

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA, DEPARTMENT	)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION	)	SOUTHEAST DISTRICT
	)	
v.	)	OGC FILE NO. 16-1487
	)	
CITY OF FORT LAUDERDALE	)	
	)	

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**AMENDED CONSENT ORDER**

On September 27, 2017 Consent Order OGC File No. 16-1487 (First Order) between the State of Florida Department of Environmental Protection (Department) and City of Fort Lauderdale (Respondent) became final and effective. This Amended Consent Order (Amended Order) is entered into between the Department and Respondent to reach settlement of certain matters at issue between the Department and the Respondent. This Amended Order supersedes and replaces the First Order.

The Department finds and the Respondent neither admits nor denies the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes (F.S.), and the rules promulgated and authorized in Title 62, Florida Administrative Code (F.A.C.). The Department has jurisdiction over the matters addressed in this Amended Order.

2. The Respondent is a municipal corporation in the State of Florida and a person within the meaning of Section 403.031(5), F.S.

3. The Respondent is the owner and is responsible for the operation of the following:

a) The G.T. Lohmeyer Wastewater Treatment Plant, a 56.6 million gallons per day, pure oxygen activated sludge facility with secondary effluent disposed of via 5 deep injection wells (Facility). The Facility is operated under Wastewater Permit No. FLA041378-014 (Permit), which was issued by the Department on May 4, 2016, and will expire on September 6, 2021. The Facility is located at 1765 SE 18<sup>th</sup> Street, Fort Lauderdale, Florida, 33309, in Broward County, Florida (Property). The Respondent owns the Property on which the Facility is located.

b) The domestic wastewater collection and transmission system (Collection System) serves the Respondent and its customers. The Collection System delivers the collected wastewater to the Facility for treatment and disposal.

4. The Department makes the following findings of fact and conclusions of law to which the

Respondent neither admits nor denies:

a) During the periods from January 1, 2014 to August 31, 2017 and December 10, 2019 to February 14, 2020, the City released untreated wastewater from the Collection System into surface waters and/or groundwaters of the State as follows:

Date	Volume (gallons)
02/05/17	123,041
4/28/17	1,500
4/30/17	1,350
5/19/17	9,874
5/26/17	154,270
6/14/17	3,000
6/19/17	3,900
6/30/17	3,000
8/4/2017	2,000
8/28/2017	100,000
8/30/2017	1,000
8/31/2017	23,730

Date	Volume (gallons)
12/30/16	17,460
12/19/16	145,887
12/17/16	2,545,560
12/01/16	4,820
07/18/16	79,800
06/23/16	10,620,000
06/23/16	3,217,501
6/23/16	852,499
06/22/16	1,000
03/18/16	94,828
02/16/16	1,820,000
02/14/16	1,000
01/07/16	6,525

Date	Volume (gallons)
10/29/15	177,250
10/26/15	100,965
10/23/15	279,930
10/20/15	13,500
10/14/15	1,000
10/08/15	2,000
09/28/15	76,308
09/20/15	2,000
09/06/15	10,000
08/19/15	8,000
07/31/15	3,600
07/05/15	5,000
06/29/15	3,335
05/09/15	50,400
04/30/15	25,000
01/26/15	1,500
01/22/15	12,900

Date	Volume (gallons)
12/22/14	73,815
11/16/14	4,200
07/16/14	46,575
07/10/14	24,480
05/18/14	212,500
05/06/14	4,000
03/31/14	1,600

<u>Date</u>	<u>Volume (gallons)</u>
<u>12/10/19</u>	<u>35,400,000</u>
<u>12/20/19</u>	<u>77,570,000</u>
<u>12/21/19</u>	<u>769,533</u>

<u>12/27/19</u>	<u>154,600</u>
<u>12/30/19</u>	<u>44,620</u>
<u>12/30/19</u>	<u>8,075</u>
<u>1/30/20</u>	<u>84,720,000</u>
<u>2/14/20</u>	<u>20,520,000</u>

The Department finds that the foregoing releases in Paragraph 4(a) violate Rules 62-604.130, 62-330 and 62-302, F.A.C., as well as Section IX, General Condition 5 of Wastewater Permit No. FLA041378-014 and Part I.D. of Phase I Municipal Stormwater Permit No. FLS000017-004. Furthermore, the releases from December 10, 2019 violate Consent Order OGC Case No.: 16-1487.

