

October 23, 2019 Land Use title and video:

VIDEO 15. DISCUSSION TO REVIEW THE PALM AND HIBISCUS ROAD ELEVATION EXPERIENCE

Commissioner Samuelian

Capital Improvement Projects

Item C4 Q - September 11, 2019 Commission Meeting

October 30, 2019 title and video

R9 D DISCUSSION ON THE PALM AND HIBISCUS RESILIENCY PROJECT WITH A FOCUS ON PRIVATE PROPERTY HARMONIZATION.

VIDEO

Commissioner
Samuelian

Mark

AFTERACTION:

October 23, 2019 Land Use Committee

15. DISCUSSION TO REVIEW THE PALM HIBISCUS ROAD ELEVATION EXPERIENCE ACTION:
Item Deferred.

October 30, 2019 COMMISSION DISCUSSION/AFTERACTION:

R9 D DISCUSSION ON THE PALM AND HIBISCUS RESILIENCY PROJECT WITH A FOCUS ON PRIVATE PROPERTY HARMONIZATION. Commissioner Mark Samuelian

ACTION: Discussion held. Lilia Cardillo to place on the Commission Agenda, if received. Eric Carpenter and David Martinez to handle.

DIRECTION: • Add this item as a recurring update item each Commission Meeting. Lilia Cardillo to place on the agenda. Eric Carpenter and David Martinez to handle.

• Inspector General Centorino to investigate Palm and Hibiscus Islands and Indian Creek and identify what the permitting problem is, why did it cost so much money, and why has it taken so long? Inspector General Joseph M. Centorino to report back to the City Commission with more information. Joseph M. Centorino to handle. • Include a drop-dead date set for the harmonization agreements to be signed. Eric Carpenter and David Martinez to handle. Commissioner Samuelian explained that at the last Commission meeting, they talked about the Palm and Hibiscus neighborhood project landscape, and they mentioned they should get an update on this project. The situation is urgent. The project is frozen, and this is the last City Commission meeting until December. In his

two years on the dais, this is one of the most concerning situations that he has become aware of, because it is such an important, complex, and challenging project.

The City team is working hard but they have some big problems. At Sustainability Committee, they are providing oversight to neighborhood projects and have learned with great concern that there are issues with the County. He reached out to Commissioner Higgins and invited her to come, who came along with the Director of Environmental Resource Management, DERM, and on Wednesday they gave the City information that he summarized. The project started in 2016, it is a \$40 million project, and like they had in Indian Creek, they now have unpermitted work, and the City is in violation with up to 200 drains on public and private property. This action needs to stop. The project was stopped by DERM on July 9, 2019, and now the residents are suffering, and they do not know what is happening. DERM is waiting for the updated permit application. Also looming is their need to get individual property by property resident harmonization agreements. Given the situation they have, he would not describe it as trivial. This raises three questions; 1) how this happened; 2) how they can fix it, and 3) what changes do they need to make to their approach in their program given the learnings they have. Tonight, they need to be more tactical, they need to listen to the residents and have them understand that the entire City Commission is aware of the situation, and they are all going to act in urgency. He requested an action plan; when will they get their engineering done; when will they submit to DERM; when is a reasonable expectation for DERM approval and After Action October 30, 2019 City of Miami Beach Commission Meeting/Presentations & Awards Page 28 of 48 completing the project, and most importantly, what can they do to help, whether it is policy or resources, what is it that this body can do, because right now they are not in a great position.

Mayor Gelber thanked Commissioner Samuelian for bringing this item before the City Commission. Although he does not like Presentation & Awards meetings becoming business meetings, he believes that this is an important topic that deserves to be discussed. This is not the time to wrestle over this item though. He will be meeting with Mr. Hefty, Director of DERM, tomorrow to discuss the situation. He would like to hear from the Administration today, but they will not be taking any action tonight about the project. He is not sure the item is fully "cooked" between the City and the County. Eric Carpenter, Assistant City Manager, stated that the most concerning of all items is the characterization of the permit discussion. The fact is that the City started construction in July 2016 on the stormwater system on Palm and Hibiscus Islands; they had a full permit issued from DERM in May 2016 before the City ever broke ground on the stormwater system. Throughout the project, the stormwater system has gone through an evolution. This is different from what happened in Indian Creek, where the City bypassed a Federal permitting process. In this case, the City is going through a permit modification process and it is a judgment call of DERM as to when is the most appropriate time to go through that permit modification process, because a vast majority of all Class 2 permits go through modifications at the closeout. Seldom does anyone install a stormwater project that is the same as what was designed and permitted originally. He would like to invite the representatives of the design/builder

to talk briefly about what their thought process was in not going for that permit modification at the time that they began to do that work, but he acknowledged it was a judgment call by DERM. He acknowledged that they are working through it with them and they are going to continue to work through it with them. He is happy to say that he has spent six hours at DERM over the last two days and they had positive discussions with their water control section, and thinks they are headed in an exceptionally good direction.

There have clear objectives that they set forward for the City and they will be able to deliver them. They are committed to delivering the permit closeout documents that were requested by DERM before Thanksgiving.

He introduced Holly Kremers to explain the permit modification process and what Lanzo and Wade Trim's thought process was. Holly Kremers, Vice-President, Wade Trim, explained the process they have gone through as far as permitting, and clarified that when the project started construction, they did have both systems, Palm and Hibiscus Islands, fully permitted. As construction projects go through there are some field adjustments that take place in any infrastructure system; many times, those are addressed as asbuilt and permits are closed out. To be clear, the permit modifications are unique to the west end of Palm Island. On the east end of Palm Island, the stormwater system was constructed and installed for the permitted documents without modifications. On Hibiscus Island there was a net difference of one, an 18-inch inland drain in the right of way, and there is an area where they had obstruction and was shifted around so they added one. This is normally something they would take care of during permit closeout.

The west end of Palm Avenue has been more challenging during construction, and there are two separate issues that they have been discussing with DERM about how to handle.

- 1) There are 17 drains that are in the right of way around the west end of Palm Avenue. When they initially designed the project, they planned to clear out more vegetation in the right-of-way by taking out some trees and they would have a grassy swale for the stormwater to collect in the right-of-way and traverse on the swale and be collected on a larger catch basin. During construction they realized there were issues with removing those trees and they decided, to preserve the trees, instead of having the water meander down the swale and going to one basin, they would have to put an intermediate secondary drainage basins through the right-of-way to capture that same water in transit to the larger drain basin. In retrospect, at that point they should have gone to DERM and ask about permit modification process, and certainly at their next project they will do that, but they thought it was something that could be handled during the as built in and they went forward with construction of capturing the same stormwater in the right of way that was After Action October 30, 2019 City of Miami Beach Commission Meeting/Presentations & Awards Page 29 of 48 already permitted through additional inlets. The 88 drains are temporary construction drains, one of which was installed in the right of way in front of each property on north and south Coconut Lane; and they put them there because they knew that with a smaller right of way in that area, during construction and before they had a chance to do the final

harmonization drainage, they wanted to make sure they had that in place; in case of flooding issues were to occur during construction they would have a way to transmit that water away. The intent was that when the project was complete and before the stormwater system was placed in the service, those drains would be abandoned, and the permitting drainage system would be in place at that time. And for that reason, they did not include those 88 temporary constructions drains on the permit documents. They have resolution on how DERM wants to see those and they are going to add them as temporary drains to the temporary modification. They are also adding the 17 drains as part of the permanent permit modification; that piece was already done. They have enough treatment capacity to handle those areas, and they think they have all the pieces in place to move towards a resolution with all parties. Mayor Gelber announced that he plans to call a Commission Workshop on resiliency and all similar projects soon into the next Commission term, but he does not want to do that today. It is important to realize that there will soon be at least two new Commissioners elected on November 5, 2019, and he would like to give them some time to get up to speed on all that is taking place in the City. He hopes to schedule this Commission Workshop sometime soon.

The Palm and Hibiscus Islands project has been an ongoing nightmare for residents, who are simply very frustrated. There are many lessons to be learned from this experience, unfortunately probably at the expense of a great deal of disruption. The City needs to learn to do this right, and the City is taking it seriously, which is why ULI, Columbia and Harvard were asked to investigate this. With the recent king tide, he noticed that in areas where they have done work, there is not the flooding that has been in the past, as compared to areas where they have not done any work. It is important that the marketplace understands the City is serious about it, but most importantly to do it right. Eric Carpenter, Assistant City Manager, added that the good news is that the City has received clear direction from DERM and will have the engineering portion done by Thanksgiving. He has met with most property owners that have the eligibility for harmonization and private property drains. He believes that all property owners will be met with by the first week in December, and there will be a full-time contact person at the Palm Island guardhouse to answer questions regarding the harmonization agreement to hopefully facilitate the process. A landscaping contractor will be mobilizing next week to start landscaping work on the islands. Their commitment is to finish this project and not move on to another project until this one is done, and they are trying to speed up the process as much as possible. City Manager Morales believes there is confusion on the number of drains that are deemed illegal. For the Hibiscus portion the original permit provided for 125 permanent drains on Hibiscus that were in fact installed, except for one unpermitted drain indicated. On Palm Island there were 138 permitted drains in the plan that were installed; the ones that were not permitted were 17 done to not remove trees and the 88 temporary drains; most of the drains were in fact originally permitted drains. In 2017, over a year after the project begun, the City Commission, in response to concerns raised by the public that raising the road would cause flooding on their properties, adopted a policy indicating that all properties could connect to the City's system. That policy was subsequently modified late last year and codified in January of this year, that it would not be all properties, but in fact

staff would work with individual properties, on a case by case basis and evaluate whether there were properties that could have a drain either on or in front of the property, but particularly on to help deal with the drainage. Therefore, through this project there were changes made, and issues such as generators were added. In the harmonization process, during the course of this year, City staff worked with property owners and ultimately identified 98 properties, almost all of them on Palm Island, that would qualify for having an on-site private property drain, and then began the process of designing, putting together the paperwork and sitting down with property owners to look through After Action October 30, 2019 City of Miami Beach Commission Meeting/Presentations & Awards Page 30 of 48 it. One of the issues that emerged that was resolved at the last City Commission meeting was what paperwork DERM require from the City or from the property owners. Last week DERM agreed that the harmonization agreements with the easement in them would suffice for them to rely in. He will submit the harmonization agreement once is finally signed. They met with 69 of the 98 property owners and the design work is done for those. DERM is committed to try to turn them around in two weeks.

The notion is that they can be in a position where they submit all that to DERM by December and get those permit issues. The harmonization work will take five months to do the 98 properties. Once that is done, they are a month away from doing the final lift of asphalt. Assistant City Manager Carpenter stated that if the City has an opportunity to do final lift in some areas, they may do that ahead of whatever needs to be done in other portions of the islands. City Manager Morales recommended having a drop-dead date set for the agreements to be signed, and if a property owner does not sign, they will not be getting a drain on their property. This is not a question of resources or funding, they will place more personnel out there to work with the neighbors and talk about the agreements, and they will work with Lanzo Construction to see if they can add additional crew in the area. The conversations with DERM have helped jump start the process. Mayor Gelber thanked Commissioner Samuelian and Assistant City Manager Carpenter for explaining the issues. He is meeting with Mr. Hefty tomorrow. There is a great deal of movement on this. Pierre De Agostini, Executive Director of Palm and Hibiscus Islands Homeowner Association, thanked the City Commission for letting him speak. They all learn from discussions and he learned that on a \$14 million project, the Administration had a "a-ha" moment as stated by one of the City Commissioners. The City Manager stated that in 2017, the City realized that if they raised the roads the homeowners are going to be facing inundation. It is totally mind boggling. How could this "a-ha" moment happen on a \$14 million project a year after it started. He is equally surprised that the City of Miami Beach was operating without proper permits. The true story is that since February of 2019, DERM has been asking the City to take care of a few things they need to operate, including getting the required permit. The City has still not acted on this. They all want this to move forward and be done with it. He suggested that first the City of Miami Beach acknowledges the nightmare of the situation and ask itself how it happened in the first place. This could be something that the Inspector General could do homework and investigate this, as it is a great deal of money. The City must do its work and conduct a proper draining calculation, as there is no proper drainage calculation, which is what the owners are

saying, how do they know it is going to work. The City needs to put proper resources, hire proper people, and do the drainage calculations. Additionally, the homeowners must sign the harmonization letter for this to move forward. But the homeowners are fearful that the harmonization letter draft has been challenged on several occasions. For each property there have been different layout provided one was in front of the property or the side. They are asking or suggesting to those 98+ homeowners to hire a law firm, as it is a legal document, and hire a civil engineer firm to help them establish a counterpoint to the City's actions. If the City could provide a guarantee that the project will be finished right, it would make it easier for homeowners not to hire expensive professionals. He urged everyone on the City Commission to continue working on this item. They need to have a seawall policy. Roadway project is what is called but the issue is resiliency and raising of the water. The reason is called Roadway project is because it was the City's approach to raise the roads. However, the true subject is what is the City doing with the rising water. Part of the equation is the necessity to have contiguous seawalls to provide incentive to the homeowners to renew the seawall. Seawalls cost about \$1,000 per square linear feet, and the City needs to provide that incentive. At the next king tide, the water is going to come in and if neighbors have not built the proper seawall; there will be flooding. The City needs to do it right and reset the clock. The City needs to have a timeline and resources. Homeowners want to make it happen; it is a fantastic opportunity in what is currently a nightmare situation for the City Commission and future City Commissions to rise up to the occasion to show, not only to the residents of Palm and Hibiscus and Star Islands, but all the residents that live in Miami Beach and in the State of Florida, what leadership, courage, determination, and vision can do with a very acute problem. Mayor Gelber thanked Pierre for his leadership in the community. Andres Asion owns two properties on Palm Avenue and both properties flood in the backyard when it rains six inches or more. Some houses on Palm Island do not allow access to their parking garages because the road raising floods their property so badly. His elderly parents' living room is under street level, which will get flooded for sure. This has been a nightmare situation for the past four to five years and still nothing gets done. He invited the City Commission to come to his house and he will show them what is happening. At the end of the day, this is a test for other neighborhoods, and they should see exactly what is happening there. Regarding the seawalls, the entrance to Palm Island, which on either side of the bridge belongs to the City, that seawall does not exist. Whenever there is a high tide, the water goes right into the grass and into the islands and there is no seawall from the City to stop it. Mr. De Agostini added that it is ironic that the City is willing to have someone posted at the guardhouse, because it shows the lack of communication between the City and the Post Master, that guardhouse is now a post office annex because they refuse to deliver for lack of communication. They need to resolve that. The residents that live around the west circle of Palm Avenue are looking at the generator, which is 20 to 30 feet in height, so they are at the ground level. He requested the plan from CIP on the landscape that is going around the generator and he was told it was not designed yet. Those are additional points for this City Commission that they trust to be able to fix it, take care, and be a shining example of what can be done. Commissioner Góngora thanked Commissioner Samuelian for putting this item on the Agenda because the residents of Palm and Hibiscus Islands have been frustrated since

they were running for office two years ago. Commissioner Góngora has not seen the movement that he anticipated. Both this project and Indian Creek have been troubling and upsetting to him, as they are both situations where the proper permits were not pulled. They modified and amended these projects for tens and millions of dollars over the past two years, given both projects more money to try to appease the resident complaints, but the work does not get done. He is just as frustrated as them, because they keep asking why this is happening and why this is going on, and they are not getting answers either, except when a Commissioner puts it on the Agenda. He likes Mr. Agostini's idea and publicly requested to send this item to the Inspector General to look into the Palm and Hibiscus Islands projects as well as the Indian Creek project, find out what went wrong with permitting, why they budgeted so much money and it has gone over budget, why the projects are not working correctly, and why residents are waiting for years with no result. He formally requested to refer an investigation and oversight into the money and permitting in these two projects to the Inspector General and report back to the City Commission. Joseph M. Centorino General to handle.

Commissioner Samuelian appreciates the response from the Administration and the residents who have shown incredible patience with this situation and he summarized as follows: 1) the City needs to act with urgency and get this done; 2) the City needs to do a much better job engaging with residents. These 90+ harmonization agreements are not a trivial task and he is curious as to how the Administration is going to approach that and what the timing is. 3) He appreciates Mayor Gelber having this body continue to engage. The Workshop idea is excellent, but he requested keeping this item on the Agenda for each meeting so they can monitor progress, and 4) the seawalls issue will be discussed at Sustainability and Resiliency Committee. Finally, he also agrees with his colleague that when they brought in the Inspector General, it was to address waste and inefficiency, After Action October 30, 2019 City of Miami Beach Commission Meeting/Presentations & Awards Page 32 of 48 and he thinks this is a classic example. He has communicated his interest in having the Inspector General investigate the issue. City Manager Morales reminded the City Commission that when they designed these projects, they did not include generators, because they would be huge pieces of equipment in the middle of residential neighborhoods. They did not originally recommend it in this project or others, as they knew the impact of them aesthetically in the neighborhoods, not to mention the cost. However, this neighborhood came forward and insisted on having permitted generators. It is not an "a ha" moment; they figured there would be an "a ha" moment in the neighborhood when they saw generators installed. Obviously, they will be designing the landscaping around the generators, but they did not think they would be popular, and he is not shocked to see that they are not. With respect to the drainage, they have met with 69 property owners of the 98 drains on private property; that drainage work is done as part of the package sent. After January, they were able to do the analysis work and they presented to them the harmonization agreements. Those are the ones that out of the 69, 10 had comments on them; the only ones they are now finishing design work on are the 29 that are left, and they believe that will be completed soon. Assistant City Manager Carpenter added that they will have that done and will meet with each property owner by the first week of December. Mayor Gelber thanked everyone for the discussion.

EXHIBIT B

Flood Mitigation Results

Palm Island 316 South Coconut Ln



BEFORE

Tides: 1.40 ft NAVD 10/17/12



AFTER

Tides: 1.88 ft NAVD 10/15/19

Flood Mitigation Results

Palm Island 303 North Coconut Ln



BEFORE

Tides: 1.42 ft NAVD 10/17/12



AFTER

Tides: 1.88 ft NAVD 10/15/19

Firtel, Lauren

From: Centorino, Joseph
Sent: Tuesday, January 19, 2021 9:18 AM
To: Firtel, Lauren
Cc: McGee, James; Singer, Jani; Alonso, Elisa
Subject: RE: Response to OIG draft report No. 20-07 on Palm and Hibiscus Island

Ms. Firtel,

Thank you for your thoughtful response to the Draft Report. It will be included in our final draft.

Joe Centorino



Joseph M. Centorino

Inspector General

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From: Firtel, Lauren <LaurenFirtel@miamibeachfl.gov>
Sent: Monday, January 18, 2021 8:50 PM
To: Centorino, Joseph <JosephCentorino@miamibeachfl.gov>
Cc: McGee, James <JamesMcGee@miamibeachfl.gov>; Singer, Jani <JaniSinger@miamibeachfl.gov>; Alonso, Elisa <ElisaAlonso@miamibeachfl.gov>
Subject: Response to OIG draft report No. 20-07 on Palm and Hibiscus Island

Hello Mr. Joseph M. Centorino,

I wanted to submit a brief statement to acknowledge receipt and (mostly) understanding the 176-page Palm and Hibiscus Inspector General draft report. I read it thoroughly and in its entirety. I do not think it is my place to critique the wholistic subject matter, city leadership or project team players in a positive or negative light; nor am I in a position of authority to decide right or wrong throughout the scenario.

For the time span discussed in this report, I was a public information specialist in the Office of Capital Improvement Projects (CIP) – a significantly subordinate position in the bigger picture. It was my job to work with the project team and our PIO consultant to create messaging that explained project objectives to the stakeholders on the islands and respond to resident questions or general project inquiries. Often, the PIO team is tasked with making technical construction details into “plain language” descriptions that the general public will understand. As part of CIP procedure, project managers review all advisory drafts and messaging for content accuracy before they are distributed by the PIO team.

On page 90 where an email I sent is quoted and then you reference “Firtel’s account...” in the following paragraph – I read this to say that I had summarized the information provided by the project team in stating the contractor’s intentions and status at the time of the resolution passed by commission. In essence, I was simply doing my job.

At the top of page 91, the draft report says, “CIP’s communications with residents between January and March signaled the City’s plans to use those right-of-way drainpipes for their intended purpose: as permanent connection points for private-side yard drains to the mainline pipe.” I can see how in retrospect and with reading the advisories parallel to researching/creating the draft report how one might conclude that “stormwater and secondary drainage installation” alludes to the above. However, while we were writing these notices, we were very much in the day-to-day communications and decidedly unaware of any intentions to make the drains permanent later in the project.

Admittedly, as a communications professional I was not in the loop on the various sets of plans, permits or regulatory agency visits to the project site. Please note (with some humility) that while the communications/outreach team works closely with the project team and engineers – we are not trained in permitting processes and/or regulatory agency requirements.

I am not sure of your end-goal in releasing this report. I, for one, would like to put this messy series of events behind us and put our lessons learned and collective city leadership efforts into how we can educate, share or explain things better in the future – both internally and externally.

Thank you for considering my standpoint, and my general input in this response.

MIAMIBEACH

Lauren Firtel, Neighborhood Affairs Coordinator

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We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

Memorandum

Date: January 22, 2021

To: Mr. Joseph Centorino, Inspector General

From: Mina Samadi, Senior Capital Project Coordinator



Subject: Office of Inspector General Report of Investigation on the Management of the Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project
OIG No. 20-07

Please accept this memorandum as my statement regarding the reference report prepared by your office and provided to me on December 4, 2020 at 7:24 PM.

It appears that this report selectively expresses unsubstantiated statements by some individuals, as true statements of facts. In addition, this report does not mention the requirement and responsibilities stipulated in the DCP and the City's Contract with the Design/Builder in regard to development of contract documents and permitting. Some of the language directly taken from the Design/Build Contract is listed below:

"1.19 "Guaranteed Maximum Price (GMP)" means the mutually agreed maximum contract value to be paid to the Design-Builder for all services, labor, equipment, and materials for design services during construction, **permit**, administer, coordinate, inspect, construct, and install the Project within the described scope and time specified in the Contract Documents (and shall include, ..."

"2.2 It is the intent of the Contract Documents to result in the design and construction of a fully complete, fully functional Project, ready in all aspects to be put to its intended use, that is designed and constructed by the Design-Builder in accordance with the City reviewed and **fully-permitted** Contract Documents prepared by Design-Builder and accepted by the City.

"The Project includes furnishing all planning, engineering, design **and permitting services**, as well as all construction labor, materials and equipment, services and incidentals necessary to design and build the Project in accordance with the Contract Documents, including the Design Criteria Package..... "

"It will be the sole responsibility of the Design-Builder to secure all permits not provided by the City, and to provide signed and sealed design documents for construction and installation which comply with all regulatory requirements, Applicable Laws, and the Contract Documents."

"3.6.2 The Design-Builder shall be responsible for obtaining all necessary licenses and permits not being provided by the City, and for complying with Applicable Laws in connection with the prosecution of the Work."

It is the Design/Builder's responsibility to obtain all the relevant permits for construction of the project.



Joseph M. Centorino, Inspector General

Eric Carpenter
Assistant City Manager
City of Miami Beach, Florida
c/o Attorney Michael Band

Re: Response to Office of Inspector General (OIG) Draft Report 20-07 dated Jan. 21, 2021
("Carpenter Response Memorandum")

Eric,

Thank you for meeting with us on Friday along with Mr. Band to hear your concerns about the draft of our report on the Palm and Hibiscus project. As I explained, it is not possible to provide you with four additional months to submit responses. However, as I indicated during the meeting, in light of the views expressed during the meeting, I will allow you an additional week to provide responses to material questions of fact and take two additional steps.

First, as discussed, to ensure that we have a fuller understanding of the basis of your concerns, this letter provides questions of act that you are welcome to address. You will see that they are derived in part from your memorandum. Direct answers to these questions will assist our efforts to evaluate your concerns and, as appropriate, revise the text of the final report. I promise that I will carefully consider your responses to these questions and, additionally, ensure that they are included in the report's Appendix.

Secondly, I have directed that additional statements that you made during recorded and sworn interviews OIG staff be included in the final report in order to (a) more fully reflect the views you conveyed in your memorandum and (b) provide fuller and more nuanced expression of your views about the challenges that issue of sea level rise generally and the Palm and Hibiscus project specifically posed for you as an Administrator and Licensed Professional Engineer. I will also include a Note on Context that will acknowledge your statement that progress has been made on the project and that it may be nearing completion.

The Carpenter Response Memorandum states: "Notwithstanding, the OIG's report includes, in our opinion, a significant amount of innuendo and editorializing which, in our opinion, serves no purpose other than insinuate wrongdoing where none has occurred."

Question #1. Please identify each sentence in the report regarding you personally or your actions as Public Works Director and/or Assistant City Manager that you believe contain “innuendo and editorializing.”

Question #2. Please identify each sentence in the report about you personally or your actions as Assistant City Manager and/or Public Works Director that “insinuate wrongdoing where none has occurred.”

The Carpenter Response Memorandum states: “In the end, the OIG's draft report has clearly omitted or manipulated facts to substantiate some objective that we are not privy to, but which, in our opinion, is intended to be punitive and not instructive” and also states, “To imply that there was a coordinated conspiracy to the contrary is outlandish, lazy, and unbecoming of a professional tasked with improving the City of Miami Beach.”

Question #3. Please identify each statement in the draft report about you or your actions that you believe is false or in error; any instance in which you believe a material fact is “clearly omitted”; and each statement that you believe contains a fact that is “manipulated” with punitive intent.

Question #4. Please identify each statement in the draft report that you believe states or implies that you personally are part of a “coordinated conspiracy” or that you believe defames or libels your professional reputation.

As set forth in the report, on Oct. 9, 2015 former City Engineer Bruce A. Mowry attended a meeting convened by the Capital Improvement Project's (CIP) office and notified CIP staff of a decision by the City Administration to require the use of the minimum grate elevation criteria of 2.7 NAVD for all areas of Palm and Hibiscus Islands. This decision effectively rescinded an earlier waiver of that criteria for west Palm Island. That waiver had enabled then Engineer of Record Orlando A. Rubio to establish a minimum crown-of-road elevations of 2.2 feet NAVD for North and South Coconut Lanes.

The decision Mowry conveyed to CIP staff on Oct. 9, 2015 also had the consequent effect of requiring that the minimum crown of road elevations in West Palm Island be raised an additional foot above 2.2 feet NAVD to 3.2 feet NAVD. Further, the decision required extensive revision of the stormwater and hardscape sections of the plans prepared by Rubio that had been submitted Oct. 11, 2015 to the South Florida Water Management District with an application for an Environmental Resources Permit.

Mr. Mowry has stated that he did not act unilaterally in this matter; that he consulted with you about his recommendation to require the minimum grate elevation criteria for the project; and that, as his supervisor, you approved this decision. Further, Mr. Mowry has stated that you also approved the decision on or about Oct. 30, 2015 approving conceptual plans by Wade Trim for the design and construction of a right-of-way drainage system that was designed to connect to

private-side yard drains in the future. Finally, Mr. Mowry has stated that you approved a proposal and plan by the City Administration on or about November 2015 to seek a change in policy that would allow residents to connect privately-owned yard drains to public drainage system.

Question #5. Did Mr. Mowry consult with you in on or before Oct. 9, 2015 about his recommendation to require the minimum grate elevation of 2.7 NAVD for all areas of Palm Island and did you approve this change in the modified criteria for West Palm Island? If yes, when did you approve this change for the Palm and Hibiscus project?

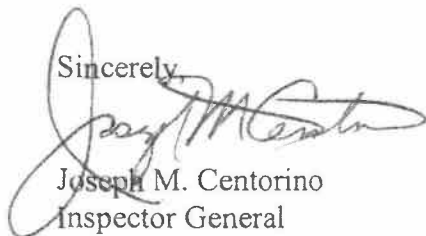
Question #6. Did Mr. Mowry consult with you before approving on Oct. 30, 2015 the Wade Trim conceptual plans to build a drainage system that accommodated the future connection of yard drains on private lots and did you approve of this plan and engineering solution for west Palm Island?

Question #7. Did Mr. Mowry consult with you on or before November 2015 about a plan to seek a change in City policy to allow the connection of private-side yard drains and did you approve that plan in 2015?

Question #8. When and by what means did you communicate any of the decisions or actions referenced in Questions #6 through #8 above to former City Manager Jimmy Morales and the City Commission. When did Mr. Morales approve each decision?

Question #9. When and by what means do you believe the City Commission was first notified of the above-referenced decision by the City Administration and notified of the potential costs and consequences of those decisions, specifically including (a) the decision to require the minimum grate elevation criteria of 2.7 NAVD in all areas of Palm and Hibiscus Island and (b) the City Administration's decision to have Lanzo Construction Co. Florida and Wade Trim design and build a public drainage system that was designed to connect to private-side yard drains in the future.

Sincerely,



Joseph M. Centorino
Inspector General



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, FL 33139, www.miamibeachfl.gov

MEMORANDUM

To: Joseph Centorino, Inspector General

From: Eric Carpenter, Assistant City Manager *EC*

Date: February 1, 2021

Subject: Response to Office of Inspector General Draft Report 20-07 Supplemental Questions

This letter is meant to serve as the direct responses to the additional questions posed by the Office of Inspector General (OIG) following our in person meeting on January 22, 2021. This is meant to be a supplement to the overall City Administration response and my individual response to the draft report 20-07 and should be reviewed in conjunction with the more comprehensive responses submitted previously. This is not an exhaustive list, as I was only provided a week to identify all of the myriad of misrepresented items in a 167 page report.

The responses to the specific questions are provided below in order:

- 1) Question: Please identify each sentence in the report regarding you personally or your actions as Public Works Director and/or Assistant City Manager that you believe contain "innuendo and editorializing".

Answer:

- a. Page 83 The quote from the City's FAQ document is "Currently this [private-tie in] is not an option for private property owners, but we are exploring options to provide our residents with additional water management options in the future." Somehow the OIG gleaned from that statement the following opinion: "While expressed in nuanced language, the answers indicated that the City recognized the risk that raising roads would cause new flooding on private lots; was unwilling to assume a city-wide duty to prevent such flooding; and intended to shift the legal responsibility for any flood damage caused by elevating roads to individual property owners." This is a significant inference, from a relatively simple statement by the City and it appears that this opinion is at best unfounded.
- b. Page 85 how is responding to a media inquiry proof that the "City officials used the news media to generate support for the new policy"
- c. Page 86 "Lanzo's design team was concerned about regulatory implications of converting temporary drains to permanent fixtures" what is the basis for this statement since they were not contractually obligated to perform this work until the change order was approved in October 2018, well after they had communicated the changes to DERM in the May 10, 2018 letter.
- d. Page 89 "During the panel, Carpenter and Mowry did not mention their ongoing and unprecedented plan to build a public drainage system that was designed to connect private-side yard drains to the public drainage system." What does this insinuate,

because one of the many initiatives that were being directed by Commission was not mentioned, it is somehow a conspiracy, even though two months earlier in the public City Commission meeting direction was given to make connections.

- 2) Question: Please identify each sentence in the report about you personally or your actions as Assistant City Manager and/or Public Works Director that “insinuate wrongdoing where none has occurred”.

Answer:

- a. Page 86 “Subsequent events and records examined during the investigation, support a conclusion that the primary purpose of the resolution was to provide after-the-fact authorization and legal justification for the private-side drains the City had already allowed”. No proof to support this position and furthermore, there were no private drains in April 2017. Report fails to acknowledge the evolution of the policy direction from June 2015 to April 2017 was primarily for the City to bear the cost.
- b. Page 97 “The City and Lanzo failed to submit a notarized request for the extension with responses to the five questions”. Even though the extension of the permit was the responsibility of Lanzo, if the intent was to not inform DERM the extension would have been a better path than to reapply for the permit, however, this is drafted to make it seem it was part of some scheme. Interestingly the same five questions with detailed answers were provided in the letter dated May 10, 2018.
- c. Page 116 “One gets the impression that the motivation behind the retention of so many consultants could have more to do with insulating the decision-makers from responsibility, than it does with marshalling the professional expertise with the necessary brainpower to ensure the project’s success.” The City uses best practices for management of complex construction projects. In this particular case we only have one consultant and a design/builder. This is clearly a misguided statement as it is contradicted by Recommendation #4 of the OIG report which suggests adding another consultant.

- 3) Question: Please identify each statement in the draft report about you or your actions that you believe is false or in error; any instance in which you believe a material fact is “clearly omitted”; and each statement that you believe contains a fact that is “manipulated” with punitive intent.

Answer:

- a. Page 5 General Observations Item 10. No reference to May 10, 2018 letter notifying DERM of the changes to the project.
- b. Page 9 “City and Lanzo directed two engineering firms and engineers...to develop distinctly different construction plans for different purposes.” City gave a revised drainage directive to the Design/Builder, no facts to conclude the City dictated who was to do the work or that there was a different purpose.
- c. Page 11 “At no time did the City and Lanzo advise the SFWMD and DERM of the significant changes in design” changes were provided to DERM in writing on May 10, 2018. SFWMD has determined that no permit modifications are required.
- d. Page 11 “The City and Lanzo proceeded with this work during the Spring and Summer of 2018, after rejecting a recommendation from Wade Trim that the City and Lanzo notify the SFWMD and DERM of the new phase of construction”. There was no rejection of any recommendation from Wade Trim regarding the regulatory

requirements, in fact DERM was notified, via the May 10, 2018 letter from Wade Trim, within two months of first discussions regarding the need for modifications on west Palm Island permit.

