

CITY OF MIAMI BEACH OFFICE OF THE INSPECTOR GENERAL



FINAL REPORT

OIG Report No. 21-15

Indian Creek Project

November 15, 2022

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EXECUTIVE SUMMARY

This report reviews the design and construction of a state-owned stormwater drainage system along Indian Creek Drive between 25th St. and 41st St. (project) that was managed by the City of Miami Beach Public Works Department (Public Works) under a joint funding agreement with the Florida Department of Transportation (FDOT).

The report chronicles the events regarding an urgently needed public enterprise that began with the best of intentions and ended as a cautionary tale that holds important lessons for elected and appointed leaders of any local government in Florida that may be upgrading its drainage infrastructure to counter the effects of sea level rise.

The report's account of events that unfolded over a period of seven years, as well as its findings and recommendations, are based on a review and analysis of many thousands of pages of documents, recordings of meetings between City staff and the project's contractors, as well as statements provided to the OIG by current and former City and State officials and staff, and other participants, including more than a dozen licensed professional engineers.

The body of evidence establishes that a combination of factors led to the extremely high cost escalations and ballooning timeline of the project, including the failure to use the competitive bidding process; the use of job order contracts with higher unit costs intended for smaller scale projects; the repetitive use of "emergency" procurements to circumvent procurement procedures; permitting violations; failure to comply with the agreement with the Florida Department of Transportation; political pressure placed on City staff by elected and appointed officials; and poor project management. A disregard for the fundamental concepts of acquisition planning, engineering design, and construction management caused the project's cost to double from \$25.4 million to more than \$50 million and extended the project completion by four years.

At the center of the project was a City Engineer, serving as project manager, whose actions led to a perception that he was licensed by the City Administration, the City Commission, and its Blue Ribbon Panel, to bend and even violate the rules, regulations, and laws that apply to the construction of stormwater drainage systems and the reconstruction of seawalls.

During the 2013 City of Miami Beach election, then mayoral candidate Philip Levine, who promised to accelerate the construction of more effective stormwater drainage projects to reduce flooding, adopted the slogan "Get it Done," and appeared in campaign videos paddling a kayak down a flooded City street. On his first day in office, Levine distributed a memorandum by email that established an advisory board with a broad mandate to oversee the "City's response to flooding, including storm water and the effects of sea level rise, and assisting with the implementation of a comprehensive flood management plan for the City of Miami Beach."

Levine's email stated, "Because the flooding epidemic on Miami Beach is of such great importance and must be tackled on an emergency basis, I have formed a Blue-Ribbon Panel on Flooding Mitigation consisting of qualified Miami Beach residents." Levine appointed Scott Robins, a business partner, to serve as chairman. His memorandum granted the Mayor's panel "powers and duties," official functions, and citywide responsibilities commensurate to those established in the City Charter for the City Manager. These included the "authority to meet directly with City staff", hire an engineering firm to serve as the Committee's in-house consultant, review

budgets, propose changes to the City's planning, zoning, and building design practices, and "evaluate and recommend all necessary" consultants and contractors.

The authority granted to the Mayor's Blue-Ribbon Panel also included the oversight, in an advisory capacity, of flood mitigation projects, from design through construction and to "recommend a necessary course of action to mitigate flooding including immediate action (emergency basis) projects."

The starting point for the Panel's work was the City's recently revised Stormwater Master Plan. Between 2010 and 2013 former Mayor Matti Bower Herrera and the Commission adopted an updated Master Plan and design criteria for new drainage systems based on the projected rate of sea level rise. This established a minimum Level of Service standard to ensure that new systems have the drainage capacity to prevent flooding of buildings and streets that made arterial roads impassable for emergency vehicles during a five-year design storm with six inches of rain in twenty-four hours.

Six weeks into his tenure as Mayor, Levine delivered on his campaign promise to accelerate the construction of stormwater drainage systems to provide better protection against flooding. On Feb 12, 2014, the Commission voted to waive the competitive bid requirement to procure emergency design and construction services for the remaining stormwater pump stations for 6th, 10th, and 14th Streets. Acting on a recommendation from the Mayor's Panel, the Commission voted the same day to raise the baseline tailwater boundary condition from 0.5 feet to 2.7 feet above local sea level, an increase of 350 percent. The Panel's Chair, Scott Robins, indicated that the City's previously established twenty-year timeline for completing the design and construction of \$200 million in new drainage projects could be completed in "perhaps two to five years." The Commission's message to the City's Public Works Department was clear; build more drainage systems; build them faster; and build them to provide a dramatically higher capacity to prevent flooding of buildings and major roads.

A major emphasis of Levine's tenure was the lawful use of the Commission's authority to declare flooding a public emergency, justifying the waiver of provisions in the City's procurement ordinance that required the competitive award of engineering and construction contracts. A primary purpose of these waivers was to compress or eliminate the acquisition plans and engineering studies that usually occur during the pre-construction phase of such projects. The practical effect of this procurement strategy was to suspend and greatly limit activities that are considered essential to the success of major construction projects, including documenting a project's requirements and technical specifications; estimating costs and identifying funding; reducing costs through economies of scale; engineering design and preparation of construction plans; establishing a manageable schedule; and complying with permitting and regulatory requirements.

Discussions between the City and the Florida Department of Transportation regarding the Indian Creek project began in 2015. Various conceptual designs were proposed and considered. Following months of negotiations between City staff and their counterparts in FDOT's District Six office in Miami, the parties reached a verbal agreement in 2016 on the terms of a draft Department Funded Agreement (DFA) for a \$25.4 million Design-Build construction project along Indian Creek Drive between 26th St. and 41st St. The scope of work for the Design-Build project included a stormwater drainage system and pumping station at 32nd St., and related roadway infrastructure that included a continuous concrete wall or levee in the state right-of-way to prevent flooding from water that overtopped the adjacent creek's dilapidated seawall.

In addition to underwriting 78 percent of the project's cost, FDOT also agreed to the City's request to be allowed to manage all aspects of the project. In exchange for, and in consideration of, FDOT's commitment to cover three-fourths of the project's cost, the City agreed to use a Design-Build construction process, an expedited arrangement that assigns both design and construction responsibilities to a single contractor; to comply with the procurement ordinance in the City Code and provisions in Florida law that govern the use of such contracts by public agencies; and to adhere to FDOT standards for designing drainage systems and managing construction projects. The practical effect of the contractual obligations the City agreed to meet was to require the Public Works Department to adopt and adhere to the proven system of internal controls that FDOT relies on to ensure the success of major construction projects.

The commitment by the City was short-lived. In response to the perceived pressure to begin construction, City staff concluded that they could not afford the time it would take to march through the planning and design phase of a Design-Build contract, and, further, that strict compliance with FDOT standards would also hamper their efforts to do as Mayor Levine had asked, "Get it Done."

During a March 9, 2016 Commission meeting, former City Manager Jimmy Morales and Public Works Director Eric Carpenter obtained Commission approval for cost sharing for the Indian Creek project between the City and the Florida Department of Transportation. The approved resolution authorized the City to negotiate a final agreement. As those negotiations proceeded it was Public Works' goal to minimize or remove what they considered overly "stringent" procurement requirements in the agreement established by FDOT and to secure additional state funding. This last concern was based on estimates by engineering consultant AECOM that the project would likely cost an additional \$8 million if replacement of the seawall were included.

In the months that followed, the City continued to press FDOT to agree to modify or remove provisions in the draft Department Funded Agreement that required compliance with Florida law and FDOT standards. These back-and-forth negotiations continued for six months. During this interregnum and without FDOT's approval, the Public Works Department began construction. At the Department's request, the Commission awarded unit price contracts to David Mancini & Sons Inc. (DMSI) to install the drainage system's trunkline and the associated road construction. Similarly, the Commission awarded an expensive unit price contract to Shoreline Foundation to begin replacing sections of the seawall.

The Commission also awarded a contract to Ribbeck Engineering, Inc. to develop the project's Design Criteria Package (DCP) and to prepare construction plans. It did so after declaring a public emergency in order to waive the conflict-of-interest provisions in Florida law that prohibit an engineer, who develops a DCP and Request for Proposal (RFP) for a public agency during the design phase of a Design-Build contract, from also preparing the construction plans for the project's build phase.

These official actions set the stage for City Engineer Bruce Mowry, the City's designated project manager, to proceed with what was intended to be a Design-Build construction project that, in fact, would be designed and built in increments contrary to the Design-Build process. As DMSI proceeded to complete one section of the drainage system or roadway construction, Ribbeck would develop plans for the next, moving at a tempo that often did not allow time for FDOT to approve the new set of plans.

Concurrent with these efforts on the ground, the City Attorney's office retained outside law firms to lobby senior officials in Tallahassee and prepare for possible litigation against FDOT in Miami.

This was part of a multi-faceted strategy by the City Administration to pressure FDOT into approving a version of the DFA that did not expressly require the use of a competitively bid and awarded Design-Build contract.

Telling evidence of the unintended consequences and costs of accommodating Mayor Levine's urgent policy objectives is the sequence of events that occurred when the project was temporarily stopped in August 2017, after regulators discovered that Mowry had authorized construction on a section of the seawall in violation of the permit issued by DERM and without obtaining a permit from the Army Corps of Engineers. In spite of the temporary stop, the City tried to move forward and proposed to FDOT that DMSI complete construction of the rest of the project. The agency refused, and again asked that the City utilize a competitively bid and awarded contract. For the next 18 months, the City spent time and resources resolving the permitting violations and further negotiating with FDOT to complete the project.

Ultimately, Carpenter directed Shoreline to stop work on the seawall. Shoreline complied, leaving behind a half-finished seawall with several sections partially constructed. DMSI continued installing the trunkline and then demobilized, ending its work on the project and leaving behind a pump station that was at risk of collapsing when all three pumps became operational. The City Engineer was fired.

Public Works and FDOT worked on solicitation documents for a competitive procurement to award an ITB construction contract to complete the project. Because of irregularities in the first round of bidding, award of the \$14 million contract to finish the stormwater drainage system was delayed until 2019. To begin that work, the City had to pay Ribbeck Engineer Inc. to complete the still unfinished construction plans. Soon after construction began, the contractor discovered the instability of the pump station, and worse, that sinkholes had appeared along sections of the unfinished seawall adjacent to the state road. Concurrently, residents in the neighborhood asked the City to move the pumping station's generator to another location.

Ultimately, the Commission approved an additional \$5 million in construction work to move the generator to another location; install sheet pile along sections of the state road to prevent sinkholes from undermining the pavement; and install support struts to prevent the pump station from collapsing into Indian Creek.

As set forth below, the City's lawful, but rushed efforts to begin construction before completing pre-construction planning and design tasks, resulted in the waste of millions of dollars in state and local funding, delayed completion of the project by at least three years, and caused reputational damage with FDOT as well as a loss of public confidence in the City's ability to manage major construction projects.

INTRODUCTION

The scope of this report was broadened from its original inception to include, in addition to permitting violations in connection with seawall construction, a detailed historical analysis of the various aspects of the Indian Creek Stormwater Drainage Project deemed to be of importance to the City's ongoing and pathbreaking resiliency projects. Projects of this type are expected to continue well into the future and to involve expenditures of hundreds of millions of dollars in public funds. The substantial time and effort involved to produce the report was appropriate in view of the importance of the issues that were identified during this comprehensive investigation and the likelihood that the City will encounter similar issues as the battle to address flooding and sea-level rise continues.

The report could not have been completed without the cooperation of present and former City staff as well as that of City contractors and consultants who provided candid testimony and pertinent information to the OIG during the investigation and in response to the draft report. Additionally, the OIG acknowledges the paralegals, legal staff, Engineers and District 6 Directors from the Florida Department of Transportation who were generous with their time and impressively responsive to our public records requests. The information provided has led to revisions and corrections to this report that have improved its accuracy. The OIG recognizes and appreciates the expertise of those who have contributed to the report by taking the time to review it and offer their comments and constructive criticisms. The OIG also recognizes the substantial contribution made by former OIG Investigator Jim McGee to the researching and writing of the draft report.

The report contains, by necessity, an account of inappropriate and wasteful practices by the City including the failure to use the competitive bidding process; the use of job order contracts with higher unit costs intended for smaller scale projects; the repetitive use of "emergency" procurements to circumvent procurement procedures; permitting violations; failure to comply with the City's agreement with the Florida Department of Transportation; political pressure placed on City staff by elected and appointed officials; and poor project management. The City's wasteful practices were the root cause of the extremely high-cost escalations and scope expansion that increased the project cost from \$25.4 million to more than \$50 million and extended the completion of the project by four years.

While the report makes it clear that the decisions and actions made and taken throughout the project were serious and costly to the City and the State of Florida, the primary purpose of this report is not the assessment of blame, but rather the identification of systemic weaknesses and lack of internal controls that led to significant problems. The City has already taken steps to improve upon past performance by adopting a Management Policy for Major Construction Projects, the product of collaboration between City staff and the OIG.

There is more to be done in increasing the City's vigilance in the oversight of major resiliency projects critical to its future. It is hoped that the value of this report lies in a contribution to greater understanding of the potential pitfalls involved in these projects and a commitment to adhere to well-established laws, rules, and processes for efficient project management to the benefit of those who live and work in the City of Miami Beach.

PART I: BACKGROUND ON CITY DRAINAGE PROJECTS AND THE USE OF EMERGENCY CONTRACTING

JANUARY 2010 to JANUARY 2015

Between 2010 and 2013, two events occurred in the City of Miami Beach that caused flood mitigation and procurement integrity to become issues in the 2013 mayoral election. These events also set the stage for a series of decisions that resulted in the waste of millions of dollars during the Indian Creek project.

The first event was the Commission's approval, in 2011, of an updated Stormwater Master Plan to replace the City's outdated gravity-based stormwater system with a modern pump-based drainage system. In the process, the Commission raised the Level of Service performance standard for new stormwater drainage systems and required that they prevent the flooding of buildings during storms with rainfall equivalent to a 5-year design storm with up to six inches of rain in a 24-hour period.

The design of a new drainage system determines the size and capacity of the new system's pipes and pumping stations based on the stormwater basin size (usually measured in acres) of the drainage area it is designed to serve. When issuing new permits for stormwater systems, regulatory agencies require the submission of technical reports, known as drainage studies, demonstrating that a new system will not cause flooding or pollute nearby bodies of water. Drainage studies are based on computer modeling that estimates whether a new system has the drainage capacity to meet minimum water quantity and water quality standards.

Given the number of state roads and state-owned drainage systems in Miami Beach, the Master Plan acknowledged that it made sense to align the City's design criteria with those used by the Florida Department of Transportation (FDOT). FDOT uses Mean High Tide, or Mean High Water, to establish the tailwater boundary condition for new drainage systems. According to the Master Plan, "For consistency of comparisons, the stormwater master plan design storm simulations used a design tidal tailwater elevation of 0.5 ft NAVD [North American Vertical Datum of 1988 - a measurement of sea level]," that "conservatively approximates the tidal boundary condition elevation used by FDOT." The Master Plan said FDOT was planning to use a tailwater boundary condition of 0.45 ft. NAVD to upgrade the state-owned drainage system along Alton Road.

The decision to raise the design criteria for construction of drainage systems that provide a higher level of service (protection from flooding), requires a cost-benefit analysis assessing how much flood protection the City can afford to build into new drainage systems, and the land available for larger pumping stations. Based on the City's estimates of the funding it expected to have available for construction of new drainage systems, the City's engineering consultant, AECOM, recommended, and the Commission approved, a 20-year plan to spend \$206 million building drainage systems (See Figure #1 below).

FINANCING

	0-5 Years	5-10 Years	10-15 Years	15-20 Years	Total
Biscayne Point				11	11
North Shore		7			7
North Shore (72nd Street)			10		10
Normandy Isle			20		20
Upper La Gorce*		11		1	12
Lower La Gorce*	12			2	14
La Gorce Island/Allison Island			9		9
Oceanfront			0.3		0.3
Nautilus				4	4
Sunset Islands 3 & 4*	3				3
Flamingo/West Avenue	47			59	106
Adjustment for higher sea level rise			2	4	10
Total	62	29	34.3	81	206.3

* Under design

+ Does not include \$6M in RDA funding

\$50M currently funded
\$5M req'd additionally



Figure #1. City of Miami Beach slide depicting the financing of the 20-year plan adopted by the Commission in 2011 to spend \$206 million for the construction of stormwater drainage systems with pumping stations in flood-prone neighborhoods.

By the end of 2013, the City had built new pumping stations in Sunset Harbour and other flood-prone neighborhoods and had others under active construction or moving through the design phase of the procurement process.

However, despite the completed stormwater construction projects, flooding remained a persistent frustration in Miami Beach and a source of embarrassment to the City Administration, especially during annual King Tides when seawater backed up through stormwater pipes and into streets. During the 2013 election, Philip Levine ran on the issue with commercials that included scenes of flooded roads with the message, "The Levine Plan: Fix Our Streets. Stop the Flooding." He adopted the campaign slogan, "Get it Done," a reference to accelerating the City's plans to build a modern drainage system that could prevent flooding.

The second event that influenced the 2013 mayoral election was the arrest of former Procurement Director Gus Lopez on bribery and other corruption charges for conducting a bid-rigging scheme for the award of Job Order Contracts (JOCs), expedited contracts usually reserved for small projects, without competitive bidding for the contract award. The arrest affidavit described payments to a consultant, who was working in tandem with Lopez, and who was retained by 31 City contractors for help in winning job order contracts. The consultant then split the payments with Lopez. During the 2013 campaign, City Commission candidate Joy Malakoff declared that

she had decided to run in response to the “scandal, lack of accountability, mismanagement, corruption, divisiveness, and negative press about our City.”

None of the 31 contractors paying the consultant were charged in the bid-rigging case. In the aftermath of Lopez’s arrest, the City Administration retained a law firm to review the actions of the contractors and determine whether they justified debarment from competing for City contracts. The outside investigation concluded that the contractors were not aware that a portion of the fee they paid to the consultant was a bribe for Lopez, and none of them were debarred.

The law firm’s report described the facts and circumstances that had allowed the bid-rigging scheme to occur. In the excerpt below, the section underlined in bold type is material to the OIG’s evaluation of the Indian Creek project. The law firm’s report said in part:

In 2002, the City created the JOC program and entered into an agreement with the Gordian Group to manage the program and oversee the contractors. ...the City’s JOC Program is a construction program focused on managing projects ranging from several thousands of dollars to multi-million-dollar capital projects...Lopez allegedly assisted [the consultant] by exerting his influence as the Procurement Director and providing... **exclusive information and/or advice, with the intent of [the consultant’s] clients obtaining a competitive advantage that was not made available to other competing companies or the public.** In addition, as the City’s Procurement Director...Mr. Lopez **served as the City’s point of contact for the JOC Program.** When a City department sought to utilize a JOC contractor for a specified project, **Mr. Lopez was responsible for determining which contractor from the pre-approved rotational list would be selected to perform the requested work.**” (Emphasis added.)

The facts and circumstances documented in the law firm’s report contained the hallmarks of deficient internal controls and well-recognized indicators of the risk of procurement fraud. These included the following: the end-to-end control that Lopez had over the job order contracting process; his ability to decide which contractors on an approved list received a contract; and the lack of administrative review and separation of duties in the administration of the contracting process. As a result of the Gus Lopez arrest in October 2012, the City Administration suspended the use of job order contracts and, in mid-2013, commissioned the National Institute of Government Procurement (NIGP) to review the City’s procurement code.

In July 2013, the NIGP’s report recommended that the City use a competitive bidding process to award major construction contracts over \$50,000 and listed the standard contracting and project delivery methods. The report said, "These five delivery methods are Design-Bid-Build (including Construction Management At-Risk as a permitted variation), Design-Build, Design-Build-Operate-Maintain, Design-Build-Finance-Operate-Maintain, and Operations and Maintenance."

The NIGP report said, "**These methods of delivery should be authorized by the ordinance and include provisions for the competitive award of contracts for architectural, engineering and other professional services.**" (Emphasis added.)

The NIGP recommendations mirrored applicable provisions in Florida law. Instead of adopting a new section of the procurement ordinance, the NIGP report said the Commission could adopt by reference the “construction procurement process that has already been developed, such as Florida Statute, Title XVIII, Chapter 255,” and observed that, “This section should address the

appropriate procurement process (competitive sealed bid) and be used for typical design-bid-build construction procurement.”

Levine and Malakoff were both elected. Levine received 50 percent of the votes cast for mayor in a race with four candidates, an outcome he viewed as a mandate from voters to take charge of the City’s ongoing efforts to reduce flooding and accelerate the construction of pumping stations and other stormwater infrastructure.

Levine’s term as Mayor began January 6, 2014. One of his first official acts was to establish an advisory board known, as the Mayor’s Blue-Ribbon Panel on Flooding and Sea Level Rise, (Mayor’s Panel), with the authority to take control of the planning and implementation of the City’s flood mitigation projects, programs, procurements, and the design and construction of stormwater drainage systems and associated roadway improvements.

Levine signed a memorandum that authorized the advisory board’s “duties and powers” to carry out its mission of overseeing “all aspects of the City’s response to flooding, sea level rise.” The board was given responsibility for recommending “immediate action [emergency basis] projects,” and “overseeing [in an advisory capacity] flood mitigation projects from design through construction,” and evaluating and recommending contractors and consultants the City retained to work on these projects.

To ensure that the board had the resources to operate as an effective oversight entity, Levine’s memorandum directed that the “City Manager shall” provide the Mayor’s Panel with secretarial and administrative support; “the City Attorney’s office shall” provide the board with legal services; and, as needed, the City would contract with an engineering firm “for the express purpose of working with the Panel,” as a technical consultant. Additionally, the memorandum authorized members of the Panel to “meet directly with City Staff,” report directly to the Mayor and Commission, and otherwise operate outside the chain-of-command that former City Manager Jimmy Morales relied on to manage City departments and administer the City’s projects, programs, and finances.

Levine appointed Miami Beach developer Scott Robins to serve as chairman of the Mayor’s Panel. Robins and Levine were friends and business partners in a limited liability corporation that owned seven buildings in Sunset Harbour and had been part of a joint public-private venture with the City to build a parking garage in that neighborhood. Robins shared Levine’s view that flooding was a public emergency that threatened the health, safety and economic welfare of Miami Beach.

In an interview with the OIG, Robins said that, prior to Levine’s election, he had been alarmed by flooding that occurred during 2013 in neighborhoods with newly constructed pumping stations. He said, “That really raised an alarming red flag from my perspective because here I was being told that things were being done to combat the effects of sea-level rise, and I would see projects that were completed and streets and sewer... and stormwater systems reopened only to flood immediately.”

During post-election discussions about appointing other members of the advisory board, Levine sent Robins an email that said, “We don’t need more people to study Global warming...we only need engineers to fix immediate problem now. We want this small and tight.”

In January 2014, Public Works Director Eric Carpenter and City Engineer Bruce Mowry completed preparations for a new Public Works project called “Sunset Harbour Pump Station No. 3 Improvements” that included construction of four gravity drainage wells, replacement of an

existing pumping station along 20th Street between Purdy Avenue and Alton Road, and the installation of pumping units in two existing stations at Maurice Gibb Memorial Park and Sunset Harbour Marina.

On January 7, 2014, Robins sent an email to Carpenter and Mowry that said, "In case you do not know, the Mayor has created a blue-ribbon panel to deal with all flooding and sea level rise issues. I have been appointed the chairman. We will be scheduling meetings soon to get up to date on all of our ongoing efforts in the near future. In the meantime, I would like to see what is planned for the upcoming work in Sunset Harbour."

Carpenter advised Robins that he could get a copy of the plans and technical specifications from Mowry. In an email to Robins the same day, Mowry provided a "summary of our thoughts on addressing the flooding" that anticipated several changes in design criteria that Levine and the Commission would adopt, such as increasing the level of service performance standard for new drainage systems up to a 5-year design storm with 7.5 inches of rain in a 24-hour period. Additionally, Mowry identified three issues that would be material to the Indian Creek project. These included raising the elevation of seawalls, blocking the intrusion of groundwater, and ending the use of thousands of publicly and privately-owned gravity wells and injection wells.

Meetings of the Mayor's Panel occurred approximately once a month during 2014, 2015, 2016, and 2017. Mowry provided updates on the status of construction projects managed by Public Works and responded to questions from Robins and the panel about technical issues. The City's Capital Improvement Projects (CIP) Director, David Martinez, provided updates on the status of projects being managed by CIP. Carpenter addressed issues of policy, administration, and funding. Video recordings of the sessions were posted to a City website. The Public Works Department staff prepared concise minutes of the panel's activities. These one-page summaries contained limited descriptions of extended discussions of policy options and the basis of decisions by Robins and the panel. These decisions resulted in actions by the City Commission that sustained and funded an emergency procurement strategy and the City's efforts to counter the effects of sea level rise.

Early on, Mowry was designated as the liaison between the Mayor's Panel and the City Administration, and in that role often set the agenda for the meetings of the advisory board, independent of his supervisor, Carpenter. During an OIG interview, Mowry said:

I was like the liaison between the City and Scott. He, Scott, was the chairman and I was the liaison. And so, Eric normally attended those meetings with me at the Blue-Ribbon Committee, but I was the actual liaison. But Eric was there. Also, David from CIP was there and we would review all projects of the city as far as drainage goes and elevations...

Policy decisions, procurements and budgets related to flood mitigation and stormwater drainage procurements were developed by Carpenter and Mowry and presented to Robins and the Mayor's Panel. In most cases, resolutions were drafted by Public Works based on directions Carpenter and Mowry received from Robins and the panel and were submitted directly to the Commission without the involvement of Morales.

In response to questions from the OIG about the override of his role as the City Manager, Morales said, "Your observation is correct. The Blue-Ribbon Committee was very proactive, met frequently, worked with staff, and their recommendations usually went straight to the Commission.

But in fairness, with the analysis done usually by the City staff and AECOM, the City's engineering consultant on the project.”

As set forth below, between 2014 and 2017, Robins and the Mayor's Panel exercised effective influence over the administration and management of the activities of City departments (primarily Public Works, Finance, CIP and Procurement) related to the planning, budgeting, and procurement of major construction projects and the management of programs and policies related to flood mitigation and sea level rise, and often did so without the involvement and/or approval of the City Manager.

On February 12, 2014, the Commission adopted a recommendation by the Mayor's Panel to raise the tailwater boundary elevation to 2.7 feet NAVD. This represented a four-fold increase above the 0.5 feet NAVD elevation that the Commission had adopted in 2012. That lower performance standard had been used to build existing pumping stations and design additional stations that were moving through the procurement process. In advocating the higher performance standard, Robins told the Commission that responsible City officials had said that the design criteria adopted in 2012, raising the minimum Level of Service performance standard for new pumped drainage systems, had been “grossly inadequate” and resulted in the construction of pumping stations that would not prevent flooding. He acknowledged that, “the cost of meeting the new set of guidelines will be 20 to 30 percent higher,” and, “This effort can be completed in perhaps two to five years at a cost of \$150 million to \$200 million.”

At the time of the Commission meeting, there were three neighborhoods in active construction: Central Bayshore (70% complete); Lake Pancoast (95% complete); and Venetian Islands (10% complete) which were Design-Bid-Build projects. Design-Build contracts had been awarded for projects in Lower North Bay Road and Palm & Hibiscus Islands.

During an interview, Robins made this comment:

...we felt we were at war with this issue. And the City was in the middle of spending money and work going on. And it was just, that at that time, we just felt it was more of a military operation to get everything stopped, to get the new guidelines established and to get this work going.

He further explained in an interview with the OIG that it was important for the City to stop work on projects that had been designed using the lower design criteria and to re-design projects in the procurement pipeline that had been sized based on the 2012 design criteria. He further said:

We needed to get that stopped, get new design criteria for those projects, get those projects restarted because there were neighborhoods that were torn up at that time. And there was just this emergency situation to get these numbers as quickly as possible so that we could at least finish the work that had progressed while we were in the process of establishing a more formal set of guidelines.

At the February 2014 meeting, the Commission approved the City's first use under Levine of its authority to declare flooding a public emergency and to waive the City's compliance with state procurement laws for the purpose of awarding a Design-Build contract without competitive bidding. The first of these awards was an \$11.2 million Design-Build contract to Bergeron Land Development, Inc. to construct pumping stations at Alton Road and 6th, 10th, and 14th Streets.

In a traditional Design-Bid-Build contracting process, municipalities award two separate contracts. The first contract is awarded for the project's design and preparation of finished construction plans. The second contract uses the finished plans to conduct a competitive solicitation and award a construction contract to the qualified bidder that submits the lowest bid.

In contrast, a Design-Build contract combines the design and preparation of plans and the project's construction in a single contract awarded to a design-build team. During the design phase, the contractor prepares finished construction plans, technical specifications, and cost estimates. The owner uses the finished 100% plans to negotiate a Guaranteed Maximum Price (GMP). During the build phase, the contractor constructs the project based on the approved plans.

Municipalities and the Florida Department of Transportation (FDOT) use the Design-Build project delivery method to expedite major construction projects requiring extensive design because it can be tailored to fit a variety of circumstances. FDOT policy authorizes eight variations of the design-build project delivery methods, including a version that allows construction to begin on some tasks while plans are still being designed.

