

**SPECIAL MEETING
CITY COMMISSION
CITY OF APALACHICOLA, FLORIDA
WEDNESDAY, JUNE 10, 2020 – 5:00 PM
APALACHICOLA COMMUNITY CENTER
1 BAY AVENUE
APALACHICOLA, FLORIDA**

AGENDA

You are welcome to speak or comment on any matter under consideration by the Apalachicola Board of City Commissioners when recognized to do so by the Mayor. Once recognized please rise to the podium, state your name for the record and adhere to the five minute time limit for public comment. Those wishing to speak concerning an item on the agenda shall complete a speaker card and give it to the City Clerk before the meeting starts.

- I. Call to Order
 - Invocation (Please rise and remain standing)
 - Pledge of Allegiance

- II. Agenda Adoption

- III. Old Business
 - A. Consent Orders

- IV. New Business
 - A. Finance Director Position Discussion

- V. Adjournment

The public is invited to speak on any agenda, non-agenda and/or consent agenda topics. Comments should be less than “five” minutes.



FLORIDA DEPARTMENT OF Environmental Protection

Northwest District
160 W. Government Street, Suite 308
Pensacola, Florida 32502

Ron DeSantis
Governor

Jeanette Nufiez
Lt. Governor

Noah Valenstein
Secretary

May 22, 2020

Honorable Kevin Begos, Mayor
City of Apalachicola
#1 Avenue E
Apalachicola, Florida 32320
kbegos@cityofapalachicola.com

Re: Revised Second Amended Proposed Consent Order; DEP vs. City of Apalachicola;
Apalachicola Water System; PWS ID No. 1190150; OGC File No. 11-1557C; Franklin
County

Dear Mayor Begos:

Enclosed is the revised second amended proposed Consent Order, which addresses issues related to the subject facility. Please review the document, and if acceptable, sign and return it within 14 days for final execution. A copy of the executed Consent Order will be forwarded to you for your records. If the document is not acceptable, please contact the Department regarding your objections within 14 days of your receipt of the document.

Your cooperation in resolving this matter is greatly appreciated. If you have any questions, please contact Dana Vestal at 850-595-0659 or by e-mail at Dana.Vestal@floridadep.gov.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Mullins Orr".

Elizabeth Mullins Orr
Interim Director

EMO / dv

Enclosure: Revised Second Amended Proposed Consent Order and Exhibits

cc: Ron Nalley, City of Apalachicola (rnalley@cityofapalachicola.com)
Robert Graham, City of Apalachicola (robertgraham@cityofapalachicola.com)

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	NORTHWEST DISTRICT
)	
v.)	OGC FILE NO. 11-1557C
)	
CITY OF APALACHICOLA)	
_____)	

SECOND AMENDED CONSENT ORDER

This Second Amended Consent Order ("Second Amended Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and the City of Apalachicola ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent. This Amended Order replaces and supersedes the Original Consent Order ("Original Order") entered into by the Department and the Respondent on March 28, 2012, and later amendment on July 30, 2013 ("Amended Order").

The Department finds and Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's water resources and to administer and enforce the provisions of the Florida Safe Drinking Water Act, Sections 403.850, et seq., Florida Statutes ("F.S."), and the rules promulgated and authorized in Title 62, Florida Administrative Code ("F.A.C."). The Department has jurisdiction over the matters addressed in this Second Amended Order.
2. Respondent is a person within the meaning of Section 403.852(5), F.S.
3. Respondent is the owner and operator of a community public water system, PWS No. 1190150, located at #1 Avenue E, Apalachicola, in Franklin County, Florida 32320 ("System").
4. The Department finds that Respondent is in violation of Rule 62-550.310(3), F.A.C, which establishes the maximum contaminant level ("MCL") for total trihalomethanes ("TTHMs") as 0.080 milligrams per liter ("mg/L") as a locational running

annual average ("LRAA"). Quarterly sampling events conducted from the fourth quarter 2013 through the first quarter 2020 resulted in 35 exceedances of the MCL for TTHMs. See Exhibit I for the full list of violations for the System since the Amended Order was executed. Further corrective actions are still needed to address these recurring MCL exceedances.

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

ORDERED:

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

a) **Within 30 days of the effective date of this Second Amended Order,** develop an updated written plan to increase systemwide flushing, including all flushing locations and maps for review and approval by the Department.

b) **Within 60 days of the effective date of this Second Amended Order,** Respondent shall implement the approved flushing plan referenced in subparagraph a), above.

c) **Within 90 days of the effective date of this Second Amended Order,** Respondent shall initiate monthly sampling for TTHMs in accordance with Rule 62-550.514(2), F.A.C., starting with commencement of the pilot study, Respondent shall submit all sampling results to the Department within 10 days following the end of the month in which the samples were taken or within 10 days following Respondent's receipt of the results, whichever is sooner.

d) Permit hydrogen peroxide treatment permanently, if results of the pilot study, as approved by the Department on March 20, 2020, are sufficient to show a substantial reduction in TTHM levels in the monthly sampling results due within 30 days of the conclusion of the pilot study. See the approval at the link below.

[https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=getEntity&\[guid=32.1202515.1\]&\[profile=Permitting_Authorization](https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=getEntity&[guid=32.1202515.1]&[profile=Permitting_Authorization)

e) If, within 180 days of the effective date of this Second Amended Order, increased flushing and hydrogen peroxide addition to the System is not effective in lowering the facility's TTHMs sampling results below the MCL, then the facility shall install additional treatment to the System within 30 months following the effective date of this Second Amended Order. The required permit application for this change to the System must be submitted within 194 days following the effective date of this Second Amended Order. The application must be made complete within 208 days of the effective date of this Second Amended Order.

f) Within 33 months of the effective date of this Second Amended Order, Respondent shall complete all corrective actions necessary to resolve the MCL exceedances described above. If the Department issues a permit pursuant to subparagraphs 5.e), above, within 30 days of the completion of construction Respondent shall submit a Certification of Completion, prepared and sealed by a professional engineer registered in the State of Florida. Respondent shall receive written Department clearance prior to placing the permitted system modifications into service. If a permit is not required to implement the corrective actions required by this paragraph, and none is issued by the Department pursuant to this Second Amended Order, within 33 months of the effective date of this Second Amended Order, Respondent shall submit to the Department a written statement attesting to the completion of all required actions.

