director

Subject: **Approve Additional Scope of Work from Operations Management International, Inc. (OMI) to Remove and Replace the Ultraviolet Disinfection System (UVDS) at the Richard A Heyman Environmental Pollution Control Facility (WWTP) in the Amount of \$317,168.00 and Authorize Any Necessary Budget Transfers.**

Introduction

The Utilities Department recommends approving the additional out of scope proposal from Operations Management International, Inc. (OMI) in the amount of \$317,168.00 to remove and replace the Ultraviolet Disinfection System (UVDS). This resolution will authorize the City Manager to execute any necessary documents upon consent of the City Attorney and approve any necessary budget transfers.

Background

The City of Key West (City) owns the Richard A. Heyman Wastewater Treatment Plant (WWTP) on Fleming Key as well as the sanitary sewer collection system throughout the City of Key West. The City contracts with Operations Management International, Inc. (OMI) for the operations and maintenance of the sanitary sewer system and WWTP.

The WWTP facility is operated under Wastewater Permit No. FLA147222 and ultimately discharges to two (2) Class V underground injection wells permitted through FDEP under permit numbers 327710-001-UO/5W and 327710-002-UO/5W that discharges to Class G-III ground water. Prior to discharging to the Class V injection wells, the effluent undergoes UV disinfection to ensure the effluent is treated to be within the limits prescribed in the permit.

The existing UVDS was installed in 2006 and is nearing the end of its useful life. Per Resolution 23-043, the City Commission authorized the purchase of a new UVDS system from Trojan Technologies. Staff

subsequently placed the order for the system and it is expected to be delivered by the end of 2023. Installation of the new UVDS system will satisfy the required measures stated in Section 5(A) of Consent Order OGC 21-0581 by completely replacing the system. The system is expected to have a 15 year useful life if maintained properly.

To facilitate installation of the UVDS system, staff approached OMI to inquire if their in-house staff was capable of performing the work. OMI indicated they were able; however, per the contract for operations and maintenance services at RAHEPF, this work is out of scope and considered an additional service. The contract allows for out-of-scope work to be performed as an additional service per Section 3.2.5 of the contract. OMI issued a scope and fee proposal for the additional work to install the UVDS system in the amount of \$317,168.00.

Procurement

The City of Key West entered into a contract agreement with OMI that was authorized per Resolution 13-304 and renewed per Resolution 18-366. The contract allows for additional services that are out of scope to be provided. OMI has the staff to accomplish the work in order to complete the project.

Funds are currently budgeted in Account 401-3503-535-6500, Project #SE35032302 for the both the procurement and installation costs. There is sufficient funding to cover the proposed cost of \$317,168.00.

Recommendation

The City Manager's Office recommends approving the additional out of scope proposal from Operations Management International, Inc. (OMI) in the amount of \$317,168.00 to remove and replace the Ultraviolet Disinfection System (UVDS). This resolution will authorize the City Manager to execute any necessary documents upon consent of the City Attorney and approve any necessary budget transfers.

June 23rd, 2023

Kelly Crowe
Utilities Director
City of Key West
1300 White Street
Key West, FL 33040

Subject: Out-of-Scope Letter Agreement – UV Disinfection System (UVDS) Installation

Dear Kelly:

Jacobs would like to propose the following out-of-scope services as further defined below. These services will comply with the requirements of the Operations, Maintenance and Management Agreement between Operations Management International, Inc. and the City of Key West, Florida dated 31 March 2014.

- What is being provided: Jacobs will provide the following out-of-scope services for UVDS installation & commissioning works at the Key West WWTP:
- Installation & commissioning of new UVDS per Trojan submittal (04/13/23) & Jacobs submittal review (05/12/23)
 - Use of existing power distribution equipment including MCC breaker, conduits, wiring from MCC breaker to UV disinfection equipment, other existing equipment installed at the Facility
 - SCADA integration works (UVDS reporting only)
 - Phased installation with full plant operations maintained (1 channel UVDS installed at a time)
 - Management, coordination & oversight of OOS work
- What is not being provided: Jacobs will not provide the following items:
- Modifications to power distribution equipment (other than at the point of UVDS installation)
 - Any other material or service not included within the out-of-scope services
- When it is being provided: Start date to be agreed based on confirmation of delivery of UVDS equipment on site. Estimated duration of work is 8 weeks.

Project costs: The lump price for this work is \$317,168 and will be performed during normal business hours. If during the execution of this scope, Jacobs encounters unforeseen conditions that results in additional work to complete the installation & commissioning, Jacobs shall retain the right to bill City for any additional labor and/or materials needed to complete the scope as intended at cost+ 13.75%.

Payment terms: Billing upon completion of the work and payment will be due within thirty (30) days following issuance of Jacobs' invoice.

All other terms and conditions of the Agreement between OMI and the City of Key West remain in full force and effect.

The pricing contained in this letter is valid for ninety (90) days. If these terms are agreeable to you, please sign this letter. A fully executed version of this Agreement will be returned for your files.

Jacobs appreciates the opportunity to provide these services to the City of Key West.

Sincerely,

Richard Cleaver
Project Manager



Both parties indicate their approval of the above described services by their signature below.

Operations Management International, Inc.:

City of Key West, Florida



Name: Andy Rouse
Title: Vice President

Date: 06/23/2023



Name: Kelly Crowe
Title: Utilities Director

Date: Jan 18, 2024

Albert P. Childress
City Manager

Reviewed for Legal Sufficiency
1/14/23
CM Needs to sign
Ronald J. [unclear], City Attorney

AGREEMENT FOR OPERATIONS, MAINTENANCE,
AND MANAGEMENT SERVICES FOR
The CITY OF KEY WEST, FLORIDA, WASTEWATER FACILITIES

THIS AGREEMENT made this 31st day of March, 2014, by and between the City of Key West, Florida, a Florida municipal corporation (the "City") with an office located at ~~525 Angela~~ ^{1360 White} Street, Key West, Florida 33040, and Operations Management International, Inc. (hereinafter the CONTRACTOR) with an office located at 9191 S. Jamaica Street Englewood, CO 80112.



W I T N E S S T H :

WHEREAS, the City intends to hire a management company to operate, maintain and manage the wastewater treatment plant and related facilities (including collection and stormwater systems);

WHEREAS, the CONTRACTOR is a corporation engaged in the business of operating, maintaining, and managing such wastewater treatment plants and related facilities; and

WHEREAS, the City desires to receive, and the CONTRACTOR desires to provide, services for the operation, maintenance, and management of the wastewater treatment plant and related facilities (including collection and stormwater systems).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Premises.

The foregoing recitals are hereby made a part of this Agreement.

2. Definitions.

In addition to all of the words and terms defined herein, the following words and terms (or pronouns used in their stead) shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context. The masculine gender shall be deemed and construed to include correlative words of feminine and neuter genders. Unless the context shall otherwise indicate, all words shall include the plural as well as the singular number. The word "person" shall include the corporations and associations, including public bodies, as well as natural persons.

- 2.1. Adequate Nutrients. Plant influent nitrogen, phosphorous, and iron contents proportional to BOD₅, in the ratio of five (5) parts nitrogen, one (1) part phosphorous and one-half (0.5) part iron for each one hundred (100) parts BOD₅.
- 2.2. Biologically Toxic Substances. Any substance or combination of substances contained in the plant influent in sufficiently high concentrations so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the Wastewater required to meet the discharge requirements of the NPDES Permit. Biologically toxic substances include, but are not limited to, heavy metals, phenols, cyanides, pesticides, and herbicides.
- 2.3. Purchasing Practices. Contractor must follow all City travel policies when travel relates to the Key West project and/or when expenses are allocated to the Key West Project. Airline tickets and other transportation requirements shall be purchased from the most economical and practical carrier. Tickets will be advance purchase unless the travel is on an emergency basis. Meal reimbursements are subject to the City, per diem rate as allocated, based on the travel items. No alcoholic beverages or other personal items will be reimbursed. City travel policies will be provided to the Contractor and will be followed in every respect.

No entertainment expenses of any kind will be charged to the Key West project "Direct Costs".

Corporate or regional expense allocation (split) will not include items otherwise defined as non billable expenses.

Purchasing practices under the terms of the contract shall follow the City's purchasing ordinance when purchases are made by the Contractor as a "Direct Cost". If the Contractor desires to modify any such purchasing procedure, the Contractor shall submit in writing a justification to the City for approval. When it is in the City's best interest for the Contractor to select vendors for reasons other than lowest price, the Contractor will document and disclose the reasons to the City for approval. The Contractor's nation or regional purchase agreements/contracts will be nonbinding on the Key West project. The Contractor will coordinate with the City by following City purchasing policies when direct purchases are to be made outside the scope of the contract.

The Contractor shall provide the City a list of anticipated equipment or materials, with justification for SOLE SOURCE purchases within 30 days of the Notice to Proceed for City Approval. Thereafter, the list shall be updated and resubmitted to the City within the first 30 days of the start for each fiscal year. As needed, the Contractor may also request SOLE SOURCE approval throughout the fiscal year.

City purchasing policies will be provided to the Contractor after the award of Contract.

The City encourages the Contractor to be a good corporate citizen; however, the City does not want said participation to be passed on to the City ratepayers. Community involvement in any form of contributions, fees or in kind services (employee time) shall

not be billed to Key West project "Direct Cost". Where it is expedient for an employee to participate in community involvement during working hours, said employee will be required to make up and document time (flex time).

Company parties, Christmas parties and employee award programs shall not be charged to "Direct Cost".

Computer leases, once the actual cost of local hardware and local software is recovered, no computer lease charges will appear as "Direct Cost" and the City will own all hardware and software charged to "Direct Cost". Computers charged to the project will remain property of the City. The total amortized cost charged to "Direct Cost" shall be disclosed to the City and shall not exceed reasonable market prices. All computers on site at the Key West project are City property. Computer upgrades will be required through established budgeting procedures subject to prior City approval.

Personally assigned vehicle costs (for the Project Manager) billed to "Direct Cost" shall not exceed \$300.00 per month without written prior City approval. City agrees to review new lease terms at the expiration of the current and subsequent leases.

Key West Project Reviews: Internal or external "project review" or other quality assurance program costs (except budgeted "quality training programs") will not be charged as a "Direct Cost".

New Project Startups (off-site): When Contractor employees of the Key West project help in new Contractor project startups, their salary and wage costs will be charged to the new Contractor project that is receiving their assistance. Any charges for overtime or temporary workers required due to their absence will be charged as a "Direct Cost" to Key West, as long as such temporary costs do not exceed the wage or salary cost of the employee participating in the new project startup.

Project Evaluations (off-site): When Contractor employees of the Key West project participate in off-site evaluations or reviews of existing or potential Contractor projects, their salary will be charged to Key West, as there is a definite benefit to Key West in exposing staff to new ideas, technologies and approaches to wastewater operations and maintenance. However, Key West will not be charged for any overtime or temporary labor associated with these employees being away from the project.

The Contractor will establish accounting procedures to segregate non billable costs as they are incurred. Contractor employees who have budget, accounts payable or purchasing responsibilities will be trained on what is non billable and how said cost shall be treated. Internal control procedures shall be established to review all "Direct Costs" to ensure proper handling of non billable cost.

The Contractor acknowledges the City's right to receive summary and detailed accounting records with associated source documents as frequently as deemed necessary by the "City's Representative".

Moving and Relocation expenses for the Project Manager will not occur more often than three years per assignment and will not exceed the current City policy amount as shown in the record for the City Manager. If it becomes necessary to move the Project Manager before the three-year limit for the Contractor's convenience, the Contractor will bear the expense of moving a new manger to the site. Should the City Commission request the Project Manager be replaced for any reason, Key West will bear the expense of moving a new manager to the site.