To prevent favoritism in the award of Design-Build contracts, Florida Statute 287.055 (Consultant Competitive Negotiation Act or CCNA), also known as the "Design-Build Act," requires that "Municipalities shall award Design-Build contracts by the use of a competitive proposal selection process." Design-Build solicitations are based on a Design Criteria Package (DCP), a document that provides performance-oriented design criteria and technical specifications for a project. The act requires that a DCP be prepared by "a design criteria professional employed by or retained by the agency."

If a municipality enters into a professional services contract with an engineering consultant to prepare a DCP, Florida Statute 287.055 requires that the design criteria professional must be selected based on a competitive process. To prevent conflicts-of-interest, the act prohibits the engineering consultant who prepared the DCP from also providing engineering services under a Design-Build contract executed pursuant to the design criteria package. In case of public emergencies, the law allows an agency or municipality to skip the competitive selection process by declaring a public emergency and negotiating with the "best qualified Design-Build firm" available at that time.

After the initial award to Bergeron of the Alton Road pumping stations project, the Commission would approve eight change orders to Bergeron's contract for the construction of pumping stations and seawalls in other neighborhoods. The initial resolutions contained the following language:

To protect life, health and property the City Manager can declare a state of emergency. Per subsections 287.055(3)(a)(1) and (9)(c)(6), Florida Statutes, all as more specifically set forth in this resolution and, as permitted pursuant to section 2-367(e) of the city code, waiving, by 5/7ths vote, competitive bidding requirements, finding such waiver to be in the city's best interest, and **authorizing the City Manager to take the following actions to procure the necessary emergency design and construction services for the project, pursuant to a negotiated Design-Build contract.** (Emphasis added.)

A Letter to Commission (LTC) for a change order referred to Mowry's role in negotiating the terms of the contract with the contractor, Bergeron, that included the construction of two pumping stations on Alton Road. It said, "The Public Works Engineering Division has discussed design

and construction of similar stormwater pump stations coordinated with FDOT contractor Bergeron Land Development Inc., who has designed the FDOT pump station at 6th Street, 10th Street, and 14th Street, to provide for the future drainage requirement for 6th Street, 10th Street, and 14th Street west of Alton Road for the City."

On February 21, 2014, Morales submitted a memorandum to the Committee on Finance and Citywide Projects in support of a proposal to resume the use of job order contracts for construction projects. Morales noted that the City had stopped using job order contracts after the arrest of former City Procurement Director Gus Lopez in the fall of 2012. Morales said that, as a result, the City was left "without a methodology for expediting construction and infrastructure projects," and, further, that the status quo "is especially problematic for **smaller projects and projects related to unplanned emergency work** for which releasing independent solicitations is not operationally feasible and causes unnecessary delays." (Emphasis added.) His memorandum described the arrest of former Procurement Director Lopez, the City's decision to stop using job order contracts, and the NIGP recommendation to amend the City procurement ordinance to require competitive bidding of major construction contracts, including Design-Build contracts.

Morales acknowledged that the bid-rigging case resulted from "a failure of internal controls," but added that, "It has been determined that the failures that occurred were unrelated to the actual JOC process, but rather a manipulation of that process by prior City staff as detailed in the Affidavit." Further, Morales said that "in the event the City resumed use of job order contracts, he intended to make procedural changes to eliminate any recurrence of past problems with internal controls, including appropriate levels of administrative approval and regular reports to the City Commission."

Concurrent with Morales's presentation to the Finance Committee, the Procurement Department circulated a memorandum that described a type of JOC contract that the City intended to use. It was based on a competitive selection process conducted by the National Joint Powers Alliance (NJPA) that results in the selection of a group of contractors. The City had selected a version of the NJPA contract administered by the Gordian Group, which issued a type of job order contract known as an Indefinite Quantity Contract (IQC). The Procurement Department's memo stated that, "This contract may be utilized to procure construction and specific trade services for small projects up to \$250,000 and for emergency projects with higher limits with the written approval of the City Manager." The memo stressed that the job order IQC agreements issued pursuant to an NJPA contract "helps expedite projects by eliminating the need to competitively solicit projects prior to contract, which can often result in a three to six-month delay."

By early March 2014, Robins and members of the Mayor's Panel were exercising significant influence over financial management of the City's capital budget and spending related to stormwater construction projects. During a March 18th meeting of the Mayor's Panel, Robins introduced a resolution that instructed City staff to begin to design and implement the upgrade of the City's storm drainage system to meet the new design criteria set by the Commission with a budgeted cost of approximately 200 million dollars. Lower lying areas were to receive the first priority until all areas were complete.

Robins said in an interview, "We knew early on that the cost of this work was going to be at least a half a billion dollars. Those were early numbers that we had sort of estimated we even felt that it was going to probably be more than a half a billion dollars. And we also knew that the City didn't have that kind of money." But Robins said the early cost estimates and the rush to begin construction reflected a belief that the City "needed to act quickly... before we lost the confidence of, not only the residents, but the rest of the world. And we wanted to take action as quickly as

possible so that the people believed that there was a solution to the problem and that the government was going to act effectively to fix the problem.”

During a meeting of the Mayor's Panel on April 1st, 2014, Carpenter told the panel members that the Departments of Procurement and Finance were “working to cost out a five-year program to be included in the capital budget,” according to the minutes. Further, he said, “David Martinez, CIP Director was to bring back to the Panel the amount of money available from neighborhood projects that might be reallocated for flooding solutions.” On May 20th, 2014, as reflected in the minutes, Carpenter followed up with a report that the Finance Department would issue three \$100 million bonds for stormwater projects: “Until then pumps will be funded by the City’s line of credit...The Commission will be asked to approve a utility rate increase at the June 11th meeting.”

During this period, Public Works produced a document titled, “Pump Station Five Year Plan,” with a cost estimate that totaled \$131,054,000, based on lump sums allocated for each year: \$21.7 million the first year, \$27.7 million the second, and so on, reaching the five-year total of \$131 million. The plan included the caveat that budgets for all projects “should be increased by 25% for unexpected issues and contingencies.” This cushion raised the projected total to \$163.8 million. Under the circumstances, according to Robins, the City could not be constrained by standard practices of budgeting and acquisition planning:

Forget the old adage of: 'Look, we're going to build to the budget. We got this much money to spend in our neighborhood. This is how much money we're going to be able to spend.' Forget that. It was 'What do we need to do to make sure that we can survive another 30, 50 years?' So that was a whole change in philosophy. And Levine did bring some of that in. I mean, he ran on a platform that the existing street flooding was not acceptable and needed to be changed. So, there was a push from above that we're going to make some changes and these projects need to address the here and the now and then going forward.

In approving a recommendation for the Commission, the Mayor's Panel rounded the Public Works estimate up to \$200 million. There were differences in the number and nature of projects proposed in the 20-year, \$206 million budget adopted in 2011 and the 5-year, \$200 million plan adopted in 2015. But the scale of construction activity and spending was roughly the same. The singular difference was the time allotted to design and build the projects. The 2011 budget enabled the Administration to sequence the planning, design and construction of projects in 5-year phases on a schedule that CIP had the resources to manage effectively.

Over a period of years, CIP had built a staff that specialized in managing major construction projects and had developed policies and procedures geared to administering Design-Build contracts and other standard project delivery methods (See Figure #2 below).

CIP CORE ACTIVITIES

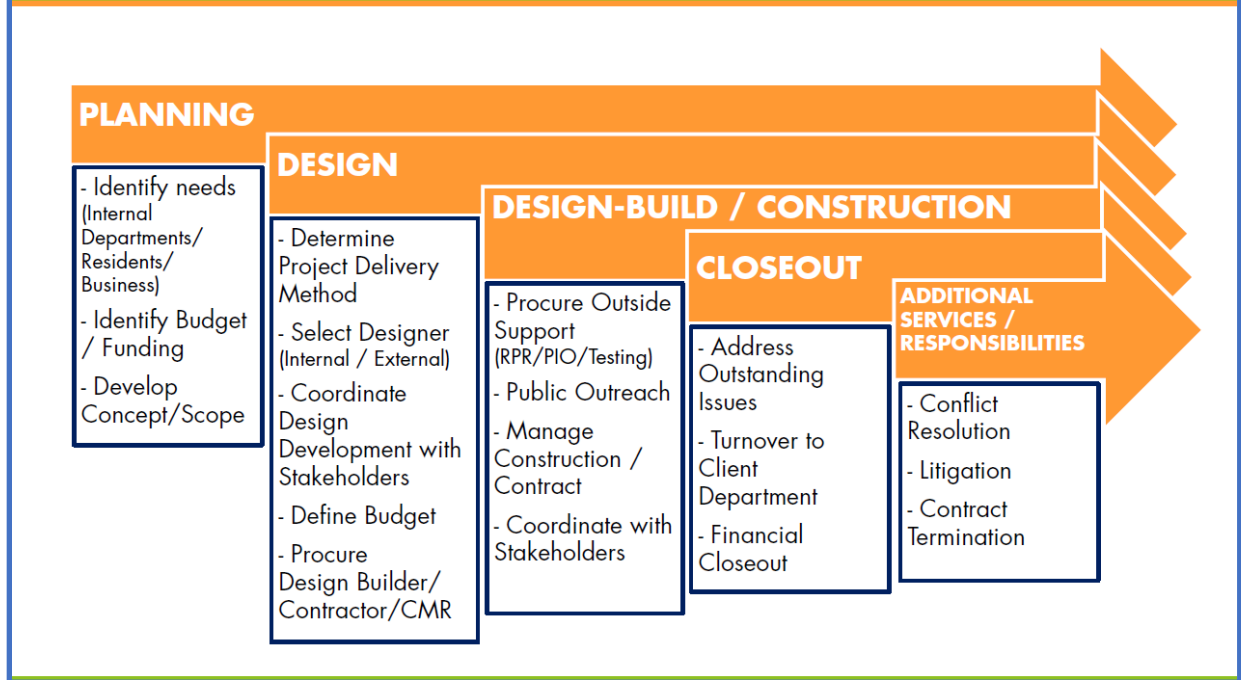


Figure #2. January 31, 2014 briefing slide that depicts CIP's process for managing Design-Build projects.

CIP's Construction Management section consisted of four senior project managers, eleven project coordinators, and five field inspectors. CIP had invested in eBuilder, a powerful, web-based construction management database that was widely used by agencies and private-sector entities to manage large portfolios of major construction projects that use Design-Build contracts and other standard project delivery methods. Between 2010 and 2013, CIP had successfully managed the initial surge of stormwater drainage projects that the Commission approved, which included construction of new pumping stations and roadway infrastructure. Figure #3 below is a CIP briefing slide that depicts the number of projects CIP had completed by January 2014.

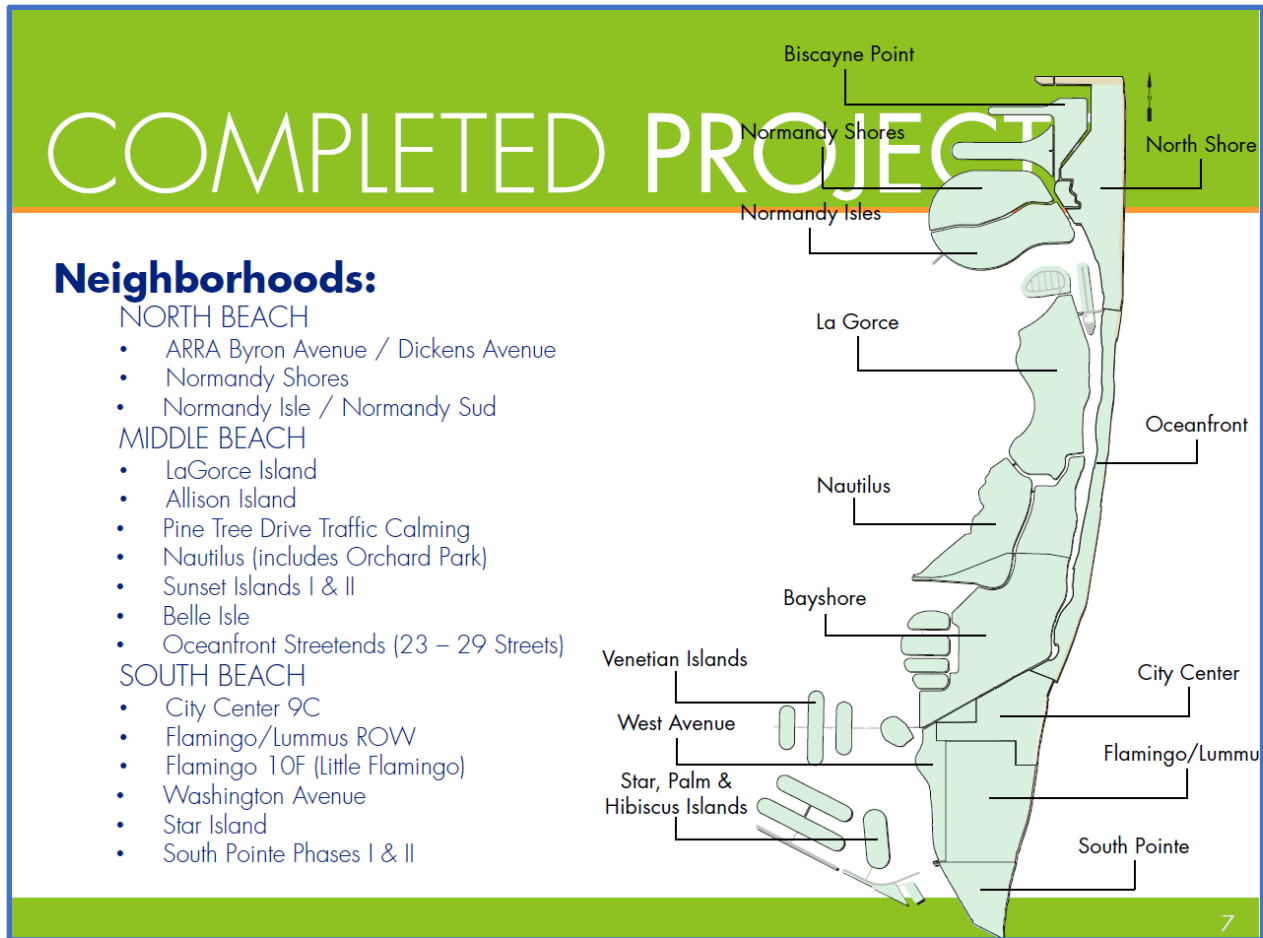


Figure #3. CIP briefing slide that depicts stormwater drainage and neighborhood infrastructure improvement projects CIP had completed by January 31, 2014.

During the first quarter of 2014, CIP was managing three Design-Bid-Build stormwater and roadway projects in Central Bayshore, Lake Pancoast, and Venetian Islands neighborhoods, and two additional Design-Build projects in the Lower North Bay Road and Palm and Hibiscus Islands neighborhoods that were in the design phase.

Public Works, on the other hand, is primarily an operational department. Public Works is staffed by civil engineers who specialize in designing projects and approving design criteria packages and construction plans. They manage many smaller construction projects, such as the repair of seawalls, and the occasional larger project. But Public Works is not CIP and was not staffed or configured at that time to manage a large portfolio of major construction projects.

There is no indication in the public record or evidence gathered during this investigation that the City Administration proposed that the Commission increase the number of senior project managers and support staff in CIP to provide the office with the additional resources that would be needed to manage the new projects. Instead, the City Administration decided to have Public Works manage the new projects, with City Engineer Mowry taking the lead with the assistance of an engineering contractor, AECOM, retained to provide the Mayor's Panel with technical support.

On June 11, 2014, the Commission approved a contract with AECOM to serve as technical advisor to the Mayor's Panel and serve as an onsite flood mitigation consultant to Public Works.

AECOM's contractual tasks included developing short-term engineering solutions that are "part of a phased approach that moves toward an ultimate, comprehensive solution." Robins recognized the risks of accelerating the design and construction of major projects. During an interview, he said, "We always knew...that there was going to be, after this emergency work was done...that there would be some sort of pause in this process where, rather than doing things on an emergency basis, that we would be doing things more in the normal course of business" and that "...there would be an engineering company overseeing us and this was going to be part of the process that eventually it would become a normal course of business. And we began to move in that direction."

AECOM Senior Project Manager Thomas McGowan and other AECOM technical specialists assisted Carpenter, Mowry and Public Works Engineers, in engineering design tasks such as revising and refining design criteria. As a flood management consultant to the Mayor's Panel and Public Works, AECOM updated the City's map of elevations across the City and conducted computer simulations that modeled the neighborhoods where flooding was predicted to occur. Figure #4 below is an excerpted section of a 2015 AECOM inundation map that identifies in red and orange the neighborhoods that would flood during a 5-year design storm with up to 7.5 inches of rain during a 24-hour period.



Figure #4. Excerpt from 2015 inundation map titled "AECOM 5-year Simulation – Existing Conditions, North and Middle Beach Locations Not Meeting Level of Service" depicting the expected level of flooding during a storm with the rainfall equivalent to the City's 5-year design storm with 7.5 inches of rain in 24 hours adopted in 2014. The red arrow added here by OIG staff indicates the approximate mid-point of Indian Creek Drive between 25th St and 41st Street AECOM's modeling showed that areas in red and orange would likely experience flooding of 1 to 1 ½ feet during a 5-year design storm.

On Sept. 30, 2014, the Commission approved Change Order No. 2 to Bergeron's contract for \$3,006,544 for construction of roadway improvements along 6th St and West Avenue and a new section of seawall. To justify the emergency waiver of competitive bidding, the resolution said Public Works had discovered that drainage improvements along 6th Street and West Avenue, between 5th and 6th Streets, will require significant removal of the existing pavement in order to construct the 6th Street storm water pump station." The resolution said further that Public Works

had discovered that “during the construction of the 14th Street pump station the existing seawall had a crack and required replacement.” The resolution added that the Administration had “already programmed and budgeted a West Avenue and Bay Road Design-Build Neighborhood Improvement Project.” It said that, under the circumstances on Alton Road, Carpenter had recommended that construction of both projects be done “simultaneously in order to minimize construction impacts along these neighborhood corridors.”

A month later, the Commission approved Change Order No. 3 to Bergeron’s contract, adding \$15,670,000 for additional roadway construction on West Avenue between 8th Street, 10th Street and 14th Street west of Alton Road and the installation of a new pumping station. The effect of both awards was to use the change orders to award new construction projects without competitive bidding for work in locations that were several blocks from the original project.

During the Commission meeting on September 30, 2014, another public emergency declaration was adopted to award a Design-Build contract to Lanzo Construction Co. (Fla.) for a stormwater drainage and infrastructure project in Sunset Harbour. In this instance, the Commission converted an existing contract with Lanzo to award a Design-Build contract without competitive bidding and increased the total funding to \$9.3 million.

As justification for the emergency waiver of Florida Statute 287.055, the LTC cited "current conditions" in the Sunset Harbor neighborhood, including "community hardships" and "quality of life issues," and "the fact that this contractor is already performing work in the area." If the Commission failed to waive the public bidding requirement, the LTC warned, the City would be forced to competitively select an engineering consultant, wait months for the project’s redesign, and then “procure another construction contract through the standard bidding process.” The LTC said that the emergency award process would save time; Public Works would prepare the DCP; and the City would still receive the benefits of a Design-Build contract.

On October 29, 2014, seven months after approving the use of NJPA contracts for "small construction projects up to a value of \$250,000 and for unplanned emergencies," the Commission authorized the first exception to that ceiling, approving a \$329,000 award for “emergency” construction of showers and an ice rink at the Scott Rakow Center. An LTC submitted with the resolution said that the NJPA contracts were “used extensively by the local, state and federal governmental agencies... to expedite the delivery of construction projects.”

The LTC was silent on the inherent limitations of job order contracts with higher fixed unit prices and the risks associated with their use in major construction contracts. The risks included that awarding such contracts before a major project’s scope and design had been fully defined could result in frequent changes in design during construction that disrupted a project’s schedule; and that awarding a unit price contract without competitive bidding was likely to result in significantly higher construction costs. In describing the limited scope and intended use of JOC agreements, the Gordian Group’s own literature did not advocate the use of indefinite quantity job order contracts for major construction projects. Literature on Gordian’s website said, "When planning for a large construction project, Job Order Contracting can be used to perform preliminary work such as demolition, hazardous material abatement and site work," and pre-construction tasks.

During the fall of 2014, the Mayor's Panel assigned AECOM’s McGowan to revise the Design Criteria Packages (DCP) for projects in the final stages of design, including the DCP for the Palm Island and Hibiscus Island Neighborhood Infrastructure Improvement Project. In the process, McGowan applied new design criteria that he would later use to develop a stormwater drainage system for the Indian Creek Drive Project. In a section of the Palm and Hibiscus Islands DCP

titled, "Drainage Area," McGowan wrote, "For drainage design and modeling of the piping and pump station system, the drainage area shall be sized to account for, and reflect the actual contributory area – and shall include at a minimum all road rights-of-way, 100% of interior (landlocked) lots and 50% of waterfront lots."

The DCP also provided for the use of "yard drains" during the Palm and Hibiscus Islands project. And, in October 2014, shortly before construction, Mowry directed Lanzo to design and build a new public drainage system in the public right-of-way to allow the connection of privately-owned residential stormwater systems on Palm and Hibiscus Islands and to utilize yard drains. Public Works had decided to provide for the future use of private-side yard drainage on Palm and Hibiscus Islands to mitigate the risk that raising the elevation of roads in areas with unusually low elevations would cause new flooding of private lots.

By the final quarter of 2014, Mowry had fully embraced his role as chief advocate in City Hall for Levine's emergency procurement strategy and the views of Robins and the Mayor's Panel. An exchange of emails on November 4, 2014, related below, about flooding on Indian Creek Drive, illustrates Mowry's increasing sense of autonomy within the Administration and the influence he exerted on procurement and policy-making decisions that were beyond the scope of his role in the Public Works Department.

November 4, 2014 Emails

At 7:40 AM, Mowry sent Morales an email that said, "Winds and high tides, I drove through water on Indian Creek Drive and water was over the highway at 28th and 29th Streets and some of the side streets. We have infinity seawall, and you cannot see the top of the walls. Plugs will not do any good and Joe [former Assistant City Manager Joseph Jimenez] needs to come up with a solution for the privately-owned seawalls. We have reports to the Mayor's Panel and the Panel on Flooding this month and they want a solution."

At 8:05 AM, Morales emailed a response that referred to the number of stakeholders with a potential interest in the Indian Creek project and said he would consult with Mowry's immediate supervisors, former Assistant Public Works Director Jay Fink and Jimenez. His response said, "Bruce, as you know, we have an FDOT road and private sea walls. This is a complicated issue, and it is not just Joe's responsibility to come up with a solution. Remember that this is a team. Joe and Jay (Fink) Let me know where we are with both FDOT and the private sea walls."

At 8:12 AM, Mowry, emailed a response: "Mr. Manager, You are correct about it is not just about Joe. The reason I included Joe is that private land ownership is in my opinion a much more complicated issue. Joe has told me that you placed him in the lead of this issue of private ownership of these seawalls. You noticed I did not ask for Joe to go out and place sandbags along the highway to fix the problem. The solution will take years to implement, and we have to develop a plan and then work the plan."

Eighteen minutes passed without an additional email from Morales.

At 8:30 AM, Robins, who had not been copied on the earlier messages, joined the discussion on Mowry's behalf and, in the process, added Levine and Carpenter as recipients. Robins wrote, "This is an important issue and needs to be attacked aggressively. The tides are scheduled to get higher as the week progresses and if we are already over the sea wall and into the streets that is not good."

On January 13, 2015, the Mayor's Panel received a report on the status of stormwater drainage projects in Sunset Harbour, on Purdy Avenue, West Avenue, Alton Road, Belle Island, the Venetian Islands, Sunset Islands 3 & 4, and Palm and Hibiscus Islands. According to the minutes, the Panel also discussed possible funding sources for infrastructure projects in the future. In response to a question from Robins, Mowry said that the City had committed all the funding it had available for stormwater drainage projects, but he observed that Bergeron had submitted an unsolicited proposal to provide financing for additional design-build contracts. Mowry was enthusiastic about the option. Morales was not.

The next morning Mowry sent Morales an email that referred to the previous evening's discussion about funding that said, "Mr. Manager, yesterday we had flooding in several areas of the City. I was asked yesterday by the Mayor's Blue-Ribbon Panel on Flooding and Sea Level Rise if the 300 million flood mitigation program could be completed within the five years. I told them that Bruce Mowry could complete in less time, but City funding could prevent us from meeting the schedule." Thereafter, he turned to the subject of Bergeron's proposal and wrote, "I would recommend that we evaluate the proposal for consideration. This would allow us to take the City funds that may be available for the projects defined in their proposal and use these funds to address other areas of the City that are experiencing flooding."

Morales did not respond to the email. Fifteen minutes later he received an email from Robins, "Hey Jimmy, I know we have discussed this but the fact of the matter is we are going to need additional funds to complete the most important parts for our program. The spring tides will be coming in and around April and we will be experiencing floods in many of our neighborhoods especially during times of intense rain. I know you are aware of this just reiterating our need. Yesterday at the Blue-Ribbon meeting I was told that we have no money left for the central and lower Bayshore area where those residents have but (sic) under construction for years. We need you to keep the program on a timely track."

Morales's response to Robins was pointed: "Let's talk offline about this. It is not for Bruce to make these statements. Once someone gives me a well-thought-out program, I will sit down with Budget and Finance to figure out how to proceed. **I don't want to use this as an excuse to circumvent competitive procurement or sole-source work to favored entities.**" (Emphasis added.)

Robins responded: "Agreed and understood."

PART II: PUBLIC WORKS, THE "INDIAN CREEK GREENWAY FACILITIES PLAN" AND FDOT

A. Public Works asks AECOM to prepare Greenway Facilities Plan for Indian Creek Drive; Mowry uses the plan to persuade FDOT to participate in the construction of a new drainage system for the project.

On the afternoon of Saturday March 21, 2015, Mowry asked McGowan to send him the plan AECOM had developed to replace the seawall along Indian Creek between 25th Street and 41st Street as part of the project that included construction of a stormwater drainage system. In an email, Mowry wrote, "I have a Commissioner that may want to take the Indian Creek Drive to Commission in April for action to start project...I also have FDOT wanting an update so they can

consider a commitment to reimburse the City for their part of the project when they have funding available.”

In the balance of his message to McGowan, Mowry asked about the status of AECOM’s work on acquisition planning tasks. He wrote the following:

I need the information that you have developed for this project and how we estimated the cost. Did we write a Design Criteria Package? If we sized the three pump stations, we must have done some modeling?...Did we address the issue of that (sic) about three quarters of the project is presently private land? Can we build the public portion of the project like the three pump stations and part of the wall and collection system and then add the private ownership land as they donate the land to the City or pay for their work to keep ownership? Did we look at the environmental mitigation cost and the permitting timeline?

A week later, McGowan emailed Mowry a 60-page document entitled “Indian Creek Greenway Facilities Plan” (Greenway Plan) that described a \$34.2 million Design-Bid-Build construction project to replace the Indian Creek seawall, install a stormwater drainage system, and construct a mile-long linear park alongside the Creek with a walkway, benches, pedestrian lighting and trees.

Figure #5 below contains an AECOM map that illustrates the dimensions of the Indian Creek Drainage Basin. It consists of 80 acres between the Atlantic beach on the east and Indian Creek on the west and extends north from West 25th Street to West 41st Street. From the dune line, the basin’s terrain slopes downward to the west, reaching a low point along the southern half of Indian Creek Drive. When rain falls on Collins Avenue and adjacent side streets and private property, gravity pulls the stormwater westward to outlets that empty into Indian Creek.



Figure #5. In this map, the 80 acres that comprise the Indian Creek Drainage Basin are shown within the red borders.

For the Greenway Plan, AECOM designed a drainage system based on a 50-acre drainage area that began west of the dune line and oceanfront hotels. It included Collins Avenue, Indian Creek Drive, their side streets, 100 percent of all landlocked private lots, and 50 percent of all waterfront lots.

Including the private property within the drainage basin for the Indian Creek/Collins Avenue neighborhood was consistent with the interpretation Public Works gave to the new design criteria. In October 2014, McGowan had applied the same design criteria to his revision of the DCP for the Palm and Hibiscus Islands project. In that case, the objective was to provide an engineering solution to mitigate the risk that raising road elevations would cause flooding of adjacent private lots.

In November 2015, Mowry directed the Design-Build team of Lanzo and engineering subcontractor Wade Trim on the Palm and Hibiscus Islands project for construction of a stormwater system in the public right-of-way that was designed to accommodate connections with privately-owned yard drains in private lots. By including private property in the drainage area, Public Works sought to ensure that new pumped drainage systems on those islands would be sized with enough storage and pumping capacity to handle the volume of stormwater that Public Works expected from both public and private property in the future during a 5-year design storm with 7.5 inches of rain in 24 hours.

Public Works directed McGowan to take the same approach in designing a drainage system for the Greenway Plan and Indian Creek. While there was a similar need to plan for the future connection of residential private-side yard drains, there was the added complication in the Indian Creek Basin to plan for the connection of commercial stormwater systems to the public drainage system.

Most of the condominiums, hotels, and commercial buildings in the area were equipped with high-volume stormwater systems that were connected to gravity wells or injection wells. (An injection well has pumped water pushed into the well. With a gravity well, water flows into the well by gravity without mechanical assistance.) Public Works and AECOM had concluded that the rising level of groundwater would eventually cause most of the approximately 120 existing gravity and injection wells located in the Indian Creek Basin to stop working. When that occurred, water previously stored in the aquifer would flow into the street. As early as January 2014, Mowry had sent Robins an email with the following warning: "We are eliminating the use of gravity wells because they will become artesian with rising sea levels and injection wells will only be allowed in special cases."

