

# MIAMIBEACH

## OIG Palm and Hibiscus Report

### SUMMARY OF CITY ADMINISTRATION'S RESPONSE TO FINDINGS AND RECOMMENDATIONS

**Finding #1.** The stubouts, which consisted of lateral pipes that extend from the main drainage system to the front of each house on west Palm Island with connection tees were permanent parts of the stormwater drainage system. They were available to mitigate flooding during construction. Evidence, including statements under oath by multiple witnesses, established that the description of these installations as “temporary construction drains” after they were discovered by DERM, was a legal fiction

**Response #1:** This is categorically false. The Administration required the Design-Builder to keep properties from flooding, even during construction, and did not interfere with the Design-Builders proposal of temporary construction drains. The connection points, consisting of underground lateral pipes were never intended to be removed, however, collected no water and were installed proactively as potential future connection points for future project modifications. What has been referred to as “temporary construction drains” were the inlets, which took advantage of the future connection points, installed by the contractor to manage drainage during construction. These were always intended to be removed at the appropriate time. Those which needed to remain, as a result of the evolving climate change strategy, would be documented and permitted through the close-out process. Perhaps more importantly, the OIG, or anyone else, cannot presume to know the Administrations intentions.

**Finding #2.** In May 2016 DERM issued Class II permit based on plans for a standard right-of way drainage system prepared, signed, and sealed by Orlando A. Rubio, PE., without seeing the Kremers plans; similarly, the SFWMD issued an Environmental Resources Permit based on the Rubio plans and without the benefit of reviewing the Kremers plans.

**Response #2:** The City’s approach to mitigating sea level rise is a continuously evolving process which has significantly impacted the Palm and Hibiscus project’s progression. The project execution required innovative, “outside the box” thinking, including changing strategies to adopt and adapt to changes to policies and ordinances. The Kremers plans were a response to that evolution and changes in policies. The Design/Build Team determined that the changes in the drawings were immaterial to the permit, as it did not alter the tributary area nor volume of water to be treated.

**Finding #3** (variant of former Finding #8). In early 2018 the City began the installation of private-side yard drains on west Palm Island but did not disclose the new phase of construction to DERM and SFWMD, turn over the updated Kremers plans, or obtain modification of the existing Class II permit.

**Response #3: This is categorically false. Neither the City nor Lanzo began installation of private side yard drains in 2018. In fact, the City and Lanzo did not begin the installation of private side yard drains until the summer of 2020, after construction drawings had been submitted to and permits issued by DERM. What began in 2018, upon direction from the City Commission to allow private properties to connect to the City's system, was the analysis, survey and design of those individual connections. This included the process of determining which properties qualified for a connection, and the development of a policy for its implementation.**

**Finding #4** (variant of former Finding #9). In May 2018, in applying for a second-Class II permit, the City did not give DERM recently updated As-Built plans and new drainage studies. Instead, the City obtained a permit based on the Rubio plans and the misrepresentation that significant changes had not been made to the Rubio plans.

**Response #4: The permit management activities and regulatory compliance responsibilities lie with the design-builder and their engineer of record. The Class II permit renewal application package was prepared and submitted by the project's engineer of record, Wade Trim. The glaring omission in this finding is that it fails to consider that immaterial changes are ordinarily reconciled through permit modifications at project close-out. This report completely disregards communications between the design team and DERM indicating changes to the project and the intent to document those changes through as-built drawings. DERM took no exception with the stated intent and issued the permit because this approach is part of the ordinary protocol for drainage system design, permitting, and close-out.**

**Finding #5.** The pressure to accelerate work on the project resulted in a sequence of decisions that disrupted CIP's management of the project and resulted in an override of internal controls, process, policies and procedure designed to protect the City's interests and achieve its objectives in design-build projects. The investigation established that the City lacks a clear policy for planning and managing design-build construction projects.