5. This Amended Order has been entered into by the Respondent for the purposes of settlement only. Accordingly, neither the recitals nor the Department's findings in this Amended Order, nor the terms and conditions of this Amended Order, nor the Respondent's compliance with those terms and conditions, shall be construed in any legal or administrative action, proceeding or litigation, as an admission that the Respondent has violated any statute, regulation, or ordinance or has otherwise committed a breach of any duty at any time, or of any fact, inference or conclusion of law.

Having reached a resolution of the matter, the Respondent and the Department mutually agree, and it is hereby **ORDERED**:

6. Respondent shall comply with the following corrective actions within the stated time periods:

a) No later than February 28<sup>th</sup>, 2018, the Respondent shall replace approximately 1900 linear feet (lf) of 12" diameter force main at high risk of failure along Las Olas Blvd. The cost of this project is estimated at \$1,500,000.00.

b) No later than May 31<sup>st</sup>, 2018, the Respondent shall replace approximately 11,620 lf of failing 30" diameter force main that connects Repump Station A, located on Sistrunk Blvd, to the force main located at the intersection of SW 6<sup>th</sup> Ave and 7<sup>th</sup> St. The cost of this project is estimated at \$8,700,000.00.

c) No later than September 30<sup>th</sup>, 2020, the Respondent shall complete the pump station rehabilitation and replacement projects listed in ***Exhibit A: Phase I Projects***, in order to facilitate existing flows capacity and future projected increase in demands.

d) No later than September 30<sup>th</sup>, 2020, the Respondent shall complete the infiltration/inflow (I/I) projects listed in ***Exhibit B: Phase I Projects***, in order to reduce flows and lower

peak demands and stresses on the system during rain events.

e) No later than September 30<sup>th</sup>, 2026, the Respondent shall complete the following force main rehabilitation projects listed in *Exhibit C of Phase II Projects*, in order to repair and/or replace the infrastructure with the highest risk of failure.

f) **Existing Schedule:** Within 90 days of September 27, 2017, the Respondent shall provide to the Department the existing schedule for repair, upgrade, or replacement of existing Collection System assets during the next 2 years, including schedules for repair, upgrade, or replacement of the existing force mains, gravity mains, isolation and other control valves, air release valves, access and conflict manholes, and pump stations.

g) **Mapping Plan:** Within 9 months of September 27, 2017, the Respondent shall submit a Plan to the Department for review and comment detailing how the Respondent will develop a complete map of the existing Collection System within the City's geographic boundaries, including all existing or in-construction force mains, gravity mains, isolation and other control valves, air release valves, access and conflict manholes, pump stations, and directional flow routes of each of these components to pump stations and the receiving Facility. The Department will provide comments on the Mapping Plan within 30 days of submittal by Respondent. Mapping will include both existing and under-construction components. Directional flows, including flows to any alternate Facility not belonging to the Respondent, will be shown on the maps. Inactive mains and related appurtenances with shut-off valves should be illustrated and highlighted to define their unique operationally inactive status. Maps will be maintained in such a manner that they can be accessed quickly and easily by maintenance and repair crews at all times and from multiple locations, to facilitate prompt and efficient responses to emergencies. As new construction is completed, the Respondent will incorporate as-built drawings of the new components into the maps. Within 21 months of September 27, 2017, the Respondent shall certify to the Department in writing that mapping is complete in accordance with the terms of this paragraph. Respondent shall contemporaneously provide the Department with a description of the storage and retrieval methods and the availability of the maps to City field staff.

h) **Force Main Condition Assessment:** Within 10 months of September 27, 2017, the Respondent shall submit to the Department for review and comment a plan for completing an assessment of the current condition of all force mains in the collection system within the Respondent's jurisdiction, in sufficient detail that the resulting assessment can be used to schedule improvements of aging or deteriorating pipes, connections, valves, and appurtenances. The plan shall include the methods to be used and a schedule for conducting the assessment. The Department will provide comments on the Force Main

Condition Assessment within 30 days of submittal by Respondent. The final completion date for the assessment shall be no later than 18 months from the date of Respondent's receipt of Department comments on the plan. Within 60 days of completion of the assessment, the Respondent shall submit to the Department a report summarizing the results of the condition assessment.

