



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

January 5th, 2022

Jennifer Carpenter
Assistant Director
Florida Department of Environmental Protection
South District Office

Re: Draft Consent Order between the State of Florida Department of Environmental Protection
and the City of Key West - OGC FILE NO. 21-0581

Dear Jennifer Carpenter:

The City of Key West is in receipt of the Draft Consent Order - OGC FILE NO. 21-0581. The City sincerely appreciates the opportunity to comment on the findings and corrective actions outlined in the Consent Order (CO) as well as the proposed schedule to implement the corrective actions.

Our response is structured to address selected findings followed by the Ordered Corrective Actions.

Findings

- 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.

City Response: The City has developed a database of Enterococcus density levels which clearly demonstrate that the elevated levels of bacteria reflect the ambient environmental conditions at the locations cited in the CO and that the spills referenced in the CO had a negligible impact on the Enterococcus density levels in the affected areas. The data which serve as the basis for this statement are summarized in Attachment A to this letter. A detailed explanation of the data is provided in the response to Ordered Corrective Action (D) on pages 7 and 8 below.

Ordered Corrective Actions

- (A) Respondent shall submit to the Department an evaluation conducted by a professional engineer registered in the state of Florida, of the Facility, including the effluent disposal



THE CITY OF KEY WEST

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system and associated collection system, to discover the cause or causes of the violations identified in paragraph 4 above. Time Period – December 31, 2021

City Response: The causes of the violations identified in paragraph 4 are fully understood by the City and Jacobs. As such, the City does not believe that there is value to the ordered evaluation. Specific details as to the cause of each cited violation are provided below.

Violations c) 1) through c) 5) are attributed to the ambient environmental conditions as explained in the aforementioned “City Response to Finding c)”. Please refer to the data in Attachment A which serve to illustrate the cause of the violations.

Violation 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.

City Response: Jacobs, the Contract Operator of the City of Key West’s Wastewater Treatment Plant, acknowledges that they did not report the overflow of treated effluent on July 23, 2020 in a timely manner. However, the discharge was reported to FDEP on January 13, 2021, not March 15, 2021 as stated in the Consent Order.

In response, Jacobs has developed and implemented Standard Operating Procedures that address timely notification to FDEP of unauthorized discharges or permit limit violations. Retraining of the Jacobs staff has been conducted to ensure their understanding of the requirement for timely reporting.

Violation 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.

City Response: Table 1 provides an explanation for each of the permit limit violations cited in the CO.



THE CITY OF KEY WEST

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Table 1. Causes of the Violations cited in the Consent Order

Monitoring Group	Date	Description	Result	Limit	Units	Cause of the Violation	Corrective Action
U-001	6/30/2021	Coliform, Fecal	1244	800.0	#/100mL	Possible malfunction in UV system; all UV metrics were within guidelines	Replaced several computer control boards and UV sensors
U-001	1/31/2021	Ultraviolet Light Transmittance	63	65.0	percent	A failure in the SCADA system main control board led to a loss of automatic controls in the aeration system.	Reloaded the main program and backed up a copy for future use if needed.
U-001	12/31/2020	Ultraviolet Light Transmittance	62	65.0	percent	A failure in the SCADA system main control board led to a loss of automatic controls in the aeration system.	Reloaded the main program and backed up a copy for future use if needed.
U-001	12/31/2020	Nitrogen, Total	8.02	6.0	mg/L	A failure in the SCADA system main control board led to a loss of automatic controls in the aeration system.	Reloaded the main program and backed up a copy for future use if needed.
U-001	11/30/2020	Solids, Total Suspended	14	10.0	mg/L	Tropical Storm Eta resulted in heavy precipitation; influent flow exceeded WWTP design capacity	Not Applicable
U-001	11/30/2020	Nitrogen, Total	25.7	6.0	mg/L	Tropical Storm Eta resulted in heavy precipitation; influent flow exceeded WWTP design capacity	Not Applicable
U-001	11/30/2020	Nitrogen, Total	7.2	4.5	mg/L	Tropical Storm Eta resulted in heavy precipitation; influent flow exceeded WWTP design capacity	Not Applicable