**Response #5: The OIG does not expand nor provides any basis for the statements on this finding, as it does with all others. No internal controls were overridden, no process was bypassed, and no policy was ignored. CIP has managed this project, as with all others, placing the best interests of the City and its residents at the forefront. CIP's directors and staff are well versed in the management of design-build projects as well as other delivery methods. CIP has successfully managed and completed multiple design-build projects, including Lower North Bay Road Neighborhood Improvements, Sunset Islands 3 & 4 Neighborhood Improvements, North Shore Bandshell Canopy, Collins Park Parking Garage, Storm Water Pump Station at 19<sup>th</sup> Street, and London House Historical Apartments Renovation. Currently, CIP has been managing the Design-Build contracts for the West Avenue Phase II Improvements project.**

**Finding #6** (formerly Finding #2). The City awarded Lanzo a contract for the project's pre-construction design phase without a finished DCP.

**Response #6:** The project was awarded as a progressive design build, under FS 287.055. As defined in this statute, the purpose of the DCP is to provide sufficient information to allow firms to bid the project. The scope of services for the Palm and Hibiscus project included vast information for all pertinent infrastructure assets, clearly complying with the statute. This finding makes it clear that the OIG does not understand the progressive design-build project delivery methodology, where the selected Design-Builder is contracted to progress the design to the level needed to produce a reliable construction cost estimate with well-understood risks and contingencies. This process culminates in the submittal of a construction cost proposal (Guaranteed Maximum Price Proposal), to be approved by the City Commission, and fully executed GMP amendment.

**Finding #7** (formerly 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.

**Response #7:** The original DCP was antiquated and ineffective to address the rapidly evolving science of sea level rise. Since the original DCP was issued, the City exhibited tides at elevation of 2.2 feet NAVD, same elevation as the originally proposed roadway elevation. As the king tide events unfolded during the early stages of the project, it became abundantly clear that the proposed improvements would not even solve the flooding concerns at the time, not to mention the 30 year planning horizon worth of sea level rise that this project was supposed to mitigate. Furthermore, the OIG report clearly identifies that the Final DCP included requirements regarding inlet elevations and maximum flood stages, which are defined and measurable criteria for success of the stormwater system—consistent with statutory requirements of a Design/Build contractual mechanism.

**Finding #8** (formerly 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.

**Response #8** This is grossly misrepresented. 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 overall tributary area and, consequently, the volume of runoff water being collected did not change. Moreover, the City was working to ensure that the life, safety, and property of residents were protected. For example, acting decisively ensured that emergency vehicles would continue to have access. Furthermore, the contractor obviously felt comfortable enough to provide a cost proposal for the added scope and accept associated risks, as it is standard industry practice for design-build projects.

**Finding #9** (variant from former Finding #5). The City awarded Lanzo 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 without a reliable basis for estimating costs associated with providing connections to private-side yard drains.

**Response #9** This is grossly misrepresented. The OIG should be well aware that the progressive design-build project delivery method is intended to proceed without final construction plans. The OIG's assumption that construction plans must first be completed prior to award completely negates the benefits of design-build and demonstrates the office's unfamiliarity with the delivery model. Nonetheless a Guaranteed Maximum Price (GMP) was negotiated, one that was favorable to the City when compared with the initial \$43 M GMP. Furthermore, to ensure the equity of the GMP proposal, the City relied on two different third parties to verify that the GMP was fair and reasonable.

**Recommendation #1:** Establish by ordinance that the Director of the Environmental and Sustainability Department shall have the final authority and responsibility to approve the submission of all applications for permits by the City from the South Florida Water Management District (SFWMD), the Miami-Dade Department of Regulatory and Economic Resources (RER) and its Division of Environmental Resource Management (DERM), or any other federal, state or county agency with environmental enforcement authority over issuance of a permit for any City project; and, further, that the Director of the Environmental and Sustainability Department shall immediately, and in writing, report to the City Manager and the Inspector General any concerns expressed by those agencies, or by any other parties, about alleged lack of compliance with federal, state or county laws and regulations related to the permitting of any such projects.