i) **Asset Management and CMOM Program Development Plan:** Within 11 months of September 27, 2017, the Respondent shall submit for Department review and comment a plan to develop an Asset Management and Capacity, Management, Operations and Maintenance Program (AM and CMOM Program). The Department will provide comments on the AM and CMOM Plan within 30 days of submittal by Respondent. The plan shall describe how the Respondent will develop the AM and CMOM Program, including the items required in Subpara. 6(k) below, and follow the Environmental Protection Agency's (EPA) guidance in the following references, available along with additional references via [www.epa.gov](http://www.epa.gov):

- EPA 305-B-05-002, *Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems*
- EPA 816-F-08-014, *Asset Management: A Best Practices Guide*

j) **Capacity Evaluation:** Within 20 months of September 27, 2017 the Respondent shall complete an evaluation of the capacity of the Collection System, including all existing force mains, gravity mains, and pump stations. Within 22 months of September 27, 2017, the Respondent shall submit to the Department a report summarizing the results of the capacity evaluation, specifically identifying any assets with insufficient capacity for current and known projected demands over the next 10 years.

k) **Asset Management and CMOM Program:** Within 18 months of Respondent's receipt of the Department's comments on the AM and CMOM Program Development Plan required in Subpara. 6(i) above, the Respondent shall submit for Department review and comment the written AM and CMOM Program for ongoing management of the Collection System. The Department will provide comments on the AM and CMOM Program within 30 days of submittal by Respondent. The Program shall be consistent with the EPA guidance referenced in Subpara. 6(i) above, and shall include the following:

- i) a description of grease trap ordinance requirements and the compliance monitoring and enforcement program conducted by the Respondent;
- ii) a description of how and when information from the mapping, capacity evaluation, force main condition assessment, manufacturer's maintenance and replacement recommendations, spill data, gravity sewer information, and other pertinent sources will be stored, periodically updated, and used in the ongoing Program;

iii) a description of how repairs, upgrades, and replacement of Collection System assets will be determined to be needed, prioritized, authorized, and funded, with priority given to those assets identified as critical within the City's Master Plan.

l) **Asset Management and CMOM Program Schedules:** At the time Respondent submits the Asset Management and CMOM Program to the Department for review and comment, Respondent shall also submit for Department review and approval (the Department shall provide a written response to the Respondent within 30 days of receipt) the Asset Management and CMOM Program Schedules listed below:

i) a schedule for implementing the AM and CMOM Program, including when any software upgrades or integrations needed for initial implementation of the Program will be completed and put into service, when databases the software relies upon will be populated with the information from the sources listed in 6(k)(ii) above, and when the AM and CMOM Program will be fully incorporated into planning, funding, procuring resources, and scheduling work;

ii) a schedule showing the completion date for construction of each Phase II Improvement Project identified in Exhibit C;

iii) a schedule for any other projects that need to be added to Phase II, as identified by the Force Main Condition Assessment.

m) Unless otherwise specified herein, Respondent has the right to challenge any final agency action including any determination by the Department hereunder, pursuant to Chapter 120 Fla. Stat. At the election of either the Respondent or Department, the Respondent and Department shall schedule an informal meeting to attempt a good faith resolution of any disputes that may arise under decision made hereunder; thereafter to the extent that the Respondent or Department remain aggrieved, the Department and Respondent may exercise any rights they may have under applicable statutes and administrative code rules.

n) Upon approval by the Department, the AM and CMOM Program implementation schedule and the Phase II improvements schedule shall be incorporated herein as enforceable parts of this Consent Order. It is the Respondent's responsibility to complete planning, budgeting and funding allocation, permitting, procurement, bidding and awarding each project, and initiation of construction on a schedule that will result in completion of construction by the dates required in this Amended Order. However, subsequent changes to schedules adopted pursuant to this Amended Order may be modified by mutual agreement of the Parties in writing.

o) Every 6 calendar months after the effective date of this Amended Order, the

Respondent shall submit to the Department a written progress report on the status and progress of projects being completed under this Amended Order, including the following information:

- i) the status of compliance or noncompliance with the applicable requirements of this Amended Order, and any reasons for noncompliance;
  - ii) the status of each of the Phase I and II projects listed in Exhibits A, B, and C;
- and
- iii) a projection of the work the Respondent will perform pursuant to this Amended Order during the 12-month period following the report.
- p) The Respondent shall submit progress reports to the Department on or before July 31, for the period from January 1 through June 30, and on or before January 31, for the period from July 1 through December 31 each year.