THE CITY OF KEY WEST

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						capacity	
U-001	11/30/2020	Phosphorus, Total (as P)	6.8	2.0	mg/L	Tropical Storm Eta resulted in heavy precipitation; influent flow exceeded WWTP design capacity	Not Applicable
U-001	11/30/2020	Phosphorus, Total (as P)	1.55	1.5	mg/L	Tropical Storm Eta resulted in heavy precipitation; influent flow exceeded WWTP design capacity	Not Applicable
U-001	10/31/2020	Solids, Total Suspended	22.5	10.0	mg/L	Bulking of clarifiers due to high influent loadings related to adverse weather conditions	Not Applicable
U-001	10/31/2020	Ultraviolet Light Transmittance	60	65.0	percent	Bulking of clarifiers due to high influent loadings related to adverse weather conditions	Not Applicable
U-001	9/30/2020	BOD, Carbonaceous 5day, 20C	15	10.0	mg/L	Tropical Storm Sally resulted in 10 inches of precipitation within 24 hours; influent flow exceeded WWTP design capacity	Not Applicable
U-001	9/30/2020	Ultraviolet Light Dosage	0	35.0	mW-s/sqcm	Tropical Storm Sally resulted in 10 inches of precipitation within 24 hours; influent flow exceeded WWTP design capacity	Not Applicable
U-001	9/30/2020	Solids, Total Suspended	11	6.25	mg/L	Tropical Storm Sally resulted in 10 inches of precipitation within 24 hours; influent flow exceeded WWTP design capacity	Not Applicable



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

U-001	9/30/2020	Solids, Total Suspended	45.1	7.5	mg/L	Tropical Storm Sally resulted in 10 inches of precipitation within 24 hours; influent flow exceeded WWTP design capacity	Not Applicable
U-001	9/30/2020	Solids, Total Suspended	158	10.0	mg/L	Tropical Storm Sally resulted in 10 inches of precipitation within 24 hours; influent flow exceeded WWTP design capacity	Not Applicable
U-001	9/30/2020	Ultraviolet Light Transmittance	26	65.0	percent	Tropical Storm Sally resulted in 10 inches of precipitation within 24 hours; influent flow exceeded WWTP design capacity	Not Applicable
U-001	9/30/2020	Coliform, Fecal	1244	800.0	#/100mL	Tropical Storm Sally resulted in 10 inches of precipitation within 24 hours; influent flow exceeded WWTP design capacity	Not Applicable
U-001	9/30/2020	Nitrogen, Total	7.41	6.0	mg/L	Tropical Storm Sally resulted in 10 inches of precipitation within 24 hours; influent flow exceeded WWTP design capacity	Not Applicable
U-001	9/30/2020	Phosphorus, Total (as P)	2.7	2.0	mg/L	Tropical Storm Sally resulted in 10 inches of precipitation within 24 hours; influent flow exceeded WWTP design capacity	Not Applicable
U-001	8/31/2020	Nitrogen, Total	4.7	4.5	mg/L	A failure in the SCADA system main control board led to a loss of automatic controls in the aeration system.	Reloaded the main program and backed up a copy for future use if needed.



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

U-001	5/31/2020	Coliform, Fecal	1336	800.0	#/100mL	Operator did not monitor UV system performance; several bulbs failed causing inadequate disinfection	SOP developed for monitoring of UV system performance;
U-001	4/30/2020	Coliform, Fecal	1473	800.0	#/100mL	Operator did not monitor UV system performance; several bulbs failed causing inadequate disinfection; Lab Technician analyzed sample outside of sample hold time	SOP developed for monitoring of UV system performance

Based upon the information presented in Table 1, the ordered evaluation specified in 5.(A) seems unnecessary. The causes of the violations are well understood.