g) Respondent shall continue to issue public notices regarding the MCL violation(s) described above every 90 days, as required by Rule 62-560.410(1), F.A.C., until the Department determines that the System is in compliance with all MCLs. Respondent shall submit certification of delivery of public notices, using DEP Form 62-555.900(22), F.A.C. to the Department within 10 days of issuing each public notice.

h) Respondent shall submit written quarterly updates on the status of the corrective actions contained in this Second Amended Order ("Quarterly Reports"). Quarterly Reports shall include a summary of the monthly sampling data, a summary of the flushing performed, a summary of the hydrogen peroxide treatment, as well as any

activities completed in the calendar quarter, and a projection of the plans for the next quarter activities. Updates shall be submitted to the Department within 10 days following the end of each calendar quarter until the modifications are complete and cleared for service.

6. Within 30 days of the effective date of this Second Amended Order, Respondent shall submit a written estimate of the total cost of the corrective actions required by this Second Amended Order to the Department. The written estimate shall identify the information the Respondent relied upon to provide the estimate.

7. Within 90 days of the effective date of this Second Amended Order, Respondent shall pay the Department \$63,400.00 for stipulated penalties assessed under paragraph 12 of the First Amended Order, for failure to comply with paragraph 10.f) for the completion of permitted modifications. This amount is calculated for 634 days from June 5, 2018 until February 29, 2020. Also due within 90 days of the effective date of this Second Amended Order is \$1,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Second Amended Order.

8. In lieu of making cash payment of the amounts required as set forth in paragraphs 7 above, Respondent may elect to off-set this amount by implementing an in-kind penalty project, which must be approved by the Department. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility improvement project. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the civil penalty off-set amount, which in this case is equivalent of at least \$95,100.00. Please refer to the link below to review in-kind project requirement contained in DEP Directive 923. If Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election by e-mail to Dana Vestal, Environmental Manager, Compliance Assurance Program – Potable Water Section, Department of Environmental Protection at Dana.Vestal@floridadep.gov and copy the

program's shared e-mail box at NWDPWS@dep.state.fl.us or certified mail within 15 days of the effective date of this Order. Notwithstanding the election to implement an in-kind project, payment of the remaining \$1,000.00 in costs must be paid within 90 days of the effective date of this Order.

DEP Directive 923:

https://floridadep.gov/sites/default/files/dep_923_civil_penalty_directive.pdf

9. In the event Respondent elects to off-set stipulated penalties, by implementing an in-kind penalty project which is approved by the Department, during the period that this Second Amended Order remains in effect or during the effective date(s) of any Department issued Permit to Respondent, whichever is longer, Respondent shall not transfer or use funds obtained by the Respondent from the collection of water rates for any purpose not related to the management, administration, operation, or maintenance of the System or to any capital improvement needs of the System (herein, Prohibited Transfer). Respondent shall annually submit a certification to the Department utilizing the Certification Form in Exhibit II to this Second Amended Order regarding the status of Prohibited Transfers. In the event of any Prohibited Transfer, the In-Kind project option shall be forfeited, and the entire civil penalty shall immediately become due and owing to the Department irrespective of any expenditures by the Respondent in furtherance of the In-Kind project.

10. If Respondent elects to implement an in-kind project as provided in paragraph 8 to off-set civil penalties assessed in paragraph 7, then Respondent shall comply with all the requirements and time frames in Exhibit III entitled In-Kind Projects.

11. Respondent agrees to pay the Department stipulated penalties in the amount of \$500.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph(s) 5, 7, 8, 9, 25, and Exhibit III of this Second Amended Order. The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment, and shall do so as further described in paragraph

12, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Second Amended Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 7 of this Second Amended Order.

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

13. Except as otherwise provided, all submittals and payments required by this Second Amended Order shall be sent to electronically by e-mail to Dana Vestal, Environmental Manager, Compliance Assurance Program – Potable Water Section, Department of Environmental Protection at Dana.Vestal@floridadep.gov and copy the program's shared e-mail box at NWDPWS@dep.state.fl.us.

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

15. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Second Amended Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Second Amended Order with all attachments to the

purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Second Amended Order.

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

17. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Second Amended

Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Second Amended Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Second Amended Order.

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

19. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Second Amended Order.

20. Respondent is fully aware that a violation of the terms of this Second Amended Order may subject Respondent to judicial imposition of damages, civil penalties up to \$5,000.00 per day per violation, and criminal penalties.

21. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Second Amended Order. Respondent also acknowledges and waives its right to appeal the terms of this Second Amended Order pursuant to section 120.68, F.S.

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

23. The terms and conditions set forth in this Second Amended Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S.

Failure to comply with the terms of this Second Amended Order constitutes a violation of section 403.161(1)(b), F.S.

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

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

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF SECOND AMENDED CONSENT ORDER

The Department of Environmental Protection ("Department") gives notice of agency action of entering into an Amended Consent Order with THE CITY OF APALACHICOLA pursuant to section 120.57(4), Florida Statutes. The Amended Consent Order addresses the total trihalomethane maximum contaminant level exceedances at the City of Apalachicola's water system located at #1 Avenue E, Apalachicola, Florida 32320. The Amended Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Northwest District, 160 West Government Street, Suite 308, Pensacola, Florida 32502.

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

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

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

The petition must be filed (received) by the close of business at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at Northwest District, 160 West Government Street, Suite 308, Pensacola, Florida 32502. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57,

Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Amended Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

26. Rules referenced in this Second Amended Order are available at <http://www.dep.state.fl.us/legal/Rules/rulelist.htm>

FOR THE RESPONDENT:

Kevin Begos Date
Mayor

DONE AND ORDERED this _____ day of _____, 20____, in _____
Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Elizabeth Mullins Orr
Interim Director
Northwest District

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

Clerk

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35

Exhibit II

Annual Certification Form

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

A. I am a person with management responsibilities for the City of Apalachicola's budget and finances. During the 12-month period immediately preceding the notary date on this Certification, there has not been any transfer or use of funds obtained by the City of Apalachicola from the collection of water rates for any purpose not related to the management, operation, or maintenance of the System or to any capital improvement needs of the System.