- e. Page 12 "The deception of the SFWMD and DERM lasted 31 months" this is clearly untrue from the timelines unless you disregard the May 10, 2018 letter.
- f. Page 12,14 several allusions to "cost overruns", "soaring costs" and "cost escalation" that did not occur. (Please refer to December 9, 2015 contract amendment setting the price at \$38.5 million).
- g. Page 13 "In January 2016, the City Commission awarded Lanzo a \$36.5 million contract, plus 10% contingency." The contract was actually awarded in July 2013 and was amended in December of 2015 to include a construction cost of \$38.5 million including a 10% contingency.
- h. Page 13 "At the time of the award, the City did not have finished construction plans for building the stormwater drainage system, drainage studies verifying the system's expected performance, or a reliable basis for determining how much the non-standard system would cost or how long it would take to build." Almost all Design/Build projects agree on a final cost prior to completion of plans, there was a cost estimate provided by an independent 3rd party cost estimator as well as the Design Criteria professional and we had a schedule that the Design/Builder was contractually bound to meet.
- i. Page 15 assertions of a "whistleblower" must accompany facts that they uncovered something that was not already provided in writing to the agency, which is not the case here.
- j. Page 45 "...set a precedent of making significant changes to the plans after construction had begun." Construction had not begun at the point in time referenced in this statement.
- k. Page 60 there is no mention of the fact that the Commission Memorandum included documents that clearly identified "City Directive of October 12, 2015 (2.7 NAVD-minimum)" as well as the reference to "RFI-035 (Private Drainage Accomodation)".
- l. Page 78 "Coley said lateral pipes and right-of-way drainpipes on the plans approved by Public Works were not intended to be temporary construction drains." I believe Mr. Coley has clarified the difference between permanent private-side drains and temporary construction drains and this particular assertion is taken out of context.
- m. Page 83 "The FAQ statement that "water will not flow from the elevated City street into private property" was, at this point, an aspiration and design objective of the construction plans, but was not true." The water can be contained within the right-of-way of an elevated road. The difference between water not flowing off of private property; and water flowing from the elevated roadway is being confused.
- n. Page 84 please provide any proof that private-side yard drains were in place by March 31, 2017 as stated.
- o. Page 95 "...did not approve \$17,500 for engineering services associated with notifying SFWMD and DERM about the City's plans to install private-side yard drains and obtain permit modifications" These design services were part of the Design/Build teams existing scope this was a cost discussion regarding the change order.
- p. Page 97 Sanchez emailed the application on May 15, 2018 not May 10, 2018. This is important because DERM had already seen the letter that described all of the changes.

- q. Page 99 "The statement did not describe the unpermitted construction in detail and minimized as "few" the number of properties that would have one or more drains installed." There is significant detail on what work was performed and more than enough information to clearly show there have been changes that will need to be either done through a permit modification or reflected in the as-built close out package. The issuance of the permit clearly signaled the intention by DERM to use the latter.
- 4) Question: Please identify each statement in the draft report that you believe states or implies that you personally are part of a "coordinated conspiracy" or that you believe defames or libels your professional reputation.

Answer:

- a. Page 20 "The permanent right-of-way drainpipes were available during construction to mitigate flooding. But the evidence, and sworn statements of multiple witnesses, established that their description as "temporary construction drains" was a legal fiction." I have addressed extensively the difference between the stub out pipes that do not have any drain connected; temporary construction drains; and permanent private-side yard drains. This statement clearly confuses the different situations in order to make it seem nefarious.
- b. Page 86 "Subsequent events and records examined during the investigation, support a conclusion that the primary purpose of the resolution was to provide after-the-fact authorization and legal justification for the private-side drains the City had already allowed" this April 2017 Resolution was a reaffirmation of the Commission directives prior and please provide any proof of private-side yard drains installed by this date.
- c. Page 87 Garcia states "I can say that on many occasions, I raised red flags and I tried to push back, but it felt like just the support wasn't there, you know, going up the chain, so to speak..." Garcia never made any attempt to speak to me on this matter and it is my understanding that he never spoke to the CIP Director about his concerns either.
- d. Page 152 "In my professional opinion, Ms Kremers and Mr. Carpenter misstated the disclosure obligations of a permittee and mischaracterized the Rubio plans." It is and will remain my professional opinion that if you do not change the contributory area or the amount of water flowing into a drainage system that the location of the pipes or the inclusion of stub outs are immaterial.
- e. Page 152 "In my opinion, Carpenter also mischaracterized the practices of DERM and other regulatory agencies regarding the use of As-Built plans." I believe that the definition of "substantial" in substantial modification is based upon the judgment of the specific agencies and even the individual regulators. As a result, I ask how can stating that it is a "judgment call" be a mischaracterization.
- 5) Question: Did Mr. Mowry consult with you in on or before Oct. 9, 2015 about his recommendation to require the minimum grate elevation of 2.7 NAVD for all areas of Palm Island and did you approve this change in the modified criteria for West Palm Island? If yes, when did you approve this change for the Palm and Hibiscus project?

Answer: To my knowledge I was not involved in discussions regarding the inlet elevations on west Palm Island during this time period, and I am not surprised as there was clear

direction from Commission regarding the inlet grate elevation. The minimum grate elevation was set at 2.7 NAVD by Resolution 2014-28499 (February 12, 2014) which set the tailwater elevation at 2.7 NAVD and consequently the lowest inlet elevation. Furthermore, this was buttressed by Resolution 2015-28921 (February 11, 2015) which reconfirmed the 2.7 NAVD tailwater condition as well as setting the crown of road at 3.7 NAVD. I do recall later in the project, once the road was constructed, being surprised the elevation of the road was below 3.7 NAVD for west Palm Island, as that was not discussed with me.

- 6) Question: Did Mr. Mowry consult with you before approving on Oct. 30, 2015 the Wade Trim conceptual plans to build a drainage system that accommodated the future connection of yard drains on private lots and did you approve of this plan and engineering solution for west Palm Island?

Answer: More than four years after the fact, I am not sure of when the initial discussions took place in relation to the October 30, 2015 date but I was consulted on the need to provide stub outs to allow for the possibility of future connections without disturbing the work that needed to be done on the roadway. I believed then as I do now, the flexibility to consider future modifications is a good thing and can save significant cost after the fact. I feel the need to reiterate, until brought to my attention by the OIG, I was not aware that there were two sets of plans. Although, I still contend that the introduction of stub out pipes does not change the functionality or water treatment requirements as set forth by Chapter 24 of the Miami-Dade County code.

- 7) Question: Did Mr. Mowry consult with you on or before November 2015 about a plan to seek a change in City policy to allow the connection of private-side yard drains and did you approve that plan in 2015?

Answer: The City Commission gave direction to the Administration on June 10, 2015 to prepare a framework to allow private connections to the public stormwater system. So yes there were many conversations regarding this matter. However, there was no definitive plan for me to approve, the concepts continued to evolve over the next four years. One important milestone in that evolution is when on April 26, 2017 the Commission refined the direction to the Administration on how to implement private-side yard drains and further codified the criteria on September 12, 2018.

- 8) When and by what means did you communicate any of the decisions or actions referenced in Questions #6 through #8 (sic) above to former City Manager Jimmy Morales and the City Commission. When did Mr. Morales approve each decision?

Answer: Information was provided in agenda memos drafted by the Public Works and CIP Departments and submitted to Mr. Morales for inclusion in the Commission Agendas. It was the Commission that, as identified above and below, gave the direction to the City Manager, in duly noticed public hearings what to do on this project consistent with staff recommendations.

- 9) Question: When and by what means do you believe the City Commission was first notified of the above-referenced decision by the City Administration and notified of the potential costs and consequences of those decisions, specifically including (a) the decision to require

the minimum grate elevation criteria of 2.7 NAVD in all areas of Palm and Hibiscus Island and (b) the City Administration's decision to have Lanzo Construction Co. Florida and Wade Trim design and build a public drainage system that was designed to connect to private-side yard drains in the future.

Answer: The City Commission provided the Administration with the Direction on February 2, 2014 to change the tailwater boundary condition to 2.7 NAVD which in fact sets the inlet grate elevations at 2.7 NAVD. Resolution 2015-28921 (February 11, 2015) which reconfirmed the 2.7 NAVD tailwater condition as well as setting the crown of road at 3.7 NAVD. They also provided direction on June 10, 2015 to create a framework to allow private property connections to the City drainage system. Finally the City Commission reviewed and approved the scope of work for Palm and Hibiscus Islands on December 9, 2015 which included within the backup documentation both a reference of the "City Directive of October 12, 2015 (2.7 NAVD-minimum)" as well as the reference to "RFI-035 (Private Drainage Accomodation)". As a result it is clear that the Administration was moving forward with the full authorization and approval of the City Commission under Resolution 2015-29243.

There were many decisions made that created an evolution of the Palm and Hibiscus Neighborhood Improvement project. All of my decisions were made with the best interest of the residents, and with the clear concurrence and approval of the City Commission. There were decisions made by all involved, which are now being questioned by those looking backwards. With the benefit of hindsight, any project could have been executed better, and I accept the criticism for the project delays as that impacted the residents. When you peel back all of the posturing, for a first of its kind solution, to the existential threat of sea level rise in Miami Beach, the outcome for the neighborhood should be allowed to be judged on the merits of the completed project.



Joseph M. Centorino, Inspector General

David Martinez
Director
Capital Improvement Project's Office

Re: Response to Office of Inspector General Draft Report of Investigation on the Management of the Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project OIG No. 20-07 dated Jan. 21, 2021 ("Response Memorandum")

David,

Thank you for meeting with us on Friday to hear your concerns about the draft version of our report on the Palm and Hibiscus project. As I explained, it is not possible to provide you with four additional months to submit additional responses. However, as I indicated during the meeting, in light of the views expressed in the Response Memorandum and during the meeting, I will allow you an additional week to provide responses to material questions of fact and take two additional steps.

First, as discussed, to ensure that we have a fuller understanding of the basis of your concerns, this letter provides questions of fact that you are welcome to address. You will see that they are derived from your Response Memorandum. May I suggest that direct answers to these questions will greatly assist our efforts to evaluate your concerns and, as appropriate, revise the text of the final report. I promise to carefully consider your responses to these questions and, additionally, ensure that they are included in the report's Appendix.

Secondly, I have directed that additional statements that you made during the recorded and sworn interviews conducted by OIG staff be included in the final report in order to (a) address the concerns raised in the Response Memorandum and (b) provide fuller expression of your views about the challenges the project presented for CIP.

The Response Memorandum states: "I am well regarded by my peers and have established an impeccable reputation centered on integrity, honesty, and fairness. The OIG's findings, as presented in this document, are slanderous, flawed, biased and unfounded

Question #1. Please identify each sentence in the report regarding you personally or your actions as CIP Director that you believe are slanderous, defamatory and/or libel your professional reputation.

Question #2. Please identify each sentence in the report related to the actions of current or former CIP staff that you believe are slanderous, defamatory and/or libel their professional reputations.

The Response Memorandum states: "Insufficient time has been provided in order to properly respond to the unfounded and baseless allegations represented in the OIG's report. However, it is clear to me that these allegations are based on misinformation, opinions, hearsay, and conjecture. Evidence has been ignored or avoided to establish their findings."

Question #3 Please identify each sentence in the report that you believe is false, erroneous, factually incorrect, "baseless or unfounded".

Question #4. Please identify each statement in the report that you believe is based on "misinformation, opinions, hearsay, and conjecture."

Question #5. Please identify any evidence that you believe was "ignored or avoided" and identify any additional records or facts that you believe would alter our analysis of the evidence.

The Response Memorandum states: "There has been no mismanagement, deception, negligence, or serious misrepresentations. All decisions by City officials were made will (sic) full transparency and with the support of the City Commission. There was no serious override of internal controls."

The draft report describes significant decisions or actions that do not appear to have been disclosed to the City Commission until months after the City Administration was aware of their potential costs and consequences for the project. These include:

- The City Administration's decision in October 2015 to require minimum grate elevation criteria of 2.7 NAVD for west Palm Island and the consequent raising the elevation of North and South Coconut Lanes by an additional foot or more.

Question #6 When and by what means do you believe the Commission was first notified of this decision and its potential consequences for the project's cost and schedule?

- The City Administration's decision in November 2015 to (a) build a public drainage system on west Palm Island that was designed to accommodate future connections of privately-owned yard drains in private lots and (b) inform members of the Homeowner's Association that represents Palm and Hibiscus Island that the City Administration intended to seek a change in existing policy to allow the connection of privately-owned yard drains to the public drainage system.

Question #7 When and by what means you believe the Commission was first notified of these two decisions and their potential consequences for the project's cost and schedule estimates.

- The City Administration's decision on or before February 2018 to direct the design-builder to proceed with design of a new phase of construction to install yard drains in private lots and connect those drains to unpermitted right-of-way drains under the project's existing Class II permit for construction in the right-of-way.

Question #8 When and by what means do you believe the Commission was first notified of this decision and its potential consequences for the project's cost and schedule estimates?

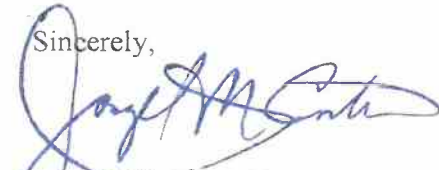
- Between October 2018 and February 2019, the Miami-Dade County Division of Environmental Resources Management (DERM) discovered that the City had installed more than 80 unpermitted right-of-way drains on west Palm Island and allowed some homeowners to connect privately-owned yard drains to the drainage system. In July 2019, DERM initiated formal enforcement action against the City.

Question #9. When and by what means do you believe the Commission was first notified of DERM's discovery of the unpermitted construction activity, and DERM's enforcement action and notified of the potential consequences for the project's cost and schedule.

The Response Memorandum states: "The design and construction cost was established initially and approved by the City Commission at \$38,500,000. After all is said and done, our total cost is \$40,965,00 despite the evolution that made a complex, multi-faceted project increasingly more difficult, including multiple scope changes and other challenges... This translates to just over 4% of the original cost, an inconsequential amount given the magnitude and complexity of this project." Presently, CIP's eBuilder "Actual Cost for Palm & Hibiscus Islands Enhancements" reports the following financial information: Current Budget: \$50, 232,729; Current Commitments: \$49,724,270; and \$46,754,987.

Question #10. How do you reconcile the assertion that "after all is said and done, our total cost is \$40,965,000" with the information report by eBuilder?

Sincerely,




Joseph M. Centorino
Inspector General

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

MEMORANDUM

TO: Joseph M. Centorino, Inspector General

FROM: David Martinez, PE, Director, Office of Capital Improvement Projects 

DATE: February 1, 2021

SUBJECT: Response to Office of Inspector General Letter (emailed 1/26/21, 4:52 PM) Regarding the Draft Report of Investigation on the Management of the Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project OIG No. 20-07

Mr. Centorino,

The purpose of this memorandum is to provide a response to your undated letter emailed to me on January 26, 2021. I appreciate your consideration as demonstrated in your letter and the additional one week offered to provide a response.

At this time, I will let my original response memorandum of January 21, 2021 stand on its own.

Thank you again for your consideration.

To: Mayor Dan Gelber and Members of the City Commission
Joseph Centorino, Inspector General
Raul Aguila, Interim City Manager
Rafael Granado, City Clerk
Rafael Paz, Interim City Attorney

From: John Elizabeth Aleman, Former City of Miami Beach Commissioner, Group VI

Date: March 3, 2021

Subject: John Elizabeth Aleman Written Response to OIG Final Report 20-07 Palm and Hibiscus Island Neighborhood Improvement Project dated February 8, 2021 ("the report")

Dear all,

The purpose of this memo is to respond to OIG Final Report 20-07 Palm and Hibiscus Island Neighborhood Improvement Project dated February 8, 2021 ("the report"), and the author's inaccurate and conspiratorial conclusions made about my policy intentions and the mischaracterization of my advocacy as a City Commissioner standing up and fighting for the taxpayers of Miami Beach on a matter of policy that needed to be corrected.

After hearing my testimony from multiple public meetings as well as under oath during a formal investigation, how or why the OIG chose to invent his own explanation for the impetus of the residential tie-in resolution of 2017 I cannot imagine. I stand firmly behind the residents-first policy for the City of Miami Beach to make extra care and effort for extremely low elevation homes, and to have a flexible resident-focused policy that acknowledges the as-built reality and allows single family homeowners to connect private property infalls to the public stormwater system if they are at or below the new crown of road elevation brought forward as part of their Neighborhood Improvement Project. Allowing existing very low-elevation homes to shed into the public system is practical and prudent and has in fact since been permitted by County DERM for Palm and Hibiscus Islands without a single request for expanded treatment or pollution control, and so it has largely been an academic exercise of documenting connections.

First, though, I must address the issue of the lack of notice that is required by Miami Beach City Code Section 2-256 (h) entitled "Procedure for finalization of Reports and recommendations which make findings as to the person or entity being reviewed or inspected":

".. whenever the inspector general concludes a report or recommendation which contains findings as to the person or entity being reported on, or who is the subject of the recommendation, the inspector general shall provide the affected person a copy of the report or recommendation, and such person or entity shall have thirty working days to submit a written explanation or rebuttal of the findings before the report or recommendation is finalized, and such timely submitted written explanation or rebuttal shall be attached to the finalized report or recommendation"

On page 134 of the report under the section header “Responses of Elected and Appointed Officials and a Representative of the Homeowners Association,” the report states “**former Commissioner John Elizabeth Aleman did not submit written responses to the draft report**” when in fact I was never noticed as is required. In his 2/10/2021 email response to my 2/10/2021 email requesting evidence of copy or notice, Mr. Joe Centorino confirmed “*I have checked with my staff, and it should have been sent to you, but somehow you were left off of the list of more than forty recipients. You were an important voice in this project, so it is especially troubling to me that you were not included. It was our fault, and I heartily apologize to you for it.*”

I do expect that the final “Final” Report will be revised based on this response, as Mr. Centorino has committed “*What I can promise is that I will attach to the final report any response you may want to make to it, include it on our website, and forward it to the Commission prior to its hearing on the subject, which is now scheduled for March 17. I will also correct any inaccuracy in the report that may have been caused by our oversight.*”

This entire letter shall serve as my “written explanation or rebuttal” of the findings of the report.

Clarification #1

On page 51 begins a section titled “B. (April 27 - May 26, 2015)” that continues on page 52 which states “During an interview with OIG staff, City Engineer Mowry said the need to both raise road elevations and develop a policy that allowed the collection of stormwater from private lots was a consensus view that he, Carpenter and Martinez shared and discussed with Robins and members of the Mayor’s Committee and with members of the Flooding Mitigation Committee, **including Commissioner Aleman.**” **This is not accurate; I was not even elected to the Commission until November 2015.** This is a tremendous flaw which calls into question the accuracy of the entire timeline.

Clarification #2

On page 101 the report states “The resolution had not been discussed or approved by the Sustainability and Resiliency Committee; was not accompanied by a Letter to the Commission from Morales that described how the policy would be implemented.”

Neither of these steps, however, were or are customary:

- (1) The bulk of the discussion and policy work at that time having to do with the Stormwater Master Plan and Neighborhood Improvement Projects was conducted at The Mayor’s Blue Ribbon Panel on Sea Level Rise, NOT at the Sustainability and Resiliency Committee.
- (2) When an item is sponsored by a Commissioner, the Administration does not do a memo nor an LTC. It was and remains so that Commissioner-sponsored policy resolutions are passed at Commission first and during the After-Action Meeting, staff is assigned to implement the resolution (in this case Eric Carpenter as assigned). In this way, staff time is not wasted operationalizing policies that are not passed by the Commission.

Moreover, the report omits that the 4/26/2017 Commission Agenda Handouts and Reference Materials did include a letter of endorsement via Email from Scott Robins (Chairman of The Mayor's Blue Ribbon Panel on Sea Level Rise) dated April 24, 2017 RE: R7R Stormwater Resolution, and that I referred to that letter to make the public aware of it during my statements at the April 2017 vote, which was unanimous. Tenured Chair Robins had deep knowledge of the overall program that would support an informed position on whether the Resolution was sound policy. My Commission statement in fact referenced that information:

"I would've normally taken this Resolution through the blue ribbon panel on sea level rise and have them endorse it through all the proper [steps], but I was really concerned because I have been to meetings with Lakeview neighbors, Central Bayshore neighbors, Alton Road and LaGorce neighbors, who are really really concerned about the message that they were receiving which was based on the old policy [...] I thought residents needed to hear this sooner rather than later. So to sort of clean it up and be able to do this now, I did reach out to the chairman of the Blue Ribbon Panel on Sea Level Rise who has endorsed the Resolution."

Clarification #3

Most importantly, I must address the conspiratorial characterization of the intent behind Commission Resolution 2017-29840 which I sponsored and was adopted unanimously by the City of Miami Beach Commission on 4/26/2017. On Page 102, the report states

"Subsequent events and records examined during the investigation, support a conclusion that the primary purpose of the resolution was to provide after-the-fact authorization and legal justification for the private-side drains the City had already allowed, and any new connections of such drains to the system."

This conclusion is pure conjecture and grossly inaccurate. Having now re-listened to the April 2017 Commission Meeting, the October 2019 Sustainability and Resiliency Meeting, and my taped interview with the OIG via Zoom June 29, 2020, I am astounded that the author of this report would ignore all of the testimony at two public meetings and under oath as to (1) the true impetus for the 2017 residential tie-in resolution, and (2) my obvious lack of awareness that private drain connections had been made for every property versus only extreme low-elevation homes.

The residential tie-in resolution was created to provide relief and reassurance to single family homeowners, many of whom were deeply concerned, if not downright scared, that the City was going to make changes to infrastructure that would cause flooding in their homes and was not planning to provide any support or assistance mitigating such flooding.

"Today with the resolution that I presented, that was because of the feedback from residents at the earlier meetings who said "wait a minute, I mean, I don't really care that the County Code says that I can't shed [private stormwater] into the street; it was that way when I bought it, and my house is [...] 30 years old, 40 years old, 50 years old, it was built that way!" You know what? You're right." – Commissioner Aleman, 4/26/2017 Commission Meeting, Item R7R approx. 5:00:45pm

Furthermore, the intent was to provide **connections only for those homes having a finished floor elevation at or below future crown of road:**

[Oct 23, 2019 Sustainability and Resiliency - Miami Beach, FL \(swagit.com\)](#) 1:26:02

Aleman: "Mr. Hefty, you are completely right that the Palm and Hibiscus project was designed and launched without these individual home connections. The result of that of course, the way that Palm and Hibiscus were originally built, as you know, the entire City and probably the entire County is built, is that peoples' personal properties do drain into the public right of way and that goes into the public system. So that is the built condition, right?"

Mr. Hefty: "Yes."

Aleman: "So, therefore, with the original design of Palm and Hibiscus, just elevating the right of way, and that being one of the lowest parts of our City [...] the lowest elevation homes in the City, then homeowners were rightly concerned then, if by built condition their stormwater was always going into the public system and now we elevate the public system, where was their water going to go and what would that mean for their personal property. **And so that was why the Commission endorsed this residential tie-in: if the homeowners finished floor was below, not their yard, not their yard, but their finished floor was below the future crown of road, and they could be concerned about interior home flooding, then we would let them tie into the public system which we had the capacity for. And so that was a huge change in the middle of that project, and you alluded to that. I'm not telling you anything that you don't know.**"

Additionally, from the 10/26/2019 RE:MiamiBeach article [Unpermitted work delays Palm and Hibiscus road work - South Beach \(remiamibeach.com\)](#) which recapped the Oct. 2019 public hearing of the Environment and Sustainability Committee that discussed enforcement action and the unpermitted construction of right-of-way drainpipes before members of the Commission:

"Commissioner John Alemán agreed the **"project was launched without these individual home connections"** and noted Commission action mid-project to allow residents citywide to tie-in to **the public system** to drain water from areas below road crown elevation when roads are raised to mitigate flooding from sea level rise. She asked if the City was clear on what DERM needed or if there was some kind of a stalemate that needed to be dealt with."

"Alemán told Hefty that Miami Beach "can't afford to wait" on its resiliency projects. "So we appreciate your patience when we stumble, if we don't do everything exactly perfectly. Clearly none of us, whether it's on the Commission side or the Administration side think it's okay to do work without permits. None of us think that's okay and we know we've made that mistake in the past and we're doing everything we can to not make that mistake anymore. This situation is really tough for the reasons that I said. **We had a major, major, major design change right in the middle** and we just really need, really need to work together. We really cannot have a stalemate of any kind because people live there, you know.""

Testimony throughout my OIG interview also describes the purpose of the residential tie-in resolution as being constituent focused, and only for low elevation homes, and clearly indicates that I was unaware of the connections for every home in 2017.

[00:37:36] Investigator McGee: “And so just to just to sum up, when you got into this issue, you basically heard about the problem at some community meetings, during your meetings with various parties. And when you focused on it, as I understood you to say, you know, you talk to Bruce Mowry, to Eric Carpenter, and if there's somebody else I'd be happy to hear, but that these two gentlemen basically indicated that the system that they had a solution, it was a possible solution, which is they built the system to accommodate private drains on private property. And that if the city wanted to go in this direction and if you wanted to do that, then the system was built to accommodate it. Did I understand you right?”

[00:38:28] Commissioner Aleman: “I'm going to restate it just in the spirit of absolute accuracy. They informed me, when I came forward with this concept of allowing only those homes that were below 3.7 NAVD with their finished floor, allowing, how could we help them? That they let me know that the capacity, the carrying capacity of the system, was already sized to handle that private stormwater runoff. And they would get to work on an engineering solution to figure out how to put in falls on those private homes.” “The connections were not as I understand it part of the design at that time. It's that the capacity of the main system was adequate.”

[00:39:27] Investigator McGee: “Ok, so they didn't tell you at that time. They didn't tell you that the connections were part of the design.”

[00:39:31] Commissioner Aleman: “No, no, no.”

[00:39:34] Investigator McGee: “Would you be surprised to find out they were?”

[00:39:37] Commissioner Aleman: “I would be surprised to find out they were.”

Additional Observations

One thing that was not explored in this report although I brought it up to the OIG, was the question of whether during the pursuit of permits from DERM for the SFH connections, the City was being asked to reach an even higher standard of water quality than pre-project. Although the as-built environment, as acknowledged in the report, always had allowed private stormwater to drain in the public system, so essentially, no new stormwater flows were being introduced by the project, I understood from staff at the time that DERM was requiring the City to certify that no pollutants from private property would make it into the system, which essentially was a new and stricter requirement. While improving water quality is an admirable and shared goal, there was the question of whether the removal of solid litter and oils etc. by the new system was not already adequate improvement over as-built, and whether there really was any other available technology that could be successful. Hopefully the Administration and DERM have reached some go-forward agreement on this and if not it should be addressed now.

Secondly, during my interview I brought up several suggestions for improving these projects going forward. I find it interesting that none of them made it into the report. If the purpose of the OIG is to help the City improve its processes, procedures and best practices (which is what we discussed when we

created the office in the first place), then an opportunity was certainly missed in capturing all of the suggestions from all of the parties interviewed as to how the City can do better going forward. For example:

1. I suggested that the City obtain Elevation Reports for all residential properties within municipal boundaries. The City should create a database of finished floor elevations by soliciting certificates from residents (most will have done one for their flood insurer) and update the database on an ongoing basis with data from the Building Department, filling in any gaps prior to initiating residential stormwater design efforts. That way the City will know the precise elevation of every finished floor, and be able to design accordingly, and use that data in stormwater / event modeling, and use it to assist residents with the most challenging circumstances.
2. I suggested that the City create a process to help residential property owners identify on their property where they can beneficially engineer to run and collect stormwater, to maximize absorption and enhance the freshwater lens under the City (flowerbeds, backyards, other places so that the water will not store underneath the home, nor enter the actual home, and will not impede ingress / egress from the home to the public right of way). This could be provided as a service to generate ideas for solutions that the property owner can then pursue as part of their private property adaptations.

This report in its prior "final" version dated February 8, 2021 contained inaccuracies as to timeline, as to customary Commission and Administration procedure, and made inappropriate conjecture including the author's conclusion as to the primary purpose of Resolution 2017-29840. The author ignored critical testimony at public meetings and under oath that did not align with his conclusion, and the author omitted critical facts that did not align with the conjecture.

In closing, it is imperative that the Miami Beach Mayor and Commission move forward on our water, sewer and stormwater management infrastructure upgrades. It is critical that our City Administration work effectively with our County, State and Federal level partner Agencies, following all applicable codes and laws. The continued politicization of critical municipal infrastructure and our City's response does not serve the residents. This is not a choice. The coming reality is something we must address. The Inspector General missed a crucial opportunity to help us do what we do better and more efficiently for the residents of our community.

Sincerely,

The Honorable John Elizabeth Aleman

Former City of Miami Beach Commissioner

McGee, James

From: Markle, Jesse <jmarkle@sfwmd.gov>
Sent: Wednesday, February 3, 2021 2:05 PM
To: McGee, James
Cc: Creech, Jill; Waterhouse, Anthony; Wood, Dustin; Lomonico, Julia; Centorino, Joseph
Subject: RE: Request for assistance from the City of Miami Beach Office of Inspector General

[THIS MESSAGE COMES FROM AN EXTERNAL EMAIL - USE CAUTION WHEN REPLYING AND OPENING LINKS OR ATTACHMENTS]

Mr. McGee,

The District appreciates the opportunity to provide comments regarding the City's *Office of the Inspector General Report of its investigation of the management of the Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project* provided as a draft on December 4, 2020.

As we discussed in our meeting of February 2, 2021, the District offers the following comments:

- The District's July 30, 2020 response to the e-mail from Wade Trim engineer Jim Penkosky of the same date was based solely on the information provided in the e-mail without benefit of review of the Wade Trim/Kremers construction plans or any supporting stormwater management (SWM) calculations, which were not provided. As such, our position that "[t]he installation of yard drains within the permitted surface water management system...will not require a permit modification" is no longer the case.
- A modification to Environmental Resource Permit (ERP) 13-06125-P to address the changes made to the SWM system during construction that were not contemplated by the ERP will be required. The permit modification shall meet the criteria in Chapter 373, Florida Statute, Chapter 62-330, FAC, and ERP Information Manual Volumes I & II including, but not limited to:
 - Demonstration that the City has real property interest as defined by Section 4.2.3, ERP Information Manual Applicant's Handbook Volume II to operate and maintain the portion of the SWM system that extends into private property,
 - Demonstration that any area that was not considered under the permit that is now contributing discharge to the SWM system does not lead to a violation of State water quality standards
 - Demonstration that any area that was not considered under the permit that is now contributing discharge to the SWM system does not lead to substantially different flood protection
- Please revise the last sentence of the second full paragraph on page 111 of the draft report to clarify that the District was not one of the agencies informed of the "non-standard drainage system" by the whistleblower.

Please contact me should you have any questions or comments.

Thanks,



JESSE MARKLE, P.E.

Bureau Chief

Environmental Resource Bureau | Regulation Division

South Florida Water Management District

3301 Gun Club Road, West Palm Beach, FL 33406

Phone: 561.682.6274 | Toll Free: 800.432-2045, x6274



Wade Trim Group, Inc.
25251 Northline Road • Taylor, MI 48180
734.947.9700 • www.wadetrim.com

January 15, 2021

Office of Inspector General
City of Miami Beach
1130 Washington Avenue
6th Floor
Miami Beach, FL 33139

Attention: Mr. Joseph M. Centorino, Inspector General

Re: Office of Inspector General Report of its Investigation on the
Management of the Palm and Hibiscus Islands Neighborhood
Infrastructure Improvement Project (OIG No. 20-07)

Dear Mr. Centorino:

Wade Trim has reviewed the Office of Inspector General Report of its Investigation on the Management of the Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project (OIG No. 20-07). Relative to Wade Trim, we find the report to contain numerous misrepresentations and faulty conclusions; so many that responding to each would be overly burdensome, adding to the significant effort already expended cooperating with the Inspector General's investigation. The sum of these misrepresentations and faulty conclusions is the implication of intentional wrongdoing by Wade Trim to deceive parties, which was not the case.

Article 7.3 of the Agreement Between City of Miami Beach, Florida and Lanzo Construction Co., Florida For Progressive Design-Build Services For Neighborhood No. 13: Palm & Hibiscus Islands Right-of-Way Infrastructure Improvement Project defines the Design-Builder Standards of Performance. Article 7.3.1 states the following:

"Services and Work provided by Design-Builder and all of its agents, subconsultants, subcontractors, and employees under this Agreement shall be performed in a manner consistent with the degree of care and skill customarily accepted as good professional practices and procedures by members of the same profession currently practicing under similar circumstances in Miami-Dade County, as well as having the experience and qualifications to complete the Services and Work."

This is the standard of performance against which Wade Trim should be measured. From our review, it appears that the Inspector General, not "...members of the same profession currently practicing under similar circumstances in Miami-Dade County..." is judging and drawing conclusions about Wade Trim's performance and stating such in the referenced report. The report should clearly indicate that the conclusions are being drawn, not by a "member of the same profession" as required by the contract, but by a party limited in familiarity with design engineering, construction, and design-build delivery, making it unqualified to assess the performance or standard of care.

