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**VIA ELECTRONIC CORRESPONDENCE**

January 22, 2019

CCN: 62368  
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  
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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 2.2(2) – Repairs to Various Buildings - Remodel Bathrooms,  
Locker Rooms & Showers**

Dear Sir/Madam:

In accordance with the provisions of Section XI, Paragraph 52 of the above referenced Consent Decree (CD), on January 8, 2019 Miami-Dade County (County) electronically notified United States Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP) of a potential delay of CD Capital Improvement Project (CIP) 2.2(2) – Repairs to Various Buildings - Remodel Bathrooms, Locker Rooms & Showers located at the Central District Wastewater Treatment Plant (CDWWTP), 3989 Rickenbacker Causeway, Virginia Key,

Florida. This project has experienced delays during construction and project re-implementation phases.

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 CIP 2.2 is repairs to maintenance, operations control and administration buildings to include refurbishing of roofs and staff facilities. The project is executed through four separate child projects or subprojects: CD 2.2(1a) Building Improvements - Administration Building Asbestos Abatement, CD 2.2(1b) Administration Building Interior Improvements, CD 2.2(1c) Miscellaneous Roof Improvements, and CD 2.2(2) Repairs to Various Buildings - Remodel Bathrooms, Locker Rooms & Showers. The first three child projects were completed on 6/1/2015, 1/17/2018, and 10/19/2016, respectively. The potential delay reported herein is related to the latter child project, CD 2.2(2), which may impact the Project CD Compliance Date of September 26, 2019.

Two notifications issued in May and November 2017 advised EPA and FDEP that CD 2.2(2) was delayed due to Contractor's lack of performance and its Subcontractor default during construction. In April 2018, EPA and FDEP approved the County's request to extend the CD Compliance Date for this project to September 26, 2019. Despite numerous notifications of concerns and attempted negotiations with the Contractor to complete the project, the Contractor continued to struggle with non-performance issues leading ultimately to the Contractor's termination for convenience on June 7, 2018.

Immediately after the contract termination, the County re-assessed the project and proactively re-implemented the project through all project phases (re-design, re-permit, re-procurement, re-construction) in an effort to recoup the lost time and to meet the CD Compliance Date. However, additional issues were encountered.

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

The contract termination required re-design of the project to (1) memorialize existing conditions discovered and performed by the Contractor, and (2) update design to meet the requirements of the newly adopted 2017 Florida Building Code (FBC) since the previous design utilized the 2014

FBC to obtain its dry run permit approval in 2016. The re-design was fast-tracked and completed in late July 2018.

For re-permitting, a new permit dry run application was submitted to the City of Miami Building Department (COM) for approval in early August 2018. A new permit requirement, Art in Public Places, was flagged by the COM around September 2018. Specified under the Miami 21 Code, Article 11, the Art in Public Places (AIPP) Program requires all Government Development Projects to provide for the acquisition of Art, equivalent in value to not less than one and one-half percentage (1.5%) of the Project Cost. According to the COM, AIPP became effective in January 2017 and all County Projects, including CD 2.2(2), submitted after that effective date are required to comply. The County has been in contact with the COM as well as the County Building Department to discuss resolutions. A meeting was held in November 2018, where the County Building Department advised the AIPP Program shall be administrated by the Public Art Division with the County instead of the COM and the switch of the program administrator requires an approval from the Board of County Commissioners (BCC). As of January 2019, the County is planning to present to the BCC in March 2019. The AIPP will remain pending for CD 2.2(2) until a resolution is reached between the County Building Department and the COM.

For re-procurement, the County advertised the project on November 14, 2018 and the bids are due on January 22, 2019. The County will proceed with opening and reviewing the bids. However, the County will not be able to issue a contract Notice to Proceed to the responsible and responsive bidder until AIPP is resolved and a dry run permit is obtained from the COM.

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

After the County Building Department successfully obtains BCC approval to allow the County to take over the administration of the AIPP program, AIPP will be resolved for CD 2.2(2), which should enable an issuance of the dry run permit by the COM. After obtaining the dry run permit approval, the County will be able to issue a contract Notice to Proceed for the Contractor to commence the re-construction phase of the project.

**Anticipated duration of the delay**

The time impact of the resolution of the AIPP program issue will remain undetermined until BCC approval. Since the Notice to Proceed to a Contractor is directly subject to the resolution of this AIPP program issue, the impact of the anticipated delay is nearly impossible to estimate at this time. The County is evaluating the time required for the following activities: (1) the resolution of Ordinance Amendment of the AIPP program, (2) the County to complete re-permit by clearing Art in Public Places permit comment and to obtain COM Dry Run Approval, (3) the County to complete re-procurement by awarding and issuing a Notice to Proceed to a responsible and responsive bidder, (4) the new Contractor to substantially complete the project per contract

documents. The County will transmit the duration of the anticipated delay, upon completion of the time impact analysis of the above activities.

**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. Open and review contract bids (re-procurement)
2. Award responsible and responsive bidder (re-procurement)
3. Obtain the BCC approval for the County to administrate the AIPP Program (re-permit)
4. Obtain dry run permit approval from the COM (re-permit)
5. Issue General Contractor Notice to Proceed (re-procurement)
6. New Contractor to substantially complete the project per contract documents (re-construction)

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

Improvements performed under CD 2.2 are needed to provide staff with adequate and safe facilities to perform their jobs. There is no indication that delays in Repairs to Various Buildings - Remodel Bathrooms, Locker Rooms & Showers 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

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