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Water and Sewer  
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**VIA ELECTRONIC CORRESPONDENCE**

March 6, 2019

CCN: 62446  
File No: 8.DC.20.52

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Tom Mariani  
Washington, D.C. 20044-7611  
RE: DOJ No. 90-5-1-1-4022/1  
[Tom.Mariani@usdoj.gov](mailto:Tom.Mariani@usdoj.gov)

Chief, Clean Water Enforcement Branch  
Water Protection Division  
Attn: Brad Ammons  
U.S. Environmental Protection Agency, Region 4  
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Atlanta, Georgia 30303  
[Ammons.Brad@epa.gov](mailto:Ammons.Brad@epa.gov)

Rachael Amy Kamons  
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Florida Department of Environmental Protection  
Southeast District – West Palm Beach  
3301 Gun Club Road, MSC 7210-1  
West Palm Beach, FL 33406  
Attn: Compliance/Enforcement Section  
[Jason.Andreotta@dep.state.fl.us](mailto:Jason.Andreotta@dep.state.fl.us)

**RE: Consent Decree (Case: No. 1:12-cv-24400-FAM),  
Reference DOJ Case No. 90-5-1-1-4022/1,  
Section XI, Paragraph 52 – Force Majeure,  
Section XVII, Paragraph 77 – Notices,  
Potential Delay Notification Letter for Consent Decree Appendix D-2, Capital  
Improvement Projects 2.22 – Pump Station No. 2**

Dear Sir/Madam:

In accordance with the provisions of Section XI, Paragraph 52 of the above referenced Consent Decree (CD), on February 20, 2019 Miami-Dade County (County) electronically notified United States Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP) of delays affecting CD Capital Improvement Project (CIP) 2.22 – Master Pump Station No. 2 located at 1075 Biscayne Boulevard, Miami, FL and operated under the Central District Wastewater Treatment Plant (CD WWTP), 3989 Rickenbacker Causeway, Virginia Key, Florida. This project has experienced delays during the construction phase.

In accordance with Section XI, Paragraph 52, this notification letter shall further describe and explain the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; County's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; a statement as to whether, in the opinion of the County, such event may cause or contribute to an endangerment to public health or the environment, and documentation to support the force majeure claim.

**Background information**

CD Project description for Project 2.22 is the rehabilitation of the pump station odor control system, rehabilitation of bar screen mechanisms, and replacement of pump stations flow metering to improve maintenance activities. The rehabilitation of the bar screen mechanisms was completed by WASD, and it is not part of the contractor's scope of work. The scope of work under the current construction contract is the replacement of the existing pump station effluent flowmeter, installation of a new 42-inch isolation valve to allow removal of the flowmeter for maintenance, replacement of the existing odor control system, replacement of the existing odor control system chemical storage and feed systems and replacement of the dry-well ventilation system.

On June 1, 2017, the County submitted a force majeure notification due to unforeseen groundwater contamination encountered at the project site during initial excavation activities, resulting in a Limited Stop Work Order being issued to the Contractor. Subsequent to EPA and FDEP requesting additional information, the County provided a project status update letter submitted in October 2017 to advise that the Limited Stop Work Order was rescinded on August 11, 2017. Also included in the October 2017 Update Letter was a cautionary disclaimer of ongoing contractor non-performance challenges.

On December 22, 2017, the County requested schedule modifications for several projects, including the one discussed herein. On April 11, 2018, EPA and FDEP approved the requested schedule modifications and modified the Compliance Date for the referenced project to May 25, 2019.

*mill*

The delay reported herein impacts the Project CD Compliance Date of May 25, 2019.