Further, the report implies that Wade Trim intentionally deceived parties involved in the project without providing any supporting factual evidence. The design-build team worked with and at the direction of the City of Miami Beach. We were transparent in our dealings with the City and other stakeholders. Wade Trim never intentionally misled or deceived any party and the implication of such is simply false. The report should present any factual evidence to support the implications being made. Prior to finalizing the report, please revise to either include factual evidence or eliminate the implication of intentional wrongdoing by Wade Trim.

Wade Trim is proud of the projects we have delivered with the City of Miami Beach staff for the residents of the City. Our services are always delivered in a transparent manner with all involved parties for the good of the community. We have enjoyed the professional relationship built with City staff and look forward to other future projects.

This letter should be included in the final Report as Wade Trim's statement.

Very truly yours,

Wade Trim Group, Inc.



Andrew J. McCune, PE
President/CEO

AJM:ka

LNZ 2003-02S

Report Response Ltr 1-15-21.docx



*Delivering sustainable infrastructure solutions
for tomorrow's communities*

January 15, 2021

Via Email and U.S. Mail

City of Miami Beach Office of Inspector General
Old City Hall, Sixth Floor
1130 Washington Ave.
Miami Beach, Florida 33139

Attn: Mr. Joseph M. Centorino
Inspector General
City of Miami Beach

Ref: Lanzo Construction Co., Florida
Case No. OIG No. 20-07
Response to OIG Letter of December 4, 2020

Dear Mr. Centorino:

Lanzo does not agree with many of the opinions and conclusions contained in the Draft Report, OIG No. 20-07, dated December 4, 2020. The Draft includes representations characterized as statements of fact which have no basis. Furthermore, many erroneous conclusions were incorrectly drawn. A picture of deception by the City of Miami Beach, Wade Trim and Lanzo is seemingly presented which is not factual and far from the truth.

Lanzo does not cast blame upon the OIG for its erroneous presentation, understanding that the engineering and construction aspects of the Palm and Hibiscus Neighborhood Infrastructure Project are quite complex and beyond the normal report and recommendation background of your office. However, Lanzo respectfully requests that your Draft be substantially amended to delete suppositions and conclusions that have no basis in fact.

The Contract Design Criteria Package under which Lanzo proceeded with its work defines the Stormwater System for a Drainage area including at a minimum all road rights-of-way, 100% of interior (landlocked) lots and 50% of waterfront lots (DCP-1.04-C-2-g). This stormwater system drainage area has not changed despite what your draft Report concluded.

As a Progressive Design Build, Lanzo partnered with engineering firm Wade Trim, the City of Miami Beach, and the City's engineer Stantec Consulting to develop plans and construct the Palm and Hibiscus project in accordance with the Contract Design Criteria, all in full public view. Please note the following points associated with this endeavor:

- Twice monthly coordination meetings were typically held with the partners and stakeholders to update progress and path. The planning was well-coordinated and transparent.
- Plans were updated as required to accommodate current work definitions. There were no separate parallel plans as implied by the Draft OIG report.
 - o Permit plans of February 19, 2016 represented the proposed stormwater system as of February 19, 2016.
 - o The plans of February 19, 2016 evolved into the May 27, 2016 plans initially used for construction.
 - o The May 27, 2016 Plans have currently evolved into the May 20, 2020 as-built plans being utilized for Permit Modifications.
 - o Drainage areas, treatment and outfalls did not change through this evolution.

Please note that South Florida Water Management District (SFWMD) issued Environmental Resource Permit 13-06125-P for the Palm and Hibiscus surface water management system. In response to the discussion concerning the addition of yard drains to the system, SFWMD stated “The installation of yard drains within the permitted surface water management system as described below will not require a permit modification.” (July 30,2020 email attached).

The Draft OIG report discussed the innovative design associated with the Lanzo-constructed City of Miami Beach Sunset Harbour Neighborhood Improvements Project. The national publication, Engineering News-Record, recognized the Sunset Harbour Neighborhood Improvements Project with an award for Best Water / Environment Project – 2017 (attached). The City of Miami Beach, Lanzo / Wade Trim partnership was recognized nationally for innovative design and construction. It is important to recognize that Sunset Harbour Project was the first of its kind in a Miami Beach commercial area. The Palm and Hibiscus Neighborhood Infrastructure Project is also the first of its kind in a Miami Beach residential area, yet somehow the Draft Report seeks to cloud this accomplishment with some darkness that is not deserved.

Please correct the misrepresentations in your report. Lanzo did not deceive the City or other Stakeholders regarding this Project.

Lanzo is proud of the work performed for the City of Miami Beach and looks forward to future contracts with the City.

Sincerely,



Bob Beaty, PE
Assistant Secretary
Lanzo Construction Co., FL.

Bob Beaty

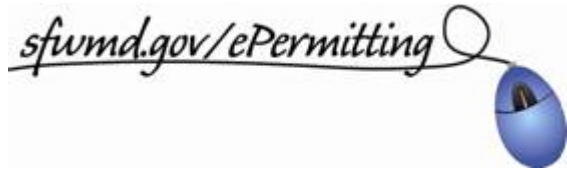
From: Wood, Dustin <duwood@sfwmd.gov>
Sent: Thursday, July 30, 2020 3:30 PM
To: Penkosky, Jim
Cc: Gomez, David; Samadi, Mina; Perez, Rodney; Jeffrey Crews (jeff.crews@stantec.com); Bob Beaty; Victor Serrano; Mullen, David; Suarez Toledo, Lisel
Subject: RE: Miami Beach P&H ERP Permit 13-06125-P: No permit mod action required

Jim,

The installation of yard drains within the permitted surface water management system as described below will not require a permit modification.

Thanks,

DUSTIN WOOD, P.E.
SECTION LEADER
ENVIRONMENTAL RESOURCE BUREAU
3301 Gun Club Road, West Palm Beach, Florida 33406
561 682-2624 • 800 432-2045 Ext. 2624



NOTE:

While the District supports that it is commonplace and convenient to collaborate via email during the pre-application/application process, Permit Applications and Responses to a Request for Additional Information (RAI) submitted via email are not an official submittal (Section 4.4 of Environmental Resource Permit Applicant's Handbook Volume I). For timely and efficient processing of permit applications and RAI responses, please submit online using ePermitting (link above).

Florida enjoys a broad public records law. Any emails sent to or from this address will be subject to review by the public unless exempt by law.

From: Penkosky, Jim <jpenkosky@wadetrim.com>
Sent: Thursday, July 30, 2020 2:01 PM
To: Wood, Dustin <duwood@sfwmd.gov>

Cc: Gomez, David <DavidGomez@miamibeachfl.gov>; Samadi, Mina <MinaSamadi@miamibeachfl.gov>; Perez, Rodney <RodneyPerez@miamibeachfl.gov>; Jeffrey Crews (jeff.crews@stantec.com) <jeff.crews@stantec.com>; Bob Beaty <BobB@Lanzo.org>; Victor Serrano <VictorS@Lanzo.org>; Mullen, David <dmullen@wadetrim.com>; Suarez Toledo, Lisel <LiselSuarezToledo@miamibeachfl.gov>

Subject: Miami Beach P&H ERP Permit 13-06125-P: No permit mod action required

[Please remember, this is an external email]

Good afternoon, Dustin.

In a follow-up to our conversation, it is my understanding that the work described herein is considered 'de minimus' and no permit mod is required for the subject permit (attached for convenience). Briefly, as part of the project the City has asked the design-build team of Lanzo and Wade Trim to provide for drains within select private properties to assist in localized drainage at those properties. The ERP project description is right-of-way based. So we did want to inform the District of our encroachment into the private side at an average of 10' into each property.

We further submit the following points.

- The base collection, pumping, and discharge system all remain unchanged
- Drainage basins are unchanged
- Permitted acreage is 25.53 which constitutes all public ROW on Palm and Hibiscus Islands
- A conservative estimate based on a 10' wide construction activity into each of the 39 private properties equates to a cumulative 0.16 acres or 0.63% of the permitted acreage (at most)
- DERM permitting for each property is almost complete and property owner agreements are all in place for the work

We further understand that all requirements of the permit remain in effect including final SFWMD inspections and as-built/certification forms to be submitted.

Please let me know if you have any further questions or you can provide concurrence of this understanding. Thank you again for your guidance in the matter.

Best Regards...Jim

[COVID-19 Planning and Response at Wade Trim](#)



Jim Penkosky, PE, Senior Project Manager
2100 Ponce de Leon Blvd, Suite 940, Coral Gables, FL 33134
786.361.1645 office

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SKANSKA



McGee, James

From: Bruce Mowry <bmowry@att.net>
Sent: Tuesday, January 5, 2021 1:31 PM
To: Alonso, Elisa; McGee, James
Cc: Centorino, Joseph
Subject: Re: Cover Letter and Draft Report: OIG No. 20-07, Office of Inspector General Report of Investigation on the Management of the Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project

[THIS MESSAGE COMES FROM AN EXTERNAL EMAIL - USE CAUTION WHEN REPLYING AND OPENING LINKS OR ATTACHMENTS]

Jim,
I have thought a lot about the report over the past several weeks. My position is still the same that when this draft report references policy that were given by me, it reflected the direction given by the City Commission and City Management. As I had stated that the City Engineer position within the City of Miami Beach is at a level below a Director or the City's Executive Management Team.

The City Commission gave direction by actions such as approving a sea level projection curve showing the expected levels that needed to be followed for all actions of the City. The Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project was to be completed to meet these actions.

The City Commission approved to allow for connections to nonpublic properties within the city. This first official action by the Commission for these types of connection occurred when they approve the connection for the new hotel that was built at the intersection of 17th Street and West Avenue. This action allowed for the City to charge for this use in the future, when a policy was to be developed to establish the value of this connection. Later action by the City Commission established that there would not be a charge for these connections within the city. This is the why you will see references in Palm and Hibiscus Project that connection points were to be made available to the private land owners with a potential fee charged in the future.

The Regulators were aware of these policies because they had to approve the connection for the new hotel at 17th Street and West Avenue. A significant amount of the storm waters within the city actually originates on private land and either drains on the surface into the public right of way or directly piped into the City's storm water systems.

The Regulators are aware that during high tide events, a significant amount of groundwater actually either rises up about ground level or reverse flows up out of the permitted stormwater disposal wells and into the City's stormwater system. With the porous soils under the city, this groundwater flow cannot be stopped. The City had a study with INVEST that looked at other locations and this study showed that 200 feet deep walls may have to be constructed below ground to prevent this ground water flow from the ocean and it was not feasible. We considered a method to plug the soil formation just below the surface of the city and the Regulators objected and the City Manager and City Attorney instructed that we not further develop this type or solution.

The only solution that was supported by the City Commission and City Management was to elevate to above the accepted sea level projection curves to prevent this type of flooding. This would mean that private homes and building below these elevations would be subject to flooding.

In summary with sea level rising, the City can look at Resist (building walls and pump systems and accept flooding), Resiliency (build all infrastructure to meet the sea levels) or Retreat (this policy to retreat was not acceptable to anyone).

I enjoyed my time with the City of Miami Beach as their City Engineer and this is why I was willing to work the long hours for the residents of the City.

Thanks,
Bruce

Bruce A. Mowry

40 Foxcroft Run

Ormond Beach, FL 32174

email: bmowry@att.net

cell: (386) 262-4943

On Tuesday, December 8, 2020, 02:49:17 PM EST, McGee, James <jamesmcgee@miamibeachfl.gov> wrote:

Mr. Mowry,

Good afternoon sir.

Thank you for these comments, and for your willingness to provide a more detailed response over the next several weeks.

Best regards,

Jim McGee

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From: Bruce Mowry <bmowry@att.net>

Sent: Tuesday, December 8, 2020 1:39:48 PM

To: Alonso, Elisa <ElisaAlonso@miamibeachfl.gov>

Cc: Centorino, Joseph <JosephCentorino@miamibeachfl.gov>; McGee, James <JamesMcGee@miamibeachfl.gov>

Subject: Re: Cover Letter and Draft Report: OIG No. 20-07, Office of Inspector General Report of Investigation on the Management of the Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project

[THIS MESSAGE COMES FROM AN EXTERNAL EMAIL - USE CAUTION WHEN REPLYING AND OPENING LINKS OR ATTACHMENTS]

Good Morning Ms. Alonso,

I did a brief review of the document and it appears to be well written. I will complete a more detailed review of the document over the next several weeks.

A minor comment is that when you reference a change in elevation from 2.2 feet NAVD to 2.7 feet NAVD, this is not 5 inches because it is referenced as tenths of a foot. This make the change actually 6 inches in elevation change.

It should also be noted that the City Engineer is actually sub servant to the Director of Public Works and all direction of standards had to have the Director of Public Works approval. You can verify this by looking at the organization chart for the Department and also see that the City Engineer's pay grade was below that of even the Assistant Public Works Director. I had discussed this with the City Manager to see if the City Engineer should be upgraded to a higher level to review all standards of the City and he did not agree with this change.

When the elevation changes were established for Palm Island, the City Engineer had to discuss these changes with the Director of Public Works for his approval. The Director of Public Works and I did have these discussions, before I gave direction for the design of Palm Island to CIP. I did concur with the direction and we made these decisions due to increases in sea level. We had observed high tide elevations of greater than 2.2 feet beginning to occur during the years of the project design.

In the Director of Public Works discussions, we looked at the existing home elevations that were below 2.2 feet NAVD. These homes were experiencing flooding prior to construction of the project and due to the soil formations under

the City of Miami Beach, flooding of these homes would continue with or without the streets being raised. The water actually flowed up from under these homes during high tides and this was documented by the contractors with videos with water flowing out from under one to these house. The only solution to stop this flooding of the homes would be to elevate the finished floor to above the high tides. You can look at the planning curves adopted by the City Commission and you will see that these low elevation homes will all be flooded out within the next 10 to 20 years. (If a home owner asked me about the future of their home and I would tell them to either look at elevating their home or build a new home at the new required standards of the City.) The new homes being built in this area are being elevated as much as 6 to 8 feet higher.

The City Engineer did not direct any work or manage any aspect of the work or contracts being performed by CIP. The capacity of the City Engineer was to support CIP in the appropriate standards of the City that should be followed. CIP actually directed the design of their projects as was confirmed by this report. As was noted, I cautioned CIP in one of their meetings with the contractor that they build what was on the design drawings and stop changing the design.

Thank you,
Bruce

Bruce A. Mowry

40 Foxcroft Run

Ormond Beach, FL 32174

email: bmowry@att.net

cell: (386) 262-4943

On Friday, December 4, 2020, 07:14:47 PM EST, Alonso, Elisa <elisaalonso@miamibeachfl.gov> wrote:

Good afternoon Mr. Mowry,

Please find attached the cover letter and draft report OIG No. 20-07, Office of Inspector General Report of Investigation on the Management of the Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project for your review and comments.

Thank you! Have a nice weekend!



Elisa Alonso, *Executive Assistant*

City of Miami Beach

OFFICE OF INSPECTOR GENERAL

1130 Washington Avenue, 6th Floor

Miami Beach, FL 33139

Tel: 305-673-7000 ext. 26725 | Fax: 305-587-2401

Hotline: 786-897-1111

elisaalonso@miamibeachfl.gov

www.miamibeachfl.gov


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MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, FL 33139, www.miamibeachfl.gov

MEMORANDUM

To: Joseph Centorino, Inspector General

From: Eric Carpenter, Assistant City Manager 

David Martinez, Capital Improvement Projects Director 

Roy Coley, Public Works Director 

Date: January 21, 2021

Subject: Response to Office of Inspector General (OIG) Draft Report 20-07

In addition to this collective report, each of the individuals above prepared their own response, which is also attached to this report for a complete response. In order to respond to this report, which looks back nearly eight years, the Administration of the City of Miami Beach (City), represented by those signatures above, believes that it is important to begin by providing some context.

The City is a low elevation barrier island surrounded by tidal waters; in most cases within a few feet of the existing ground elevation. As such, we find ourselves at the forefront of the battle against climate change and sea level rise. Through many years of study it has been determined that not only do the waters surrounding the island respond to the tides, but also the groundwater elevations mirror the surrounding tidal elevations. As a result the City is not only susceptible to the heavy rainfall and flash flood events that plague all of South Florida but also vulnerable to the problem of "sunny day" or tidal flooding.

Historically the City has relied upon gravity based drainage systems that only function when the coastal waters are lower in elevation than the water in the stormwater collection system. Unfortunately as tidal elevations have increased over the years, the existing gravity based systems became less and less effective at times of high tides; to the point that they experience reverse flow where groundwater or baywater flow backwards through the system and flood the streets and low lying yards. This situation has gotten progressively worse over time, as evidenced by not only the scientific data, but also resident surveys (such as the 2016 Citywide Resident survey by ETC Institute, where 76% of the residents have observed coastal water level increases).

The frequency of flooding events and the existential concerns surrounding them began to draw the attention of national media as well as the insurance industry. While media outlets like Rolling Stone were screaming out "Goodbye Miami" discussions were taking place in Washington DC surrounding the National Flood Insurance Program (NFIP) and the legislation (Biggert/Waters Act) that required a more risk based approach to rate setting, and which may significantly impact the ability of property owners to obtain flood insurance and, consequently,

federally backed mortgages. It became very clear that ignoring the issues and concerns was not a reasonable option.

The City began to take into account the clear changes in the stormwater/tide water dynamics by studying sea level rise in conjunction with the Southeast Florida Climate Compact, South Florida Water Management District, several universities, and our expert consultants. The findings were incorporated into all of our planning efforts, including adoption of the unified sea level rise projections (Attached as Exhibit 1).

Despite significant efforts to learn from other hydraulically challenged areas (sending a team to the Netherlands to find out how the Dutch have learned to live with water; studying the impacts of hurricane Katrina on the New Orleans area), it became clear that the speed with which water can move within the porous limestone subsurface in Miami Beach created a need to find a new approach. As a result, we began to look at other solutions beyond dykes and levees.

The City is an interesting situation as much of what is known today as Miami Beach was filled in with dredge spoils from the bay bottom or sand/limerock that was imported from areas of inland Miami. The island was literally elevated out of the sea in the early 1900s. As Miami Beach approached its 100th birthday, it was becoming increasingly evident that the only way it would still be around in another 100 years, was if it continued to elevate ahead of the sea levels through new, alternative, and soundly engineered solutions.

As a result of many discussions with outside experts, community stakeholders and City officials the legislative direction began to evolve with a sense of urgency, commensurate with a world class City; one that is home to \$40 Billion worth of real estate that was at risk of losing significant value due to the advancing seas. The City took bold and necessary steps that changed the approach of many communities in how they planned and implemented the inevitable adaptation to sea level rise. The significant changes in approach created many challenges, including but not limited to, the areas of engineering, public perception and regulatory compliance. This is to be expected with the development and evolution of any transformational change.

The City took great effort to bring the many different stakeholders along on the journey of creating a new playbook for vulnerable communities. As with all change, this was difficult and created situations where those that did not share the same level of concern, or were uncertain that the changes might not be worth the difficult transition, became frustrated and responded negatively. Please see an example of the level of public engagement, as described in the presentation for the Joint Workshop of the Neighborhood and Community Affairs Committee and Mayor's Blue Ribbon Panel on Sea Level Rise and Flooding (Exhibit 2).

The City enlisted the best available science and outside expertise, utilizing two of the top three global design firms (as ranked by Engineering News Record for the past seven years), AECOM and Jacobs Engineering, as the lead consultants during the evolution and reevaluation of this program. The City also solicited the services of a diversity of volunteer experts through the Urban Land Institute to evaluate the City's actions and provide critical feedback on what could be done better. The collective of these nationally and internationally renowned experts all concluded that the approach of the City was prudent and necessary (See attached AECOM, ULI and Jacobs study results attached as Exhibits 3, 4, and 5 respectively).

Potentially the greatest challenge of breaking out of the status quo was demonstrating to the regulatory agencies that the same approach that had continued to become less and less

effective due to changing conditions was not sufficient to overcome the evolving threat of sea level rise. This was further exacerbated by a prior employee of the City that significantly undervalued the role of the regulatory community and ultimately was removed from his position due to his cavalier approach to the need of following the requirements of those agencies. This difficult evolution created situations that allowed for individuals with political motivations to plant seeds of distrust in the minds of the regulatory agencies toward the City. Despite efforts at all levels of the City Administration (including monthly meetings beginning in October of 2016, to open the lines of communication with the regulatory agencies), the City was still unable to overcome the distrust that had been growing as a result of the efforts of those that intended to undermine the program.

The evolution of the stormwater program included the gradual increase in understanding of the impacts to those properties that had historically relied on the flow of water from private to public property. The building code of Florida is clear that private properties are responsible for managing all water that falls upon their property. That perspective did not address the moral obligation to leave all properties in a better position after completion of the work than before. The City underwent this evolution of thought that contemplated the entire City, both public and private. The understanding that both must raise to keep pace with the rising tides is a challenge, particularly during the transition period where one or the other of these processes may get ahead. As a result, and with the full transparency and direction of the City's Blue Ribbon Panel on Flooding and Sea Level Rise and City Commission, the scope of these projects included additional requirements, concepts such as maximum flood stages below the finished floor elevations of homes and the inclusion of private property drainage connections to facilitate the transition period.

The incorporation of the secondary drainage system on Palm and Hibiscus evolved as well. The initial modification was only the inclusion of stub out pipes from the existing primary drainage system that remained unchanged. Since these stub outs were not connected to anything there was no additional water entering the system. Subsequently the Design/Build team used some of these stub outs as temporary construction drains within the right of way during the construction activities (see attached photos Exhibit 6) and more recently properties went through a separate permitting process and received private property drains that will remain until these low lying properties redevelop and are required to elevate out of the floodplain. The impacts of this real time development of solutions created modifications to the Palm and Hibiscus Island Neighborhood Improvement project that could have been handled better, had there been unlimited time to evaluate. The City Administration acknowledged these shortcomings in its presentation in the Commission Workshop on Resilience held January 27, 2020. A copy of the presentation is attached for clarity (Exhibit 7).

Interestingly, although the City acknowledged many of the findings of this report in a Commission workshop on January 27, 2020, it took nearly another 12 months for the Office of the Inspector General (OIG) to prepare a draft report which echoes the same thoughts. Notwithstanding, the OIG's report includes, in our opinion, a significant amount of innuendo and editorializing which, in our opinion, serves no purpose other than insinuate wrongdoing where none has occurred. Furthermore, after over a year spent on generating this report, despite several requests from the Administration for extensions beyond the 30 business day response time, which happened to fall during the holidays and a global pandemic, those requests were rejected by the OIG. Why are the facts from staff that were involved from the beginning less

important than the conjecture of those who are trying to decipher a very complex issue after the fact?

Finally, the real truth is that there were many decisions made that created an evolution of the Palm and Hibiscus Neighborhood Improvement project. All of those decisions were made with the best interest of the City, and with the clear direction and approval of the appropriate authorities within the City. There were decisions made by the contracted Design/Build firm that are now being questioned by the regulatory authorities, that are open to debate. However, there was no ill intent, nor any intentional omissions, as can be demonstrated by the lack of clear evidence to the contrary; despite a year of investigation.

Furthermore, there was a level of communication at both the macro and micro levels with the regulators, including documentation via letter from Wade Trim on May 10, 2018 (attached as Exhibit 8), clearly identifying the modifications of the project over time. Even though the importance of this letter was brought up in an email from City Manager Jimmy Morales (attached as Exhibit 9) it was limited to an excerpt from the letter buried on page 99 of the OIG's report and glossed over preferring to continue to use words like deception and misrepresentation. This letter, along with the signed application submitted by the City via email on May 15, 2018 was before the response from DERM, stating that it needed a certification from the Engineer of Record stating there were no changes, and well before the September 19, 2018 email from the alleged whistleblower.

- There was no information hidden from the regulators, it was provided to them in writing prior to permit renewal being applied for in May 2018 including the reference to the secondary drainage system connections. Furthermore, it has recently been confirmed by the South Florida Water Management District that the introduction of the secondary drainage system will not require any additional documentation or a permit modification.

It appears that individuals from the Design/Build firm, after being intimidated by the approach and the actions of the OIG, (which were extremely aggressive and led to an overall feeling of persecution and degradation of morale for all involved) may have made statements that they thought would insulate them from any responsibility but they are not based in fact, merely opinion.

The reality is the project is nearly complete, the systems in place function as intended, as can be seen by the attached before and after photos of the Coconut Lanes (Exhibit 10), and the regulatory agencies have at this point agreed and permitted almost all of the proposed connections. Those that do not receive permits will not be connected as was originally contemplated.

This entire exercise felt from the start that it was determined to find some issue where none exists, other than what was acknowledged already a year ago. This begs the question of what is the real motivation and intent here? In the end, the OIG's draft report has clearly omitted or manipulated facts to substantiate some objective that we are not privy to, but which, in our opinion, is intended to be punitive and not instructive.

Below please see the responses to the individual findings. The City Administration hopes that the information included herein can help to clarify some if not all of the misguided conclusions in the report.

Response to Finding # 1. *The City and Lanzo, having failed to disclose to DERM and SFWMD the plans they intended to use to build the drainage system, obtained two permits from the regulatory agencies based on false and misleading information.*

This finding speculates, and erroneously concludes, that the City and Lanzo conspired to obtain a permit from DERM and SFWMD utilizing false and misleading information. This finding demonstrates a fundamental misunderstanding of the standard procedures and practices surrounding drainage permits. Unlike a typical building permit process, which requires progressive inspections by State certified inspectors, drainage permits issued by DERM do not follow that procedure. DERM reviews engineered drawings and calculations, and issues permits based on those documents. Once the project is completed, the engineer of record submits signed and sealed as-built drawings, certifies the installation, and requests closure of the permit. At the time of permit closure, changes to the plans, whether resulting from unforeseen field conditions, design changes or owner directed changes, are recorded and documented. It is common and customary for close-out documents to “clean-up” those discrepancies between the permit drawings and the as-built conditions.

When comparing the two plans referenced in this finding, it is evident that the primary differences equate to the proposed roadway elevations and the addition of underground stub outs. The stub-outs, implemented in a proactive response to the evolving strategies to mitigate sea level rise, were included to provide the opportunity for future private projects to have a connection point. As a result, future private projects, which would be required to obtain their own permits, would be able to complete their installation without having to interfere with the main trunk lines or damage above ground installations.

The documents prepared by Wade Trim did not add inlets. This is not a material change, nor does it make the permit documents false or misleading. The DCP and early meetings with DERM clearly established the tributary area of the stormwater collection system for this project to include the entire right-of-way, the entire private, non-waterfront lots, and ½ the private waterfront lots. This did not change between the two sets of documents; is not a material change to the permit; and does not make the permit documents “false or misleading.” Simply stated, the Wade Trim drawings did not alter the functionality, effectiveness, or ability of the project to protect the Bay, and comply with Code. This finding attempts to equate normal and common project evolution to the nefarious presentation of false or misleading permit plans.

In the management of a majority of City projects, the City relies heavily on the experience and expertise of its professional consultants and State certified general contractors, to meet and comply with all regulatory requirements. Under the design-build delivery model for this contract, the design-builder, Lanzo, is responsible for the project development and permit management. This includes, through their sub-consultant(s), not only the preparation of permit drawings, but the management of permit revisions, renewals and closures. This is not limited to the pursuit of a drainage permit from DERM, but includes the design and permitting of water main replacement, sanitary sewer rehabilitation/lining, replacement of street lighting, landscape improvements, paving, signage and striping, and utility undergrounding. In short, this project is much more than a drainage project; it is a neighborhood enhancement project.

Given the above (and the importance of this project), the City, through its procurement processes, endeavored to obtain the services of the most qualified, experienced and capable professionals. Those efforts resulted in the engagement of Stantec, as the City’s design criteria

professional and resident project representative, and Lanzo, as the design-builder. Stantec, formerly known as Corzo, Costello, Carballo, Thompson and Salman (C3TS), was selected through the procurement process to serve as the City's design criteria professional and resident project representative. At the time of selection, as indicated in their response to the Request for Qualifications, C3TS was a local firm that had provided a broad array of services throughout South Florida for more than 24 years. The procurement process for design-builders endeavors to evaluate proposers and select the most qualified team. As evidenced in the response to the Request for Qualifications, Lanzo and Wade Trim, at that time, had more than 20 years of experience working together. In addition, both firms provided proof of meeting all of the Miami-Dade County pre-qualification requirements in the RFQ and accompanying addenda. Wade Trim, founded in 1926, demonstrated experience with design-build projects, and touted the benefits of a regional firm with local offices. In combination, the qualifications, experience, professionalism and contractual requirements for these firms establishes a balance and creates redundant measures to ensure proper project development and compliance with the contract.

In addition to the contractual oversight measures established for the project, the City also relies on State regulations which detail the responsibilities of professional engineers and general contractors. In addition to licensing and statutory requirements, the City's contracts explicitly also require compliance with regulatory agencies.

Response to Finding #2. *The City awarded Lanzo a contract for the project's pre-construction design phase without a finished DCP.*

As defined in Florida Statutes 287.055 "Acquisition of professional architectural, engineering, landscape architectural or mapping services", the purpose of a design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or an agency's request for proposal or to permit an agency to enter into a negotiated design-build contract. The scope of services for the development of the Palm & Hibiscus Project DCP included landscaping /irrigation, street lighting, replacement of existing watermain infrastructure, improved storm water drainage collection and disposal infrastructure, including swale restoration, curb and gutter, lining of the existing sewer system and other facilities; street resurfacing /pavement markings, repair and/or extension of existing sidewalks to comply with ADA requirements; incorporation of traffic calming features, consistent with community preferences; and the incorporation and coordination of the undergrounding of franchise utilities on Hibiscus Island.

The Design-Builder was selected using the progressive design-build methodology, where the Design-Builder was to initiate the design period, encompassing the completion of the design to the level needed to define the actual construction costs and begin construction activities in the field. This included collaboration with the City during the design process to ensure that design solutions reflected the most efficient construction means and methods, and that the project was to meet the schedule, quality, permitting, and safety requirements; and procurement of long-lead items, conduct field investigations, and early release construction packages. Once the Design-Builder advanced the design to a sufficient level of detail necessary to produce a reliable estimate with well-understood risks and contingencies, the process would culminate in the submittal of a cost of construction (Guaranteed Maximum Price Proposal), to be approved by the City Commission, and fully executed GMP amendment.

Design Build Contracts transfer certain risks from the City to the Design-Builder. The D-B is responsible for data collection, utility coordination, regulatory permitting and compliance, development of construction documents which meet the requirements of the DCP, responsible for design errors and omissions, and ultimately responsible for the full coordination during the design and construction of the project.

The Design Criteria Package and the design completed by the D-B, which was the basis of the GMP included all the components in the scope of work; which, as stated, included more than just the drainage system. The project also included, but was not limited to, water main replacement, sanitary sewer rehabilitation/lining, replacement of street lighting, landscape improvement, paving, signage and striping, and utility undergrounding.

The DCP was completed and provided to the D-B with the best information available at that time and a GMP contract was awarded to Lanzo for all the scope of work included in the project. Concurrently, the City's Storm Water Master Plan was being reviewed and updated to ensure a greater level of service for the residents. The City is steward to community desires and Commission direction. Subsequently, at the beginning of 2014, the City embarked to address sea level rise in order to reduce flooding associated with storms and seasonal king tides and to counter the effects of climate change. It is not uncommon for City projects to introduce changes in direction and policy during the entire development of a project.

Response to Finding #3. *The City overrode the role of the project's Design Criteria Professional and adopted a DCP that did not provide Lanzo with clear guidance for raising road elevations on west Palm Island.*

The original Design Criteria Package (DCP) for the Palm and Hibiscus Islands Neighborhood Improvement project did not take into account the rapidly advancing science surrounding climate change and sea level rise. The original DCP for this project was actually created contemporaneously with the completion in 2012 of the very first Stormwater Master Plan that even took into account the existence of sea level rise. As the King Tide events unfolded during the early stages of the project, it became abundantly clear that the construction activities proposed would not solve even the flooding concerns at the time, not to mention the 30 year planning horizon worth of sea level rise that this project was to mitigate.

The legislative decision to change the tailwater elevation criteria to 2.7 feet NAVD, in February of 2014, would have meant that the roadway elevation of 2.2 feet NAVD, originally proposed for Palm and Hibiscus, would be regularly flooded within the useful life of the improvements. Additionally, the legislative direction to raise streets in February of 2015, gave direction to the Administration to update the goals of the project. Furthermore, the King Tides of September and October of 2015 resulted in significant flooding of the project area and the elevation of the tides (approximately 2.1 feet NAVD) made it clear that the project was being under designed on the sea level rise mitigation component.

It is worth noting that the DCP has many other elements including water, sewer, lighting, landscaping, striping, signage and overhead to underground utility conversion. The stormwater component is just a portion of the overall DCP. In addition, the OIG report clearly identifies that the Final DCP was issued by Stantec on November 5, 2014, with requirements regarding inlet elevations and maximum flood stages, which are clearly measurable criteria for success of the stormwater system consistent with statutory requirements of a Design/Build contractual

mechanism. Any future modifications of the scope once the final DCP is issued can be accomplished by change order as was utilized in this project.