- 2.4. City's Representative. The person designated in writing, by the City Manager, to act on behalf of the City as its authorized representative in dealing with the CONTRACTOR under this Agreement.
- 2.5. Direct Cost. The cost incurred for the direct benefit of the Facilities, including, but not limited to, expenditures for direct labor, employee benefits, chemical lab supplies, repairs, repair parts, maintenance, parts, safety supplies, gasoline, oil, equipment rental, office supplies, other supplies, uniforms, telephone, postage, electricity, water, utilities, tools, insurance, professional memberships, and training supplies.

Direct Cost shall not include labor or other charges for Regional, District or Corporate personnel, offices or activities. All such costs shall be recovered through indirect cost and management fee provided for below.
- 2.6. Total Actual Direct Cost. The actual Direct Cost incurred by the CONTRACTOR in any one Fiscal Year for the operation of the Facilities.
- 2.7. Total Budget Direct Cost. The amount of Direct Cost agreed upon by the parties in the annual budget determined pursuant to Section 5.3 hereof, a copy of which budget for the first Fiscal Year hereof is attached hereto as Exhibit F and, by this reference incorporated herein. A copy of the 2014 approved Total Budget Direct Costs will be provided to the Contractor following Commission Approval. For reference, Exhibit F illustrates prior budget year approvals for "Direct Costs".
- 2.8. Total Budget Amount. The sum of Total Budget Direct Cost plus (13.75%) of Total Budget Direct Cost which (13.75%) percent figure shall constitute the CONTRACTOR's indirect costs and management fees.
- 2.9. EPA. The United States Environmental Protection Agency.
- 2.10. FDEP. The Florida Department of Environmental Protection.
- 2.11. Facilities. All equipment, vehicles, grounds and facilities described in Exhibit B attached hereto and, by this reference, incorporated herein.
- 2.12. Fiscal Year. The City's fiscal year commencing on October 1 and ending on September 30 of each calendar year.

- 2.13. Inflow/Infiltration. The inflow and infiltration of outside elements into the wastewater system as those terms are commonly used in wastewater treatment practices.
- 2.14. NPDES Permit. The Florida Department of Environmental Protection Domestic Wastewater Facility Permit FLA147222 effective on June 18, 2009 with an expiration date of June 17, 2014, a copy of which is attached hereto as Exhibit C and, by this reference, incorporated herein, as may be amended or such other permit as is in effect during the term hereof.
- 2.15. Navy Easement. The Grant of Easement dated March 31, 1986, by and between the United States of America, acting by and through the Department of the Navy, and the City, a copy of which is attached hereto as Exhibit A and, by this reference, incorporated herein, which easement allows the use by the City, subject to the terms contained therein, of the property described in Exhibit D attached hereto and, by this reference, incorporated herein.
- 2.16. Non-Processible Waste. Any ashes, foundry sand, human remains, animal carcasses, tree trunk sections, branches and stumps, motor vehicles (including major parts such as transmissions, rear ends, springs, and fenders), agriculture machinery and equipment, marine vessels and their major parts, any other large machinery or equipment, any matter or material the incineration of which in the Facility is prohibited by any law, ordinance, rule, or regulation of any government or public agency having jurisdiction over the Facility and its operations, noncombustible construction material or demolition debris, and hazardous waste, such as, but not limited to, explosives, hazardous chemicals, radioactive materials, cleaning fluids, crank case oils, cutting oils, paints, acids, caustics, poisons, or drugs.
- 2.17. The CONTRACTOR's Representative. The person designated in writing, by the CONTRACTOR, to act on behalf of the CONTRACTOR as its authorized representative in dealing with the City under this Agreement.
- 2.18. Plant. The wastewater treatment plant and all appurtenances thereto but not including any pump stations, lift stations or pipes located outside the physical structure of the building and structures.
- 2.19. Processible Waste. Wastewater brought to the Plant other than Non-Processible Waste.
- 2.20. Collection System. All components of the sewer collection system from (and excluding) lift stations, including gravity lines, force mains, and manholes.
- 2.21. Pump Stations/Lift Stations. The pump stations/lift stations are located as described on Exhibits B and G attached hereto.
- 2.22. Wastewater. The water carried through the wastewater collection system of the City and brought to the Plant for treatment and discharge.
- 2.23. Effluent Systems. The wastewater treatment plant point of discharge from the plant to the injection wells.

- 2.24. Navy Flow Meters. The Navy Flow Meters located as described on Exhibit B attached hereto.
- 2.26. Stormwater Drainage System. All components of the stormwater collection system to include minor pipe and catch basin repair and improvements.
3. Scope of Services.
- 3.1. The City hereby hires and contracts with the CONTRACTOR to operate, maintain, and manage the Facilities during the term hereof and upon the terms contained herein. The CONTRACTOR shall not subcontract or assign any portion of this contract without prior written approval of the City.
- 3.2. The CONTRACTOR.
- 3.2.1. Staffing. The CONTRACTOR will staff the facilities with its own employees who are qualified in wastewater and stormwater utility operations, maintenance, and management. The CONTRACTOR shall, at all times during the term hereof, provide qualified personnel needed to ensure the adequate and satisfactory monitoring and performance of the Facilities as required pursuant to this Agreement or by law. The CONTRACTOR may utilize any and all other additional personnel that may be necessary for the operation of the Facilities during abnormal or emergency conditions for Key West, Florida, upon receipt of approval of such additional personnel by the City. The CONTRACTOR shall be compensated for the costs of such personnel pursuant to Section 3.2.5 hereof. The CONTRACTOR shall submit the name of the Project Manager to the City for approval, which approval shall not be unreasonably withheld. If the City does not approve the person submitted by the CONTRACTOR, then the CONTRACTOR shall select another candidate for approval by the City. The CONTRACTOR shall reassign the Project Manager upon receipt of notice from the City that said Project Manager is no longer acceptable to the City.
- 3.2.2. Training. The CONTRACTOR shall provide classroom and on-the-job training for its employees to ensure proper and safe operation of the Facilities and to maintain the competency levels required by State of Florida certification standards. These training programs will be patterned after the CONTRACTOR programs currently utilized at other of the CONTRACTOR-operated facilities. The cost of these programs will be the sole responsibility of the CONTRACTOR as part of "Direct Cost". Where appropriate, said training will be made available to other City personnel.
- 3.2.3. Equipment. The CONTRACTOR shall, at its own cost and expense, provide all materials and equipment necessary for the operation and maintenance of the Facilities. The CONTRACTOR shall also maintain and furnish to the City on the first day of each

Fiscal Year, a current inventory listing the tools and equipment acquired by it for the City with budgeted funds during the previous Fiscal Year, containing the following information: reasonably detailed description of such tools and equipment; the date of purchase; the identification number, if any; and the manufacturer's name.

Such tools and equipment acquired by the City or by the CONTRACTOR for the City with budgeted funds will remain a part of the Facilities upon termination of this Agreement. Upon the termination of this Agreement, the CONTRACTOR will provide the City with the same quantity of fuel and chemicals, or the equivalent thereof, as are on hand at the commencement of operation of the Facilities. The CONTRACTOR shall take all steps necessary to preserve and maintain any warranties on any of the tools, equipment, and Facilities components and to keep the City informed in a timely manner of any and all steps taken to preserve and maintain such warranties.

- 3.2.4. Operation of Facilities. The CONTRACTOR shall, at a minimum, provide the following services during the continuing operation of the Facilities:
- 3.2.4.a. Respond immediately to, and immediately commence resolution of, any and all complaints concerning the Facilities made by the City, any other governmental agency, or any other person, agency, or body;
 - 3.2.4.b. Periodically utilize all dormant equipment to ensure the proper functioning and maintenance of such equipment;
 - 3.2.4.c. Maintain throughout the contract all Collection Systems, Stormwater System, Effluent Systems and Pump Stations/Lift Stations;
 - 3.2.4.d. Comply with any and all terms of the Navy Easement of which it has control, and assist the City in complying with all other terms thereof;
 - 3.2.4.e. Operate the Facilities unmanned for up to eight hours at a time as required by the Navy and at any time specified by the Navy. When the CONTRACTOR vacates the Facilities pursuant to the Navy's request, the Facilities shall be operating properly and shall continue to so operate under normal conditions for Key West, Florida, during the entire time that the CONTRACTOR is required to leave the Facilities unmanned;
 - 3.2.4.f. Observe all rules and regulations concerning the exercise of the rights of ingress and egress to and from the Facilities;

- 3.2.4.g. Operate, maintain and repair the stormwater and wastewater Pump Stations/Lift Stations described in Exhibits B and G as consistent with normal wastewater treatment plant practices;
- 3.2.4.h. Operate, maintain and repair the WWTP described in Exhibit B as consistent with normal wastewater treatment Plant practices;
- 3.2.4.i. Operate, maintain and repair the entire City sewage collection and stormwater systems and discharge force mains of the Lift Stations described in Exhibits B and G and through the Effluent System.
- 3.2.4.j. Operate the Plant continuously, as consistent with normal wastewater treatment plant practice so as to maximize the efficient treatment of Wastewater;
- 3.2.4.k. Clean, maintain and minor repair of approximately 49,500 feet of storm sewer pipe with catch basins and injection wells;
- 3.2.4.l. Clean, maintain and repair Effluent System Deep Injection Well(s);
- 3.2.4.m. Installation of new small basins and French drains. Repair minor structural damage to stormwater system including up to 200 LF of stormwater collection system pipe;
- 3.2.4.n. Navy Flow Meters. Operate and maintain the Navy Flow Meters described in Exhibit B as consistent with normal wastewater treatment plant practices.
- 3.2.4.o. Provide twenty-four-hour access to the Facilities for the City's personnel. Visits to the Plant by the City's personnel may be made at any time by any of the City's employees so designated by the City's Representative. Keys to the Plant shall be provided to the City by the CONTRACTOR. All visitors to the Facilities shall comply with the CONTRACTOR's operating and safety procedures;
- 3.2.4.p. Provide adequate security of the Facilities at all times;
- 3.2.4.q. Continue training programs for all of the CONTRACTOR's employees;
- 3.2.4.r. Maintain a state of readiness and responsiveness to requests and/or after hour callouts on a 24 hour, 7 days per week basis. Such activities could include but not limited to, collection main

blockages, broken mains, high water events (flooding), pump station failures, treatment plant upsets, and power outages.

- 3.2.5. Additional Services. The CONTRACTOR shall provide and perform any other services that are outside of, or in addition to, the scope of services as provided herein, upon direction by the City. Such services will be invoiced to the City at the CONTRACTOR's actual cost plus (13.75%).
- 3.2.6. Direct Cost. The CONTRACTOR shall pay all Direct Cost incurred in the normal operation of the Facilities.
- 3.2.7. Wastewater Treatment. The CONTRACTOR shall manage, operate, and maintain the Facilities to the extent that the design capacity and capability of the Facilities permit such operation so that, at a minimum, the effluent discharge from the Facilities meets the requirements specified in Exhibit E attached hereto, as may be amended from time to time, and, by this reference, incorporated herein. The CONTRACTOR may reasonably alter the process and/or Facilities to achieve the objectives of this Agreement, provided, however, that no alteration which costs in excess of \$2000 shall be made without the City's prior written approval.
- 3.2.7.a. Acceptance of Processible Waste. The CONTRACTOR shall accept all Processible Waste delivered to the Facilities.
- 3.2.7.b. Removal of Non-Processible Waste. The CONTRACTOR shall remove non-processible Waste from the refuse storage pit of the Facilities at its sole cost and expense. All Non-Processible Waste removed by the CONTRACTOR shall be removed from the site promptly by the CONTRACTOR and delivered to the City's Rockland Key Transfer Station or such other FDEP approved landfill or such other FDEP approved compost site as may be designated by the City at the CONTRACTOR's sole cost and expense, except that the City shall pay for the increase in transportation of the Non-Processible Waste to such other landfill or compost site as part of the annual Budgeted Direct Cost.
- 3.2.7.c. Removal of Process Residue. The CONTRACTOR shall remove all Process Residue (i.e., screenings, grit and sludge) resulting from the processing of Processible Waste in the Facilities at its sole cost and expense. All Process Residue removed by the CONTRACTOR shall be removed from the site promptly by the CONTRACTOR and delivered to the City's transfer station or such other FDEP landfill or such other compost site as may be designated by the City at the CONTRACTOR's sole cost and expense, except that the City shall pay for the increase in transportation of the Process Residue to such other FDEP

landfill or compost site as part of the annual Budgeted Direct Cost.

