

RESOLUTION 2024-40

RESOLUTION 2024-40, A RESOLUTION BY THE CITY OF FLAGLER BEACH, FLORIDA APPROVING A PROPOSAL FROM MCKIM AND CREED TO COMPLETE THE REQUIREMENTS OF A CONSENT ORDER WITH THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, AND A BUDGET AMENDMENT TO COVER THE EXPENSE, PROVIDING FOR CONFLICT AND EFFECTIVE DATE.

WHEREAS, the City agreed to a Florida Department of Environmental Protection (FDEP) Consent Order No. 23-0409 in December 2023, and

WHEREAS, the City has previously approved McKim and Creed as a professional consultant, and staff recommends engaging McKim & Creed to ensure compliance with the Consent Order.

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH:

SECTION 1. The City Commission approves the proposed McKim & Creed Scope of Services Summary (Exhibit A) to assist City compliance efforts with the FDEP Consent Order.

SECTION 2. The City Commission hereby approves a budget amendment in the amount of \$289,920 to move the funds to cover the expense.

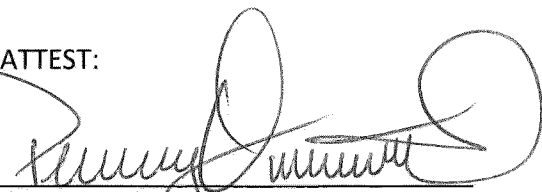
From:	To:
Utility Unrestricted Reserve 401.3800.389101	Utility Capital Equip. 4015351.303100.568


SECTION 3. All resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

SECTION 4. This Resolution shall become effective immediately as provided by law.

PASSED AND ADOPTED THIS 11th DAY OF JULY, 2024.

ATTEST:


Penny Overstreet, City Clerk

CITY OF FLAGLER BEACH, FLORIDA
CITY COMMISSION

Patti King, Mayor

Attachment: Exhibit A

June 28, 2024

Bill Freeman, P.E., City Engineer
City of Flagler Beach
Via Email: bfreeman@cityofflaglerbeach.com

**RE: Consent Order Response Assistance & Capacity Management Operation and Maintenance (CMOM) – Phase 1
Professional Services Task Order Proposal**

Dear Bill,

On behalf of the entire team at McKim & Creed, we thank the City for this opportunity to assist with the response to the City's FDEP Consent Order (CO) to resolve Case Number 23-0409. Our team is happy to present the following professional services proposal for Phase 1 of that effort. Considering the urgent need to address the CO and the States's deadlines, we have offered a proposal that represents the City's best use of the time remaining and the requirements of the CO. The table below summarizes our proposed tasks and fees. We estimate this phase of the CO response will require approximately 180 days of effort. For additional details on scope and schedule, please see **Attachment A – Scope of Services Summary**.

Task	Description	Task Fee	Fee Type
Task 1 –	Project Management	\$28,120	Lump Sum
Task 2 –	Field Research / Personnel Interviews	\$38,240	Lump Sum
Task 3 –	CO Compliance Plan & Reporting	\$44,800	Lump Sum
Task 4 –	Wastewater Emergency Response Plan	\$17,140	Lump Sum
Task 5 –	CMOM Development	\$161,620	Lump Sum
Total Proposed Fee		\$289,920	

Note: Lump Sum tasks will be invoiced monthly based on percent of scope completed for that task. Direct expenses for project-related costs (e.g., travel, print shop services) are included in the stated lump sum fees and will not be submitted for separate reimbursement.

This Phase 1 proposal covers the CO items that are the most time sensitive. This includes an evaluation of your Wastewater Treatment Plant that is required as well.

After your review of the details of our proposal, please let me know if you would like to schedule a time to discuss.

Sincerely,



Mario E. Loaiza, P.E., F.ASCE
Regional Manager



Charles Hill, P.E., BCEE
Client Manager

ATTACHMENT A
SCOPE OF SERVICES SUMMARY

Proposal No.: 242178
Project Name: Consent Order Response and CMOM – Phase 1
Project Jurisdiction: City of Flagler Beach, Florida
Proposal Date: June 28, 2024

Pursuant to the terms of its Master Contract for Professional Services, dated March 1, 2024, McKim & Creed, Inc. (Consultant) is providing this scope of services to the City of Flagler Beach, Florida (City) for professional services related to Consent Order (CO) Response Assistance & CMOM development.