Response to Finding #4. *After deciding to change the project's elevation criteria, the City failed to provide sufficient time and resources for Wade Trim to prepare construction plans for a drainage system designed to connect to private-side yard drains and verify its expected performance.*

It is important to understand the basic premise and genesis of the direction to raise roads. Numerous examples of sunny day flooding throughout the City demonstrated the urgency to address both the short term and long-term effects of climate change and sea-level rise. This was not a matter of nuisance ponding, but a matter of life safety and protection of property. The City needed to take action and the Commission, rightly so, tasked the Administration with developing a solution. This direction put the City on the front line of the battle against climate change and sea-level rise, and garnered world-wide acclaim. Unfortunately, there is no simple solution to this challenge, and in the early stages of the project there were no precedents to follow or case studies to review. The approach to mitigating sea level rise was an evolving process, and resulted in the Palm and Hibiscus project's evolution. Every decision and strategy required innovative, "outside the box," thinking, including changes to policies and ordinances. Everything was on the table. Arguably the single most important and impactful strategy to adapt to sea level rise was raising the roads, and eventually private properties, above the level where tidal changes cause flooding. Raising private properties is a long-term strategy and is being addressed through City legislation requiring new developments to build at higher elevations.

Roadways were/are a different matter that required a more immediate solution. In order to ensure that roads remained accessible to residents, and even more importantly, to emergency vehicles, they needed to be raised. The longer the City delayed the implementation of these mitigation strategies, the greater the risk to life and property. Delays, at a minimum, would impact basic City services and the quality of life of our residents. Recognizing the challenges and urgency, the City Commission took steps to implement the mitigation strategies. Between January of 2013 and July of 2020, the City Commission has heard/discussed more than 200 items related to storm drainage and sea-level rise. It is not insignificant to consider that the Commission's decision to change policy and allow private properties to connect to the public drainage system contradicts countless years of standard practice throughout the County, requiring all projects to manage drainage within their property limits. This was groundbreaking and recognized, as early as June of 2015, that the City would have to make some accommodations for those low-lying properties that had historically shed their rainfall onto the right-of-way. It is worth noting, that this policy establishes the parameters under which a private property is allowed to connect. Over time, as properties develop or re-develop at higher elevations, they will no longer meet those conditions, and the connections will be removed, returning to the long-established policy that each property will be responsible for their own storm water management.

The City approaches all changes to projects in the same manner: determine and verify the validity of the claim for additional compensation and time, and only then evaluate the fairness and equity to the City. It is not uncommon to receive requests for change orders, only to determine that the scope of the requested change falls within the contract requirements,

resulting in a rejection of the request. In this particular case, it is apparent that the project team did not support additional design fees. The rejection was not refuted by the design builder.

While the direction to raise roads represented a change to the design-build contract, it was not a material change to the design and construction of the stormwater collection, treatment and pumping systems. The original DCP established the tributary area of the stormwater collection system and included the entire right-of-way, the entire private, non-waterfront lots, and ½ the private waterfront lots. This criteria did not change with the elevation of the roadway. The system was still required to collect and process the same exact volume of rainfall.

Response to Finding #5. *The City awarded Lanza a \$38.5 million contract for the build or construction phase of the project without finished construction plans for the stormwater and hardscape sections of the project and no reliable basis for estimating costs.*

In order to understand how a contract could be awarded “without finished construction plans,” the OIG must first understand the project delivery model. As stated previously, the Palm and Hibiscus Islands Project is a **design-build** project, where the awarded firm is responsible for the design of the project, among other things. In the design-build delivery model, construction plans are usually incomplete and, with no known exception, never fully completed prior to execution of the contract for construction (GMP). In fact, there are many examples where design-build contracts are awarded for “turn-key” delivery, including all phases of project development and construction, utilizing only a design criteria and concept. Despite the complexity of this project, Design-Build contractors are well versed in this delivery method, and adept at preparing cost estimates and project schedules with limited information.

Again, it is important to emphasize that this project is not a stormwater project, but a multi-faceted neighborhood enhancement project. In addition to stormwater collection, treatment and pumping systems, the project drawings and scope included, watermain replacement, sanitary sewer rehabilitation, streetlight upgrades and replacement, undergrounding of overhead utilities, new roadway curbs, paving, signage and striping. One of the key advantages of the design-build delivery model is the compressed project delivery and acceleration of the timing of the project, with some construction activities taking place prior to the construction plans being completed. For example, in this case the contractor was able to commence water and sanitary sewer scope while the stormwater drawings and permitting were being completed. This is a significant timesaving strategy employed by most design-build firms, reducing overall project duration. The OIG’s assumption that construction plans must first be completed prior to award completely negates this benefit and demonstrates the office’s unfamiliarity with the delivery model.

In contrast to a conventional design-bid-build contract, where the owner is responsible for the design and engineering documents, design-build transfers a great deal of risk from the owner to the design build firm. The transferred risk includes constructability, design development, and permitting, among other items. The design builder knowingly and willingly accepts these risks, based on their level of comfort, experience and ability to estimate the construction costs. In this case, the design-builder obviously felt it had enough information to provide a cost estimate and schedule, or it would not have assumed those risks by providing a GMP proposal. The OIG’s report, again, fails to understand the nuances of this project delivery model.

It is also apparent that the OIG does not fully understand the processes or efforts employed by the City in the pursuit of fulfilling the fiduciary responsibility entrusted by the residents and City Commission. Again, the City establishes redundant measures to inform and guide the project. In the case of this project, the City relied on two different sources to verify the fairness and equity of the design builder's GMP proposal. Concurrent to the contractor's preparation of the GMP, the City contracted US Cost, Inc., a third-party cost estimating consultant, to prepare an estimate using the exact same documents available to the design builder. US Cost was engaged through the City's RFQ 30-10/11, Constructability, Cost and Value Engineering Review Services contract. US Cost, in their response to the RFQ, demonstrated 28 years of worldwide experience providing estimating and construction management services. At no time did the design builder or US Cost indicate that the information available was insufficient to provide a reliable cost proposal.

As a second source of verification, the City's design criteria professional, after reviewing both cost estimates, prepared its professional recommendation. Following the receipt of the GMP, the estimate from US Cost and the DCP's recommendation, the City presented the GMP to the City Commission, which authorized the City to negotiate with the design builder. As with all projects, the City endeavors to ensure the best possible negotiations including contractual terms for the City and its residents. The same is true here, as the design-builder's initial GMP proposal exceeded \$43M. Utilizing the estimate from US Cost and the professional recommendation of the DCP, \$34.9M and \$34.5M respectively, the City negotiated a \$38.5M construction cost, inclusive of owner's project contingency.

As a result of following the proper protocols, the City was able to ensure that negotiations were conducted in the best interest of the City and its residents. The GMP was a negotiated proposal, under the authorization of the City Commission, based on best information available.

Response to Finding #6. *The City used CAS Engineer of Record Rubio and his 100% Final Design plans to obtain permits from SFWMD and DERM after deciding to discard those plans; after the permits were issued, the City used a distinctly different set of construction plans prepared by former Wade Trim Vice President Holly Kremers to build the stormwater drainage system on west Palm Island.*

Through the award of a design-build contract, the City transfers certain responsibilities and risk from the City and its consultants to the design-builder. Among those are design development and permit management. Through the City's procurement process, the City entered into a design-build contract with Lanzo Construction. Articles of the Agreement read as follows:

Article 1.9- The design builder will be responsible for the professional services, design, supply, provision, construction, installation and performance of all equipment, materials and systems offered, and shall in no way be relieved of the responsibility for the performance of the project

Article 2.1- The Design-Builder shall perform the design and construction of the Project, as defined in the City's Request for Qualifications No. 251-2013TC including, without limitation, the Design Criteria Package...In summary, the Services include, but are not limited to, providing all resources and professional services to perform the design and construction of the Project such as planning,

technical investigations, engineering, design, permitting...testing and commissioning..."

Article 2.3- The Project includes furnishing all planning, engineering, design and permitting services... It will be the sole responsibility of the Design-Builder to secure all permits not provided by the City, and to provide signed and sealed design documents for construction and installation which comply with all regulatory requirements, Applicable Laws, and the Contract Documents.

As a result of the Agreement, Lanzo entered into a contract with Wade Trim. The City has no contractual relationship with Wade Trim or any of Lanzo's sub-consultants or sub-contractors. How Lanzo proceeded to get this project designed, permitted and completed is entirely a means and methods concern. As long as they meet the requirements of the RFP and the DCP, they are in compliance with the contract. This includes the preparation and pursuit of permits.

Given that the City is not in contractual privity with Lanzo's subconsultants or subcontractors, it is erroneous to conclude that the City had the ability to dictate permit strategy or manage Lanzo's consultants, nor was it the City's responsibility to do so. The undeniable truth is that design-builders and engineers alike are in business to earn a living and make a profit. At the end of the day, their ability to cover their overhead and sustain their operation is a management concern, and how they do that is not a condition of the contract. In this case, it appears that Lanzo's prime consultant, Wade Trim, felt that it was necessary to reduce the overhead of an evolving and developing project by employing their own internal forces rather than continuing to pay additional fees to their sub-consultant. The City did not, at any point, **decide** to discard the Rubio plans. This was simply a change of sub-consultant by Lanzo and Wade Trim. For this project, in their capacity as the Prime Professional exercised and managed their option to sub-consult portions of their work to a Delegated Engineer. Under the Florida Administrative Code, 61G15-30, it is the Prime Professional's responsibility to retain and coordinate the services of such other professionals as needed to complete the services contracted for the project.

Further, this finding assumes that construction projects of this nature occur in a vacuum, where changes in an evolving sea-rise mitigation strategy do not impact ongoing project activities. If that were the case, all project activities would stop while strategies and policies are developed and finalized. The reality of construction projects, for a variety of reasons, is that projects are often fluid, changing and evolving. The project owner's priorities and parameters, as occurred in the Palm and Hibiscus project, often change during the design development phase. The City's contract clearly places the responsibility of design development, permit management, and code compliance on the design-builder.

To that end, the City relies heavily on the experience and expertise of the professional consultants involved in the project. The City, through its procurement processes, endeavored to obtain the services of the most qualified, experienced and capable professionals. Those efforts resulted in the engagement of Stantec, as the City's design criteria professional and resident project representative, and Lanzo, as the design-builder. In combination, with a combined experience of more than 150 years, the qualifications, experience, professionalism and contractual requirements for these firms establishes a balance and creates redundant measures to ensure proper project development and compliance with the contract.

Response to Finding #7. *The April 2017 resolution authorizing the City staff to develop an “engineering solution” and policy allowing the connection of private-side yard drains to the public drainage system was developed by the responsible City officials to provide after-the-fact legal justification for construction of a drainage system with unpermitted right-of-way drainpipes that were intended to provide future connections for privately owned drains.*

City Resolution R-2017-29840, approved on April 26, 2017 was not the first legislative direction that addresses a private stormwater connection. The first direction was at the June 10, 2015 City Commission meeting (Agenda Item R7Q) allowing the connection of the private stormwater system for the Marriott Residence Inn at 17th Street and West Ave, to the City stormwater system along 17th Street. The direction during this meeting was to provide a private stormwater connection for a single property and, as quoted from the City Commission Meeting “After Action Report”; “Until The City Approves Code Modifications To A Citywide Storm Water Connection Fee Program”. This, combined with the direction to size the stormwater systems to account for all of the inland lots and half of the waterfront lots, clearly demonstrates the direction if not the intent of the City Commission to include private properties in the adaptation plans, and not as an after the fact approval of modifications to the program. This is also refuted by the language in Resolution R-2017-29840 that it was intended to be a reaffirmation of the direction previously provided by the Commission.

Response to Finding #8. *The City began the large scale installation of private-side yard drains on west Palm Island and decided not to disclose the new phase of construction to the SFWMD and DERM, turn over an updated version of the Kremers plans, or obtain modification of the existing Class II permit to install private-side yard drains.*

First and foremost, this finding is demonstrably prejudice, stretching facts to achieve the needed confirmation bias for this report. There was no “large scale installation of private-side yard drains”. In fact, there were only eight building permits authorized for drainage connections from private properties. To provide perspective, this was eight connections out of approximately 300 properties in the Palm and Hibiscus project – less than 3% of the properties received private-side yard drains.

Assuming that the report was referring to all temporary construction drains, the finding essentially makes one fundamental claim – that the construction of the drains was purposely concealed from regulators. Setting aside, for a moment, all other issues, this finding exemplifies the most fundamental flaw in the OIG report – the finding is patently speculative.

The OIG cannot substantiate a claim that any error in judgment was deliberate, or to use the OIG’s own words: “knowing, considered, and intentional”. Not only can this claim not be substantiated, but it is unfounded.

The report fails to mention that immaterial project changes are ordinarily reconciled through permit modifications at project close out. While the significance of the yard drains may be arguable, the professionals working on the project clearly arrived at the consensus that these drains were immaterial.

The total project cost is \$40,956,000. The permanent right of way drains and private side inlets, including associated harmonization, were \$1,615,000 or less than 5% of the total project cost. Any large public infrastructure project as complex as Palm and Hibiscus incurs a 5% change in scope.

Moreover, Palm and Hibiscus was a design build project, where, by definition, the plans were not fully developed. It is not only reasonable, but expected, that a professional would deem a 5% change immaterial.

The temporary construction inlets were part of the contractors means and methods. Contractor means or methods are within the discretion of the contractor to implement in order to achieve a contract objective. Using the Palm and Hibiscus project as an example, the contractor could not adversely impact the level of service of the stormwater system while working on the system. The contractor decided that the best way to ensure that properties did not flood during construction was to construct temporary construction inlets. Means and methods are not dictated by the owner of a project and doing so could expose the owner to undue liability. In fact, as noted in the summary judgment of *Juno Indus. v. Heery Int'l*, 646 So. 2d 818, 822 (Fla. 5th DCA 1994), "The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for all safety precautions and programs, in connection with the Work as well as for coordinating all portions of the Work."

From a technical perspective, the original permit application, and the plans enclosed therein, defined the tributary area. An example of the tributary area is shown in Exhibit 11. The addition of the yard drains did not change the tributary area. Thus, not only was the change immaterial it was nonexistent from a runoff perspective. **The same amount of water was being captured by the system – if the original plans collected a drop of water, so would the revised set.**

It therefore stands to reason that the lack of permit revisions are not indicative of willful deception, but rather representative of ordinary project management decisions.

Perhaps more important is the myriad testimony from City Staff, the Engineer of Record, and the Licensed Contractor that the drains were considered a temporary condition.

In Mr. Carpenter's own words:

"As we were going through the process, we realized that raising the roads up could potentially put some of these properties in a little bit different situation during construction activity. So we installed approximately 88 temporary construction drains while we were out there."

In the OIG's own words:

Referring to Mr. Carpenter – "On August 5, 2019, he signed a letter to Spadafina that said the 85 unpermitted right-of-way drain connections were temporary construction drains that were never intended to be part of the drainage system"

In the Engineer of Records (Kremer's) own words:

"88 drains that you've been hearing about, these are temporary construction drains, there was one installed in the right-of-way in front of each property on North and South Coconut."

These are just a few of numerous examples provided by OIG

Whether these drains should have been permitted or not is another issue. However, it is evident that all parties believed these drains to immaterial or temporary and therefore not need a permit.

In addition to the above, should this finding be discussing the eight yard drains that were placed on private property, these drains did not receive a City permit for the construction of stormwater drainage systems. Instead, building permits were issued for the construction occurring on private property.

Over the course of normal business, Public Works reviews building permits that affect its infrastructure. Approval was granted to construct piping on private property, which falls under the purview of the Building Department, and to connect to the City's stormwater system in a manner acceptable by the systems owner – in this case, a system that is wholly owned by the City of Miami Beach.

This in no way eliminated the need for the owners to meet other regulatory requirements. In fact it is common practice for a utility to issue permits prior to obtaining DERM permits. For example Sanitary Sewer Permits are approved by the Owner prior to DERM issuing the Sanitary Sewer Extension Permit. The City and County regularly approve sanitary sewer plans ahead of DERM for private developers.

Therefore, independent of DERM's approval to construct a drainage system it is the City's sole right to allow connections to its public stormwater system. Without DERM's approval a drainage system cannot be constructed and without the City's approval, a connection cannot be established.

Statements that insinuate the contrary, such as the one below, are misleading and, if not intentionally malicious, exemplify the fundamental lack of understanding by the authors of the OIG report.

"No municipality in Miami-Dade County has the legal authority to issue permits for the construction of stormwater drainage systems, temporary or otherwise, that empty into a body of water such as Biscayne Bay.

Finally, to paraphrase the OIG, Lanzo neglected its contractual duty to obtain permits, Stantec neglected its contractual responsibility to monitor permits, Wade Trim neglected its responsibilities under Florida law and rules that apply to licensed professional engineers, former City Engineer Mowry exhibited a poor attitude toward permitting agencies, and engineers in DERM's Water Control Section failed to notice discrepancies in information they received from the City. These are all professional and licensed staff; no direction would supersede their requirement under State or County Code to properly permit their work. To imply that there was a coordinated conspiracy to the contrary is outlandish, lazy, and unbecoming of a professional tasked with improving the City of Miami Beach.

Response to Finding #9. *In applying for a renewal of the Class II permit, the City again decided not to give DERM recently updated As-Built plans and new drainage studies. Instead, the City obtained a permit based on the serious misrepresentation that the City and Lanzo had used Rubio's plans to build the drainage system and that no significant changes had been made since 2016.*

This finding misrepresents the contractual relationships and responsibilities of the project team and does not appear to consider the ordinary drainage permitting and installation protocols.

The City did not **decide**, as the finding indicates, “not to give DERM recently updated As-Built plans and new drainage studies.” The truth is that the permit management activities and regulatory compliance lie with the design-builder and their engineer of record. Both of which have considerable experience in designing, permitting and constructing drainage systems. In its capacity as the engineer of record, and given their extensive experience, Wade Trim served as the project’s “code and regulatory expert.”

The Class II permit renewal application package was prepared and submitted by the project’s engineer of record, Wade Trim. The OIG’s report cites that submittal as a “serious misrepresentation,” or, as speculated in other sections, a “knowing, considered and intentional” attempt to conceal project information from regulators. The glaring omission in this finding, and indeed the report, is that it fails to consider that immaterial changes are ordinarily reconciled through permit modifications at project close-out. Most notably, this finding relies on the Wade Trim letter, dated May 17, 2018, indicating that no significant changes had taken place. However, it fails to provide even a cursory examination of the second paragraph of that same letter, which reads:

The City of Miami Beach has recently revised the project’s stormwater design criteria, which we are currently evaluating. Should the new criteria result in any significant changes, as they relate to the original signed and sealed plans and drainage calculations, they will be reflected in the project permit certification documents.

This paragraph clearly indicates an evolving project, in response to the City’s efforts to combat sea-level rise. More importantly, this letter openly indicates the engineer of record’s estimation that changes incurred to date were immaterial to the permit, as well as their intention to reconcile any changes as part of the project close out. DERM took no exception with the stated intent and issued the permit because, as indicated previously, this approach is part of the ordinary protocol for drainage system design, permitting, and close-out.

Irresponsibly, the author of the Report decided to omit additional communication between the engineer of record and DERM, related to the issuance of this permit, and in fact uses the term “misconduct,” to describe the application for this permit as an act of “commission and omission.” The reality, omitted by this report for unknown reasons, is that the permit application to DERM included a letter dated May 10, 2018, from the engineer of record, providing a narrative whose purpose was to assist DERM in their review of the permit. The EOR’s third paragraph reads:

City provided a change in directive requiring installation of private-side yard drains for properties that have finished floor elevations below the adjacent crown of road. The original stormwater design criteria required that the drainage area be sized to account for and reflect the actual contributory area at a minimum all road rights-of-way, 100% of interior (landlocked) lots and 50% of waterfront lots. Thusly there is enough capacity in the system to account for this additional stormwater load, particularly in light of the fact that few of the properties fall within this new City criteria.

Additional City-directed changes will be submitted via revised plans for Palm Island and Hibiscus Islands during permit certification submittals; these mainly relate to change of pipe alignments to reduce impact to existing vegetation, addition of a secondary drainage system to reduce potential flooding in isolated

areas, and lowering of proposed elevation of roads to reduce harmonization impacts to private properties.

Changes to the plans were disclosed, documented to be immaterial to the parameters of the permit, and proposed to be fully captured during permit certification submittals.

The OIG's report erroneously concludes that the installation of drainage inlets not reflected in the permit documents, is a significant and material change to the design. Further review and understanding of the project's evolution refute that conclusion. Former Wade Trim vice president Holly Kremers explained to the City Commission on October 30, 2019, that "88 drains...are temporary construction drains...installed in the right-of-way in front of each property on North and South Coconut Lane." Lanzo installed these additional inlets as a temporary and interim condition to manage water during construction activities, and before the system was placed into service. Given the complexity of the project, implementing these temporary measures was reasonable.

In an executive summary dated October 22, 2019, the Lanzo/Wade Trim team further explain:

One construction challenge was ensuring that properties were not made susceptible to increased flooding during construction of the elevated streets before the new drainage system was complete and placed into service. The design-build team's solution for this was to place a temporary construction drain within the ROW in front of each property on North and South Coconut Lane to convey stormwater away from the property as needed during construction. The drainage system was not connected to the pump station and in service during the period of intended use of these temporary construction drains, and each drain was intended to be abandoned in place prior to project completion. Though these temporary construction drains were not shown on the design drawings, it was not the intent of the City or the design-build team to deliberately violate any Class II permit agreements or policies, as the drains would have been removed prior to start-up of the pump station and conveyance of stormwater to the Bay

Again, it is apparent that the project's code expert did not consider these inlets to be a significant, material change to the design. The reason for that estimation is simple: these additional inlets did not alter the tributary area nor the volume of water to be collected and treated. From a technical perspective, there was no change. It should be noted that the report erroneously refers to additional inlets as "**private side yard drains.**" **Additional inlets were installed within the right-of-way, and not on private property.**

As has been stated previously, City officials and the Commission were aware that as the City developed its policies to combat sea-level rise, some accommodations would have to be made to protect low-lying properties. What was not certain, and remains under discussion even to this day, is the exact manner in which those accommodations would take form. An examination of the project's evolution shows the progressive responses to the developing stormwater drainage criteria; from proactive installation of underground connection points, to additional inlets within the right-of-way, to the eventual design and permitting of inlets within private property.

As was always intended, following ordinary and customary protocols, the project has commenced the process of closing the drainage permit. As of the date of this writing, January 8, 2021, the Engineer of Record has submitted the permit closure for Hibiscus Island, which has

been reviewed, inspected and accepted by DERM. Permit modification for Palm Island has also been submitted and is currently under review by DERM. Once the permit modification is accepted, the permit closure will follow, and the City's public stormwater drainage system will be complete.


Following the direction received from the City Commission, the project team has evaluated 112 properties and determined that 85 properties qualify for connection to the City's drainage system, 23 of which have declined the installation of an inlet. The engineer of record has completed the design for 62 additional inlets; 11 within the right-of-way and 51 on private property. Of these, DERM has issued permits for 59. Following the receipt of permits, Lanzo commenced the installation of those inlets, and as of this date, has completed the installation of 45 inlets, and has abandoned/removed 24 of the temporary inlets.

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

MEMORANDUM

TO: Joseph M. Centorino, Inspector General

FROM: David Martinez, PE, Director, Office of Capital Improvement Projects 

DATE: January 21, 2021

SUBJECT: Response to Office of Inspector General Draft Report of Investigation on the Management of the Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project OIG No. 20-07

The purpose of this memorandum is to provide a brief response to the report referenced above received on December 4, 2020. I will only be able to address "some" of the baseless allegations due to the extremely short timeframe available. After all, responding to this document is not my full-time job. The OIG has provided an insufficient thirty (30) working days to respond to this extensive document, given the fact that it took over one year and enumerable resources for the OIG to produce and deliver this document. The OIG rejected Administration's request to extend the response timeframe.

I have worked and been an active participant in the engineering and construction industry for over 34 years. I have held positions in both the public and private sectors. I am well regarded by my peers and have established an impeccable reputation centered on integrity, honesty, and fairness. The OIG's findings, as presented in this document, are slanderous, flawed, biased and unfounded.

The Office of Capital Improvement Projects (CIP) is tasked with managing and developing many of the City's large capital projects. Projects in our program include unparalleled investments in quality of life infrastructure including prioritization of sea level rise with storm water and neighborhood improvement projects, parking facilities, park improvements and sustainability & resiliency projects, to name a few. These projects are necessary to improve, enhance, and maintain facilities and infrastructure to meet the exceptional service demands of our residents and visitors. The CIP staff is composed of senior management, project managers, financial managers, field inspectors and other support staff. At any given time, CIP manages 50-60 projects all in the planning, design, construction, or close-out phases. The expectation on the delivery of these projects by the City Commission and its constituents is extraordinarily high.

Delivery of Large Capital Projects

Anyone who has any knowledge of the construction industry understands the complexities and challenges of delivering any project within the proverbial "on time, and on budget." The delivery of large capital improvement projects involves a myriad of processes and requires a high level of coordination among stakeholders which include residents, business owners, community organizations, activists, media outlets, franchise utilities, city committees, elected officials, internal city departments, regulatory

agencies, and city administration, to name a few. These stakeholders play a significant role in the definition of these projects. Most of the time, this definition fluctuates and changes during the lifecycle of these projects, even during construction. This is ultimately detrimental to the success of any project.

Public sector agencies and private sector businesses rely on the expertise of consultants and contractors for the delivery of projects. Entities such as FDOT, Miami-Dade County, any municipality and the Federal Government hire thousands of consultants and contractors to carry out the multitude of tasks associated with project development.

The Palm & Hibiscus Islands (P & H) Neighborhood Improvement project, like any of our projects, includes an extensive list of improvements in its scope of work. It was not just a storm water improvement project. It included replacement of the water distribution system and water services; rehabilitation of the sanitary sewer system; replacement of all streetlights; reconstruction of all roads and sidewalks; roadway striping/signage; new landscaping; and undergrounding of franchise utilities. All these elements were to be coordinated with all the stakeholders previously listed throughout the life cycle of the project. That is a daunting task for anyone who knows this business. It is doubtful that the OIG could have contemplated this perspective. And this is only one project of dozens that CIP manages.

To efficiently deliver the P & H project, the City engaged several entities. These included a Design Criteria Professional consultant, a Construction Engineering and Inspection consultant, and a Design-Build Firm (Design-Builder). All these entities were vetted through the city's qualifications and selection processes, and ultimately approved by City Commission. All these entities have contractual, fiduciary, and legal responsibilities and obligations to deliver these projects, including regulatory compliance and to protect the City in all respects.

For example, the Design-Build Firm's agreement with the City includes the following terms:

Page 1 – *Collaborate with the City during the design process to ensure that design solutions reflect the most efficient construction means and methods and that the Project will meet the schedule, quality, **permitting**, and safety requirements.*

Page 3 – Article 1.9, *The Design-Builder will be responsible for the professional services, design, supply, provision, construction, installation, and performance of all equipment, materials and systems offered, and shall in no way be relieved of the responsibility for the performance of the Project.*

Page 6 – Article 1.27, *“Services” means the professional services to be provided by Design-Builder that include, but are not limited to, full architectural and engineering design and construction services necessary to prepare the design, **including the approved and permitted Plans and Specifications**, of the Project.*

Page 7 – Article 1.35.1, *The City (or Owner) shall mean the City of Miami Beach..., which is a party hereto and/or for which this Agreement is to be performed. In all respects hereunder, **City's performance is pursuant to City's position as the owner of a construction project.***

Page 8 – Article 1.35.11, *Project Manager: The authorized individual or firm who/which is the representative of Design-Builder who/which will administer/manage the design and construction effort...*

Page 10 – Article 2.1, *The Design-Builder shall perform the design and construction of the Project..., including, without limitation, the Design Criteria Package. In summary, the Services include, but are not limited to, **providing all resources and professional services to perform the design and***

construction of the Project such as planning, technical investigations, engineering, design, permitting...

Page 10-11 – Article 2.3, The Project includes **furnishing all** planning, engineering, **design and permitting services**, as well as all construction labor, materials and equipment, services and incidentals necessary to design and build the Project...**Work and Services shall be in compliance with design and construction standards required by the RFQ, the Florida Accessibility Code, the Florida Building Code, all environmental and fire codes, and any other Applicable Laws. It will be the sole responsibility of the Design-Builder to secure all permits** not provided by the City, and to provide signed and sealed design documents for construction and installation which comply with all regulatory requirements, Applicable Laws, and the Contract Documents.

Page 13 – Article 3.6.2, The Design-Builder **shall be** responsible for obtaining all necessary licenses and permits not being provided by the City, and for complying with Applicable Laws in connection with the prosecution of the Work...**The Design-Builder shall protect, indemnify and hold harmless the federal, State, County and municipal governments, and their members, officers, agents and employees against claims and liabilities arising from or based on the violation of requirements of laws or permits...**

Page 14 – Article 3.6.5, Neither the City's inspection, review, approval or acceptance of, nor payment for, any of the Services of Work required... shall be construed to relieve Design-Builder (or any sub-consultant or subcontractor) of its obligations...

Page 34 – Article 7.3.2, The City shall not be responsible for discovering deficiencies in the technical accuracy of Design-Builder's Services or Work.

Page 35 – Article 7.4.1, Design-Builder agrees to indemnify and save harmless City against any Federal, State, County or City laws...

Page 36 – Article 7.5.2.1, Design-Builder shall supervise the (design) Services undertaken...Design consultants shall exercise a standard of care used by members of the architecture and/or engineering profession... practicing under similar conditions...

Page 40 – Article 7.5.11, **Design-Builder shall secure and pay for the building permit and other permits... for the proper execution and completion of the Work...**

City's Efforts to Address Climate Change and Combat Sea Level Rise

Since 2014, the City embarked on an unprecedented and aggressive path to protect itself from the effects of climate change, specifically, rising sea levels and king tides. As part of this endeavor, the City created a Blue Ribbon Panel whose purpose was to monitor the progress of the City's Stormwater Management Program and Comprehensive Flood management Plan and ultimately provide solutions, options and suggest policies to the City Commission on how to adapt to the impending seal level rise.

It is no secret that CIP participated and sat at the table during the panel's deliberations. Our role as executor of many of these projects was to stay informed, and provide feedback and expertise to the group. For nearly four years the panel deliberated on many elements associated with protecting the City from sea level rise. The topic of raising elevations on public and private properties was a recurring theme. The challenges and opportunities of raising city streets was often discussed. There was no play book on how to address the challenges. There were no instructions, or codes, or standards specifying how to address elevation changes or harmonization of private properties. Ideas, solutions, policies and ultimately directives from the City Commission, evolved through this period. During this evolution, CIP was responsible for moving this project, and all other projects forward. Yes, there was abundant

pressure from all stakeholders, but doing nothing was not an option. That is what makes this city so great.

Project Budget and Status

The design and construction cost was established initially and approved by the City Commission at \$38,500,000. After all is said and done, our total cost is \$40,965,000 despite the evolution that made a complex, multi-faceted project increasingly more difficult, including multiple scope changes and other challenges. The increase of \$2,465,000 represents just over 6% of the original project cost. Of this increased cost, \$1,615,000 represents the portion attributed to addressing the private property additional inlets and related harmonization. This translates to just over 4% of the original cost, an inconsequential amount given the magnitude and complexity of this project.

Today, the project is nearly complete. The Design-Builder has less than a dozen private property inlets left to complete and is gearing up to begin final paving of the roads. The stormwater system has been completed and has been functioning for quite some time and has provided the expected protection against rain events. The City has continued working with Miami-Dade County Department of Regulatory and Economic Resources, Division of Environmental Resources Management (DERM) to obtain all new Class II permits for the added inlets and in closing out the original Class II permits. In my opinion, this ultimately transpired into a successful project despite all the challenges. The P & H Homeowners Association voiced their opinions to the City Manager in a January 2020 email (Exhibit 1). The email, from two of their board members, states the following:

From Ian Kaplan – “Overall, given sea level rise and the uncertainties of the escalation of higher tides in the future, we believe raising our roads on Palm and Hibiscus Islands where needed and adding pump stations (with backup generators) for our Islands was a prudent and good decision. As we live on Island communities it is critical for the future that our roadway infrastructure remains above sea level and storm water has a well-planned and environmentally safe method to be removed from our Islands without being trapped. Once our project is finally completed, we remain confident that our Islands will be significantly more resilient for the future while protecting our property values and our waterfront environment.”

From Neil Fairman – “I concur with our Chairman Ian Kaplan and would like to emphasize the resident’s sacrifice during the extended work timeline was well worth the security afforded by creating a sustainable infrastructure for our islands for the future. We must consider the future threats of unimpeded flooding in comparison to an extended inconvenience. Being the pioneer in raising our roads only the uninformed would believe that this would be a perfect process, hopefully our sacrifice will help other communities have a more efficient schedule.

“I would like to thank your CIP staff for the professional work ethic and facing a a staged project with constantly changing scope. It was a learning exercise for all, which should now allow more complete planning and engineering giving staff the documents which will allow staff the tools to keep contractors on time and save funds on change orders.”

“The raised roads will bring security to our neighborhood during high water events for years to come and the beautiful landscape plan the City is implementing will bring gratification and pride to all of our residents.”

Private Yard Drains – Clarification

The OIG's makes reference throughout the document of the, so called, "private yard drains." I believe this term might have been originally coined by the Design-Builder's consultant. The term, as applied, implies that these drains, or inlets, are installed within private properties. All of these, with few exceptions, were (and are) installed within the City's public right-of-way. This terminology is very misleading to the reader and should be corrected or addressed accordingly. As a matter of fact, DERM asked that this terminology be amended.