3.2.8. Maintenance, Repair and Replacement.

- 3.2.8.a. General. The CONTRACTOR shall, at its sole cost and expense, maintain the Facilities and grounds in good condition and repair, including making any and all necessary repairs and replacements consistent with standard wastewater treatment plant practices. The CONTRACTOR shall maintain the safety of the Facilities at a level consistent with applicable law and normal wastewater treatment plant practices for facilities of similar magnitude. The CONTRACTOR shall maintain the site, access roads, drives, parking lots, buildings, and other such appurtenances in good repair and in a neat, orderly, and litter-free condition in order to protect the Facilities against deterioration and to maintain the aesthetic quality of the Facilities. The CONTRACTOR shall correct any material deficiencies, inefficient operation and maintenance of the Facilities throughout the term hereof pursuant to the provisions hereof for normal conditions in Key West, Florida, and in accordance with standard wastewater treatment practices. The City shall have the right to inspect all records in detail during normal business hours. The CONTRACTOR shall maintain the Facilities in such a manner as to keep all warranties in full force and shall not act, or allow any other party to act, so as to interfere with the effectiveness of such warranties.
- 3.2.8.b. Preventive Maintenance. The CONTRACTOR shall create and implement a plan for a preventive maintenance program for the Facilities and all related equipment, structures, and vehicles consistent with good preventive maintenance practices or the manufacturer's specifications, utilizing its computerized maintenance management system. Such preventive maintenance program shall include, at a minimum, the Collection System, Pump Stations/Lift Stations and all facilities at the WWTP. Collection System preventive maintenance must include line cleaning and Inflow/Infiltration remedial work. The CONTRACTOR shall maintain records of preventive maintenance activities.
- 3.2.8.c. Corrective Maintenance and Repair. To the limits provided below, the CONTRACTOR will provide corrective maintenance and repairs for the Facilities and all related equipment, structures, and vehicles consistent with good corrective maintenance and repair practices or the manufacturer's specification, utilizing its computerized maintenance management system. Corrective maintenance and repairs are

deemed to be those non-preventive maintenance or repairs which cost less than \$5,000, other than repair of damages caused by Force Majeure, as hereinafter defined. During the term of this Agreement, the CONTRACTOR shall use methods of operation and maintenance which shall keep the Facilities in as good or better condition that at the start of this Agreement, excepting normal wear and tear. The CONTRACTOR shall maintain records of corrective maintenance and repair activities.

3.2.8.d. Capital Expenditures and Replacements. Capital expenditure and replacement are deemed to be any repairs or replacements which cost \$5,000 or more or which are caused by Force Majeure. The CONTRACTOR shall make no unreasonable request and shall ensure that items requested are reasonable and justifiable to carry out the terms of this Agreement in accordance with professional engineering practices. The City shall consent to all reasonable and justifiable capital expenditures and replacements, which consent shall not be unreasonably withheld. The City's cost of repairing and replacing these items shall be paid for either by reimbursement to the CONTRACTOR or by direct purchase by the City. Emergency items which are identified and which are needed for the safety of workers, will be given first priority. The CONTRACTOR shall submit to the City, by April 10 of each Fiscal Year, a list and estimate of capital expenditures and replacements, if any, to be provided by the City for the succeeding year. Because the City will be responsible for equipment replacement, the CONTRACTOR will submit documentation of the cost effectiveness of "repair versus replace" decisions recommended by the CONTRACTOR.

3.2.9. Analysis. The CONTRACTOR shall provide any and all laboratory testing necessary for monitoring of process control activities and compliance with the NPDES Permit. The CONTRACTOR shall employ and train all laboratory staff to the extent necessary and shall purchase all equipment and supplies necessary for the operation of the laboratory. The laboratory shall maintain an accreditation of NELAP certification for carbonaceous biological oxygen demand (CBOD), residue-nonfilterable (TSS), enterococci, and fecal coliforms.

3.2.10. Annual Budget. The CONTRACTOR shall submit to the City, by April 10 of each year, a budget for the upcoming fiscal year. The budget shall be in City format and shall detail Total Budgeted Direct Cost and the Total Budgeted Amount. The CONTRACTOR shall also include a labor worksheet that identifies the organizational structure by position, the number of employees per position, the salary per position, and a salary per position which includes the benefits package. The benefits package shall be defined for each position.

3.2.11. Reporting and Documentation.

- 3.2.11.a. NPDES Permit Reports. The CONTRACTOR shall prepare all NPDES Permit reports and submit them to the City no later than five (5) days prior to the due date for delivery of such reports to the appropriate government body.
- 3.2.11.b. EPA Reports. The CONTRACTOR shall submit all EPA reports required of the operator of a wastewater treatment facility.
- 3.2.11.c. FDEP Reports. The CONTRACTOR shall prepare all FDEP reports and submit them to the City no later than five (5) days prior to the due date for delivery of such reports to the appropriate government body.
- 3.2.11.d. Monthly Operating Reports. The CONTRACTOR will ensure that a certified operator prepares and signs any monthly operating report required by state, federal, or local government bodies or agencies and shall submit them to the City no later than five (5) day prior to the due date for delivery of such reports to the appropriate government body or agency.
- 3.2.11.e. Reports to the City. The CONTRACTOR shall provide a monthly report to the City of the Direct Cost for the operation of the Facilities for the month covered by such report. The CONTRACTOR shall provide an annual report to the City of all formant equipment and tools, and of all equipment and tools required to be purchased in the next fiscal year. The CONTRACTOR shall provide an annual report to the City comparing the Total Actual and Budgeted Direct Cost and an explanation of all budget variances. The CONTRACTOR shall also provide any other reports to the City that are reasonably requested by the City in the time period and in the manner reasonably requested by the City.
- 3.2.11.f. Records. The CONTRACTOR shall maintain all records related to the operation, maintenance, and management of the Facilities, including copies of all governmental reports and all financial documents, at the Facilities. Representatives of the City may review said records at any time. The CONTRACTOR shall maintain said records in accordance with sound business practices and generally accepted accounting practices or generally accepted accounting standards adopted by the Government Accounting Standards Board and the Government Financial Officers Association.
- 3.2.11.g. Emergency Management Plans. The CONTRACTOR within 90 days of the notice to proceed will provide the City with the

following emergency management plans, a hurricane plan, a high water/flooding plan, a spill plan, and a public information plan. Thereafter, each plan shall be update within the first 30 days of each fiscal year. The City, as needed, may request additional plans during the course of the contract. Likewise, the CONTRACTOR may have additional plans they desire to provide to the City.

3.2.12. Licenses and Permits. The CONTRACTOR shall act in a timely fashion to initiate an application for, and to maintain, with the City's assistance, all licenses, permits, and warranties necessary for the initial and continued operation of the Facilities. Unless stated otherwise herein, during the term hereof, the CONTRACTOR shall have the obligation to maintain all such licenses, permits, and warranties. The CONTRACTOR shall maintain all such licenses, permits, and warranties on behalf of, and in the name of, the City, at the CONTRACTOR's sole cost and expense. The City shall sign and certify applications for NPDES permits and any other permits in accordance with applicable state and federal laws and regulations.

3.2.13. Force Majeure. The CONTRACTOR shall not be deemed to be in default hereof if performance of the obligations required by this Agreement is delayed, disrupted, or becomes impossible because of any act of God, war, hurricane, fire, civil commotion, epidemic, act of government, its agencies or officers, or any other legitimate cause beyond the control of the parties, except any action required to be taken pursuant to the Navy Easement ("Force Majeure"). Upon the occurrence of any such event, the CONTRACTOR shall operate the Facilities on a best effort basis and shall not be responsible for effluent or product water quality/quantity/characteristics, or damages, fines, penalties or claims resulting therefrom. In the event labor stoppage by employee groups (e.g., picketing) causes a disruption of the CONTRACTOR employees entering and working at the Facilities, the CONTRACTOR shall seek appropriate legal injunctions or court order to terminate such disruption.

3.3. Obligations of the City.

3.3.1. Taxes. The City shall pay all property, franchise, or other taxes assessed against either the Facilities or the operation of the Facilities, except that the CONTRACTOR shall be responsible for any sales tax related to the Facilities, or any corporate or income taxes related to its operation, maintenance, and management of the Facilities.

4. Term and Terminations.

4.1. Term. The initial term of this Agreement shall be for (5) years commencing on March 1, 2014 and upon mutual agreement, will be renewable for up to (2) two additional terms of (5) five year periods.

4.2. Termination. The City or the CONTRACTOR shall have the right to terminate this Agreement, with or without cause, upon ninety-(90) days written notice to either party.

Either party hereto may terminate this Agreement upon a material breach of the terms hereof by the other party, provided that the non-breaching party gives written notice of the breach to the breaching party and allows said breaching party thirty (30) day to cure, or to take all responsible steps to commence to cure, said breach.

4.3. Operation of the Facilities After Termination. Upon termination of this Agreement, by failure to renew or by termination as provided above. The CONTRACTOR shall continue to provide the operations, maintenance, and management services required hereunder for a period of up to one-hundred eighty (180) days from said termination. During this period, the CONTRACTOR shall assist the City, or any party designated by the City, in assuming the operation, maintenance and management of the Facilities. The City shall pay the CONTRACTOR during this period within thirty (30) days of receipt of an invoice for such costs from the CONTRACTOR.

5. Compensation.

5.1. Fee. Subject to the adjustments contained in Section 5.2 and 5.3 hereof, the City shall pay to the CONTRACTOR as compensation for services performed for each Fiscal Year of this Agreement a fee (the "Fee"), which shall consist of the Total Budgeted Amount. **At least Fifty percent (50%) of the Fee shall be fixed and not subject to the adjustment made pursuant to Section 5.3 hereof (the "fixed" portion of the Fee). The Fee shall not exceed a specified amount determined pursuant to Section 5.2 hereof for each subsequent Fiscal Year. The Fee shall be paid in equal monthly installments.**

5.2. Total Budgeted Amount. The fee paid to the CONTRACTOR as compensation for services performed shall be (13.75%) markup over Total Budgeted Direct Cost, plus Total Budgeted Direct Cost. The Management Fee of 13.75% shall remain fixed for the entire duration of the Contract Term and any subsequent renewals. Total Budgeted Direct Cost expended for each Fiscal Year under this Agreement shall be negotiated annually commencing no later than five (5) months prior to the end of the then current Fiscal Year. If the parties fail to agree on the revision to the Fee by August 15 of each Fiscal Year, the Fee will be subject to Section 5.4 (iii) hereof, and be determined by arbitration pursuant to Section 9 hereof unless said date is mutually extended.

5.3. Annual Adjustments. Within sixty (60) days after the end of each Fiscal Year, the CONTRACTOR shall prepare and present to the City, a final financial report of the Direct Cost of the Facilities for such Fiscal Year, comparing the Total Actual and Budgeted Direct Cost. If the Total Actual Direct Cost exceed the Total Budgeted Direct Cost, then no adjustment shall be made for that fiscal year to the Fee. If the Total Actual Direct Cost for any Fiscal Year are less than the Total Budgeted Direct Cost for said Fiscal Year, then the CONTRACTOR shall be entitled to retain a portion of the estimated Fee paid for such fiscal Year pursuant to Section 5.1 hereof, based on the following formula:

1. Total Actual Cost plus
2. (13.75%) of Total Actual Direct Cost plus;
3. Fifty percent (50%) of the difference between Total Actual Direct Cost and Total Budgeted Direct Cost, up to a maximum difference of One Hundred Thousand Dollars (\$100,000.00).