Public Works had documented the failure of gravity wells in Sunset Harbour, Flamingo Park, and Sunset Islands #1 and #2. Usually, this resulted in overflows that caused flooding. In some cases, the rising level of groundwater caused a reverse flow of water, turning gravity wells into artesian wells. The anecdotal evidence that gravity wells were failing was buttressed by AECOM's flood inundation modeling and other analysis. In an Engineer's Report prepared for use with a 2015 Stormwater Bond Issue, AECOM reported that the City had "implemented a working policy to, over the next ten to fifteen years, reduce and/or eliminate the use of exfiltration trenches (an underground trench that allows stormwater to seep into the ground), gravity drainage wells and stormwater injection wells due to concerns over reliability and decreasing capacity."

AECOM flood modeling had verified that the problem would likely grow worse over time in areas where elevations were below 2.2 feet NAVD, or 2.2 feet below local sea level. A summary McGowan prepared for a 2015 report said, "These areas will be inundated during normal high tide with the adopted 50-Year Sea Level Rise of 1.50 feet. With a projected Mean High Water at 1.50 feet, NAVD and a normal high tide cycle of 0.70 feet, the water level in the Biscayne Bay would be at 2.20 feet NAVD. At these elevated Bay and groundwater levels, gravity drainage systems and conventional best management practices will not function."

Mowry and McGowan could not predict with certainty when gravity wells in the Indian Creek Basin would fail in large numbers, and Public Works did not know how many wells had already failed. The City did not inspect privately-owned gravity wells or the performance of commercial stormwater systems connected to gravity wells. But when rising levels of groundwater caused the wells to stop working, the high-volume commercial stormwater systems would back up and discharge torrents of water into the street. In their view, common sense dictated that a drainage system designed for the Indian Creek Basin should be sized with sufficient storage and pumping capacity to handle the additional volume of stormwater.

Given the extensive use of gravity wells in the Indian Creek Basin, Public Works and AECOM concluded that the City had no alternative but to design a drainage system based on the inclusion of most of the private property west of the dune line and ocean front hotels. AECOM calculated that a 50-acre drainage area would result in the design of a pump-based drainage system sized with sufficient storage and pumping capacity to handle the volume of rain that fell on all public roads and rights-of-way in the area, and the additional volume that fell on most of the area's private property.

Public Works approved AECOM's design for a drainage system based on a 50-acre drainage area that consisted of three pumping stations and a total pumping capacity of 97,500 gallons per minute (GPM). In an OIG interview, McGowan said, "We designed a system to take all of that water, whether we were getting it today or not, but in anticipation of these wells successively failing." Mowry told the OIG, "There was no other way to get rid of water in this area because we already said the groundwater wells did not work. So, you had to anticipate that all water in this area had to go to this drainage system."

On March 31, 2015, Mowry emailed the Greenway Plan to FDOT District Six Drainage Engineer Ricardo Salazar with an email that said, "This is our facility plan for the Indian Creek Drive project we talked about. Please review and let me know if FDOT want (sic) to participate in this work along the FDOT highway."

B. Constraints on the City's capacity to continue funding stormwater projects in 2015 and the plan to use state funds to pay for construction of the Indian Creek seawall.

Six days after AECOM's McGowan sent Mowry the Greenway Plan, an aide in Levine's office emailed Morales with a last-minute "heads up" and a request for information. The email, dated April 1, 2015, said, "Jimmy: We are going to Tallahassee today and are meeting with Secretaries of DEP [Environmental Protection] and DOT [Transportation]. Is there anything you can advise of things we need to bring up to the secretary that is a priority?" Morales forwarded the request to Carpenter, asking what issues Levine should stress during meetings with state officials later in the day. Carpenter's response said in part:

The items that Public Works feels are most important with these two agencies are the funding and programming of flood mitigation for Indian Creek Drive 24-41 Street (FDOT) and further evaluation of the soil reuse criteria and the background levels of Arsenic (FDEP)...**The Indian Creek project has a preliminary cost estimate of \$36 Million and we are preparing a feasibility study for addressing the flooding as well as incorporating a greenway along the water.** (Emphasis added.)

During this period, AECOM was also developing a "well-thought-out program" of estimates Morales wanted for financing and construction of new drainage systems. Since June 2014, AECOM engineers had used computer models to rank the risk of flooding across the City and design stormwater systems for flood-prone neighborhoods, based on the new Level of Service standard of a 5-year design storm with 7.5 inches of rain in 24 hours. McGowan and his team were using the results of this work to develop a five-year schedule of cost estimates for each stormwater system. The purpose of the plan was to provide the programmatic and budgetary justification for a sequence of three \$100 million stormwater bond issues to pay for the construction.

On April 15, 2015, AECOM produced a map showing the proposed location of 55 new pumping stations and 17 stormwater systems with cost estimates for each project totaling \$431 million over five years (See Figure #6 below). As indicated by the OIG annotation, the City's five-year spending plan did not include a stormwater drainage project or new pumping stations for the Indian Creek Basin. This conspicuous omission reflected the City's apparent assumption that state funds would pay for the stormwater system described in the Greenway Plan. The status of Indian Creek Drive and Collins Avenue as state roads made FDOT responsible for their maintenance and for ensuring that flooding did not make the two thoroughfares impassable.

Earlier in the year, Mowry had prepared a summary of the "Indian Creek Seawall and Drainage Improvements" for the City's FY 2015/FY2016 capital budget planning process that said construction would be paid for by "State revolving fund loans and contributions from the Florida Department of Transportation." This budget document said the project would "provide complete design and replacement of approximately one mile of new seawall along Indian Creek Drive including drainage improvements and pumping stations behind the wall to collect drainage runoff from the adjoining side streets and Collins Avenue," and further, that "construction of the new wall will also allow for a pedestrian walkway and public amenities within this linear park."

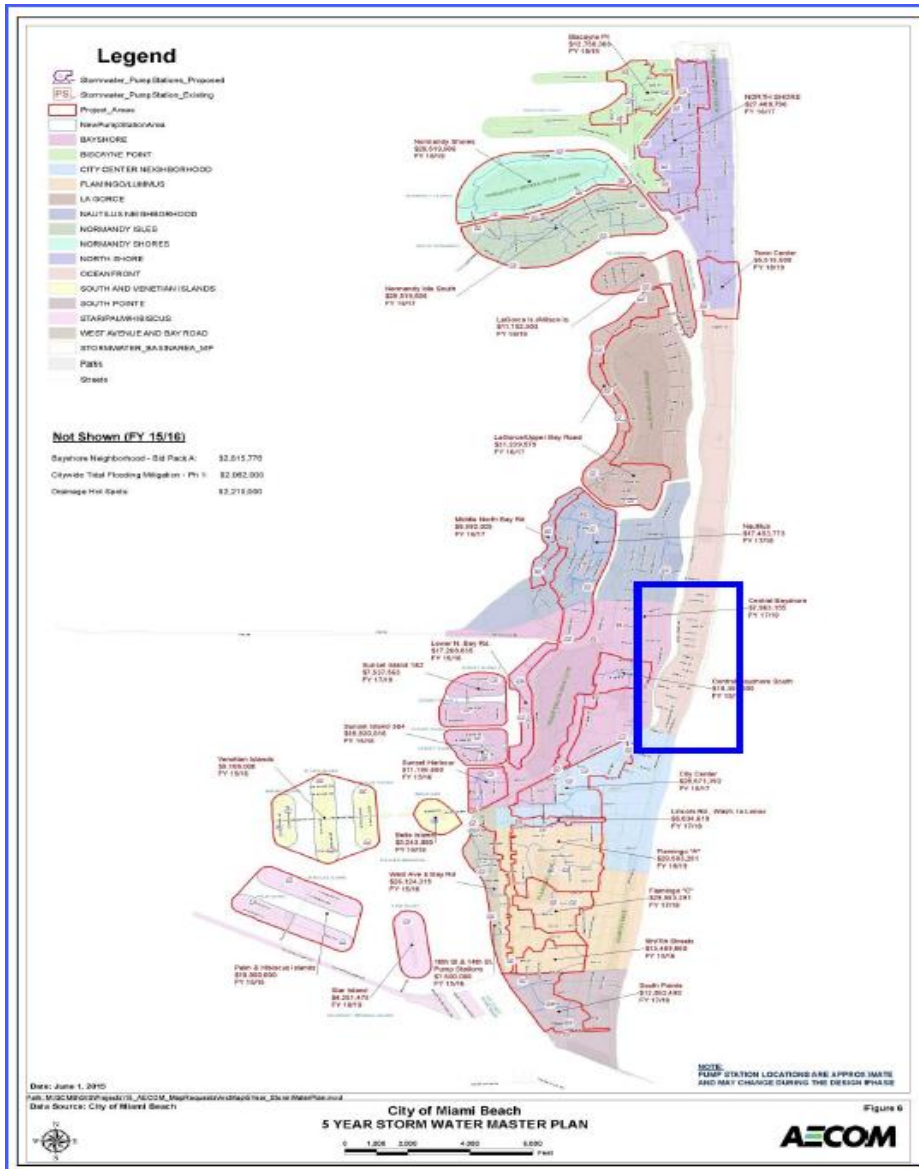


Figure #6. AECOM’s 2015 5-year Stormwater Master Plan identifying the proposed location of new pump stations and stormwater drainage systems with cost estimates for each project. As shown in the area with blue OIG annotation, the plan did not include a stormwater project or pumping stations for the Indian Creek Basin.

The City’s financial position at the time was inherently strong; its tax base unusually so; and stormwater utility rates had been raised. However, a financial strategy that relied on a sequence of three bond issues over five years was not without risks, a point that Moody Investors Services would make when the FY 2015 Stormwater Bond Issue went on sale during the summer.

Moody’s Investors Services issued a statement that it had “assigned a Aa3 rating and negative outlook to the City of Miami Beach’s (FL) \$90 million Stormwater Revenue Bonds, Series 2015 and affirmed an Aa3 rating and assigned a negative outlook to \$90 million in outstanding parity bonds.” The statement continued, “The Aa3 rating is based on the system’s healthy liquidity position, adequate debt service coverage, mature service area and high leverage.” But it also said

the “negative outlook reflects the system's expectation of significant additional debt in the near term which will increase its already high leverage and require large additional rate increases.”

C. The City uses the public emergency justification and change orders negotiated by Mowry to expand the scope of Design-Build contracts on other projects awarded to Bergeron and Lanzo.

Despite the funding constraints, the Administration was able to provide increases for other Design-Build projects that were underway. Apart from the Indian Creek project, Mowry and Bergeron staff, using an emergency waiver, negotiated a \$4.4 million change order to the company's original Design-Build contract to install pumping stations on Alton Road, that had been awarded in February 2014 without competitive bidding. The new work was not on Alton Road, and, instead of building new pumping stations, it would involve replacement of sections of seawall along Collins Canal.

As had become his practice, Mowry submitted the paperwork justifying the change order with language for a resolution. On this occasion, however, Carpenter did not immediately approve the proposal. Mowry grew impatient and turned to Robins for help. On May 7, 2015, Mowry forwarded a copy of the draft resolution to Robins with an email expressing his frustration at constraints on his ability to have the \$4.4 million award approved. He wrote:

I have a meeting with Bergeron on Monday morning to review the 17th Street work at 8 AM on Monday. I would be free after 9:30 on Monday morning. The attached proposed Commission item is not supported by Eric and therefore I cannot get it on the agenda for the May 20th Commission meeting. We have funding for all this work, and it is necessary work that I have identified. What this shows is the City Engineer has no authority to move items up the organization because my position is below a director. **I think we should move this work and not continue the approach of waiting. I can explain why I think this work should move forward so you can talk with the Mayor** (Emphasis added.).

Five days later, Levine emailed Morales to ask about the status of plans for a temporary solution to flooding in Indian Creek that Mowry had been discussing with FDOT. Levine wrote, “What is update on temporary fix on Indian Creek flooding? We need to get this done ASAP, so we are not all embarrassed.” Morales forwarded the message to Carpenter and Mowry for a response.

Within the hour, Mowry responded with an email to Morales and Carpenter that he copied to Levine. He wrote, “We have been in communication with FDOT on potentially perform (sic) work to raise the curb in the section of Indian Creek Drive between 27th Street and 35th Street where water flow (sic) into the highway.” He described the option of installing backflow valves in outfall pipes to prevent flooding during high tides and deploying mobile pumping stations during the King Tide season, and then referred to the Greenway Plan, writing, “A permanent solution for Indian Creek Drive is being developed that will include three pump stations and a sea wall. This proposed work can be presented in the next few months.”

Having responded to the Mayor's query, Mowry used the balance of the message to press his case for approval of the pending change order to Bergeron's contract. He wrote, “We have discussed this work with Bergeron over the last several months and they are prepared to perform this work. It would (sic) our recommendation that we add this work to a change order that is being proposed for the May 20th meeting with critical sea walls on Collins Canal/Dade

Boulevard...Funding has been identified for all this work for a total value of the change order of \$4.4 million with the work to start immediately."

Minutes later, Mowry forwarded a copy of this email to Robins with a message that said, "Scott, this is the email I just sent to the Mayor and Manager for the change order for Bergeron. The dollars I have included have a contingency that could construct the sea wall on Cherokee Avenue, if we want to perform this work at the same time." Carpenter did not contribute to the email exchange.

Mowry's actions on behalf of Bergeron did not violate laws or City policies that applied at that time to the procurement of multi-million contracts. During an OIG interview, Carpenter said Mowry was difficult to manage, and on at least one occasion he verbally reprimanded Mowry for attempting to have one of his decisions changed. "I remember having a conversation with him at some point that I was unhappy that I found out that he was going behind my back...And I made it very clear to him that that was not acceptable."

Regarding the frequency of his communications with Levine and Robins, Mowry contended that they were no secret to his supervisors, who were often copied on emails he exchanged with Levine. According to Mowry, this reflected Levine's confidence in Mowry's ability to accelerate the construction of drainage systems. In an interview, Mowry added the following:

The Mayor basically had trust that I was able to get things done. I was the one that produced the pump stations on Alton Road in record time, which nobody in the City thought I could deliver. And so, the Mayor looked at me as being, 'If I want something done, I go to Bruce Mowry.' Now, for a proper protocol, Eric was my supervisor, and so he had to basically go through Eric. But the bottom line, he knew that if he wanted to know about it and to make sure it was getting done, I had to be informed.... the Mayor was basically looking to get things done and he knew who to go to...whether it was right or wrong.

On July 7, 2015, the Commission approved Change Order No. 5 to the Design-Build contract Bergeron had been awarded in February 2014, to build pumping stations on Alton Road at 6th, 10th, and 17th Street. The change order authorized \$4.4 million for the construction of seawalls along Collins Canal and repair of a seawall on Cherokee Avenue, an add-on that Mowry had told Robins was possible. The LTC submitted in support of the resolution suggested the new work was a continuation of the design phase of the original project. The LTC said that the "project is to be carried out simultaneously with the FDOT's Alton Road Project," and was related to Bergeron's ongoing preparation of a Design Criteria Package.

The LTC said the City had only recently learned of the need for expeditious repairs to the seawall: "During the drainage phase of construction, it was noted that the sea walls along the Collins Canal were overtopped during recent high tides, making some sections of Dade Blvd. impassable." And, as Mowry had suggested to Robins, the change order now included replacement of a seawall at the end of Cherokee Avenue. The LTC added that overtopping of the seawall was "causing erosion that will cause damage to the adjacent owner."

Finally, the LTC contended that there were special circumstances that justified the decision by Morales to declare a public emergency. These included the need to finish construction during the summer months to minimize the impact on students attending Miami Beach High School, and because, "With the completion of the improvements of the intersection of West Avenue and 17th Street, it became obvious that for the residents to fully realized (sic) the benefit of this work [on]

the construction of the West Avenue Bridge, it is necessary to allow pedestrian, bike and vehicle traffic easy movements over the Collins Canal,” and “...construction at this time will have the least impact on residents and business.”

Approval of the Bergeron change order had taken two months longer than Mowry expected. It provided an early indication of concern on the part of responsible City officials that the public emergency rationale for awarding no-bid construction contracts was wearing thin. In a subsequent email to Carpenter about funding issues, Morales wrote, “Time to evaluate what is really an emergency. On that note, I don't want anyone from PW declaring an emergency unless I sign off on it.”

When Shoreline Foundation, Inc., a firm that specialized in the construction of seawalls, learned of the award of a large seawall repair contract without competitive bidding, the company's business representative, Ben Mostkoff, registered the company's concerns with Commissioner Edward Tobin. In an email dated August 4, 2015, Mostkoff wrote that, “our firm has not been contacted by any party/department from the City of Miami Beach, nor have I seen advertised in any of the bid services” about the City's reconstruction of the seawall at the street end at Cherokee Avenue. Tobin forwarded the email to Morales. Soon after, Carpenter invited Shoreline to bid on an upcoming Citywide continuing contract for seawall repairs, a contract that would result in Shoreline's being selected to build the Indian Creek seawall.

The optics, if not the legality, of awarding no-bid contracts to Bergeron and Lanzo was underscored by a *Miami Herald* article on June 13, 2015, regarding television commercials highlighting Levine's “Get it Done” approach to combating the risks of sea level rise. The *Herald* reported that the advertisement had been paid for by a political action committee (PAC), chaired by former Commissioner Jonah Wolfson, a Levine ally, that had received donations from contractors competing for City contracts. Bergeron had donated \$12,500, Lanzo \$25,000. A third contractor, David Mancini and Sons, Inc. (DMSI), donated \$10,000 and was subsequently awarded two job order contracts during the Indian Creek project for which it was paid \$11 million.

D. Public Works begins negotiations with FDOT to build a drainage system based on the system designed by AECOM for the Greenway Plan; City Attorney expresses concerns about use of emergency waivers for award of no-bid contract.

Substantive discussion about the Indian Creek project between the City and FDOT staff began in May 2015, as an extension of negotiations over the installation of temporary measures to prevent flooding during the October 2015 King Tide season. Former Public Works Infrastructure Director Mike Alvarez had met with FDOT District Secretary Gus Pego and proposed raising the elevation of a curb along Indian Creek Drive. Alvarez subsequently reported in an email to Morales, Robins and other City staff that Pego said the Department would not fund the construction of the seawall because large sections of it were privately owned. He said Pego had offered to provide funding for the purchase of an inflatable plug for outfall pipes as a temporary response to flooding. Public Works viewed that solution as ineffective and favored the installation of backflow prevention devices.

On May 7, 2015, Mowry sent Pego an email that described the City's plans: “The City wishes to install (sic) one-way check valves in over 15 outfalls in this section of Indian Creek Drive and also construct a berm/curb similar to what Mike Alvarez has proposed.” The tone and content of this message and those that followed reflected Mowry's strong view that the City should take the lead in designing stormwater construction in Miami Beach, including those built with state funds, and the assertive approach he favored during negotiations with FDOT. Mowry said the City was

prepared to begin construction on its own to raise the curb's elevation. He wrote, "I am requesting the City to approve \$300,000 to implement this solution to prevent the flooding this year during the high tides that will be starting again this summer. This work needs to start immediately to prevent flooding this year." Mowry closed the email with a reference to FDOT's future participation in the larger project proposed in the Greenway Plan: "Please let me know if FDOT is willing to assist in implementing this program this year and work together on a permanent solution for this critical highway in the City. The permanent solution will consist of three storm water pump stations located between 24th Street and 41st Street along with a permanent sea wall upgrade."

On May 22, 2015, Alvarez circulated to City staff the following summary of a second conversation with Pego: "FDOT will not fund the barrier wall since flooding is caused by the seawall / property owners although, Gus will let me know the cost of (sic) for the concrete barrier wall." Alvarez added, "We also discussed an FDOT storm water pump station in the area although, a seawall is required to be built first by the property owners and then, monitor future high tides flooding."

On June 13, 2015, Mowry sent FDOT District 6 Design Engineer Chris Tavella a copy of the Greenway Plan with an email that again asked if the Department was "interested in joining the City in constructing a permanent engineering solution for flooding along Indian Creek Drive **consisting of three pumping stations and a new seawall between 24th Street and 41st Street.**" (Emphasis added.) Chris Tavella emailed Mowry that the Department was developing plans "for a potential ultimate solution that would involve reconstructing with a higher roadway profile elevation and new drainage system **that could coincide with a new higher seawall.**" (Emphasis added.)

On August 31, 2015, Mowry sent Levine an email with information for a conversation the Mayor planned to have with Pego. It began with a reference to the City's successful work with FDOT in the 2014 project to install pumping stations along Alton Road, and a more recent collaboration. Mowry wrote, "We need some additional assistance from FDOT to make our systems perform better for the next set of high tides that we will be challenged to defend the City from flooding in a few weeks." He stressed the importance of FDOT's allowing construction of a concrete barrier along Indian Creek Drive to prevent flooding from overtopping the Creek during high tides and concluded with the following:

This past weekend the City utilized temporary pumps at 29th Street and 30th Street to control flooding after the City spent approximately 300k for the installations of check valves on the 22 outfalls on Indian Creek. **Next month we expect the tides to be higher and an extension of the curb to a higher elevation or a temporary water barrier will need to be installed to keep the highway from flooding.** FDOT assistance is being requested to work with City staff for approval of this work to ensure the success of this project. (Emphasis added.)

To save time, Levine forwarded Mowry's email to Pego with the following message, "Hi Gus, We have two more major high tide events coming up in September and October. We would be beyond grateful if you could look at the note below and we could get FDOT's URGENT assistance so that we could keep our streets dry during these upcoming king tide periods. Please let me know your thoughts."

A month later, Public Works prepared a \$7 million change order to Lanzo's design-build contract to expand the scope of work in Sunset Harbour to include the elevation of roads and installation of a new waterline. When former City Attorney Raul Aguila learned that the resolution had been

inserted in the agenda packet for a Commission meeting on Sept. 30, 2015, he had the item pulled for further legal review.

In an email to Morales and Carpenter, City Attorney Aguila said the change order was "technically an amendment to the existing Design-Build contract and therefore subject to the CCNA," an observation that applied to earlier change orders. In this instance, though, Aguila was concerned that the resolution and LTC did not contain sufficient information about the existence of emergency conditions to justify an award without competitive bidding.

Aguila wrote, "I discussed with Eric when this item came up at the September 2nd Commission meeting for discussion, and since this is a significant contract amendment with equally significant expanded scope, this needs to be justified as an emergency. The CCNA provides for waivers of competitive bidding in the case of public emergencies declared by the agency head." Aguila counseled the following:

In this case, Jimmy's Comm (sic) Memo needs to set forth the reason for the emergency and his recommendation that it's necessary. It will also require 5/7ths vote...**Again, since the waiver of competitive bidding is an extraordinary remedy, and since this will be Jimmy's recommendation to the City Commission, Memo and Reso need to be SPECIFIC AND DETAILED (especially Memo).** (Emphasis added.)

Ultimately, the Commission approved a revised version of the resolution during its meeting on Sept. 30, 2015. It was submitted with an LTC that cited the risk that flooding could occur in October 2015, during several days of King Tides, and said, "Due to these exigent circumstances and the extreme weather condition the City Manager has concluded that the potential emergency conditions need to be addressed as quickly as possible."

The next month, however, during a Commission meeting on October 14, 2015, former Commissioner Edward Tobin expressed concern to former Assistant City Engineer Jay Fink about awarding sequential contracts for complex projects expanding their scope:

Here's the problem, when you rush to do public works jobs like this, we get in these situations where we have to let no bid contracts. And it has happened for my first couple of years here...I think in this instance we just wanted to get it done...I would just suggest in the future, no matter how much pressure you feel, you gotta do these things right. Because to go forward on your plans and then add, you know, 100 percent for additional scope, or to modify, is just probably not the best idea. And if we're going to spend \$400 or \$500 hundred million dollars around the city... that \$500 million will quickly turn to a billion or more if we jump into these projects because you feel like you gotta just get it done. You got to plan it first.

E. FDOT produces conceptual plans for building a stormwater system without replacing the seawall.

Beginning in September and continuing through early October 2015, Ribbeck and his staff prepared a summary of its anticipated approach to the drainage feasibility study. The Ribbeck team considered the City's proposal contained in AECOM's Greenway Plan and Ribbeck's evaluation of the shortcomings of the plan, the FDOT proposal and scope of work, including adherence to FDOT Chapter 14-86 and a preliminary construction cost. The summary was given

to FDOT and included a preliminary drainage map and the conceptual idea of four pump station schematics with a total pumping capacity of 100,000 GPM.

In its response to the OIG draft report, Ribbeck submitted the following clarification, distinguishing his position from the Greenway Plan:

It is important to emphasize that at his very initial stage of the drainage feasibility study preparation, a very preliminary pump capacity analysis had been conducted with the main purpose of sizing the pump house. The preliminary drainage map boundaries were established from the very beginning based on FDOT and local street right-of-way plus a 20-foot setback outside the right-of-way. The computed project total drainage area was 36 acres and not 24 as stated [in the OIG draft report, now amended]. The initial 4 pump station layout schematics show the pump stations located within the travel lane as an option to address right-of-way limitations between the roadway and seawall. The pumps were arbitrarily labeled to have a 25,000 GPM capacity as an initial starting point and following a conservative approach for purposes of scoping and construction cost estimate. The 25,000 GPM capacity per pump station was not optimized, meaning some of them could have been slightly less in capacity. At this initial stage in the feasibility study preparation we were more concerned to determine if the pump stations layout would fit within the right-of-way (strip of public land between roadway and seawall) and what impacts to expect with underground utilities...the total 100,000 GPM pump capacity has nothing to do with the Greenway Study pump capacity evaluation. Our initial evaluation was based on different drainage contributing areas and different drainage design criteria than the one used for the Greenway Study...The Greenway Plans report was reviewed but found to have several design and permitting flaws in relation to the Indian Creek Project. The concept omitted the side-streets and private properties contributing drainage areas to the east of Collins Avenue. It also showed the proposed trunkline and pump stations built within Indian Creek Waters/Submerged State Lands which would have required filling portions of the Creek. This activity would have been difficult, if not impossible, to permit by United States Army Corps of Engineers, Florida Department of Environmental Protection, South Florida Water Management District and/or the Department of Environmental Resources Management.

On October 16, 2015, Levine scheduled a meeting in Tallahassee with then FDOT Secretary Jim Boxold to discuss the Indian Creek project. In advance of that visit, a letter to Boxold from Levine and Morales was drafted that said the following:

We need your help because one of the current emergencies we face involves a portion of State Road A1A on Miami Beach. This iconic street is critical to the north-south movement of the City. There is a 15 block stretch south of 41st Street where A1A splits into Collins Avenue northbound and Indian Creek Drive southbound. **Unfortunately, at high tides like we are now experiencing, Indian Creek Drive is completely flooded by water coming over the sea walls and up from the storm water drains. The water also floods many of the side streets and, particularly at higher tides, also flows into Collins Avenue.** This water can be very damaging to vehicles and creates a driving hazard. We often close Indian Creek Drive for safety purposes, thus creating a major traffic situation up and down the island. We need FDOT to come to the rescue on this state road....Your

immediate attention is required to address the coastal flooding on Indian Creek Drive. (Emphasis added.)

For the lobbying trip to Tallahassee, Levine was joined by Robins, Carpenter, and Mowry. According to Mowry, Boxold was very responsive to the City's desire to expedite construction. Mowry said FDOT staff were aware that Public Works had been able to expedite construction of pumping stations during the Alton Road project. Mowry added, "At that time, we had produced several projects in a very, very expedited fashion...and also, we seemed to work better with the local business and residents that we have to coordinate with that." Based on this discussion, Mowry said Boxold and FDOT's senior staff "agreed that we would take leadership and that we would develop an agreement between the two parties, the City of Miami Beach and FDOT."

Four days later, on October 20, 2015, Carpenter and Mowry met with FDOT staff in Miami for a presentation of the concept plans and cost estimates Ribbeck had developed for FDOT. According to the minutes of the meeting, FDOT presented two conceptual drainage solutions. One with a single large pump station and a second option with the area broken into four drainage basins with a pump station for each, resulting in four pump stations. Instead of a seawall, the plan included a continuous concrete wall in the right-of-way along Indian Creek Drive to serve as a dike or levee to prevent flooding from overtopping the creek during high tide. FDOT minutes of the meeting said preliminary cost estimates for the drainage system was \$7 million for a single pump system, \$11 million for a system with four pumps. The concrete wall and sheet-pile barrier would increase the total to \$15 million. FDOT did not include replacement of the seawall as part of the project.



Figure #7. This is a map of a preliminary four-station drainage system proposal that FDOT considered with total pumping capacity of 100,000 GPM, based on a drainage area of 36 acres of public roads and right-of ways. Each station had the capacity to pump 25,000 GPM of water collected from one of four drainage areas, colored in blue, yellow, green and red. It was proposed as a conceptual alternative but later deemed not feasible during the drainage feasibility study.