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

Sworn to and subscribed before me on _____ 20__ by

Personally, known or by Production of the following Identification _____
Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires: _____

Commission/Serial No.: _____

Exhibit III

In-Kind Projects

I. Introduction
Proposal

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

Proposal Certification Form

b. The proposal shall also include a Certification by notarized affidavit from a senior management official for Respondent who shall testify as follows:

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

A. I am a person with management responsibilities for the City of Apalachicola's budget and finances. During the six month period prior to the effective date of Consent Order OGC Case No.: 11-1557, there has not been any transfer or use of funds obtained by the City of Apalachicola from the collection of water rates for any purpose not related to the management, operation, or maintenance of the System or to any capital improvement needs of the System.

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

Sworn to and subscribed before me on _____ 20 ____ by

Personally, known or by Production of the following Identification

Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires: _____

Commission/Serial No.: _____

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

d. If upon review of the in-kind project proposal, the Department determines that the project cannot be accepted due to a substantially incomplete proposal or due to substantial deficiencies with minimum Department guidelines, Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the proposal. Respondent shall correct and redress all of the matters at issue and submit, by certified mail, a new proposal within 30 days of receipt of written notice. In the event that the

revised proposal is not approved by the Department, Respondent shall make cash payment of the civil penalties as set forth in paragraph 7 above, within 30 days of Department notice.

e. Within 120 days of the effective date of this Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable, Respondent shall obtain approval for an in-kind project from the Department. If an in-kind project proposal is not approved by the Department within 120 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable then Respondent shall make cash payment of the assessed stipulated penalties as set forth in paragraph 7 above, within 30 days of Department notice.

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

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

h. In the event, Respondent fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project or otherwise fails to comply with any provision of this paragraph, the in-kind penalty project option shall be forfeited and the entire amount of civil penalties shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the \$63,400.00 assessed stipulated penalties in paragraph 7, no additional penalties shall be assessed under paragraph 11 for failure to complete the requirement of this paragraph.

i. Within 15 days of completing the in-kind project, Respondent shall notify the

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

j. If upon review of the notification of completion, the Department determines that the project cannot be accepted due to a substantially incomplete notification of completion or due to substantial deviations from the approved in-kind project; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the project. Respondent shall correct and redress all of the matters at issue and submit, by certified mail, a new notification of completion within 15 days of receipt of the Department's notice. If upon review of the new submittal, the Department determines that the in-kind project is still incomplete or not in accordance with the approved proposal, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalty shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the \$63,400.00, assessed stipulated penalties, no additional penalties shall be assessed under paragraph 11 for failure to complete the requirements of this paragraph.

Exhibit I

CONTAM DESC	SM TY	RESULT	UOM	MCL	SAMPLE DATE	LOC	MDL	REMARKS	Quarterly Average	LRAA
TOTAL THMS	D	94.5	UG/L	80.4999	10/16/2013	L1	0.5	638 BAY CITY RD.	94.5	
TOTAL THMS	D	78.9	UG/L	80.4999	1/15/2014	L1	0.5	BAY CITY LODGE	78.9	
TOTAL THMS	D	81	UG/L	80.4999	4/15/2014	L1	0.5	BAY CITY LODGE	81	
TOTAL THMS	D	94	UG/L	80.4999	7/15/2014	L1	0.5	BAY CITY LODGE		
TOTAL THMS	D	82	UG/L	80.4999	8/13/2014	L1	0.5	BAY CITY LODGE		
TOTAL THMS	D	88.7	UG/L	80.4999	9/30/2014	L1	0.5	BAY CITY LODGE	88.23333333	85.658333
TOTAL THMS	D	75.7	UG/L	80.4999	10/15/2014	L1	0.5	BAY CITY LODGE	75.7	80.958333
TOTAL THMS	D	117.2	UG/L	80.4999	1/21/2015	L1	0.5	BAY CITY LODGE		
TOTAL THMS	D	73.1	UG/L	80.4999	2/18/2015	L1	0.5	BAY CITY LODGE		
TOTAL THMS	D	78.4	UG/L	80.4999	3/17/2015	L1	0.2	BAY CITY LODGE		
TOTAL THMS	D	64.5	UG/L	80.4999	3/25/2015	L1	0.2	BAY CITY LODGE	83.3	82.058333
TOTAL THMS	D	103	UG/L	80.4999	4/21/2015	L1	0.2	BAY CITY LODGE		
TOTAL THMS	D	83.7	UG/L	80.4999	6/11/2015	L1	0.2	BAY CITY LODGE		
TOTAL THMS	D	92	UG/L	80.4999	6/25/2015	L1	0.2	BAY CITY LODGE	92.9	85.033333
TOTAL THMS	D	90	UG/L	80.4999	7/16/2015	L1	0.2	BAY CITY LODGE		
TOTAL THMS	D	83.4	UG/L	80.4999	9/10/2015	L1	0.2	BAY CITY LODGE		
TOTAL THMS	D	84	UG/L	80.4999	9/16/2015	L1	0.2	BAY CITY LODGE	85.8	84.425
TOTAL THMS	D	85	UG/L	80.4999	10/20/2015	L1	0.2	BAY CITY LODGE	85	86.75
TOTAL THMS	D	115.8	UG/L	80.4999	1/13/2016	L1	0.2	BAY CITY LODGE		
TOTAL THMS	D	88	UG/L	80.4999	1/29/2016	L1	0.2	BAY CITY LODGE	101.9	91.4
TOTAL THMS	D	116.1	UG/L	80.4999	4/14/2016	L1	0.2	BAY CITY LODGE		
TOTAL THMS	D	79	UG/L	80.4999	5/12/2016	L1	0.2	BAY CITY LODGE		
TOTAL THMS	D	91	UG/L	80.4999	6/23/2016	L1	0.2	BAY CITY LODGE		
TOTAL THMS	D	90.9	UG/L	80.4999	6/29/2016	L1	0.2	BAY CITY LODGE	94.25	91.7375
TOTAL THMS	D	99.2	UG/L	80.4999	7/14/2016	L1	0.2	BAY CITY LODGE		
TOTAL THMS	D	73.5	UG/L	80.4999	8/26/2016	L1	0.2	BAY CITY LODGE		
TOTAL THMS	D	63.3	UG/L	80.4999	9/7/2016	L1	0.2	BAY CITY LODGE		
TOTAL THMS	D	62.8	UG/L	80.4999	9/14/2016	L1	0.2	BAY CITY LODGE	74.7	88.9625
TOTAL THMS	D	88.7	UG/L	80.4999	10/21/2016	L1	0.2	BAY CITY LODGE	88.7	89.8875
TOTAL THMS	D	79	UG/L	80.4999	1/19/2017	L1	0.2	BAY CITY LODGE	79	84.1625
TOTAL THMS	D	125	UG/L	80.4999	4/27/2017	L1	0.2	BAY CITY LODGE	125	91.85