The balance of the Fee, calculated above, paid by the City for said Fiscal Year shall be rebated to the City in one lump sum payment with the final financial report described above. The Fee as adjusted herein shall be subject to the parameters in Section 5.4.

5.4. **Fee Parameters.** Any annual compensation negotiated between the City and the CONTRACTOR pursuant to Section 5.2 of this Agreement shall be subject to the following parameters: (i) at least fifty percent (50%) of the annual compensation of the CONTRACTOR under this Agreement is based upon a periodic fixed amount and shall not be subject to any incentive based upon output of the Facilities; (ii) the annual compensation of the CONTRACTOR shall not be based (in whole or in part) on a share of the net profits of the Facilities; and (iii) in the event that the Fee is determined by arbitration pursuant to Section 5.2 and Section 9 hereof, the Fee so determined shall be subject to and comply with the provisions of Rev. Proc. 97-13, 1997-1 C.B. 632

5.4.1. Fixed Fee. The Fixed Fee shall be (\$4,796,254) and shall remain fixed for the term of the contract except for annual adjustments equal to Consumer Price Index for all Urban Consumers (CPI-U) (all items national).

5.4.2. Variable Fee. The fee as calculated in 5.2 above less the Fixed Fee as calculated in 5.4.1. In no case shall the Variable Fee exceed the Fixed Fee.

5.4.3. Fee Paid to the CONTRACTOR. The fee paid to the CONTRACTOR shall be the Fixed Fee plus the Variable Fee. In no case shall the total fee retained exceed twice the Fixed Fee.

5.5. Change in Scope. In the event of a change in the scope of services provided by the CONTRACTOR pursuant to this Agreement, the City and the CONTRACTOR shall negotiate, within the fee parameters described in Section 5.4 hereof, a commensurate adjustment in the Fee.

5.6. Initial Period Fee. The Fee for the initial period shall be (\$5,455,739) Total Budgeted Direct Cost and markup of (13.75%). Annual adjustments and Fee parameters under Section 5.3 and 5.4 shall be applied on a prorata basis where applicable (i.e., \$50,000 cap and Fixed Fee amount).

6. Insurance.

6.1. The CONTRACTOR.

6.1.1. Worker's Compensation. The CONTRACTOR shall maintain, during the term hereof, Worker's Compensation Insurance for all of the persons employed at the Facilities in the amount required by state law or regulation. In case any work is sublet to a party other than the CONTRACTOR, the CONTRACTOR shall require said subcontractor to provide Worker's Compensation Insurance for all of said subcontractor's employees unless such employees are covered by the protection provided by the CONTRACTOR.

- 6.1.2. Comprehensive General Liability Insurance. The CONTRACTOR shall maintain, during the term hereof, a comprehensive policy of hereof, and public liability insurance, including, but not limited to, products and completed operations liability and blanket contractual coverage's applying to, at a minimum, this Agreement, insuring against claims of liability, contingent and otherwise, for injury to, or death of, any person or persons, or damage to real or personal property, arising out of, by reason of, or in connection with, the CONTRACTOR's operations contemplated herein, and also to defend against all claims, demands, actions, or legal proceedings made or brought by any person or persons by reasons of any such injury, death, or damage, and to pay all judgments, interest, costs, or other expenses arising out of or in connection therewith. The limit of liability of such policy shall be not less than Five Million Dollars (\$5,000,000.00) combined single limit.
- 6.1.3. Automotive Liability Insurance. The CONTRACTOR shall maintain, during the term hereof, automotive liability insurance for all vehicles owned by the City or leased by the CONTRACTOR and that are used in connection with the facilities. Those vehicles owned by the City, but insured by the CONTRACTOR will be operated solely by the CONTRACTOR employees during the term hereof.
- 6.1.4. Property Damage. The CONTRACTOR shall maintain, during the term hereof, a property damage insurance policy for all property owned or acquired by the CONTRACTOR during the term hereof used in connection with the Facilities.
- 6.1.5. Pollution Liability Insurance. The CONTRACTOR shall maintain, during the term hereof, pollution liability insurance in connection with operation of the facilities.
- 6.1.6. Premiums. The cost of the premiums (self insurance cost allocation method) for the insurance required to be obtained and maintained by the CONTRACTOR pursuant to this Section 6.1 shall be included in Direct Cost, and all other insurance related costs, including, but not limited to, deductibles and loss retention, shall be at the CONTRACTOR's sole cost and expense.
- 6.1.7. Terrorism Coverage: All policies of insurance required to be obtained under the provisions of this Section 6 shall be endorsed providing that such policy or policies shall not exclude TRIA (terrorism) coverage.

6.2. General.

- 6.2.1. Obtaining Insurance. The CONTRACTOR shall not commence work pursuant to this Agreement until it shall have obtained all insurance required in this Section 6, and such insurance shall have been approved by the City or the City's Representative, as to form, amount and carrier, nor shall the CONTRACTOR allow any subcontractor to commence work.

- 6.2.2. Additional Insured. The CONTRACTOR will name both the City of Key West and the Navy as "additional insureds " on all insurance policies required by this Agreement with the exception of Workers' Compensation.
- 6.2.3. Proof of Insurance. The CONTRACTOR shall furnish satisfactory proof of coverage of the insurance required to be obtained under the provisions of this Section 6. All policies of insurance shall be endorsed providing that such policy or policies shall not be cancelled or materially modified by the carrier thereof until the non-obtaining party shall have been provided at least thirty (30) days prior written notice of such cancellation or material modification thereof. If the CONTRACTOR chooses to self-insure any of the obligations required in Section 6, the CONTRACTOR shall furnish to the City a letter certifying that the CONTRACTOR has provided for this coverage in the CONTRACTOR'S insurance system and that such coverage in the CONTRACTOR's insurance system shall be subject to the terms hereof. The letter should include a financial statement demonstrating financial solvency of the CONTRACTOR
- 6.2.4. Waiver of Subrogation. To the extent permitted by law, and only if such action does not invalidate the insurance carried by either party, the CONTRACTOR and the City, on behalf of themselves and their insurers, waive their rights of subrogation with respect to losses occurring to property of the other party insured as required hereunder.

7. Indemnification and Penalties.

7.1. The CONTRACTOR.

- 7.1.1. Indemnification. The CONTRACTOR will indemnify and hold harmless the Navy, the City, its elective and appointed boards, officers, agents, and employees from and against all liabilities, claims, damages, losses and expenses, including attorney's fees, arising out of, or resulting from, the negligent performance of its duties and obligations under this Agreement and the Navy Easement, including, without limitation, acts, and omissions of the CONTRACTOR, its employees, agents, officers, and subcontractors except that such indemnity and hold harmless agreement shall not apply to any liabilities, claims, damages, losses, and expenses arising out of the City's sole negligence. This covenant shall survive the termination of this Agreement.
- 7.1.2. Fines and Penalties. The CONTRACTOR shall be liable for (i) any fines or civil penalties which may be imposed by any governmental or quasi-governmental agency body or (ii) any judgments or liabilities arising from actions by non-governmental or quasi-governmental agencies or bodies for violations of the effluent guarantees specified herein arising out of, or resulting from, the performance or its duties and obligations under this Agreement, including, without limitation, acts and omissions of the CONTRACTORS, its employees, agents, officers and subcontractors. The City will assist the CONTRACTOR in any contest of any such fines or civil penalties in administrative and/or court proceedings; provided, however, that the CONTRACTOR shall pay such fines or

civil penalties prior to such protest if such payment is required prior to making such protest. The CONTRACTOR shall be solely responsible for all costs, including attorneys' and accountants' fees, of protesting any such fines or civil penalties. The CONTRACTOR shall also not be responsible for any fines or civil penalties due to EPA proceedings concluded prior to execution of this Agreement unless such fines or civil penalties are the direct result of an act or omission of the CONTRACTOR pursuant to the terms hereof.

7.1.3. Navy Easement. The CONTRACTOR shall be responsible for the performance of all of the City's obligations under the Navy Easement of which the CONTRACTOR has control. The CONTRACTOR will be liable for any damages or additional costs that result from a violation of any of the terms of the Navy Easement, unless caused by an act or omission or negligence of the City, Navy, or other outside entity or individual.

7.2. City.

7.2.1. Fines and Penalties. The City shall be responsible for fines or civil penalties due to violations of Ordinance 79-18, as amended, provided that the CONTRACTOR, not the City, shall be responsible for such fines or civil penalties if the CONTRACTOR negligently fails to prevent any damages arising from violations of Ordinance 79-18, as amended.

8. Default.

8.1. The CONTRACTOR.

8.1.1. Rejection of Processible Waste. If, at any time after the commencement of this Agreement, the CONTRACTOR rejects Processible Waster delivered by the City to the Facilities which the CONTRACTOR is required to accept, then such failure shall constitute an event of default.

8.1.2. Abandonment of Facilities. If the CONTRACTOR abandons the Facilities during the term hereof, such abandonment shall constitute an event of default. In addition to any other remedies described below, the CONTRACTOR shall be liable for any incidental and consequential damages resulting from its abandonment of the Facilities, including, but not limited to, any increase in fees paid by the City to subsequent operator of the Facilities. The CONTRACTOR's vacation of the Plant due to the Navy Easement shall not be deemed to be an abandonment of the Facilities.

8.1.3. Failure or Refusal to Comply With the Agreement. The failure to cure any breach hereof after notice as required in Section 4.2 hereof, or the persistent or repeated failure or refusal of the CONTRACTOR to operate, repair, and maintain the Facilities, or to substantially fulfill and of its material obligations in accordance with this Agreement, notwithstanding the payment by the CONTRACTOR of any penalties, damages, or other amounts provided for under

this Agreement, unless excused or justified by Force majeure, default by the City, or other legally recognized cause customarily justifying or excusing nonperformance, shall constitute and event of default hereunder.

8.1.4. Bankruptcy. Written admission by the CONTRACTOR that it is bankrupt, or the filing by the CONTRACTOR of a voluntary petition of bankruptcy, or the consent by the CONTRACTOR to the court appointment of a receiver or trustee for all or a substantial portion of its property or business, or the making of any arrangement by the CONTRACTOR with, or final adjudication of the CONTRACTOR as bankrupt based upon any involuntary petition under federal bankruptcy laws, shall constitute an event of default.

8.2. City.

8.2.1. Failure to Make Payments. The failure or refusal by the City, without justification or excuse, to make any payment required hereunder within ninety (90) days of the date provided herein for such payment, shall constitute an event of default.

8.2.2. Failure or Refusal to Comply with the Agreement. The failure to cure any breach hereof after notice as required in Section 4.2 hereof, or the persistent or repeated failure or refusal by the City to perform any of its material obligations in accordance with this Agreement, notwithstanding the payment by the City of any penalties, damages, or other amounts provided for under this Agreement, unless excused or justified by Force Majeure, default by the CONTRACTOR, or other legally recognized cause customarily justifying or excusing non-performance shall constitute an event of default.

8.3. Remedies.

8.3.1. Termination. Either party may terminate this Agreement upon the occurrence of an event by default by the other party as provided in Section 4.2 hereof.

8.3.2. Default by the CONTRACTOR. In addition to the rights of termination contained herein, the City may collect any consequential and incidental damages arising from the CONTRACTOR's default hereunder.

8.3.3. Default by the City. In addition to the rights of termination contained herein, upon a default by the City, the CONTRACTOR will be entitled to collect all fees due and owing to it up to the date of termination.