- (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. Time Period – December 31, 2021

City Response: The City agrees to the need to conduct an evaluation of I&I in the collection system. Following is the sequence of steps that the City must undertake in order to initiate and complete the I&I evaluation:

1. Selection of a consultant to perform the evaluation
2. Commission approval of a contract with the consultant
3. Awarding of the contract to the consultant
4. Consultant conducts the evaluation and develops a plan and schedule to reduce I&I
5. City submits the I&I Plan to FDEP

The City proposes to submit the I&I Plan to FDEP by October 1, 2022.

- (B) The actions in the I&I Plan shall have a completion date no later than December 31, 2022.

City Response: The actions in the I&I Plan shall be completed by October 1, 2022.

- (B) 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. Time Period – January 31, 2023

City Response: It is fully expected that implementation of the I&I plan will significantly reduce the potential for inflow and infiltration into the collection system. Realistically, it is



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

important to point out that inflow and infiltration cannot be completely eliminated due to a number of factors. Regardless, if the Facility has not returned to compliance after completing the actions in the I&I Plan, the City shall submit to the Department a permit application with a schedule to expand or upgrade the Facility by April 1, 2023.

- (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. Time Period – December 31, 2021

City Response: The City agrees to the need to conduct a Lift Station Plan. The City must undertake the administrative steps outlined in (B) above in order to initiate the Lift Station Plan. As such, the City proposes to submit the Lift Station Plan to FDEP by December 31, 2022.

- (C) The Lift Station Plan shall have a completion date no later than December 31, 2022.

City Response: The Lift Station Plan shall be completed by December 31, 2022.

- (C) 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. Time Period – January 31, 2023

City Response: It is fully expected that implementation of the Lift Station Plan will significantly reduce the potential for sanitary sewer overflows (SSOs) at the lift stations. Realistically, it is important to point out that SSOs cannot be completely eliminated due to a number of factors beyond the control of the City. Regardless, if the Facility has not returned to compliance after completing the actions in the Lift Station Plan, the City shall submit to the Department a permit application with a schedule to expand or upgrade the system by April 1, 2023.

- (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. Time Period – December 31, 2021



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

City Response: As mentioned in our earlier response to Finding c) of the CO, the Enterococcus data presented in Attachment A clearly demonstrate that the elevated Enterococcus bacteria levels at Linda Avenue, the Riviera Canal Boat Ramp, Riviera Street and the 18th Street outfalls are occurring due to the ambient environmental conditions at those sites. More specifically:

Linda Avenue – Data from samples collected at Linda Avenue show Enterococcus densities ranging from 75 to >2005 mpn/100 mL over the period from April 13 through November 4, 2021. On no less than 17 sampling dates, the Enterococcus densities exceeded surface water quality standards. It is important to note that no SSOs occurred on any of the sampling dates.

Riviera Canal Boat Ramp - Data from samples collected at the Riviera Canal Boat Ramp show Enterococcus densities ranging from 42 to >2005 mpn/100 mL over the period from April 13 through November 4, 2021. On no less than 10 sampling dates, the Enterococcus densities exceeded surface water quality standards. It is important to note that no SSOs occurred on any of the sampling dates.

Riviera Street - Data from samples collected at Riviera Street show Enterococcus densities ranging from 15 to >2005 mpn/100 mL over the period from April 13 through November 4, 2021. On no less than 8 sampling dates, the Enterococcus densities exceeded surface water quality standards. It is important to note that no SSOs occurred on any of the sampling dates.

18th Street outfalls – Data from samples collected at the 18th Street outfalls show Enterococcus densities ranging from <10 to >2005 mpn/100 mL over the period from April 13 through November 4, 2021. On no less than 7 sampling dates, the Enterococcus densities exceeded surface water quality standards. It is important to note that no SSOs occurred on any of the sampling dates.

Jose Marti Lagoon - Data from samples collected at the Jose Marti Lagoon show Enterococcus densities ranging from 42 to >2005 mpn/100 mL over the period from May 7 through November 4, 2021. On no less than 16 sampling dates, the Enterococcus densities exceeded surface water quality standards. It is important to note that the August 11, 2021 SSO had no demonstrated effect on Enterococcus densities as evidenced by the data before and after the SSO event.