Respondent shall also comply with the additional following corrective actions within the stated time periods:

q) Within 9 months of the effective date of this Amended Order, Respondent shall install and connect at least 1 temporary emergency generator at the G.T. Lohmeyer wastewater treatment plant to power at least one injection well pump during periods when there is no electricity, and maintain the generator in place and operational until such time the permanent emergency generator(s) is installed and fully operational, pursuant to sub-paragraph 6(r) below. Notwithstanding the number of temporary generators installed at the Facility, Respondent shall remain responsible for all unauthorized discharges of wastewater pursuant to sub-paragraph 13(b) of this Order. All necessary permits shall be obtained by Respondent prior to installing the temporary generator(s) at the Facility.

r) Within 40 months of the effective date of this Amended Order, Respondent shall install permanent emergency generator(s) at the G.T. Lohmeyer wastewater treatment plant to supply sufficient power to operate the injection well pumping system at full permitted capacity during periods when there is no electricity. All necessary permits shall be obtained by Respondent prior to installing the permanent emergency generator(s) at the Facility.

s) Within 10 months of the effective date of this Amended Order, Respondent shall create and submit a plan (Rapid Response Plan) to the Department demonstrating steps to be taken to acquire rapid response assistance from private and other public entities to further mitigate the impacts of unauthorized discharges and reduce the amount of time it takes to stop unauthorized discharges of wastewater.

7. Notwithstanding any other time periods described above, Respondent shall complete all



corrective actions required by Paragraph 6 on or before September 30, 2026, and be in full compliance with Chapter 62-604, F.A.C., other than those excused delays agreed to by the Parties, as described in Paragraph 23.

8. Within 180 days of September 27, 2017, Respondent shall submit to the Department an updated written estimate of the total cost of the corrective actions in Subpara. 6(a) through 6(l), including costs of the Phase I improvements. Within 180 days of the completion of the Force Main Condition Assessment, Respondent shall submit to the Department an updated written estimate of the total cost of the Phase II projects in Exhibit C, along with the costs for any other assets in need of repairs, rehabilitation, or replacement as identified by the Force Main Condition Assessment. Each written estimate shall identify the information Respondent relied upon to provide the estimate.

9. The Respondent shall complete an environmental analysis of George English Lake, the Tarpon River, and Himarshee Canal (“the Waterways”) to assess the potential impacts caused by the December 2019, January 2020 and February 2020 unauthorized discharges.

a. Within 180 days of the effective date of this Amended Order, the Respondent shall provide to the Department an estimate of the amount of solids released from the sewage and an estimate of how much of the released solids remains in the Waterways and of that remaining amount, how much has settled to the bottom of the Waterways.

b. Within 180 days of the effective date of this Amended Order, the Respondent will develop and submit to the Department for approval, a plan to ascertain if the remaining solids in the Waterways are causing or contributing to violations of water quality standards as defined in Florida Administrative Code Rule 62-302 (Water Quality Assessment Plan). Within 90 days after the Department’s approval of the Water Quality Assessment Plan, the Respondent will submit a water quality evaluation report (Report) signed and sealed by a Professional Engineer licensed in Florida, in accordance and in compliance with the approved Water Quality Assessment Plan.

c. If the Report concludes that the remaining solids are causing or contributing to water quality standards violations, then, within 90 days of submittal of the Report, the Respondent will submit to the Department for approval, a Corrective Action Plan (CAP). The CAP, if required, shall include a compliance schedule with dates of completion for the deliverables listed in the CAP.

d. If impacts to the Waterways are determined to not have occurred, then, within 90 days of the submittal of the Report, the Respondent shall submit to the Department a surface water enhancement plan providing environmental benefits to the Waterways. The plan shall include a compliance schedule with dates of completion for the deliverables listed in the enhancement plan.



10. The Department shall provide Respondent with its written approval, approval with conditions or modifications as a contingency of approval, or disapproval for each of the remaining plans or reports required in Paragraphs 6 and report required in paragraph 9 of this Amended Order. Respondent shall revise and resubmit plans or reports with the Department's written comments within ten (10) days of Respondent's receipt of the Department's written comments unless such comments specify an alternative due date, in which case Respondent shall submit to the Department any revised submittal, specification, or schedule in accordance with the due date specified by the Department. Revised submittals are also subject to approval, approval with conditions and/or modifications, or disapproval by the Department following these approval procedures. Failure to meet the timeframes contained herein is subject to stipulated penalties as set forth in paragraph 12 below. Any revised submittal that is not approved or is not approved with conditions and/or modifications is considered noncompliant with the terms of this Order and is subject to stipulated penalties as set forth in paragraph 12 below. Upon receipt of the Department's written approval, or approval with conditions and/or modifications, Respondent shall implement the plans or reports in accordance with the schedule and provisions contained therein", rather than inserting the statement in each applicable paragraph.