9. Arbitration.

9.1. The parties shall submit to Arbitration as provided herein, unless the parties jointly agree in writing to waive Arbitration. In the event that the City and the CONTRACTOR are unable to reach an agreement as to any compensation issues or design and construction defects versus maintenance and repair obligations by July 15 of each Fiscal Year for the negotiation of the Annual Fee pursuant to Section 5.3 hereof, and by thirty

(3) days after receipt of notice by one party from the other party stating that the parties cannot agree on one of the above issues (the "Arbitration Notice") for all other issues, then those issues remaining unresolved shall be submitted to binding arbitration under the following terms, conditions, and procedures:

- 9.1.1. Unless specifically provided for herein to the contrary, the rules and procedures of the American Arbitration association as shall from time to time be amended, shall apply.
- 9.1.2. There shall be a three-member Arbitration Board composed of one member selected by the City and one member selected by the CONTRACTOR. Each party shall notify the other of its selection on or before May 25 of said Fiscal Year for the Annual Fee or ten (10) days after receipt of the Arbitration Notice for all other issues. The final member of the three-member Arbitration Board shall be selected by the initial two members selected within a reasonable time after their appointment.
- 9.1.3. On or before June 10 of said Fiscal Year for the Annual Fee or twenty-five (25) days after receipt of the Arbitration Notice for all other issues, each party shall submit to the Arbitration Board its written position on each unresolved issue. Such submission shall include not only the party's proposed resolution, but also all supporting data and argument. All exhibits intended for introduction at the hearing and a list of witnesses each party intends to call shall be submitted as exhibits to the submission.
- 9.1.4. The Arbitration Board may schedule such pre-hearing conferences as it shall deem advisable.
- 9.1.5. The arbitration hearing shall commence no earlier than June 11 of said Fiscal Year for the Annual Fee or twenty-six (26) days after receipt of the Arbitration Notice for all other issues, and no later than June 25 of said Fiscal Year for the Annual Fee or forty (40) days after receipt of the Arbitration Notice for all other issues, and shall be concluded no later than ten (10) working days after its commencement.
- 9.1.6. The parties hereby stipulate and agree for purposes of arbitration that any modification of the Fee shall be subject to the provisions of Rev. Proc. 97-13, 1997-1 C.B. 632. The parties hereby further agree and stipulate for purposes of arbitration that the pricing and cost estimates contained in this Agreement or any subsequent modification hereto are fair and reasonable and are not to be a factual issue for determination by the Arbitration Board. The sole question of fact(s) for the Arbitration board shall be confined to changes (or anticipated future changes) in circumstances between the effective date of this Agreement or any modification(s) hereto (including, but not limited to, negotiated or arbitrated changes to fees and cost estimates pursuant to this Agreement) and the effect such changed circumstance(s) should have on the then effective fees and/or cost estimates.

- 9.1.7. Within ten (10) days of the conclusion of the evidentiary phase of the arbitration hearing the Arbitration Board shall announce its Decision and Order. The possible Decision and Order shall be limited on each individual issue presented to either the position of the City or the position of the CONTRACTOR as set forth in the position submissions described in Section 9.1.3.
- 9.1.8. Findings of fact and conclusions of law shall not be required of the Arbitration Board unless specifically requested by either party within five (5) working days of the announcement of the Decision and Order.
- 9.1.9. Unless specifically requested by either party, the proceedings shall not be recorded by other than an audio tape recording device. In the event that either party requests the services of a court reporter or other means of transcription of the proceedings, the requesting party shall bear the cost of such recording and transcription.
- 9.1.10. The costs of arbitration services shall be borne equally by the parties, provided, however, that in the event that the Arbitration Board makes a specific written finding of fact that one party has prosecuted its case frivolously or in bad faith, then the Arbitration Board shall assess the costs of arbitration services to the offending party.
- 9.1.11. The Decision and Order shall be binding on both parties and shall not be subject to appeal.
- 9.1.12. If the day or performance of any obligation under this Section 9 occurs on a Saturday, Sunday, or federal holiday, then such obligation shall be performed on the next business day thereafter.

10. Miscellaneous.

- 10.1 Notice. All notices and other communications required in connection with this Agreement shall be in writing unless otherwise specified herein, and any notice or other communication required hereunder shall be deemed delivered to the addressee thereof when delivered in person at the address set forth below, or three (3) business days after the deposit thereof in any main or branch office of the United States Post Office, certified or registered mail, return receipt requested, postage prepaid, properly addressed to the properties respectively as follows;

For notices and communication to the City:

The City of Key West

~~3140 FLAGLER AVENUE~~
~~PO BOX 1409~~ 1300 white St.



Key West, Florida 3304X0
 Attention: City Manager

with a copy (which need not be sent via certified or registered mail) to:

The City of Key West
~~3140 FLAGLER AVENUE~~
~~PO BOX 1409~~ 1300 White St.
Key West, Florida 3304X0
Attention: City Attorney

(2)


For notices and communication to the CONTRACTOR:

Attn: Director of Contracts OMBG
9191 S. Jamaica Street
Englewood, CO 80112

By notice complying with the foregoing requirements of this section, each party shall have the right to change the address or addressee or both for all future notices and communication to such party, but no notice of a change of address shall be effective until actually received.

- 10.2. Binding Effect. Each of the covenants, agreements, and provisions contained herein shall be binding upon, and shall inure to the benefit of, the parties hereto, and their respective successors and assigns.
- 10.3. Governing Law. This Agreement and the rights of the parties hereunder shall be interpreted and enforced in accordance with the laws of Monroe County, State of Florida.
- 10.4. Captions. The titles or captions contained in the Agreement are inserted only as a matter of convenience and for reference, and such captions in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provisions hereof.
- 10.5. Entire Agreement; Further Action. This Agreement, including the exhibits hereto, contains the entire agreement between the parties hereto relative to the operation, maintenance and management of the Facilities and matters related thereto. Each of the parties hereto agrees, from time to time, to execute and deliver such further instruments and to take such further action as may be reasonably necessary in order to fully perform and carry out the terms and intent hereof.
- 10.6. Facilities. All grounds, Facilities, equipment, and vehicles now owned by the City, or acquired by the City during the term hereof, or acquired by the CONTRACTOR for the City with budgeted funds for the operation, maintenance, and management of the Facilities during the term hereof, shall remain or become the property of the City during the term hereof and upon the termination hereof.
- 10.7. Severability. If any provisions of this Agreement or the application thereof to any person or circumstances shall be held by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remaining provisions of this Agreement and the validity, enforceability, and application of such provisions to other persons or

circumstances shall not be impaired thereby, but such remaining provisions of this Agreement shall be interpreted, applied and enforced so as to achieve, as near as may be, the purposes and intent of this Agreement to the greatest extent permitted by applicable law.

- 10.8. Independent Contractor. The relationship of the CONTRACTOR to the City is that of an independent contractor. The City and the CONTRACTOR hereby agree and covenant that at no time during the term of this Agreement shall any member of the governing body of the City be employed by, or be a member of the governing body of, the CONTRACTOR, nor shall any member of the governing body of the CONTRACTOR be employed by, or be a member of the governing body of, the City. The City and the CONTRACTOR hereby further covenant and agree that at no time during the term of this Agreement shall the members of the governing body of the City own a controlling interest in the CONTRACTOR.
- 10.9. Waiver. Unless otherwise specifically provided herein, no delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the party granting such waiver. In any representation, warranty, or covenant by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.
- 10.10. Assignment. This Agreement shall not be assigned by the CONTRACTOR without the prior written consent of the City which consent shall not be unreasonably withheld, except that no consent shall be required to be obtained for an assignment to any affiliate or successor. The City has the right to transfer the contract to a regional *water or wastewater* authority if it is determined to be in the City's best interest. 
- 10.11. Equal Opportunity. The CONTRACTOR is an equal opportunity employer with an approved affirmative action program.
- 10.12. Amendment. This Agreement may not be amended or modified in any respect, except by written agreement expressly referring to this Agreement and duly authorized, executed and delivered by authorized representatives of the parties hereto.
- 10.13. Representations of the CONTRACTOR. The CONTRACTOR represents that (i) it is a corporation duly organized under the laws of the State of *NAME STATE*, (ii) it is qualified to do business in the State of Florida, (iii) this Agreement has been duly authorized, executed and delivered by it, (iv) it has the required power and authority to perform this Agreement, and (v) it shall not claim, or attempt to claim, any depreciation or investment credit on the Facilities, and equipment provided by the CONTRACTOR pursuant to Section 3.2.5 hereof, or any maintenance, repair, or replacement expenditures made by the CONTRACTOR pursuant to Section 3.2.10 hereof, as would otherwise be allowed under the Internal Revenue Code, 26 U.S.C. 1, et seq. (1998).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

The CITY OF KEY WEST

ATTEST:

Susan P. Harrison


CITY MANAGER

ATTEST:



CH2M HILL OMI



Natalie L. Eldredge

Vice President

Operations Management International, Inc.

*AMB for Bill
12-16-2013*

RESOLUTION NO. 13-304

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE AWARD OF BID TO OPERATIONS MANAGEMENT INTERNATIONAL, INC. (OMI), A SUBSIDIARY OF CH2M HILL COMPANIES, LTD., IN RESPONSE TO RFP 09-13, TO OPERATE, MAINTAIN AND MANAGE THE CITY'S WASTEWATER TREATMENT PLANT, WASTEWATER COLLECTION SYSTEM AND LIFT/PUMPING STATIONS, AND STORMWATER COLLECTION SYSTEM AND PUMPING STATIONS; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT IN SUBSTANTIAL CONFORMANCE WITH THE RFP DOCUMENTS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Request for Proposal (RFP) 09-13 was issued on August 19, 2013, and three proposals were opened by the City Clerk on October 2, 2013; and

WHEREAS, Black & Veatch, an engineering services consulting firm engaged by the City, reviewed the submittals, and found the proposals each to be responsive with good references and solid financial standing; and

WHEREAS, a Ranking Committee, consisting of City staff and a Navy representative, evaluated the proposals at an advertised public meeting on October 16th, 2013, and scored the proposals pursuant to criteria contained in the RFP, with OMI receiving the highest ranking; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached proposal of OMI, in an amount based upon true operational costs, plus a management fee, to operate, maintain and manage the City's wastewater treatment plant, wastewater collection system and lift/pumping stations, and stormwater collection system and pumping stations, is hereby approved in accordance with the terms and conditions contained in Request for Proposal #09-13 and response thereto.

Section 2: That the City Manager, upon the advice and consent of the City Attorney, is authorized to enter into a contract in substantial conformance with the proposal documents.

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 19 day of November, 2013.

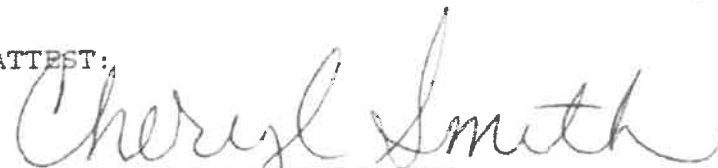
Authenticated by the presiding officer and Clerk of the Commission on November 20, 2013.

Filed with the Clerk November 20, 2013.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>No</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK



FLORIDA DEPARTMENT OF Environmental Protection

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

South District
PO Box 2549
Fort Myers FL 33902-2549
SouthDistrict@FloridaDEP.gov

August 24, 2022

Kelly M. Crowe, P.E., Utilities Director
City of Key West
3140 Flagler Ave
Key West, FL 33040
Email: kcrowe@cityofkeywest-fl.gov

Re: Monroe County – Domestic Wastewater
OGC Case No. 21-0581
Richard A. Heyman WWTP – Key West
Facility ID No. FLA147222

Dear Mr. Crowe:

Enclosed is the signed and entered Consent Order to resolve the above referenced case. This copy is for your records. Please note that all compliance dates begin from the date of entry of this Order, which is August 24, 2022.