On Nov 10, 2015, Levine sent Boxold an email that said, "Since our meeting on October 16th, where you promised to respond to us the following week with a plan, I have not heard back from you regarding any plans to fix the State's flooded Indian Creek Road on Miami Beach. Please let me know if in fact you have a plan so we will know how to proceed either way." Boxold sent a response that said, "Mayor -- Good to hear from you. We have identified some issues with ROW (Right-of-way) and construction that we are working through and which I relayed to one of the members of your team. I have asked our district staff to work with your folks because some of the

ways to resolve the construction issues involve coordination with the City. Happy to discuss with you directly at your convenience, just let me know your availability.”

Carpenter and Mowry knew that FDOT had made the Indian Creek project a priority and were refining the conceptual plans Ribbeck had prepared based on comments from the City. At this point, however, the responsible City officials were no longer concerned about persuading FDOT to build a drainage system. Their present focus was the size of the state’s financial contribution and preliminary budget estimate.

On November 11, 2015, Mowry sent Pego an email asking, “Do you know who the Secretary would have been discussing this issue on Indian Creek Drive? As you know the Mayor and others had a meeting with the Secretary concerning this highway flooding during high tides. We left him with copies of the engineering report that the City shared with your office earlier this year. We would like to move forward with a project to resolve this flooding in the next several months so we can see benefits by next year.” Pego responded that he was discussing the project with Boxold. The next day, Carpenter and Mowry met a second time with FDOT staff.

Records show that FDOT remained concerned that replacing the seawall would delay construction and increase the project’s cost and complexity. Additionally, Florida law, [F.S. 337.11(c)], prohibited FDOT from beginning the solicitation process for a major construction project “until title to all necessary rights-of-way and easements for the construction of the project...has vested in the state or a local governmental entity.” Instead of a new seawall, both FDOT options included the construction of a continuous concrete wall or levee along the west edge of Indian Creek Drive that an FDOT memorandum summarizing the agency’s proposal said would “serve the dual purpose of protecting Indian Creek Drive traffic from the creek, and also preventing high tide water from flowing into the road.”

FDOT and Ribbeck continued to refine options for the City to consider that did not include construction of a seawall or a significant increase in total cost. Ribbeck’s preliminary cost estimates for FDOT suggested a budget that fell millions short of the earlier \$34 million estimate in the Greenway Plan. Ribbeck’s estimates included costs related to the drainage system. The Greenway Plan estimates included significant costs for items well outside the scope of Ribbeck’s work.

During a second meeting in November, FDOT staff said the Department was prepared to provide funding for 50 percent of the project’s construction costs. After the meeting, Carpenter sent Morales an email that said in part:

Finally, the discussion progressed to the schedule of the project and which agency would take the lead. FDOT stated that they could have a more complete design criteria put together by December. If everything goes smoothly and City property can be used they can release a design/build contract procurement early in 2016. The procurement process would take 6-9 months. As a result, earliest construction start would be early 2017 with a duration of approximately 24 months. **The City represented that they thought construction could be completed significantly earlier to which FDOT offered to allow the City to be the lead agency. The City asked what strings would be attached to any FDOT funding as that may be the deciding factor if the City could be successful in delivering the project sooner.** (Emphasis added.)

On November 24, 2015, Carpenter emailed FDOT's Chris Tavella with information on property ownership along 4,454 feet of the seawall between 25th Street and 41st Street. The City's summary said 28 parcels, or about three-fourths of the seawall and adjacent land, was privately owned. The City owned four parcels as well as land at the end of each side street, and four other parcels, that totaled 1,410 feet of seawall, or 31.6 percent. Tavella forwarded the property ownership information from Carpenter to other staff, including Salazar, with instructions to "update previously prepared exhibits along Indian Creek Drive, modify the drainage analysis and have the revisions ready" for a third meeting in December.

By this time, Ribbeck had determined that the 4-pump stations with 100,000 GPM alternative could never be relocated into the right-of-way because there was not enough space between the roadway and the creek to allow for relocation. Consequently, Ribbeck refined a design for a system with a single pump station located at 32nd Street with pumping capacity of 40,395 GPM, (later increased to 45,000 GPM) and a 72-inch trunkline. Mowry sent a Bergeron official details about the single station system and asked for a cost estimate to build it. In early December, Bergeron sent Mowry a preliminary construction budget of \$24.8 million. The exchange was not unlawful and was consistent with an existing practice that had culminated in the award of no-bid Design-Build contracts to Bergeron in 2014 and 2015.

The capacity of the FDOT system was sized based on a drainage area that consisted of 36 acres of state-owned and City-owned right-of-way plus 20-foot setback into private properties. This was consistent with Florida Statute Chapter 14-86 and FDOT design guidelines. During an interview, Mowry said he was disappointed with the pumping capacity of the system FDOT proposed. He said he objected to the reduction in pumping but was unable to persuade the Administration to provide funding for additional pumping units. Levine was eager for the project to begin. Mowry said, "To a certain extent, I was losing and didn't have support from the City management to basically push what we needed to do...And as I told you, I was upset at Ribbeck...that it (the pumping capacity) didn't meet the (sic) additional flows that I wanted to get out of it. And I said, that's not what we asked for." The system that Ribbeck designed, however, was in compliance with its contractual obligation to design a roadway facility drainage system based on FDOT drainage design criteria and regulations and permit conditions.

On December 1, 2015, FDOT staff met a third time with Mowry. Carpenter did not attend. By that time, FDOT had made a firm decision to join the City in construction of a stormwater system. But, the Department was disinclined to use state funds to pay the cost of providing additional pumping capacity to drain private property and had legal concerns about building a state system to provide drainage for private property owners. If the City wanted a drainage system sized with more pumping capacity sized on the larger 50-acre drainage area, it would need to provide approximately \$3 million in City funds to cover the cost of the additional pumping units.

During the meeting, FDOT staff emphasized that the surest way to expedite construction of the project was to build the entire system within the state right-of-way and postpone replacement of the seawall until the City had obtained title or lawful access to the privately-owned sections. Former FDOT District Six Drainage Engineer Ricardo Salazar told the OIG that, "The biggest issue was the ownership of that land," and what FDOT feared would be a "very long process" of resolving the access issue.

An FDOT memorandum summarized its proposal for a joint project that would "eliminate the reoccurring tidal-induced flooding of Indian Creek Drive while still providing an expedited project delivery, with a new concrete dike to prevent tidal water from reaching the roadway." The memorandum added, "To expedite the project delivery, FDOT's concept was designed to

minimize or eliminate both right-of-way and environmental impacts," by fitting the drainage system and roadway infrastructure within the existing 50-foot FDOT right-of-way and by replacing a lane of parking on the east side of the state road with a sidewalk."

Ribbeck had developed revised cost estimates for both options: \$7 million for single station system; \$11 million for a system with four stations; and an additional \$10 million for roadway construction, for an estimated total project cost between \$17 million and \$21 million. Additionally, FDOT was prepared to fund Ribbeck's preparation of a DCP and Request for Proposal (RFP) and handle the procurement process. The memorandum described the options of either a Design-Bid-Build or Design-Build contract and project delivery methods but noted that the latter would take less time. FDOT said it would take 12 months to award a Design-Build contract and an additional 36 months for the design phase and construction phase. FDOT staff viewed this timeline as relatively short, even expeditious; the responsible City officials, who were under pressure to begin construction, did not.

On December 8, 2015, Mowry sent Carpenter and Robins copies of FDOT's revised conceptual plans in an email that said, "This is the present design concept that FDOT has for Indian Creek Drive." The single-station 40,000 GPM system provided less than half the pumping capacity Public Works that AECOM had recommended in the Greenway Plan a year earlier. Carlos Ribbeck, P.E, who was subsequently retained by the City to serve as the project's Engineer of Record, attributed the outcome to FDOT funding constraints and the laws and administrative rules that apply to FDOT's design and construction of state-owned drainage systems, including those that strictly limit the connection of private stormwater systems to state-owned drainage systems.

In a revised conceptual plan, Ribbeck increased the drainage area to 36 acres by adding 20 feet of private property along rights-of-way and increased the pumping capacity to 45,000 GPM. He said, "My system is not designed to accommodate drainage contribution from private properties as per FDOT regulations." Ribbeck said he recognized the engineering logic behind the 97,500 GPM drainage system AECOM designed and Public Works approved for use in the Greenway Plan. He said, "It makes sense, you know, but the reality is different...the reality is it's about money. It's about risk. It's about liability. It's about what is constructible...and what DOT will allow."

During an interview, Mowry said he objected to building the less capable 40,000 GPM system, that he argued for the City to contribute additional funding to cover the cost of three additional pumping units, approximately \$3 million, and further, that he warned Levine and other responsible City officials that the system's pumping capacity would not meet the City's Level of Service performance standard.

AECOM's McGowan attributed the decision to FDOT policies that he said focus "very narrowly within the confines of what they consider their problem or their responsibility" to build drainage systems sized for the state roads and rights-of-way. In an interview, McGowan said, "they don't look too far beyond that. And the problem, doubly, the problem is, once you constrain yourself to a pumped mechanical system, then, if that pumped mechanical system is not large enough to deal with the ultimate problem, then it's very short-sighted."

In its response to the draft OIG report, the City Administration stated that it disagreed with the assertion that the drainage system on Indian Creek was built with less than half the total pumping capacity required to provide protection from flooding. It asserted that the Indian Creek Drainage Report prepared by AECOM published on October 26, 2016 and the October 2016 Drainage Report prepared by Ribbeck Engineering were the basis used for the design of the pump station. AECOM's report proposed a 40,000 GPM pump station serving a tributary area of 80 acres (right-

of-way plus private property area for water quantity, but right-of-way only for water quality analysis. Ribbeck's report considered a 10-year, 24-hour storm event (FDOT's requirement) at the time of design. The report proposed the 44,000 GPM pump station serving a 36-acre tributary area (right-of-way plus 20 feet within private properties for water quantity analysis, but right-of-way area only for water quality analysis. This design was consistent with FDOT standards and permit conditions. Both of these drainage reports complied with the level of service standards in place at the time of the initiation of the design.

F. City and FDOT complete \$7 million construction of a concrete flood barrier or levee along Indian Creek Drive to prevent flooding; FDOT revises drainage plan for City.

By the end of 2015, the actual risk that King Tides would cause serious flooding of Indian Creek Drive and adjacent side streets had been greatly reduced, if not eliminated by a \$7 million flood mitigation construction project. The City contracted with DMSI to build a continuous concrete barrier along the state road to prevent flooding from seawater that overtopped the Creek. (See Figure #8 below.) The levee or small dam was considered "temporary" infrastructure that would prevent flooding during construction of the drainage system. Ultimately, it would be demolished and replaced by the permanent five-foot seven-inch wall in Ribbeck's conceptual plans built on top of a twenty-foot underground barrier of sheet pile. To prevent flooding from the reverse flow of water from the Creek during King Tides, the City also installed backflow preventers on stormwater pipes that emptied into the Creek. These devices contained a valve that blocked water from backing up through the drainage system and into streets. Additionally, Public Works contracted with DMSI and other vendors to position mobile pumping stations as needed to remove ponding water from other sources, such as rain or underground intrusion.



Figure #8. Photograph shows “temporary” concrete flood barrier built in early 2016 along Indian Creek Drive that reduced the risk of flooding from water overtopping the seawall.

On January 2, 2016, FDOT’s Salazar sent Mowry revised cost estimates labeled “Preliminary Construction Cost Re-evaluation” (Figure #9 below) that broke out the cost of the single-station 45,000 GPM system and trunkline pipe for Indian Creek Drive, and the City-owned roads and right-of-way, with a total cost of \$25.2 million. The chart also included an additional cost of \$11.2 million for “providing drainage only for FDOT Right-of-Way Indian Creek Drive & Collins Ave.” This additional amount was the estimated cost of adding a second trunkline pipe and 5,000 RPM pump station on Collins Avenue. The effect of the side-by-side presentation was to provide an alternative to the 100,000 GPM system with the capacity to collect stormwater on Collins and pump that water into Indian Creek.

SR A1A/Indian Creek Drive Drainage Improvements (including Collins Avenue) From 26th Street to 41st Street Preliminary Construction Cost Re-Evaluation						
Project Construction Items (Drainage Feasibility Study - Handling all drainage for FDOT & City)	Original Feasibility Drainage Study Cost Brake-down - Handle All FDOT ROW & City's Drainage	Indian Creek Drive - Handle Only FDOT Drainage	Collins Avenue- Handle Only FDOT Drainage	Total Cost providing drainage only for FDOT ROW - Indian Creek Drive & Collins Avenue	Project Construction Items (Handling only drainage from FDOT ROW)	
	in \$ Millions					in \$ Millions
Roadway Components:						
Roadway Reconstruction (Includes Mobilization, MOT, roadway excavation/embankment, stabilization, base, asphalt course, friction course, curb & gutter, sidewalk. Also includes additional miscellaneous roadway items such as pavement marking and signing, signalization and lighting	3.0	3.0	3.0	6.0	Collins Avenue Roadway reconstruction footprint area is similar to Indian Creek Drive	
Sheet pile construction	5.0	5.0				
Special rigid conc. barrier	1.5	1.5				
Miscellaneous drainage items. Includes inlets, manholes, pipes 36" & smaller, trench drain	1.0	0.5	0.5	1.0		
4300' of 72" RCP pipe mainline collector	5.0	3.5	3.5	7.0	Includes 4300' of 48" pipe along Indian Creek and additional 4300' of 48" pipe along Collins Avenue	
Triplex 15,000 GPM - Total 45,000 GPM pump station	2.5	1.0	1.0	2.0	Includes duplex pump stations total capacity 10,000 GPM. One for Indian Creek Drive and an additional one for Collins Avenue	
TOTAL	18.0	14.5	8.0	22.5		
Design & CEI Fees (20%)	3.6	2.9	1.6	4.5		
20% Contingency	3.6	2.9	1.6	4.5		
GRAND-TOTAL	25.2	20.3	11.2	31.5		

Figure #9. December 2015 FDOT "Construction Cost Re-Evaluation" showing the \$11.2 million cost of providing a trunkline pipe and 5,000 GPM pumping station for Collins Avenue. This would be connected to a trunkline and 45,000 GPM station on Indian Creek at 32nd Street.

Mowry said in an interview that FDOT's initial 100,000 GPM conceptual plan designed by Ribbeck "probably would have taken care of most of the drainage issues," but would not have enabled the City to achieve its other objectives, including replacing the seawall. He said, "The bottom line is it was not going to meet what all the City wanted to achieve...Ribbeck was a good engineer, and they basically engineered it and said, this will work engineer-wise. Now, the question is whether or not, operational-wise, does the City want to take over the responsibility to operate it and does it really achieve all the needs of the City."

Mowry further explained that the basis of the decision to build a less capable pumping station was "primarily money." In an interview, he said it would have required "just a few million dollars more to build a much larger capacity system," but the funds were not available in early 2016. He said that the 2016 decision to forego the purchase of three additional pumping stations meant "we're going to have failure in the program because it's still going to flood." He said he raised this concern with Carpenter and Levine to no avail. He said, "Carpenter is not stupid. Carpenter basically understands things. He's an engineer." Mowry said he also told Levine that the pumping station's capacity was inadequate, but that Levine at that time was "focused towards the governor's position."

During the weeks that followed, the City did not respond to the options FDOT had proposed. On January 20, 2016, an FDOT official telephoned Morales and asked for a meeting to discuss the project. Morales sent Levine an email that said, "Mayor I received a call from Tom Martinelli at FDOT. Gus Pego would like to meet with you and I and the team to discuss this project." Morales

scheduled the meeting for January 23 with Levine, Aguila, Mowry, Carpenter, and Boksner, to discuss the “Indian Creek FDOT project.”

Following that meeting, Mowry sent an email on January 25 to Salazar and FDOT Project Manager Fabiana Gonzalez that struck a formal tone with words and phrases typically used during contract negotiations. The message said in part, “The City is willing to administer the contract to construct the new drainage system and street improvements on Indian Creek Drive between 26th and 41st Street as we discussed, contingent on reaching the appropriate funding agreement. **In order to complete this work within the time schedule we have been discussing, FDOT will have to agree to allow the City to proceed with minimal reviews.**” (Emphasis added.)

More time passed. Pego and Carpenter had at least one additional conversation. On February 3, 2016, FDOT's District 6 Secretary Gus Pego sent Carpenter budgets for two approaches to building the Indian Creek drainage system, with an email that said, “Following up on our conversation, attached please find two rough estimates.” The budget for Alternative #1, with a total cost of \$25.4 million, was for a system it said was sized to “handle FDOT drainage areas along Indian Creek Drive and Collins Ave, as well as the City’s local street drainage areas,” based on the 36-acre drainage area in Ribbeck’s original plan for FDOT. It included \$2 million for a pumping station, \$5.2 million for the continuous concrete wall or levee to prevent flooding, and continuous underground sheet pile barrier to prevent erosion. The budget for Alternative #2, with a total budget of \$22 million, described a smaller sized drainage system that “was designed to handle only FDOT drainage areas along Indian Creek Drive and Collins Avenue (Approx. 18 acres).”

The same week, Ribbeck updated the project’s drainage study. In that technical document, Ribbeck concurred with McGowan’s assessment of the future viability of gravity wells. But at FDOT’s direction, he had not included in his drainage calculations the additional volume of water from private high-volume stormwater systems used by hotels, condominiums, and commercial buildings in the area. The drainage study included the following: “The use of drainage wells along Indian Creek Drive will result in systems having low flow because of the minimum clearance between the roadway profile and the adjusted groundwater elevation by 18 inches. **Drainage wells linked by submerged pipes will have insignificant storage volume and will not properly attenuate the design storm.**” (Emphasis added.)

Eight days passed. On February 12, 2016, Pego sent Carpenter an email that said, “After our meeting a few weeks ago it was unclear to me whether the City was still interested in delivering the project.” Additionally, Pego referred to the option of allowing the City to begin construction on some parts of the project before the award of a Design-Build contract. He wrote, “Assuming funding is available next fiscal year we could work on an (sic) reimbursement agreement if necessary, should the City wish to start work earlier. We need to know if this an option or not. In reviewing the cost distribution again, I believe I underestimated the City's share as I should have included the cost of the sheet piling and barrier to address the property that is owned by the City. In quickly looking at the aerial it appears to be around 30%.”

On February 17, 2016, Morales forwarded FDOT’s latest proposal to Aguila with a message that said, “I received this last week from Eric. As you can see, the written proposals have our share at \$3 million. But in the text of the email, Gus Pego suggests that we should also pay an additional \$2.1 million for the wall based on the fact that 30% of the seawall is owned by the City. Eric is meeting with FDOT on Monday. **Perhaps you wish to discuss with Mayor and see how he wants to proceed.**” (Emphasis added.) In his response, Aguila asked, “Is Eric meeting to

continue to negotiate or is this the best and final? Morales answered, "We hope to get something better."

Subsequently, Morales scheduled a meeting for February 20 to discuss the Indian Creek project with Levine, Carpenter, Aguila, and Assistant City Attorney Alex Boksner, who was assigned to handle preparation of a contractual agreement between the City and FDOT known as Department Funded Agreement (DFA). During the next four weeks, FDOT agreed to increase the state's share of the cost from 50 percent to 79 percent and allow the City to manage the project.

Carpenter led the negotiations with extensive participation by Mowry. Boksner's role was to provide legal advice, negotiate legal terms with FDOT attorneys, and incorporate the terms of the agreement into the DFA. While FDOT had agreed to increase funding for the project and allow the City to manage it, Boksner said the Department would not agree to waive the City's obligation to comply with applicable state laws, including those requiring the use of competitive bidding to award a Design-Build contract, and to comply with FDOT standards for construction of state roads and drainage systems. After meeting with FDOT attorneys, Boksner said he told Carpenter and Mowry, "This is where we're at with the agreement. They (FDOT) are not inclined to deviate any further. Are you fine with this? And I always had that conversation...I went through it at least a half a dozen times because of FDOT's unwillingness to deviate from that."

By the first week of March, Boksner and attorneys from FDOT had memorialized the \$24.5 million agreement Carpenter and Mowry had negotiated with their counterparts in FDOT. FDOT agreed to provide \$19.9 million in state funds, or about 78 percent, of the construction costs; the City agreed to provide the balance. FDOT also agreed to allow the City to manage the construction of the state road and state stormwater system. The City agreed to use a Design-Build contract awarded by competitive bidding to build the stormwater drainage and roadway infrastructure described in a final iteration of the plans Ribbeck had developed (FDOT-CMB conceptual plans).

According to those plans and the "Scope of Services" attached to the agreement, the drainage system would consist of a single three-unit pump station at 32nd Street with a combined pumping capacity of 44,000 GPM and a 72-inch trunkline along Indian Creek Drive. The system's drainage area consisted of the 36 acres previously described. The drainage area did not include the additional 14 acres of privately-owned land included in the Greenway Plan's 50-acre drainage area. The project included construction of a continuous concrete wall or levee along the state road, supported by an underground barrier of sheet pile, but did not include replacement of the seawall.

On March 3, 2016, Boksner sent Levine an email saying he was optimistic that the agreement with FDOT would be ready for approval by the Commission during its scheduled March 9 meeting. He wrote, "The City of Miami Beach is anticipating the receipt of a draft agreement from FDOT that will set forth the parties understanding surrounding the immediate reconstruction of Indian Creek Drive." Before signing off on the language and commitments in the DFA, Boksner said he met with Carpenter and Mowry for a final review. In an interview, Boksner said: "I went through each point of the agreement: 'Are you fine with this? Are you fine with this? Do you understand what it says? Is there any ambiguity? Is there anything that you don't understand?' And there was not. So, I recall that what was conveyed to me was 'We're good with this. We understand. And it's good to go.'"

However, as discussed in the next section, Carpenter and Mowry were far from satisfied with the agreement that they had reached with their counterparts at FDOT.

PART III: THE CITY'S "AGGRESSIVE" NEGOTIATIONS WITH FDOT

JANUARY 2016 to JULY 2016

A. FDOT agrees to increase state funding for the project and allow the City to manage construction; the City agrees to use a Design-Build contract and comply with Florida law and FDOT standards; Commission approves the agreement's terms but authorizes further negotiation.

Between January and early March 2016, the City's aggressive negotiation strategy with FDOT achieved all but one of the City's objectives. FDOT agreed to make the construction of pump-based drainage systems on Indian Creek Drive a priority. It agreed to increase the state's share of construction costs from 50 percent to 78 percent and to provide nearly \$20 million in state funding so the project could begin immediately. FDOT also agreed to allow the City to manage all aspects of building a state-owned drainage system, installing a concrete levee along Indian Creek Drive, and reconstructing the state road and above-ground infrastructure. But the state funding did not include construction of the seawall.

For its part, the City agreed to award a Design-Build contract based on competitive bidding and to construct the drainage system and roadway construction depicted in the concept plans prepared by Ribbeck and described in the Department Funded Agreement (DFA) exhibits (See Figure #10 below). The DFA's Exhibit A, "Scope of Services," (DFA scope) listed the agreed-upon construction tasks; Exhibit B, "Financial Summary," itemized the labor and material costs that could be covered by \$19.9 million in FDOT funds, and those covered by the City contribution of \$5.4 million, or 22 percent of the project's total cost of \$25.3 million.

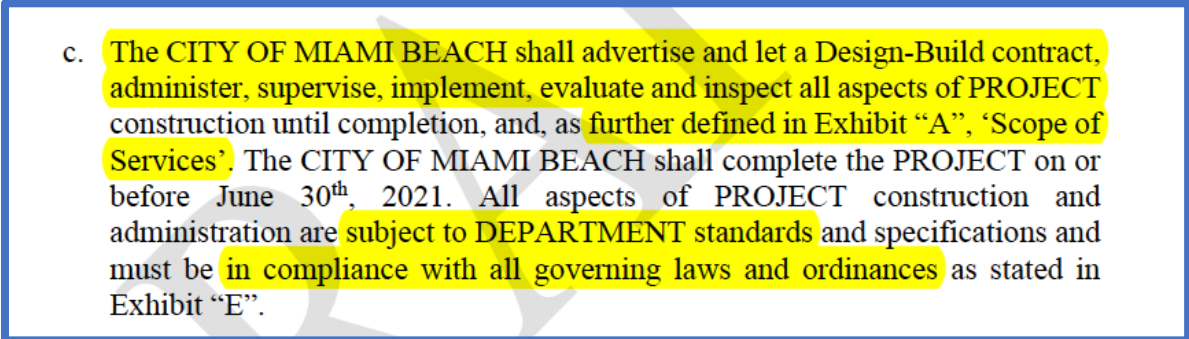
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- c. The CITY OF MIAMI BEACH shall advertise and let a Design-Build contract, administer, supervise, implement, evaluate and inspect all aspects of PROJECT construction until completion, and, as further defined in Exhibit "A", 'Scope of Services'. The CITY OF MIAMI BEACH shall complete the PROJECT on or before June 30th, 2021. All aspects of PROJECT construction and administration are subject to DEPARTMENT standards and specifications and must be in compliance with all governing laws and ordinances as stated in Exhibit "E".

Figure #10. March 9, 2016, Draft Department Funded Agreement (DFA) based on the agreement between the City and FDOT with three commitments by the City: (1) to award a Design-Build contract after competitive bidding for "all aspects" of project; (2) to build the agreed-upon project described in Exhibit "A" Scope of Services; and (3) to adhere to applicable FDOT standards and state laws.

The City agreed to build a single pumping station at 32nd Street. Despite AECOM's prediction of the future failure of approximately 120 gravity wells used by high-volume private stormwater systems in the Indian Creek Basin, and the explanation Mowry said he conveyed to Levine, the City had declined to cover the cost of installing three additional pumping units to handle the volume of stormwater from the additional 16 acres of private property.

By March 2016, the risk that the October 2016 King Tide would cause flooding from seawater overtopping the seawall had been eliminated or dramatically reduced by a \$7 million investment in flood mitigation infrastructure. The City and FDOT had completed construction of a concrete

flood barrier or levee along Indian Creek Drive and installed backflow prevention devices in stormwater pipes that emptied into the Creek.

Nevertheless, the City maintained the position that the risk of flooding on Indian Creek Drive from the October 2016 King Tide was a public emergency that justified the use of no-bid contracts to begin construction immediately. At a Commission meeting on March 9, 2016, the Administration submitted a resolution with the DFA attached as an exhibit. The resolution recommended that the Commission approve the “substantive business terms” in what it called a “a draft agreement that memorializes the parties’ respective obligations.”

The City and FDOT had agreed to build a drainage system with a single station having a total pumping capacity of 45,000 GPM at 32nd Street, and with a 72-inch trunkline along Indian Creek Drive, with connections to existing pipes on side streets between 26th St and 41st Street. In addition to building the stormwater drainage system, the scope statement included three primary tasks: “Reconstruct roadway along S.R. A1A/ Indian Creek Drive from 41st Street to south of 26th Street; Construct sheet pile wall along west side of roadway; Construct special rigid concrete barrier wall.” The budget summary included a total of \$1.7 million for the concrete wall or levee along the west shoulder of Indian Creek Drive and \$5.1 million for the continuous underground barrier sheet pile under the wall. The scope did not include construction to replace the seawall and raise the elevation of roads by approximately two feet; the budget included no funding for such work.

Levine began consideration of the resolution by recounting his October 2015 trip to Tallahassee with Robins, Carpenter and Mowry to meet with FDOT Secretary Boxold. Levine said, “The state started with, ‘We’re not going to do anything. We’ll probably get to it by 2019...We’ll put in 50 percent. And now, here we are. The state will put in 80 percent. And that really is a testament to the manager, to Eric, to Bruce, to all of you aggressively negotiating with the state to get us to this point. So, the question for all of us is, do you like the deal or do you want to go back to the state and negotiate more.”

In describing the agreement for the Commission, Carpenter said, “The State is willing to commit \$20 million dollars to making this project move forward,” and referred to the DFA as FDOT’s “initial proffer.” He described three “components” of the project: installation of a “pumped stormwater system” that would serve both the state road and City-owned side streets between 26th Street and 40th Street; the subsequent “reconstruction” of the state road; and construction of a continuous 5-foot 7 inch “crash barrier/cut off wall” in the right-of-way along Indian Creek Drive to prevent flooding from seawater. He said, “You may or may not have seen our temporary wall that was installed during the king tides last year. That portion of the project was approximately \$7 million, of which they’re asking the City to cover 30 percent, because we own approximately 30 percent of the adjacent properties where the seawalls are too low.” In response to a question from Commissioner Joy Malakoff, Carpenter said, “it’s basically what we’re looking at is putting in a steel sheet pile wall along the FDOT right-of-way with a crash barrier wall that would be to elevation 5.7 [feet] which would serve the place of a seawall, even though it would be inland.”

Carpenter’s remarks to the Commission appeared to indicate that the City had accepted FDOT’s assessment that it was not necessary to replace the seawall to prevent flooding from Indian Creek, that doing so would delay the project, and that the task should be postponed until the City had obtained the legal access to privately-owned sections of the dilapidated bulkhead. But the text of the resolution indicated otherwise. The resolution’s title referred to “construction of a seawall barrier wall” and conflated the seawall with the five-foot seven-inch wall in the state right-of-way built atop an underground barrier of sheet pile. The resolution acknowledged recent construction

of a “temporary” flood barrier, described the history of flooding on the state road, and contended that “more permanent, corrective actions in response to these flooding events” required major improvements that included “the construction of a crash barrier seawall that will maintain street drainage during high tides, and increasing the road elevation.”