PROJECT UNDERSTANDING

The overall scope of this project is focused on addressing the requirements of the Florida Department of Environmental Protection Consent Order for Case Number 23-0409. It is imperative to communicate with the State in a timely manner to avoid additional penalties. McKim & Creed understands that the City has the following goals:

- Goal 1 – Address the Requirements of the CO
- Goal 2 – Communicate with the State in a timely manner
- Goal 3 – Convert from responding to Sanitary Sewer Overflows to preventing them

At this time, the City desires to proceed with Phase 1 based on the need to respond quickly, with an understanding that future Phases will be necessary.

PROPOSED SCOPE AND FEE

Details of our proposed scope of services, fees, and deliverables associated with Phase 1 of the Consent Order Response and CMOM development effort are outlined on the following pages.

TASK 1 – PROJECT MANAGEMENT **\$28,120 Lump Sum**

This task includes general project administration and management tasks such as meetings and general communication with the City, project documentation, management of proposed scope, fee, and schedule, and project invoicing.

Deliverables for this task will be the following:

- 1) Project kick-off meeting hosted on Microsoft Teams between City and Consultant to confirm Phase 1 objectives, schedule, milestones, etc.
- 2) Regular coordination meetings between City and Consultant, assumed to be held on a bi-weekly basis and typically hosted on Microsoft Teams. In-person meetings can be coordinated on an as-needed basis, if preferred.
- 3) Monthly invoicing accompanied by a project status summary memo.

TASK 2 – FIELD RESEARCH / PERSONNEL INTERVIEWS

\$38,240 Lump Sum

Consultant will solicit and review information from the City and other publicly available sources, including prior studies, plans, surveys, as-builts, permits, and similar sources from which data on existing wastewater infrastructure and related elements can be obtained. Consultant will meet with City Utility Staff to review all existing Emergency Response and Sanitary Sewer Overflow policies and procedures and to discuss best practices.

M&C will review all Wastewater Collection system mapping and available data. M&C will incorporate any newer data collected as part of the "in-kind" project as well.

Note: We understand that Mrs. Jenifer Crews, Public Works Supervisor, will be our primary point of contact when seeking records from the City. (386-285-7737 / jcrews@cityofflaglerbeach.com).

Deliverables for this task will be the following:

- 1) Cataloged PDF inventory of all sourced data.
- 2) Memo-style records of conversations with City personnel.

This task will not include creation of any GIS shape files, or other mapping deliverables.

TASK 3 – CO COMPLIANCE PLAN & REPORTING

\$44,800 Lump Sum

Consultant will prepare a compliance plan in coordination with the City to respond to the State as required by the CO. This compliance plan will include a schedule to prevent and minimize sanitary sewer overflows and reduce infiltration and inflow into the collection system and to address exceedances for Total Recoverable Iron and Total Phosphorous (annual loading). The Compliance Plan may involve modifications to the WWTP Facility, recommend modifications to the treatment process, modifications to the sewer collections system or reductions in the amounts of contaminants entering the WWTP facility. M&C staff will provide an assessment of the WWTP as part of this task.

Deliverables for this task will be the following:

- 1) Signed and Sealed Compliance Plan
- 2) Compliance Schedule
- 3) Compliance Report to the State required now and in six months.

This task will not include BIOWIN modeling, or in-depth wastewater process reviews outside of what is necessary to address the Consent Order. This task will also not cover the design of solutions to any WWTP deficiencies identified.

TASK 4 – WASTEWATER EMERGENCY RESPONSE PLAN

\$17,140 Lump Sum

Consultant will perform a peer review of the City's current Wastewater Emergency Response Plan and revise as necessary to comply with the States requirements. These include utility staff instructions on handling unauthorized wastewater discharges, how staff will access critical information, who has authority to direct the response, how internal communications are handled, how and when sampling of surface waters will be conducted, how equipment and materials will be obtained, how and when required notifications will be made to the State, how discharge volumes will be estimated, how the event will be documented and tracked, numbers and types of generators, pumps, vacuum trucks, fuel and personnel will be kept ready, which contractors and Mutual Aid Agreements are in place, and public education campaign as required by the State.

