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VIA ELECTRONIC CORRESPONDENCE

September 25, 2019

CCN: 62788
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
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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

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**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,
Project Update on Delay and Failure to Meet Compliance Date Notification for Consent
Decree Appendix D-2, Capital Improvement Projects 2.2(2) – Repairs to Various Buildings
- Remodel Bathrooms, Locker Rooms & Showers**

Dear Sir/Madam:

Miami-Dade County submitted a Force Majeure notification and a project update letter on May 11, 2017 and November 3, 2017, respectively. On January 22, 2019, Miami-Dade County (County) submitted a Potential Delay notification letter to the United States Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP) regarding a schedule delay to Consent Decree (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. The purpose of this letter is to provide an update on the

project status and to notify the EPA and FDEP of the failure to meet the CD compliance date. This project experienced delays during past construction and project re-implementation phases.

Further, this letter is to 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

The previous notifications issued in May and November 2017 to advise 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 concern and attempted negotiations, the Contractor continued to struggle with non-performance issues leading to the Contractor's termination for convenience on June 7, 2018.

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Despite the County's efforts to re-assess and re-implement the project in a proactive manner, additional issues were encountered. The contract termination required re-design of the project in order to memorialize existing conditions and to update the design to meet the requirements of the newly adopted 2017 Florida Building Code (FBC). Also, during the re-permitting phase, the City of Miami Building Department (COM) noted that a new permit requirement, Art in Public Places (AIPP), was flagged around September 2018 with an effective date of January 2017. The COM informed that all County projects, including 2.2(2), submitted after the effective date were required to comply. The County was not able to issue a contract Notice to Proceed to the responsible and responsive bidder until AIPP was resolved and a dry run permit was obtained from the COM.

On January 8, 2019, the County electronically notified EPA and FDEP of a potential delay for this project, and on January 22, 2019, the County submitted the Potential Delay Notification Letter mentioned above.

The following mitigation events have occurred since the last notification:

- On February 2, 2019, the Board of County Commissioners approved the amendment to Section 2-11.15 of the Code of Miami-Dade County Florida related to Art in Public Places (AIPP). The amendment provides exclusive County jurisdiction over AIPP for County facilities being developed in municipalities.
- On March 4, 2019, the County Building Department provided an official certified copy of the approved amendment and a notification letter to the City of Miami Building Department.

- On April 8, 2019, the City of Miami Building Department waived the permit requirement of AIPP and dry run permit approval was issued for CD 2.2(2).
- On April 15, 2019, the County issued Notice to Proceed (NTP) to CAMO Consulting, LLC (CAMO) to recommence the construction phase of CD 2.2(2).

Explanation and description of the reasons for the delay

The County successfully accomplished the mitigation steps identified in the January 22, 2019 notice. Despite the effort undertaken to recoup the lost time due to the termination of the previous contractor, the CD Compliance Date of September 26, 2019 will be impacted.

Even though the Contractor has been performing to date, several unforeseen conditions such as asbestos containing materials not previously identified that expanded the abatement plan, and different site conditions that could not have been anticipated prior to construction were encountered during the demolition phase and affected progress. The County anticipates the Contractor will substantially complete the project on or before April, 2020.

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

The County has completed re-permitting and re-procurement phases of the project by taking the mitigation steps identified in the January 22, 2019 notice. Since the initiation of the re-construction phase, the County has worked closely with CAMO to kickoff construction, mobilize to site and continue to closely monitor the construction progress in order to mitigate the effects of known anticipated delays.

and
Anticipated duration of the delay

Based on the Contractor's construction progress and contingency for unforeseen conditions, the anticipated completion date in April 2020. The County will closely monitor construction progress and report any further delay to EPA immediately when it becomes known to the County.

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 to prevent or mitigate delay or the effect of the delay:

1. County to work closely with the Contractor to promptly resolve any unforeseen conditions
2. County to report further delay to EPA when issues arises
3. 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.
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Project Update on Delay and Failure to Meet Compliance Date Notification for CD CIP 2.2(2) Repairs to Various Buildings - Remodel Bathrooms, Locker Rooms & Showers
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