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VIA ELECTRONIC CORRESPONDENCE

May 5, 2020

CCN: 63182
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

Chief, Clean Water Enforcement Branch
Water Protection Division
Attn: Brad Ammons
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
Ammons.Brad@epa.gov

Rachael Amy Kamons
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Rachael.Kamons@usdoj.gov

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

**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,
Delay Notification for Consent Decree Appendix D-2, Capital Improvement Project
3.6 Disinfection**

Dear Sir/Madam:

In accordance with the provisions of Section XI, Paragraph 52 of the above referenced Consent Decree (CD), on April 21, 2020, Miami-Dade County (County) electronically notified the United States Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP) of a Force Majeure for CD Capital Improvement Project (CIP) 3.6 Disinfection, located at the North District Wastewater Treatment Plant (NDWWTP), 2575 NE 156th Street, North Miami Beach, 33160. Delays have occurred in the execution of this project during the construction phase including Force Majeure COVID-19 Pandemic impacts. These delays will impact the project's CD compliance date of September 9, 2020.

In accordance with Section XI, Paragraph 52, this update letter shall further describe and explain the reasons for the delay and Force Majeure; 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; the anticipated duration 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

The CD Exhibit D-1 project description for 3.6 is the replacement of existing chlorine gas storage, liquid chlorination, and dosing system with a new bulk sodium hypochlorite storage and dosing system in the location of the existing gas chlorine system. Since 2010, WASD had planned to replace the existing gas chlorination system with a bulk sodium hypochlorite system and had initiated the design of new facilities. Construction was deferred until the CD was negotiated and was incorporated as a CD project. In the interim, a temporary bulk sodium hypochlorite storage and dosing system was designed and constructed in June 2013 which allowed for the existing chlorine gas system to be removed from service and decommissioned. Disinfection at the NDWWTP will continue to be provided by the temporary system until the permanent sodium hypochlorite system is constructed and commissioned under CD 3.6.

The contractor's scope of work includes the rehabilitation of Main Disinfection Building for the installation of the new Sodium Hypochlorite Storage and dosing system, construction of a new Electrical Room Building, construction of a new Sodium Hypochlorite Satellite Facility at the Pretreatment and Sludge Transfer Building, and associated piping, trenches, mechanical and electrical equipment and materials.

Explanation and description of the reasons for the delay

On April 9, 2020, the Contractor notified the County of potential impacts due to COVID-19. The notification covered the availability of labor (including subcontractors), professional services and materials.

In addition, the Contractor encountered multiple unforeseen field conditions with the existing underground utilities which conflicted with the scope of work and resulted in delays. The unforeseen complexity of the Electrical and Mechanical switchover, after new Electrical Building is built, warranted a careful more phased approach of a longer duration than anticipated during the planning and design phases of this projects. The Contractor is preparing a time- impact analysis for this switchover.

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

Additionally, the County will take the following steps:

1. Implement preventative safety measures to limit the spread and impacts of COVID-19.
2. Closely monitor construction progress.

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

The County is proactively implementing actions to minimize any further delays and will continue to implement all necessary measures to substantially complete CD 3.6.

Anticipated duration of the delay

Even though the County has implemented proactive public health safety measures to limit the spread of the pandemic, this situation and the inherent consequences are still developing. The County will transmit the duration of the delay, upon completion of the time impact analysis for the above activities. The County will closely monitor construction progress and report any further delay to EPA and FDEP when it becomes known to the County and as required by Section XI, Paragraph 52.

 **Force majeure rationale**

On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic. National, state and local agencies are taking actions to suppress and control the spread of COVID-19. The County is taking preventative measures to contain the spread and the impacts of the virus. The County attributes any delays resulting from impacts of COVID-19 as a force majeure event. Contractor has issued a letter with attachments from their electrical and door subcontractor notifying of COVID-19 impacts.

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

Because WASD took measures to replace the existing gas chlorination system with a temporary bulk sodium hypochlorite and dosing system in 2013, the potential for an unregulated discharge of chlorine gas and exposure of plant personnel and nearby community to chlorine gas was eliminated. There is no indication that delays in CD 3.6, Disinfection at NDWWTP, present an immediate endangerment to the public health, welfare or the environment since a temporary system exists and is operational.