Deliverables for this task will be the following:

- 1) New Wastewater Emergency Response Plan

TASK 5 – CMOM DEVELOPMENT

\$161,620 Lump Sum

Consultant will develop a documented Capacity, Management, Operation, and Maintenance (CMOM) program in accordance with US EPA document 305-B-05-002 dated January 2005 ("Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems"). This effort will include the "self-assessment" results from staff interviews. The CMOM is a framework for municipalities to identify and incorporate widely accepted wastewater industry practices to better manage, operate, and maintain collection systems. It will also be used to identify capacity constrained areas of the collection system and provide guidelines on how to respond to sanitary sewer overflow (SSO) events. The CMOM will help optimize the use of human and material resources by shifting maintenance activities from "reactive" to "predictive" leading to cost savings and reducing regulatory noncompliance. The CMOM planning framework covers operation and maintenance (O&M) planning, capacity assessment and assurance, capital improvement planning, and financial management planning.

Deliverables for this task will be the following:

- 1) Draft CMOM
- 2) Final CMOM

As there are many unknowns regarding the wastewater collection system conditions and potential deficiencies, we are unable to scope all the efforts and designs for engineering solutions that may be required to address all items. This CMOM effort will be based solely on records that can be provided by the City. This draft may also identify deficiencies based on the first draft with a schedule to address them in future Phases.

MILESTONES AND SCHEDULE

The following milestones and schedules are contemplated for the purposes of this proposal, and these may be refined after Notice to Proceed. Interim progress updates and deliverables will be reviewed with the City at recurring coordination meetings between milestone dates. The schedule below assumes approval of this scope and fee will be issued at the next City Commission Regular Meeting, followed by preparation and execution of the task order and receipt of Notice to Proceed in July 2024.

- 1) Kick-Off MeetingWithin 1 week of NTP
- 2) Field Research ±2 wks from kickoff
- 3) CO Compliance Plan ±4 wks from Field Research
- 4) Wastewater Emergency Response Plan ±8 wks from NTP
- 5) CMOM Development ±24 wks from NTP

Overall Schedule for Phase 1 Scope of Services..... ±25 weeks
(Not including City review periods, public notice periods, or other factors outside of Consultant's control.)

ADDITIONAL SERVICES

Services requested by the City other than those specifically listed in this Scope of Services will be considered Additional Services for which the City and Consultant will mutually agree to additional fee and time prior to the execution of the services.

Please be advised of the following:

1. Evaluation of wastewater infrastructure not specifically described in scope above is not included.
2. Permitting assistance is not included.
3. Record drawings, water quality, and operations data required to support the evaluation will be provided by the City in accordance with the project schedule for data collection.
4. Evaluations for structural integrity, lead, asbestos, flood elevation, wind loading, and storm surge for existing structures are not included. Architectural and structural services for any building modifications are not included. If information suggests that further evaluation is needed to design and construct the intended improvements, additional services will be negotiated and amended to the scope of the project.
5. The following items are specifically excluded from the design:
 1. Field verifying existing construction and information indicated on existing record drawings, or field survey.
 2. Non-destructive testing of existing structural and architectural components. In the event such testing is warranted an amendment to the proposal will be provided to CITY subject for acceptance.
 3. HVAC systems
 4. Plumbing and fire protection/sprinkler system design

5. Hazardous materials abatement design
 6. Code related upgrades outside of the project scope of work
 7. Statements of Special Inspection
-
6. Modeling, geotechnical engineering, architectural and landscaping designs are not included as part of this project.
 7. Wetland impacts, mitigation plans and protected species permitting; maintenance of traffic plans; environmental services; and tree permitting are not anticipated and are not included in this scope of work.
 8. City will provide as-built/record documents of the existing facilities, utilities, and improvements within the service area in PDF format.
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**END OF ATTACHMENT A
SCOPE OF SERVICES SUMMARY**



FLORIDA DEPARTMENT OF Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256

Section 7, Item c.

RON DESARMS
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

December 22, 2023

Sent electronically to: dmartin@cityofflaglerbeach.com

Mr. Dale Martin, City Manager
City of Flagler Beach
105 Second Street
Flagler Beach, FL 32136

SUBJECT: Department of Environmental Protection v. City of Flagler Beach
OGC File No. 23-0409
Facility ID No. FL0026611
Flagler County

Dear Mr. Martin:

Enclosed is a copy of the executed Consent Order to resolve Case Number 23-0409. The effective date of this Order is December 22, 2023, and all timeframes will be referenced from this date.

