



FLORIDA DEPARTMENT OF Environmental Protection

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

Ron DeSantis
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,


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

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,



City of Flagler Beach

P.O. Box 70 • 105 South Second Street
Flagler Beach, Florida 32136
Phone (386) 517-2000

January 3, 2024

Mr. Abhi Maturi
Department of Environmental Protection
Northeast District Office
8800 Baymeadows Way West, Suite 100
Jacksonville FL 32256

Dear Mr. Maturi:

The City of Flagler Beach ("City") and the Florida Department of Environmental Protection ("Department") entered into a Consent Order ("Order") to resolve Case Number 23-0409. The effective date of said Order is December 22, 2023.

In accordance with Paragraph 14, the City hereby notifies the Department of its election to implement an in-kind project. The value of the in-kind project will exceed the cost of one-and-a-half times the civil penalty (\$25,125).

As further described in Exhibit A to the Order, upon notification from the Department that applying the stipulated penalties to an in-kind project is acceptable, the City will submit to the Department, within sixty days, a detailed in-kind project proposal for evaluation.

City officials and staff look forward to working with State officials and staff throughout (and beyond) 2024.

If you have any questions, please contact me.

Sincerely,

Dale L. Martin
City Manager

Cc: D. Andrew Smith (City Attorney)



City of Flagler Beach

P.O. Box 70 • 105 South Second Street
Flagler Beach, Florida 32136
Phone (386) 517-2000

February 19, 2024

Mr. Abhi Maturi
Department of Environmental Protection
Northeast District Office
8800 Baymeadows Way West, Suite 100
Jacksonville, FL 32256

Dear Mr. Maturi:

Under the conditions of the current Consent Order (“Order”; Case Number 23-0409) between the Department of Environmental Protection (“Department”) and the City of Flagler Beach (“City”), and based upon acceptance by the Department for the City to pursue an “in-kind” project in lieu of a civil penalty (correspondence, J. Petry to D. Martin, Jan 23, 2024; attached), please find attached the City’s proposal for an in-kind project to further address specific challenges cited in the Order.

The Order (Section 4 d V) indicates that a significant overflow (described as 1.5 million gallons of partially treated wastewater) was due to inflow and infiltration. The impact of inflow and infiltration has significant design and cost implications as the City works to improve its wastewater collection and treatment system. To mitigate the effects of inflow and infiltration, the City has embarked upon an effort to re-line wastewater collection mains as well as the wastewater connections to individual properties (commonly referred to as “lateral” connections). The budget for the re-lining project is approximately \$750,000, of which approximately \$500,000 has been expended (the project is funded, in part, with a grant from the St. Johns River Water Management District).

It is imperative, however, that before significant additional expenditures and efforts are initiated for re-lining, the initial efforts should be validated: have the areas of the City that have been re-lined demonstrating lower levels of inflow and infiltration? If the data proposed to be collected as part of this in-kind project illustrate that the re-lining is reducing inflow and infiltration, the City can confidently (and enthusiastically) continue the re-lining program. On the other hand, if the data indicates minimal effect from the re-lining, it will be critical for the City to re-evaluate mitigation efforts, especially with the current design effort to appropriately scale the City’s proposed new wastewater treatment facility.

Mr. Dale L. Martin, City Manager; dmartin@cityofflaglerbeach; mobile (904) 557-5047

The City has established a new relationship with McKim & Creed, a qualified consulting engineering firm. In addition to the proposed in-kind project, McKim & Creed has been charged with developing a comprehensive review of the City's stormwater challenges (tidal flood, weather events, sea level rise, and development) which will unquestionably aid the City's wastewater mitigation and improvement efforts.

I look forward to your review and support for the proposed in-kind project as part of the Order. As mentioned previously, City officials and staff look forward to working with State officials and staff to address the challenges noted in the Order.

If you have any questions, please contact me.