**Response - The Administration does not agree with this recommendation. Since early 2020 the Engineering Division of the Public Works Department has been successfully working to resolve all permitting matters. In that time 22 permits have been closed and 14 have been approved – a number significantly higher than the preceding years. Working towards mutual goals, an effective and productive professional relationship has been established. The OIG is aware of this, as numerous DERM personnel have explicitly expressed that they are pleased with the current working relationship. Additionally, these permits are related to engineering projects and require an engineer to provide the appropriate solutions. Lastly, anyone working for the City Manager will report only to the City Manager, unless reporting a matter of an ethical or illegal nature.**

**Recommendation #2:** Establish by ordinance that, notwithstanding any provision in a City contract, that the City official who signs an application for a permit included under Recommendation #1 be responsible to personally verify in writing to the City Manager the accuracy and completeness of all such permit applications and associated documentation submitted to any such regulatory agency.

**Response - The Administration disagrees with this recommendation. The permit applications have their own provisions that should be followed. Individuals signing as owner are only responsible for representing the City ownership and legal authority to enter into a permit arrangement. All other matters are addressed by the other parties involved – the Engineer, Permit Agent, Contractor, etc.**

**Recommendation #3:** The City Administration should develop policies and procedures for the management of design-build contracts that provide a framework of guidelines, practices, and internal controls to guide management of design-build projects. The City Manager should develop the policy in consultation with CIP, Public Works and the Procurement Director.

**Response The Administration disagrees with this recommendation. Policies and procedures are already in place. However, one way to improve these policies is to implement decision toll-gates for the planning, design, and construction of City projects.**

**Recommendation #4:** Establish by ordinance that, prior to approving significant changes in the design criteria of a design-build project after the award of the construction phase of the project, require that the City Manager notify the Commission, provide justification for the change and its impact on project cost schedule.

**Response - The Administration agrees that all resolutions approving changes to existing projects should include relevant cost and schedule impacts. Furthermore, these resolutions should only be approved if the quantified impacts are approved concurrently.**

**Recommendation #5:** Direct the City Manager to provide an evaluation of the costs and benefits of the City present of multiple architecture and engineering consultants versus those of retaining a single project management contractor to provide the City with an integrated, coordinated, and disciplined end-to-end process for planning, designing, and managing the City's portfolio of design build projects to counter the effects of sea level rise.

**Response - The Administration disagrees with this recommendation. First and foremost, the law requires various entities – a design criteria professional, a builder, and a designer. There is of course an owner, which is typically split in two departments (CIP and PWD). Then there are various subs, which is commonplace throughout the entire nation. This model is exhibited in FDOT, county, and other neighboring contracts. Furthermore, this function is already provided by the CIP department during construction and the Public Works Department for planning and design. The recommendation may allude to the implementation of a program manager. As seen in neighboring cities and in this county, program managers rarely provide a service to justify their exorbitant fees. Furthermore, these firms are often incentivized to inflate the cost of the programs, since that directly increases their respective fees. Instead, the City uses a mix of consultants and leans on a prime consultant (Jacobs) for the integrated water management approach. The administration maintains that this is a better approach than what is recommended.**

**Recommendation #6:** : Require that CIP, Public Works, and the Procurement Department working together, in consultation with the Finance Department, develop a list of key indicators and provide an annual report to the Commission that projects that are at a high risk of cost overruns, schedule delays, or performance failures.

**Response - The Administration agrees with this recommendation.**

**Recommendation #7:** Amend the City's Debarment Ordinance to authorize the Inspector General to conduct fact investigations in support of the Debarment Panel and submit to the City Manager and Director of Procurement reports of investigations on the performance of City contractors for possible debarment.

**Response - The Administration agrees with this recommendation.**