As a reminder, a Consent Order is a binding legal document and was voluntarily entered into by both parties.

Should you have any questions concerning the Consent Order, please contact Tom Kallemeyn, at (904) 256-1606, or via email at Thomas.Kallemeyn@floridadep.gov. Your continued cooperation in the matter is appreciated.

Sincerely,

A handwritten signature in black ink that reads "T.G. Kallemeyn".

Thomas G. Kallemeyn
Assistant Director

Enclosure: Executed Consent Order #23-0409

ec: Johnny Lynn: jlynn@cityofflaglerbeach.com
FDEP-OGC: Lea Crandall
FDEP-NED: Joni Petry, Herndon Sims, Thomas Kallemeyn, Shannon Taylor, Dung Vo,
DEP_NED

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	NORTHEAST DISTRICT
)	
v.)	OGC FILE NO. 23-0409
)	
CITY OF FLAGLER BEACH)	
_____)	

CONSENT ORDER

This Consent Order (Order) is entered into between the State of Florida Department of Environmental Protection (Department) and City of Flagler Beach (Respondent) to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent admits 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 Order.
2. Respondent is a person within the meaning of Section 403.031(9), F.S.
3. Respondent is the owner and is responsible for the operation of the Flagler Beach Wastewater Treatment Facility (WWTF), a 1.0 million gallons per day (MGD) annual average daily flow (AADF) domestic wastewater treatment facility consisting of a automatically cleaned bar screen with integral compactor, one oxidation ditch, two secondary clarifiers, two chlorine contact chambers (0.021 MG each), one dechlorination chemical feed system, one sludge holding tank (0.215 MG), eight sludge drying beds, and one Parshall Flume effluent flow meter (Facility). The Facility is also authorized to blend up to 0.50 MGD maximum daily flow reverse osmosis (RO) concentrate water from the City’s nano-filtration potable water system. The final treated effluent is discharged to the Intracoastal Waterway. The domestic wastewater biosolids are treated to meet Class B requirements and applied on approved land application sites. The

Facility is operated under Wastewater Permit No. FL0026611 (Permit), which was issued on July 31, 2019, and will expire on July 31, 2024. The Facility is located at 2000 Avenue A, Flagler Beach, Florida, 322136, in Flagler County, Florida (Property). Respondent owns the Property on which the Facility is located.

4. The Department conducted a compliance evaluation and sanitary sewer inspection on November 18, 2022 and file review on October 29, 2023, and finds that the following violations occurred:

a) Respondent did not have a Sanitary Sewer Overflow Plan (SSOP) in violation of Rules 62-600.410(1) and 62-604.500(4)(b), F.A.C.

b) Respondent reported final effluent exceedances for Enterococci, Total Recoverable Iron, pH, Total Phosphorus (annual loading), Total Suspended Solids, and Total Radium 226 + Radium 228 from September 2020 through October 2023.

c) Respondent failed to report sanitary sewer overflows in accordance with Section X.20. of the permit in violation of Chapter 403, F.S. and Rule 62-604.130(1), F.A.C.

d) Additionally, Respondent had the following sanitary sewer overflows in violation of Rules 62-604.500(3) and 62-620.300(1), F.A.C.

I) On December 26, 2020, a 25-gallon spill from an overflowing manhole.

II) On October 18, 2021, a 70-gallon spill from a force main break.

III) On March 30, 2022, a 200-gallon spill from a scum pit overflow.

IV) On May 5, 2022, a 10,000-gallon spill from a crack in a force main.

V) On September 29, 2022, the WWTF designed for a flow of 1.0 MGD AADF; received flows due to Hurricane Ian and exceeded 2.0MGD for approximately two (2) days. The result was 1.5 million gallons of partially treated wastewater overflowed from the plant because of inflow and infiltration. The overflow stayed on property at 2000 Avenue A and did not reach surface waters.

VI) On November 11, 2022, a 3,000-gallon spill from the collection system during Tropical Storm Nicole.