**Explanation and description of the reasons for the delay**

The County issued a Notice to Cure letter dated January 11, 2019, to give the Contractor an additional opportunity to cure deficiencies and provide an acceptable plan of action to complete construction work at the project site. Please refer to Exhibit A. The Contractor responded on January 18, 2019, and after review of the response, the County determined the plan of action

was insufficient. On February 21, 2019, the County issued a Notice of Termination for Default to the Contractor. Reasons cited for the termination of the Contractor are related to contractor's non-performance. Please refer to Exhibit B. The Contractor was not able to maintain the progress required to achieve contract completion nor CD Compliance date, failing to meet dates shown in their recovery schedule.

**Action taken or to be taken to prevent or minimize the delay**

The County will now engage with the Contractor's Surety. The Surety will determine the best course of action under the conditions of the Performance Bond. Several options are available to the Surety including, but not limited to, completing the project themselves, assigning a Surety Project Manager to complete the Project using Contractor's staff, and/or developing a financial package to complete the project by another contractor. The first meeting between the County, Surety, Contractor and Attorneys was held today.

**Anticipated duration of the delay**

The County will transmit the duration of the delay, once the Surety determine the best course of action under the conditions of the Performance Bond and a time impact analysis is performed.

**Schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay**

The County will take the following steps in sequence to prevent or mitigate delay or the effect of the delay:

1. Continue meeting with the Surety to discuss options available under the Contractor's Performance Bond,
2. Agree on the Surety's proposals to complete the Project,
3. Monitor closely the Surety's schedule to completion.

**Cause or contribution to an endangerment to public health, welfare or the environment**

Improvements performed under CD 2.22 are needed to 1) mitigate odor complaints resulting from an improperly functioning odor control system and 2) replace the station's flow meter in a timely fashion to ensure continued and accurate flow measurement from this pump station. There is no indication that delays in this project present an immediate endangerment to the public health, welfare or the environment.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true,

accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Should you have any questions regarding this matter, please call me at (786) 552-8571.

Sincerely,



Lynnette M. Ramirez P.E.  
Senior Advisor, Capital Improvement Programs & Regulatory Compliance

Attachment: Exhibit A – Notice to Cure  
Exhibit B – Notice of Termination for Default

ec: Elizabeth Teegen  
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Southeast District – West Palm Beach  
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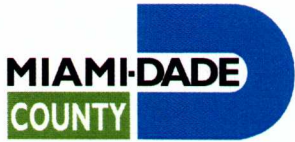
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Manuel Moncholi  
Amanda Kinnick  
Lee N. Hefty (RER-DERM)  
Carlos Hernandez (RER-DERM)  
Rashid Istambouli (RER-DERM)  
Lynn Feldmann (CD PMCM)  
Scott Eckler (CD PMCM)  
Andrea Suarez-Abastida (CD PMCM)  
Cynthia Doyon (CD PMCM)

Exhibit A  
Notice of Default with Opportunity to Cure

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**Water and Sewer**  
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T 305-665-7471

January 11, 2019

Mr. Felix Valdes  
President  
V Engineering & Consulting Corp.  
2929 SW 3<sup>rd</sup> Avenue, Suite 340  
Miami, FL 33129

Re: Consent Decree Project 2.22 – CDWWTP Master Pump Station No. 2  
RPQ No. T2250; ER No. S049346; PCTS No. 13162  
Notice of Default/Opportunity to Cure No. 2

Dear Mr. Valdes:

Over a year ago, on November 1, 2017, correspondence CD2.22\_GNC-010 issued the first Notice of Default/Opportunity to Cure to V Engineering & Consulting, Corp (VEC). While new issues and impacts have arisen in 2018, the core concerns of not meeting your obligations under the terms of the Contract with respect to assigned resources, prosecution of the work, and progress to date remain the same. As of today, the project is 29% complete and there is a delay of 316 days with no pending time extensions.