Design-Builder's Consultant Allegations

The Design-Builder's Prime Design Consultant was the firm Wade Trim. The OIG's documents make several mentions of attempts by their representative, Daniel Garcia, a project manager with the firm, that DERM should be advised of the project changes. The OIG places great emphasis on these alleged claims. Barring the Design-Builder's obligations discussed earlier in this memorandum, if Wade Trim (and the OIG) thought that this was such a big deal, why wouldn't an executive or principal of the firm make this known to me or the City Manager's office? In addition, no evidence is provided in the OIG document to substantiate these claims. It is strictly hearsay.

Re-Issue of Class II DERM Permits

The OIG alleges that DERM was not advised or notified of any stormwater system modifications. In fact, in a letter prepared by Wade Trim dated May 10, 2018 (Exhibit 2), and submitted to DERM at that time, reads as follows:

Question 2 – *Describe the work, as authorized by the above-referenced permit that has not been completed up to date.* ANSWER – Swale area grading, pump stations, **private-side yards drains**, lighting, final lift of asphalt, pavement and marking.

Question 3 – *Has the work performed to date as authorized by the above-referenced permit, been conducted in accordance with the permit description, approved plans and restrictions, limitations or conditions of the permit? If not, describe in detail work that has been conducted that is not in accordance with the permit.* ANSWER – **City provided a change in directive requiring installation of private-side yard drains for properties that have finished floor elevations below the adjacent crown of road.** The original stormwater design criteria required that the drainage area be sized to account for and reflect the actual contributory area at a minimum all road rights-of-way, 100% of interior (landlocked) lots and 50% of waterfront lots. Thusly there is enough capacity in the system to account for this additional stormwater load, particularly in light of the fact that few of the properties fall within this new Criteria.

Question 3 (continued) - *Additionally City-directed changes will be submitted via revised plans for Palm Island and Hibiscus Islands during permit certification submittals; these mainly relate to change in pipe alignments to reduce impact to existing vegetation, **addition of a secondary drainage system to reduce potential flooding in isolated areas**, and lowering of proposed elevation of roads to reduce harmonization impacts to private properties.*

Clearly, DERM was advised by the consultant of the minor changes in the project as described in the May 10, 2018 letter.

Explanation of Additional Inlets as explained by Wade Trim

The installation of temporary inlets, that could be converted to permanent inlets, or points of connection, were always considered by the Design-Builder and Wade Trim as minor modifications to the original plans and as permitted by DERM. At a City Commission meeting on October 30, 2019, Holly Kremers, Vice-President for Wade Trim (representing the Design-Builder), explained to the City Commission the process of permitting and the purpose of the additional inlets that were a point of contention. See attached after action report from the City Clerk's office (Exhibit 3).

During the meeting, Ms. Kremers explained the following:

"As construction projects go through there are some field adjustments that take place in any infrastructure system; many times, those are addressed as as-built and permits are closed out...The 88 drains are temporary construction drains, one of which was installed in the right-of-way in front of each property...and they were put there because they (Wade Trim) knew that with a smaller right-of-way in that area, during construction and before they had a chance to do the final harmonization drainage, they would have a way to transmit that water away. The intent was that when the project was complete and before the stormwater system was placed in service, those drains would be abandoned, and the permitted drainage system would be in place at that time. And for that reason, they did not include those 88 temporary construction drains on the permit documents."

This explanation is consistent with Wade Trim's, May 10, 2018, letter that was submitted to DERM.

October 17, 2018 Commission Meeting

The OIG alleges that the presentation to the City Commission on October 17, 2018 of the Design-Builder's Amendment No. 5 was a reaction to a DERM warning issued to the City one week prior. The OIG claims that the warning was a result of an email sent to DERM by a whistle blower with photographs of the installation of a private-side yard drain on a residential lot on Palm Island that was connected to an unpermitted drainpipe in the right-of-way. Records show that the whistle blower email was also sent to the City on September 19, 2018 (Exhibit 4).

The evidence shows that on that day, Item C4E, which was part of the consent agenda, requested a referral to the Finance and Citywide Projects Committee meeting later that month to discuss Amendment No. 5 between the City and Lanzo construction for Design-Build Services for the Palm and Hibiscus project. The amendment included additional design services and construction associated with the new drainage policy; and for installation of additional drains and associated harmonization in private properties in the amount of \$775,000 plus contingency.

The item was separated from the consent agenda for discussion. After much discussion, it was determined that time was of the essence and it was clear that the item should be taken up for consideration at this time, with the full commission, and not referred to a committee. The City Commission voted unanimously in favor of adopting a resolution approving amendment No. 5.

It should be noted that CIP had been working on putting together that item, Amendment No. 5, for several months prior to the October 17, 2018 commission meeting. Please refer to the following exhibits.

Exhibit 5 – April 4, 2018 email exchange between Design-Builder and Senior Capital Projects Coordinator, Mina Samadi. Ms. Samadi requested that the Design-Builder start implementing the new drainage policy. The Design-Builder informs that this could have an impact to the project's time and cost.

Exhibit 6 – June 22, 2018 email exchange between Design-Builder and Senior Capital Projects Coordinator, Mina Samadi. Design-Builder provides preliminary pricing to implement the new drainage policy that would become Amendment No. 5.

Exhibit 7 – August 14, 2018 email from Senior Capital Projects Coordinator, Mina Samadi, to Design-Builder asking the Design-Builder to provide a request for change order for the new drainage directive by August 20, 2018 with the intent of presenting it (Amendment No. 5) to the City Commission at its September 2018 meeting.

Exhibit 8 – September 18, 2018 email from CIP's Administrative Support Manager, Christina Baguer, to CIP staff asking to review Commission item titles to be included in the October 17, 2018 Commission meeting agenda. Included is P & H Amendment No. 5.

Clearly, the evidence shows that CIP staff had been working and preparing on bringing Amendment No. 5 to the City Commission for consideration well in advance of the September 19, 2018 date when the alleged whistleblower sent emails to DERM and the City. The whistleblower's emails and DERM's alleged discoveries did not change the project's trajectory as suggested by the OIG.

Conclusion

Insufficient time has been provided in order to properly respond to the unfounded and baseless allegations represented in the OIG's report. However, it is clear to me that these allegations are based on misinformation, opinions, hearsay, and conjecture. Evidence has been ignored or avoided to establish their findings. All exhibits attached hereto, and referenced above, were available to the OIG for review. The OIG was clearly focused on finding a "smoking gun" that did not exist. Even after spending more than a year conducting "deposition" style, "hostile" interrogations, there is nothing material or of substance represented in their document.

Neither the City Administration, Office of Capital Improvement Projects, nor I, have violated the laws of Miami-Dade County regarding the construction of stormwater drainage systems. There has been no miss-management, deception, negligence, or serious misrepresentations. All decisions by City officials were made with full transparency and with the support of the City Commission. There was no serious override of internal controls. The OIG simply does not understand the complexity and processes involved in managing large capital improvement projects. At the end of the day, where is the damage? This has not been shown or proven.

Exhibits 1-8 attached



Wade Trim, Inc.

2100 Ponce de Leon Boulevard, Suite 940 • Coral Gables, FL 33134
786.361.1645 • www.wadetrim.com

May 10, 2018

Department of Regulatory and Economic Resources
701 NW 1st Court, 5th Floor Miami, FL 33136-3912

Attention: Mayra de Torres, Engineer

Re: City of Miami Beach Neighborhood 13A Infrastructure Improvements
Palm and Hibiscus Islands
Class II Permit Renewal

Dear Ms. De Torres:

We are submitting the attached application for the above-referenced project, in lieu of a Time Extension Request. In order to assist in your review of this, as it relates to the original Class II Permit Application for this project (Permit No. 20150058), we are providing the following narrative:

1. Has the above-referenced permit previously extended? If so, list the permit extension date(s).

No.

2. Describe the work, as authorized by the above-referenced permit that has not been completed up to date.

Swale area grading, pump stations, private-side yard drains, lighting, final lift of asphalt, pavement and marking.

3. Has the work performed to date as authorized by the above-referenced permit, been conducted in accordance with the permit description, approved plans and restrictions, limitations or conditions of the permit? If not, describe in detail work that has been conducted that is not in accordance with the permit.

City provided a change in directive requiring installation of private-side yard drains for properties that have finished floor elevations below the adjacent crown of road. The original stormwater design criteria required that the drainage area be sized to account for and reflect the actual contributory area at a minimum all road rights-of-way, 100% of interior (landlocked) lots and 50% of waterfront lots. Thusly there is enough capacity in the system to account for this additional stormwater load, particularly in light of the fact that few of the properties fall within this new City criteria.

Additional City-directed changes will be submitted via revised plans for Palm Island and Hibiscus Islands during permit certification submittals; these mainly relate to change of pipe alignments to reduce impact to existing vegetation, addition of a secondary drainage system to reduce potential flooding in isolated areas, and lowering of proposed elevation of roads to reduce harmonization impacts to private properties.

City of Miami Beach Public Works
May 3, 2018
Page 2

4. Describe any substantial changes in the environment that have occurred at or adjacent to the subject location since the date of issuance of the above-referenced permit or prior extension time.

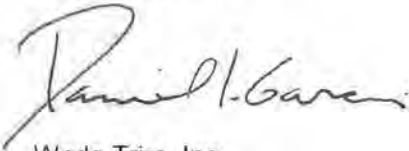
None.

5. Describe any adverse environmental impact(s) or cumulative environmental impact(s) that may occur if a permit extension is granted.

None.

For all required documentation as outlined in Section 2 and Attachment B, please refer to original permit application for Permit No. 20150058, as a reference. Please do not hesitate in contacting me should require additional information or have any additional questions.

Very truly yours,



Wade Trim, Inc.

Daniel Garcia, PE
Project Manager

LNZ2003.02S

cc: Olga Sanchez (City of Miami Beach)
Pablo Riano (Lanzo Construction)
Holly Kremers, PE (Wade Trim)



Carlos A. Gimenez, Mayor

Department of Regulatory and Economic Resources
 Environmental Resources Management
 701 NW 1st Court, 6th Floor
 Miami, Florida 33136-3912
 T 305-372-6567 F 305-472-6407

**CLASS II, III, VI
 PERMIT APPLICATION FORM**

miamidade.gov

For Departmental Use Only

Date Received: _____ Application #: _____ Reviewer: _____

Fee Received: _____ Tracking #: _____

1. Type of Water Control Permit Application:

- Class II Permit (Construction of drainage system with overflow or outfall in, on or upon any water body).
- Class III Permit (Construction within county owned or controlled canal right-of-way, reservation, or easement).
- Class VI Permit (Construction of a drainage system for any project that has known soil or groundwater contamination or that uses, generates, handles, disposes of, discharges, or stores hazardous materials).

2. Checklist: INCOMPLETE APPLICATION PACKAGE WILL NOT BE PROCESSED

- Application Fee:
 - Construction costs less than \$2,499.00 - fee is **\$215.00**
 - Construction costs more than \$2,500.00 - fee is **\$490.00**
 Note: After-the-Fact permit applications will be twice of the original fee, plus Departmental administrative enforcement costs
- 3 sets of construction plans*
- 1 set of drainage calculations*
- 1 copy of topographic or boundary survey
- A vertical aerial photograph or project location map
- Engineer letter of certification (See **ATTACHMENT A**)

Other items may be required depending on the nature of the work (See **ATTACHMENT B**)

* **Must be signed and sealed by an engineer licensed in the state of Florida.**

3. Project Information:

This application is for a(n): New Permit After the Fact Permit

Project Name: City of Miami Beach Infrastructure Improvements for Palm & Hibiscus Islands Folio: _____

Location: All rights-of-way on Palm Island & Hibiscus Island

Section: 32,4,5 Township: 53/54 Range: 42 Municipality: Miami Beach

Is the proposed work in a contaminated site? Yes No Unknown If yes, refer to **ATTACHMENT C**

Description of proposed work:

Proposed are the infrastructure improvements to serve the City of Miami Beach (CMB) Palm and Hibiscus Islands otherwise known as "Neighborhood No.13: Palm and Hibiscus Islands Right-of-Way Infrastructure Improvement Project" consisting of elevated roadways where possible, installation of new potable water main systems, installation of stormwater collection systems with 3 stormwater pumping stations equipped with water quality treatment units and gravity bypass stormwater outfalls with dissipation structures discharging into Biscayne Bay. Backflow prevention devices will be installed at the outfalls to prevent extreme high tides from backing up into the system.

3. Project Information (Continuation):

Date activity is proposed to commence 01/20/2016
 Cost of project construction*: \$ 11,028,969.64

Date activity is proposed to be completed: 12/31/2018

Proposed Use

- Residential Commercial Recreational Industrial Highway or road
 Agricultural Institutional Landfill Other, Specify: _____

***Cost of project construction is as follows: Class II & VI – total cost of drainage work ONLY, Class III – total cost of construction work within the canal right-of-way, reservation or easement ONLY.**

4. Applicant Information:

This should be the applicant's information for contact purposes.

Name: Eric Carpenter, PE
 Company: City of Miami Beach
 Address: 1700 Convention Center Drive
Miami Beach Zip Code: 33139
 Phone: 305.673.7080 Fax: 305.673.7028
 Email: luissoto@miamibeachfl.gov

5. Applicant's Authorized Permit Agent:

Agent is authorized to process the application, furnish supplemental information relating to the application and bind the applicant to all requirements of the application.

Name: Daniel Garcia, PE
 Company: Wade Trim
 Address: 2100 Ponce de Leon Blvd
Coral Gables, FL Zip Code: 33134
 Phone: 786-361-1645 Fax: _____
 Email: dgarcia@wadetrim.com

6. Contractor Information:

Name: Bob Bealy, PE License No. (County/State): CGC1519540 Broward/FL
 Company: Lanzo Construction Companies
 Address: 125 SE 5th Court Zip Code: 33441-4749
 Phone: 954.979.0802 Fax: 954.979.9897 Email: BobB@Lanzo.org

7. Professional Engineer Information:

Name: Holly Kremers, PE P.E. License No.: 68130
 Company: Wade Trim
 Address: One Tampa City Center, 201 North Franklin Street, Suite 1350, Tampa, FL Zip Code: 33602
 Phone: 813-882-4373 Fax: _____ Email: hkremers@wadetrim.com

8. List all permits or certifications that have been applied for or obtained for the above referenced work:

- Issuing Agency SFWMD Permit Type ERP ID # 13-06125-P
 Application Date 10/12/2015 Approval Date 05/05/2016
- Issuing Agency _____ Permit Type _____ ID # _____
 Application Date _____ Approval Date _____
- Issuing Agency _____ Permit Type _____ ID # _____
 Application Date _____ Approval Date _____

9. APPLICANT AFFIRMATION:

Application is hereby made for a Miami-Dade County Class (circle one) II , III , VI permit to authorize the activities described herein. I agree to or affirm the following:

- I possess the authority to authorize the proposed activities at the subject property, and
- I am familiar with the information, data and plans contained in this application, and
- To the best of my knowledge and belief, the information, data and plans submitted are true, complete and accurate, and
- I will apprise the Department of any changes to information provided in this application, and
- I will provide any additional information, evidence or data necessary to provide reasonable assurance that the proposed project will comply with the applicable State and County water quality standards both during construction and after the project is completed, and
- I am authorizing the permit agent listed in Section 5 of this application to process the application, furnish supplemental information relating to this application and bind me to all requirements of this application, and
- I agree to provide entry to the project site to inspectors and authorized representatives of Miami-Dade County, with proper identification or documents as required by law, for the purpose of preliminary analysis, verification, sampling, monitoring, and observation of permitted activities.
- **Class III only:** The Applicant shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from performance of this Class III Permit by the Applicant or its employees, agents, servants, partners, principals, subcontractors, or invitees. The Applicant shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Applicant expressly understands and agrees that any insurance protection required by this Permit or otherwise provided by the Applicant shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

A. IF APPLICANT IS AN INDIVIDUAL

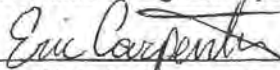
Signature of Applicant _____ Print Applicant's Name _____ Date _____

B. IF APPLICANT IS OTHER THAN AN INDIVIDUAL OR NATURAL PERSON

(Examples: Corporation, Partnership, Trust, LLC, LLP, etc.)

City of Miami Beach _____ Government Entity _____ FL _____
 Print Name of Applicant (Enter the complete name as registered) _____ Type (Corp, LLC LLP, etc.) _____ State of Registration/Incorporation _____

Under the penalty of perjury, I certify that I have the authority to sign this application on behalf of the Applicant, to bind the Applicant, and if so required to authorize the issuance of a bond on behalf of the Applicant. (If asked, you must provide proof of such authority to the Department). Please Note: If additional signatures are required, pursuant to your governing documents, operating agreements, or other applicable agreements or laws, you must attach additional signature pages (ATTACHMENT D).

 Eric Carpenter, P.E. Assistant City Manager _____ 5/15/18 _____
 Signature of Authorized Representative _____ Print Authorized Representative's Name _____ Title _____ Date _____

C. IF APPLICANT IS A JOINT VENTURE Each party must sign below (If more than two members, list on attached page)

Print Name of Applicant (Enter the complete name as registered) _____ Type (Corp, LLC LLP, etc.) _____ State of Registration/Incorporation _____

Print Name of Applicant (Enter the complete name as registered) _____ Type (Corp, LLC LLP, etc.) _____ State of Registration/Incorporation _____

Under the penalty of perjury, I certify that I have the authority to sign this application on behalf of the Applicant, to bind the Applicant, and if so required to authorize the issuance of a bond on behalf of the Applicant. (If asked, you must provide proof of such authority to the Department). Please Note: If additional signatures are required, pursuant to your governing documents, operating agreements, or other applicable agreements or laws, you must attach additional signature pages (ATTACHMENT D).

Signature of Authorized Representative	Print Authorized Representative's Name	Title	Date
Signature of Authorized Representative	Print Authorized Representative's Name	Title	Date

10. WRITTEN CONSENT OF THE PROPERTY OWNER FOR THE PROPOSED WORK LOCATION
 I/We are the fee simple owner(s) of the real property located at City Rights-of-Way Miami-Dade County, Florida, otherwise identified in the public records of Miami-Dade County as Folio _____. I am aware and familiar with the contents of this application for a Miami-Dade County Class II, III, or VI Permit to perform the work on the subject property, as described in the section 3 of this application. I hereby consent to the work identified in Class II, III, or VI Permit application.

A. IF THE OWNER IS AN INDIVIDUAL

Signature of Owner	Print Owner's Name	Date
Signature of Owner	Print Owner's Name	Date
Signature of Owner	Print Owner's Name	Date

B. IF THE OWNER IS OTHER THAN AN INDIVIDUAL OR NATURAL PERSON
 (Examples: Corporation, Partnership, Trust, LLC, LLP, etc.)

City of Miami Beach	Government Entity	FL
Print Name of Applicant (Enter the complete name as registered)	Type (Corp, LLC LLP, etc.)	State of Registration/Incorporation

1700 Convention Center Drive, Miami Beach, FL 33139

Address of Owner

Under the penalty of perjury, I certify that I have the authority to sign this application on behalf of the Owner, to bind the Owner, and if so required to authorize the issuance of a bond on behalf of the Owner. (If asked, you must provide proof of such authority to the Department). Please Note: If additional signatures are required, pursuant to your governing documents, operating agreements, or other applicable agreements or laws, you must attach additional signature pages (ATTACHMENT E).

	Eric Carpenter, PE	Assistant City Manager	5/15/18
Signature of Authorized Representative	Print Authorized Representative's Name	Title	Date
Signature of Authorized Representative	Print Authorized Representative's Name	Title	Date

Appropriate signature(s) must be included in:
 Box 9: either A, B or C **AND** Box 10: either A or B

The written consent of the property owner is required for all applications to be considered complete. Your application WILL NOT BE PROCESSED unless the Applicant and Owner Consent (sections 9 and 10) portions of the application are completed.

NOTE: THIS APPLICATION SHALL NOT, AT ANY TIME, BE CONSTRUED AS A PERMIT TO COMMENCE THE SCOPE OF WORK PROPOSED. WHEN PLANS ARE APPROVED, A PERMIT WILL BE ISSUED BY WATER CONTROL SECTION

ATTACHMENT B

- Substantiating letter from zoning authority of municipality or county stating that proposed work does not violate applicable zoning law
- Stormwater pollution prevention plan
- Percolation test (signed and sealed by an engineer, licensed in the state of Florida - for Class II & Class VI)
- Manatee grates for outfalls (if applicable)
- Covenant for the requirements of cut and fill or special basin criteria.
- 7-A Covenant for lake excavation in well field protection areas.
- Performance Bond and/or Mitigation Fee: (to be assessed by Water Control Section).

Note that based on new information or future submittals, this Department may require additional items prior to the issuance of the permit.



Carlos A. Gimenez, Mayor

ATTACHMENT C

Department of Regulatory and Economic Resources

Environmental Resources Management

701 NW 1st Court, 4th Floor

Miami, Florida 33136-3912

T 305-372-6700 F 305-372-6982

miamidade.gov

**RER/ERM
POLLUTION REMEDIATION SECTION
TECHNICAL GUIDANCE**

DRAINAGE PLANS FOR CONTAMINATED SITES

MINIMUM REQUIREMENTS

The appropriate location of drainage structures is essential in preventing the movement of contaminant plumes into previously uncontaminated areas. All drainage installations at contaminated sites shall be reviewed and approved by the RER/ERM's Pollution Remediation Section prior to construction. The scope of work provided by the PRS review is limited to evaluate the location of the proposed drainage system in reference to the contaminated areas. Approval from other departments, and/or sections and other governmental agencies having jurisdiction over the scope of work must be obtained prior to the implementation of the project. The following information is required:

- 1) The location of the contaminant plume(s) in reference to the area of the proposed drainage structures must be included on the site plan. The plume(s) must be delineated both horizontally and vertically to applicable target cleanup levels in the drainage area. Monitoring wells, including identification numbers, must be shown on the plan.
- 2) Groundwater analytical results must be submitted with the plan including copies of laboratory analyses sheets. An updated groundwater sampling event may be required if sample results are greater than nine (9) months old. The sampling event must include all applicable parameters associated with the site's type of contamination.
- 3) The groundwater flow direction must be shown on the plan.
- 4) The location and detailed construction drawings of the proposed drainage structure must be included on the plan (e.g., piping depth, drainage well depth, etc.). Plans must specify the locations of solid and perforated sections of piping. Details of the existing system must be provided if the proposed drainage system ties into the existing drainage system.
- 5) A minimum of two (2) plan sets that include all of the information requested are to be submitted for the review (1 set will be placed in the PRS RER/ERM file). All applicable pages of the drainage plan must be signed and sealed by a Professional Engineer registered in the State of Florida. The appropriate review fee (see below), made out to Miami-Dade County, must be included with the plans.

PRS REVIEW FEES

(See Fee Schedule at <http://www.miamidade.gov/development/library/fees/schedule-environmental.pdf>)

- Site under one acre in size - \$300.00
- Sites over one acre in size or projects that encompassed multiple contaminated sites - \$300.00 plus \$100.00 per additional acre or site encompassed by the project

MIAMI BEACH

**Commission Meeting/Presentations & Awards
City Hall, Commission Chamber, 3rd Floor, 1700 Convention Center Drive
October 30, 2019 – 5:00 PM**

Mayor Dan Gelber
Commissioner John Elizabeth Alemán
Commissioner Ricky Arriola
Commissioner Michael Góngora
Commissioner Joy Malakoff
Commissioner Mark Samuelian
Commissioner Micky Steinberg

City Manager Jimmy L. Morales
City Attorney Raul J. Aguila
City Clerk Rafael E. Granado

Visit us at www.miamibeachfl.gov for agendas and video streaming of City Commission Meetings.

ATTENTION ALL LOBBYISTS

Chapter 2, Article VII, Division 3 of the City Code of Miami Beach, entitled "Lobbyists," requires the registration of all lobbyists with the Office of the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the Office of the City Clerk. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.

To request this material in alternate format, sign language interpreter (five-day notice required), information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceedings, call 305.604.2489 and select 1 for English or 2 for Spanish, then option 6; TTY users may call via 711 (Florida Relay Service). To ensure adequate public consideration, if necessary, the Mayor and City Commission may move any agenda item to an alternate meeting. In addition, the Mayor and City Commission may, at their discretion, adjourn the Commission Meeting without reaching all agenda items.

AFTER ACTION

Meeting called to order by Mayor Dan Gelber at 5:08:51 p.m.

Pledge of Allegiance led by Miami Beach Senior Citizens present in the audience.

Mayor Gelber announced that tomorrow is Vice-Mayor Ricky Arriola's birthday and everyone sang Happy Birthday. A birthday cake was presented by his Aide Erick Chiroles.

6:28:14 p.m.

ANNOUNCEMENT:

Mayor Gelber announced that this was an Awards and Presentation Commission Meeting, that also included many regular business items. He feels that they should not do business during Presentation and Awards meetings, as this is the time to honor residents, and that is the purpose for it. In the future, these Awards and Presentations meetings will be limited to that only.

R9 D DISCUSSION ON THE PALM AND HIBISCUS RESILIENCY PROJECT WITH A FOCUS ON PRIVATE PROPERTY HARMONIZATION.

Commissioner Mark Samuelian

ACTION: Discussion held. Lilia Cardillo to place on the Commission Agenda, if received. **Eric Carpenter and David Martinez to handle.**

DIRECTION:

- Add this item as a recurring update item each Commission Meeting. Lilia Cardillo to place on the agenda. **Eric Carpenter and David Martinez to handle.**
- Inspector General Centorino to investigate Palm and Hibiscus Islands and Indian Creek and identify what the permitting problem is, why did it cost so much money, and why has it taken so long? Inspector General Joseph M. Centorino to report back to the City Commission with more information. **Joseph M. Centorino to handle.**
- Include a drop-dead date set for the harmonization agreements to be signed. **Eric Carpenter and David Martinez to handle.**

Holly Kremers, Vice-President, Wade Trim, explained the process they have gone through as far as permitting, and clarified that when the project started construction, they did have both systems, Palm and Hibiscus Islands, fully permitted. As construction projects go through there are some field adjustments that take place in any infrastructure system; many times, those are addressed as as-built and permits are closed out. To be clear, the permit modifications are unique to the west end of Palm Island. On the east end of Palm Island, the stormwater system was constructed and installed for the permitted documents without modifications. On Hibiscus Island there was a net difference of one, an 18-inch inland drain in the right of way, and there is an area where they had obstruction and was shifted around so they added one. This is normally something they would take care of during permit closeout. The west end of Palm Avenue has been more challenging during construction, and there are two separate issues that they have been discussing with DERM about how to handle. 1) There are 17 drains that are in the right of way around the west end of Palm Avenue. When they initially designed the project, they planned to clear out more vegetation in the right-of-way by taking out some trees and they would have a grassy swale for the stormwater to collect in the right-of-way and traverse on the swale and be collected on a larger catch basin. During construction they realized there were issues with removing those trees and they decided, to preserve the trees, instead of having the water meander down the swale and going to one basin, they would have to put an intermediate secondary drainage basins through the right-of-way to capture that same water in transit to the larger drain basin. In retrospect, at that point they should have gone to DERM and ask about permit modification process, and certainly at their next project they will do that, but they thought it was something that could be handled during the as built in and they went forward with construction of capturing the same stormwater in the right of way that was already permitted through additional inlets. The 88 drains are temporary construction drains, one of which was installed in the right of way in front of each property on north and south Coconut Lane; and they put them there because they knew that with a smaller right of way in that area, during construction and before they had a chance to do the final harmonization drainage, they wanted to make sure they had that in place; in case of flooding issues were to occur during construction they would have a way to transmit that water away. The intent was that when the project was complete and before the stormwater system was placed in the service, those drains would be abandoned, and the permitting drainage system would be in place at that time. And for that reason, they did not include those 88 temporary constructions drains on the permit documents. They have resolution on how DERM wants to see those and they are going to add them as temporary drains to the temporary modification. They are also adding the 17 drains as part of the permanent permit modification; that piece was already done. They have enough treatment capacity to handle those areas, and they think they have all the pieces in place to move towards a resolution with all parties.

From: Michael Alvarez <malvarez@balharbourfl.gov>
Date: September 19, 2018 at 3:03:00 PM EDT
To: "Morales, Jimmy" <JimmyMorales@miamibeachfl.gov>, "Wheaton, Elizabeth" <ElizabethWheaton@miamibeachfl.gov>
Subject: FW:

Good afternoon Jimmy,

A friend of mine that lives several houses from 253 North Coconut Lane, Palm Island sent me the pictures attached. Could not been a better time to raise my point of views as well as concerns, on the City allowing private properties to connect to the storm water system.

Look and zoom into the garage and see the pipe heading inside the garage. This resident can pour anything he wants without no one noticing and such liquids such as chemical pollutants ending / polluting Biscayne Bay.

I hope now you understand my point. The City SHOULD NOT implement or allowed private properties to connect to the City stormwater system.

2

Sincerely,

MIKE ALVAREZ -- CGC, PWLF
Utility Compliance Officer
Bal Harbour Village
PARKS AND PUBLIC SPACES DEPARTMENT
655 - 96th Street
Bal Harbour , FL 33154 Office: 305-
993-7361 Ext: 361
Cell: 786-566-3462
malvarez@balharbourfl.gov

***** Please be advised that Bal Harbour Village has transitioned to a new .GOV e-mail domain. Please send all future correspondence to Village contacts using the new domain as specified above. Thank you. *****



From: Pablo Riano [<mailto:PabloR@Lanzo.org>]
Sent: Wednesday, April 04, 2018 2:55 PM
To: Samadi, Mina; Joe D'Alessandro Jr.; 'Garcia, Daniel'; Victor Serrano
Cc: Sanchez, Olga; Soto, Luis; Rivas, Jose
Subject: RE: P & H- New drainage directive

NCC 005 - Revised

Mina,

At this moment, we are in the process of assessing the impact(s) of these new changes. We will forward more specific documentation to you as soon as it is available. Please, note this new directive has the potential to impact the project's cost and duration, and requires a careful approach; not to mention the fact the potential additional work may impact work that has already been completed. It is necessary to agree on the impacts before we proceed.

Please, let us know if you have any questions, comments, and/or concerns.

Respectfully,

LANZO CONSTRUCTION CO., FL.

Pablo C. Riaño
Sr. Project Manager

LANZO COMPANIES
407 Lincoln Road, Suite 10R
Miami Beach, FL 33139
(305) 548-8765 Office
(954) 931-0804 Mobile

www.lanzo.net

From: Samadi, Mina [<mailto:MinaSamadi@miamibeachfl.gov>]
Sent: Wednesday, April 04, 2018 11:49 AM
To: Samadi, Mina; Pablo Riano; Joe D'Alessandro Jr.; 'Garcia, Daniel'; Victor Serrano
Cc: Sanchez, Olga; Soto, Luis; Rivas, Jose
Subject: RE: P & H- New drainage directive
Importance: High

Please start implementing the below directive immediately.

Thank you,

Mina Samadi, P.E., LEED® AP,
Senior Capital Project Coordinator
CAPITAL IMPROVEMENT PROJECTS OFFICE
1700 Convention Center Drive, Miami Beach, FL 33139
Tel: 305-673-7071 ext 2581 Fax:305-673-7073 minasamadi@miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.



It's easy being Green! Please consider our environment before printing this email

From: Samadi, Mina
Sent: Wednesday, April 04, 2018 10:21 AM
To: Pablo Riano; Joe D'Alessandro Jr.; 'Garcia, Daniel'; 'Victor Serrano'
Cc: Sanchez, Olga; Soto, Luis; Rivas, Jose
Subject: P & H- New drainage directive
Importance: High

Hello Lanzo team,

Below is the directive for the drainage system modification as it relates to final Harmonization for Palm and Hibiscus project

1. Any Property that has signed the Harmonization Agreement and has FFE at or below the new crown of the road shall receive a yard drain/catch basin inside the private property, at the low point, referred to as the "connection point" with a plug that can be removed and connected to.
2. All properties that elect to construct additional drainage components and connect to the City's system must obtain a building permit to perform their work. *(please provide any property that would like to obtain a permit, a copy of the project design plan for their specific area, so that they may include with their package and identify in their package the City's project in their area)*
3. Properties that have not signed the Harmonization Agreements will be harmonized to the ROW line.
4. There are a couple of special location where we have met with the property owners, identified the harmonization method and will implement the discussed method.

Thank you,

<< OLE Object: Picture (Device Independent Bitmap) >>

Mina Samadi, P.E., LEED® AP,

Senior Capital Project Coordinator

CAPITAL IMPROVEMENT PROJECTS OFFICE

1700 Convention Center Drive, Miami Beach, FL 33139

Tel: 305-673-7071 ext 2581 Fax:305-673-7073 minasamadi@miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.



It's easy being Green! Please consider our environment

From: Samadi, Mina
Sent: Friday, June 22, 2018 5:29 PM
To: 'Albert Dominguez' <AlbertD@Lanzo.org>; Victor Serrano <VictorS@Lanzo.org>; Joe D'Alessandro Jr . <JoeJr@Lanzo.org>; Pablo Riano <PabloR@Lanzo.org>
Cc: Sanchez, Olga <OlgaSanchez@miamibeachfl.gov>; 'Compel, Sean(sean.compel@stantec.com)' <sean.compel@stantec.com>; 'Vargas, Fernando' <fernando.vargas@stantec.com>
Subject: RE: Private Property Yard Drain Installation - North Coconut Lane

Hello Albert,
Thank you for sending the list of location, work and prices.