Sincerely,



Dale L. Martin
City Manager

Attachments:

Correspondence, J. Petry to D. Martin (January 23, 2024)
Proposal Certification Form (February 19, 2024)
Proposed In-Kind Project, McKim & Creed (February 16, 2024)

Cc:

City Commission, Flagler Beach
D. Andrew Smith (City Attorney)
E. Fernandez, Attorney
C. Hill, McKim & Creed

Dale Martin

From: Petry, Joni <Joni.Petry@FloridaDEP.gov>
Sent: Tuesday, January 23, 2024 2:18 PM
To: Dale Martin
Cc: Kallemeyn, Thomas; Maturi, Abhi; Sims, Herndon; dsmith@shepardfirm.com; edgar@anfieldflorida.com
Subject: RE: Flagler Beach

You don't often get email from joni.petry@floridadep.gov. [Learn why this is important](#)

Mr. Martin,

The Department is agreeable to Flagler Beach pursuing an in-kind project in lieu of the payment of civil penalties in the Consent Order. In Exhibit A, the language “of the Department’s notification that applying stipulated penalties to an in-kind project is acceptable” is specific to stipulated penalties. An in-kind project proposal should be submitted by February 20, 2024 for Departments review and consideration. The project must be approved by the Department.

If you have any questions regarding the documentation needed for the in-kind project, please feel free to reach out to myself and Abhi Maturi.



Joni Petry
Environmental Administrator
Florida Department of Environmental Protection
Northeast District – Compliance Assurance
Joni.Petry@FloridaDEP.gov
Office: 904-256-1606

From: Dale Martin <dmartin@cityofflaglerbeach.com>
Sent: Monday, January 22, 2024 3:16 PM
To: Kallemeyn, Thomas <Thomas.Kallemeyn@FloridaDEP.gov>
Cc: Drew Smith <dsmith@shepardfirm.com>; Edgar G. Fernandez <edgar@anfieldflorida.com>
Subject: Flagler Beach

EXTERNAL MESSAGE

This email originated outside of DEP. Please use caution when opening attachments, clicking links, or responding to this email.

Good afternoon, Mr. Kallemeyn:

The City of Flagler Beach remains committed to working with the Florida Department of Environmental Protection (FDEP) to address the issues presented in the Dec 22, 2023 Consent Order.

Under the provisions of Sec. 14, the City notified FDEP of the City’s intent to offset the civil penalties by implementing an in-kind penalty project which must be approved by the Department (of Environmental Protection). The City made notification to the DEP under the provisions of Sec. 14.

Exhibit A to the Consent Order (In-Kind Projects) indicates that “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 proposal to the Department for evaluation.”

Will the Department be responding to the City’s notification of implementing an in-kind project that such effort is acceptable?

Mr. Dale L. Martin

City Manager

City of Flagler Beach

PO Box 70

Flagler Beach, FL 32136

(386) 517-2000 ext. 222

dmartin@cityofflaglerbeach.com



Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. The City of Flagler Beach's policy does not differentiate between personal and business emails. This means email messages, including your e-mail address and any attachments and information we receive online might be disclosed to any person or media making a public records request. E-mail sent on the City system will be considered public and will only be withheld from disclosure if deemed confidential or exempt pursuant to State Law. If you are an individual whose identifying information is exempt under 119.071, Florida Statutes, please so indicate in your email or other communication. If you have any questions about the Florida public records law refer to Chapter 119 Florida Statutes.

Website: [www.cityofflaglerbeach.com]www.cityofflaglerbeach.com





City of Flagler Beach

P.O. Box 70 • 105 South Second Street
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Phone (386) 517-2000

PROPOSAL CERTIFICATION FORM

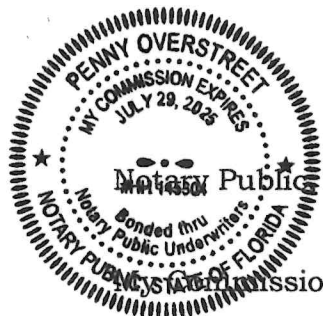
My name is Dale L. Martin, City Manager, and do hereby testify under penalty of law that:

- A. I am a person with management responsibilities for the City of Flagler Beach budget and finances. During the eighteen-month period prior to the effective date of Consent Order OGC Case No: 23-0409 there has not been any transfer or use of funds obtained by the City of Flagler Beach 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. **NOTE: Due to my appointment as the Flagler Beach City Manager, effective July 31, 2023, I cannot attest to any transfer activities prior to that date.**
- 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 notarization, this 19th day of February, 2024 by


Dale L. Martin

Personally, known or by Production of the following Identification:




Penny Overstreet

Printed Name

Commission: HH145304