The term “crash barrier seawall” was not defined; the extent of road raising was not specified. Further, the resolution said, “The proposed seawall would be constructed over a 20 feet deep sheet pile wall that would eliminate water from flowing all the way to 41st Street” and described “construction of a seawall barrier wall, improved street drainage, and raising the road elevation.” In the resolution’s text, the “proposed seawall” was also referred to as a “crash barrier seawall,” a “seawall barrier,” and a “seawall barrier wall.” The LTC described “a crash barrier wall to serve as a seawall,” and said, “The proposed seawall would be constructed over a 20 feet deep sheet pile wall that would eliminate water from flowing underground and from flowing over the wall and flooding the street.” (Emphasis added.)

At no time had concept plans prepared by Ribbeck included construction of a seawall. And all versions of those plans, including the final iteration approved by the City, called for construction of a sheet pile barrier in the ground directly under a concrete wall or levee built in the right-of-way along Indian Creek Drive – a structure that Ribbeck and FDOT had proposed in lieu of replacing the seawall. FDOT had rejected the seawall option because two-thirds of the seawall was privately-owned, but included plans and funding for construction of an underground sheet-pile bulkhead that would serve the same function as a seawall.

While the Administration’s resolution approved the agreement’s “substantive business terms,” it also authorized further negotiations with the stated goal of preventing flooding during the October 2016 King Tide. Thus, Carpenter said, “This is basically a resolution...to allow us to continue negotiations and execution of an agreement, joint funding agreement with the Florida Department of Transportation to do the improvements necessary on Indian Creek between 26th and 41st Street to be able to alleviate this flooding concern.”

Carpenter told the Commission about two “substantive items” that required additional negotiation. The first was funding. He said, “their initial proffer was that they cap their cost at twenty million dollars. Obviously, if there’s something that comes up that requires additional input, we want to make sure that we have the ability to go back to them and get them to cost share in whatever additional cost there would be.” At that point, FDOT had only agreed to build a drainage system designed to prevent flooding of Indian Creek Drive. This was the first public indication that Carpenter and Mowry contemplated expanding the project’s agreed-upon scope to achieve other objectives. The \$25.4 million authorized by the agreement was sufficient to build the stormwater drainage system and reconstruct Indian Creek. It was not enough to also replace the seawall, which AECOM had estimated would cost \$9 million, elevate the state road by approximately two feet to 3.7 feet NAVD, and upgrade the City’s drainage system along side streets.

Further, Carpenter said, “they’ve been very stringent in their initial proffer on how they would like us to move forward with the construction activities. We would just ask that they allow us to move forward in any legal means of procuring their services, because we do believe that there’s an emergency out there, that this needs to be dealt with. You know, we’re using a lot of police resources to close this road during these flooding activities. And we really think that this needs to move a lot faster than FDOT is willing to.”

This was the first indication that Carpenter and Mowry did not believe they could complete the project on Levine’s expedited schedule using a competitively bid Design-Build contract. The LTC

in support of the resolution expanded on Carpenter's two themes: that the risk of flooding during the coming King Tide season was an emergency; and provisions in the DFA would constrain the City's ability to accelerate construction to mitigate an imminent emergency. It said, "Should the City take the lead, a Design-Build and a fast-track system would be utilized" that would "...reduce the time necessary to develop the drawings and start construction as early as summer 2016, enabling enough of the system to help during the high tides this fall," and then to complete the project by the end of 2017.

For two years the City had expedited construction of drainage systems by awarding Design-Build contracts without competitive bidding after declaring flooding a public emergency. This approach had allowed Public Works to minimize the use of standard practices that FDOT and the City's CIP department used to manage construction projects using the design-build delivery method. During 2014 and 2015, the emergency procurement strategy had succeeded in expediting the construction of pumping stations and other improvements that were credited with preventing flooding during the King Tides of 2014 and 2015. But the strategy required the City to accept an unusually high level of risk and to sacrifice the most important benefits of the design-build contracting and project delivery method.

The expedited construction schedule for completing the project by the end of 2017 did not allow time for a design phase to produce a finished set of construction plans, technical specifications and cost estimates that the City could use to negotiate a Guaranteed Maximum Price (GMP) under a design-build methodology. Beginning construction without a fully designed project and finished set of construction plans increased the risk of design changes during construction that could expand the project's scope, thereby triggering a sequence of change orders resulting in schedule delays and cost overruns.

During his remarks, Carpenter said, the resolution will "allow us to continue negotiations" and execute an agreement "to do the improvements necessary on Indian Creek between 26th and 41st Street to be able to alleviate this flooding concern." The Commission approved the resolution and Carpenter was encouraged to continue "aggressive" negotiations with FDOT. Despite continued references to the need to hasten the start of construction, negotiations continued for seven months. The City declined to accept the DFA and \$20 million in state funding until FDOT agreed to allow the City to use its "fast track" contracting mechanisms that relied on the award of a contract without competitive bidding.

During the days that followed the Commission's qualified approval of the DFA, Carpenter and Mowry met with FDOT staff. The provision in the DFA that Carpenter and Mowry viewed as overly "stringent" was the requirement that the City use a competitively awarded Design-Build contract to build the project. Carpenter and Mowry wanted to use an NJPA job order contract because it could be awarded immediately without competitive bidding. After three weeks, FDOT staff agreed to allow Public Works to use a job order contract to begin installing sections of the trunkline as an emergency measure to prevent King Tide flooding in the fall of 2016. But FDOT continued to require the City to use a Design-Build contract as originally agreed; the DFA remained unsigned.

By the final week of March, Assistant City Attorney Boksner grew concerned about the repetitive nature of the negotiations and failure to reach agreement. Boksner told the OIG, "We were often disinclined to agree to certain provisions and certain aspects of the agreement, and they were not willing to really budge in terms of coming to some consensus or agreement." On March 22, Boksner sent Carpenter an email that said, "RE: Indian Creek Blvd Department Funded Agreement. Eric: We need to meet on this matter. Have you reviewed the latest version? Are the

same issues that existed in the previous version...continue to exist in this latest version? Have you spoken with Pego about our issues and concerns?"

By this time, Carpenter had been promoted to Assistant City Manager, but continued serving as Director of Public Works. Boksner sent Carpenter a second email on March 30th that said, "This matter must be finalized. We need to discuss the pending issues and concerns previously discussed. We must meet. What is your availability?" Carpenter responded, "We can meet on this if you want but we still have not received the updated draft agreement from FDOT. Bruce met with them on Monday and I spoke with Gus this morning. We are trying to break this loose."

In a separate email to City Attorney Raul Aguila, Boksner wrote, "I am not inclined to push further...unless you think otherwise. I just don't want the Mayor being upset with our Office." Aguila responded, "We're not babysitters; they can deal with Mayor Levine when he starts to ask." Aguila followed up with an email to Morales, Carpenter, Fink, and Boksner that said, "Just so everyone's aware, Mayor is anxious to finalize!" The negotiations were taking longer than Boksner expected because Public Works wanted FDOT to allow for the use of a job order contract to build the project and to include the seawall as part of the project.

On March 24, 2016, Mowry met with Ribbeck and explained that, before awarding a Design-Build contract, Public Works planned to use City contracts to design and build the stormwater drainage system and begin replacing the seawall. On March 28, Ribbeck sent Mowry an email that summarized Mowry's description of the City's plans "to obtain a perpetual easement within the private parcels between the roadway & the existing seawall," and to contract with Shoreline and DMSI. The message included the following:

This would allow the construction of a permanent seawall in-front of the existing seawall (by Shoreline Construction) and the construction of a double (one on top of the other) heavy wall HDPE 48" trunkline (by Dave Mancini) with a manhole at every side-street. Bolton & Perez (Jake) would be responsible for the design of the seawall (pre-cast concrete panel type)...Both activities would take place under City's (push-button) contract prior to the Design-Build project."

During this period, Assistant City Manager Kathie Brooks was working on a state grant application for funding to build the seawall. After reviewing the Greenway Plan, she sent Mowry an email that raised the same concern that FDOT had posed. She wrote, "I am trying to understand what the project would be since we do not own the upland properties." Mowry responded:

Kathie, we have had several of the owners approach us to see if we were interested in them giving their land to the City. In the past the City declined due to the cost of having to build the required sea walls. Now we may want to look at this ownership and develop a greenway. **I will not slow down the present project to wait on this land and we will make the improvements as directed by Commission with flood protection.** (Emphasis added.)

During this period, Mowry had conversations with property owners along Indian Creek Drive and their attorneys about the seawall and communicated with Levine about the interest of owners in providing the City with easements. On March 31, 2016, Mowry forwarded an email to Levine that said, "Mayor, This is an email that was sent to the city management. **It appears there is a desire of many of the landowners on Indian Creek Drive that would be interested in contributing their land to the City to make this a better project. We need to have this land transfer done now to capture the value of the opportunity.**" (Emphasis added.)

Levine responded the same evening with a text that stressed the importance of beginning construction. The next morning, Mowry sent Morales and Carpenter an email that said, **“Last night the Mayor texted me and said he does not want any delays in completing the Indian Creek Drive project. I replied back to him that we are pushing purchase orders through for the preliminary work to get the project started.”** (Emphasis added.) Having responded to Levine’s query, Mowry used the balance of the email to argue that the City could include construction of the seawall in the project by obtaining easements and thereby “accelerate” other aspects of the project. He wrote the following:

As Eric and I discussed yesterday and I told the Mayor, we have interest from a number of the landowners to contribute their land on the water side of Indian Creek so the City can incorporate this property into the project. This will accelerate the project to reduce the effort of utility relocates and also give the opportunity to develop a greenway along the Creek. We would construct a new sea wall and place the drainage system behind the new wall at the same time. Lynn has started this initiative yesterday based on our discussions.

Regarding his working relationship with Levine and their frequent communications, Mowry said in an OIG interview that he regarded Levine as the primary decision maker, saying, “...even though the city charter says it’s a city manager form of government, Levine was a very powerful person. And he got things done. It was not Jimmy Morales calling Tallahassee. It was the mayor.” Additionally, he said, “...the mayor was drawn to me because I was getting what he wanted done. And he would say, ‘You know...Bruce, you’re the only one that I can look to get things done. And, of course, as long as I had his backing, I was able to do a lot.’”

B. The City continues negotiations with FDOT; FDOT agrees to allow City to use job order contract to build the drainage system and a City contract to begin building the seawall.

By early April, FDOT had agreed to allow the City to award an NJPA job order contract to build the stormwater drainage half of the project and to award a continuing contract to Shoreline to begin building the seawall. Public Works, however, declined to approve the agreement and proposed additional changes that would modify the requirement that the City use a competitively awarded Design-Build contract to complete construction of the roadway half of the project.

On April 20, 2016, Boksner emailed a heavily revised version of the joint agreement to a lobbyist in Tallahassee that the City had retained to persuade Governor Rick Scott to order FDOT to accept the City’s changes to the terms of the DFA. Boksner’s email included the following:

This is the current, redlined version of the FDOT Cost Sharing Agreement. The City of Miami Beach has made certain revisions to the Agreement to ensure the equitability of the various terms and conditions, and as such, prevent a one-sided Agreement that solely benefits FDOT regarding the anticipated construction Project for Indian Creek Drive. I would like for you to contact the Governor’s Office and facilitate FDOT’s execution of this Agreement without the need for numerous modifications and/or obstacles from FDOT (which would unnecessarily delay the Project).

The City’s proposed changes revised the “Scope of Services” to allow for construction of the seawall. The original language had said, “Construct a sheet pile wall along the west side of the

Project roadway." In the revision, Public Works changed it to read, "Construct a seawall and/or sheet pile."

Figure #11 below is an excerpt from a red-line markup of the original joint agreement, as revised in mid-April 2016, that reflected the effort by Public Works to persuade FDOT to remove or modify a provision that required the City to use a Design-Build contract for reconstruction of the road. Further, it would have FDOT agree that "time was of the essence," and allow the City "maximum discretion" to disregard the commitments and use other types of contracts. Despite six additional months of negotiation by the City, FDOT refused to accept either proposed change.

2. GENERAL REQUIREMENTS AND OBLIGATIONS OF THE PARTIES

a. The CITY shall procure, or otherwise retain, the services of a licensed contractor, or contractors, in accordance with Florida Statutes and CITY laws (as codified in the CITY's Code), to design, develop, and construct the PROJECT to a Design-Build contract to design and construct the PROJECT and to prepare a design criteria package, in accordance with Section 287.055, Florida Statutes, for such purpose. The CITY intends to utilize an existing competitively bid contract procured pursuant to CITY Invitation and Bid No. 2015-267-KB) for the construction of the seawalls portion of the PROJECT, pursuant to ITB 2015 267 KB. The CITY intends to utilize CITY competitively bid contracts through NIPA (the National Joint Powers Alliance) to construct the majority of the storm drainage system portion of the PROJECT. For the remainder of the ~~project~~PROJECT, the CITY shall ~~procure~~utilize a Design-Build contract, in accordance with (and in compliance with) Section 287.055, Florida Statutes. The CITY shall ensure that the design-build criteria package is inclusive of the applicable DEPARTMENT standards and specifications set forth in Exhibit "E," attached hereto and made part hereof, and shall further provide the proposed design criteria package to the DEPARTMENT for review and approval, prior to the CITY proceeding with the procurement of the Design-Build contract. Notwithstanding the preceding, or anything contained in this Agreement, the DEPARTMENT and CITY acknowledge and agree that, as time is of the essence in the completion and delivery of the PROJECT, the DEPARTMENT shall afford the CITY maximum reasonable discretion and judgment in the CITY's determination of the means, manners, and methods for procuring the design, development and construction of the PROJECT; provided, however, that the CITY shall comply with applicable Florida Statutes and the CITY Code.

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Figure #11. Excerpt from draft of DFA dated April 19, 2016, with changes proposed by the City in redline text that would have enabled Public Works to avoid using a competitively awarded Design-Build contract to finish the project.

In the figure above, the first blue arrow points to redline changes proposed by the City that strike language in the joint agreement that requires the City to use a "Design-Build contract to design and construct the PROJECT and prepare a design criteria package, in accordance with Section

287.055, Florida Statutes.” The second blue arrow points to the City’s proposed changes that FDOT accepted. This language authorized the City to award an NJPA job order contract to DMSI “to construct the majority of the storm drainage system,” and to use a citywide continuing contract to build the seawall. The sentence immediately following the authorization said that for the “remainder of the project” (meaning the roadway construction half), the City would use a Design-Build contract and develop a DCP that complied with F.S. 287.055 and applicable FDOT standards.

The third blue arrow points to a “time is of the essence” disclaimer that the City wanted inserted. The disclaimer says that, Notwithstanding the preceding, or anything contained in this agreement,” FDOT would agree to “afford the CITY maximum reasonable discretion and judgment in the CITY’s determination of the means, manners, and methods for procuring the design, development and construction of the PROJECT; provided, however, that the CITY shall comply with applicable Florida Statutes and the CITY Code.” The last clause affirming that the City “would comply with applicable Florida Statutes” for a design-build contract was inconsistent with the plans Public Works had to use the City’s public emergency declaration to waive the City’s obligation to comply with the competitive bidding and selection requirements of F.S. 287.055.

FDOT maintained its unwavering position that the City use a competitively awarded Design-Build contract to complete the project. The primary concern of FDOT staff was ensuring the price competition of competitive bidding in order to control the project’s cost, as well as the financial incentive that the Design-Build project delivery method gave the general contractor to control costs during construction.

During an interview, former FDOT District 6 Secretary James Wolfe, who succeeded Pego, told the OIG that FDOT also valued the legal protections of a Design-Build contract. The first phase of a Design-Build project would produce a finished set of construction plans, technical specifications, and cost estimates. Thereafter, the responsibility for the project’s design would shift from the owners (FDOT and the City) to the Design-Build team. The NJPA job order or indefinite quantity contract offered none of these advantages. There would be no price competition between vendors competing to build the Indian Creek drainage system, and no economies of scale to reduce the cost of materials. DMSI would have no responsibility for the design and no financial incentive to control costs.

Despite FDOT’s willingness to agree to the City’s use of contract awards to Ribbeck, DMSI and Shoreline, FDOT stood by the requirement that the City competitively award a Design-Build contract and comply with the competitive bidding and selection requirements of F.S. 287.055 for construction of the roadway half of the project. After reviewing each of the City’s obligations with Carpenter a final time, Boksner said in an interview that Carpenter and other Public Works staff assented to the agreement’s terms. Levine signed the agreement and state funding became available for reimbursement of the City’s expenditures up to \$20 million.

On May 5, 2016, Levine sent Carpenter an email that said, "What is a timetable on Indian Creek?" Carpenter responded, "Agreement is back with FDOT. **We have agreed on all the terms, and we are trying to get it signed this week. Once signed we can move forward with the larger contracts for seawalls and drainage.**" (Emphasis added.) Carpenter closed with the suggestion; "Bruce can provide additional information on the status of survey and geotechnical work needed to advance design solution."

Levine replied with an email that he copied to Morales, Robins, Aguila, and Mowry. It said, "Ok but maybe we should be simultaneously moving toward ‘post haste’ in anticipation of this

agreement being signed as to not lose any time? We need to get this done on emergency 'turbo' speed...." Taking Levine's email as direction to begin the procurement process, Mowry followed this with an email to Carpenter stating, "We will prepare purchase orders based on proposals for work. Geotechnical and survey work is in progress. Drilled holes last week and the survey crew was at 41st and Indian Creek Drive this morning." Levine's last message ended with the exhortation, using capitalization for effect. He wrote: "EMERGENCY FAST???? Unbelievable sense of urgency?"

C. FDOT agrees to allow the City to retain Ribbeck as a consultant to produce a DCP and RFP for a Design-Build procurement; Public Works directs Ribbeck to also prepare construction plans for DMSI.

During mid-May of 2016, Public Works drafted a resolution that included a public emergency finding for the purpose of waiving the competitive selection requirement in F.S. 287.055 and awarding Ribbeck Engineering, Inc. a professional services contract to prepare a DCP and RFP for use in a competitive Design-Build procurement. F.S. 287.055 Sec. (4) ("COMPETITIVE SELECTION") requires that DCP engineering consultants be selected based on a public solicitation and competitive selection process. However, Sec. (9) ("APPLICABILITY TO DESIGN-BUILD CONTRACTS") states that the statute is not applicable to the procurement of Design-Build contracts except as provided in that section, which lays out the conditions and procedures for state and local agencies to follow in Design-Build procurements. Subsection 9[c] [6] of the statute authorizes an exception to the procedural requirements: "In the case of public emergencies, for the agency head to declare an emergency and authorize negotiations with the best qualified design-build firm available at that time."

FDOT staff had previously advised the City that the Department was prepared to continue funding Ribbeck's work as an FDOT engineering consultant and to serve as the project's design criteria professional and prepare the project's DCP and RFP. But, Public Works subsequently proposed that, given Ribbeck's experience with FDOT projects, the City should retain Ribbeck under a separate contract to finish the DCP and assist the City with awarding a Design-Build contract. FDOT agreed.

In mid-May 2016, Public Works prepared a resolution for the award of a \$407,000 professional services contract to Ribbeck that included a finding by Morales that conditions on Indian Creek Drive constituted a public emergency that justified the exception to the competitive selection of a DCP engineering consultant under F.S. 287.055 Sec. 9 [c] [6]. On May 25, 2016, Boutsis sent an email to Denis, Carpenter, and Mowry that said City Attorney Aguila was "ok with the way you are handling."

On May 31, 2016, the City and Ribbeck developed a new Scope of Work for the Project that consisted of "developing a Design Criteria Package (DCP) and Conceptual plans for approximately 0.85 miles of Indian Creek Drive" and an RFP that included "FDOT design criteria as well as City of Miami Beach contract requirements required by the Design-Build Firm to properly submit a response to the RFP."

But the revised scope also included preparation of construction plans for DMSI. Titled "Pre-DCP Design Component," that included "coordination with City & City's Contractor for 72" trunk-line & manholes construction" and "providing design & plan production support for main trunk-line plan layout (horizontal/vertical control) and incidental miscellaneous drainage details."

During this period, Morales and Carpenter remained skeptical about the feasibility of including the seawall in the project, due to the time it would take to get easements from owners of seawall segments. Mowry was not. Continuing through May, he and a public information officer working on the project continued to communicate with property owners along Indian Creek Drive and their attorneys. On May 31, 2016, an attorney for the owner of one seawall section emailed a City staff member working with Mowry about his efforts to obtain approval of an easement agreement by the City Attorney's office: "I hear...that you guys worked out an 'easement' version of the agreement. Can I see the doc?" The staffer said the matter was pending, but "we do not have a document from the City Attorney. We will keep you updated."

Learning of this exchange, Mowry forwarded the emails to Morales, with copies to Carpenter and Assistant City Attorney Eve Boutsis. Mowry added a message of his own that ignored Morales's earlier direction to proceed with construction of the wall or levee in the right-of-way and said he was awaiting a firm decision on whether the City intended to pursue easements and build the seawall:

Mr. Manager and Eric, **We have been in discussions with several of the landowners along Indian Creek Drive between 26th Street and 41st Street.** If this land was contributed to the City, it will make the Indian Creek Drive project with FDOT a better project and reduce the issue of underground utility conflicts. Several of the landowners have requested to maintain ownership but give both underground and surface rights in a perpetual easement to the City. **Before we continue these discussions, the City Manager need (sic) to give direction if an easement option can be taken to utilize the rights of this property.** The City would construct new sea walls at the water edge on this property and install a large drainage pipe behind this new sea wall in the easement property. The area will have full public access, but the owner would maintain their riparian rights of the land.

Please let us know the direction you would like us to take. The alternative is to build the sea wall on FDOT property and place a drainage pipe in FDOT right-of-way and the City relocates their utilities and we request all other utilities for others to be relocated that are in conflict. (Emphasis added.)

Morales did not respond immediately. At 7:17 PM Carpenter joined the discussion with the following:

This easement process will take longer than we have available to design the needed improvements. As a result, I believe we should provide one last opportunity for the property owners to provide us with a quit claim deed to the properties in question and **if that does not take place by the time we have an executed agreement with FDOT then we will proceed with our original plan to perform the improvements all within current City/State controlled lands.** I hope that we have notified the utilities of the need for relocation as we had discussed prior." (Emphasis added.)

At 8:09 PM, Morales wrote, "Good idea."

Mowry did not view the matter as closed. At 8:25 pm, he sent Morales a response to Carpenter's email, without including the Public Works Director as a recipient. It said, in part, "Mr. Manager,

the deeds transfers will have conditions to get land. Most of the owners will want to keep docking rights that will be just as much of an issue to develop acceptable language.”

Morales sent a response that left no doubt about the direction he wanted Public Works to take. He directed Carpenter and Mowry to proceed with the plans described in the agreement with FDOT to build the concrete wall or levee and underground barrier in the right-of-way along Indian Creek Drive. The City Manager wrote, "Just put the wall in the ROW and forget the property owners. I don't want to be held hostage.”

D. Public Works issues purchase order to Stantec Engineering, Inc. to prepare permit applications for seawall construction; and awards a contract to Ribbeck to design construction plans.

In addition to Levine’s advocacy, Public Works had two sources of leverage in its negotiations with FDOT that it used to good effect between March and September 2016: the ability to award contracts and purchase orders of its own and the ability to postpone execution of the agreement.

Despite Morales’s skepticism about the feasibility of replacing the seawall as part of the project with FDOT, he did not control Mowry’s interactions with contractors. By May 31, when the City Manager directed Carpenter and Mowry to “put the wall” in the right-of-way along Indian Creek Drive, Mowry had already commissioned Stantec Engineering, Inc. to provide a lump sum estimate to handle permitting of the seawall construction.

On June 2, 2016, Public Works issued a \$90,394 purchase order to Stantec Engineering, Inc. for “permitting related to the construction of a walkway, a submerged drainage pipe (by DMSI), a seawall (by Shoreline) and living shoreline.” The award was based on a proposal from Stantec Project Manager Jeffrey H. Marcus, P.E. for the “engineering and environmental services” required to obtain local, state and federal permits “for construction of a walkway, a submerged drainage pipe, a seawall, and living shoreline” along Indian Creek Drive from 26th St to 41st Street.” The following summary in the proposal provided an explanation for the language used in the March 9, 2016, resolution that conflated construction of the seawall with the underground barrier of sheet pile in the right-of-way:

Two seawall replacement options are currently being considered. The first option includes driving sheet piles landward of the existing seawall, keeping all work above the mean high-water line. The second option involves the construction of a new, taller seawall waterward of the existing seawall.

These were the remaining elements of AECOM’s Greenway Plan that had not been included in the construction described in the DFA’s project scope or funded in the DFA’s project budget.

On June 8, 2016, the Mayor and City Commission followed the Administration’s recommendation to award Ribbeck Engineering, Inc. a contract to serve as the City’s engineering consultant to prepare a DCP and RFP for use in awarding a Design-Build contract in the amount of \$407,851. The professional services contract was awarded without competitive bidding following a Commission declaration that flooding was a public emergency on Indian Creek Drive. The resolution described flooding that occurred during the October 2015 King Tide and contended that “conditions in the area are so drastic and will only worsen if the work is postponed in order to go through a three (3) to six (6) month competitive procurement process.” The resolution and LTC were silent about the City’s recent construction of a concrete levee along Indian Creek Drive and outfall backflow prevention devices installed in the outfall pipes along Indian Creek Drive.

The LTC said that the “facts do indeed support the existence of a public emergency,” stating that, “While the CCNA requires municipalities to publicly bid on certain professional services, including architecture and engineering services, this requirement can be waived in cases of valid public emergencies.” The Administration cited, in support of its position, the following: “1) current conditions, both at the Project site and within the neighborhood; 2) the potential community hardships, quality of life issues, potentially aggravated due to a postponement of the current work in the ordinary procurement process; and 3) the fact that this firm is performing work in the area.”

On its face, the City’s contract with Ribbeck was consistent with Section 2 [c] of the DFA that the City “shall advertise and let a Design-Build Contract...for all aspects of the project.” For example, it said, “Consultant (Ribbeck) will serve as the “Design Criteria Professional,” a designation used in FS 277.055, and “shall be responsible for...preparation of the Design Criteria Package.” The contract defined terms and concepts that are integral to the design-build process. For example, it said the process would result in “Construction Documents” that consist of “the final (100% completed) plans, technical schematics...and drawings, prepared by the Design/Builder” and containing “all details necessary to complete the construction of the Project.”

Further, it included provisions that reinforced a Design-Build contract’s singular benefit of shifting legal responsibility for the project’s final design from the City to the design-build team. The contract said the City’s approval of the final set of plans “shall not in any way...constitute a waiver or excuse Design/Builder’s obligations to ensure the Construction Documents are constructible, in compliance with all Applicable Laws and in accordance with the Contract Documents.”

The LTC also said that the City Manager would procure “emergency design and construction services for the project, via a design-build contract, including authorizing the preparation of a Design Criteria Package (DCP) which complies with the specifications set forth under F.S. 287.055(2)(i).” However, subsequent events, and exhibits attached to Ribbeck’s contract, support a conclusion that the LTC’s use of the word “emergency design and construction services” referred to the City’s established practice of declaring flooding on Indian Creek Drive a public emergency for the purposes of waiving compliance with F.S. 287.005 and awarding a Design-Build contract without competitive bidding.

The contract included three Scope of Work statements. The first described tasks a consulting engineer performs in support of a municipality’s effort to award a Design-Build contract (“Prepare RFP Design Criteria and requirements”), but it also referred to a “Pre-DCP Design Component” of work that included “providing design & plan production support for main trunk-line.” The second and third work plans referred to the preparation of construction plans for work Mowry had said Public Works planned to have DMSI perform. The second involved plans for installation of a 72-inch trunkline from, “Indian Creek Drive from 25th Street to north of 26th Street “and for “reconstruction of the roadway that would be opened up for the pipe.” The third required preparation of plans for installing 24-inch drainpipes along the side streets and installing 100 new drainage structures along Indian Creek Drive.”

Several days after the Commission’s action, Jay Fink, Mowry’s immediate supervisor, became puzzled by Mowry’s plan to retain a consulting engineer to prepare DCP and RFP to award a Design-Build contract, and to simultaneously begin construction. Fink sent Mowry a message that said, in part:

Can you explain to me what work has already commenced...What is the process to develop the Project Design Plans and who will be preparing such? Correct me if I am wrong, but it would appear that the City has engaged a surveyor and an engineer. They will prepare a DCP. **According to Section 2, a. (in DFA) we will use a contractor to construct the seawall and a NJPA contractor to put in the pipe. And THEN we will competitively procure a Design-Build contractor to complete the remaining construction?** (Emphasis added.)

In his response, Mowry described purchase orders Public Works had issued to a surveying firm, and to Stantec Engineering Inc. to obtain permits and explained that Ribbeck's consulting agreement was a *fait accompli*, based on the Commission's declaration of a public emergency. Mowry wrote, "The Commission approved a contract with Ribbeck Engineering to assist the City for the DCP and general designs with FDOT. They were originally working on the concept of this project with FDOT."

On the morning of June 20, 2016, Mowry convened a meeting of the contractors on the project. According to the minutes Mowry began by presenting "three project goals. 1. Keep Indian Creek Dry, 2. Create a Green Way/ Mangrove Mitigation Plan, 3. Prepare for a National Geographic follow up story." Thereafter, he directed the contractors to begin tasks that expanded the scope of the Indian Creek project one block south of the project's southern terminus at 26th Street.