As per our previous conversation, as you are scheduling and performing the work we will review the prices and tally them for the change order. Also that you will continue with scheduling these work till all the harmonization and the new drainage criteria are complete.

We will schedule a meeting next week to complete the walk through and review the cost proposals.

Thank you,

MIAMIBEACH

Mina Samadi, P.E., LEED® AP,

Senior Capital Project Coordinator

CAPITAL IMPROVEMENT PROJECTS OFFICE

1700 Convention Center Drive, Miami Beach, FL 33139

Tel: 305-673-7071 ext 2581 Fax: 305-673-7073 minasamadi@miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.



It's easy being Green! Please consider our environment before printing this email

From: Albert Dominguez [<mailto:AlbertD@Lanzo.org>]
Sent: Friday, June 22, 2018 4:41 PM
To: Samadi, Mina
Cc: Joe D'Alessandro Jr.; Pablo Riano; Victor Serrano; Sanchez, Olga
Subject: RE: Private Property Yard Drain Installation - North Coconut Lane

Mina,

In continuing coordinated effort between Lanzo and the CMB CIP office, to expedite the implementation of the New Private Yard Drain Directive in certain priority locations, and after several mutual site visits, Lanzo is hereby providing you with the proposed work plan and proposal for the listed properties to begin work on June 25th, and estimated for completion by July 6th.

If you agree with this work plan and proposal, we will order materials immediately and initiate the work as proposed.

Please see that work on three (3) of the 11 properties are pending action by your staff, before we can provide a proposal and schedule the work.

Please advise us at your earliest convenience if you approve this work plan for scope and cost.

Thank you,
Albert Dominguez, PE



1968-2018

50 YEARS STRONGwww.lanzo.net

From: Albert Dominguez
Sent: Friday, June 8, 2018 3:00 PM
To: 'Samadi, Mina' <MinaSamadi@miamibeachfl.gov>
Cc: Joe D'Alessandro Jr. <JoeJr@Lanzo.org>
Subject: Private Property Yard Drain Installation - 195 North Coconut Lane

Mina,

In a coordinated effort between Lanzo and the CMP CIP Office, to expedite the implementation of the New Private Yard Drain Directive in certain priority locations, Lanzo completed the installation of the private property yard Drain at the subject location.

We are now ready to complete the restoration for the private driveway area and are providing you with the cost proposal for your review and approval.

Please expedite this review and approval so that we can proceed with the work next week.

The proposed work is as follows:

Items		Cost
Furnish and Install new yard Drain in Private Property		\$ 3,780.00
Core and connect to existing inlet		\$ 750.00
Furnish and install check Valve		\$ 700.00
Demo and prepare Private area for Concrete Restoration		\$ 4,900.00
Furnish and install approx. 160 Sy of 6" Concrete Driveway		\$ 6,300.00
		\$ 16,430.00
Overhead and Profit	7.50%	\$ 1,232.25
Bond and Insurance	2.50%	\$ 441.56
		\$ 18,103.81
Total Proposed Change Order		\$ 18,103.81

Thank you for your prompt attention.
 Albert Dominguez, PE



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EXHIBIT 6

Proposed Work on North Coconut For the Weeks 6-25-18 through 7-7-18

House #	Street	Work	Issue	Resp. Party
195	N. Coconut	Work Completed	LC to revise Estimate	LC
199	N. Coconut	Grade/SOD/ Cap Edge Drain & Add Clean-out Box		LC
199	Palm	Grade/SOD		LC
		T. Drain across Drey, yard drain, Check valve in 30426 Str.		
201	N. Coconut	Grade/SOD		LC
201	Palm	Cap Edge Drain & Add Clean-out Box		LC
205	N. Coconut	New yard drain, check valve in 36" Str., Grade/SOD	CIP to advise LC about parking at this location since there is a conflict with Visibility Triangle	CMB
205	Palm		City to Provide Direction with Owner	CMB
210	Palm		No Agreement	CMB
211	N. Coconut	New Yard drain/ Check valve in 36" Str	City to provide new owner agreement	CMB
215	Palm	Install Check Valve in inlet, Eliminate ED		LC
215	N. Coconut	Cap Two Edge Drain & Two Add Clean-out Box		LC

check valve	yard drain	36" Str	T Drain (ft)	CO / Box	Core Intel	Restoration	coll total	2.5% GP	2.5% B&I
\$ 3,700.00	\$ 3,780.00	\$ 3,800.00	\$ 375.00	\$ 1,500.00	\$ 750.00				
				\$ 1,500.00	\$ 750.00	\$ 5,600.00	\$ 13,830.00	\$ 1,037.25	\$ 371,681.95
\$ 3,700.00	\$ 3,780.00	\$ 3,800.00	\$ 3,000.00				\$ 14,280.00	\$ 1,071.00	\$ 383.78
				\$ 1,500.00			\$ 1,500.00	\$ 112.50	\$ 40.31
\$ 3,700.00	\$ 3,780.00	\$ 3,800.00					\$ 11,280.00	\$ 846.00	\$ 303.15
\$ 3,700.00					\$ 750.00		\$ 4,450.00	\$ 333.75	\$ 119.59
				\$ 3,000.00			\$ 3,000.00	\$ 225.00	\$ 80.63
							\$ 49,840.00	\$ 3,738.00	\$ 1,339.49

From: Samadi, Mina [mailto:MinaSamadi@miamibeachfl.gov]
Sent: Tuesday, August 14, 2018 11:03 AM
To: Albert Dominguez; Joe D'Alessandro Jr.; Pablo Riano; Victor Serrano
Cc: Sanchez, Olga; 'Compel, Sean'; Crews, Jeff
Subject: P & H - new drainage directive harmonization
Importance: High

EXHIBIT 7

Hello Albert,

We had a walk through last Thursday to review the harmonization needed as a result of the new drainage directive (FFE< crow of road = yard drain in private properties). This was the last phase of coordination to determine the scope of work per joint understanding. Please provide a **comprehensive(design/build)** change order request for this work so that we can prepare a change order that will be presented at the September commission meeting. Please provide the request for change order with the spread sheet that explains the work and cost by Monday August 20, 2018.

Thank you,

Mina Samadi, P.E., LEED® AP,
Senior Capital Project Coordinator
Office of Capital Improvement Projects
1700 Convention Center Drive, Miami Beach, FL 33139
Tel: 305-673-7071 ext 2581 Fax: 305-673-7073 minasamadi@miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical historic community.



It's easy being Green! Please consider our environment before printing this email.

From: ChristinaBauer@miamibeachfl.gov <ChristinaBauer@miamibeachfl.gov>
Sent: Tuesday, September 18, 2018 12:35 PM
To: CapitalProjectsSeniorCoordinator@miamibeachfl.gov
Cc: DavidMartinez@miamibeachfl.gov; MariaCerna@miamibeachfl.gov
Subject: Agenda Titles for October Commission Meeting

Seniors,

Please see attached, the agenda titles I have, as of today, for the October 17th Commission meeting.

These titles have not been approved yet. If you have any revisions or any additional titles, please send to me as soon as possible.

Thank you.
Christina

MIAMI BEACH

Christina Bauer, Administrative Support Manager
OFFICE of CAPITAL IMPROVEMENT PROJECTS (CIP)
1700 Convention Center Drive, Miami Beach, FL 33139
Tel: 305-673-7071 Ext 6767 / Fax: 305-673-7073
ChristinaBauer@miamibeachfl.gov / www.miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

MIAMI BEACH

Office of Capital Improvement Projects
October 17, 2018 Commission Agenda Items

PALM AND HIBISCUS AMENDMENT NO. 5

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AMENDMENT NO. 5 TO THE DESIGN-BUILD AGREEMENT BETWEEN THE CITY OF MIAMI BEACH, FLORIDA, AND LANZO CONSTRUCTION CO., FLORIDA, FOR DESIGN-BUILD SERVICES FOR NEIGHBORHOOD NO. 13: PALM AND HIBISCUS ISLANDS RIGHT-OF-WAY INFRASTRUCTURE IMPROVEMENTS (THE PROJECT), DATED SEPTEMBER 18, 2014 (THE CONTRACT); THE AMENDMENT INCLUDES ADDITIONAL DESIGN SERVICES AND CONSTRUCTION ASSOCIATED WITH THE RECENTLY ADOPTED DRAINAGE DIRECTIVE AND NECESSARY WORK IN ORDER TO MAINTAIN EXISTING OUTFALLS OPERATIONAL IN THE NOT-TO-EXCEED AMOUNT OF \$800,000 WITH **XXXXXX FUNDING**.

saying, how do they know it is going to work. The City needs to put proper resources, hire proper people, and do the drainage calculations. Additionally, the homeowners must sign the harmonization letter for this to move forward. But the homeowners are fearful that the harmonization letter draft has been challenged on several occasions. For each property there have been different layout provided one was in front of the property or the side. They are asking or suggesting to those 98+ homeowners to hire a law firm, as it is a legal document, and hire a civil engineer firm to help them establish a counterpoint to the City's actions. If the City could provide a guarantee that the project will be finished right, it would make it easier for homeowners not to hire expensive professionals. He urged everyone on the City Commission to continue working on this item. They need to have a seawall policy. Roadway project is what is called but the issue is resiliency and raising of the water. The reason is called Roadway project is because it was the City's approach to raise the roads. However, the true subject is what is the City doing with the rising water. Part of the equation is the necessity to have contiguous seawalls to provide incentive to the homeowners to renew the seawall. Seawalls cost about \$1,000 per square linear feet, and the City needs to provide that incentive. At the next king tide, the water is going to come in and if neighbors have not built the proper seawall; there will be flooding. The City needs to do it right and reset the clock. The City needs to have a timeline and resources. Homeowners want to make it happen; it is a fantastic opportunity in what is currently a nightmare situation for the City Commission and future City Commissions to rise up to the occasion to show, not only to the residents of Palm and Hibiscus and Star Islands, but all the residents that live in Miami Beach and in the State of Florida, what leadership, courage, determination, and vision can do with a very acute problem. Mayor Gelber thanked Pierre for his leadership in the community. Andres Asion owns two properties on Palm Avenue and both properties flood in the backyard when it rains six inches or more. Some houses on Palm Island do not allow access to their parking garages because the road raising floods their property so badly. His elderly parents' living room is under street level, which will get flooded for sure. This has been a nightmare situation for the past four to five years and still nothing gets done. He invited the City Commission to come to his house and he will show them what is happening. At the end of the day, this is a test for other neighborhoods, and they should see exactly what is happening there. Regarding the seawalls, the entrance to Palm Island, which on either side of the bridge belongs to the City, that seawall does not exist. Whenever there is a high tide, the water goes right into the grass and into the islands and there is no seawall from the City to stop it. Mr. De Agostini added that it is ironic that the City is willing to have someone posted at the guardhouse, because it shows the lack of communication between the City and the Post Master, that guardhouse is now a post office annex because they refuse to deliver for lack of communication. They need to resolve that. The residents that live around the west circle of Palm Avenue are looking at the generator, which is 20 to 30 feet in height, so they are at the ground level. He requested the plan from CIP on the landscape that is going around the generator and he was told it was not designed yet. Those are additional points for this City Commission that they trust to be able to fix it, take care, and be a shining example of what can be done. Commissioner Góngora thanked Commissioner Samuelian for putting this item on the Agenda because the residents of Palm and Hibiscus Islands have been frustrated since

they were running for office two years ago. Commissioner Góngora has not seen the movement that he anticipated. Both this project and Indian Creek have been troubling and upsetting to him, as they are both situations where the proper permits were not pulled. They modified and amended these projects for tens and millions of dollars over the past two years, given both projects more money to try to appease the resident complaints, but the work does not get done. He is just as frustrated as them, because they keep asking why this is happening and why this is going on, and they are not getting answers either, except when a Commissioner puts it on the Agenda. He likes Mr. Agostini's idea and publicly requested to send this item to the Inspector General to look into the Palm and Hibiscus Islands projects as well as the Indian Creek project, find out what went wrong with permitting, why they budgeted so much money and it has gone over budget, why the projects are not working correctly, and why residents are waiting for years with no result. He formally requested to refer an investigation and oversight into the money and permitting in these two projects to the Inspector General and report back to the City Commission. Joseph M. Centorino General to handle.

Commissioner Samuelian appreciates the response from the Administration and the residents who have shown incredible patience with this situation and he summarized as follows: 1) the City needs to act with urgency and get this done; 2) the City needs to do a much better job engaging with residents. These 90+ harmonization agreements are not a trivial task and he is curious as to how the Administration is going to approach that and what the timing is. 3) He appreciates Mayor Gelber having this body continue to engage. The Workshop idea is excellent, but he requested keeping this item on the Agenda for each meeting so they can monitor progress, and 4) the seawalls issue will be discussed at Sustainability and Resiliency Committee. Finally, he also agrees with his colleague that when they brought in the Inspector General, it was to address waste and inefficiency, After Action October 30, 2019 City of Miami Beach Commission Meeting/Presentations & Awards Page 32 of 48 and he thinks this is a classic example. He has communicated his interest in having the Inspector General investigate the issue. City Manager Morales reminded the City Commission that when they designed these projects, they did not include generators, because they would be huge pieces of equipment in the middle of residential neighborhoods. They did not originally recommend it in this project or others, as they knew the impact of them aesthetically in the neighborhoods, not to mention the cost. However, this neighborhood came forward and insisted on having permitted generators. It is not an "a ha" moment; they figured there would be an "a ha" moment in the neighborhood when they saw generators installed. Obviously, they will be designing the landscaping around the generators, but they did not think they would be popular, and he is not shocked to see that they are not. With respect to the drainage, they have met with 69 property owners of the 98 drains on private property; that drainage work is done as part of the package sent. After January, they were able to do the analysis work and they presented to them the harmonization agreements. Those are the ones that out of the 69, 10 had comments on them; the only ones they are now finishing design work on are the 29 that are left, and they believe that will be completed soon. Assistant City Manager Carpenter added that they will have that done and will meet with each property owner by the first week of December. Mayor Gelber thanked everyone for the discussion.

EXHIBIT B

Flood Mitigation Results

Palm Island 316 South Coconut Ln



BEFORE

Tides: 1.40 ft NAVD 10/17/12

AFTER

Tides: 1.88 ft NAVD 10/15/19

Flood Mitigation Results

Palm Island 303 North Coconut Ln



BEFORE

Tides: 1.42 ft NAVD 10/17/12



AFTER

Tides: 1.88 ft NAVD 10/15/19

MEMORANDUM

To: Joseph Centorino, Inspector General

From: Eric Carpenter, Assistant City Manager *EC*

Date: February 1, 2021

Subject: Response to Office of Inspector General Draft Report 20-07 Supplemental Questions

This letter is meant to serve as the direct responses to the additional questions posed by the Office of Inspector General (OIG) following our in person meeting on January 22, 2021. This is meant to be a supplement to the overall City Administration response and my individual response to the draft report 20-07 and should be reviewed in conjunction with the more comprehensive responses submitted previously. This is not an exhaustive list, as I was only provided a week to identify all of the myriad of misrepresented items in a 167 page report.

The responses to the specific questions are provided below in order:

- 1) Question: Please identify each sentence in the report regarding you personally or your actions as Public Works Director and/or Assistant City Manager that you believe contain "innuendo and editorializing".

Answer:

- a. Page 83 The quote from the City's FAQ document is "Currently this [private-tie in] is not an option for private property owners, but we are exploring options to provide our residents with additional water management options in the future." Somehow the OIG gleaned from that statement the following opinion: "While expressed in nuanced language, the answers indicated that the City recognized the risk that raising roads would cause new flooding on private lots; was unwilling to assume a city-wide duty to prevent such flooding; and intended to shift the legal responsibility for any flood damage caused by elevating roads to individual property owners." This is a significant inference, from a relatively simple statement by the City and it appears that this opinion is at best unfounded.
- b. Page 85 how is responding to a media inquiry proof that the "City officials used the news media to generate support for the new policy"
- c. Page 86 "Lanzo's design team was concerned about regulatory implications of converting temporary drains to permanent fixtures" what is the basis for this statement since they were not contractually obligated to perform this work until the change order was approved in October 2018, well after they had communicated the changes to DERM in the May 10, 2018 letter.
- d. Page 89 "During the panel, Carpenter and Mowry did not mention their ongoing and unprecedented plan to build a public drainage system that was designed to connect private-side yard drains to the public drainage system." What does this insinuate,

because one of the many initiatives that were being directed by Commission was not mentioned, it is somehow a conspiracy, even though two months earlier in the public City Commission meeting direction was given to make connections.

- 2) Question: Please identify each sentence in the report about you personally or your actions as Assistant City Manager and/or Public Works Director that "insinuate wrongdoing where none has occurred".

Answer:

- a. Page 86 "Subsequent events and records examined during the investigation, support a conclusion that the primary purpose of the resolution was to provide after-the-fact authorization and legal justification for the private-side drains the City had already allowed". No proof to support this position and furthermore, there were no private drains in April 2017. Report fails to acknowledge the evolution of the policy direction from June 2015 to April 2017 was primarily for the City to bear the cost.
- b. Page 97 "The City and Lanzo failed to submit a notarized request for the extension with responses to the five questions". Even though the extension of the permit was the responsibility of Lanzo, if the intent was to not inform DERM the extension would have been a better path than to reapply for the permit, however, this is drafted to make it seem it was part of some scheme. Interestingly the same five questions with detailed answers were provided in the letter dated May 10, 2018.
- c. Page 116 "One gets the impression that the motivation behind the retention of so many consultants could have more to do with insulating the decision-makers from responsibility, than it does with marshalling the professional expertise with the necessary brainpower to ensure the project's success." The City uses best practices for management of complex construction projects. In this particular case we only have one consultant and a design/builder. This is clearly a misguided statement as it is contradicted by Recommendation #4 of the OIG report which suggests adding another consultant.

- 3) Question: Please identify each statement in the draft report about you or your actions that you believe is false or in error; any instance in which you believe a material fact is "clearly omitted"; and each statement that you believe contains a fact that is "manipulated" with punitive intent.

Answer:

- a. Page 5 General Observations Item 10. No reference to May 10, 2018 letter notifying DERM of the changes to the project.
- b. Page 9 "City and Lanzo directed two engineering firms and engineers...to develop distinctly different construction plans for different purposes." City gave a revised drainage directive to the Design/Builder, no facts to conclude the City dictated who was to do the work or that there was a different purpose.
- c. Page 11 "At no time did the City and Lanzo advise the SFWMD and DERM of the significant changes in design" changes were provided to DERM in writing on May 10, 2018. SFWMD has determined that no permit modifications are required.
- d. Page 11 "The City and Lanzo proceeded with this work during the Spring and Summer of 2018, after rejecting a recommendation from Wade Trim that the City and Lanzo notify the SFWMD and DERM of the new phase of construction". There was no rejection of any recommendation from Wade Trim regarding the regulatory

requirements, in fact DERM was notified, via the May 10, 2018 letter from Wade Trim, within two months of first discussions regarding the need for modifications on west Palm Island permit.

- e. Page 12 "The deception of the SFWMD and DERM lasted 31 months" this is clearly untrue from the timelines unless you disregard the May 10, 2018 letter.
- f. Page 12,14 several allusions to "cost overruns", "soaring costs" and "cost escalation" that did not occur. (Please refer to December 9, 2015 contract amendment setting the price at \$38.5 million).
- g. Page 13 "In January 2016, the City Commission awarded Lanzo a \$36.5 million contract, plus 10% contingency." The contract was actually awarded in July 2013 and was amended in December of 2015 to include a construction cost of \$38.5 million including a 10% contingency.
- h. Page 13 "At the time of the award, the City did not have finished construction plans for building the stormwater drainage system, drainage studies verifying the system's expected performance, or a reliable basis for determining how much the non-standard system would cost or how long it would take to build." Almost all Design/Build projects agree on a final cost prior to completion of plans, there was a cost estimate provided by an independent 3rd party cost estimator as well as the Design Criteria professional and we had a schedule that the Design/Builder was contractually bound to meet.
- i. Page 15 assertions of a "whistleblower" must accompany facts that they uncovered something that was not already provided in writing to the agency, which is not the case here.
- j. Page 45 "...set a precedent of making significant changes to the plans after construction had begun." Construction had not begun at the point in time referenced in this statement.
- k. Page 60 there is no mention of the fact that the Commission Memorandum included documents that clearly identified "City Directive of October 12, 2015 (2.7 NAVD-minimum)" as well as the reference to "RFI-035 (Private Drainage Accomodation)".
- l. Page 78 "Coley said lateral pipes and right-of-way drainpipes on the plans approved by Public Works were not intended to be temporary construction drains." I believe Mr. Coley has clarified the difference between permanent private-side drains and temporary construction drains and this particular assertion is taken out of context.
- m. Page 83 "The FAQ statement that "water will not flow from the elevated City street into private property" was, at this point, an aspiration and design objective of the construction plans, but was not true." The water can be contained within the right-of-way of an elevated road. The difference between water not flowing off of private property; and water flowing from the elevated roadway is being confused.
- n. Page 84 please provide any proof that private-side yard drains were in place by March 31, 2017 as stated.
- o. Page 95 "...did not approve \$17,500 for engineering services associated with notifying SFWMD and DERM about the City's plans to install private-side yard drains and obtain permit modifications" These design services were part of the Design/Build teams existing scope this was a cost discussion regarding the change order.
- p. Page 97 Sanchez emailed the application on May 15, 2018 not May 10, 2018. This is important because DERM had already seen the letter that described all of the changes.

- q. Page 99 "The statement did not describe the unpermitted construction in detail and minimized as "few" the number of properties that would have one or more drains installed." There is significant detail on what work was performed and more than enough information to clearly show there have been changes that will need to be either done through a permit modification or reflected in the as-built close out package. The issuance of the permit clearly signaled the intention by DERM to use the latter.

4) Question: Please identify each statement in the draft report that you believe states or implies that you personally are part of a "coordinated conspiracy" or that you believe defames or libels your professional reputation.

Answer:

- a. Page 20 "The permanent right-of-way drainpipes were available during construction to mitigate flooding. But the evidence, and sworn statements of multiple witnesses, established that their description as "temporary construction drains" was a legal fiction." I have addressed extensively the difference between the stub out pipes that do not have any drain connected; temporary construction drains; and permanent private-side yard drains. This statement clearly confuses the different situations in order to make it seem nefarious.
- b. Page 86 "Subsequent events and records examined during the investigation, support a conclusion that the primary purpose of the resolution was to provide after-the-fact authorization and legal justification for the private-side drains the City had already allowed" this April 2017 Resolution was a reaffirmation of the Commission directives prior and please provide any proof of private-side yard drains installed by this date.
- c. Page 87 Garcia states "I can say that on many occasions, I raised red flags and I tried to push back, but it felt like just the support wasn't there, you know, going up the chain, so to speak..." Garcia never made any attempt to speak to me on this matter and it is my understanding that he never spoke to the CIP Director about his concerns either.
- d. Page 152 "In my professional opinion, Ms Kremers and Mr. Carpenter misstated the disclosure obligations of a permittee and mischaracterized the Rubio plans." It is and will remain my professional opinion that if you do not change the contributory area or the amount of water flowing into a drainage system that the location of the pipes or the inclusion of stub outs are immaterial.
- e. Page 152 "In my opinion, Carpenter also mischaracterized the practices of DERM and other regulatory agencies regarding the use of As-Built plans." I believe that the definition of "substantial" in substantial modification is based upon the judgment of the specific agencies and even the individual regulators. As a result, I ask how can stating that it is a "judgment call" be a mischaracterization.

5) Question: Did Mr. Mowry consult with you in on or before Oct. 9, 2015 about his recommendation to require the minimum grate elevation of 2.7 NAVD for all areas of Palm Island and did you approve this change in the modified criteria for West Palm Island? If yes, when did you approve this change for the Palm and Hibiscus project?

Answer: To my knowledge I was not involved in discussions regarding the inlet elevations on west Palm Island during this time period, and I am not surprised as there was clear

direction from Commission regarding the inlet grate elevation. The minimum grate elevation was set at 2.7 NAVD by Resolution 2014-28499 (February 12, 2014) which set the tailwater elevation at 2.7 NAVD and consequently the lowest inlet elevation. Furthermore, this was buttressed by Resolution 2015-28921 (February 11, 2015) which reconfirmed the 2.7 NAVD tailwater condition as well as setting the crown of road at 3.7 NAVD. I do recall later in the project, once the road was constructed, being surprised the elevation of the road was below 3.7 NAVD for west Palm Island, as that was not discussed with me.

- 6) Question: Did Mr. Mowry consult with you before approving on Oct. 30, 2015 the Wade Trim conceptual plans to build a drainage system that accommodated the future connection of yard drains on private lots and did you approve of this plan and engineering solution for west Palm Island?

Answer: More than four years after the fact, I am not sure of when the initial discussions took place in relation to the October 30, 2015 date but I was consulted on the need to provide stub outs to allow for the possibility of future connections without disturbing the work that needed to be done on the roadway. I believed then as I do now, the flexibility to consider future modifications is a good thing and can save significant cost after the fact. I feel the need to reiterate, until brought to my attention by the OIG, I was not aware that there were two sets of plans. Although, I still contend that the introduction of stub out pipes does not change the functionality or water treatment requirements as set forth by Chapter 24 of the Miami-Dade County code.

- 7) Question: Did Mr. Mowry consult with you on or before November 2015 about a plan to seek a change in City policy to allow the connection of private-side yard drains and did you approve that plan in 2015?

Answer: The City Commission gave direction to the Administration on June 10, 2015 to prepare a framework to allow private connections to the public stormwater system. So yes there were many conversations regarding this matter. However, there was no definitive plan for me to approve, the concepts continued to evolve over the next four years. One important milestone in that evolution is when on April 26, 2017 the Commission refined the direction to the Administration on how to implement private-side yard drains and further codified the criteria on September 12, 2018.

- 8) When and by what means did you communicate any of the decisions or actions referenced in Questions #6 through #8 (sic) above to former City Manager Jimmy Morales and the City Commission. When did Mr. Morales approve each decision?

Answer: Information was provided in agenda memos drafted by the Public Works and CIP Departments and submitted to Mr. Morales for inclusion in the Commission Agendas. It was the Commission that, as identified above and below, gave the direction to the City Manager, in duly noticed public hearings what to do on this project consistent with staff recommendations.

- 9) Question: When and by what means do you believe the City Commission was first notified of the above-referenced decision by the City Administration and notified of the potential costs and consequences of those decisions, specifically including (a) the decision to require

the minimum grate elevation criteria of 2.7 NAVD in all areas of Palm and Hibiscus Island and (b) the City Administration's decision to have Lanzo Construction Co. Florida and Wade Trim design and build a public drainage system that was designed to connect to private-side yard drains in the future.

Answer: The City Commission provided the Administration with the Direction on February 2, 2014 to change the tailwater boundary condition to 2.7 NAVD which in fact sets the inlet grate elevations at 2.7 NAVD. Resolution 2015-28921 (February 11, 2015) which reconfirmed the 2.7 NAVD tailwater condition as well as setting the crown of road at 3.7 NAVD. They also provided direction on June 10, 2015 to create a framework to allow private property connections to the City drainage system. Finally the City Commission reviewed and approved the scope of work for Palm and Hibiscus Islands on December 9, 2015 which included within the backup documentation both a reference of the "City Directive of October 12, 2015 (2.7 NAVD-minimum)" as well as the reference to "RFI-035 (Private Drainage Accomodation)". As a result it is clear that the Administration was moving forward with the full authorization and approval of the City Commission under Resolution 2015-29243.

There were many decisions made that created an evolution of the Palm and Hibiscus Neighborhood Improvement project. All of my decisions were made with the best interest of the residents, and with the clear concurrence and approval of the City Commission. There were decisions made by all involved, which are now being questioned by those looking backwards. With the benefit of hindsight, any project could have been executed better, and I accept the criticism for the project delays as that impacted the residents. When you peel back all of the posturing, for a first of its kind solution, to the existential threat of sea level rise in Miami Beach, the outcome for the neighborhood should be allowed to be judged on the merits of the completed project.

MEMORANDUM

To: Joseph Centorino, Inspector General

From: Eric Carpenter, Assistant City Manager *EC*

Date: February 1, 2021

Subject: Response to Office of Inspector General Draft Report 20-07 Supplemental Questions

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- a. Page 86 “Subsequent events and records examined during the investigation, support a conclusion that the primary purpose of the resolution was to provide after-the-fact authorization and legal justification for the private-side drains the City had already allowed”. No proof to support this position and furthermore, there were no private drains in April 2017. Report fails to acknowledge the evolution of the policy direction from June 2015 to April 2017 was primarily for the City to bear the cost.
- b. Page 97 “The City and Lanzo failed to submit a notarized request for the extension with responses to the five questions”. Even though the extension of the permit was the responsibility of Lanzo, if the intent was to not inform DERM the extension would have been a better path than to reapply for the permit, however, this is drafted to make it seem it was part of some scheme. Interestingly the same five questions with detailed answers were provided in the letter dated May 10, 2018.
- c. Page 116 “One gets the impression that the motivation behind the retention of so many consultants could have more to do with insulating the decision-makers from responsibility, than it does with marshalling the professional expertise with the necessary brainpower to ensure the project’s success.” The City uses best practices for management of complex construction projects. In this particular case we only have one consultant and a design/builder. This is clearly a misguided statement as it is contradicted by Recommendation #4 of the OIG report which suggests adding another consultant.

- 3) Question: Please identify each statement in the draft report about you or your actions that you believe is false or in error; any instance in which you believe a material fact is “clearly omitted”; and each statement that you believe contains a fact that is “manipulated” with punitive intent.

Answer:

- a. Page 5 General Observations Item 10. No reference to May 10, 2018 letter notifying DERM of the changes to the project.
- b. Page 9 “City and Lanzo directed two engineering firms and engineers...to develop distinctly different construction plans for different purposes.” City gave a revised drainage directive to the Design/Builder, no facts to conclude the City dictated who was to do the work or that there was a different purpose.
- c. Page 11 “At no time did the City and Lanzo advise the SFWMD and DERM of the significant changes in design” changes were provided to DERM in writing on May 10, 2018. SFWMD has determined that no permit modifications are required.
- d. Page 11 “The City and Lanzo proceeded with this work during the Spring and Summer of 2018, after rejecting a recommendation from Wade Trim that the City and Lanzo notify the SFWMD and DERM of the new phase of construction”. There was no rejection of any recommendation from Wade Trim regarding the regulatory

requirements, in fact DERM was notified, via the May 10, 2018 letter from Wade Trim, within two months of first discussions regarding the need for modifications on west Palm Island permit.

- e. Page 12 "The deception of the SFWMD and DERM lasted 31 months" this is clearly untrue from the timelines unless you disregard the May 10, 2018 letter.
- f. Page 12,14 several allusions to "cost overruns", "soaring costs" and "cost escalation" that did not occur. (Please refer to December 9, 2015 contract amendment setting the price at \$38.5 million).
- g. Page 13 "In January 2016, the City Commission awarded Lanzo a \$36.5 million contract, plus 10% contingency." The contract was actually awarded in July 2013 and was amended in December of 2015 to include a construction cost of \$38.5 million including a 10% contingency.
- h. Page 13 "At the time of the award, the City did not have finished construction plans for building the stormwater drainage system, drainage studies verifying the system's expected performance, or a reliable basis for determining how much the non-standard system would cost or how long it would take to build." Almost all Design/Build projects agree on a final cost prior to completion of plans, there was a cost estimate provided by an independent 3rd party cost estimator as well as the Design Criteria professional and we had a schedule that the Design/Builder was contractually bound to meet.
- i. Page 15 assertions of a "whistleblower" must accompany facts that they uncovered something that was not already provided in writing to the agency, which is not the case here.
- j. Page 45 "...set a precedent of making significant changes to the plans after construction had begun." Construction had not begun at the point in time referenced in this statement.
- k. Page 60 there is no mention of the fact that the Commission Memorandum included documents that clearly identified "City Directive of October 12, 2015 (2.7 NAVD-minimum)" as well as the reference to "RFI-035 (Private Drainage Accomodation)".
- l. Page 78 "Coley said lateral pipes and right-of-way drainpipes on the plans approved by Public Works were not intended to be temporary construction drains." I believe Mr. Coley has clarified the difference between permanent private-side drains and temporary construction drains and this particular assertion is taken out of context.
- m. Page 83 "The FAQ statement that "water will not flow from the elevated City street into private property" was, at this point, an aspiration and design objective of the construction plans, but was not true." The water can be contained within the right-of-way of an elevated road. The difference between water not flowing off of private property; and water flowing from the elevated roadway is being confused.
- n. Page 84 please provide any proof that private-side yard drains were in place by March 31, 2017 as stated.
- o. Page 95 "...did not approve \$17,500 for engineering services associated with notifying SFWMD and DERM about the City's plans to install private-side yard drains and obtain permit modifications" These design services were part of the Design/Build teams existing scope this was a cost discussion regarding the change order.
- p. Page 97 Sanchez emailed the application on May 15, 2018 not May 10, 2018. This is important because DERM had already seen the letter that described all of the changes.

- q. Page 99 "The statement did not describe the unpermitted construction in detail and minimized as "few" the number of properties that would have one or more drains installed." There is significant detail on what work was performed and more than enough information to clearly show there have been changes that will need to be either done through a permit modification or reflected in the as-built close out package. The issuance of the permit clearly signaled the intention by DERM to use the latter.