Upon satisfactory completion of all conditions of the Order, we will close this case and place it in our inactive file.

If you have any questions, please contact Gary Hardie at Gary.Hardie@FloridaDEP.gov or 305-289-7074. Your cooperation in resolving this case is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer L. Carpenter".

Jennifer L. Carpenter
Acting District Director
South District Office
Department of Environmental Protection

Enclosure: Executed Consent Order

cc: Lea Crandall, FDEP Agency_Clerk@dep.state.fl.us

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	SOUTH DISTRICT
)	
v.)	OGC FILE NO. 21-0581
)	
CITY OF KEY WEST)	
_____)	

CONSENT ORDER

This Consent Order (Order) is entered into between the State of Florida Department of Environmental Protection (Department) and City of Key West (Respondent) to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes (F.S.), and the rules promulgated and authorized in Title 62, Florida Administrative Code (F.A.C.). The Department has jurisdiction over the matters addressed in this Order.
2. Respondent is a person within the meaning of Section 403.031(5), F.S.
3. Respondent is the owner and is responsible for the operation of the Richard A. Heyman WWTP-Key West (Facility), an existing 10.0 million gallons per day (MGD), annual average daily flow (AADF) domestic wastewater treatment facility. The headworks consist of three mechanical bar screens at 10 MGD, AADF, two grit removal systems and an odor control system. The biological treatment units consist of: two aeration basins (total volume 3.33 MG), one anoxic basin (0.97 MG), and one re-aeration basin (0.11 MG). Solids are removed from the effluent by two clarifiers with a capacity of 10 MGD each and four cloth media filters. The ultraviolet disinfection system consists of two UV-reactors. The facility has two offline chlorine contact tanks (no chlorination). The residuals system consists of two sludge storage tanks (total volume 0.44 MG) and two belt-filter presses (fed at 600 - 900 pounds dry solids per hour). The

effluent disposal method is by an underground injection well system consisting of 2 Class V underground injection wells permitted under Department permit number(s) 327710-001-UO/5W and 327710-002-UO/5W discharging to Class G-III ground water. The Facility is operated under Wastewater Permit No. FLA147222 (Permit), which was issued on January 23, 2019 and will expire on January 22, 2024. The Facility is located at Trumbo Point Annex-Fleming Key, in Monroe County, Florida (Property). Respondent owns the Property on which the Facility is located.

4. The Department finds that the following violations occurred:

a) Respondent reported 9 unpermitted or unauthorized discharges not involving surface or groundwater quality violations. Spill details are in Exhibit B attached and incorporated to this Order. The Department finds that the discharges violated Rule 62-604.130(1), F.A.C., and Section 403.161(1)(a), F.S.

b) Respondent reported an additional 2 unpermitted or unauthorized discharges on September 13, 2020 that resulted in surface water quality violations at Flagler Avenue and the Trumbo Point Annex. Spill details are in Exhibit B attached and incorporated to this Order. The Department finds that the discharges violated Rules 62-604.130(1) F.A.C., Rule 62-302.530(6)(c) F.A.C., and Section 403.161(1)(a), F.S.

c) Respondent has sampling data indicating elevated levels of Enterococcus at various sampling locations within the City of Key West. The Department finds that these elevated levels of bacteria violate Rule 62-302.530(6)(c) F.A.C. and Rule 62-302.300(15) F.A.C. Sampling data was provided by the Respondent for the spills documented below:

1) Sampling data associated with two spills on December 23, 2019 at Front and Duval Streets and manholes on Flagler indicate levels of Enterococcus exceeding surface water quality standards at Linda Avenue, 15th Street, 18th Street, 11th Street and Venetian sampling locations.

2) Sampling data associated with the spill on September 13, 2020 at Flagler Avenue indicate levels of Enterococcus exceeding surface water quality

standards at canal outfalls at Linda Avenue, Riviera Canal boat ramp, and Riviera Street and 18th Street.

3) Sampling data associated with the spill on September 13, 2020 at Trumbo Point Annex indicate levels of Enterococcus exceeding surface water quality standards at Fleming Channel.

4) Sampling data associated with the spill on August 11, 2021 at Seminal and Thompson Streets indicate levels of Enterococcus exceeding surface water quality standards at the Jose Marti Lagoon, at Garrison Bight and Roosevelt and at Garrison Bight Bridge North sampling locations.

5) Sampling data associated with the spill on August 17, 2021 at Roosevelt and Kennedy Streets indicate levels of Enterococcus exceeding surface water quality standards at the Ibis Bay Lagoon, Parrot Key Bridge, Gulf View and Marriott Courtyard sampling locations.

d) Respondent failed to submit required notification to the Department in a timely manner for the unauthorized discharge on July 23, 2020. The discharge was reported on March 15, 2021. The Department finds that the failure to report in a timely manner violated Rule 62-604.550(2)(c) F.A.C.

e) Respondent failed to meet permit imposed effluent limitations for Ultraviolet Light Transmittance, Total Nitrogen, Total Suspended Solids (TSS), Ultraviolet Light Dosage, Total Phosphorus, Biological Oxygen Demand (BOD) and Fecal Coliform from April 2020 to June 2021. Each exceedance is a violation of Rule 62-600.410(1) F.A.C.

1) The Respondent had exceedances for Ultraviolet Light Transmittance in January 2021, December 2020, October 2020 and September 2020. Details are in Exhibit C attached and incorporated in this Order.

2) The Respondent had exceedances for Total Nitrogen in December 2020, November 2020, September 2020 and August 2020. Details are in Exhibit C attached and incorporated in this Order.

3) The Respondent has exceedances for TSS in November 2020, October 2020, and September 2020. Details are in Exhibit C attached and incorporated in this Order.

4) The Respondent had an exceedance for Ultraviolet Light Dosage in September 2020. Details are in Exhibit C attached and incorporated in this Order.

5) The Respondent had exceedances for Total Phosphorus in November 2020 and September 2020. Details are in Exhibit C attached and incorporated in this Order.

6) The Respondent had an exceedance for BOD in September 2020. Details are in Exhibit C attached and incorporated in this Order.

7) The Respondent had exceedances for Fecal Coliform in June 2021, September 2020, May 2020 and April 2020. Details are in Exhibit C attached and incorporated in this Order.

Having reached a resolution of the matter Respondent and the Department mutually agree and it is

ORDERED:

5. Respondent shall comply with the following corrective actions within the stated time periods:

(A) Respondent shall submit to the Department an evaluation conducted by a professional engineer registered in the state of Florida, of the UV disinfection system, to discover the cause or causes of the violations identified in paragraph 4 above, and design modifications to the UV disinfection system to prevent recurrence and improve reliability such that with the largest flow capacity unit out of service, the flow capacity of the remaining units shall be sufficient to handle the peak wastewater flow.	August 31, 2022
As an interim short-term corrective action to improve UV system	August 31, 2022

<p>reliability, Respondent shall install a working alarm system that immediately alerts operators to at least the following UV system malfunctions:</p> <ul style="list-style-type: none">• Lamp/Ballast failure.• Low UV Dose.• Low UV Intensity.• Low UV Transmittance.	
<p>(B) Respondent shall submit to the Department a plan and schedule (hereinafter, I&I Plan) to reduce infiltration and inflow (I&I) into the collection system. Referring to the EPA Quick Guide for Estimating Infiltration and Inflow dated June 2014 which is attached to this Order and also available at the following link: https://www3.epa.gov/region1/sso/pdfs/QuickGuide4EstimatingInfiltrationInflow.pdf, (copy provided as Attachment 1), the I&I Plan shall reduce ADW flow to less than 120.0 gallons per person per day (gppd), reduce infiltration rate in gallons per day per inch of diameter per mile of pipe (gpd/idm) to less than 1,500.0 gpd/idm, and reduce the Average WWF divided by the population served to less than 275.0 gallons per person per day (gppd).</p> <p>The actions in the I&I Plan shall have a completion date no later than June 30, 2025.</p> <p>If the Facility has not returned to compliance after completing the actions in the I&I Plan, Respondent shall, submit to the Department a permit application with a schedule to expand or upgrade the Facility to bring Respondent into compliance with Permit FLA147222 and Fla. Admin. Code Chapters 62-600, 62-604, 62-610, 62-620, and 62-640.</p>	<p>September 30, 2023</p> <p>June 30, 2025</p> <p>September 30, 2025</p>

<p>(C) Respondent shall submit a plan and schedule (hereinafter, Lift Station Plan) to the Department for approval to bring all of the Facility’s lift stations into compliance with the standards specified in the “Recommended Standards for Wastewater Facilities,” the current version of which is referenced in Rule 62-604.300(5)(g), Florida Administrative Code.</p> <p>The Lift Station Plan shall have a completion date no later than June 30, 2025.</p> <p>If the Facility has not returned to compliance after completing the actions in the Lift Station Plan, Respondent shall, submit to the Department a permit application with a schedule to expand or upgrade the system to bring Respondent into compliance with Permit FLA147222 and Fla. Admin. Code Chapters 62-600, 62-604, 62-610, 62-620, and 62-640.</p>	<p>September 30, 2023</p> <p>June 30, 2025</p> <p>September 30, 2025</p>
<p>(D) Develop and implement a Pollutant Reduction Plan to address elevated Enterococcus bacteria levels at Linda Avenue, Riviera Canal boat ramp, Riviera Street and 18th Street outfalls, and any other areas known to have elevated Enterococcus bacteria levels, such as the Jose Marti Lagoon and Venetian area. The Plan shall include measures to identify and eliminate sources of Enterococcus bacteria within the City of Key West and shall be submitted to the Department for review and approval.</p>	<p>June 30, 2023</p>
<p>(E) Conduct and submit quarterly sampling data for at least 1 year/4 quarters to the Department for the areas referenced in subparagraph 5 (D) above (minimum 2 stations per area) and other areas known to have elevated bacteria levels, such as the Jose Marti Lagoon and</p>	<p>September 30, 2022</p> <p>December 31, 2022</p> <p>March 31, 2023</p> <p>June 30, 2023</p>

<p>Venetian area. The sampling shall continue until bacteria levels fall within surface water quality criteria for at least two consecutive quarters.</p>	<p>And continue until elevated bacteria levels fall within surface water quality criteria for at least two consecutive quarters.</p>
<p>(F) Investigate the effluent exceedances to avoid violating permit limitations in the future and provide a report indicating what the City of Key West will do to prevent such future violations from occurring.</p> <p>Corrective actions shall be completed by May 31, 2023.</p>	<p>August 31, 2022</p> <p>May 31, 2023</p>
<p>(G) Fully implement a documented Capacity, Management, Operation, and Maintenance (CMOM) program in accordance with US EPA document 305-B-05- 002 dated January 2005 (“Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems”).</p>	<p>September 1, 2024</p>
<p>(H) Document reasonable further progress in implementing the CMOM in semiannual reports in accordance with subparagraph 5 (G) of this order.</p>	<p>January 31, 2023</p> <p>July 31, 2023</p> <p>January 31, 2024</p> <p>And so on until the CMOM program is fully implemented.</p>
<p>(I) Provide a report indicating the list of projects that the City of Key West is doing to improve aging infrastructure.</p>	<p>August 31, 2022</p>
<p>(J) Submit a list of all known pump stations and collection systems connected to the City of Key West that are not under the direct control of the City of Key West, including the portion(s) of the FKAA collection system and any private collection systems. Include</p>	<p>August 31, 2022</p>

responsible party contact information, estimated flow from the pump station, the location of the pump station, and any known complaints or problems since September 2017/Hurricane Irma.	
(K) Submit in writing to the Department, every 6 months, a report containing information concerning the status and progress of projects completed under this Order. The report shall include projection of the work to be performed pursuant to this Order. The report shall include status update of any In-Kind projects.	September 30, 2022 March 31, 2023 September 30, 2023 And so on until the Consent Order is closed.
(L) Submit to the Department a Final Report demonstrating that all conditions and corrective actions required in this consent order have been completed.	December 31, 2025

6. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions required by paragraph 5 on or before December 31, 2025, and be in full compliance with Section 403.161(1)(a), F.S., and Permit FLA147222, and Fla. Admin. Code Chapters 62-302, 62-600, 62-604, 62-610, 62-620, and 62-640, regardless of any intervening events or alternative time frames imposed in this Order.

7. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$58,125.73 in settlement of the regulatory matters addressed in this Order. This amount includes \$57,625.73 for civil penalties and \$500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. The civil penalty in this case includes 8 violations that each warrant a penalty of \$2,000.00 or more.

8. In lieu of making cash payment of \$57,625.73 in civil penalties as set forth in paragraph 7 above, Respondent may elect to offset this amount by implementing an in-kind penalty project, which must be approved by the Department. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility

improvement project and may not be a corrective action requirement of the Order or otherwise required by law. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least \$86,438.60. If Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election by certified mail within 15 days of the effective date of this Consent Order. Notwithstanding the election to implement an in-kind project, payment of the remaining \$500.00 in costs must be paid within 30 days of the effective date of the Consent Order.

9. If Respondent elects to implement an in-kind project as provided in paragraph 8, then Respondent shall comply with all the requirements and time frames in Exhibit A entitled In-Kind Projects attached and incorporated to this Order.

10. Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000.00 per day for each and every day Respondent fails to timely comply with any of the requirements of this Consent Order. Additionally, Respondent shall pay the Department stipulated penalties for any discharges of wastewater from the WWTF and/or collection/transmission system. Respondent shall pay penalties as follows:

<u>Amount p/day p/discharge</u>	<u>Discharge Volume</u>
\$1,000.00	up to 5,000 gallons
\$2,000.00	5,001 to 10,000 gallons
\$5,000.00	10,001 to 25,000 gallons
\$10,000.00	25,001 to 100,000 gallons
\$15,000.00	in excess of 100,000 gallons

The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment, and shall do so as further described in paragraph 11, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce

any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 7 of this Order.

11. In lieu of making a cash payment of the amount required under paragraph 10 (stipulated penalties) above, the Department, at its discretion, may allow Respondent to offset this amount by implementing an in-kind project, which must be approved by the Department. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility improvement project and may not be a corrective action requirement of this Consent Order or otherwise required by law. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the portion of the stipulated penalty amount for which the approved project off-sets. The Respondent shall request consideration of applying stipulated penalties toward an in-kind project within 15 days of notification by the Department that stipulated penalties are being assessed under paragraph 10. If acceptable, the Respondent shall comply with all the requirements and timeframes in Consent Order Exhibit A, entitled In-Kind Projects. If not acceptable, the Respondent will pay the stipulated penalties within 30 days of receipt of the Department's notification that applying the stipulated penalties to an in-kind project is not acceptable.

12. In the event that Respondent elects to offset civil penalties, including stipulated penalties, by implementing an in-kind penalty project which is approved by the Department, during the period that this Consent Order remains in effect or during the effective date of any Department issued Permit to Respondent whichever is longer (Prohibited Transfer Duration), Respondent shall not transfer or use funds obtained by the Respondent from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System (hereinafter, Prohibited Transfer). Respondent shall annually certify to the Department using the Annual Certification Form located within Exhibit A to this Consent Order that no Prohibited Transfer has occurred. In the event of any Prohibited

Transfer, the In-Kind project option shall be forfeited, and entire civil penalty shall immediately become due and owing to the Department irrespective of any expenditures by the Respondent in furtherance of the In-Kind project.

13. Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>. It will take a number of days after this order is final, effective and filed with the Clerk of the Department before ability to make online payment is available.

14. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Gary Hardie, Environmental Specialist III, Department of Environmental Protection, 2796 Overseas Highway, Suite 221, Marathon, FL 33050, or via e-mail at Garv.Hardie@FloridaDEP.gov.

15. Respondent shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

16. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Order.

17. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in

complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

18. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

19. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement

of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

20. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

21. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$15,000.00 per day per violation, and criminal penalties.

22. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, F.S.

23. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

24. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), F.S.

25. This Consent Order is a final order of the Department pursuant to section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

26. Respondent shall publish the following notice in a newspaper of daily circulation in Monroe County, Florida. The notice shall be published one time only within 14 days of the

effective date of the Order. Respondent shall provide a certified copy of the published notice to the Department within 10 days of publication.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF CONSENT ORDER

The Department of Environmental Protection ("Department") gives notice of agency action of entering into a Consent Order with the City of Key West pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the unauthorized discharges to ground and surface waters, violations to water quality standards, failure to report required notification in a timely manner and effluent exceedances at Richard A. Heyman WWTP.

The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, South District Branch Office, 2796 Overseas Highway, Suite 221, Marathon, FL 33050, phone (305) 289-7070.

Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

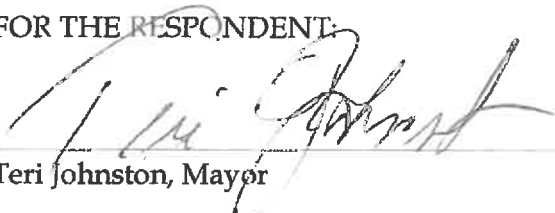
- a) The name and address of each agency affected and each agency's file or identification number, if known;
- b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- c) A statement of when and how the petitioner received notice of the agency decision;
- d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

- e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at Agency_Clerk@FloridaDEP.gov, within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the South District Branch Office at Department of Environmental Protection, South District Branch Office, 2796 Overseas Highway, Suite 221, Marathon, FL 33050 or via e-mail at SouthDistrict@FloridaDEP.gov. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

27. Rules referenced in this Order are available at <http://www.dep.state.fl.us/legal/Rules/rulelist.htm>

FOR THE RESPONDENT:



Teri Johnston, Mayor

8/17/21
Date

DONE AND ORDERED this 24th day of August, 2022, in Lee
County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Jennifer L. Carpenter
Acting Director of District
Management South District Office

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk,
receipt of which is hereby acknowledged.



Clerk

August 24, 2022

Date

Final Clerked Copies furnished to:
Lea Crandall, Agency Clerk
Mail Station 35

Exhibit A

In-Kind Projects

I. Introduction

Proposal

a. Within 60 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable, Respondent shall submit, by certified mail, a detailed in-kind project proposal to the Department for evaluation. The proposal shall include a summary of benefits, proposed schedule for implementation and documentation of the estimated costs which are expected to be incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the in-kind project.

Proposal Certification Form

b. The proposal shall also include a Certification by notarized affidavit from a senior management official for _____ (insert name of Respondent) who shall testify as follows:

My name is _____ (print or type name of senior management official) and do hereby testify under penalty of law that:

A. I am a person with management responsibilities for _____ (print or type name of Respondent) budget and finances. During the eighteenth month period prior to the effective date of Consent Order OGC Case No.: _____ there has not been any transfer or use of funds obtained by the _____ (print or type name of Respondent) from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System.

B. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowingly submitting false information in this certification.

Sworn to and subscribed before me, by means of physical presence or online notarization,
this ____ day of _____, 20__ by

Personally, known or by Production of the following Identification _____

Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires: _____

Commission/Serial No.: _____

Annual Certification Form

My name is _____ (print or type name of senior management official) and do hereby

testify under penalty of law that:

A. I am a person with management responsibilities for _____ (print or type name of Respondent) budget and finances. During the twelve month period immediately preceding the notary date on this Certification, there has not been any transfer or use of funds obtained by the _____ (print or type name of Respondent) from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System.

B. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowingly submitting false information in this certification.

Sworn to and subscribed before me, by means of physical presence or online notarization,
this ____ day of _____, 20__ by

Personally, known or by Production of the following Identification _____

Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires: _____

Commission/Serial No.: _____

c. If the Department requests additional information or clarification due to a partially incomplete in-kind project proposal or requests modifications due to deficiencies with Department guidelines, Respondent shall submit, by certified mail, all requested additional information, clarification, and modifications within 15 days of receipts of written notice.

d. If upon review of the in-kind project proposal, the Department determines that the project cannot be accepted due to a substantially incomplete proposal or due to substantial deficiencies with minimum Department guidelines; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the proposal. Respondent shall correct and redress all the matters at issue and submit, by certified mail, a new proposal within 30 days of receipt of written notice. In the event that the revised proposal is not approved by the Department, Respondent shall make cash payment of the civil penalties as set forth in paragraphs 7 and 10 above, within 30 days of Department notice.

e. Within 120 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable Respondent shall obtain approval for an in-kind project from the Department. If an in-kind project proposal is not approved by the Department within 120 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable then Respondent shall make cash payment of the civil penalties as set forth in paragraphs 7 and 10 above, within 30 days of Department notice.

f. Within 180 days of obtaining Department approval for the in-kind proposal or in accordance with the approved schedule submitted pursuant to paragraph (a) above, Respondent shall complete the entire in-kind project.

g. During the implementation of the in-kind project, Respondent shall place appropriate sign(s) at the project site indicating that Respondent's involvement with the project is the result of a Department enforcement action. Respondent may remove the sign(s) after the project has been completed. However, after the project has been completed Respondent shall not post any sign(s) at the site indicating that the reason for the project was anything other than a Department enforcement action.

h. In the event, Respondent fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project or otherwise fails to comply with any provision of this paragraph, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalties shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the entire amount of civil penalties and stipulated penalties due, no additional penalties shall be assessed under paragraphs 7 and 10 for failure to complete the requirement of Exhibit A.

i. Within 15 days of completing the in-kind project, Respondent shall notify the Department, by certified mail, of the project completion and request a verification letter from the Department. Respondent shall submit supporting information verifying that the project was completed in accordance with the approved proposal and documentation showing the actual costs incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the project.

j. If upon review of the notification of completion, the Department determines that the project cannot be accepted due to a substantially incomplete notification of completion or due to

substantial deviations from the approved in-kind project; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the project. Respondent shall correct and redress all the matters at issue and submit, by certified mail, a new notification of completion within 15 days of receipt of the Department's notice. If upon review of the new submittal, the Department determines that the in-kind project is still incomplete or not in accordance with the approved proposal, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalty shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the entire amount of civil penalties and stipulated penalties due, no additional penalties shall be assessed under paragraphs 7 and 10 for failure to complete the requirement of Exhibit A.