Garrison Bight - Data from samples collected at Garrison Bight and Roosevelt show Enterococcus densities ranging from <10 to 591 mpn/100 mL over the period from August 11 through September 30, 2021. On no less than 8 sampling dates, the Enterococcus densities exceeded surface water quality standards. It is important to note that the August 11,



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

2021 SSO had no demonstrated effect on Enterococcus densities as evidenced by the data before and after the SSO event.

Garrison Bight Bridge North - Data from samples collected at Garrison Bight Bridge North show Enterococcus densities ranging from <10 to 162 mpn/100 mL over the period from August 19 through September 30, 2021. On 1 sampling date, the Enterococcus densities exceeded surface water quality standards. It is important to note that the September 2 result of 162 mpn/100mL was not influenced by an SSO event.

Ibis Bay Lagoon – Data from samples collected at Ibis Bay Lagoon show Enterococcus densities ranging from <10 to 1098 mpn/100mL over the period from August 17 through September 30, 2021. On no less than 4 sampling dates, the Enterococcus densities exceeded surface water quality standards. It is important to note that the August 17, 2021 SSO had no demonstrated effect on Enterococcus densities as evidenced by the data on the day of and following the SSO event.

Parrot Key Bridge - Data from samples collected at Parrot Key Bridge show Enterococcus densities ranging from 20 to 10981 mpn/100mL over the period from August 19 through September 30, 2021. On no less than 4 sampling dates, the Enterococcus densities exceeded surface water quality standards. It is important to note that no SSOs occurred on the dates with the highest densities of Enterococcus bacteria.

Gulf View - Data from samples collected at Gulf View show Enterococcus densities ranging from 0 to 238 mpn/100mL over the period from August 19 through September 30, 2021. On no less than 2 sampling dates, the Enterococcus densities exceeded surface water quality standards. It is important to note that no SSOs occurred on the dates with the highest densities of Enterococcus bacteria.

Based upon the above information, the City requests that the Pollution Reduction Plan recognizes that the ambient Enterococcus density levels at the aforementioned locations are at levels that will make it impossible to achieve the surface water quality standards specified in Rule 62-302.530(6) (c) F.A.C. and Rule 62-302.300(15) F.A.C. The City will implement the Pollutant Reduction Plan which will identify the measures necessary to eliminate sources of Enterococcus bacteria that are under the control of the City.

- (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 Venetian area. The sampling shall continue until bacteria levels fall within surface water quality criteria for at least two consecutive quarters. Time Period – January 31, 2022 – October 31, 2022



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

City Response: Based upon the data analysis presented in Corrective Action (D) above, the City requests that the Department recognize that bacteria levels will not fall within surface water quality criteria. As such, the City questions the value of conducting the sampling and reporting required by Corrective Action (E) and requests that the Department consider removing Ordered Corrective Action (E) from the Consent Order.

- (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.

Time Period – December 31, 2021

Corrective actions shall be completed by December 31, 2022.

City Response: Table 1 provides a detailed explanation for each of the effluent exceedances cited in the CO. In situations with tropical storms, it is simply unrealistic to expect that effluent exceedances are not going to occur.

Jacobs, working in concert with the City, has developed a high-flow management plan which was implemented successfully during Tropical Storms Eta and Sally. During those Tropical Storms, the Jacobs Team worked tirelessly around the clock to operate the lift stations and WWTP to minimize effluent exceedances and protect the infrastructure from storm-related damage.

For the exceedances that occurred on April 30, 2020, May 31, 2020, August 31, 2020, December 31, 2020, January 31, 2021 and June 30, 2021, the Jacobs Team has a full understanding of the cause of the effluent exceedances and has already put into place the corrective measures to minimize future exceedances. The City will provide a report on the aforementioned corrective measures to FDEP by April 1, 2022.