Exhibit I

CONTAM DESC	SM TY	RESULT	UOM	MCL	SAMPLE DATE	LOC	MDL	REMARKS	Quarterly Average	LRAA
TOTAL THMS	D	102.8	UG/L	80.4999	7/13/2017	L1	0.2	BAY CITY LODGE	102.8	98.875
TOTAL THMS	D	98.6	UG/L	80.4999	10/19/2017	L1	0.2	BAY CITY LODGE	98.6	101.35
TOTAL THMS	D	93.7	UG/L	80.4999	1/25/2018	L1	0.2	BAY CITY LODGE	93.7	105.025
TOTAL THMS	D	63.6	UG/L	80.4999	4/19/2018	L1	0.2	BAY CITY LODGE	63.6	89.675
TOTAL THMS	D	108.4	UG/L	80.4999	7/3/2018	L1	0.2	BAY CITY LODGE	108.4	91.075
TOTAL THMS	D	80	UG/L	80.4999	10/2/2018	L1	0.2	BAY CITY LODGE	80	86.425
TOTAL THMS	D	85.49	UG/L	80.4999	1/2/2019	L1	0.39	BAY CITY LODGE	85.49	84.3725
TOTAL THMS	D	76.6	UG/L	80.4999	4/2/2019	L1	0.39	BAY CITY LODGE	76.6	87.6225
TOTAL THMS	D	87.24	UG/L	81.4999	7/3/2019	L1	0.39	BAY CITY LODGE	87.24	82.3325
TOTAL THMS	D	81.37	UG/L	82.4999	10/1/2019	L1	0.39	BAY CITY LODGE	81.37	82.675
TOTAL THMS	D	86.06	UG/L	82.4999	1/8/2020	L1	0.39	BAY CITY LODGE	86.06	82.8175
TOTAL THMS	D	90.1	UG/L	80.4999	10/16/2013	L2	0.5	MARKET STREET	90.1	
TOTAL THMS	D	84.2	UG/L	80.4999	1/15/2014	L2	0.5	MARKET STREET	84.2	
TOTAL THMS	D	108	UG/L	80.4999	4/15/2014	L2	0.5	MARKET STREET	108	
TOTAL THMS	D	102.3	UG/L	80.4999	7/15/2014	L2	0.5	MARKET STREET		
TOTAL THMS	D	81	UG/L	80.4999	8/13/2014	L2	0.5	MARKET STREET		
TOTAL THMS	D	66.9	UG/L	80.4999	9/30/2014	L2	0.5	MARKET STREET		
TOTAL THMS	D	88.7	UG/L	80.4999	10/14/2014	L2	0.5	MARKET STREET	83.4	91.425
TOTAL THMS	D	66.8	UG/L	80.4999	11/11/2014	L2	0.5	MARKET STREET		
TOTAL THMS	D	95	UG/L	80.4999	1/21/2015	L2	0.5	MARKET STREET	77.75	88.3375
TOTAL THMS	D	70.9	UG/L	80.4999	2/18/2015	L2	0.5	MARKET STREET		
TOTAL THMS	D	62.2	UG/L	80.4999	3/17/2015	L2	0.2	MARKET STREET		
TOTAL THMS	D	95	UG/L	80.4999	4/21/2015	L2	0.2	MARKET STREET	76.03333333	86.295833
TOTAL THMS	D	78	UG/L	80.4999	6/25/2015	L2	0.2	MARKET STREET		
TOTAL THMS	D	100	UG/L	80.4999	7/16/2015	L2	0.2	MARKET STREET	86.5	80.920833
TOTAL THMS	D	84.5	UG/L	80.4999	9/10/2015	L2	0.2	MARKET STREET		
TOTAL THMS	D	85.2	UG/L	80.4999	9/16/2015	L2	0.2	MARKET STREET		
TOTAL THMS	D	71.5	UG/L	80.4999	10/20/2015	L2	0.2	MARKET STREET	89.9	82.545833
TOTAL THMS	D	66.8	UG/L	80.4999	12/23/2015	L2	0.2	MARKET STREET		
TOTAL THMS	D	80.3	UG/L	80.4999	1/13/2016	L2	0.2	MARKET STREET	69.15	80.395833
TOTAL THMS	D	72.6	UG/L	80.4999	1/29/2016	L2	0.2	MARKET STREET		