Exhibit B

Table of Sanitary Sewer Overflows

SWO #	Incident Start Date	Incident End Date	Number of Days Discharging	Reached Surface Water?	Final Spill Volume (Gallons)	Reported Recovered Volume (Gallons)	Location	Spill Characteristic
2022-843	2/11/22	2/11/22	1	N	2,000	2,000	1620 Steven Ave	RAW WASTEWATER
2021-4549	8/17/21	8/17/21	1	Y	2,000	1,000	Roosevelt & Kennedy	RAW WASTEWATER
2021-4410	8/11/21	8/11/21	1	Y	450	350	Seminal & Thompson St	RAW WASTEWATER
2021-2919	6/5/21	6/5/21	1	Y	50,000	25,000	Trumbo Point Annex	Treated Effluent
2020-4863	9/13/20	9/13/20	1	Y	6,000	-	4 th and 16 th at Flagler Ave	RAW WASTEWATER
2020-4862	9/13/20	9/13/20	1	N	1,000	-	Amelia and Thomas Street	RAW WASTEWATER
2020-4861	9/13/20	9/13/20	1	Y	50,000	10,000	Trumbo Point Annex	Partially Treated
None	7/23/20	7/23/20	1	N	19,000	17,000	At Plant	Treated Effluent
2020-2024	4/17/20	4/17/20	1	Y	5,000	1,000	1329 Seminary Street (LS D)	RAW WASTEWATER
2019-7169	12/23/19	12/23/19		Y	1,000	-	Manholes at Front & Duval St	RAW WASTEWATER
2019-7168	12/23/19	12/23/19		Y	5,000	-	Manholes on Flagler	RAW WASTEWATER

Exhibit C

Effluent Exceedances						
Monitoring Group	Date	Description	Result	Limit	Units	StatisticalBase
U-001	6/30/2021	Coliform, Fecal	1244	800.0	#/100mL	MB - Maximum
U-001	1/31/2021	Ultraviolet Light Transmittance	63	65.0	percent	ME - Minimum
U-001	12/31/2020	Ultraviolet Light Transmittance	62	65.0	percent	ME - Minimum
U-001	12/31/2020	Nitrogen, Total	8.02	6.0	mg/L	MB - Maximum
U-001	11/30/2020	Solids, Total Suspended	14	10.0	mg/L	MB - Maximum
U-001	11/30/2020	Nitrogen, Total	25.7	6.0	mg/L	MB - Maximum
U-001	11/30/2020	Nitrogen, Total	7.2	4.5	mg/L	WA - Weekly Average
U-001	11/30/2020	Phosphorus, Total (as P)	6.8	2.0	mg/L	MB - Maximum
U-001	11/30/2020	Phosphorus, Total (as P)	1.55	1.5	mg/L	WA - Weekly Average
U-001	10/31/2020	Solids, Total Suspended	22.5	10.0	mg/L	MB - Maximum
U-001	10/31/2020	Ultraviolet Light Transmittance	60	65.0	percent	ME -

U-001	9/30/2020	BOD, Carbonaceous 5 day, 20C	15	10.0	mg/L	MB - Maximum
U-001	9/30/2020	Ultraviolet Light Dosage	0	35.0	mW-s/sqcm	ME - Minimum
U-001	9/30/2020	Solids, Total Suspended	11	6.25	mg/L	MK - Monthly Average
U-001	9/30/2020	Solids, Total Suspended	45.1	7.5	mg/L	WA - Weekly Average
U-001	9/30/2020	Solids, Total Suspended	158	10.0	mg/L	MB - Maximum
U-001	9/30/2020	Ultraviolet Light Transmittance	26	65.0	percent	ME - Minimum
U-001	9/30/2020	Coliform, Fecal	1244	800.0	#/100mL	MB - Maximum
U-001	9/30/2020	Nitrogen, Total	7.41	6.0	mg/L	MB - Maximum
U-001	9/30/2020	Phosphorus, Total (as P)	2.7	2.0	mg/L	MB - Maximum
U-001	8/31/2020	Nitrogen, Total	4.7	4.5	mg/L	WA - Weekly Average
U-001	5/31/2020	Coliform, Fecal	1336	800.0	#/100mL	MB - Maximum
U-001	4/30/2020	Coliform, Fecal	1473	800.0	#/100mL	MB - Maximum

EPA New England Water Infrastructure Outreach provides tools, examples, and technical assistance for water infrastructure operators and managers, local officials, and other decision-makers for more effective and sustainable water infrastructure management. For more information see <http://www.epa.gov/region1/iso/toolbox.html>

Quick Guide for Estimating Infiltration and Inflow For Region 1 NPDES Annual Reporting

June 2014

Addressing Permit Requirements to:

Submit a calculation of the annual infiltration and inflow (I&I), maximum daily, weekly, and monthly infiltration and the maximum daily, weekly, and monthly inflow for the reporting year. For further details on Infiltration and Inflow, see ‘Guide for Estimating Infiltration and Inflow’.

Definitions

Infiltration

Groundwater that infiltrates a sewer system through defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from inflow. Infiltration is generally measured during seasonally high ground water conditions, during a dry period.

Inflow

Water other than sanitary flow that enters a sewer system from sources which include, but are not limited to, roof leaders, cellar drains, yard drains, area drains, drains from wet areas, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwater, surface runoff (including leaking manhole covers), street wash-water, or drainage. Inflow does not include, and is distinguished from infiltration. Inflow is generally measured during wet weather.

Estimations for reporting:

Term	Definition or How to Calculate
Average Dry Weather (ADW) flow	Use highest 7 to 14 day average per day flow without precipitation and during high seasonal groundwater. Includes domestic wastewater and infiltration.
Groundwater Infiltration (GWI)	During ADW flow period, average the low nighttime flows (midnight to 6am) per day for the same time period, minus significant industrial or commercial flows.
Groundwater Infiltration (GWI)	Subtract GWI from ADW flow.
Maximum Daily Infiltration	Subtract BSF from highest daily flow after a dry period of three days or more during high seasonal groundwater.
Maximum Weekly Infiltration	Subtract BSF from highest 7 day average flow after a dry period of three days or more during high seasonal groundwater.
Maximum Monthly Infiltration	Subtract BSF from highest monthly flow during dry or minimal rain period during high seasonal groundwater.

Maximum Daily Inflow	Measured during wet weather. Determine infiltration rate for dry period preceding rain event. Subtract BSF plus infiltration rate from the highest daily flow during the event.
Maximum Weekly Inflow (includes delayed inflow)	Determine infiltration rate for dry period preceding rain event(s). Subtract BSF plus infiltration from the highest 7 day average wet weather flow.
Maximum Monthly Inflow	Determine infiltration rate for dry period preceding rain event(s). Subtract BSF plus infiltration rate from the highest monthly average flow.
Maximum Monthly Infiltration and Inflow	Subtract BSF from highest monthly average flow.
Average Annual Flow	The total annual volume divided by 365 days. The average annual flow can also be calculated by averaging the monthly average flows.
Average Annual Infiltration and Inflow	Subtract the BSF rate from the average annual flow.
Average Annual Infiltration	Average of the monthly minimum flows.
Average Annual Inflow	Subtract the BSF and average annual infiltration from the average annual flow.
Average Wet Weather Flow (Average WWF)	The average daily flow during a period of significant rainfall (excludes significant commercial and industrial flow).
Peak Hourly Wet Weather Flow (Peak WWF)	The highest one hour flow rate during a significant rain event.

Notes:

If your system experiences SSOs or backups, you may have excessive inflow, although infiltration also contributes to the problem. Even where a system is not suffering from SSOs, systems experiencing surcharging should be evaluating their I&I, as should systems where new growth is expected and existing collection system infrastructure may be inadequate or marginal for handling new customers.

Other calculations used by state agencies to determine whether infiltration and/or inflow are excessive include:

Is your Infiltration Rate Excessive?

Some states have an excessive infiltration criterion based on gallons per person per day (gppd) and other states use a criterion of gallons per day per inch of diameter per mile of pipe (gpd/idm).

To determine gppd, divide the ADW flow by the population served. If the ADW flow exceeds 120 gppd, your state agency may consider the infiltration excessive.

To determine gpd/idm, first determine your total inch diameter-miles of pipe (idm). As an example, for a sewer system that has 36 miles of 4 inch diameter laterals, 36 miles of 8 inch diameter, 6 miles of 10 inch diameter, and 6 miles of 12 inch diameter gravity sewers, the total number of inch – miles is:

$$36 \times 4 + 36 \times 8 + 6 \times 10 + 6 \times 12 = 564 \text{ inch diameter miles}$$

To determine gpd/idm, divide the dry weather infiltration rate during seasonal high groundwater (GWI from B above) by the total inch miles. In this example, if the GWI is 2 mgd, with 564 inch diameter-miles of pipe, then the gpd/idm would be:

$$2 \text{ mgd divide by } 564 \text{ idm} = 3546 \text{ gpd/idm}$$

Metcalf & Eddy's text "*Wastewater Engineering: Collection and Pumping of Wastewater*", suggests that infiltration rates for whole collection systems (including service connections) that are lower than 1500 gpd/idm are not usually excessive. The Massachusetts Department of Environmental Protection document "*Guidelines for Performing I/I Analyses*" recommends (as a rule-of-thumb) sewer subsystems of about 20,000 linear feet that exhibit infiltration rates above 4000 gpd/idm be investigated for contributing potentially excessive infiltration. For more information on design standards consult the Technical Report, "*Guidelines for the Design of Wastewater Treatment Works, New England Interstate Water Pollution Control Commission TR-16*".

Is your inflow excessive?

Divide the Average WWF by the population served to determine the gallons per person per day (gppd). If the Average WWF exceeds 275 gppd your state agency may consider the inflow excessive. This calculation should exclude major industrial or commercial flows.

A calculation for gpd/idm can also be determined for wet weather.

Estimating your cost to treat Infiltration and Inflow

Wastewater collection and treatment cost can range from \$2 to \$5 per thousand gallons. An annual I&I volume of 150 million gallons would cost between \$300,000 and \$750,000 per year to transport and treat. For many older collection systems infiltration can be quite substantial, and has been calculated as high as fifty percent of the flow.

If your treatment facility is at or near capacity and an upgrade will be necessary, the cost of reducing I&I to free up capacity at the existing treatment facility should be measured against the cost of building additional treatment capacity.

RESOLUTION NO. 22-180

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING AND ACCEPTING THE ATTACHED "CONSENT ORDER" OGC FILE No. 21-0581 BETWEEN THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP) AND THE CITY OF KEY WEST, TO SETTLE MATTERS RELATED TO VIOLATIONS IN CONJUNCTION WITH THE OPERATION OF THE RICHARD A. HEYMAN WASTEWATER TREATMENT PLANT (WWTP) AND THE SANITARY SEWER COLLECTIONS SYSTEM, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONSENT ORDER ON BEHALF OF THE CITY; AUTHORIZING ANY NECESSARY BUDGET AMENDMENTS OR ADJUSTMENTS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Richard A. Heyman Wastewater Treatment Plant (WWTP) is operated under State of Florida Domestic Wastewater Facility Permit No. FLA147222, with effluent disposal to two Class V underground injection wells permitted through FDEP Permit numbers 327710-001UO/5W and 327710-0020UO/5W. Through these permits, the City and Operations Management International, Inc. (OMI) are responsible for compliance with the permit requirements; and

WHEREAS, FDEP issued a draft Consent Order and the City issued comments on January 5, 2022, in response to certain violations of the permit allowances. In June 2022, City staff had a second opportunity to review the Order and issue comments related to the proposed compliance timeline. The purpose of the Consent Order is to establish an agreement on achievable terms to improve the City's sanitary sewer system and WWTP operations; and

WHEREAS, a penalty fee is established as a component of the Consent Order, however, FDEP at its discretion may allow the City to perform in-kind projects in lieu of payment of the penalty amount; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached "Consent Order" (OGC File No. 21-0581) between the State of Florida Department of Environmental Protection and the City of Key West, to settle matters related to violations in conjunction with the operation of the Richard A. Heyman Wastewater Treatment Plant and the Sanitary Sewer Collections System, is hereby approved and accepted, and the Mayor is authorized to execute the Consent Order on behalf of the City.

Section 2: Funds for the stipulated penalty in the amount of \$58,125.73, or in-kind services alternate in the amount of \$87,188.60, if approved by FDEP, shall be budgeted in wastewater and/or sewer accounts. Funding for future projects related to the corrective actions will be budgeted into the wastewater and/or sewer accounts within the appropriate fiscal year that funding is needed. Any necessary budget transfers or adjustments are hereby approved.

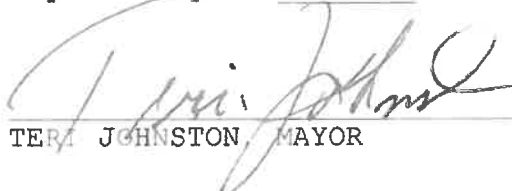
Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 16th day of August, 2022.

Authenticated by the Presiding Officer and Clerk of the Commission on 17th day of August, 2022.

Filed with the Clerk on August 17, 2022.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>


TERI JOHNSTON, MAYOR

ATTEST:


KERI O'BRIEN, DEPUTY CITY CLERK