4) Question: Please identify each statement in the draft report that you believe states or implies that you personally are part of a "coordinated conspiracy" or that you believe defames or libels your professional reputation.

Answer:

- a. Page 20 "The permanent right-of-way drainpipes were available during construction to mitigate flooding. But the evidence, and sworn statements of multiple witnesses, established that their description as "temporary construction drains" was a legal fiction." I have addressed extensively the difference between the stub out pipes that do not have any drain connected; temporary construction drains; and permanent private-side yard drains. This statement clearly confuses the different situations in order to make it seem nefarious.
- b. Page 86 "Subsequent events and records examined during the investigation, support a conclusion that the primary purpose of the resolution was to provide after-the-fact authorization and legal justification for the private-side drains the City had already allowed" this April 2017 Resolution was a reaffirmation of the Commission directives prior and please provide any proof of private-side yard drains installed by this date.
- c. Page 87 Garcia states "I can say that on many occasions, I raised red flags and I tried to push back, but it felt like just the support wasn't there, you know, going up the chain, so to speak..." Garcia never made any attempt to speak to me on this matter and it is my understanding that he never spoke to the CIP Director about his concerns either.
- d. Page 152 "In my professional opinion, Ms Kremers and Mr. Carpenter misstated the disclosure obligations of a permittee and mischaracterized the Rubio plans." It is and will remain my professional opinion that if you do not change the contributory area or the amount of water flowing into a drainage system that the location of the pipes or the inclusion of stub outs are immaterial.
- e. Page 152 "In my opinion, Carpenter also mischaracterized the practices of DERM and other regulatory agencies regarding the use of As-Built plans." I believe that the definition of "substantial" in substantial modification is based upon the judgment of the specific agencies and even the individual regulators. As a result, I ask how can stating that it is a "judgment call" be a mischaracterization.

5) Question: Did Mr. Mowry consult with you in on or before Oct. 9, 2015 about his recommendation to require the minimum grate elevation of 2.7 NAVD for all areas of Palm Island and did you approve this change in the modified criteria for West Palm Island? If yes, when did you approve this change for the Palm and Hibiscus project?

Answer: To my knowledge I was not involved in discussions regarding the inlet elevations on west Palm Island during this time period, and I am not surprised as there was clear

direction from Commission regarding the inlet grate elevation. The minimum grate elevation was set at 2.7 NAVD by Resolution 2014-28499 (February 12, 2014) which set the tailwater elevation at 2.7 NAVD and consequently the lowest inlet elevation. Furthermore, this was buttressed by Resolution 2015-28921 (February 11, 2015) which reconfirmed the 2.7 NAVD tailwater condition as well as setting the crown of road at 3.7 NAVD. I do recall later in the project, once the road was constructed, being surprised the elevation of the road was below 3.7 NAVD for west Palm Island, as that was not discussed with me.

- 6) Question: Did Mr. Mowry consult with you before approving on Oct. 30, 2015 the Wade Trim conceptual plans to build a drainage system that accommodated the future connection of yard drains on private lots and did you approve of this plan and engineering solution for west Palm Island?

Answer: More than four years after the fact, I am not sure of when the initial discussions took place in relation to the October 30, 2015 date but I was consulted on the need to provide stub outs to allow for the possibility of future connections without disturbing the work that needed to be done on the roadway. I believed then as I do now, the flexibility to consider future modifications is a good thing and can save significant cost after the fact. I feel the need to reiterate, until brought to my attention by the OIG, I was not aware that there were two sets of plans. Although, I still contend that the introduction of stub out pipes does not change the functionality or water treatment requirements as set forth by Chapter 24 of the Miami-Dade County code.

- 7) Question: Did Mr. Mowry consult with you on or before November 2015 about a plan to seek a change in City policy to allow the connection of private-side yard drains and did you approve that plan in 2015?

Answer: The City Commission gave direction to the Administration on June 10, 2015 to prepare a framework to allow private connections to the public stormwater system. So yes there were many conversations regarding this matter. However, there was no definitive plan for me to approve, the concepts continued to evolve over the next four years. One important milestone in that evolution is when on April 26, 2017 the Commission refined the direction to the Administration on how to implement private-side yard drains and further codified the criteria on September 12, 2018.

- 8) When and by what means did you communicate any of the decisions or actions referenced in Questions #6 through #8 (sic) above to former City Manager Jimmy Morales and the City Commission. When did Mr. Morales approve each decision?

Answer: Information was provided in agenda memos drafted by the Public Works and CIP Departments and submitted to Mr. Morales for inclusion in the Commission Agendas. It was the Commission that, as identified above and below, gave the direction to the City Manager, in duly noticed public hearings what to do on this project consistent with staff recommendations.

- 9) Question: When and by what means do you believe the City Commission was first notified of the above-referenced decision by the City Administration and notified of the potential costs and consequences of those decisions, specifically including (a) the decision to require

the minimum grate elevation criteria of 2.7 NAVD in all areas of Palm and Hibiscus Island and (b) the City Administration's decision to have Lanzo Construction Co. Florida and Wade Trim design and build a public drainage system that was designed to connect to private-side yard drains in the future.

Answer: The City Commission provided the Administration with the Direction on February 2, 2014 to change the tailwater boundary condition to 2.7 NAVD which in fact sets the inlet grate elevations at 2.7 NAVD. Resolution 2015-28921 (February 11, 2015) which reconfirmed the 2.7 NAVD tailwater condition as well as setting the crown of road at 3.7 NAVD. They also provided direction on June 10, 2015 to create a framework to allow private property connections to the City drainage system. Finally the City Commission reviewed and approved the scope of work for Palm and Hibiscus Islands on December 9, 2015 which included within the backup documentation both a reference of the "City Directive of October 12, 2015 (2.7 NAVD-minimum)" as well as the reference to "RFI-035 (Private Drainage Accomodation)". As a result it is clear that the Administration was moving forward with the full authorization and approval of the City Commission under Resolution 2015-29243.

There were many decisions made that created an evolution of the Palm and Hibiscus Neighborhood Improvement project. All of my decisions were made with the best interest of the residents, and with the clear concurrence and approval of the City Commission. There were decisions made by all involved, which are now being questioned by those looking backwards. With the benefit of hindsight, any project could have been executed better, and I accept the criticism for the project delays as that impacted the residents. When you peel back all of the posturing, for a first of its kind solution, to the existential threat of sea level rise in Miami Beach, the outcome for the neighborhood should be allowed to be judged on the merits of the completed project.

[THIS MESSAGE COMES FROM AN EXTERNAL EMAIL - USE CAUTION WHEN REPLYING AND OPENING LINKS OR ATTACHMENTS]

Dear Mayor , Commissioners , City Manager ,

It is our understanding that the City of Miami Beach and Jacobs Engineering are asking for public input in reference to the City of Miami Beach Road Elevation Policy .

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Please find below a statement from the Board of Directors of our Palm , Hibiscus and Star Island Homeowners Association :

"

The Roadway Project for Palm and Hibiscus Islands started back in 2016, over 4 years ago.

After many adjustments, change orders and numerous delays it seems that the project should be completed either this year or maybe even next year.

The Board is delighted that the end is in sight and would like to seize this opportunity to thank all parties who are helping achieve this result.

That said, we strongly believe that a more global vision to the project, a better analysis of all the relevant parameters and significantly better execution and communication would have avoided all the grievances with which the homeowners are still trying to resolve and complete. Better foresight and management would have led to a faster, smoother and less expensive execution.

We look forward to our project's completion as expediently as possible

"

Pierre De Agostini , PHS HOA
Executive Director
Managed by Florida Estate Investments .

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

Public Works Department

Tel: 305-673-7080

MEMORANDUM

TO: Joseph M. Centorino, Inspector General

FROM: Roy Coley, Public Works Director



DATE: January 22, 2021

SUBJECT: OIG Palm & Hibiscus Islands Response

On December 4, 2020, the Office of Inspector General released a draft report titled: General Report of its investigation of the management of the Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project. The findings within the report are demonstrably prejudice, stretching, or even creating, facts to affirm the apparent desired narrative.

The report generally posed two broad claims: 1) the City's administration knowingly omitted material changes in the Palm and Hibiscus Projects from the regulators; and 2) the elevation of roads within Palm and Hibiscus Islands caused private properties to flood. These claims are patently false. To illustrate this, I only offer the most pressing facts below.

Claim 1

At no point did the city conspire to construct a drainage system that was not properly disclosed to DERM or other regulatory entities. In fact, the plans submitted for permitting established a tributary area that included the private properties. This tributary area did not change throughout the entirety of the project. The addition of the temporary construction inlets only facilitated drainage within the defined tributary area, as did the addition of private side inlets or permanent right-of-way inlets. Akin to adding a second drain to your bathtub. Does it drain faster? Yes, but it's the same water.

Not only did the tributary area not change, but neither did the design storm event or the percent of impervious area. Without harping on the technical, this is a momentous fact that is not acknowledged in the OIG report. The parameters that remained constant constitute the area, runoff coefficient, and the rainfall intensity. The product of these parameters is flow rate – the essence of a drainage design. It stands to reason that from a drainage perspective, and a drainage permitting perspective, if these factors remain constant, other changes would reasonably be considered immaterial.

A testament to immateriality of the change, is the fact that the temporary construction inlets were part of the contractors means and methods. Contractor means or methods are within the

discretion of the contractor to implement in order to achieve a contract objective. Using the Palm and Hibiscus project as an example, the contractor could not adversely impact the level of service of the stormwater system while working on the system. The contractor decided that the best way to ensure that properties did not flood during construction was to construct temporary construction inlets. Means and methods are not dictated by the owner of a project and doing so could expose the owner to undue liability. In fact, as noted in the summary judgment of *Juno Indus. v. Heery Int'l*, 646 So. 2d 818, 822 (Fla. 5th DCA 1994), "The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for all safety precautions and programs, in connection with the Work as well as for coordinating all portions of the Work."

Moreover, the cost of the private side inlets and permanent right-of-way inlets and associated harmonization is minor compared to the overall contract. The change order amounted to \$1,615,000, or less than 5% of the total \$40,956,000 project cost.

Any large public infrastructure project as complex as Palm and Hibiscus incurs a 5% change in scope. Moreover, Palm and Hibiscus was a progressive design build project, where, by definition, the plans were not fully developed. It is not only reasonable, but expected, that a professional would deem a 5% change immaterial.

A key issue that is concerningly reiterated throughout the OIG report, although it is not representative of reality, is that there was "large scale installation of private-side yard drains". In fact, there were only eight building permits authorized for drainage connections from private properties. The remaining drains were all in the right-of-way and reasonably considered temporary construction solutions.

To provide perspective, public works permitted eight private connections out of approximately 300 properties in the Palm and Hibiscus project – less than 3% of the properties received private-side yard drains.

The report fails to mention that immaterial project changes are ordinarily reconciled through permit modifications at project close out. This was stated by the Engineer of Record (see Exhibit A) at a public committee meeting; however, no mention of these statements is made in the OIG report. While the significance of the yard drains is arguable at best, the professionals working on the project clearly arrived at the consensus that these drains were immaterial.

Perhaps there are well vetted technical or administrative reasons that DERM considers the additional temporary drains material; this, however, does not change the fact that within normal engineering practices the volume of water and tributary area are what is of importance.

It therefore stands to reason that the lack of permit revisions is not indicative of willful deception, but rather representative of ordinary project management decisions.

Claim 2

The elevation of roadways does not and did not flood properties. It is essential to understand that any water ponding on a property is only there because the water landed on that property. This is the purpose of harmonization – to ensure proper access and drainage.

The OIG report stated that an elevation of 2.2 NAVD would have been the proper elevation. However, this elevation is no different than 3.7 from a grading perspective - the adjacent property would remain lower.

In fact, the below table from the signed and sealed drainage report for Palm Island shows that the post development conditions on the south-southwest side of the island (the Coconut Lanes) exhibit a Max Stage of 1.06 or less.

Table 2- 4: Maximum Flood Stage Elevations

Location	Node	Warning Stage (ft)	Max Stage (ft)	
			5-Yr, 1-Day Storm at Low Tide	5-Yr, 1-Day Storm at High Tide
NW	CB-123	2.82	-0.75	-0.75
Before East PS	CB-131	2.95	-1.97	-1.97
Before West PS	MH-020	2.56	-2.32	-2.32
NE	CB-084	3.00	3.29	3.29
SE	CB-085	3.00	3.34	3.34
S	CB-133	2.90	1.06	1.06
S	CB-013	3.20	0.63	0.63
SW	CB-114	2.82	0.85	0.85

As seen in the last three rows of the above table, the elevation of water during the design storm event for these properties is well below, even the 2.2 NAVD recommended in the OIG report. Therefore, it stands to reason that if 2.2 NAVD would not adversely impact the properties, neither would 3.7 NAVD.

The OIG is encouraged to see Exhibit B – clearly showing the efficacy of the Palm and Hibiscus Project with before and after photographs.

If the intent was clearly to improve the quality of life of the residents and no conspiracy was at hand, the inevitable question becomes who, from an official perspective, would be responsible to obtain the necessary permits.

Contractually, the responsibility fell on the Design-Builder – Lanzo. However, from a statutory perspective, the Florida Board of Professional Engineers states that:

The engineer needs to resolve the issue, whether by correcting the design, by obtaining a formal interpretation that clarifies the requirements, or through obtaining a documented waiver or variance through legal means.

It cites that if an engineer fails to do this, the engineer could be found to be negligent pursuant to 61G15-19.001(4), F.A.C or be found guilty of misconduct pursuant to 61G15-19.001(6), F.A.C

This can be found in the following link titled: **“An Engineer’s Responsibility When Engineering Issues Are Discovered After Permitting”**

<https://fbpe.org/an-engineers-responsibility-when-engineering-issues-are-discovered-after-permitting/#:~:text=The%20engineer%20needs%20to%20resolve,or%20variance%20through%20legal%20means.>

Like hiring a roofing contractor to repair your home after a hurricane, the City hired professionals to fix the drainage system in Palm and Hibiscus Islands. It was the sole responsibility of these professionals to comply with regulatory requirements. The fact that if these licensed professionals did not properly conduct their business is not indicative of wrongdoing from City staff, but rather an oversight of the design-builder.

Beyond the broad comments stated above, it is integral to this response and to understanding of the City’s constituents that the statements quoted regarding the permanency of the yard drains be clarified.

I, Roy Coley, was installed as Director of Public Works in April of 2018. This position serves as the owner, operator, and regulator of the City’s Right of Way. Prior to this installment I held the position of Infrastructure Director, a divisional position that is charged with operating our City’s infrastructure. At no time to date has anyone from the progressive design build team, or the engineer of record notified me of any concerns related to design or permitting of this project.

As directed by commission (Resolution 2017-29840), I approved permits the connections of private property inlets to the stormwater system within the right of way. These permits were executed under my authority as the owner of the stormwater management system and the right of way and did not make any representations regarding environmental regulations. This is not only completely within our purview at public works but standard protocol for the owner of any asset. For example, when connecting to a Miami Dade Water and Sewer Department water main, one must obtain their approval. It is the same case when anchoring a pipe to an FDOT bridge, you first obtain an FDOT permit. In both cases although the owner’s consent is given, the permittee must also obtain all other regulatory approvals, including those from the environmental regulators.

I have no direct knowledge of, and therefore did not and cannot testify to, permits authorized prior to my installment in April on 2018. To be clear, the following discussions (below) cited in the report only applied to the limited permits issued by Public Works after April of 2018.

On this subject, I credit the testimony of Public Works Director, Roy Coley, who stated that the laterals and yard drains were always intended to be permanent installations and were approved for permanent use by the Public Works Department.

From a fundamental perspective, I am sure that all City staff is working to improve the conditions of the City's constituents. In fact, our own staff at Public Works have worked tirelessly to secure numerous new permits and close out old permits. The success of our close working relationship with regulators is best exemplified in the tables below, tallying results.

Approved Permits		
Permit Number	Name	Approved date
CLII-20200029	PUMP STATION NO. 3 PUMPS REPLACEMENT	5/11/2020
CLII-20200016	W. 59th Street Bioswale	5/15/2020
CLII-2020022	Cherokee Ave Outfall	5/19/2020
CLII-20200010	PALM ISLAND - NDD ROW INLETS (2 PROPERTIES)	6/11/2020
CLII-20200012	PALM ISLAND - NDD PRIVATE INLETS (25 PROPERTIES)	6/12/2020
CLII-20200038	NEIGHBORHOOD 5 LA GORCE 57 ST & N BAY RD	6/15/2020
CLII-20200010	PALM ISLAND - NDD ROW INLETS (2 PROPERTIES)	7/11/2020
CLII-20200020	Maurice Gibb Park	7/16/2020
CLII-20200053	PALM ISLAND - 14 NDD PRIVATE INLETS	9/29/2020
CLII-20200048	Hibiscus Pvt (4 properties) - BFP modification request	10/13/2020
CLII-20200051	Parking Lot P-14-RESURFACING & DRAINAGE	11/20/2020
CLII-20200064	Hibiscus Island NDD ROW inlets (3 properties)	12/21/2020
CLII-20200062	Palm Island NDD - Inlets (3) - 8 properties	12/23/2020

Closed Permits		
Permit Number	Name	Closed date
CLII-20200038	NEIGHBORHOOD 5 LA GORCE 57 ST & N BAY RD	9/1/2020
CLII-20160052	Venetian Islands Drainage Improvements	9/11/2020
CLII-20180043	19 Street PS (Partial)	9/11/2020
CLII-20180022	NAUTILUS ON STREET PARKING SHERIDAN AVENUE AND 42 STREET	9/21/2020
CLII-20200029	PUMP STATION NO. 3 PUMPS REPLACEMENT	9/21/2020
CLII-20180038	Palm and Hibiscus Island Drainage Improvements (Partial only Hibiscus)	9/22/2020
CLII-20140068	CENTER STREET SCAPE EUCLID AVENUE STREET	10/8/2020
CLII20150010	17X Parking lot - Collins and 13 Street	11/6/2020
CLII-20080015	Neigh No. 8 Bayshore.	12/7/2020
CLII-20150035	Normandy Isle Neighborhood Phase II	12/7/2020
CLII-20160023	Parking P-91 Renovation 501 72 Street	12/7/2020
CLII-20160022	Parking P-59 Renovation 4000 Royal Palm Avenue	12/7/2020

The OIG spent considerable time compiling the data in this report. He is fully aware that the Engineering Division is now charged with permitting. He did not discuss the new permitting process with the Engineering Division or endeavor properly ascertain the existing process. Instead, many assumptions were made on how the process could be improved moving forward. It is worth asking, with a track record like the one shown above, how can the OIG not have taken into consideration the demonstrably successful permitting process the City has established?

EXHIBIT A

October 23, 2019 Land Use title and video:

- VIDEO 15. DISCUSSION TO REVIEW THE PALM AND HIBISCUS ROAD ELEVATION EXPERIENCE
Commissioner Samuelian
Capital Improvement Projects
Item C4 Q - September 11, 2019 Commission Meeting

October 30, 2019 title and video

- R9 D DISCUSSION ON THE PALM AND HIBISCUS RESILIENCY PROJECT WITH A FOCUS ON PRIVATE PROPERTY HARMONIZATION.

VIDEO

Commissioner Mark Samuelian

AFTERACTION:

October 23, 2019 Land Use Committee

15. DISCUSSION TO REVIEW THE PALM HIBISCUS ROAD ELEVATION EXPERIENCE ACTION:
Item Deferred.

October 30, 2019 COMMISSION DISCUSSION/AFTERACTION:

R9 D DISCUSSION ON THE PALM AND HIBISCUS RESILIENCY PROJECT WITH A FOCUS ON PRIVATE PROPERTY HARMONIZATION. Commissioner Mark Samuelian

ACTION: Discussion held. Lilia Cardillo to place on the Commission Agenda, if received. Eric Carpenter and David Martinez to handle.

DIRECTION: • Add this item as a recurring update item each Commission Meeting. Lilia Cardillo to place on the agenda. Eric Carpenter and David Martinez to handle.

• Inspector General Centorino to investigate Palm and Hibiscus Islands and Indian Creek and identify what the permitting problem is, why did it cost so much money, and why has it taken so long? Inspector General Joseph M. Centorino to report back to the City Commission with more information. Joseph M. Centorino to handle. • Include a drop-dead date set for the harmonization agreements to be signed. Eric Carpenter and David Martinez to handle. Commissioner Samuelian explained that at the last Commission meeting, they talked about the Palm and Hibiscus neighborhood project landscape, and they mentioned they should get an update on this project. The situation is urgent. The project is frozen, and this is the last City Commission meeting until December. In his

two years on the dais, this is one of the most concerning situations that he has become aware of, because it is such an important, complex, and challenging project.

The City team is working hard but they have some big problems. At Sustainability Committee, they are providing oversight to neighborhood projects and have learned with great concern that there are issues with the County. He reached out to Commissioner Higgins and invited her to come, who came along with the Director of Environmental Resource Management, DERM, and on Wednesday they gave the City information that he summarized. The project started in 2016, it is a \$40 million project, and like they had in Indian Creek, they now have unpermitted work, and the City is in violation with up to 200 drains on public and private property. This action needs to stop. The project was stopped by DERM on July 9, 2019, and now the residents are suffering, and they do not know what is happening. DERM is waiting for the updated permit application. Also looming is their need to get individual property by property resident harmonization agreements. Given the situation they have, he would not describe it as trivial. This raises three questions; 1) how this happened; 2) how they can fix it, and 3) what changes do they need to make to their approach in their program given the learnings they have. Tonight, they need to be more tactical, they need to listen to the residents and have them understand that the entire City Commission is aware of the situation, and they are all going to act in urgency. He requested an action plan; when will they get their engineering done; when will they submit to DERM; when is a reasonable expectation for DERM approval and After Action October 30, 2019 City of Miami Beach Commission Meeting/Presentations & Awards Page 28 of 48 completing the project, and most importantly, what can they do to help, whether it is policy or resources, what is it that this body can do, because right now they are not in a great position.

Mayor Gelber thanked Commissioner Samuelian for bringing this item before the City Commission. Although he does not like Presentation & Awards meetings becoming business meetings, he believes that this is an important topic that deserves to be discussed. This is not the time to wrestle over this item though. He will be meeting with Mr. Hefty, Director of DERM, tomorrow to discuss the situation. He would like to hear from the Administration today, but they will not be taking any action tonight about the project. He is not sure the item is fully "cooked" between the City and the County. Eric Carpenter, Assistant City Manager, stated that the most concerning of all items is the characterization of the permit discussion. The fact is that the City started construction in July 2016 on the stormwater system on Palm and Hibiscus Islands; they had a full permit issued from DERM in May 2016 before the City ever broke ground on the stormwater system. Throughout the project, the stormwater system has gone through an evolution. This is different from what happened in Indian Creek, where the City bypassed a Federal permitting process. In this case, the City is going through a permit modification process and it is a judgment call of DERM as to when is the most appropriate time to go through that permit modification process, because a vast majority of all Class 2 permits go through modifications at the closeout. Seldom does anyone install a stormwater project that is the same as what was designed and permitted originally. He would like to invite the representatives of the design/builder

to talk briefly about what their thought process was in not going for that permit modification at the time that they began to do that work, but he acknowledged it was a judgment call by DERM. He acknowledged that they are working through it with them and they are going to continue to work through it with them. He is happy to say that he has spent six hours at DERM over the last two days and they had positive discussions with their water control section, and thinks they are headed in an exceptionally good direction.

There have clear objectives that they set forward for the City and they will be able to deliver them. They are committed to delivering the permit closeout documents that were requested by DERM before Thanksgiving.

He introduced Holly Kremers to explain the permit modification process and what Lanzo and Wade Trim's thought process was. Holly Kremers, Vice-President, Wade Trim, explained the process they have gone through as far as permitting, and clarified that when the project started construction, they did have both systems, Palm and Hibiscus Islands, fully permitted. As construction projects go through there are some field adjustments that take place in any infrastructure system; many times, those are addressed as asbuilt and permits are closed out. To be clear, the permit modifications are unique to the west end of Palm Island. On the east end of Palm Island, the stormwater system was constructed and installed for the permitted documents without modifications. On Hibiscus Island there was a net difference of one, an 18-inch inland drain in the right of way, and there is an area where they had obstruction and was shifted around so they added one. This is normally something they would take care of during permit closeout.

The west end of Palm Avenue has been more challenging during construction, and there are two separate issues that they have been discussing with DERM about how to handle. 1) There are 17 drains that are in the right of way around the west end of Palm Avenue. When they initially designed the project, they planned to clear out more vegetation in the right-of-way by taking out some trees and they would have a grassy swale for the stormwater to collect in the right-of-way and traverse on the swale and be collected on a larger catch basin. During construction they realized there were issues with removing those trees and they decided, to preserve the trees, instead of having the water meander down the swale and going to one basin, they would have to put an intermediate secondary drainage basins through the right-of-way to capture that same water in transit to the larger drain basin. In retrospect, at that point they should have gone to DERM and ask about permit modification process, and certainly at their next project they will do that, but they thought it was something that could be handled during the as built in and they went forward with construction of capturing the same stormwater in the right of way that was After Action October 30, 2019 City of Miami Beach Commission Meeting/Presentations & Awards Page 29 of 48 already permitted through additional inlets. The 88 drains are temporary construction drains, one of which was installed in the right of way in front of each property on north and south Coconut Lane; and they put them there because they knew that with a smaller right of way in that area, during construction and before they had a chance to do the final

harmonization drainage, they wanted to make sure they had that in place; in case of flooding issues were to occur during construction they would have a way to transmit that water away. The intent was that when the project was complete and before the stormwater system was placed in the service, those drains would be abandoned, and the permitting drainage system would be in place at that time. And for that reason, they did not include those 88 temporary constructions drains on the permit documents. They have resolution on how DERM wants to see those and they are going to add them as temporary drains to the temporary modification. They are also adding the 17 drains as part of the permanent permit modification; that piece was already done. They have enough treatment capacity to handle those areas, and they think they have all the pieces in place to move towards a resolution with all parties. Mayor Gelber announced that he plans to call a Commission Workshop on resiliency and all similar projects soon into the next Commission term, but he does not want to do that today. It is important to realize that there will soon be at least two new Commissioners elected on November 5, 2019, and he would like to give them some time to get up to speed on all that is taking place in the City. He hopes to schedule this Commission Workshop sometime soon.

The Palm and Hibiscus Islands project has been an ongoing nightmare for residents, who are simply very frustrated. There are many lessons to be learned from this experience, unfortunately probably at the expense of a great deal of disruption. The City needs to learn to do this right, and the City is taking it seriously, which is why ULI, Columbia and Harvard were asked to investigate this. With the recent king tide, he noticed that in areas where they have done work, there is not the flooding that has been in the past, as compared to areas where they have not done any work. It is important that the marketplace understands the City is serious about it, but most importantly to do it right. Eric Carpenter, Assistant City Manager, added that the good news is that the City has received clear direction from DERM and will have the engineering portion done by Thanksgiving. He has met with most property owners that have the eligibility for harmonization and private property drains. He believes that all property owners will be met with by the first week in December, and there will be a full-time contact person at the Palm Island guardhouse to answer questions regarding the harmonization agreement to hopefully facilitate the process. A landscaping contractor will be mobilizing next week to start landscaping work on the islands. Their commitment is to finish this project and not move on to another project until this one is done, and they are trying to speed up the process as much as possible. City Manager Morales believes there is confusion on the number of drains that are deemed illegal. For the Hibiscus portion the original permit provided for 125 permanent drains on Hibiscus that were in fact installed, except for one unpermitted drain indicated. On Palm Island there were 138 permitted drains in the plan that were installed; the ones that were not permitted were 17 done to not remove trees and the 88 temporary drains; most of the drains were in fact originally permitted drains. In 2017, over a year after the project begun, the City Commission, in response to concerns raised by the public that raising the road would cause flooding on their properties, adopted a policy indicating that all properties could connect to the City's system. That policy was subsequently modified late last year and codified in January of this year, that it would not be all properties, but in fact

staff would work with individual properties, on a case by case basis and evaluate whether there were properties that could have a drain either on or in front of the property, but particularly on to help deal with the drainage. Therefore, through this project there were changes made, and issues such as generators were added. In the harmonization process, during the course of this year, City staff worked with property owners and ultimately identified 98 properties, almost all of them on Palm Island, that would qualify for having an on-site private property drain, and then began the process of designing, putting together the paperwork and sitting down with property owners to look through After Action October 30, 2019 City of Miami Beach Commission Meeting/Presentations & Awards Page 30 of 48 it. One of the issues that emerged that was resolved at the last City Commission meeting was what paperwork DERM require from the City or from the property owners. Last week DERM agreed that the harmonization agreements with the easement in them would suffice for them to rely in. He will submit the harmonization agreement once is finally signed. They met with 69 of the 98 property owners and the design work is done for those. DERM is committed to try to turn them around in two weeks.

The notion is that they can be in a position where they submit all that to DERM by December and get those permit issues. The harmonization work will take five months to do the 98 properties. Once that is done, they are a month away from doing the final lift of asphalt. Assistant City Manager Carpenter stated that if the City has an opportunity to do final lift in some areas, they may do that ahead of whatever needs to be done in other portions of the islands. City Manager Morales recommended having a drop-dead date set for the agreements to be signed, and if a property owner does not sign, they will not be getting a drain on their property. This is not a question of resources or funding, they will place more personnel out there to work with the neighbors and talk about the agreements, and they will work with Lanzo Construction to see if they can add additional crew in the area. The conversations with DERM have helped jump start the process. Mayor Gelber thanked Commissioner Samuelian and Assistant City Manager Carpenter for explaining the issues. He is meeting with Mr. Hefty tomorrow. There is a great deal of movement on this. Pierre De Agostini, Executive Director of Palm and Hibiscus Islands Homeowner Association, thanked the City Commission for letting him speak. They all learn from discussions and he learned that on a \$14 million project, the Administration had a "a-ha" moment as stated by one of the City Commissioners. The City Manager stated that in 2017, the City realized that if they raised the roads the homeowners are going to be facing inundation. It is totally mind boggling. How could this "a-ha" moment happen on a \$14 million project a year after it started. He is equally surprised that the City of Miami Beach was operating without proper permits. The true story is that since February of 2019, DERM has been asking the City to take care of a few things they need to operate, including getting the required permit. The City has still not acted on this. They all want this to move forward and be done with it. He suggested that first the City of Miami Beach acknowledges the nightmare of the situation and ask itself how it happened in the first place. This could be something that the Inspector General could do homework and investigate this, as it is a great deal of money. The City must do its work and conduct a proper draining calculation, as there is no proper drainage calculation, which is what the owners are

From: Morales, Jimmy <JimmyMorales@miamibeachfl.gov>
Sent: Tuesday, January 21, 2020 7:45 PM
To: Carpenter, Eric <EricCarpenter@miamibeachfl.gov>; Coley, Roy <RoyColey@miamibeachfl.gov>; Knowles, Amy <AmyKnowles@miamibeachfl.gov>; Martinez, David - CIP <DavidMartinez@miamibeachfl.gov>
Subject: FW: Palm Hibiscus Star Islands HOA input in reference to the City of Miami Beach Road Elevation Policy

FYI A very nice message.

From: Neil Fairman <nfairman@plazaequity.com>
Sent: Tuesday, January 21, 2020 7:15 PM
To: Ian Kaplan <ik@kaplangroup.com>
Cc: Morales, Jimmy <JimmyMorales@miamibeachfl.gov>; Pierre De Agostini <deagostini@aol.com>; Gelber, Dan <DanGelber@miamibeachfl.gov>; Steinberg, Micky <MickySteinberg@miamibeachfl.gov>; Samuelian, Mark <Mark@miamibeachfl.gov>; Gongora, Michael <Michael@miamibeachfl.gov>; Meiner, Steven <StevenMeiner@miamibeachfl.gov>; Arriola, Ricky <RickyArriola@miamibeachfl.gov>; Richardson, David <DavidRichardson@miamibeachfl.gov>; rosenstep@gmail.com; k@claramonte.com; sk4inc@gmail.com; pierre@palmhibiscusstarislands.org
Subject: Re: Palm Hibiscus Star Islands HOA input in reference to the City of Miami Beach Road Elevation Policy

[THIS MESSAGE COMES FROM AN EXTERNAL EMAIL - USE CAUTION WHEN REPLYING AND OPENING LINKS OR ATTACHMENTS]

Jimmy,

I concur with our Chairman Ian Kaplan and would like to emphasize the resident's sacrifice during the extended work timeline was well worth the security afforded by creating a sustainable infrastructure for our islands for the future. We must consider the future threats of unimpeded flooding in comparison to an extended inconvenience. Being the pioneer in raising our roads only the uninformed would believe that this would be a perfect process, hopefully our sacrifice will help other communities have a more efficient schedule.

I would like to thank your CIP staff for the professional work ethic and facing a staged project with constantly changing scope. It was a learning exercise for all, which should now allow more complete planning and engineering giving staff the documents which will allow staff the tools to keep contractors on time and save funds on change orders. The raised roads will bring security to our neighborhood during high water events for years to come and the beautiful landscape plan the City is implementing will bring gratification and pride to all of our residents.

Any help you could provide expediting our electrical under grounding would be greatly appreciated.

Thanks

Neil Fairman

Board Member

Palm Hibiscus Star Island Homeowners Association

On Jan 21, 2020, at 11:52 AM, Ian Kaplan <ik@kaplangroup.com> wrote:

Jimmy,

Good morning.