CONTAM DESC	SM TY	RESULT	UOM	MCL	SAMPLE DATE	LOC	MDL	REMARKS	Quarterly Average	LRAA
TOTAL THMS	D	70.2	UG/L	80.4999	2/17/2016	L2	0.2	MARKET STREET	74.36666667	79.979167
TOTAL THMS	D	105	UG/L	80.4999	4/14/2016	L2	0.2	MARKET STREET		
TOTAL THMS	D	79	UG/L	80.4999	5/12/2016	L2	0.2	MARKET STREET		
TOTAL THMS	D	85	UG/L	80.4999	6/29/2016	L2	0.2	MARKET STREET		
TOTAL THMS	D	105	UG/L	80.4999	7/14/2016	L2	0.2	MARKET STREET	89.66666667	80.770833
TOTAL THMS	D	72.2	UG/L	80.4999	8/26/2016	L2	0.2	MARKET STREET		
TOTAL THMS	D	63.6	UG/L	80.4999	9/7/2016	L2	0.2	MARKET STREET		
TOTAL THMS	D	79.7	UG/L	80.4999	9/14/2016	L2	0.2	MARKET STREET	80.125	78.327083
TOTAL THMS	D	75.4	UG/L	80.4999	10/21/2016	L2	0.2	MARKET STREET	75.4	79.889583
TOTAL THMS	D	69	UG/L	80.4999	1/19/2017	L2	0.2	MARKET STREET	69	78.547917
TOTAL THMS	D	116	UG/L	80.4999	4/27/2017	L2	0.2	MARKET STREET	116	85.13125
TOTAL THMS	D	83.1	UG/L	80.4999	7/13/2017	L2	0.2	MARKET STREET	83.1	85.875
TOTAL THMS	D	85.6	UG/L	80.4999	10/19/2017	L2	0.2	MARKET STREET	85.6	88.425
TOTAL THMS	D	84.1	UG/L	80.4999	1/25/2018	L2	0.2	MARKET STREET	84.1	92.2
TOTAL THMS	D	61	UG/L	80.4999	4/19/2018	L2	0.2	MARKET STREET	61	78.45
TOTAL THMS	D	87.5	UG/L	80.4999	7/3/2018	L2	0.2	MARKET STREET	87.5	79.55
TOTAL THMS	D	73.4	UG/L	80.4999	10/2/2018	L2	0.2	MARKET STREET	73.4	76.5
TOTAL THMS	D	93.16	UG/L	80.4999	1/2/2019	L2	0.39	MARKET STREET	93.16	78.765
TOTAL THMS	D	67.29	UG/L	80.4999	4/2/2019	L2	0.39	MARKET STREET	67.29	80.3375
TOTAL THMS	D	86.64	UG/L	81.4999	7/3/2019	L2	0.39	MARKET STREET	86.64	80.1225
TOTAL THMS	D	77.87	UG/L	82.4999	10/1/2019	L2	0.39	MARKET STREET	77.87	81.24
TOTAL THMS	D	92.96	UG/L	82.4999	1/8/2020	L2	0.39	MARKET STREET	92.96	81.19



FLORIDA DEPARTMENT OF Environmental Protection

Northwest District
160 W. Government Street, Suite 308
Pensacola, FL 32502

Ron DeSantis
Governor

Joanette Nufiez
Lt. Governor

Noah Valenstein
Secretary

June 3, 2020

The Honorable Kevin Begos, Mayor
City of Apalachicola
One Avenue E.
Apalachicola, Florida 32320
kbegos@cityofapalachicola.com

Subject: Proposed Consent Order; DEP vs. City of Apalachicola; Apalachicola WWTP;
Permit # FLA038857; OGC File No. 20-0841; Franklin County

Dear Mayor Begos:

Enclosed is the proposed Consent Order, which addresses domestic wastewater issues related to the City of Apalachicola wastewater treatment plant. Please review the document, and if acceptable, sign and return it within 15 days for final execution. A copy of the executed Consent Order will be forwarded to you for your records. If the document is not acceptable, please contact the Department regarding your objections within 15 days of receipt of the document.

Your cooperation in resolving this matter is greatly appreciated. If you have any questions, please contact Krista McGraw at 850-595-0612 or Krista.McGraw@floridadep.gov.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Mullins Orr".

Elizabeth Mullins Orr
Interim Director

EMO/km

Enclosure

cc: Adrienne Pennington, DEP Division of Water Resources Management
(Adrienne.Pennington@floridadep.gov)
Robert Graham, Operator (robertgraham@cityofapalachicola.com)
Kristy Branch Banks, Attorney (info@kbblawfl.com)

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION)	IN THE OFFICE OF THE NORTHWEST DISTRICT
)	
v.)	OGC FILE NO. OGC 20-0841
)	
CITY OF APALACHICOLA)	
<hr/>		

CONSENT ORDER

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

The Department finds and Respondent admits the following:

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

2. Respondent is a person within the meaning of Section 403.031(5), F.S.

3. Respondent is the owner and is responsible for the operation of the Apalachicola Waste Water Treatment Plant ("WWTP"), a 1.00 MGD annual average daily flow advanced wastewater treatment facility ("AADF") with effluent disposal to 1.00 MGD annual average daily flow slow-rate public access system ("Facility"). The Facility is operated under Wastewater Permit No. FLA038857 ("Permit"), which was issued on October 27, 2014 and expired on October 26, 2019. The Facility is located on Us Hwy 98, South of Apalachicola Airport, Apalachicola, FL 32320 in Franklin County, Florida ("Property"). Respondent owns the Property on which the Facility is located.

4. The Department conducted an inspection on July 26, 2019 and finds that the following violations occurred:

a) Respondent bypassed the grit removal system at the Facility headworks. The bypass is a violation of Permit Condition IX.22., Rule 62-620.610(22), F.A.C., and Section 403.161(1)(b), F.S.

b) Respondent failed to meet the deadlines for in the permit compliance schedules to develop and implement a closure plan for the receiving wetlands. These requirements are in violation of Permit Condition VI.1. and Section 403.161(1)(b), F.S.

c) Respondent failed to timely submit Discharge Monitoring Reports ("DMR"). From December 2017 till March 2019, Respondent submitted ten DMRs more than 30 days late. Respondent's untimely submission of the DMRs are in violation of Permit Condition I.B.8, Rule 62-620.610(18), F.A.C. and Section 403.161(1)(b), F.S.

d) Respondent failed to properly calibrate the Facility's lab equipment. The Facility's primary calibration standard for its chlorine meter was out of date and not refrigerated. The Facility's pH 10 buffer was out of date. The Facility's thermometers were not calibrated annually. Respondent's failures to ensure that sampling and monitoring data for chlorine, pH, and temperature were collected in accordance with 62-621, F.A.C., and DEP SOPs, are in violation of Permit Condition V.C.1., Rule 62-620.610(18), F.A.C., and Section 403.161(1)(b)

e) Respondent failed to maintain various parts of the Facility including: the headworks (micro bar screen, dumpster screens, plant walkways, grit chamber, excessive solids and trash), influent pipe, influent valve, Single Batch Reactors (SBRs), blowers, alum storage tanks, filters, and geotube area. Failure to properly maintain the Facility is a violation of Permit Condition IX.7., Rules 62-600.410(1), and 62-620.610(7) F.A.C, and Section 403.161(1)(b), F.S.