The following is a list of ongoing deficiencies and outstanding work to be completed:

- Numerous correspondence has been issued identifying the general lack of oversight provided by VEC. Per Article 8 of the General Covenants and Conditions, "The Contractor shall have at all times, as his agent on the site of the work, a competent superintendent capable of reading and thoroughly understanding the Plans and Specifications".
- VEC is required to complete and submit daily reports; however, not one Contractor Daily Report has been submitted as required per Specification Section 013216, paragraph 1.12.A.
- All required project submittals have still not been prepared and submitted for review even though we are now a year past the original project completion date.
- Regarding the prosecution of the work and progress to date, there has been a consistent lack of progress.
- For activities outside the Pump Station No. 2 fence line, there has been no progress to date. The DERM dewatering permit is a prerequisite for the work in Biscayne Boulevard that has yet to be obtained. The DERM dewatering permit is an issue that has been open since Notice to Proceed on January 24, 2017. Obtaining permits remains the responsibility of the Contractor.

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The latest monthly schedule update (October/mid-November 2018) is the first update that reflects that VEC will not achieve substantial completion prior to the EPA Consent Decree date of May 25, 2019. VEC's projected substantial completion is July 29, 2019. At the October 11, 2018 meeting, we discussed the Department's reservations over the current progress of the work, complying with the Consent Decree dates and the associated liquidated damages (and possibly EPA stipulated penalties) that would be assessed. These concerns remain valid and are substantiated by the latest monthly schedule update.

The current estimate of potential penalties, based on VEC maintaining and meeting their latest schedule dates, is \$513,000.00 in liquidated damages, and \$58,000.00 in EPA stipulated penalties.

VEC has until January 18, 2019 to submit a recovery schedule revising and detailing all remaining activities necessary to complete the balance of the work. Additionally, in accordance with specification Section 013216, paragraph 1.10.L, VEC must provide a written statement as to the steps that will be taken, including a list of resources and supervision, to ensure the recovery schedule will be achieved. Failure to meet this January 18, 2019 deadline will result in the County declaring VEC in default of the Contract. Submission of an incomplete or unacceptable recovery schedule will also result in the County declaring VEC in default of the Contract.

Respectfully,

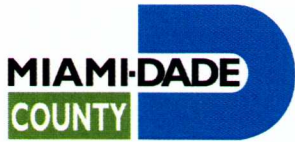


Lynnette M. Ramirez, P.E.  
Senior Advisor Capital Projects and Compliance

Cc: Charles D. Nielson/Nielson, Hoover & Associates (Surety)  
Daniel Edwards, Senior Program Manager, Miami-Dade County  
Lynn Feldman, Program Manager, CD PMCM  
Edith Brown, Chief, Contract Compliance Division, Miami-Dade County  
Margaret Moss, Chief, Small Business Initiatives, Miami-Dade County

Exhibit B  
Notice of Termination for Default

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February 21, 2019

Mr. Felix Valdes  
President  
V Engineering & Consulting Corp.  
2929 SW 3<sup>rd</sup> Avenue, Suite 340  
Miami, FL 33129

Re: Consent Decree Project 2.22 – CDWWTP Master Pump Station No. 2  
RPQ No. T2250; ER No. S049346; PCTS No. 13162  
Notice of Termination by Default

Dear Mr. Valdes:

This letter is formal notification to V Engineering and Consulting Corp. (VEC) and its Surety that VEC have failed to perform in accordance with the Contract Documents for Contract No. T2250 and that the Contract is terminated for default by Miami-Dade Water and Sewer Department (WASD). This termination for default is effective immediately and WASD reserves all rights as provided for within the Contract Documents. VEC has jeopardize WASD's ability to meet the requirements of the Consent Decree.

You are hereby notified to stop all work and vacate the jobsite immediately. You are to remove all materials and equipment not to be permanently placed as part of this Contract. Equipment required to maintain the safe condition of the jobsite shall not be removed without prior agreement with the Department. The jobsite shall be left in a safe and clean condition. You are not entitled to future payments except as stated within the Contract Documents.