Overall, given sea level rise and the uncertainties of the escalation of higher tides in the future, we believe raising our roads on Palm and Hibiscus Islands where needed and adding pump stations (with back up generators) for our Islands was a prudent and good decision. As we live on Island communities

it is critical for the future that our roadway infrastructure remains above sea level and storm water has a well planned and environmentally safe method to be removed from our Islands without being trapped. Once our project is finally completed we remain confident that our Islands will be significantly more resilient for the future while protecting our property values and our waterfront environment.

However and unfortunately, for the homes/properties that are now below the new roadway elevation there was lack of foresight, planned policy, good communication and execution for these homeowners to properly understand their options and how to best interconnect their properties into the new storm water system. No doubt several properties are currently faced with hardships and we are counting on the City to collaborate with these homeowners for the optimum and timely result for all involved.

2

Please feel free to reach out if you have any further questions or require any clarifications.

We are counting on you to assist in finally completing our overall infrastructure projects including the undergrounding of our utilities, which we have literally been working on for over 20 years!

All the best, Ian

Kaplan
Palm Hibiscus Star Islands Assoc. Board Chair

On Jan 21, 2020, at 10:34 AM, Morales, Jimmy <JimmyMorales@miamibeachfl.gov> wrote:

Pierre,

Thank you for the input. I am curious if the Board of Directors had an opinion as to the merits of road raising on Palm and Hibiscus. Many other single family neighborhoods will look to the experience of Palm and Hibiscus since this was the first single family home area where road raising was significantly implemented. We obviously did that due to the very low lying nature of the islands. Clearly, we can do a better job of implementation. But the more fundamental question is whether you and your neighbors feel that the raising of the roads has made a positive long term impact on the neighborhood or not. I have seen before and after pictures that lead me to believe that significant flooding has been prevented, but I would welcome the firsthand experience of those who live there. Thanks

Jimmy

From: Pierre De Agostini <deagostini@aol.com>

Sent: Monday, January 20, 2020 10:10 PM

To: Gelber, Dan <DanGelber@miamibeachfl.gov>; Steinberg, Micky <MickySteinberg@miamibeachfl.gov>; Samuelian, Mark <Mark@miamibeachfl.gov>; Gongora, Michael <Michael@miamibeachfl.gov>; Meiner, Steven <StevenMeiner@miamibeachfl.gov>; Arriola, Ricky <RickyArriola@miamibeachfl.gov>; Richardson, David <DavidRichardson@miamibeachfl.gov>; Morales, Jimmy <JimmyMorales@miamibeachfl.gov>

Cc: ik@kaplangroup.com; rosenstep@gmail.com; k@claramonte.com; nfairman@plaza-group.com; sk4inc@gmail.com; pierre@palmhibiscusstarislands.org

Subject: Palm Hibiscus Star Islands HOA input in reference to the City of Miami Beach Road Elevation Policy

From: Jimmy Morales <jimboldmorales@gmail.com>
Date: January 22, 2021 at 8:05:12 AM EST
To: Philip Levine <philip@mayorphililevine.com>
Subject: City Stormwater program

Philip

In response to your inquiry, I am not aware of any complaint or allegation from any City employee during my tenure as City Manager that you or any Commissioner had exercised any improper pressure or influence with respect to the City's resilience and stormwater program. The City's resilience was certainly a top priority for you and several of your colleagues during your tenure in office and city staff certainly understood that and sought to implement the clear policy directions given by the City Commission. As I recall, many residents in the lowest lying regions of the City were also demanding relief from flooding. We were tasked to address those issues and took that responsibility seriously.

Have a great weekend.

Jimmy

Sent from my iPhone

From: "Aguila, Raul" <RaulAguila@miamibeachfl.gov>

Date: January 22, 2021 at 1:04:22 PM EST

To: Philip Levine <philip@baron-corp.com>

Subject: Undue influence

Mayor:

It was great speaking with you last week to wish you and your family a belated Happy New Year.

Regarding what we spoke of , and to the best of my memory and recollection (which is good) and , further, having served as your City Attorney during your two terms as Mayor, I never received any complains from members of the City's administrative staff, or from outside agencies such as the Commission on Ethics, regarding your ever having used any undue influence or pressuring City staff with regard to the various projects that we worked on together in the City including, but not limited to, our resiliency and sea level rise projects.

Please let me know if I can be of further assistance. Again , great talking to you.

Best,

Raul Aguila
City Attorney
Interim City Manager

Sent from my iPhone

January 22, 2021

Mr. Joseph M. Centorino, Inspector General
1130 Washington Avenue, 6th Floor
Miami Beach, FL 33139

RE: Office of Inspector General Report of Investigation on the Management of the Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project.
OIG No. 20.07

Dear Mr. Joseph M. Centorino,

This letter is in response to the draft report, OIG No. 20-07 dated December 04, 2020.

Although my name has been mentioned in some of the events listed in this document, I would like to rebut and correct some of the information related to my role as Capital Project Coordinator for the above referenced project. Please see my findings below:

- Page 79, Second paragraph: *"During interviews with OIG staff, DERM engineers Molina and De Torres stated that they believe they were misled by the responsible City officials and Lanzo. During interviews with the OIG staff, the responsible current or former City officials, including Carpenter, Mowry, Martinez, Tomczyk, Samadi, and Sanchez, said they were not responsible for obtaining permits or ensuring the agencies were given the Kremers plans because the City's agreement with Lanzo made the general contractor responsible for obtaining all permits."*

Response: I am in agreement with this statement. I was not responsible for obtaining permits for this project.

- Page 100, fifth paragraph: *"The City, Lanzo, and Wade Trim knew, or had reason to know, that this statement was false and omitted facts that were material to the regulatory agency's permitting process. It was not true that no significant changes had been made to the "original signed and sealed plans dated...February 26, 2016 for Palm Island." The Rubio plans had been extensively revised in early 2016; after construction began, significant changes were made to the Kremers version of the stormwater and hardscape plans. The statement conveyed the false and misleading impression that the City and Lanzo had been using, and would continue to use, the Rubio plans and omitted the material fact that City was using different plans signed and that sealed by a different Engineer of Records (Kremers) to build the drainage system."*

Response: If any significant changes were made to the original design, it was the consultant's (Wade Trim Inc.) responsibility to advise on such changes, as they were hired to provide to the City of Miami Beach with a design that complies with all the local codes and regulations. DERM requested that in order for them to renew the Class II Permit, the engineer of records had to provide a letter affirming that no major changes were made to the plans; this letter was provided on May 17, 2018 by the consultant, stating that no major changes were made to the

plans. No changes were communicated by the Engineer of Record, which would have had knowledge of said changes.

Moreover, I do not possess the authority to make any changes in the design of a project nor on approving any changes.

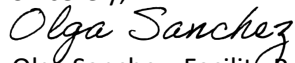
- Page 102, first paragraph: *“Senior Project Manager Samadi said, “I want to emphasize this is the design builder's responsibility. I don't know why they didn't apply for a permit. I don't know. I don't know. It is beyond me to understand why they didn't do what they were supposed to have done.” She said she was unaware of the letters by Garcia, or that Sanchez, her subordinate, was involved in applying for the second permit. “She (Sanchez) was my project manager, but sometimes she did things that I didn't know...example of it here. I would not have asked her to submit this package and application directly to DERM because this would be the contract design builder's responsibility. I would have suggested against this move.”*

Response: I strongly disagree with the statement made by Ms. Samadi in reference to myself, “the Project Manager...sometimes doing things I didn’t know”. At the CIP Department, no documents that goes to an external agency, leaves the department without the approval of a Senior, Assistant Director, or Director. No documents that needs a signature from an Assistant City Manager leaves the CIP Department without the approval of a Senior, Assistant Director, or Director. That was the policy as a Capital Projects Coordinator, I did not have the authority to undertake this action on my own nor could I have bypassed three levels of supervision. Furthermore, we discussed all projects at regular weekly meetings and we always were required to obtain prior authorization to proceed with all projects related matters.

In addition, to the above responses, I would like to reiterate that, in my role as a Capital Projects Coordinator (CPC) for the CIP Department, I was not authorized to make any substantive project decisions or issue any approvals pursuant to project development. The CPCs simply acted as liaisons between the admin staff and the all other third parties, such as contractors and engineers.

If you should wish to do so, you may corroborate the rules and responsibilities of a Capital Projects Coordinator with my colleagues at the CIP Department.

Sincerely,



Olga Sanchez, Facility Projects Coordinator

591 SW 51st Ct
Miami, FL 33134

January 20, 2021

Joseph M. Centorino
Inspector General
Office of the Inspector General
City of Miami Beach
1130 Washington Avenue, 6th Floor
Miami Beach, FL 33139

Mr. Centorino,

This letter is in response to the draft report issued by the Office of the Inspector General (the “OIG”) dated December 4, 2020 entitled the Investigation on the Management of the Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project (the “OIG Report”).

Due to the substantial number of comments, I have organized the body of this letter into several sections. The first section (“COMMENTS SUMMARY”) provides an overall summary of the comments included in this letter. The second section (“ADDITIONAL FINDINGS BASED ON REPORT CONTENT”) recommends additional findings based on the evidence in the OIG Report or information that I shared with the audit team during my interviews. The third section (“ADDITIONAL FINDINGS BASED ON INFORMATION NOT PRESENTED IN REPORT”) presents findings that were all-together missed because of the OIG team’s limited investigation focus and line of questioning during interviews. The final section (“GENERAL COMMENTS ON OIG’S INVESTIGATION PROCESS”) catalogues my opinions on the audit process itself. In an effort to be concise, but comprehensive my comments in each section are presented in bulleted format.

The OIG report itself contains more than fifty comments on the specifics of the report. It is my hope that these comments supplement the hard work completed by the OIG team and further the ultimate goal of the investigation, which is to ensure all residents of Miami Beach receive the service they deserve from the City of Miami Beach’s (the “City”) offices and departments.

COMMENTS SUMMARY

While the OIG Report makes a distinction among the various personnel within the City of Miami Beach, when presenting evidence, findings and recommendations, the OIG does not place enough emphasis on the interrelationship between the different agencies to which personnel belonged. The lack of distinction in the report’s evidence between the Office of Capital Improvement Projects (“CIP”) and other City offices and departments reduces the report’s fidelity of findings and risks missing the causes that resulted in many of the Project’s problems. It is my opinion that CIP’s lack of constructive and cooperative interaction with the Lanzo team, other City departments, residents, and regulatory agencies made an already complicated and contentious project, even more chaotic and dysfunctional. The unfortunate consequence of this

was to drive the Project into deep delays resulting in skyrocketing costs and frustrate the residents of Palm and Hibiscus Islands.

ADDITIONAL FINDINGS BASED ON REPORT CONTENT

The following is a description of findings the I recommend added to the OIG Report. These findings are based on the information presented in the report. One of the main issues that the Palm and Hibiscus Neighborhood Improvement Project (the “Project”) encountered was the lack of coordination and leadership in public outreach on the part of the City, particularly CIP. Below is a short summary of what I consider key points related to public outreach that were not raised by the OIG in the Report. It is unclear from the Report’s findings and recommendations if public outreach was explored as line of investigation, despite evidence that communication was a key shortcoming of the Project’s management.

Authority of Palm and Hibiscus Islands Homeowner’s Association to request changes on behalf of all Palm and Hibiscus residents

- Did the OIG confirm that the president of the Palm and Hibiscus Homeowner’s Association (the “HOA”) was legally authorized to make decisions or present requests on behalf all Palm and Hibiscus residents?
- Proper protocol in Miami-Dade County when considering design changes, i.e., particularly when considering modifications to existing conditions like addition of speed bumps or parallel parking to public streets, is for mailers to be sent out to residents to take a vote on whether they agree with proposed changes; approval of changes typically requires a two-thirds majority.
- My personal experience from discussions with residents during onsite resident meetings was that residents were not aware of changes proposed by the HOA to the original construction plans, and in some cases were opposed to the proposed changes that had already been directed by CIP to Lanzo.

Confusion in City encroachment enforcement policy

- CIP moved away from enforcement of encroachment policy when it clearly violated the DCP.
- Many manhours were spent on identifying encroachments only to have the policy discarded, leading to delays and cost overruns.
- Why did the DCP (“Stantec”) move forward with inclusion of strict encroachment removal policy and not anticipate resident pushback on this policy? Residents had been placing trees, statues, call boxes, etc. in the City right-of-way (ROW) for many years.
- The confusion caused by the initial, ostensible commitment to remove any encroachments from City ROW to allow for a proper contiguous stormwater swale construction, followed by a reversal of this commitment caused confusion among residents and ultimately a lack of trust among residents that the City had approved a proper design for construction and taken into account resident’s needs when developing the design criteria; this lack of trust and CIP’s inability to communicate the need for residents to cooperate, opened the door for further requests no matter how counterproductive they were to the ultimate objective of the Project.

Avoidance of CIP to provide official written communication

- CIP developed a pattern of not providing directives via written communication; when they did provide written communication it was after intense lobbying by the Lanzo team; this led to significant confusion, delay and cost overruns.
- City had spent substantial financial resources on the project management platform e-Builder to not only store documents, but to manage communications among project stakeholders. CIP's ad hoc approach to including some communications on e-Builder and not others created a disjointed project communication environment where Lanzo had to come up with its "best guess" at what CIP was directing them to do. Rather than Stantec attempting to clarify communications they consistently deferred clarification back to the City. Lanzo essentially did much of the work that CIP or Stantec should have done in developing clear directives.
- After the 90% construction drawing phase, design progress came to a standstill with comments coming in bits and pieces; some comments were retracted or reversed, only to be resurrected again. In some cases, the comments were on the aesthetics of the drawings rather than technical aspects of design. Rarely were comments provided in clear and understandable format after the 90% submittal.

ADDITIONAL FINDINGS BASED ON INFORMATION NOT PRESENTED IN REPORT

This section presents findings that I recommend be included in the Report but cannot reference evidence included in the OIG Report itself. This was likely due to the investigations limited line of questioning, lack of access to project documentation, or discretion exercised in not including relevant information that may have led to these findings. The key points in this section touch upon City review and approval protocols, public outreach management, CIP's project management approach, and support of City management towards CIP.

Violation of City technical review protocols

- As per page 22 of the OIG Report, CIP's role is limited to "managing all aspects of the construction for Public Works." CIP's role did not include technical reviews or approving changes it directed on the technical aspects of the design.
- Stantec's role is to confirm design's adherence to the DCP, but any proposed changes or technical reviews need to be routed to Public Works for review and approval; this was not the case when it came to changes to the permitted plans, e.g., not removing obstructions from swales in the public ROW and FPL transformer bulb outs and parallel parking on North and South Coconut Lanes.

Lack of consistent public outreach messaging

- Public outreach is a basic function of CIP as they are responsible for management of construction projects; its importance is underscored by the fact that CIP has in-house Public Information Officers (PIO) fully dedicated to this function.

- Frequent turnover of the public information staff assigned to the project from either change of consulting firm assisting with Project public outreach or change of staff assigned to the Project from within the same consulting firm. Frequent turnover of public outreach consultant staff resulted in inconsistent messaging and disjointed public outreach support to the PIO assigned to the Project; the inability of new, incoming staff to put into context many of the outreach challenges facing the Project weighed down on the core Project management team's performance.
- Lack of fluency on the project from CIP project management, CIP PIO and PIO consultant made it necessary for staff from Wade Trim and Lanzo team to participate in all resident meetings; this requirement imposed by CIP was out of scope, misallocated resources, and led to delays and cost overruns.
- CIP project management and City official's inability to communicate with residents the key benefits of the Project likely caused further distrust and confusion on part of the residents.
- CIP representative's frequent tardiness to resident meetings cannot have helped either in maintaining resident trust in the City.

Failure of CIP to create a team-oriented, solution-driven atmosphere

- I have already stated that it was CIP's custom to provide delayed and incoherent directives, many times not using written media.
- CIP on several occasions demonstrated a combative posture during meetings with Lanzo, Stantec and even other City departmental staff. CIP also took a confrontational posture with residents on a number of occasions.
- Request to revise aesthetics of construction plans even though same plans adhered to standards and requirement created frustration among the design-build team as the plans were understandable to everyone else except the CIP Senior Project Manager, resulting in significant delays, misallocation of resources and cost overruns.
- The chaos caused by the CIP Senior Project Manager was a significant factor in derailing the project, as proper communication both up and down the chain of the command was erratic, incoherent, and many times inflammatory.
- I am in agreement with OIG recommendation of independent consultant to oversee complex design-build projects; this should have been Stantec's role, but because they were under contract to CIP they were under CIP control and thus not a truly independent and objective entity tasked with ensuring the completion of the Project as prescribed by the design criteria and based on technical principles and City standards.
- CIP did not effectively manage resident expectations; they essentially acted as a pass-through for requests. CIP lacked basic understanding of the purpose of the Project and the technical details that were critical to the project's success; if CIP did understand the Project's core intent and the technical subtleties that came with it, was not evident from the internal meetings had with CIP nor with CIP communications with residents during field meetings. As mentioned before, CIP required representatives of Lanzo and Wade Trim to be present at every resident meeting.

Support of CIP by City Management

- Intervention of other City officials in the decision-making process of the core CIP project management team created undue stress on the Project team.
- Access and influence of residents to key decision makers and officials resulted in changes to the project very late in the construction phase, slowly building up and stunting project progress. CIP management simply acquiesced to most resident requests creating added pressure downstream ultimately leaving Lanzo to figure out how to incorporate changes that were counter to the Project's ultimate intent; this created a negative feedback loop that severely impaired project performance.
- CIP's failure to stand their ground and back up design engineer and contractor decisions is a failure of the basic CIP function of properly managing projects through a collaborative atmosphere.

GENERAL COMMENTS ON OIG'S INVESTIGATION PROCESS

This last section explores my comments on the OIG's investigation process. While I cannot opine on the experience of other interviewees on this investigation, I can offer lessons learned from investigations that I conducted as an internal auditor for a large, international engineering firm. I hope that these comments on OIG's investigation process will be found useful by the OIG as they embark on future audits.

While I believe the OIG was professional in their investigation and genuinely attempted to be clear in their explanation of the intent of the investigation, I found that some of their communications with me were either unclear or unprecise. Establishing and maintaining the trust of investigation subjects is key to ensuring a smooth and candid interview process. The vigorous questioning, interrogative feel to several of my interviews and determination of OIG to find responsible parties to the acts outlined in the OIG Report set the impression that this was more of a cross-examination exercise rather than a holistic and constructive effort to improve the City's operations. While the Report makes an excellent attempt at listing pertinent and useful findings and recommendations, it is my opinion that several other key findings were missed because of the OIG's focus on procedural shortcomings and administrative inconsistencies, albeit relevant and concerning.

Communication of OIG investigation objectives

- During initial discussions OIG stated that intent of the investigation was to determine findings and develop lessons learned to be applied to later projects to improve project operations at the City; very little was mentioned about the permitting focus of the investigation which is the first focus the investigation, as stated in page 124 of the Report.
- Later interviews made it clear that the focus of the investigation was to uncover the details of what the OIG determined was an elaborate and deliberate effort to deceive regulatory agencies.
- A later discussion that I had with OIG Special Agent made it clear that the primary focus of the investigation was the RER permit (as stated on page 124), rather than a holistic investigation of the project's performance (stated as the second focus of the Report on page

124). It would have been appreciated if this had been clearly emphasized during my initial interview.

Apparent ultimate intent of OIG report

- Report's argues that the City and Lanzo were colluding in the charade regarding parallel designs, placing equal blame on both the City and Lanzo. The truth is that the CIP through its lack of proper communication between the design-build team, residents and supervising City officials and peer City agencies was the Project's undoing. Lanzo did what it could to maintain some semblance of order as the Project's directives unraveled, but CIP's contentious posture throughout the Project prevented efficient alignment of resources, necessary in a such a complex and high-profile effort.

Data gathering for OIG Report

- It is clear from the Report's evidence that multiple interviews were had with specific people; I participated in at least three separate, multi-hour interviews; in my opinion not enough interviews were conducted with a wider audience, capable of providing more facts and context regarding the Project. If there were, it is not evident from the Report contents.
- Questions that I have regarding the pool of interviewees for this Report include:
 - How many Palm and Hibiscus residents were interviewed?
 - What staff from other City departments were interviewed, e.g., Urban Forestry?
 - What staff from the Public Works Department were interviewed? I do not see any evidence that Luis Soto, nor Jose Rivas were interviewed, both of whom participated on the Project.
- It appears only interviews were conducted and quotes presented to further permitting administration findings rather than a holistic view of the Project; this is the impression I got from several of my interviews.
- Very few interview references from City CIP staff or CIP management in the Report.

Availability of reference documents

- Unclear or confusing guidance was given to me by the OIG on how to back up my statements via document references; lack of explanation as to what documents were available to me for use in defending my statements.
- OIG had very limited documentation to share with me, even though the ultimate product was going to be a public document; what I did not understand was why OIG selected certain documents to share with me and not others. This was even after I declared under oath that I would not discuss this investigation with anyone else.
- Furthermore, the documents shared with me were incomplete or corrupted files.

CONCLUSION

My goal in providing the comments included in this letter on the OIG Report and the investigation process itself is to prevent this from being a missed opportunity in recommending substantial, necessary and sustainable change to the City's operations. While the OIG makes mention of the many versions of drawings and changes that occurred during the Project, it is not clear that OIG understands that "changes" are at the core of a design-build project. The changes

discussed that are the center piece of this investigation cover less than a quarter of the project area. While the changes are limited in scope when compared to the total project effort, nevertheless the focus of this investigation centered around this limited area in an attempt to highlight many of the larger issues looming over this Project and its stakeholders. While many of the findings and recommendations are valid, I believe the investigation placed too much emphasis on the first of its goals (“the enforcement actions taken by the Division of Environmental Resources Management, Miami-Dade County Department of Regulatory and Economic Resources, regarding the City’s alleged unpermitted construction of yard drains on public and private property”), as stated in page 124, and not enough emphasis was placed on the second goal (“the Project’s frequent design changes, schedule delays, escalating costs and unfinished status”). I hope my comments have been useful and will further the OIG’s efforts to make the Report findings comprehensive and accurate with recommendations that are relevant and actionable.

Sincerely,

A handwritten signature in black ink that reads "Daniel I. Garcia". The signature is written in a cursive style with a large initial "D".

Daniel Garcia, PE

Enclosure: Commented PDF of OIG Report

CC: James McGee



January 18, 2021

Mr. Joseph Centorino
Inspector General
Office of the Inspector General
City of Miami Beach
1130 Washington Avenue, 6th floor
Miami Beach, FL 33139

RE: Office of Inspector General Report of Investigation on the Management of the Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project OIG No. 20-07

Dear Mr. Centorino,

We received your Draft report, OIG No. 20-07 on December 4th 2020, which we have reviewed.

Unfortunately, we must note from the outset of our comments that the language and tone used in the report's various sections would appear to demonstrate that the Palm Hibiscus Star Islands Homeowners Association acted with the deliberate intention to specifically rush and force the decision-making process or had unreasonable demands. However, to the contrary, our Homeowners Association was instead expressing the resident's frustration at the relentless project delays and construction fatigue. Our Association was simply trying to move the process along towards reasonable and timely completion. The Homeowners Association also expressed our residents' frustration to the City. The contract for the original two-year project with Lanzo was signed by the MB City Commission in September 2013 with a completion date of August 2015. It is now January 2021, and notably the project is still ongoing in its 7th year and counting.

We would like to bring the following points to your attention prior to its finalization, along with our recommended changes:

1. Page 31 item G:

a. Please add the words in red:

(Jan. – Sept. 2014) The Redesign: The City and Lanzo struggle to incorporate new road elevation design criteria over fears that raising roads will cause new flooding; under pressure from Homeowners Association *to keep the project moving*, City awards Lanzo a contract for the project's design phase without a finished DCP

2. Page 32:

The HOA president Pierre De Agostini's quote in your report from the August 17, 2014 email left out important points. When pushing for the contract negotiation, Pierre noted that we had formed a committee over a year earlier, and that the city had been negotiating the contract for more than a year. Our residents had also been paying for the utility undergrounding for over four years through a special taxing district voted for by our residents to voluntarily tax themselves. We were simply hoping to move forward with whichever company the City decided upon. If you are including the quote from our then-President Pierre de Agostini, *please include this entire paragraph in your quote:*

"To date, the contract negotiation with the firm selected as the first choice, Lanzo Construction, has not been finalized! It should not take over a year to work out a contract between the City and this firm. The lack of progress on this negotiation is very disturbing. By now, a contract should be worked out with the firm chosen as the 1st choice, if not, let's negotiate with the 2nd choice firm, or if need be, the 3rd choice firm. We need to move on with this! Mr. Mayor, please push this contract negotiation to finalization! Our residents would be most grateful."

3. Page 42 item C:

The header text in section IV C. page 42 "...*intent on minimizing conflicts with residents...*" mentions "**Homeowners Association objects to clearing right-of-ways**" yet there is no mention of the objections or anything regarding the Homeowners Association in that section.

- a. Please remove the Homeowners Association reference in that header.
- b. Please also update Page 2 header to remove the Homeowners Association reference.

4. Page 43 item D please add the words in red, and remove the word *clearing*:

D. (June 2015) Lanzo submits 90% plans, with Rubio's near-finished stormwater and hardscape sections; Homeowners Association objects to *removing all trees from the clearing* right-of-ways to build swales; City postpones milestone review

5. Page 53 Item B

There is no text in Section V. B. page 53 that mentions the Homeowners Association or the yard drains. The header states "**....tells Homeowner's Association that a new City policy will allow residents to connect personal yard drains to the City drainage system**".

- a. Please remove the Homeowners Association reference in the header in that location
- b. Also remove the Homeowners Association reference in the same header from Page 3.



6. Page 80 Item B

The text under the header states that the Homeowners Association *requested* changes, and your header says "*demands*".

- a. Please change to "requests": **B. (May 2016 – Dec. 2017) The City and Lanzo make significant changes to the construction plans to accommodate *demands requests* from the Homeowners Association; Wade Trim engineers recommend notifying DERM and obtaining a permit modification; the City and Lanzo decline to notify DERM**
- b. Please also change to *requests* on Page 4.

7. Page 17, Last Paragraph

Pierre held two roles at the Homeowners Association; President and then Executive Director. To be factually correct for the reference in September of 2019 on Page 17, his title at that time was Executive Director. (The reference on page 32, President, is correct for 2014)

- a. Please change Pierre's title to Executive Director "The disclosures came as a surprise to Samuelian and to Pierre De Agostini, **President Executive Director** of the Homeowners Association that represents residents of the islands."

8. Page 45, Last Paragraph

"As a consequence of the complaints by the HOA, the City postponed..."

The assertion that the Homeowners Association is responsible for delays in the project due to objections over the removal of trees is false. There was clearly a lack of adequate planning in the original plans to preserve the trees, which we understood to also be the design policy mandate from the City. Had proper planning taken place initially, no delays would have been encountered and the financial savings from minimizing tree removals would have been maximized. Thankfully, our residents and Association stood firm to ensure proper design and tree preservation in the swales. The end proof is that we have a final working drainage system design that preserved most of the trees and works extremely well.

Sincerely,



Ian Kaplan
President & Board Chair
Palm Hibiscus Star Islands Homeowners Association

Memorandum

To	Joseph Centorino, Inspector General	Page	1 of 3
CC	James McGee, Special Agent		
Subject	Palm & Hibiscus Islands – Confidential OIG Draft as of December 4, 2020		
From	Thomas F. McGowan, PE		
Date	January 7, 2021		

My general thoughts regarding the draft report are that, as it relates to my recollections, the report seems to be a reasonable and thorough representation of project events for the level and duration of my involvement. As such, I am content with the language as is, but I offer a couple points of clarification which may assist in formulating the final report.

My comments that follow are in referenced to the alpha-numeric outline and page numbers contained within the draft report.

Specific Comments:

- (1) Article 3 Section F (page 30) / and FINDING 3: General Comment regarding AECOM's role with the Blue-Ribbon Panel:

AECOM's master contract for "flood mitigation consulting services" was executed by the City on July 14, 2014. Our initial task order was approved on August 29, 2014. My first day at the City working in the Public Works Department was August 11, 2014. For the next three weeks I spent considerable time with then Assistant City Engineer, Douglas Seaman, who had been working closely with CIP on multiple neighborhood redevelopment projects – particularly on DCP roadway and stormwater issues, and the ever-evolving genesis of the envisioned stormwater master plan – including; 1) initial project prioritization, 2) initial pump station siting, 3) preliminary cost estimates presented to the Finance and Citywide Projects Committee and ultimately to the City Commission and as the basis for authorization of additional stormwater bond sales, 4) water quality treatment areas, volumes and methods, AND 5) the City's position regarding water quality treatment requirements for single family residences. Douglas' last day with the City was August 29, 2014.

In addition to making heads or tails out of the myriad of information bequeathed by Douglas, at the time AECOM was brought on board, there were a minimum of four (4) design build neighborhood projects for which the design phase was substantially underway or completed which were "shelved" and had been directed by the City to be revised to incorporate the new design tidal boundary condition of 2.7 feet, NAVD and incorporating pumping systems for stormwater removal. These included, but might not necessarily be limited to, Palm & Hibiscus Islands, Lower North Bay Road, the Venetian Islands, and Sunset Harbour together with various nearing completion, or recently completed projects in the Nautilus and Central Bayshore Neighborhoods and the ongoing FDOT construction on the Alton Road / West Avenue corridor.

The engineering methodologies and solutions presented in these project redesigns varied significantly and pumping and water quality treatment systems were equally varied and numerous.

In my opinion it was not the intention of the BRP to “usurp” the responsibility of the DCP professional hired for the Palm and Hibiscus progressive design-build project, but rather a realization that the City had a “tiger by the tail” and for the long-term benefit, economy of scale and maintenance of the completed system, there needed to be some efforts made to “standardize” the Design Criteria for the reconstruction of stormwater systems to be applied citywide.

As requested, AECOM reviewed, and consolidated salient aspects of the various design criteria imposed in the DCP’s and clarifications provided in the various RFI’s for the “shelved” projects (as they evolved over time) and incorporate various BRP directives to “standardize” the stormwater section of the City’s DCP to the extent practicable. Particularly, the “master” DCP language sought to standardize the design storm event, modeling techniques, pumping system requirements, water quality treatment areas and rates, AND at the heart of this matter, baseline elevations for road crowns, minimum inlet elevations, and the use of swales within the right-of-way as a tool in the design of the stormwater management system.

All the while knowing each project is unique, and that certain information was, as yet, unknown – case in point FFE’s for Palm and Hibiscus Islands. This information was unavailable at the time the DCP language was requested, ***therefore, some flexibility in the DCP language was necessary.***

- (2) Article III, Section H (page 34) of the Draft report states no design storm was specified....and refers to a range of flood stages.

This statement is incorrect. The copy of the draft DCP that I have containing review comments by both Crews and Rubio contains explicit criteria for the design storm as being the 5-year / 24-hour storm consisting of 7.5 inches of rainfall.

- (3) Article III, Section H (pages 34-35) of the Draft report infers, implies or directly states the language in the DCP regarding minimum elevations was unclear, ambiguous, or difficult to decipher and deferred resolution of difficult technical issues. While I will agree that it was not definitive (arguably necessarily so), to a professional drainage engineer the language has clear meaning. The ambiguity is in the need for use of the qualifier “to the extent practicable”. The reference to the minimum grate elevation of 1.66, was contained in, and taken directly from, the then Public Works Manual.

However, during my involvement in the Palm and Hibiscus project, I attended several meetings at CIP including Rubio and Crews wherein the intent of the DCP language was discussed, where flexibility existed, and means and methods to resolve the technical issues. The result was the Rubio design with road crowns in specific locations at 2.2 feet, NAVD, and a standard stormwater management system design as reflected in the 100% Rubio plans.

As documented in your report, subsequent decisions made by the City in reaction flooding from King Tides and pressure from the Homeowner’s Association regarding clearing and tree removal in the right-of-way for swale construction contributed greatly to the resulting non-standard stormwater system design.

(4) Article VI, Section E (pages 87 & 88) Cost Overrun vs. Engineer's Report Estimate:

Not all the project cost is booked against the stormwater utility – particularly the landscaping, lighting, water and sewer, and utility undergrounding, etc. However, I would have to dig deep to pull the exact numbers attributable to the stormwater program.

(5) Article VI, Section E (page 88) Discussion on water quality treatment during Round Table discussion:

The water quality treatment devices were sized to treat an area and subsequent volumetric runoff over a period of 1 hour (the Water Quality Treatment Area and Water Quality Treatment Rate, respectively) for the **Right-of-Way ONLY** - not private properties. While it is true the device continuously treats all runoff at pumping rates below the water quality treatment rate, in **MY** involvement in the stormwater program, water quality treatment of private properties was never discussed with DERM.

(6) Article XIX – Engineer's Report Part 4 (page 154): AECOM's Role:

AECOM (in the person of me) did not start working on the flood mitigation project until August 2014 (not 2013). We were not contracted solely to review and rewrite the Palm and Hibiscus DCP. It was merely one of the initial tasks, to wit to review all outstanding DCP's and develop standardized language as described in Item 1, above.

Summary:

It is my hope this information in some way aids in the preparation of your final report. You are to be commended as this appears to be a complete and thorough synopsis of events and I'm sure a monumental undertaking. If I can be of further assistance, please contact me at your earliest convenience.