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: Contractor's COVID-19 Notification

ec: Barbara Jean Throne
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Attachment

Contractor COVID-19 Notification



ESTABLISHED 1879

Daniel O'Connell's Sons
Construction Managers and
General Contractors

2999 NE 191st St
Suite 906
Aventura, FL 33180
786-864-0003
www.oconnells.com

April 9, 2020

Transmittal Method: Via Email

Mr. Pedro Angel
Construction Manager
Consent Decree PM/CM Team

RE: CD 3.06 North District WWTP Disinfection Improvements
NOTICE OF FORCE MAJEURE EVENT
WASD Contract No. S-912, DOC 2018-104

Mr. Angel,

Please be advised Daniel O'Connell's Sons (DOC) continues to comply with applicable guidelines and direction from WASD regarding the current COVID 19 pandemic. These efforts have had an impact on productivity on a daily basis as initial screening and self certifications are required before work commences. DOC has complied with the WASD request for a COVID-19 plan and applies the plan requirements daily to mitigate the effects of the COVID-19 disease. However, this past week DOC received letters (Attachments A & B) from subcontractors and suppliers stating their concerns and expectations of the adverse impacts on their operations in prosecuting the work on this Project.

The COVID-19 pandemic is considered by DOC to be a Force Majeure event. We expect an impact on the availability of healthy workforce and potential impacts to the fabrication and delivery of materials and equipment to the project timely and meeting schedules.

Article 1 of the Supplemental General Terms and Conditions defines "Force Majeure" as an Act of God including but not limited to an epidemic which impacts the materials, supplies, labor, services, permits, etc required to complete the Project and is outside of the control of all parties involved.

DOC shall provide documentation of specific incidences as they occur. Accordingly, DOC reserves its rights under this Notice to claim relief from delays and damages incurred due to the COVID-19 pandemic.

Sincerely,
DANIEL O'CONNELL'S SONS

Jaime Vélez
Project Manager

CC: Robert Murphy, P.E. – DOC
George Brodeur – DOC

José Murphy, P.E. – DOC
Enrique Cardona – PMCM
DOC File No. 2018-104

ATTACHMENT "A"



04/03/2020

Notice of Force Majeure Event

Dear Clients:

We are closely monitoring the outbreak and spread of COVID-19 and the impact it may have on our business and our clients. We are working to continue providing and delivering the same level of work and service you have come to expect, while remaining in compliance with all guidelines issued by municipalities, counties, states and the federal government.

At this time, it is reasonable to expect that the COVID-19 virus will have an adverse impact upon our ability to continue providing labor and materials to your project and timely perform all of our obligations under our contract. The scope of this potential impact is currently unknown. We can expect a reduction in available labor due to policies requiring social distancing and self-isolation to prevent the spread of the virus. In addition, the impact on our supply chains for materials, many of which are shipped from overseas, may be severe.

Therefore, we write to provide notice that we consider the COVID-19 outbreak a Force Majeure event in relation to the Project. As a result, to the extent permitted by our contract, we reserve all rights to: (1) an extension of time based upon any delay to the project caused by COVID-19; (2) additional compensation based upon costs incurred related to any delay to the project caused by COVID-19; and (3) additional compensation based upon increased costs of materials.

While we provide this notice as a precaution, we assure you that we are doing everything in our power to avoid any delays or increased costs to the project, while remaining compliant with the directions, guidelines and requirements issued by municipalities, counties, states and the federal government.

We will continue to share information as it becomes available and do our very best to keep you informed about any further actions as it relates to your project. If you have any further questions, please feel free to contact me directly.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Loveland', is written over a faint blue circular stamp.

David M Loveland

Vice President

CORRIM Company

Corrosion Immune Fiberglass Doors and Frames
1870 Stillman Drive · Oshkosh, WI 54901-1010

ATTACHMENT "B"

www.corrim.com

P: (920) 231-2000 · F: (920) 231-2238

April 6, 2020

To whom it may concern,

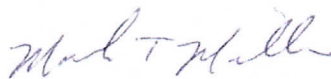
As a country we are going through difficult times with the Covid-19 Stay at Home orders by our state governments. With this being said Corrim Company has been classified as an essential company due to the product we supply.

Due to this essential manufacturer order, Corrim Company has received letters from the US Military classifying specific projects as Mission Essential which states that those orders have a priority and have preference ahead of all other orders.

Corrim Company is doing our best to get these orders through our plant and try to not upset our current lead time but due to the nature of these orders we may see a delay of the original estimated ship date by 2 to 4 weeks.

Please bear with us as we work through these strenuous times together.

Sincerely,



Mark Miller
President



John Morelli
Vice President