The minutes of the meeting said, "The main priority at this time, as reviewed by Bruce, is to obtain permits and begin construction of the seawall and drainage from 25 Street to 26 Street" and "...Dr. Mowry asked if declaring the project an emergency might expedite the process." According to the minutes, Stantec's Marcus responded that he "believes it will be a faster solution because we can start the project and obtain the permits after the fact." Mowry directed Ribbeck to "start work on the proposed drainage line from 25 Street to 26 Street," and "...requested a complete survey of Indian Creek from 25 Street to 26 Street, be added to the Scope of Services," and also explained that DMSI's President, David Mancini, "will conduct site visits to identify probable conflicts... to come up with best possible drainage designs."

The next day, Assistant City Attorney, Eve Boutsis, learned that Mowry was moving forward with work on the seawall, beginning at 25th Street, one block south of the project's endpoint. After looking at the DFA, she sent Aguila and Boksner an email ("Subject: Indian Creek Does the agreement with FDOT include along Lake Pancoast, between 25 and 26th Street?"):

Bruce Mowry is looking to ASAP start construction on this seawall and there are issues. The land between road and seawall were quit claimed to City. The seawall and riparian rights remain with upland owner. I don't see that City owns right to build a new seawall and we need to contact condo owners. **Bruce is of opinion, that we can do what we want—and I need to correct that. But, more importantly, if we don't have this area as scope of the agreement, how are we paying for this? I am concerned that he is trying to act quickly without understanding procurement.** (Emphasis added.)

Boksner responded with two emails that said Mowry was wrong about the scope, writing "Seawall work will (sic) between 41st and 26th street." He followed up with a second email that said the cost sharing agreement with FDOT would only reimburse the City for covered "eligible Project expenses" and would not cover work performed before the DFA was executed: "Meaning that, not all of the expenditures will be applied to the City's maximum limiting amount, and the City

...would be proceeding at its own risk because those expenditures might not be eligible Project costs.”

Boutsis sent an email to Mowry, Carpenter, and Fink with a heading in bold type that said, **“Bruce: Please do not email anyone back. I recommend we meet.”** She described the project’s actual limits and the import of the DFA’s reimbursement terms, and wrote, “I now understand City wants to do work between 25 and 26th on the seawall, which does not appear within the scope of the FDOT agreement, and as such, maybe at the City’s complete expense.”

By the following day, Fink had reviewed the minutes of Mowry’s first meeting with the contractors and come to a similar conclusion. Fink sent Mowry an email that said, “Bruce, It would appear by the minutes that were taken during yesterday’s meeting, that you are directing work be performed on Indian Creek from 25th Street to 26th Street. **This is clearly outside the boundaries of the Commission authorized project with FDOT. Under what authority do you have to direct this work?**” (Emphasis added.)

Mowry’s response said, "Jay The actual limits of the project are south of 26th Street (M.P. 0.232) that are defined by FDOT. **I am working under the authority of the draft agreement that the Commission gave approval.** (Emphasis added.)

Four months had passed since the Commission had approved the original DFA on March 9th; two months since Boksner had sent a lobbyist a copy of the DFA with changes proposed by Public Works. In an interview, Mowry blamed the delay on FDOT. He said, “DOT is a very bureaucratic organization. Our agreement hung out there for a long time and this job was supposed to be accelerated.... the agreement between DOT and the City, if you look at the timeline on it, it took longer than the construction that we were anticipating.”

During an interview, Mowry described a conference call that he said he and Carpenter had with senior FDOT staff during the negotiations about how Public Works planned to use the NJPA with DMSI:

We told them we want to use that mechanism. We had to basically work with them and familiarize them of how we would do that. Upper management of FDOT reviewed that and then concurred with it. All the negotiations that we did... on the push button or JOC contract, whatever you want to call the mechanism we were using...It gave us the ability to develop this project quicker and to build it as we completed certain sections. Mancini could then be building that section as we moved on through the project.

JULY 2016 to SEPTEMBER 2016

A. FDOT Secretary Boxold approves changes to the joint agreement allowing the City to award contracts to begin “emergency” construction of drainage system to prevent King Tide flooding and for the seawall and other changes sought by Public Works.

On July 20, 2016, Levine and the Commission approved a resolution that waived the \$250,000 ceiling on NJPA job order contracts and awarded a \$3 million job order contract to David Mancini & Sons, Inc. to build the Indian Creek Drive drainage system. Morales submitted an LTC in support of the award that said, "Due to complexity and urgency of this project, the administration recommends engaging David Mancini and Sons, Inc. (DMSI) as the construction firm responsible

in constructing the storm water drainage system...with the intention of providing the first line of defense against high tide.”

While contractors must qualify to be considered for selection under the NJPA contracting process based on a competitive process, a contract under that process may be awarded without competitive bidding based on pricing. Although the title of the resolution awarding DMSI a \$3 million construction contract said the City would be “utilizing the competitively bid National Joint Powers Alliance (NJPA) Cooperative Contract for Construction” to expedite construction needed to prevent flooding during the October 2016 King Tide, DMSI was not selected for the contract award based on competitive bidding.

The LTC Morales submitted with the resolution did not attempt to justify DMSI’s \$3 million award with a finding that flooding on Indian Creek Drive was a public emergency. A declaration to that effect was unnecessary because the Commission had already given Morales the discretion to use NJPA’s indefinite quantity purchase order for emergency projects. All the Administration required at this point was the Commission’s approval to exceed the \$250,000 threshold for such contracts.

On this subject, the LTC provided an extended discussion of the City’s decision to suspend use of job order contracts after the arrest of Procurement Director Lopez. It said, “Since the fall of 2012, the City has been without a methodology for expediting construction and infrastructure projects. This is especially problematic for smaller projects and projects related to unplanned emergency work for which releasing independent solicitations is not operationally feasible and causes unnecessary delays.” The LTC and resolution and comments during the Commission meeting did not indicate that construction of the stormwater system was a “smaller” project or “related to unplanned emergency work.” In fact, it would prove to be the first installment on a contract to build the entire stormwater system.

The LTC said the City planned to award DMSI a second purchase order to build the pumping station and an additional 2,500 feet of trunkline. It said, “Additional work to complete the drainage work for the project is estimated to be an additional four to six million dollars and this request will be submitted in the next few months for approval.” In his statement, Carpenter said, “This \$3 million dollar that we’re asking for under the National Joint Powers Alliance contracting mechanism is really just a ballpark to get the project started, to get us through to September, October, where we’re going to have to come back with some additional contracting mechanisms.” As indicated below, the phrase “contracting mechanisms” proved to be a reference to a second NJPA purchase order for \$9 million.

The effect of the Commission’s action in July 2016 was to award DMSI the equivalent of an open-ended, time-and-materials contract to build the entire pumped-based stormwater system, and to do so without competitive bidding and construction plans. The Administration was relying on Mowry’s ballpark estimate of the costs before design of the project had begun. The LTC said:

Based on the City Engineer (Engineer of Record) designer's opinion of probable construction cost of work necessary to be performed by the end of this summer for this project is \$3,000,000. Staff considers this amount to be fair and reasonable. Additional work to complete the drainage work for the project is estimated to be an additional four to six million dollars and this request will be submitted in the next few months for approval.

A projected cost for the entire stormwater system of \$7 million to \$9 million fell within the range of the estimates by Ribbeck and McGowan. But both engineers had assumed pricing would be

based on finished construction plans. Ribbeck based his \$7 million estimate on a Design-Build contracting process that produced a negotiated guaranteed maximum price; AECOM assumed the City would award a lowest and best price lump sum contract based on a competitive Design-Bid-Build contracting process.

Awarding DMSI a unit price job order contract to build the stormwater system eliminated the price competition and economies of scale that were built into standard construction contracts and would add millions to the project's cost. By mid-2018, DMSI had billed the City for \$13 million after completing less than half the stormwater system.

Higher costs for the stormwater system were not the only consequence of the City's decision. The decision also had an irrevocable impact on how the project was designed, how construction activities were scheduled and, ultimately, on the feasibility of using a design-build project delivery method.

The LTC said, "The work will be open cut along the entire project." The term "open cut" referred to digging an open trench along Indian Creek Drive to install the trunkline pipe. Further, the LTC said, "The storm water drainage improvements to be completed by the end of this summer include installing approximately 1500 linear feet of 72" pipe, 400 linear feet of 36" pipes, and a total 15 drainage structures to be installed, one at each street end; traffic control and all ancillary miscellaneous work."

This meant that Public Works planned to have DMSI dig up the pavement and install the drainage system before plans for reconstruction of Indian Creek Drive were prepared. Once the trunkline was installed, DMSI would close the trenches and put a temporary layer of pavement in place pending award of a Design-Build contract to finish the project. The LTC did not address the potential costs and complications of pausing work on the project after the stormwater system was built; directing DMSI to demobilize from the construction system; and awarding a contract to a design-build team to prepare construction plans to finish the project.

During the same Commission meeting, Levine read a proclamation that made July 20, 2016, "Bruce Mowry Day in the City of Miami Beach" in recognition of his having been named "2015-2016 Government Engineer of the Year" in Florida by the American Society of Civil Engineers. The proclamation said Mowry was "an indispensable asset to the city" where he was "known for his get it done approach." Addressing Mowry, Levine said, "We always say around here you are like Gen. Patton." Minutes later, Carpenter told the Commission that "He's definitely the guy who makes it all happen...He's come up with some amazing workarounds and solutions in the face of a lot of adversity."

By now, Mowry had become the public face of Levine's emergency procurement strategy and had a growing reputation as an engineer with a knack for developing innovative solutions. By the end of 2014, the first wave of expedited Design-Build projects was credited with preventing flooding during the King Tide season in October 2014. A year later, when streets in flood prone neighborhoods remained mostly dry during the 2015 King Tide, the *Miami Herald* published a front-page article ("Miami Beach's Battle to Stem Rising Tides") that featured photographs of Mowry standing on newly elevated sidewalks and stairs. The article began with a vivid description of the stormwater infrastructure Lanzo had built in Sunset Harbour with the following observation: "This foundation for Miami Beach's future is actually a complicated and expensive experiment: As much as \$500 million to install up to 80 pumps and raise roads and seawalls across the City. A first phase appears to be working." And that seemed to be the case. Despite the inherent risks

of compressing the time allotted for engineering design, Mowry had made it look easy to shorten the time it took to deliver design-build projects from two years or more to a matter of months.

B. FDOT District 6 staff surprised by \$3 million award to DMSI.

By the Summer of 2016, FDOT District 6 Secretary Pego had been replaced by James Wolfe. During an interview with OIG, Wolfe said the Commission's \$3 million award came as a surprise to his staff. FDOT Senior Manager Harold Desdunes and his colleagues in the District 6 office had been under the impression that the City intended to use the NJPA contract with DMSI to install a two-block long section of the 72-inch trunkline to help reduce flooding during the 2016 King Tide but would then complete the balance of the project using a Design-Build contract. In an interview, Wolfe said, "My understanding, too, is that originally Mancini was to receive assignments of no more than \$250,000 each assignment. That was raised to \$3 million by the City Commission as an exception."

The biggest surprise was the amount of the award. Florida law requires that FDOT construction contracts above \$250,000 be awarded based on competitive bidding. FDOT uses a variety of contracting methods for major construction projects. It typically uses one of several variations of a Design-Build contract, which combines the functions of engineering design and construction in a single contract, or a more traditional Design-Bid-Build delivery method with two separate contracts, one to prepare construction plans, the second to build the project. Under either model, contracts are awarded based on competitive bidding; lump sum prices are based on a finished set of plans, technical specifications and scope of work; and work is based on a finished set of construction plans signed and sealed by the Engineer of Record. FDOT used a type of job order contract known as a "pushbutton" for smaller projects with estimated costs under \$250,000.

The Commission action was tantamount to awarding DMSI the first \$3 million installment of a \$12 million construction contract to build the drainage system. During an interview, Wolfe said, "This was a very significant issue for FDOT...and the assignment of work to Mancini under this contract...we had legal reviews and...I, personally, was extremely uncomfortable with assignment of millions of dollars of project work to Mancini... so no one in the industry could compete for this specific project."

Wolfe said he was also troubled by a \$3 million award that he said "pre-dated" the completion of a detailed scope of work and construction plans. To prevent the unplanned escalation of costs under open-ended unit price contracts, FDOT requires that job order or pushbutton contracts be awarded based on finished construction plans. FDOT project managers were authorized to use a "Design-Build Pushbutton," a variant of the standard design-build contract, but only based on a "defined scope of work to be completed by the Design-Build Firm."

Nevertheless, Wolfe said FDOT lawyers ultimately concluded that the \$3 million award did not violate Florida law. Thus, by mid-July 2016, the City's negotiations with FDOT had succeeded in persuading senior FDOT officials to override a long-standing FDOT internal control designed to prevent cost overruns in job order contracts.

On August 11, 2016, an FDOT attorney sent Boksner a revised version of the DFA. The new version authorized the City to use an existing continuing contract "for construction of the seawalls" and to use "contracts through the National Joint Powers Alliance... for the construction of the storm drainage system portion of the PROJECT." Another change allowed the City's expenditures for this contract to be counted as part of the City's \$5.4 million contribution.

Despite the success of the City's negotiating strategy, the DFA remained a work-in-progress, and the District 6 staff in Miami remained responsible for the DFA agreement and, ultimately, the expenditure of nearly \$20 million in state funds. Wolfe reflected on the "long and involved" negotiations that ensued in an OIG interview:

...it is fair to say that political influence was an input. But we have a very professional organization at FDOT, and we have legal advice and we have attorneys and none of them are politically constrained, and they are told to do their best to putting this document together, the DFA. And in fact, read the DFA. It has a lot of things in it that...protect FDOT... There is staff that is following through with a professional document that we believe is going to be workable and get the job done.

The DFA continued to require that the City "shall competitively procure a Design-Build maximum bid contract" awarded in compliance with F.S. Section 287.055 for the balance of the project, which consisted of the reconstruction of Indian Creek Drive and other above-ground infrastructure. FDOT's commitment of nearly \$20 million for the project was contingent on the City's promise to use a competitively awarded Design-Build contract (or a Design-Bid-Build contract) to build the project.

The FDOT staff in Miami had two primary responsibilities. The first was to ensure that construction of the state-owned road and state-owned drainage system complied with FDOT's standard specifications. This task was assigned to Fabiana Gonzalez, a senior project manager. The second was to account for the expenditure of \$20 million in state funds that would be used to reimburse the City for construction costs FDOT approved. FDOT Project Manager Amanda Shotton was assigned this role. Like Carpenter and Mowry, Gonzalez and Shotton were licensed professional engineers with experience managing large construction projects.

The DFA also required the City to retain Construction Engineering Inspection (CEI) services for all work within the state right-of-way. From FDOT's point of view, a primary purpose of the CEI requirement was to ensure that the FDOT staff had timely and reliable access to information about the project and independent assessments of the project's design, construction and costs. Additionally, the DFA said, "The CITY shall deliver all phases of the PROJECT, as generally defined in Exhibit "A," 'Scope of Services' and "...Any change to the Scope of Services shall require an amendment, approved by the parties" to the agreement," and, further, that "The construction and administration of the portion of the PROJECT (i) within the public's right-of-way, and (ii) under FDOT's jurisdiction shall be subject to the DEPARTMENT standards and specifications."

The City's own CIP department routinely employs CEI contractors for major construction projects. CEI inspectors are deployed to a job site where they document each day's work, the material that's used during construction, and the performance of critical tasks. Based on this documentation, CEI teams verify that the project was built as designed by the Engineer of Record and vet the accuracy of invoices submitted by contractors. At the end of a project, the CEI contractor confirms the project's "substantial completion" and approves a final set of construction plans showing how the project was built. To ensure the City's compliance with the CEI requirements, FDOT added a provision that said the state's reimbursement of the City's expenditures was contingent on the City Attorney's certifying that the CEI firm had been competitively selected in compliance with F.S. 287.055 and that the CEI firm had used the prescribed number of inspectors and engineers to monitor the project.

On August 12, 2016, Boksner emailed a copy of the updated version of the DFA to Carpenter and Fink with the provisions related to certification. Neither objected to the proposed language. Mowry, however, was not okay with the changes and took particular exception to the strengthened CEI requirements for monitoring the projects. Five days later, after circulating the new draft, Boksner queried Mowry about the delay in approving the revisions. In his response, Mowry contended that more senior FDOT officials had agreed the City would not be hampered by such requirements. He wrote, "We agreed it would only apply to the design-build work phase and not the entire project in FDOT right-of-way." As written, the CEI firm would monitor DMSI's construction of the drainage system. Mowry added, "The [FDOT] attorneys are the ones that over stepped (sic) in the agreement and contradicted the negotiations."

FDOT ultimately agreed to provide \$20 million in state funds, the City \$5.4 million. FDOT agreed to allow the City to use a NJPA job order awarded to DMSI for "construction of the storm drainage system," a continuing contract with Shoreline "for construction of the seawalls," and individual contracts for engineering services for Stantec to obtain permits, and Ribbeck and its subcontractor Bolton-Perez to prepare the DCP.

Additionally, FDOT agreed to include a reference to the seawall as an optional part of the project, by amending the scope of work to say, "construct a seawall and/or sheet pile wall along west side project." FDOT did not provide additional funding for the replacement of the seawall but agreed that City funds spent on Shoreline's contract could be counted as part of the City's contribution.

In consideration of nearly \$20 million in state funding, the City agreed in the DFA to use a Design-Build contract awarded based on competitive bidding to complete reconstruction of the state road and the above-ground infrastructure. The relevant section said, "For the remainder of the project the City shall competitively procure a Design-Build maximum bid contract" in compliance with FS 287.055. Before beginning the public procurement process, the City agreed to allow FDOT to review and approve a "design-build criteria package."

Despite six months of sustained negotiations, FDOT had viewed these conditions as non-negotiable; the state funding was contingent on the City's promise to use the Design-Build project delivery method based on competitive bidding. Even so, FDOT also agreed to the accommodation that the City could use its own funds for engineering. "The DEPARTMENT will only provide reimbursement for expenditures incurred by the CITY for engineering, architecture, or surveying services for the PROJECT if the expenditures are provided pursuant to contracts procured in compliance with Section 287.055 F.S. Eligible expenditures incurred under contracts that are not procured in compliance with the provisions of Section 287.055 F.S. will not be reimbursed, but will still be counted towards the CITY's "maximum limiting amount," as such term is defined in Paragraph 3(c) of this Agreement."

In exchange for the right to manage all aspects of a project to build a state road and state-owned drainage system, the City agreed to comply with FDOT construction standards and not to begin construction until FDOT approved the project's finished construction plans. After work began, the City agreed to "immediately notify" FDOT of any need for major changes to the project's design and to obtain the agency's approval of changes to the construction plans "prior to implementing" changes.

On September 30, 2016, the seven months of negotiations between the City and FDOT ended when Levine signed the joint agreement.

PART IV: THE SEAWALL PROJECT GOES OFF THE WALL

A. City awards Shoreline contract to begin replacing seawall; City has pre-application meetings with DERM to discuss the project and plan for its execution; DERM expedites permitting of seawall construction and encounters initial problems with City's compliance.

The construction of the seawall and removal of mangroves along Indian Creek was subject to county, state, and federal environmental regulations. Section 24-48 of the Miami-Dade Code authorizes the Miami-Dade Division of Environmental Resources Management (DERM) within the County's Department of Regulatory and Economic Resources (RER) to issue Class I permits for the construction of seawalls and mangrove trimming, alteration or removal, and Class II permits for the construction of stormwater drainage systems. The permits are utilized to manage impacts from construction on coastal wetlands and tidal waters. As a section of "sovereign submerged land" owned by the State of Florida, the Creek was subject to regulation by the Florida Department of Environmental Protection (FDEP). As an inland waterway, the Creek was subject to regulation by the United States Army Corps of Engineers (ACOE). FDEP and the ACOE had delegated some permitting authority to DERM, primarily for projects with limited environmental impact.

DERM's permitting practices are clearly described on the agency's webpage and on the agency's permits. To verify compliance, DERM inspectors routinely visit job sites shortly before the agency issues a Class I permit for seawall construction or a Class II permit for construction of a stormwater drainage system. DERM permits require that the project owner or contractor notify the agency before construction begins.

The City hired Stantec as its consultant for professional engineering and environmental services in connection with coastal permitting associated with roadway improvement and shoreline protection along Indian Creek. Dr. Jeffrey Marcus, a principal at Stantec, provided the services.

The permitting of the project was complicated because the work was taking place on a near mile-long stretch of Indian Creek. Moreover, the City had clear title to eleven sections of seawall, or 30% of the project area. Mowry planned to obtain a permit for the eleven sections, and then apply for modifications of the permit when the City obtained easements or quitclaim deeds from owners of the remaining sections. The project, therefore, was unusual because it was being authorized in phases, as the City received consent from the private property owners along each section of the Creek. John Ricisak, DERM Project Supervisor, stated in his interview with the OIG, that, "...DERM does not want to stand in the way of any project that is a good project with sound reasoning behind it, which is why DERM was allowing this project to be permitted in spite of the challenges related to ownership..."

Ricisak's colleague, Christine Hopps, Environmental Resources Project Supervisor at DERM, explained to the OIG that, "...delineating or identifying the limits of the work in a way that could be represented at the project site...was challenging... there were only pockets of the entire site that were being permitted under that initial permit." The goal was to make "...sure that it's clear from those plans what is being permitted and that the contractor can also rely on those when they go out to the site."

On August 10, 2016, DERM sent Mowry a letter that said, "Staff have reviewed the proposed construction methodology and have no objection to the proposal; however, prior to the start of work, the contractor will be required to coordinate an on-site pre-construction meeting with DERM

Compliance staff and adequately address how potential impacts to properties and resources outside of and adjacent to the authorized work areas will be avoided.” DERM staff asked that the City stake out the “start and stop locations of each seawall segment.”

On August 16, 2016, the Commission awarded Shoreline a contract to build a section of the Indian Creek seawall. The LTC said, “The City needs to begin the seawall work immediately to protect public safety and our infrastructure from flooding, particularly in light of the coming King Tides,” and thereafter reiterated that, “The design/build project is anticipated to last one year and will cost approximately \$25 million.”

Hopps and Marcus engaged in a lengthy pre-application process. On August 23, 2016, Joaquin Perez, P.E. from Bolton Perez and Associates, signed and sealed structural plans for permitting the construction of the seawall. The plans called for construction of a seawall using the City of Miami Beach Standard Seawall Drawings that consisted of concrete seawall panels and concrete bulkhead panels that were supported by 14-inch concrete batter piles and king piles, and held together with a continuous 36-inch concrete seawall cap. The new seawall, if it were within 12 inches of the wet face of the existing seawall, could be approved administratively. If the proposed wall were to go beyond the 12 inches, it would require review and approval from the Board of County Commissioners, a process that could take 12 weeks to over a year. The City wanted to move forward quickly with the project, so convincing DERM that it could build the seawall within 12 inches of the existing wall was critical to getting administrative approval for the permit.

During the final week of August, and before the permit had been issued, DERM staff learned that Shoreline had installed a silt fence [a protective covering to prevent dirt and other debris from falling into the Creek during construction] in an area that was environmentally sensitive. DERM inquired about Shoreline’s premature installation of a silt fence along a section of the seawall. On August 31, 2016, Jeffrey Marcus told DERM that the “...silt fence was needed as a temporary measure to prevent a flood on Indian Creek Drive.” However, during a visit to the site, a DERM inspector noticed construction debris in the area and later reported that Shoreline staff said the silt fence was related to construction of a curb that was part of the project.

On the morning of Sept. 1, 2016, Hopps sent Marcus an email, with a copy to Mowry, that asked for an explanation and said, in part:

One of our concerns is that even with the very close coordination we’ve had with both your staff and the City on a daily basis, we were not advised of this work that was proposed to take place within an area that was environmentally sensitive and potentially wetlands. I understand that there are some discrepancies in the delineation of the jurisdictional area between your staff and DERM. However, in the interest of avoiding any potential violations it would have been prudent to advise us of the project prior to starting construction.

Mowry forwarded the email to Levine the same day, with a message that said, “If we cannot get DERM to back off on our work on Indian Creek Drive, we may need your help. This is not a wetland, and we have to build this project to keep this road open.” Despite the incident, DERM issued a Class I permit, CLI-2016-0200, on Sept. 2, 2016, that authorized construction of the seawall, provided that it did not extend more than 12 inches beyond the wet face of the older wall. Permit CLI-2016-0200 covered the initial work from 25th Street to 26th Street.

Shoreline began the construction of the seawall between 25th and 26th Streets. This was a short section that was owned by the City and the City had the required Class I permit. Shoreline's contract called for the installation of a concrete panel and pile seawall with a concrete cap on top. Shoreline utilized a methodology of installing the king piles five at a time. Mowry and Shoreline were aware early on that Shoreline's process of installing five concrete king piles simultaneously did not lend itself to following the contour of the banks of the Creek.

Nevertheless, on Sept. 6, 2016, DERM received a second permit application signed by Mowry, for construction to replace portions of the seawall from 26th Street to 41st Street, using the same proposed design within 12 inches of the existing seawall. Based on all her discussions with Marcus, Perez and Mowry, and reviews of the City's plans, Hopps understood the seawall would be constructed within 12 inches of the existing seawall and proceeded with an administrative review process for that proposal. On November 3, 2016, DERM issued CLI-2016-0222, the permit for the "construction of a new seawall along the west side of Indian Creek Waterway between 26th and 41st Streets within Miami Beach" for seawall sections "owned or controlled by the City of Miami Beach," provided "placement of the new seawall was limited to no further than 12 inches waterward of an existing seawall.

The DERM permit also required the City to comply with state and federal regulations. South Florida Water Management District had issued permit number 13-06263-P on August 30, 2016. Marcus applied for a necessary permit from the Army Corps of Engineers (ACOE), but the City started the project without having obtained it.

In a statement to the OIG regarding his decision to authorize construction of seawall sections that had not been permitted by the ACOE, Mowry's explanation relied heavily on the rationale that the City faced an emergency from flooding on Indian Creek Drive and was operating under exigent circumstances:

We were doing these things without the Corps. We got (ACOE) approvals for seawalls between 25th and 26th Street. We had a federal permit for it, but we did not have federal permits for this section of wall between 29th and 30th Street...and corps came up, says, oh yeah, "you don't have a permit." Well again, they knew that this was an emergency condition. We built the wall under emergency condition and told the federal agency. But the federal agency said we don't define emergency conditions the same way the City does. They said they would only declare an emergency if the wall was physically not there.

Jeffrey Marcus, from Stantec, told the OIG the following:

...as an emergency project, it needed to get done and it needed to get done relatively quickly, and so that is why. The City decided to move forward with some sections that were not yet permitted by the Corps of Engineers...The Corps did not identify it as the same kind of emergency.

B. City starts the project without a permit from the ACOE; Mowry directs contractors to remove mangroves and build the seawall beyond the planned 12 inches, violating the permits issued by DERM and SFWMD.

As it continued its work north, Shoreline ran into conflicts with the wall control plans prepared by Joaquin Perez, which showed the new construction 12 inches from and along the existing curved seawall, and upon which the DERM and SFWMD permits had been issued. According to

Shoreline's Project Manager, Mark Osburn, "...when you deal with concrete that doesn't bend...you do the best you can...when you have a city agency that also issues permits telling you...go to work...we have a design...10-foot panels, put them in..." you go to work as instructed."

On August 9, 2017, Mowry sent a text message with an accompanying site photograph, to Shoreline that said, "Shoreline has been instructed to construct the new seawall without following the old seawall at this location." (See Figure #12 below.) The work continued as instructed by the City Engineer. Mowry defended this instruction in a *Miami Herald* article dated January 16, 2018, saying, "I don't build crooked walls. The contractor did not take discretion. The contractor did what they were told."

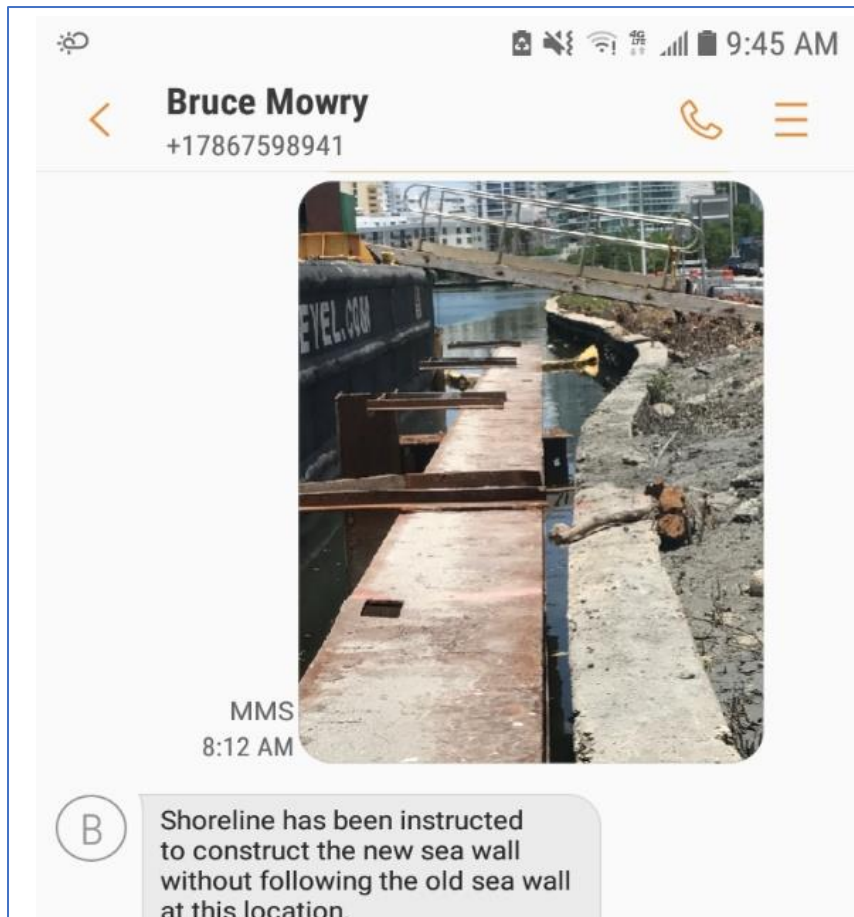


Figure #12 Text from Bruce Mowry to Shoreline.