- (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”). Time Period – December 31, 2023

City Response: The City agrees to fully implement a CMOM. The City must undertake the administrative steps outlined in (B) above in order to initiate the CMOM. As such, the City proposes to fully implement the CMOM by September 1, 2023.

- (H) Document reasonable further progress in implementing the CMOM in semiannual reports in accordance with subparagraph 5 (G) of this order. Time Period – January 31, 2022, July 31, 2022, January 31, 2023 and so on until the CMOM program is fully implemented.



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

City Response: The City shall submit semiannual CMOM implementation progress reports in accordance with the timeline specified in the Consent Order.

- (I) Provide a report indicating the list of projects that the City of Key West is doing to improve aging infrastructure. Time Period – December 31, 2021

City Response: The City shall provide a report to the Department indicating the list of projects that the City is doing to improve aging infrastructure by March 1, 2022.

- (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 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. Time Period – December 31, 2021

City Response: The City shall submit the list and the requested information to the Department by March 1, 2022.

- (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. Time Period – January 31, 2022, July 31, 2022, January 31, 2023, July 31, 2023 and so on until the Consent Order is closed

City Response: The City shall submit semiannual reports to the Department containing information concerning the status and progress of projects completed under this Order beginning on July 1, 2022 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. Time Period – December 31, 2023

City Response: The City shall submit a Final Report to the Department demonstrating that all conditions and corrective actions required in this consent order have been completed by December 31, 2023.

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, 2023, and be in full compliance with Section 403.161(1)(a), F.S., and Permit FLA147222, and Fla.



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

Admin. Code Chapters 62-600, 62-604, 62-610, 62-620, and 62-640, regardless of any intervening events or alternative time frames imposed in this Order

City Response: The City shall complete the corrective actions required by paragraph 5 by December 31, 2024. This completion date is based upon a reasonable timeline to complete corrective actions. The City requests that the Department recognize that circumstances beyond the control of the City may cause the need to extend the completion deadline. The City will communicate in a timely manner to inform the Department of the intervening circumstances that could negatively impact the completion deadline.

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.

City Response: The City desires to implement an in-kind penalty project as described below in lieu of a cash payment.

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.

City Response: The City respectfully requests that the Department include the formula for the calculation of the civil penalties prior to the City receiving the Consent Order.

The City desires to implement an in-kind penalty project pending Department approval. The City shall notify the Department of its election by certified mail within 15 days of the effective date of this Consent Order. The City shall submit payment of the \$500 for Departmental administrative costs 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.



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

City Response: The City shall comply with 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>
\$1000.00	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.

City Response: By signing and agreeing to the terms of this Consent Order, the City believes that it is demonstrating a genuine commitment to environmental stewardship and



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

protection. The City has a demonstrated history of investment in infrastructure and employment of a highly qualified labor force that is dedicated to the highest standards of operation and maintenance of the collection system, lift stations and the wastewater treatment plant. As such, it is the City's expressed desire that, so long as the City adheres faithfully to and executes the terms of the Consent Order, the Department should not bring enforcement action against the City for circumstances beyond the City's control over the entire term of the Consent Order.

The City agrees to the stipulated penalties of the Consent Order for circumstances that are under the control of the City. In lieu of making a cash payment of the amount required under paragraph 10 (stipulated penalties) above, the City would request approval from the Department for an offset of the penalty amount by implementation of an in-kind project.

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 electronic mail at Gary.Hardie@FloridaDEP.gov.



THE CITY OF KEY WEST

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City Response: The City agrees to the terms governing in-kind penalty projects and to the payments required by the Consent Order.

15 – 26.

City Response: The City shall comply with the Ordered terms of the Consent Order as described in 15 through 26.

The City of Key West looks forward to the Department's response to our comments on the draft Consent Order and to working cooperatively with the Department in the execution and completion of the Consent Order.

A handwritten signature in blue ink, appearing to read "J.P. Castro".

John P. Castro
Utilities Director
City of Key West
1300 White St.
Key West, FL 33040