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**Water and Sewer**  
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## VIA ELECTRONIC CORRESPONDENCE

May 11, 2017

CCN: 61055  
File No: 8.DC.52 & 77

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
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  
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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**  
**Force Majeure Notification Letter for Consent Decree Appendix D-2, Capital Improvement Project 2.02 (2), CDWWTP Building Improvements**

Dear Sir/Madam:

In accordance with the provisions of Section XI, Paragraph 52 of the above referenced Consent Decree (CD), Miami-Dade County (County) notified United States Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP), via email, on April 27, 2017 of a potential schedule delay in the Capital Improvement Project (CIP) 2.02 (2) Building Improvements located at the Central District Wastewater Treatment Plant (CDWWTP), 3989 Rickenbacker Causeway, Virginia Key, FL. The delay has occurred in the execution of this project when one of the contractors' sub-contractor failed to perform, thereby creating a potential delay in the contractor's overall schedule.

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, welfare or the environment, and documentation to support the force majeure claim.

**Initial schedule challenges**

In the course of setting up the process to address all of the Consent Decree projects, the County recognized the need to bring on additional staff to meet the aggressive schedules mandated by the Consent Decree. This was done by contracting with a professional consultant team of experts (led by AECOM) to assist the County in Program Management and oversight of multiple Design Services contracts. The process for hiring Engineering firms in the State of Florida is regulated under Florida Statute 287.055 "The Consultants Competitive Negotiation Act". As detailed in the First Status Report to the Court dated August 29, 2014, there was a lengthy delay in procuring the Program Management and Design Professional Firms. This resulted in a late start in the validation and design of several projects, specifically those with CD compliance dates ending 2016 through 2019, which includes this project. In addition, dates for downstream activities have been affected as is evident in the County's requests for modification of interim milestones. (Five requests submitted to EPA/FDEP in 2016 and three in 2017 to date.) Overlapping/expediting of interim activities planned to complete respective projects in accordance with the final CD milestone date has proven to be a challenge.

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

The project consists of Interior Restrooms and Lockers Renovations for the Old Maintenance Building No.1, Storage Building No. 33, and Operations and Controls Building No. 2 at the CDWWTP.

During the administration phase near the beginning of the project, submittals were not being provided by the electrical and HVAC sub-contractor. The contractor followed on the submittal delays and was assured that the sub-contractor intended to perform the work but had yet to supply the necessary submittals required prior to the start of work. On April 25, 2017, however, the contractor notified Water and Sewer Department (WASD) that the sub-contractor had submitted their Intent to Cancel, see Attachment A.

Regarding the contractor, on April 13, 2017, a third letter was issued from the County notifying issues regarding the contractor's lack of performance and requesting a written corrective action plan to mitigate the delay including a recovery construction schedule. The major issues include: (1) no building permit pulled by the contractor, (2) missing long lead items submittals, (3) field work has not commenced. On April 25, 2017, the contractor responded with providing the Intent to Cancel from the sub-contractor and a recovery construction schedule with a completion date beyond the CD compliance date of September 6, 2017.

As of May 11, 2017, the County is processing the approval of the replacement sub-contractor. However, no construction progress has been performed by the contractor including field work and permitting. The County has determined that the contractor is in default of their contract obligations due to lack of performance and will immediately initiate the termination process, which will include the following steps: (1) the County to issue the Contractor with a Notice of Deficiency (NOD) requesting a written plan of action within a specified period of time, (2) the County to issue the Contractor with a Notice to Cure (NOC) for not responding to NOD or the responses are not acceptable by the County, (3) the County to issue Termination For Default to the Contractor for failing to perform.

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

The contractor has received approval of the replacement sub-contractor by the County’s Internal Services Department Small Business Development (“SBD”) and is in the process of getting a signed agreement in place. Upon execution and approval by SBD of the agreement, a revised schedule with a project completion date will be available.

**Anticipated duration of the delay**

It is anticipated that the replacement sub-contractor will be officially under contract in the next 30 days. A follow-up letter will be provided once the new sub-contractor is on board and has provided a project schedule. It is WASD intent to work closely with the contractor to identify mitigation efforts to reduce the schedule delay.

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

WASD has taken or will take the following steps (in sequence) to prevent or mitigate delay or the effect of the delay:

1. Contractor submit replacement sub-contractor agreement to SBD for approval
2. Expedite negotiation, and execution of new agreement with new SBD approved sub-contractor
3. Contractor provides revised project schedule
4. Commence work related to the new subcontract.

**Rationale for attributing such delay to a force majeure event**

As defined in Section XI, Paragraph 51, “Force Majeure,” is defined as any event arising from causes beyond the control of the County. It is out of the County’s control when a contractor or subcontractor defaults on a contract.

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

The rehabilitation to the buildings as part of this Contract will ensure that employees have acceptable facilities in which to conduct their work. There is no indication that the lack of this work being complete represents any immediate endangerment to the public health, welfare or the environment.

Should you have any questions regarding this matter, please call me at (786) 552-8894.

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.

Sincerely,



Maricela Fuentes, P.E.  
Assistant Director, Capital Projects

Attachments: Intent to Cancel

ec: Jonathan A. Glogau  
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Florida Department of Environmental Protection  
Southeast District – West Palm Beach  
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West Palm Beach, FL 33406  
Attn: Compliance/Enforcement Section  
[Jason.Andreotta@dep.state.fl.us](mailto:Jason.Andreotta@dep.state.fl.us)  
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Rashid Istambouli (RER-DERM)  
David Wood (CD PMCM)  
Andrea Suarez Abastida (CD PMCM)  
Abby Diaz (CD PMCM)

**Attachment A**  
**Intent to Cancel Letter**

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## DONE WRIGHT A/C & ELECTRIC SERVICE, INC.

10711 SW 216TH STREET, SUITE 109 • MIAMI, FL 33170

(305) 851-2137 • FAX (305) 278-9218

April 21, 2017

RE: Contract No. RPQ NO. T2255 – SOI  
CDWWTP BUILDING REPAIRS

This letter shall serve as Written Notice of Intent to cancel my services on the above referenced project due to obligations made on other projects while waiting for this project to begin. I regret that I am unable to perform the work and wish to rescind my participation on this contract with immediate effect.

Respectfully,

David Wright  
President/Done Wright A/C and Electric Service Inc.