VII) On November 11, 2022, 1 million gallons overflowed from a break in the gravity line during Tropical Storm Nicole. The overflow stayed on property at 2000 Avenue A and did not reach surface waters. A vactor truck was used to recover approximately 95% of the volume.

Having reached a resolution of the matter Respondent and the Department mutually agree and it is

ORDERED:

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

6. Within 120 days of the effective date of this Consent Order, Respondent shall submit to the Department a plan with schedule to prevent and minimize sanitary sewer overflows and reduce infiltration and inflow into the collection system and to address exceedances for Total Recoverable Iron and Total Phosphorous (annual loading), (hereinafter, Compliance Plan).

a) The Compliance Plan may involve modifications to the Facility, modifications to the treatment processes, modifications to the collections system or reductions in the amounts of contaminants entering the facility. The Compliance Plan shall be prepared and sealed by a professional engineer registered in the State of Florida and shall include a time schedule by which compliance shall be achieved. Respondent must receive written notification of review and acceptance of the Compliance Plan from the Department (Notification) prior to implementation. If the Compliance Plan is deemed incomplete by the Department, or if the Department Requests Further Information (RFI), the Respondent shall provide this information in a written response within 30 days of the date of the RFI.

b) The Compliance Plan shall be implemented within 60 days of the date of Notification or the timeframe included within the accepted Compliance Plan.

c) Any design modifications to remedy the violations identified in paragraph 4 above and to ensure the Facility and associated collection system, will function in full

and consistent compliance with all applicable rules shall be prepared and submitted to the Department under seal by a professional engineer registered in the state of Florida.

d) Respondent shall submit a complete application for a Department wastewater permit to construct the modifications submitted pursuant to the Compliance Plan, if such permit is required. In the event the Department requires additional information to process the permit application, Respondent shall provide a written response to information requested by the department within 30 days of the date of the request.

e) Within 60 days after completion of the construction, Respondent shall submit to the Department a Certification of Completion, prepared and sealed by a professional engineer registered in the State of Florida, stating that modifications to the Facility and collection system have been constructed in accordance with the provisions of the Permit or, if no Permit is required the design modification(s) submitted pursuant to the Compliance Plan.

7. Respondent shall comply with the following discharge limitations and other requirements set forth in the Permit:

a. Beginning on the first day of the month following the effective date of this Order and lasting until July 31, 2024, the interim limits are as shown in Table 10, below:

Table 1- Interim Limits

Parameter	Units	Max/Min	Limit	Statistical Basis	Frequency of Analysis	Monitoring Site Number	Sample Type
Total Phosphorus, (as P)	lb/yr	Max	6900	Annual Total	Monthly	CAL - 1	Calculated

b. Tests conducted pursuant to this monitoring program shall conform to Rule 62-4.246, Florida Statutes, Chapters 62-160 and 62-660, Fla. Admin. Code, and 40 Code of Federal Regulations 136, as appropriate.

c. These monitoring requirements do not act as State of Florida Department of Environmental Protection Wastewater Permit effluent limitations, nor do they authorize or otherwise justify violation of the Florida Air and Water Pollution Control Act, Part I, Chapter 403, Florida Statutes, during the pendency of this Order.

8. Within 365 days of the effective date of this Consent Order, Respondent shall develop a documented Capacity, Management, Operation, and Maintenance (CMOM) program in accordance with US EPA document 305-B-05- 002 dated January 2005 ("Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems").

9. Within 528 days of the effective date of this Consent Order, Respondent shall fully implement for the entire system, a documented Capacity, Management, Operation, and Maintenance (CMOM) program in accordance with US EPA document 305-B-05- 002 dated January 2005 ("Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems").

10. Within 180 days of the effective date of this Consent Order, Respondent shall provide an updated comprehensive wastewater Emergency Response Plan as part of the collection system Operations & Maintenance Manual that is consistent with Rule 62-604.500, F.A.C., and details the City's (1) SSO response plans including surface water quality sampling protocols, and (2) hurricane and severe storm preparedness and response.

