



THE CITY OF KEY WEST  
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## EXECUTIVE SUMMARY

**Date:** August 2, 2022

**To:** Patti McLauchlin, City Manager

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

**Cc:** Todd Stoughton, Assistant City Manager  
Shawn Smith, City Attorney  
Christina Bernaldi, Finance Director

**Subject:** Authorize Mayor Johnston to Execute and Enter into Consent Order OGC No. 21-0581 with the Florida Department of Environmental Protection (FDEP) to Settle Matters Relating to Violations in Conjunction with the Operation of the Richard A. Heyman Wastewater Treatment Plant (WWTP) and the City of Key West's Sanitary Sewer Collections System.

### **ACTION STATEMENT**

Enter into Consent Order OGC No. 21-0581 (Order) with the Florida Department of Environmental Protection (FDEP) to Settle Matters Relating to Violations in Conjunction with the Operation of the Richard A. Heyman Wastewater Treatment Plant (WWTP) and the City of Key West's Sanitary Sewer Collections System. Authorize the Mayor Johnston to execute the Order.

### **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 State of Florida Domestic Wastewater Facility Permit No. FLA147222 with effluent disposal 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. Through these permits, the City and OMI are responsible for compliance with the permit requirements. FDEP is the administrative agency in the State of Florida having jurisdiction to administer and enforce the provisions of Chapter 403, "Environmental Control", Florida Statutes (F.S.) and the rules authorized in Title 62, "Department

of Environmental Protection”, Florida Administrative Code (F.A.C.). FDEP has jurisdiction over the matters addressed in the Order.

FDEP issued a draft Consent Order to the City in response to several violations of the permit allowances. The details of each violation are listed in Section 4 of the Order starting on page 2. The purpose of the Order is for FDEP and the City to reach an agreement on terms to improve our sanitary sewer system and WWTP operations. The City had an opportunity to review the first draft of the order and issued comments on January 5, 2022. Department staff had a second opportunity to review the Order and issued comments related to the compliance timeline in June 2022. Staff believes the timelines and terms set forth in the Order are reasonable and achievable. Both City staff and OMI have been working on several of the compliance items to date and have incorporated further compliance measures into the FY 22/23 budget. All corrective actions are required to be completed by December 31, 2025.

In addition to the corrective actions required in the Order, FDEP is imposing a \$58,125.73 penalty as a settlement fee, as identified in Section 7 of the Order. As an alternate, FDEP will allow in-kind projects to be performed in lieu of payment of the penalty amount. As stipulated in Section 11 of the Order, the value of the projects must be one and a half times the amount of the stipulated penalty (\$87,188.60). FDEP has discretion to allow the City to exercise this alternate.

### **PURPOSE AND JUSTIFICATION**

The WWTP operations permit and Class V injection well discharge permits, issued by the FDEP, are critical to providing continued wastewater collection, treatment and discharge services to the City of Key West. The Order provides corrective actions the City must follow to ensure improvements to the system will be implemented, as necessary to be in compliance with permit requirements.

FDEP has the statutory authority to ensure compliance with nearshore water quality standards, pursuant to Section 403 F.S. and Title 62, F.A.C. The Order represents a settled upon agreement between the City and FDEP to ensure continued compliance with our permit regulations and allows the City to continue operations of the WWTP and discharge of treated effluent into the Class V injection wells.

### **FINANCIAL**

Other than the stipulated penalty of \$58,125.73 or the required cost of the possible in-kind projects (\$87,188.60), the total cost of the corrective actions is not known at this time. Future costs related to compliance with the Order will result in improvements to the wastewater system, which will ultimately benefit the City. Funding for future projects will be programmed into appropriate Fiscal Year budgets.

### **RECOMMENDATION**

Staff recommends entering into Consent Order OGC No. 21-0581 with the Florida Department of Environmental Protection and authorizing Mayor Johnston to execute the Order.