f) Respondent failed to maintain the influent and effluent flow meters. The Facility's meters have been reportedly non-operational since February 2019. Failure to maintain the influent and effluent flow meters is a violation of Permit Condition I.B.4., Rule 62-620.610(7), and Section 403.161(1)(b), F.S.

g) Respondent failed to submit a cross connection control program. Failure to submit this program is a violation of Permit Condition IV.A.5., Rules 62-555.360 and 62-610.469(7) F.A.C., and Section 403.161(1)(b), F.S.

h) Respondent failed to conduct proper sampling. The Facility's influent auto sampler was not operational at the time of inspection. The Facility was not conducting flow proportionate sampling for its effluent or influent. Failure to conduct proper sampling is

a violation of Permit Condition IX.7. and I.A.1., as well as, Rule 62-160.400, F.A.C., -DEP SOP FS 2400 2.1.1., and Section 403.161(1)(b), F.S.

i) Respondent reported effluent quality monitoring results above the Facility's permit limits for Total Suspended Solids ("TSS") for January of 2018 and May, June, July August, and October of 2019. These permit limit exceedances are a violation of Permit Condition I.A.1. and Rule 62-600.410(1), F.A.C., and Section 403.161(1)(b), F.S.

j) Respondent reported groundwater quality monitoring results above the Facility's permit limits for Total Dissolved Solids ("TDS") for December 2018. This permit limit exceedance is a violation of Permit Condition III.10. and Rule 62-600.410(1), F.A.C., and Section 403.161(1)(b), F.S.

k) Respondent failed to notify the Northwest District and obtain a permit modification for of switching from drying beds to geotubes for biosolids treatment. Failure to notify the Department and obtain a permit modification, when required, is a violation of Permit Condition IX.16. and Section 403.161(1)(b), F.S.

l) The Department received Respondent's permit renewal application on September 19, 2019. Respondent failed to submit a complete application by the permit's expiration date of October 26, 2019, and is operating without a valid permit. Failure to operate with an appropriate and valid permit issued by the Department is a violation of Rule 62-620.300 (2), F.A.C., and Section 403.161(1)(b), F.S.

m) Respondent failed to provide information necessary to determine compliance with the Facility's Permit within a reasonable time. The Department requested this information in its September 10, 2019, Warning Letter, however Respondent did not provide the information until January 14, 2020. Failure to timely provide information needed to determine compliance with the permit is a violation of Permit Condition X.11. and Rule 62-620.610(11), F.A.C., and Section 403.161(1)(b), F.S.

n) Respondent reported pathogen monitoring results above the Facility's permit limits for oocysts of *Cryptosporidium* for September 2019. Respondent failed to re-sample pathogen monitoring within 90 days of the failed pathogen monitoring test. This failure to resample and submit the results to the Department is in violation of Permit Condition I.B.5. and Rule 62-610.300(4)(a), F.A.C., and Section 403.161(1)(b), F.S.

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

ORDERED:

5. Respondent shall comply with the following corrective actions by the scheduled completion dates. Respondent shall ensure that it obtains proper permits if corrective actions below require additional permitting or modification of existing permits.

Table 1 Corrective action descriptions and their respectively scheduled dues dates

Corrective Action Description	Scheduled Completion Date
i. Complete any corrective actions based on corrosion study at the headworks and SBRs.	June 30, 2020
ii. Complete repair of the effluent flow meter	June 30, 2020
iii. Complete repair of the effluent pump.	June 30, 2020
iv. Complete repair of influent valve.	June 30, 2020
v. Complete repairs to blowers 2 and 5.	June 30, 2020
vi. Complete repair of the alum feed tank.	June 30, 2020
vii. Submit a completed cross connection control plan required for Part III Reuse for Department review and approval.	June 30, 2020
viii. Complete repair of filter 1.	July 31, 2020
ix. Complete repairs to the wet weather and reject ponds	July 31, 2021
x. Complete maintenance and installation of the grit removal system.	July 31, 2022
xi. Complete abandonment of digester	July 31, 2022
xii. Complete maintenance of SBR 1.	July 31, 2023

a) Respondent shall complete construction of the modifications developed pursuant to paragraph 5 and submit a Certification of Completion, prepared and sealed by a professional engineer registered in the State of Florida, stating that modifications to the Facility, effluent disposal system, and collection system have been constructed in accordance with the provisions of the Permit. Respondent shall submit the Certification of Completion to the department prior to placing the newly constructed facility, or modified portion of an existing facility into operation.

b) In the event the Department requires additional information to process the permit application, the Respondent shall provide a written response containing the information requested by the Department within 30 days of the date of the request.

6. Within 30 days of the effective date of this order, Respondent shall provide the Department a written plan describing how the buffers, standards and lab equipment will be maintained and certified.

7. Within 30 days of the effective date of this Order, Respondent shall begin sampling in accordance with DEP SOP "FS 2400 Wastewater Sampling," Section 2.1.1., and provide the Department with a written standard operating procedure for sampling at the Facility. DEP SOP "FS 2400 Wastewater Sampling" is available at <https://floridadep.gov/dear/quality-assurance/content/dep-sops>.

8. Respondent shall develop and implement a closure plan for the receiving wetlands, in accordance with Exhibit II:

a) Within 30 days of the effective date of this Order, Respondent shall submit the Second Study Report and a proposed schedule for completing the remaining components of the Closure Plan for Receiving Wetlands pursuant to Permit Condition VI.1. The schedule will include a time-frame for completion of the wetland rehabilitation plan, if needed, and final assessment of the wetland rehabilitation plan.

b) Within 180 days of submitting the Second Study Report, if needed, Respondent shall submit a detailed wetland rehabilitation plan to the Department for approval. Respondent shall use data from the study to develop the rehabilitation plan, which shall include a clear set of objectives and established target criteria to meet those objectives.

c) Within 30 days of Department approval, Respondent shall implement the rehabilitation plan; allowing for changes and modifications as necessary (adaptive management strategy as described in Exhibit II), as approved by the Department.

d) No later than three years from the effective date of this order, Respondent shall submit the final assessment of the rehabilitation plan for the permitted receiving wetland area to the Department.