11. Within 180 days of the effective date of this Amended Order, Respondent shall submit to the Department an updated written estimate of the total cost of the corrective actions in Subparagraphs 6(q) through 6(s). Each written estimate shall identify the information Respondent relied upon to provide the estimate.

12. Respondent agrees to pay to the Department stipulated penalties in the amount of \$1,000.00 per day for each and every day Respondent fails to comply with paragraphs 6 through 11 and 33 of this Amended Order.

13. For each day an unauthorized discharge from the Facility or the Collection System occurs during the effective period of this Amended Order, that does not qualify as Excusable Discharges as defined in subparagraph 13.b) below, Respondent agrees to pay stipulated penalties as follows:

a)	<u>Amount per day per Discharge</u>	<u>Discharge Volume</u>
	\$1000.00	Up to 5,000 gallons
	\$2,000.00	5,001 to 10,000 gallons
	\$5,000.00	10,001 to 25,000 gallons
	\$10,000.00	25,001 to 100,000 gallons
	\$15,000.00	In Excess of 100,000 gallons

b) If the Department elects to pursue this stipulated penalty option, the Department will evaluate each spill on a case by case basis to determine whether the spill was beyond Respondent's reasonable control; whether Respondent is exercising prudent wastewater utility practices to reduce the frequency of spills; and whether Respondent took timely and appropriate actions to reduce the environmental impact of the spill(s). A stipulated penalty will be applied to any spill where Respondent fails to provide the Department with sufficient information to demonstrate that the spill qualifies as an Excusable Discharge. For the purposes of this Order, an Excusable Discharge is a spill that resulted from a temporary, infrequent incident that was beyond the reasonable control of Respondent.

Excusable Discharges include, but are not limited to the following:

- i) Extraordinary acts of nature, including but not limited to, rainfall equal to or 6 inches of rain in a 24-hour period, hurricanes, tropical storms, extreme high-tide events, tornadoes, wildfires, lightning strikes, or events where a State of Emergency is declared;
- ii) Actions by third parties unrelated to Respondent, including construction accidents, vehicular accidents, or vandalism; actions related to a contractor acting on behalf of Respondent is not an Excusable Discharge;
- iii) Blockages that could not be prevented by reasonable measures and due diligence;
- iv) Unexpected sudden structural, mechanical, or electrical failure that could not be avoided by reasonable measures and due diligence; and
- v) Spills that are attributable to parts of the Collection

System that are undergoing rehabilitation that could not be avoided by reasonable measures and due diligence.

14. The Department may demand stipulated penalties on an annual basis at any time after violations occur beginning upon the effective date of this Amended Order. Respondent shall pay stipulated penalties owed within 60 days of the Department's issuance of written demand for payment and shall do so as further described in paragraph 21, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Amended Order. Any stipulated penalties assessed under this Paragraph shall be in addition to civil

penalties agreed to in Paragraph 15 and 17 of this Amended Order. A demand for stipulated penalties does not prevent the Department from pursuing other statutory relief, such as damages or injunctive relief. In addition, if a stipulated penalty is not applied pursuant to paragraph 13 above, the Department may pursue all statutory relief, including civil or administrative penalties.

15. For the violations listed in paragraph 4. a) beginning on 3/31/14 and ending on 8/31/17, Respondent shall pay \$339,577.00. This amount includes \$334,577.00 for civil penalties and \$5,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of the First Order.

16. In lieu of making cash payment of \$334,577.00 in civil penalties as set forth in Paragraph 15 above, Respondent has elected to off-set this amount by implementing an in-kind penalty project, attached hereto and incorporated herein as Exhibit F, which was approved by the Department (hereinafter In-Kind One) Respondent shall comply with all the requirements and time frames in Exhibit D entitled In-Kind Projects for In-Kind One.