While Shoreline continued its work on the seawall, building it well beyond the 12 inches from the old seawall for which it was permitted, DMSI was working on land contiguous to the Creek, removing mangroves from private property without authorization.

On August 24, 2017, a resident living at 2643 Collins Avenue filed a complaint with DERM alleging that mangroves had been removed throughout the condo association's common grounds without permits. DERM and the City began the process of determining whether the allegations were accurate. In an effort to explain the unlawful removal of mangroves, Mowry emailed Margarita Wells, former Assistant Director of Environment and Sustainability, and Giancarlo Pena, an Engineer in the Public Works Department, among others, and said:

Last week we received approval to remove mangroves and build a sea wall at 2618 Collins, adjacent to 2642 Collins Avenue. I failed to clearly define the property limits and our contractor removed trees on most of the property at 2642 while clearing 2618 property. We stopped the contractor immediately and I reported the action to Eric Carpenter. The 2618 property holds violations for a failed seawall and Code also found overgrown vegetation into a public waterway. The Special Master has deferred action because we have been working with condo association to include them in our project. We are still working with the Association, but the President of the Association has been difficult.

On August 29, 2017, DERM responded to the project site to investigate the complaint of unpermitted work and mangrove removal. The inspection revealed that an area of mangrove trees had been removed by the Miami Beach contractor DMSI, in a location not authorized for work under the Class I permit issued by DERM, for which the City did not have a quitclaim deed. Luis Fernandez, the DERM Pollution Control Inspector, who conducted the investigation reported as follows:

During the inspection, I was met by Mr. Nelson Liberti, superintendent of Mancini and Sons [DMSI]. Mr. Liberti indicated that Mancini and Sons had been contracted by the City of Miami Beach to perform infrastructure work along Indian Creek Drive. He said that Mr. Bruce Mowry, City of Miami Beach Engineer, had instructed him to remove the mangroves within the area mentioned above. I advised Mr. Liberti that, to the best of my knowledge, mangrove removal work had not been authorized by DERM within this specific location and was not included under CLI-2016-0222. Mr. Liberti indicated he was unaware that the City of Miami Beach had not obtained authorization for this work and, as far as he knew, all necessary permits had been obtained. I verbally instructed Mr. Liberti to cease work within the area in question until I was able to confirm that authorization to remove the mangroves had/had not been obtained. Additionally, I instructed Mr. Liberti to remove fill that had accumulated along the edges of the work area and to install a silt fence in order to prevent erosion into tidal waters. A field notice was not issued at the time of this inspection (See Figure #13 below).



Figure #13. Mangrove removal along Indian Creek

The next day, on August 30, 2017, a Cease-and-Desist Notice was issued to the contractor and the private property owner. DERM then conducted a follow-up inspection which revealed additional unauthorized work, including, but not limited to, mangrove removal, the installation of concrete seawall panels and associated piles that were either in locations not yet authorized by the Class I permit and/or which were situated further waterward (6 feet) from the existing seawall than authorized by the Class I permit. A field notice was issued to the City of Miami Beach, Shoreline and DMSI. The notice ordered all unpermitted work to cease and desist. Shoreline was instructed by DERM to remove the wall that was six feet into the creek.

On August 31, 2017, Hopps emailed Margarita Wells detailing the unpermitted work that the City had performed, which included the following:

...As we discussed, the seawall work and mangrove/wetland impacts that were conducted without a Class I permit are not limited to these 5 locations that were proposed in the modification request and took place on a number of properties that are not under the ownership or control of the City. We received a complaint from the one such property owner regarding the mangrove removal. I included a draft of a table that identifies the locations where work was conducted without the required permits (16 locations). The 5 parcels are the locations that are proposed to be permitted through the pending Class I permit modification, which leaves 11 parcels where work was conducted but a permit/modification was not requested from DERM.

As the extent of the violations were discovered, City Manager Morales, in an email to Carpenter and Mowry, made clear his disapproval:

We cannot proceed on this basis. I recognize that this is an emergency, but that does not authorize us to do work on properties we do not own and to do so without a permit. We know that there is a whole neighborhood across the canal that is deeply opposed to what we are doing, and they would love nothing better than to file an injunction against us on the basis of violating the law. An emergency justifies waiving procurement; it does not sanction proceeding on an illegal basis.

C. Mowry Directs Shoreline to continue building the seawall.

During a project team meeting on August 30, 2017, after the violation was discovered by DERM, Shoreline asked the City for guidance in light of DERM's instruction to remove the seawall. Mowry instructed Shoreline not to comply because he and Carpenter were working on a plan. In a text message to Shoreline's project manager on September 2, 2017, Mowry said, "Talked to Scott Robins last night and seawall is a go-to complete as you are building. We need to start installing panels on Tuesday and DMSI needs to fill behind the wall immediately...Work with Nelson to complete. I talked to Nelson this morning...We'll need to get something from DERM retracting their cease-and-desist order they gave to SFI [Shoreline]..."

Mowry then asked Marcus to reach out to DERM regarding the stop-work order. At the time, Hurricane Irma was heading towards South Florida and a state of emergency had been declared. Marcus, in an email, explained to DERM Director Lee Hefty that the team could not stop the project as instructed by DERM because Indian Creek Drive is a hurricane evacuation route. On September 5, 2017, in response, Hefty informed Marcus and Mowry, among others, via email, of DERM's position:

I spoke with Eric Carpenter late on Friday and we have agreed to get together ASAP today to discuss this matter in detail and identify a path forward. As you may know, DERM received a complaint from a property owner regarding work the City conducted on private property without the required permits. My staff have been and continue to be committed to working with the City on all of its resilience-related projects. DERM staff are prepared and standing by to immediately issue permit modifications to the City as necessary to include additional work in any areas/properties for which the City has obtained control/permission...Be advised that under the circumstances, the cease-and-desist order does not prevent the City from taking temporary measures necessary to protect the public, life, and property.

Interpreting this as permission to continue with the project, Mowry immediately emailed Shoreline and DMSI and said, "We need to get as much done as possible. DERM is not an issue to prevent our work from moving forward."

Mowry continued to issue directions that were contrary to the instructions given by DERM. On September 14, 2017, Mowry and Mark Osburn exchanged emails regarding whether Shoreline could continue work. In his email to Mowry and Pena, Osburn stated:

As you know, DERM issued a Notice of Violation and Order to Cease and Desist on all seawall work not covered under the original Class I permit. It is our understanding that the COMB is working on clearing up this matter with DERM.

That being said, has there been any progress with retracting the Cease and Desist? Is SFI authorized to have our carpenters go back to work on forming the seawall cap at locations that are not covered under the original Class I DERM permit or are we still under the Cease and Desist?

Mowry responded:

Shoreline is authorized to proceed to complete the sea wall cap on all sea walls. The City will address all issues with DERM. We are working under an emergency condition that was declared by the City for this project.

On September 18, 2017, DERM documented that Shoreline had continued to perform unpermitted work, including the installation of additional concrete seawall panels and associated dredge and fill work in violation of the Department's cease-and-desist order. In an interview with the OIG, Mowry explained his efforts to continue the project in spite of the violations that had been issued. He cited the Commission's public emergency waivers as the legal basis for the authorization he gave to Shoreline to continue installing seawall panels:

...the only people that can declare an emergency in the City are the Commission or the City Manager. In this case, the City Commission had already rendered an emergency condition for the project, so it was already done...And I think the City Commission met at least or gave direction at least three times that this was an emergency project and that we should move ahead as quickly as possible to complete it...Now was I fully identifying to the Commission that we were still holding out, waiting on the federal permit on a seawall, they may or may not have been fully informed. I wasn't the one directly reporting to them, but the Commission gave clear direction to build that wall. But that was used as a mechanism in my termination.

Not only did Mowry instruct Shoreline to continue with its work, but he also made a number of efforts to minimize and justify the extent of the unpermitted work by indicating that the lengths of seawall that did not meet the 12-inch requirement were far less than what DERM had documented. Specifically, this involved the assertion that the old seawall was a "gravity wall", the base of which sloped waterward. In an email to Luis Soto on October 13, 2017, Mowry stated: "It has not been determined that the wall is non-compliant. The generic requirement is 12 inches from wet face of existing wall, but the requirement does not define what part of the wet face is to be referenced. It is our position that the foundation is the wet face and even if the top of the wall was inland, the foundation determines alignment. Unless DERM can prove otherwise, it is the City's position that the foundation is within the 12 inches, and this has been shown to DERM on other sections of the wall."

Mowry continued to dispute the violations for the next two months. In his response to the OIG draft report, Mr. Ricisak stated, "The problem was that DERM's inspections documented that the face of the old seawall was, in fact, vertical, not sloping, and that there apparently was no footer at the base of the existing seawall as was also claimed. Similar efforts were made by City engineering staff and the City's consultant EAS Engineering after Mr. Mowry was removed from the project."

On December 14, 2017, John Ricisak detailed for Mowry and Carpenter exactly where the violations were:

The area between 30 and 31 Streets is where the new panels exceeded the 12-inch limit (extending up to 6 feet waterward of the existing seawall) for a distance well in excess of 120 feet. Other sections between 29 and 30 Streets also exceeded 12 inches wet-face to wet-face to a maximum of 4.5 feet. After this was brought to SFI's attention, these areas were backfilled which makes a precise measurement of the non-compliant sections difficult. Attached are photos, taken yesterday, showing the area between 37 and 38 Streets where about 300 feet of panels have been placed. At least 100 feet of the seawall panels are beyond 12 inches to a maximum of about 3 feet, wet-face to wet-face. This area has not been backfilled and may not be unless and until either the panels and piles are relocated to be compliant with the Class I permit limitation or are authorized by DERM after-the-fact. Currently there are 5 king piles placed at the end of 33 Street. They are situated such that panels placed behind them will be located beyond the 12-inch limit. Lastly, 5 batter piles have been placed at the end of 35 Street. Although these appear to be situated correctly, SFI has dredged a ~ 5'-7' wide trench along the existing seawall for a distance of about 100 feet, presumably to accommodate new seawall panels. Most of the spoil generated by this work was left in the waterway and deposited waterward of the trench. Representative photos are attached. This work is unauthorized and represents a significant dredge and fill violation for which we will be taking additional enforcement action.

After receiving Ricisak's email, Margarita Wells, on behalf of the City team, requested an on-site meeting to "get on the same page about spatial concepts." That meeting took place on December 18, 2017. After the inter-agency field meeting, Carpenter directed Shoreline to stop work on the project and informed them that no additional work should be performed without his personal authorization. Mowry was terminated from the City the next month.

D. Regulatory agencies react; violations issued.

After the interagency field meeting, the ACOE notified the City that no further work was permitted without the written authorization to proceed. The ACOE ultimately determined that the City was responsible for the decision to install a seawall up to 72 inches seaward of the previous seawall, a substantial difference from the 12 inches that was submitted in the application. The ACOE also alleged that discharge of fill material and work in navigable waters of the United States occurred without the required Department of the Army authorization and in violation of Section 404 of the Clean Water Act, 33 U.S.C. Section 1344. The ACOE noted that the City had applied to obtain a permit from the Corps but did not complete the process.

In January 2018, DERM filed an affidavit of non-compliance against Shoreline for failing to correct violations at the seawall and seeking penalties and fines. DERM alleged that Shoreline was cited on September 18, 2017, and that an inspection on January 29, 2018, found that the violations had not been corrected. The violations occurred on the west side of Indian Creek between 30th and 32nd Streets. DERM petitioned for a hearing officer to issue an order finding the violator guilty and to impose penalties and fines.

The South Florida Water Management District notified Morales that the City had performed unauthorized work and was in non-compliance with environmental resource permit number 13-06263-P and Florida Statutes 373.430(1)(b), 373.413 and 373.416. The violations consisted of the dredging and filling of sovereign submerged lands which contained seagrasses, failure to control turbidity and erosion from spoil piles generated from the unauthorized dredging, and

boundaries of seagrass avoidance areas which were not delineated. The District sought civil penalties and recovery of investigative costs.

The regulatory agencies were shocked by the City's lack of adherence to the permits. In her statement to the OIG, Hopps said:

...what the City built was never represented as part of the discussions for the application or in the pre-application discussions. It was my understanding based on all of my discussions and reviews that the City could build the project as reflected in the plans within the administrative process and would not need a standard form application...the whole point of the pre-application discussions was to flesh out the challenges and the likelihood of being able to build what the City desired...It never occurred to me that the City would ignore all the discussions and build what they wanted...

She continued:

...a contractor should not try to point fingers. They are just as responsible for compliance with the permit and its conditions. By doing the work under the permit, the contractor is accepting that it is doing the work in compliance and in accordance with the conditions. There should have been no expectation by the contractor that work could continue especially after a cease and desist had been issued.

John Ricisak went further:

Placing a seawall out as far as six feet from where it was supposed to be was a very significant violation and one that DERM had never seen before on a seawall project. SFI (Shoreline) has been in the business for decades. This was not a mistake...DMSI's statement that it had assumed the City had all of the permits simply does not fly. All contractors know that they are supposed to have the permits on site and if they do not have the permit, they should not do the work...The degree of non-compliance was shocking...the thing that I was most disturbed about, you know, once the hurricane had passed and Luis went back out to the site, was not just that there had been additional seawall work done, apparently, but the areas that we had inspected previously, including the areas where the seawall had been installed way beyond where it was permitted, had been backfilled. And the reason why that was a big problem was that was going to interfere with our ability to properly and accurately assess the full extent of the areas of non-compliance because we could no longer see where the old seawall was in order to measure the distance between it and the new seawall segments. So that was a big problem. I remember being pretty unhappy about that.

DERM Enforcement Director, Joanne Clingerman, who would be responsible for resolving the subsequent permitting violations that would delay the project, said during an OIG interview that the responsible City officials understood from the beginning that the City had the option of obtaining approval by the Board of County Commissioners to extend the seawall 18 inches into the Creek, although the process would have taken several months and delayed the start of construction. "...if he told us we're going around a curve or...we have a footer or we have some obstacle that we can't meet that requirement (12 inches), we have to go out further, we could have reviewed it at the time and permitted it that way."

E. Plan to overcome violations is formed.

The City began its efforts to resolve the violations issued by the regulatory agencies. In February 2018, Carpenter approached Shoreline requesting its assistance. In an email dated February 5, 2018, he said, "I would appreciate if you could put together some guidance on how we can remove and replace these segments without causing any impacts to the environment. We will need to submit this workplan with a permit application once the scope is agreed (sic) upon with the three regulatory agencies DERM, SFWMD and ACOE. The City is also ordering a survey in accordance with the discussions with the regulatory agencies to verify the locations of all the walls and piles already constructed to determine the total amount of remedial measures needed."

Shoreline's attorneys began working with lawyers from the City Attorney's Office as well as outside counsel that had been hired by the City. Shoreline and the City began to develop the argument that unforeseen field conditions caused the wall to be built beyond the permitted 12 inches and that, although there were no field inspections of the work being done, Bruce Mowry was onsite almost every day and personally observed and directed the progression of the project.

The City also hired Ed Swakon, the Principal in EAS-Engineering, to work with the regulatory agencies to resolve the permit violations. Swakon explained to the OIG, "...that the initial argument to DERM was that there were preexisting bulkheads waterward of the main high-water line at various locations, some of which were old enough that they were submerged. In some cases, these bulkheads were located several feet away from the shoreline. The City hired Atkins to conduct a survey to show the existence of the old seawalls..." Swakon did acknowledge, however, "...in some areas where they had already done some backfill work, it was impossible to make field observations as to where the old wall was. The agencies wanted us, one of them wanted some verification. So, they tried to go out there and dig, exposed the old seawall in some locations..."

The City and the regulatory agencies met four times between February and August 2018 to review the field conditions and define the limits of a new seawall. On August 14, 2018, they tentatively agreed that the violation was limited to areas initially identified in the vicinity of 29th street, from 30th to 31st Street and from 37th to 38th Street. The agencies asked the City to excavate selected areas for relocation. The cost for this work was estimated at \$1,000,000.

Swakon thought that the City was on its way to a solution with DERM in 2018. The next step was to convince the State regulators. In October 2018, the City team traveled to Tallahassee. Swakon told the OIG:

...the idea was to...lay out the situation so that they could understand. I mean, it was kind of complicated in terms of, you know, the state law, the exemptions and the whole nine yards, so we were just trying to lay it out, so everybody was on the same page and then tell them what we were thinking. And, you know, we got a favorable response...there's always a public interest argument that has to be made in order to justify impact to resources. And so we always tried to start with making sure that people understood why we were doing what we were doing or why the City was doing what we were doing...We wanted to make sure that they understood that there was a good, solid background for why this project initially was conceived and why we were doing it. So that was all part of what we tried to do... It was a project that people had permitted that clearly was in violation of

everybody's permit and, in fact, didn't even have a permit from the feds...with the exception of the small segment in the South...That's not easy to climb out from behind.

Ultimately, in September 2020, the City entered into a Consent Order with the South Florida Water Management District. The District found that the City violated Chapter 373, Florida Statutes, and its corresponding rules, by not obtaining a modification to the existing permit prior to installing sections of the new seawall greater than 12 inches waterward of the existing seawall and dredging and filling submerged land that contained seagrasses. The City paid the District \$7,700.00 in civil penalties and costs for settlement of the violations

F. Shoreline settles with City over seawall violations.

On September 23, 2018, Shoreline sent Carpenter a proposal, in which it denied any responsibility for the cost to relocate the seawall, but, nevertheless, agreed to pay a portion of that expense in an effort to settle the issue. The very next month, on November 30, 2018, Carpenter reported to the Commission's Finance Committee on the Shoreline settlement:

We've come to this through a number of missteps and mistakes. But ultimately, at this point, we need to find a path forward. And we believe that Shoreline has been a good partner in trying to resolve the situation that we found ourselves in. And they have been willing to come to the plate and share in the cost of the remedial measures so that we can get to a place where we can put this behind us and move forward in a positive direction. That being said, I'm recommending that we move forward with this change order to Shoreline and that we, you know, finish out the permitting and go forward with the remainder of the project. And I would be proud to work with them moving forward as our contractor...Mowry was responsible for the mistakes, and he has been dealt with...and I have all the belief that...Roy Coley as the Public Works director who's lived through this with me, has felt enough pain that we will not want to relive this.

Roy Coley did not see it the same way. On September 2, 2021, in an OIG interview, former Public Works Director Roy Coley gave his assessment of the City's arrangement with Shoreline:

I knew that Shoreline had done work without a permit, and when I personally spoke with them about that, they all wanted to blame the former City engineer, Bruce Mowry. 'We did what Bruce said.' I said, Wait a minute, folks. You're a licensed general contractor. A licensed general contractor is obligated to follow the law. That's why you have to have a license. You can't blame Bruce for something you did, and you went out there and worked without a permit. And that's plain and simple. That's what they did. And I don't care what Bruce told him. If Bruce told him to jump off a bridge that don't mean they're supposed to do it, they still got certain obligations as professionals. And so, my problem with Shoreline was...they were getting a pass on accountability for doing work without a permit or inappropriately and blaming Bruce. And I said that dog don't hunt. He's not the licensed general contractor. The minute you're told to do something inappropriate, you are professionally obligated to refuse, and you didn't do it. So, I had a problem with Shoreline from that regard. Their work seems fine. Their price is fine. Everything about that is fine. I just didn't like the fact that they blame somebody else for their poor decision and didn't take accountability for it.

Carpenter reported to the Finance Committee that there was \$2.5 million dollars had been allocated to the seawall project. On December 12, 2018, the Commission approved change order #2 to cover the cost of removing 650 linear feet with the City's maximum cost not to exceed \$529,570, which was consistent with the proposal made by Shoreline.

G. Shoreline is convicted on criminal charge unrelated to City work; Shoreline faces limited post-conviction consequences.

While Shoreline was working through the violations with the City, it was also indicted in federal court. On August 29, 2018, the U.S. Attorney for the Southern District of Florida filed a criminal information against Shoreline, based on work it performed under a contract with the U.S. Coast Guard, during which coral reefs were destroyed. The complaint alleged the following against Shoreline:

[Shoreline] did knowingly make and present, and cause to be made and presented, to the United States Coast Guard, an agency of the United States, materially false, fictitious, and fraudulent claims upon and against the USCG and the United States, that is, an invoice for a monthly progress payment in the amount of \$375,061.75 fraudulently claiming that the amount requested was for performance in accordance with the specifications, terms and conditions of its contract with the USCG for the replacement of channel marker range lights, knowing such claims were false, fictitious, and fraudulent, in violation of Title 18, United States Code.

One month later, on October 23, 2018, Shoreline Vice President John McGee signed a factual proffer in the federal court case and admitted that if the case were to proceed to trial, the United States would prove the following beyond a reasonable doubt:

1. The United States Coast Guard hired Shoreline Foundation, Inc. to replace four aging channel marker range lights in the Port of Miami. The range lights are embedded into the sea floor and rise out of the water serving as aids to navigation that guide boats through the Miami channel.
2. The United States Coast Guard obtained a permit from the ACOE and Florida Department of Environmental Protection which established the terms and conditions designed to protect marine and benthic resources.
3. The contract between the United States Coast Guard and Shoreline Foundation, Inc. incorporated the permit issued by the ACOE and specified the terms and conditions for the protection of coral during construction, including the relocation of coral meeting size parameters prior to construction.
4. Shoreline Foundation, Inc. performed construction at sites containing protected coral and was aware of the requirement for relocation and the fact that it had not occurred.
5. Shoreline Foundation, Inc. performed the demolition of the existing channel marker range lights knowing that pre-demolition surveys had not occurred and that there had been no opportunity for the relocation of any coral within the demolition zone. Because there was no pre-demolition survey, it is impossible to know the impact of the demolition on coral at the sites.
6. Shoreline Foundation, Inc. submitted 13 invoices during the contract and certified that the "amounts requested are only for performance in accordance with the specification and conditions of the contract."
7. Shoreline Foundation, Inc. completed all construction and demolition in June 2015, but did not submit its post-construction survey until the spring of 2016. During the

process of preparing its final report, a senior manager for Shoreline Foundation, Inc. discouraged its subcontractor from reporting the environmental compliance failures to the United States Coast Guard.

On January 9, 2019, in US. vs. Shoreline Foundation, Inc. Case Number 18-CR-20708, the defendant pleaded guilty to one count of giving false, fictitious and fraudulent claims to an agency in the United States, was adjudicated guilty, ordered to pay a fine of \$70,000 and be placed on probation for five years.

In the aftermath of its conviction, Shoreline began dealing with the consequences of its fraud. Shoreline and FDOT entered into an agreement to refrain from bidding on projects led by the Department and/or quoting work as a subcontractor or materials supplier on projects led by the Department from June 1, 2019, through May 31, 2020.

Shoreline provided a letter disclosing the federal court case to the Miami Beach Procurement Department in June 2019, five months after its conviction, during a procurement related to ITB 2019-128-AG, the Maurice Gibb Park Floating Dock. The letter stated, in connection with its actions leading to its conviction, "Although SFI retained and paid for the outside professional benthic firm to address this specific area of work, not all of the required work was performed by the subcontractor and as a result the subcontractor's underperformed work was in fact billed to the USCG." Shoreline claimed that it did not know the subcontractor billed for work it had not performed. This was clearly inconsistent with the plea in federal court where Shoreline acknowledged knowing about the fraud. Nevertheless, Shoreline assured the City that it "...had always been and will continue to be a responsible contractor that provides a cost effective and superior product to its clients."

On June 28, 2019, City of Miami Beach Contract Compliance Administrator Alian Gonzalez emailed Assistant City Attorney Jason Jacobson copies of records related to Shoreline's fraud prosecution. Shoreline was the lowest bidder on the Maurice Gibb Park project and the City had decided not to award it to them. According to Jacobson, the information was being used to defend against a bid protest that Shoreline intended to file. It was his opinion that Morales had broad authority to reject the bid and the City could successfully defend a bid protest.

On July 3, 2019, in a letter to the Commission recommending that the contract be awarded to the second lowest bidder, City Manager Morales explained that during its due diligence review of Shoreline's bid, the Procurement Department learned of the company's recent fraud convictions:

While I recognize that Shoreline Foundation has submitted the lowest bid in response to the ITB, I am concerned with the facts regarding the Port of Miami project and the recent actions taken by FDOT as highlighted above. As a result, I have asked staff and the City Attorney's Office to review the matter and advise on any future actions that may be necessary by the City. Until that review is completed, I do not believe it is prudent to award any further projects to this firm. However, I have advised staff to allow Shoreline Foundation to complete any projects already awarded and under construction as changing contractors at this point would be very disruptive and likely increase projects costs.

Ultimately, SFI voluntarily withdrew its bid. According to Jacobson, "they knew the likelihood of their success on the merits of their bid protest was going to be expensive and unlikely to win. Based on what we discussed, I don't think they wanted their name smeared more in a public bid protest context. So, the agreement was essentially to bring them back to the status quo. Meaning

we can reject the current bid and we can provide an analysis on any future awards as we would otherwise." The agreement with SFI was crafted to coincide with FDOT's lifting of its moratorium on Shoreline's involvement in FDOT's projects.

On July 23, 2019, the City entered into an agreement with Shoreline that stated:

...as a result of matters which were unrelated to any business dealings between SFI and the City of Miami Beach, SFI will unilaterally and voluntarily cease bidding any new work with the City of Miami Beach until May 31, 2020. In addition, it is agreed that SFI shall be allowed to complete any project that it is currently under contract with the City of Miami Beach without any restrictions. With regard to pending bids, SFI currently has a bid pending with the City of Miami Beach for the Job Order Contracting contract (JOC). In the event SFI is low bidder, it is further agreed that the matter referred to above will not affect SFI's ability to be awarded the JOC contract, with the understanding that although SFI may be awarded the JOC contract, the City of Miami Beach will not issue any purchase or work orders to SFI until after May 31, 2020.

Despite the federal court conviction and regulatory violations, the City continued to allow Shoreline to work on the Indian Creek project.

In justifying this decision to the Commission, Morales, in a Letter to Commission dated October 16, 2019, stated:

With regard to the matter of Shoreline Foundation moratorium agreement with FDOT, Shoreline has notified the City Attorney's Office that it is in agreement that the City will award no work until such time as it has been determined to be in good standing with FDOT...While I acknowledge the seriousness of the issues at the Port of Miami project, I also understand that the Department of Homeland Security has investigated this matter and recommended that Shoreline not be debarred. Further, the State of Florida has also investigated the matter and has not recommended any further action. Finally, FDOT has agreed to allow Shoreline to participate in its procurement projects following the conclusion of the voluntary agreement...In considering this matter, I must also consider the City's current and future needs regarding seawalls and the need to have sufficient contractors to expeditiously complete this work...

Despite Shoreline's criminal and regulatory violations, as well as the disregard of the permit requirements, the City has paid Shoreline in excess of \$3 million for the seawall portion of the Indian Creek project.

PART V: EMERGENCIES HAVE CONSEQUENCES

A. Indian Creek drainage system design criteria is changed after construction has already commenced.

FDOT and the City had agreed to increase the drainage area to 36 acres by adding 20 feet of private property on each side of the right-of-way. By adjusting the system's configuration and equipment, Ribbeck was able to increase the system's storage, boost its total pumping capacity

to 45,000 GPM, and meet FDOT's Level of Service performance standards for the 36-acre drainage area based on a 10-year design storm with 8.75 inches of rain in 24 hours. While this level of service was required by FDOT at the time the DFA was executed, the City's level of service had been based on a 5-year storm event with 7.5 inches of rain in 24 hours. This standard did not change until October 18, 2017, when the City Commission adopted a new resolution updating the design storm criteria to a 10-year storm event. By this time the drainage design had been completed and construction of the drainage system was underway, which included the construction of the pump station structure.

Mowry believed the pump station at 32nd Street was undersized. "Technically, I wanted even larger pumps in the pump station that we were designing," Mowry said in an interview. During the weeks immediately following the City's execution of the joint agreement with FDOT in September 2016, Public Works directed AECOM to conduct a drainage study to determine the pumping capacity that would be needed to meet the City's Level of Service standard for the entire 80-acre Indian Creek Basin, an area more than twice the size of the drainage area Ribbeck's system was designed to serve. In a report dated October 26, 2016, AECOM indicated that a system with a single pump station at 32nd Street would need greater storage and pumping capacity to "meet the level of service requirements" for a drainage area that included public and private property. Since the decision had been made to build the 45,000 GPM system, AECOM recommended that, "In order to meet the level of service requirements for the system the City should consider raising road elevations" and "...connecting the system to other systems within the surrounding areas which have existing pumping systems."