The Emergency Response Plan shall include:

(i) The steps staff shall follow upon discovery of an unauthorized discharge, with the goal of immediately limiting the threat to public health and the environment by stopping the discharge, limiting the extent of impacts, and controlling public access to impacted areas;

(ii) Where and how staff may rapidly access information regarding the locations of pipes, valves, pumps, and other components of the system for purposes of responding to an unauthorized discharge;

(iii) Who has authority to direct a response, including acquiring equipment or

materials, mobilizing and directing staff and contractors, and initiating required notifications;

(iv) How internal communications will be conducted, beginning with notification of the person authorized to direct the response when an unauthorized discharge is discovered;

(v) How and when sampling of surface waters will be conducted, if necessary, who will collect samples and how the samples will be handled and transported to a certified laboratory, and what parameters will be analyzed, with analyses to include *Escherichia coli* for Class III fresh waters and *Enterococci* for Class III marine waters. Sampling locations should be selected to reflect (1) background/upstream conditions not receiving effluent or sewage, (2) the impacted area as close as possible to where the wastewater entered the water body, and (3) the impacted area downstream of or outward from the point in which the effluent or sewage entered the waterbody, with multiple sample points as needed to demonstrate the extent of the impacts.

(vi) Where and how equipment or materials may be obtained, how staff may be dispatched, and how contractors may be mobilized to respond to the discharge and to repair the damage or correct the problem that resulted in the discharge;

(vii) How and when the required notifications will be made and updates provided to the Department, other regulatory agencies, and the public, including signs and other measures prepared in advance for public access control, and specifically including;

1) Oral notification to the department for all incidents within 24 hours of discovery and/or the State Watch Office at (800) 320-0519, for unauthorized discharges greater than 1,000 gallons or that may endanger public health or the environment within 24 hours of discovery, as describe under permit condition X.20;

2) Respondent shall report all noncompliance events related to sanitary sewer overflows or bypass events to the Department electronically using the Department's Business Portal at <http://www.fldepportal.com/go/> (via "Submit" followed by "Report" or "Registration/Notification").

3) The Department's Public Notice of Pollution may also be reported

through the Business Portal webpage above or at <http://prodenv.dep.state.fl.us/DepPNP/user/pnpRequest> for unauthorized discharges greater than 1,000 gallons or that may endanger public health or the environment within 24 hours of discovery, and;

4) A written report submitted to the Department within 5 days of discovery to include the following information:

- i. What is the final spill volume of the SSO?
- ii. Did the SSO reach surface waters?
- iii. How much of the SSO's volume reached surface waters, if any?
- iv. How much volume of the SSO was recovered?
- v. How much volume of the SSO was not recoverable?
- vi. Describe what happened to cause the SSO;
- vii. Describe the actions taken to remediate the SSO; and
- viii. Describe the actions taken, or to be taken, to prevent future SSOs of this nature.

(viii) How discharge volumes will be estimated, basing calculations on such factors as pipe size, pressure, size of opening, and any other applicable information;

(ix) How the event will be documented and tracked, and how the information will be incorporated into Respondent's management of the sanitary sewer system;

(x) Numbers and type of portable or fixed generators, bypass pumps, vacuum trucks, transport vehicles, personnel, and quantities of fuel to be kept in readiness for emergencies, and how items will be mobilized and deployed to keep pump stations and wastewater treatment and disposal operating during a significant power outage event,

(xi) What outside resources, such as contractors, Mutual Aid Agreements or FlaWARN, may be called upon when needed, how the request for assistance is handled, what documentation is necessary as work proceeds, and how the outside assistance will be supervised, accounted for, and coordinated with Respondent's own equipment and personnel,

(xii) A public education campaign with 3 components:

- 1) outreach to customers via social media and other means prior to hurricane season, addressing sanitary sewer overflow prevention through maintenance of service connections and grease traps, not opening cleanouts or manholes, and preventing blockages,
- 2) outreach as a predicted event approaches (e.g., hurricane), addressing what customers should do or should avoid to prevent or be prepared for sanitary sewer overflows, and how customers can get information regarding their system before the storm,
- 3) outreach after the event, addressing how to deal with backups and floodwaters, proper cleanup, health precautions, and how to get information about the sewer system's status or report problems.

11. Every six months after the effective date of this Order and continuing until all corrective actions have been completed, Respondent shall submit to the Department a written report containing information about the status and progress of projects being completed under this Order, information about compliance or noncompliance with the applicable requirements of this Order, including construction requirements and effluent limitations, and any reasons for noncompliance. These reports shall also include a projection of the work Respondent will perform pursuant to this Order during the 12-month period which will follow the report. Respondent shall submit the reports to the Department within 30 days of the end of each six-month period.

12. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$17,750.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$16,750.00 for civil penalties and \$1,000 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this

Order. The civil penalty in this case includes two violations that each warrant a penalty of \$2,000.00 or more.

13. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraphs 5 through 11 of this Order.

The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment, and shall do so as further described in paragraph 16 below. Nothing in this Paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 11 of this Order.

14. In lieu of making payment of \$16,750 in civil penalties as set forth in paragraph 12 above, Respondent may elect to off-set 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, environmental restoration, or a capital/facility improvement project and may not be a corrective action requirement of the Order or otherwise be 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 project shall be one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least \$25,125.00. If the Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election by certified mail within 15 days of the effective date of this Consent Order. Notwithstanding the election to implement an in-kind project, payment of the remaining \$1,000 in Department costs must be paid within 30 days of the effective date of the Consent Order.

15. In the event that Respondent elects to off-set civil 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 on Exhibit A 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.

16. If Respondent elects to implement an in-kind project as provided in paragraph 13, the respondent shall comply with all the requirements and time frames in Exhibit A entitled In-Kind Projects.

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

18. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Abhi Maturi, Department of Environmental Protection, Northeast District Office. Online payments may be made at the FDEP Business Portal;

<https://www.fldepportal.com/DepPortal/go/home>18. Respondent shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

19. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property,

(a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Order.

20. 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 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 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 provision or 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.

21. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally 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 Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

22. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This 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 Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

23. 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 Order.

24. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$15,000.00 per day per violation, and criminal penalties.

25. 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. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, F.S.

26. 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.

27. The terms and conditions set forth in this 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.

28. This Consent 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 Consent Order will not be effective until further order of the Department.

29. Respondent shall publish the following notice in a newspaper of daily circulation in Flagler County, Florida. The notice shall be published one time only within 15 days of the effective date of the 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 ORDER

The Department of Environmental Protection ("Department") gives notice of agency action of entering into a Consent Order with CITY OF FLAGLER BEACH pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the sanitary sewer overflows at 2000 Avenue A Flagler Beach, Florida 32136 and collection system, as well as effluent exceedances. The 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, Northeast District Office.

Persons who are not parties to this 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 Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

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

- a) The name and address of each agency affected and each agency's file or identification number, if known;
- b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; 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; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

- c) A statement of when and how the petitioner received notice of the agency decision;
- d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.


The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at Agency_Clerk@floridadep.gov, 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 Northeast District Office. 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 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.

30. Rules referenced in this Order are available at:

<https://floridadep.gov/water/water/content/water-resource-management-rules>

FDEP vs. City of Flagler Beach
Consent Order, OGC File No. 23-0409
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FOR THE RESPONDENT:




Dale Martin
City Manager

12/18/23
Date

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 22nd day of December 2023, in Duval County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Gregory J. Strong
District Director
T6K Northeast District Office

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



Clerk

December 22, 2023

Date

Copies furnished to:

FDEP OGC: Lea Crandall, Agency Clerk, Mail Station 35 (executed copy)
FDEP-NED: Abhi Maturi, Herndon Sims, Joni Petry, DEP_NED, Tom Kallemeyn
WCAPHQ@dep.state.fl.us (executed copy)

Exhibit A

In-Kind Projects

I. **Introduction**

Proposal

a. Within 60 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable, 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. The proposal shall also include a Certification by notarized affidavit from a senior management official for the City of Flagler Beach who shall testify as follows:

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 _____ (print or type name of Respondent) budget and finances. During the eighteenth month period prior to the effective date of Consent Order OGC Case No.: _____ there has not been any transfer or use of funds obtained by the _____ (print or type name of 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.

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.: _____

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 _____ (print or type name of Respondent) 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 _____ (print or type name of 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.

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 payment of the civil penalties as set forth in paragraph above, within 30 days of Department notice.

e. Within 120 days of the effective date of this Consent 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 Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable then Respondent shall make payment of the civil penalties as set forth in paragraph above, 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 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 \$16,750 penalty, no additional penalties shall be assessed under paragraph 13 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 \$16,750, no additional penalties shall be assessed under paragraph 12 for failure to complete the requirements of this paragraph.