17. For the violations listed in paragraph 4. a) during the period of 12/10/19 through 2/14/20, Respondent shall pay the Department \$2,116,500 within 90 days of the effective date of this Amended Order. This amount includes \$371,500 in stipulated penalties, \$1,740,000 for civil penalties and \$5,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Amended Order.

18. In lieu of making cash payment of \$2,111,500 in civil penalties as set forth in paragraph 17 above, Respondent may elect to offset this amount by implementing an in-kind penalty project, which must be approved by the Department. An in-kind project must be either an environmental enhancement or an environmental restoration project and may not be a corrective action requirement of the Amended Order or otherwise required by law. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least \$3,167,250. If Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election by certified mail within 30 days of the effective date of this Amended Order. Notwithstanding the election to implement an in-kind project, payment of the remaining \$5,000 in costs must be paid within 30 days of the effective date of the Amended Order.

19. If Respondent elects to implement an in-kind project as provided in paragraph 18, then Respondent shall comply with all the requirements and time frames in Exhibit E entitled “In-Kind Projects for In-Kind Two.”

20. In the event that Respondent elects to off-set civil penalties including stipulated penalties by implementing an in-kind penalty project which is approved by the Department, during the period that this Order remains in effect or during the effective date of any Department issued Permit to Respondent whichever is longer (Prohibited Transfer Duration), Respondent shall not transfer or use funds obtained by the Respondent from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System (hereinafter, Prohibited Transfer). Respondent shall annually certify to the Department using the Annual Certification Form located in Exhibit E to this Order that no Prohibited Transfer has occurred. In the event of any Prohibited Transfer, the In-Kind project option shall be forfeited, and entire civil penalty shall immediately become due and owing to the Department irrespective of any expenditures by the Respondent in furtherance of the In-Kind project.

21. Respondent shall make all payments required by this Amended Order by cashier's check, money order, City check or on-line payment. Cashier's check, money order, or City check shall be made payable to the “Department of Environmental Protection” and shall include both the OGC number assigned to this Amended Order and the notation “Water Quality Assurance Trust Fund.” Online payments by e-check can be made by going to the DEP Business Portal: <http://www.fldepportal.com/go/pay/>. It will take several days after this Order is final, effective, and filed with the Clerk of the Department before ability to make online payment is available.

22. Except as otherwise provided, all submittals required by this Order shall be submitted via email at [sed.wastewater@dep.state.fl.us](mailto:sed.wastewater@dep.state.fl.us), or sent to Wastewater Compliance Assurance Program, Department of Environmental Protection, 3301 Gun Club Road, MSC 7210-1, West Palm Beach, FL 33406.

23. Respondent shall allow all authorized representatives of the Department access to the Facilities and the Properties at reasonable times for the purpose of determining compliance with the terms of this Amended Order and the rules and statutes administered by the Department.

24. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in

complying with the requirements of this Amended Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day of the event and shall, within seven calendar days, notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

25. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Amended Order, hereby waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Amended Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Amended Order.

26. This Amended Order is a settlement of the Department's civil, administrative, and delegated authority arising under Chapter 403, Florida Statutes, to resolve the matters addressed herein. This Amended Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Amended Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

27. The Department hereby expressly reserves the right to initiate appropriate legal

action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Amended Order.

28. Respondent is fully aware that a violation of the terms of this Amended Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation, and criminal penalties.

29. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Order other than a dispute as described in paragraph 6(l). Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, F.S.

30. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

31. The terms and conditions set forth in this Amended Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), F.S.

32. This Amended Order is a final order of the Department pursuant to section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Amended Order will not be effective until further order of the Department.

33. Respondent shall publish the following notice in a newspaper of daily circulation in Broward County, Florida. The notice shall be published one time only within 15 days of the effective date of the Amended Order. Respondent shall provide a certified copy of the published notice to the Department within 10 days of publication.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NOTICE OF CONSENT AGREEMENT

The Department of Environmental Protection ("Department") gives notice of agency action of entering into an Amended Consent Order with the City of Fort Lauderdale, pursuant to

section 120.57(4), Florida Statutes. The Amended Consent Order addresses alleged unpermitted wastewater and effluent discharges from the City's wastewater facilities and associated wastewater collection/transmission systems to State waters, and the implementation plan to minimize further discharges. The Amended Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Southwest District Office, 13051 North Telecom Parkway, Temple Terrace, Florida 33637-0926.