9. Within 15 days of the effective date of this Order, Respondent shall retain the services of a professional engineer, registered in the State of Florida, to accomplish all of the following:

a) Within 30 Days of retaining a professional engineer, the Respondent shall, have the engineer evaluate the Facility, including the effluent disposal system and associated collection system, to discover the cause or causes of the noncompliance as described in paragraph 4 and 5 here-in. The Respondent shall submit the findings of the engineering evaluation to the Department.

b) Within 30 days of evaluation, the Respondent shall design modifications of the Facility, effluent disposal system, and collection systems to ensure the Facility and effluent disposal system will function in full and consistent compliance with all applicable rules of the Department.

10. Every calendar quarter after the effective date of this Order and continuing until all corrective actions have been completed, Respondent shall submit to the Department a written report containing information as follows:

a) The current status and progress of corrective actions being completed under Paragraphs 5-9 this Order,

b) Information about compliance or noncompliance with the timeframes and applicable requirements of this Order,

c) And any noncompliance that occurred during the reporting quarter. Respondent shall submit the reports to the Department within 30 days of the end of each quarter. Quarterly reports shall be due as follows: January-March reports shall be submitted by April 30; April-June reports shall be submitted by July 30; July-September reports shall be submitted by October 30; and October-December reports shall be submitted by January 1 of the following year.

11. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions required by paragraphs (5), (6), (7), (8), and (9) by July 31, 2023, and be in full compliance with Rules 62-160, 62-600, 62-610, 62-620 and 62-604, F.A.C., regardless of any intervening events or alternative time frames imposed in this Order, other than those excused delays agreed to by the Department, as described in paragraph 23.

12. Within 120 days of the effective date of this Order, Respondent shall submit to the Department for review, an updated Operation and Maintenance manual (O&M manual) to meet all requirements of 62-600.720, F.A.C. The O&M manual shall reflect recent facility alterations performed, and shall also include written operational and control procedures, preventative maintenance and repair procedures, and schedules for these activities.

13. Within 90 days of the effective date of this Order, Respondent shall submit a written estimate of the total cost of the corrective actions required by this Order to the Department. The written estimate shall identify the information the Respondent relied upon to provide the estimate.

14. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$10,500.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$10,000.00 for civil penalties and \$500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order.

15. In lieu of making cash payment of \$10,000.00 in civil penalties as set forth in paragraph 14 above, Respondent may elect to off-set this amount by implementing an in-kind penalty project, which must be approved by the Department. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility improvement project and may not be a corrective action requirement of the Order or otherwise required by law. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least \$15,000.00. If Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election by certified mail within 15 days of the effective date of this Consent Order. Notwithstanding the election to implement an in-kind project, payment of the remaining \$500.00 in costs must be paid within 30 days of the effective date of the Consent Order.

16. In the event Respondent elects to off-set stipulated penalties, by implementing an in-kind penalty project which is approved by the Department, during the period that this Order remains in effect or during the effective date(s) of any Department issued Permit to Respondent, whichever is longer, Respondent shall not transfer or use funds obtained by the

Respondent from the collection of wastewater rates for any purpose not related to the management, administration, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System (herein, Prohibited Transfer). Respondent shall annually submit a certification to the Department utilizing the Annual Certification Form in Exhibit I to this Order regarding the status of Prohibited Transfers. In the event of any Prohibited Transfer, the In-Kind project option shall be forfeited, and the entire stipulated penalty shall immediately become due and owing to the Department irrespective of any expenditures by the Respondent in furtherance of the In-Kind project.

17. If Respondent elects to implement an in-kind project as provided in paragraph 15 then Respondent shall comply with all of the requirements and time frames in Exhibit I, entitled In-Kind Projects.

18. Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph(s) (5), (6), (7), (8), (9), (10), (11), (12), (13), (15), (16), and (17) of this Order. Respondent also agrees to pay the Department stipulated penalties in the amount of \$500.00 for any failure to timely submit DMRs in compliance with the permit violation of the DMR submittals. Respondent also agrees to pay the Department stipulated penalties in the amount of \$1000.00 for any violation of effluent water quality standard. The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment and shall do so as further described in paragraph 19, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 14 of this Order.

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

final, effective and filed with the Clerk of the Department before ability to make online payment is available.

20. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Assistant District Director, Department of Environmental Protection, Florida Department of Environmental Protection, Northwest District Office, 160 West Government St., Pensacola, FL 32502.

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

22. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Order.

23. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these

measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

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

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

26. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

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

28. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, F.S.

29. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of

the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

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

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

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

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF CONSENT ORDER

The Department of Environmental Protection ("Department") gives notice of agency action of entering into a Consent Order with CITY OF APALACHICOLA pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the Domestic Wastewater issues at the Apalachicola WWTP, located on Us Hwy 98, South of Apalachicola Airport, Apalachicola, FL 32320 in Franklin County, Florida. The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Northwest District Office, 160 West Government St., Pensacola, FL 32502.

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

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

- a) The OGC Number assigned to this Consent Order;

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

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at Florida Department of Environmental Protection, Northwest District Office, 160 West Government St., Pensacola, FL 32502. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

Rules referenced in this Order are available at
<http://www.dep.state.fl.us/legal/Rules/rulelist.htm>.

FOR THE RESPONDENT:

By: _____
Kevin Begos, Mayor
City of Apalachicola

DONE AND ORDERED this ___ day of _____, 20___, in Escambia County,
Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Elizabeth Orr
Interim District Director
Northwest District

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

Clerk

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35

Exhibit I
In-Kind Projects

I. Introduction

Proposal

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

Proposal Certification Form

b. The proposal shall also include a Certification by notarized affidavit from a senior management official for City of Apalachicola who shall testify as follows:

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

A. I am a person with management responsibilities for City of Apalachicola budget and finances. During the six month period prior to the effective date of Consent Order OGC Case No.: 20-0841 there has not been any transfer or use of funds obtained by the City of Apalachicola from the collection of sewer rates for any purpose not related to the management, administration, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System.