In the Notice to Cure letter dated January 11, 2019, VEC was requested to cure the listed deficiencies and to provide an acceptable plan of action for the necessary corrections noted in the letter. There was a follow-up meeting between VEC, the PMCM and the WASD on January 18, 2019 where you provided assurances that your firm would satisfy the requirements of the letter and complete the work by the Consent Decree Compliance Date for the project. VEC's formal response to the letter, along with a recovery schedule, was submitted in the meeting.

Upon review of VEC's January 18<sup>th</sup> letter, which contains VEC's plan of action, WASD has the following comments:

- WASD acknowledges VEC's contention that the field progress is measured at 45%. However, the project has expended over 124% of the current contract duration for substantial completion (original contract duration and approved time extensions). WASD

does not agree that VEC can complete 55% of the balance of the work scope while liquidated damages continue to be assessed due to the expiration of contract time. WASD questions VEC's capacity to continue the work with limited and/or no cashflow.

- There continues to be a lack of adequate on-site supervision at the project site.
- VEC has not submitted daily reports contrary to VEC's claim in its January 18th letter.
- The dewatering permit has not been secured by VEC and continues to affect critical activities.
- VEC referenced how they will complete the contract by way of their recovery schedule and reassert their commitment to adhere to their recovery schedule dates and activities. Comments on the schedule are below.

Upon review of the recovery schedule, WASD believes that the recovery schedule provided is unrealistic. WASD has the following comments:

- VEC has not commenced the critical path flowmeter installation activity as planned. This continued delay will adversely affect the completion date.
- VEC has twenty (20) critical submittals missing two years into the contract, and the schedule shows unrealistic durations for review. Addressing this issue will adversely affect the completion date.
- VEC's schedule assumes very aggressive procurement lead times for several items that that are yet to be submitted and reviewed.
- Specification Section 017500-Equipment Testing and Plant Start-up, requires a Commissioning Testing Period of seven (7) days and an Acceptance Testing Period of thirty (30) days. VEC has reduced the Odor Control System Commissioning and Acceptance testing periods to two (2) days and one (1) day, respectively. Addressing this issue will adversely affect the completion date.
- Specification Section 017500-Equipment Testing and Plant Start-up, requires an Acceptance Testing Period of thirty (30) days. VEC has reduced the Flowmeter Acceptance Testing period to ten (10) days. Addressing this issue will adversely affect the completion date.
- VEC's schedule shows four (4) days between substantial completion and final completion, this was originally forty (40) days. The reduced duration is not acceptable and addressing this will adversely impact the completion date.

- VEC's actual progress on site to adhere to the recovery schedule has not been met. Most of the activities scheduled to start by the date of this letter have not started, and none of the scheduled activities to be completed by the date of this letter have been completed on time.

Based on the above, VEC will not meet the Consent Decree Compliance Date, and the County has no confidence in any completion date provided by VEC at this point. WASD has afforded VEC every opportunity to comply with the Contract Documents and complete this project, and despite VEC's repeated assurances, minimum to no efforts are made to advance the project and cure the deficiencies.

Via copy of this letter to your Surety, the Department requires immediate contact from the Surety's authorized representative to discuss the actions to be taken and the responsibilities of the Surety to complete this Contract and by what means.

WASD's contact person is Eng. Lynnette M. Ramirez, Senior Advisor for Capital Projects and Compliance, and may be reached at 786-552-8204 or by electronic mail at [lynnette.ramirez@miamidade.gov](mailto:lynnette.ramirez@miamidade.gov).

Regards,



Kevin T. Lynskey  
Director

Cc: Charles D. Nielson, Nielson, Hoover & Associates (Surety)  
Gary Hartfield, Director Small Business Development, Miami-Dade County  
Laurie Johnson, Section Chief Small Business Development, Miami-Dade County  
Edith Brown, Chief, Contract Compliance Division, Miami-Dade County  
Margaret Moss, Chief, Small Business Initiatives, Miami-Dade County  
Daniel Edwards, Senior Program Manager, Miami-Dade County  
Warren Howard, Construction Task Leader, CD PMCM  
Lynn Feldman, Program Manager, CD PMCM