Persons who are not parties to this Amended Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Amended Consent Order means that the Department's final action may be different from the position it has taken in the Amended Consent Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Amended Consent Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Amended Consent Order;
- d) A statement of when and how the petitioner received notice of the Amended Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Amended Consent Order.
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Amended Consent Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Amended Consent Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900



Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at Florida Department of Environmental Protection, Southwest District Office, 13051 North Telecom Parkway, Temple Terrace, Florida 33637-0926. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Amended Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

34. Rules referenced in this Order are available at:

<https://floridadep.gov/ogc/ogc/content/rules>.

CITY OF FORT LAUDERDALE  
ATTEST:

\_\_\_\_\_  
Jeffrey A. Modarelli, City Clerk  
City Clerk

\_\_\_\_\_  
Dean J. Trantalis,  
Mayor

(SEAL)

\_\_\_\_\_  
Chris Lagerbloom,  
City Manager

Approved as to Legal Form

\_\_\_\_\_  
Alain E. Boileau,  
City Attorney

DONE AND ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2020, in Palm Beach County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_  
Jason Andreotta  
District Director  
Southeast District

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk,  
receipt of which is hereby acknowledged.

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date

Copies furnished to:  
Lea Crandall, Agency Clerk

Mail Station 35

**EXHIBIT D**

**In-Kind Projects for In-Kind One**

A. Within sixty (60) days of the effective date, the City shall submit, by certified mail, a detailed in-kind project proposal to the Department for evaluation. The proposal shall include a summary of benefits, proposed schedule for implementation and documentation of the estimated costs which are expected to be incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the in-kind project.

B. If the Department requests additional information or clarification due to a partially incomplete in-kind project proposal or requests modifications due to deficiencies with Department guidelines, The City shall submit, by certified mail, all requested additional information, clarification, and modifications within fifteen (15) days of receipt of written notice.

C. If upon review of the in-kind project proposal, the Department determines that the project cannot be accepted due to a substantially incomplete proposal or due to substantial deficiencies with minimum Department guidelines; The City shall be notified, in writing, of the reason(s) which prevent the acceptance of the proposal. The City shall correct and redress all of the matters at issue and submit, by certified mail, a new proposal within thirty (30) days of receipt of written notice. In the event that the revised proposal is not approved by the Department, The City shall make cash payment of the civil penalties as set forth in Paragraph 15 of this Amended Order, within thirty (30) days of Department notice.

D. Within one-hundred twenty (120) days of the Effective Date, the City shall obtain approval for an in-kind project from the Department. If an in-kind project proposal is not approved by the Department within one-hundred twenty (120) days of the Effective Date, then The City shall make cash payment of the civil penalties as set forth in Paragraph 15 of this Amended Order, within thirty (30) days of Department notice.

E. Within one-hundred eighty (180) days of obtaining Department approval for the in-kind proposal or in accordance with the approved schedule submitted pursuant to Paragraph A above, The City shall complete the entire in-kind project.

F. During the implementation of the in-kind project, The City shall place appropriate sign(s) at the project site indicating that The City's involvement with the project is the result of a

Department enforcement action. The City may remove the sign(s) after the project has been completed. However, after the project has been completed the City shall not post any sign(s) at the site indicating that the reason for the project was anything other than a Department enforcement action.

G. In the event the City fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project or otherwise fails to comply with any provision of this paragraph, the in-kind penalty project option shall be forfeited and the entire amount of civil penalties shall be due from the City to the Department within thirty (30) days of Department notice. If the in-kind penalty project is terminated and The City timely remits the \$334,577.00 penalty, no additional penalties shall be assessed under Paragraph 15 of this Amended Order for failure to complete the requirement of this paragraph.

H. Within fifteen (15) days of completing the in-kind project, the City shall notify the Department, by certified mail, of the project completion and request a verification letter from the Department. The City shall submit supporting information verifying that the project was completed in accordance with the approved proposal and documentation showing the actual costs incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the project.

I. If upon review of the notification of completion, the Department determines that the project cannot be accepted due to a substantially incomplete notification of completion or due to substantial deviations from the approved in-kind project, The City shall be notified, in writing, of the reason(s) which prevent the acceptance of the project. The City shall correct and redress all of the matters at issue and submit, by certified mail, a new notification of completion within fifteen (15) days of receipt of the Department's notice. If upon review of the new submittal, the Department determines that the in-kind project is still incomplete or not in accordance with the approved proposal, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalty shall be due from the City to the Department within thirty (30) days of Department notice. If the in-kind penalty project is terminated and the City timely remits the \$334,577.00, no additional penalties shall be assessed under Paragraph 15 of this Amended Order for failure to complete the requirements of this paragraph.