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

Sworn to and subscribed before me, by means of physical presence or online notarization, this ____ day of _____, 20__ by

Personally, known or by Production of the following Identification _____

Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires:

Commission/Serial No.:

Annual Certification Form

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

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

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

Sworn to and subscribed before me, by means of physical presence or online notarization, this ____ day of _____, 20__ by

Personally, known or by Production of the following Identification _____
Notary Public, State of Florida
Printed/typed or stamped name:
My Commission Expires:
Commission/Serial No.:

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

d. If upon review of the in-kind project proposal, the Department determines that the project cannot be accepted due to a substantially incomplete proposal or due to substantial deficiencies with minimum Department guidelines; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the proposal. Respondent shall correct and redress all the matters at issue and submit, by certified mail, a new proposal within 30 days of receipt of written notice. In the event that the revised proposal is not approved by the Department, Respondent shall make cash payment of the civil penalties as set forth in paragraph 14 above, within 30 days of Department notice.

e. Within 120 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable Respondent shall obtain approval for an in-kind project from the Department. If an in-kind project proposal is not approved by the Department within 120 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable then Respondent shall make cash payment of the civil penalties as set forth in paragraph 14 above, within 30 days of Department notice.

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

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

h. In the event, Respondent fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project or otherwise fails to comply with any provision of this paragraph, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalties shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the \$15,000.00 penalty, no additional penalties shall be assessed under paragraph 18 for failure to complete the requirement of this paragraph.

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

j. If upon review of the notification of completion, the Department determines that the project cannot be accepted due to a substantially incomplete notification of completion or

due to substantial deviations from the approved in-kind project; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the project. Respondent shall correct and redress all the matters at issue and submit, by certified mail, a new notification of completion within 15 days of receipt of the Department's notice. If upon review of the new submittal, the Department determines that the in-kind project is still incomplete or not in accordance with the approved proposal, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalty shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the \$15,000.00, no additional penalties shall be assessed under paragraph 18 for failure to complete the requirements of this paragraph.

Exhibit II

Closure Plan for Receiving Wetlands

(FLA038857-016-DW1P/NR)

Closure Plan for Receiving Wetland

- a. Historically, the area permitted for effluent disposal in Permit No. FL0038857 (Major) (sometimes referred to Huckleberry Swamp, but herein referred to as the "permitted receiving wetland") was described as a blackgum swamp and a titi shrub swamp bordered by flatwoods that were previously logged and planted with slash pine. Four wetland community types occurred within the project site: titi/ early successional mixed shrub swamp, titi shrub swamp, bay swamp, and blackgum deepwater swamp (see attached figure). In nearly all of the four vegetative communities sphagnum is indicated as an abundant ground cover with other herbaceous species listed such as peat moss and sedges.
- b. Approach to Wetland Assessment
 - 1) In accordance with "An Introduction and User's Guide to Wetland Restoration, Creation, and Enhancement" developed by the Interagency Workgroup on Wetland Restoration: National Oceanic and Atmospheric Administration, Environmental Protection Agency, Army Corps of Engineers, Fish and Wildlife Service, and Natural Resources Conservation Service in 2003, the best approach to rehabilitating a wetland is to use the simplest methods possible, implementing only those actions that have been determined necessary to reestablish natural wetland processes onsite. Implementation should be achieved through the least destructive means and the most ecologically sound solutions, using passive methods before more active interventions. Passive methods allow natural regeneration of wetland plant communities, natural re-colonization by animals, and re-establishment of wetland hydrology and soils.
 - 2) The programmatic goals of the rehabilitation, if necessary, of the permitted receiving wetland is to restore wetland benefits and functions as closely as possible to a palustrine shrub-bog wetland typical to the Big Bend region, while taking into account natural succession and current conditions which will not necessarily return the project wetlands exactly to pre-existing conditions.
 - 3) The Respondent shall submit a study to DEP documenting the types of wetlands currently existing in the permitted receiving wetland, and conduct an assessment of the condition of the upper creek of Huckleberry Creek located between the culvert under Moses Road and the south side of the train trestle. See Attachment A for study locations. The study for the permitted receiving wetland shall include an assessment of the wetland characteristics, including vegetative and benthic

macroinvertebrate communities and the density of those communities, hydrology, soil, and water quality which includes an analysis of the existing Wetland Condition Index (WCI) for the permitted receiving wetland area. The upper creek assessment will include a description of the condition of the upper creek, including vegetative and biological communities, water quality, measurement of bottom sediment thickness, quantification of tussocks (number of tussocks and dimensions of each), an analysis of the existing Stream Condition Index (CSI), and any recommendations on rehabilitation that are appropriate for the upper creek. No further assessment study of the upper creek will be required after this initial assessment and proposed rehabilitation recommendations. The Respondent will not be required to implement any proposed rehabilitation recommendations described in the assessment study for the upper creek area described above, and identified in Attachment A.

- 4) After all discharges to the receiving wetland cease, the Respondent shall allow the permitted receiving wetland to return to its natural hydro-period and to re-vegetate naturally and to allow natural fires.
- 5) The program objectives and target criteria shall be determined based on the second study of the permitted receiving wetland. Adaptive management shall be applied to the program which will allow the objectives and management strategies to be refined as necessary during the course of program implementation. For instance, understanding the hydrology of the wetland system is critical to success of rehabilitation. Often it is necessary to refine management schemes and objectives (e.g., prevalence of certain vegetative communities) based on a better understanding of the natural hydrology that exists on the project wetland, which may take more than the one year of study. If indicated by the results of the study, the Respondent shall undertake further drying methods and supervised burning to remove accumulated biomass and debris in order to maintain wetland structure, particularly in titi shrub swamp communities, as well as others. These types of approaches are simplest and least expensive to execute and may achieve the greatest return, given time. However, when the passive approaches are not enough to rehabilitate the natural system, active approaches, such as controlled burning, removal of exotics and/or other methods to be determined based on best scientific practices shall be used until the program objectives and target criteria have been met.