**EXHIBIT E**  
**In-Kind Projects for In-Kind Two**

**I. Introduction**

**Proposal**

a. Within 60 days of the effective date of the Amended Order, Respondent shall submit, by certified mail, a detailed in-kind project proposal to the Department for evaluation. The proposal shall include a summary of benefits, proposed schedule for implementation and documentation of the estimated costs which are expected to be incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the in-kind project.

**Proposal Certification Form**

b. On the anniversary date of the Department's approval of the in-kind project proposal, for the term of this Consent Order or the term of the Respondent's permit, whichever is longer, the Respondent shall annually submit to the Department a Certification by notarized affidavit from a senior management official for the City of Fort Lauderdale who shall testify as follows:

**Annual Certification Form**

My name is \_\_\_\_\_ (print or type name of senior management official) and do hereby testify under penalty of law that:

A. I am a person with management responsibilities for the City of Fort Lauderdale budget and finances. During the twelve-month period immediately preceding the notary date on this Certification, there has not been any transfer or use of funds obtained by the City of Fort Lauderdale from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System.

B. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowingly submitting false information in this certification.

Sworn to and subscribed before me, by means of ☐ physical presence or ☐ online  
notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by

\_\_\_\_\_  
Personally, known or by Production of the following Identification \_\_\_\_\_

Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires:

Commission/Serial No.:

c. If the Department requests additional information or clarification due to a partially incomplete in-kind project proposal or requests modifications due to deficiencies with Department guidelines, Respondent shall submit, by certified mail, all requested additional information, clarification, and modifications within 15 days of receipts of written notice.

d. If upon review of the in-kind project proposal, the Department determines that the project cannot be accepted due to a substantially incomplete proposal or due to substantial deficiencies with minimum Department guidelines; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the proposal. Respondent shall correct and redress all the matters at issue and submit, by certified mail, a new proposal within 30 days of receipt of written notice. In the event that the revised proposal is not approved by the Department, Respondent shall make cash payment of the civil penalties as set forth in paragraph 17 above, within 30 days of Department notice.

e. Within 120 days of the effective date of the Amended Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable Respondent shall obtain approval for an in-kind project from the Department. If an in-kind project proposal is not approved by the Department within 120 days of the effective date of this Amended Order, then Respondent shall make cash payment of the civil penalties as set forth in paragraph 17 of this Amended Order, within 30 days of Department notice.

f. Within 180 days of obtaining Department approval for the in-kind proposal or in accordance with the approved schedule submitted pursuant to paragraph 2(a) above, Respondent shall complete the entire in-kind project.

g. During the implementation of the in-kind project, Respondent shall place appropriate sign(s) at the project site indicating that Respondent's involvement with the project is the result of a Department enforcement action. Respondent may remove the sign(s) after the project has been completed. However, after the project has been completed Respondent shall not post any sign(s) at the site indicating that the reason for the project was anything other than a Department enforcement action.

h. In the event, Respondent fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project or otherwise fails to comply with any provision of this paragraph, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalties shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the \$2,111,500 penalty, no additional penalties shall be assessed under paragraph 17 for failure to complete the requirement of this paragraph.

i. Within 15 days of completing the in-kind project, Respondent shall notify the Department, by certified mail, of the project completion and request a verification letter from the Department. Respondent shall submit supporting information verifying that the project was completed in accordance with the approved proposal and documentation showing the actual costs incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the project.

j. If upon review of the notification of completion, the Department determines that the project cannot be accepted due to a substantially incomplete notification of completion or due to substantial deviations from the approved in-kind project; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the project. Respondent shall correct and redress all the matters at issue and submit, by certified mail, a new notification of completion within 15 days of receipt of the Department's notice. If upon review of the new submittal, the Department determines that the in-kind project is still incomplete or not in accordance with the approved proposal, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalty shall be due from the Respondent to the Department within 30 days of Department



notice. If the in-kind penalty project is terminated and Respondent timely remits the \$ 2,111,500, no additional penalties shall be assessed under paragraph 17 for failure to complete the requirements of this paragraph.

EXHIBIT F

**In-Kind One**