McGowan told the OIG that Mowry used the results of the AECOM drainage study for discussions with Ribbeck and FDOT: "What does the city need to do the job? What does the DOT need to do the job? And let us have this conversation about what would it cost? What's the cost differential for you to increase your plan to meet our needs?"

The results of AECOM's drainage study were not a reflection on Ribbeck's design for a 36-acre basin area. Ribbeck said he had designed a smaller pump-based system for Indian Creek Drive based on direction from FDOT and Public Works: "My approach is different because my approach follows the FDOT approach...To basically address the drainage needs of the FDOT roadway facility, not to address the drainage needs of the entire island." While the smaller Ribbeck drainage tributary area included some private property adjacent to right-of-ways, it was not designed to account for water on most private lots, including water collected by commercial stormwater systems. He said FDOT's design criteria requires that, "when we design a drainage system, we design it to serve, you know, to serve the right-of-way...that's basically the common practice." FDOT standards and policies discourage the connection of privately-owned drainage systems to a state-owned system. Ribbeck said the Public Works/AECOM Greenway Plan, based on a 50-acre drainage area and total pumping capacity of 97,500 GPM, "makes sense, you know. But the reality is different...The reality is it's about money. It's about risk. It's about liability. It's about what is constructible...and what DOT will allow."

Mowry told the OIG that he tried to persuade FDOT to redesign the pump station with room to add more pumping units in the future to increase the total capacity. Mowry said, "Make it larger such that I can put a larger pump similar to what we had in other pump stations, so I could in the future." This type of engineering change may occur routinely during the design phase of a construction project, but the Indian Creek project was not being delivered as a Design-Build project. Ribbeck was preparing construction plans for DMSI. Mowry said he was ultimately told

that the station foundation would not support additional pump units: “They ended up, the (pump station’s) slab was designed only for the size of the three pump units.”

According to McGowan, the new pumping station and large 72-inch diameter pipe will prevent flooding in most cases, perhaps for years. He noted that, as more gravity wells in the area fail, and if FDOT allows commercial stormwater systems to connect to the state system in large numbers, the system will be overwhelmed. He said, “The problem is, it’s not as simple as just dropping the pump in the pump station because the collection piping in the ground is too small to handle it...adding pumping units to the 32nd Street station will probably not be a viable solution.”

In its response to the OIG draft report, FDOT emphasized the limits of the system as designed and constructed:

...the City’s consultant, AECOM’s report made assumptions inconsistent with FDOT policy. FDOT follows its own drainage design criteria and methodology which accounts only for the stormwater runoff within the FDOT right-of-way in addition to tributary area from private property that historically drains into our system via roof drains that discharge onto the state roadway and/or surface runoff that is collected by the FDOT drainage system. In the case of the Indian Creek project, private properties within the project limits have their own private wells and do not drain into the FDOT drainage system. Collection of stormwater runoff from these properties would never have been considered in the drainage analysis as FDOT is only responsible for draining its public right-of-way, and the Indian Creek drainage system would never have been designed to accommodate this volume of water. The Indian Creek project accounts for an area that includes a contributing area including 20 feet of private property which satisfies FDOT drainage design criteria and methodology in Miami-Dade County.

It is noteworthy that Ribbeck, in its response to the draft OIG report and in further discussions with the OIG, told the OIG that there are plenty of solutions that can be implemented without upsizing the pump station should the gravity wells fail. “Sea water is going to rise very slowly. It’s not going to be like in the morning you wake up and there it is. It will be the private property owner’s responsibility to retrofit their gravity system to a private pump system. “The pumping station that was built reflected the contracted scope of work between FDOT and the City and was “more than adequate for what our task was.”

On October 18, 2017, the Commission approved a resolution adopting a 10-year design storm with 8.75 inches of rain in 24 hours, a performance standard that requires the system to prevent flooding during more intense storms with more rainfall volume. During 2018, AECOM performed new drainage studies for 28 flood-prone neighborhoods based on the City’s new performance standard. The purpose of this work was to provide the design basis for stormwater systems with enough underground storage and pumping capacity to the meet the Level of Service for preventing flooding of buildings and arterial roads during a storm with 8.75 inches of rain within a 24-hour period.

For the Indian Creek Basin, the task required AECOM engineers to update drainage modeling that had been the basis of the 97,500 GPM system proposed by McGowan in the 2015 Greenway Plan, albeit with a larger 80-acre drainage area that included all public and private property in the Indian Creek Basin. The results brought into sharper focus the consequences of the 2016 decision

to limit the drainage area to 36 acres and build a system with only a 72-inch trunk line and pumping capacity of 45,000 GPM.

In “The Indian Creek Parkway Final Basin Study” produced in June 2019, AECOM proposed installing six pumping units in the single station at 32nd Street with a combined capacity of 119,837 GPM, and increasing the trunkline to 96 inches, shown in Figure #14 below (reference to Figure 4 in Figure #14 relates to the Basin Study document). If AECOM’s drainage calculations were correct, then the new drainage system had approximately one-fourth the pumping capacity required to meet the City’s current Level of Service design criteria for the entire Indian Creek Basin, including Collins Avenue and side streets to the east. Unfortunately, by the time the report was received, the Indian Creek pump station structures and half of the drainage trunkline was already completed, precluding the option of upgrading the system at that time.

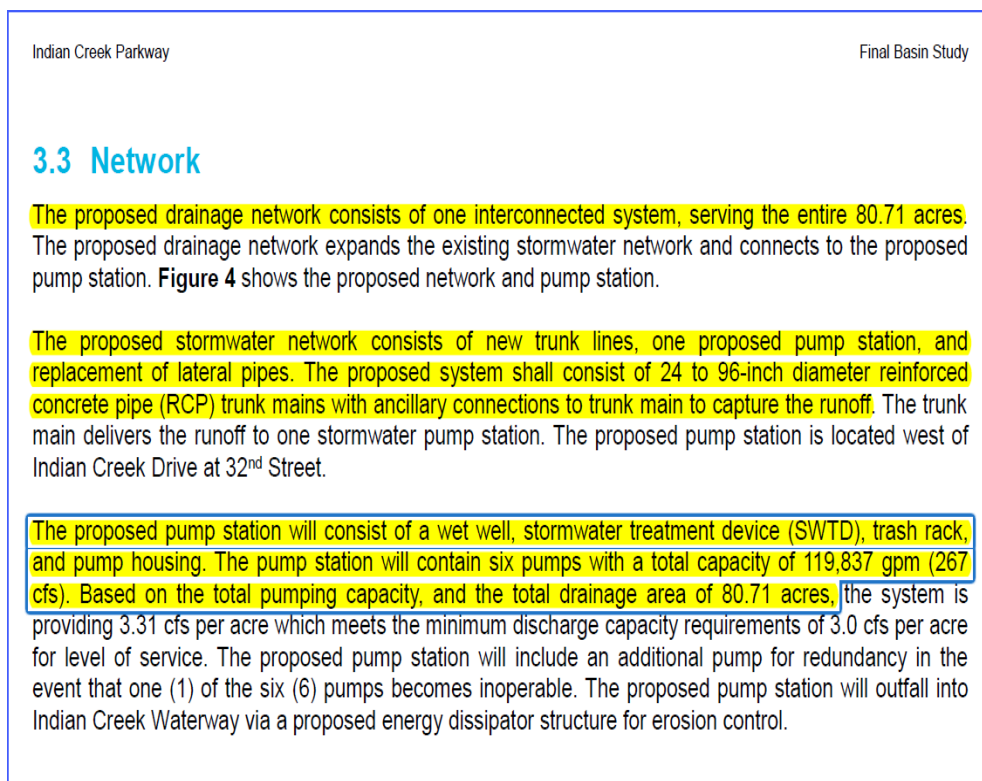


Figure #14. Excerpt from AECOM’s “Indian Creek Parkway Final Basin Study” based on the City’s Level of Service 10-year design storm with 8.75 inches of rain in a 24-hour period that modeled a system with a single pumping station at 32nd Street. Based on the drainage calculations, AECOM concluded that in order to meet the City’s current Level of Service, the system required a 96-inch trunkline and total pumping capacity of 119,837 GPM.

After reviewing the AECOM reports during an OIG interview, former Public Works Director Roy Coley said, “What you’re seeing is what you could call a component of that plan. And that is one portion of it. The rest of the basin would have to be done.” Further, he said, “Now, the entire basin, to be complete, will need, most likely, exactly what AECOM said it’s going to need... Either you’re going to have to install more wells, you’re going to have to install some type of water retention, or you’re going to have to build more pumps to get it out.”

In a 2021 interview, former City Engineer Nelson Jacome-Perez, who succeeded Mowry, agreed that the drainage system was not designed to meet the City's current Level of Service criteria for a 10-year storm event. He said that the solution will be another costly stormwater drainage project for Collins Avenue: "There has to be a future project to account for Collins...the way we're designing nowadays, it would also include half of the properties around Collins...the western half of every property along Collins because the eastern half of the property is assumed to shed water towards the ocean...so the western half of the property should be accounted for in the way we do things nowadays."

On January 29, 2019, McGowan provided Public Works with a memorandum summarizing the results of AECOM's 5-year run as the City's flooding mitigation consultant. It was attached to a final flood map. It depicted the results of AECOM's citywide inundation modeling of likely flooding during a 10-year design storm with 8.75 inches of rain in 24 hours (See Figure #15 below). AECOM's memo said the modeling showed that, "approximately 1500 acres, or roughly 30% of the City, will experience some level of surface flooding. This estimated flooding impacts approximately 70 miles of roadway within the City and approximately 5,200 homes and buildings." As indicated below, some of that surface flooding will occur on Indian Creek Drive, Collins Avenue, and the adjacent side streets and private property.

In its response to the OIG draft report, the City Administration stated that, "Based on AECOM's 2019 report and City Commission's adoption of the 10-year/24-hour storm event Level of Service, the City is moving forward incorporating this Level of Service standard into all future drainage projects. Furthermore, the City is negotiating a task to update its Stormwater Master Plan, which will result in City-Wide prioritized recommendations to further upgrade the drainage systems according to the most recently adopted 10-year storm Level of Service. The new Master Plan will include recommendations for future upgrades as needed to meet the adopted Level of Service for Indian Creek Parkway. The Roadway of Indian Creek Drive from 26th to 41st Street was reconstructed and elevated to the minimum crown of road elevation of 3.7 Ft.(NAVD). The City-Owned cross streets were only partially reconstructed to create a transition area. Collins Avenue, from 26th to 41st Street was not improved at all and needs to be reconstructed as part of a future project."

While the City advised the OIG in its response to the draft report that it is in constant communication with FDOT and DERM regarding future upcoming drainage projects, FDOT similarly advised that it is "...draining the State Road, which is all that FDOT is required to do, FDOT is not responsible for a second stormwater drainage project, or any follow up drainage projects."

It is not the role of the OIG to evaluate engineering decisions that have been made or will be made by the City and FDOT in the Indian Creek basin. Nevertheless, the OIG did consult with a qualified engineer, Louis Aurigemma, P.E., who opined that comparing the 36-acre design by Ribbeck with the 80-acre design by AECOM is a false comparison. He concluded:

"...The City of Miami Beach officials had good intentions to include the entire 80 plus acres. However, the FDOT, rightfully so, would only be responsible for stormwater drainage affecting their rights-of-way. The FDOT also contributed approximately 80% of the cost to design/construct this "smaller" drainage system. If the City wanted a larger stormwater drainage system to accommodate all the acreage outlined in the AECOM study, the City needed to finance their portion of any improvements. Obviously, this larger drainage system was not constructed

and the City is left with developing a future complex stormwater drainage project to address the remaining said area.”



Figure #15. AECOM's Citywide inundation modeling of likely flooding during a 10-year design storm with 8.75 inches of rain in 24 hours.

B. The City makes commitments to FDOT; Concrete dam built along Indian Creek Drive prevents flooding from overflow of Creek during October 2016 King Tide; City continues public emergency claim; Public Works disregards DFA contract commitments.

As previously detailed, the Administration agreed to specific terms in exchange for \$20 million in state funding and the latitude to manage the construction of a state road and state-owned drainage system:

- 1) The City agreed to use a competitively awarded Design-Build contract to build the roadway half of the project.
- 2) The City agreed to select a DCP engineering consultant in compliance with F.S. 287.055.
- 3) The City agreed to certify to FDOT that it had procured any consultant for engineering, architecture, or surveying services for the project in compliance with the provisions of Florida Statute 287.055.
- 4) The City agreed to obtain FDOT's prior approval of finished construction plans and changes to the project's scope and design.
- 5) The City agreed to retain a construction engineering inspection (CEI) consultant to assist FDOT in verifying adherence to FDOT standards and controlling costs.

The City failed to comply with all five terms.

After September 30, 2016, Public Works took no action to award a Design-Build contract. Moreover, throughout the project, the City intentionally violated the terms of the DFA by failing to obtain FDOT's prior approval of construction plans, cost estimates and changes in the project's scope and design, which compromised the financial controls FDOT had established to prevent cost overruns. By July 2017, the project's cost overrun had exceeded \$8 million, leaving the City with insufficient funding to complete construction. At that point, FDOT and the City agreed to stop construction; end DMSI's role as the drainage contractor; contribute additional funding to the project's budget; transfer management of the project to CIP; and restart construction by awarding a competitively bid contract based on finished construction plans.

In his response to the OIG draft report, Mowry claimed that he never acted unilaterally in violating the terms of the DFA. He stated:

The Indian Creek Project held weekly progress meetings in the City of Miami Beach Public Works Conference room and agendas and minutes were distributed for each meeting. The Project team included FDOT, a contracted inspector, the contractors for the drainage and seawalls, the City of Miami Beach Environmental staff, an environmental consultant, a design consultant and Public Works staff were usually in attendance...The Report had multiple references where it correctly shows that I directed the work on the Indian Creek Project, but it did not show that the decisions and direction on how the work would proceed actually came after long discussions with the City Manager's Executive Management team, the Mayor, the City Manager, the City Attorney's Office, the Mayor's Blue Ribbon Panel on Flooding and Sea Level Rise, direction from the Miami Beach Commission, and continuous interaction and meetings with Management and Staff of the Florida Department of Transportation (FDOT)...Actions taken on the Indian Creek Project were openly discussed and included participation of the City of Miami Beach staff and FDOT staff in these decisions as well.

During an OIG interview, former FDOT District 6 Secretary James Wolfe, who headed the state agency's Miami office during the project, described the Indian Creek project as "A disaster for us." He said "FDOT would prefer to do a \$25 million project ourselves. We are competent, we know what we're doing. We rarely have projects blow up on us." He said that when a municipality contends that, "We can do it faster, we can do it better," and wants to manage a jointly funded project, "if we're contributing financially...we have an agreement with some strings." He said the primary purpose of the contract requirements that the City viewed as overly stringent was to prevent ruinous cost overruns and avoid the need to bail out an unfinished project with additional state funding. "The last thing we want is we're not in control of the cost," Wolfe said. "We try to avoid that. We failed to do that with this project. This project really got out of hand from our perspective because we did not have cost controls. The terms that we had in our DFA were not being followed. And we would ultimately be asked for significant additional money."

Mowry told the OIG that he never intended to award a Design-Build contract for the road work because it was not feasible or cost-effective to do so. He claimed that during the negotiations with FDOT over changes to the joint agreement, he explained to Carpenter and others that a bifurcated contracting process--using a job order contract to build the drainage system, and a Design-Build contract for the road -- would be problematic because the City planned to raise the state road by approximately two feet to 3.7 feet NAVD. Asked directly if he ever intended to use a Design-Build contract to complete the project, Mowry said, "No. It was always going to be the, what they (FDOT) referred to as the push button contract," the term the Department uses for a

type of state job contract under \$250,000. Mowry said, "That was always our intent. And this is what I talked with Eric about, that this (the language in Section 2 of the contract) was always...to satisfy DOT."

FDOT and the City had agreed on a budget of \$25.4 million budget that was based on estimates of the engineering design and construction cost. Those estimates were based on the expected savings of a competitive bidding process and economies of scale. If Public Works paid Ribbeck to design the drainage system and DMSI to build it; and then also paid a Design-Build firm to prepare construction plans for road reconstruction and build the second half of the project; there would not be enough funding to finish the project.

Moreover, designing and building the drainage system and state road at different times, using different construction schedules virtually guaranteed conflicts that would delay the project and increase costs. The drainage system and state road comprised a single integrated infrastructure of pipes, storm drains, swales, curbs, and pavement built on porous soil that was laced with underground water, sewer, electrical and telecommunications utility lines. The six-foot wide trunkline would be installed under the west lane of Indian Creek Drive at an underground elevation that depended on the crown-of-road elevation for the new pavement.

During the DFA negotiations, Mowry contemplated a plan in which DMSI would install sections of the trunkline along several blocks at a time and, when DMSI closed the trench, have the contractor also raise the elevation of the state road and complete its reconstruction. When DMSI reached 41st Street, most of the trunkline would be in the ground and the state road would be raised to 3.7 feet NAVD. He said, "When we finished the NJPA, all you'd be doing is putting a coat of paint on the finished project." To do so, he said, it made no sense to use a Design-Build contract. He also said, "That's what I kept telling the attorneys. I said that's fine. They can do this," (include a provision requiring the City to use a Design-Build contract). But what's going to be left to bid out to finish? It is going to be nothing but doing a few little sidewalks, some little adjustments, and so forth on some things. But overall, we're going to have the bulk of the project in the ground completed."

The only obstacle to Mowry's plan was the joint agreement's requirement that the City use a Design-Build contract to raise and reconstruct the state road. Replying to Mowry's comment in an OIG interview, Carpenter strongly denied any intention to forego the award of a Design-Build contract. He said, "I've had a relationship with FDOT for almost 20 years now. And I certainly would not want that relationship to be soured by going behind their back and doing something, or being a person that says I'm gonna do X and then do Y. That's just not how I do business."

Two weeks after Levine signed the joint agreement with FDOT on behalf City, the mid-October 2016 King Tide arrived on schedule. The waters of Indian Creek rose, slipped over the seawall, and lapped against the concrete dam. However, the seawater never reached the state road, and did not cause flooding. As Mowry had promised Levine, the City's \$7 million investment in the concrete flood containment barrier and other countermeasures performed as expected. Indian Creek Drive remained open and unflooded. The *Miami Herald* reported in its October 19, 2016, edition that, "The year's worst King Tide did not cause a public emergency on the state road between 25th Street and 41st Street."

On Saturday October 16, 2016, Coastal Risk Consulting, Inc., a risk management firm acting on its own initiative, deployed employees to monitor conditions at several flood-prone locations along Indian Creek Drive. It subsequently published a report that included the photograph taken in front of the Hotel Alden at 2925 Indian Creek Drive, (See Figure #16 below), with the following

observation: “There was no tidal flooding during this event. The property, which is located along Indian Creek, would normally experience tidal flooding, especially with the 1–2-foot anticipated King Tide at 9:30 AM EDT on Sunday, October 16, 2016.”



Figure #16. Photograph taken the morning of October 16, 2016 by Coastal Risk Consulting, Inc. documenting conditions in front of the Alden Hotel at 2925 Indian Creek Drive during a King Tide event.

At the next meeting of the Mayor's Panel, Robins said he had visited several neighborhoods during the King Tide, including Indian Creek Drive, and was pleased: “I didn't see any flooding – zero - where we put our temporary barrier up on Indian Creek...I was there, and the streets remained open for the entire King Tide period.”

As a result of the \$7 million flood containment project, flooding of Indian Creek Drive caused by water overflowing the Creek during King Tides had been mitigated and no longer posed a public emergency, according to Mowry's initial comment to OIG on the event: “It wasn't [a public emergency] at that particular point.” He then quickly amended his statement, and contended there were other reasons to maintain the project's accelerated schedule:

We were having to throw a lot of resources at it. So, you know, I can't say it wasn't truly an emergency not to move ahead because we knew the solution was only temporary. It was an interim. It was not one hundred percent effective. We still did have some water issues. And so, we knew that we needed to move quickly on it and we actually had water entering into that area, even though we talked about basically the road was dry. We still had some water issues.

The Administration downplayed the dam and proceeded on the basis that the prospect of future King Tide flooding of Indian Creek Drive remained real and that it justified the Commission's awarding Ribbeck and DMSI large funding increases and other actions.

During a subsequent Commission hearing, Levine declared:

I don't think necessarily we want to delay something that that needs to happen, because during King Tides this thing is flooding. The only reason it's not flooding right now is because of our own city ingenuity. We've been able to do Quick-Stop kind of, you know? Bubble gum and spit. To put something there so that the water doesn't overflow. But that's not going to continue. It's not going to make sure. It's not strong enough to do so.

At the same meeting, Levine expressed his strong view that the dam's successful performance had not changed the need for speed in completing the project's construction. Addressing Carpenter, he said, "Fast as you can. You're going to keep doing it, doing it, doing it. And we'll check up on you to make sure you're doing it. And this body is going to put everyone's feet to the fire."

For years, the Administration had justified no-bid Design-Build contracts for the Bergeron and Lanzo firms by declaring a public emergency, supported with lengthy LTCs that described and provided evidence of recent flooding. The LTCs specified actions that the Administration would take to ensure that the process of designing and building the drainage and roadway projects and awarding lump sum contracts would comply with the spirit and letter of state law and City ordinance.

After March 2016, and despite the reservation of Deputy City Attorney Boutsis, a lower standard of justification prevailed. The flood emergency rationale for Indian Creek extended beyond the procurement process, and, within Public Works, became an all-purpose justification for decisions and official acts that contributed, directly or indirectly, to unplanned and unfunded expansion of the project's scope, often referred to as "scope creep." This involved overuse of the change order process, cost overruns, schedule delays, and design changes that created potential safety risks and required large unplanned expenditures to mitigate.

C. The pressure on City staff continues.

Between October 2016 and December 2017, statements by Carpenter and others, show that the intensity of Mowry's always-aggressive approach to dealing with FDOT staff increased and was a primary cause of a cascade of problems that followed.

Similarly, the intensity of Levine's efforts to pressure Mowry, Carpenter and Morales during the Indian Creek project to begin construction during 2016 and complete the project by the end of 2017 also increased, which is supported by the frequency and tone of Levine's emails, his public

statements during Commission meetings, and the concurrent statements of Scott Robins during meetings of the Mayor's Panel.

Further, the evidence has established that despite the 2015 construction of the barrier wall that acted as a dam along Indian Creek Drive, and the effectiveness of the wall in preventing King Tide flooding in October 2016, the City staff continued to use public emergency findings about the risk of flooding on Indian Creek Drive in order to waive state procurement laws, including Florida Statute 287.055, to award a contract to Ribbeck without competitive bidding. Additionally, they invoked the risk of future King Tide flooding to justify the award to DMSI of NJPA job order contracts with a total value of \$12 million that were awarded without competitive bidding on construction of the Indian Creek drainage system.

Mowry knew or should have known that his actions would result in the City's taking on more and more risk and accepting greater legal and financial exposure. Indeed, he was warned repeatedly about these risks by attorneys in the City Attorney's Office and others, including FDOT staff.

In the fall of 2017, Levine joined Mowry in his efforts to persuade FDOT to allow DMSI to complete the entire project. Such an outcome would have had the effect of awarding DMSI the equivalent of a \$33 million construction contract without competitive bidding. Moreover, Mowry knew, or had to know, that his actions not only undermined Carpenter's efforts to negotiate a settlement with FDOT, but also violated orders he received from Carpenter.

During September 2017, when Carpenter and his FDOT counterparts were negotiating the state bailout and the project's restart, Levine, Robins, Mowry and Mancini participated in an eleventh-hour effort to interfere with the negotiated settlement Carpenter had helped fashion and persuade FDOT Secretary Mike Dew and other senior FDOT officials to allow DMSI to complete construction of the project. These lobbying efforts culminated in Levine's scheduling a meeting with FDOT Secretary Mike Dew on October 10, 2017. Accompanied by Mowry and Morales, Levine attempted to persuade Dew to direct FDOT staff to agree to allow DMSI to complete the entire project. These lobbying efforts prompted objections from FDOT's senior professional staff, including Wolfe and FDOT's Chief Engineer. Advised of Levine's meeting, Wolfe sent a strongly worded email to FDOT Chief of Staff Shannon Schuessler. Wolfe explained that FDOT was in the midst of negotiations with the City to resolve the project's financial crisis and had already agreed to allow DMSI to complete \$800,000 in additional work under the NJPA job order contract.

Wolfe took strong exception to Mowry's view that "all of the work should be assigned non-competitively to NJPA." Wolfe said, "We do not consider it appropriate" to award the equivalent of a \$33 million construction project without competitive bidding. "This is not good business practice. We are concerned that the NJPA contract price would be higher than a competitively bid project." FDOT State Engineer Brian Blanchard agreed and offered to join the meetings with Levine. "The majority of the work (Phase 3) should be competitively bid," he wrote. "That approach would preserve the integrity of the contracting process."

In furtherance of his efforts, Mowry directed DMSI to proceed with additional out-of-scope construction from 26th Street to 28th Street without FDOT's approval that forced the closure of two lanes of traffic and violated an agreement Carpenter had reached with FDOT during the negotiations. After discovering the extent of Mowry's efforts to undo his work with FDOT on a settlement, Carpenter confronted Mowry and used the incident as part of the basis for forcing his resignation. In a subsequent email to Mowry, Carpenter wrote:

...You unilaterally instructed the contractor for the Indian Creek project to perform permanent work beyond that which was agreed by FDOT. The project team spent countless hours negotiating with FDOT to get them to agree to the permanent repairs up to the 27th Street intersection. Extending the permanent work to 28th Street from 27th Street afterwards not only puts the City at risk for additional non reimbursable expenses but it also jeopardizes the relationship with FDOT and the negotiations currently underway that will hopefully secure another \$8-10 Million that will allow us to complete the project.”

In addition to the permitting violations that brought construction of the seawall to a halt, Carpenter’s email contended that Mowry had disregarded Carpenter’s efforts during the fall of 2017 to curtail his “adversarial” relationship with FDOT, his order to stop directing DMSI to perform construction “outside of the project limits,” and his direction to cease his “manipulation of the public to lobby the elected officials on behalf of the projects you are performing.”

Several factors may have contributed to the actions of Levine and Mowry, including a sincere belief that having DMSI complete the project would expedite the construction of the pumped drainage system. A major factor was the nature of the working relationship between Levine and Mowry and the lessons Mowry, and perhaps Levine, drew from an episode in 2014, when he and Levine collaborated in a negotiation with FDOT about an earlier drainage project.

During an interview, Mowry said his relationship with Levine grew out of their joint efforts in 2014 negotiating with FDOT over its plans to build two pumping stations on Alton Road near 5th Street, a plan Mowry developed to have the City construct a parallel set of pumping stations for the City’s drainage system. During those negotiations and in the months that followed, Mowry said Levine set a tone that emphasized speed of execution and overcoming bureaucratic barriers. “The organizational culture...is to get things done fast, period,” Mowry said. “...That is the overall philosophy we did, I can tell you that if it wouldn’t have been for the Mayor, the DOT Alton Road work would have drug on for years. And because he was, had this philosophy, we were doing things with DOT and getting them done.”

The 2014 project was the first successful construction of pumping stations on an expedited basis and was one of several projects that were credited with preventing flooding during the October 2014 King Tide. That success established Mowry’s role as an innovative and technically savvy City Engineer who could deliver the results Levine wanted. The structure and pace of Alton Road hinged on negotiations Levine led and Mowry managed that persuaded FDOT officials in Tallahassee to override a design decision by the District 6 staff office in Miami.

Similar collaborative efforts between Mowry and Levine occurred during the launch of the Indian Creek project and the effort to persuade senior officials in Tallahassee to direct District 6 staff to make changes to the DFA that allowed Public Works the latitude to manage the project.

D. Mowry declares that the City will not comply with the contract with FDOT.

In January 2017, Mowry notified FDOT that he did not intend to comply with most of the contract provisions that required FDOT approval. During the fall of 2016 Mowry had decided to have DMSI install a new type of 72-inch pipe made from a hard plastic material known as Duromaxx instead of the pipe FDOT had already approved. Because this represented a design change, Ribbeck Engineering’s Frances Mitchell sent to FDOT’s Fabiana Gonzalez shop drawings of the pipe seeking FDOT’s approval. It said, “The City of Miami Beach has asked us to consider the use of SRPE 72 inches (DUROMAXX by CONTECH) for the Indian Creek pump station project. The use

of this pipe will simplify and speed up the construction of the 72-inch trunk line that will provide storage for storms attenuation.”

Mowry was pressing Ribbeck and DMSI to get the first section of pipe installed. On January 10, 2017, Mitchell sent Gonzalez an email that said, “is it okay for us to release the shop drawing to the contractor?” The answer was a fast no. Gonzalez sent Mowry, Pena, and Ribbeck an email explaining that FDOT could not approve shop drawings until it had an approved set of construction plans. She wrote, “In order to review and concur with shop drawings, plans must be released for construction (RFC). Otherwise, it is impossible to review shop drawings as there are no plans to review the structures against.”

Gonzalez said FDOT was prepared to provide expedited reviews to help the City’s efforts, but “to do so, you must provide the appropriate documentation.” Thereafter, she explained a simple workflow: Ribbeck “submits final plans to FDOT for concurrence”; FDOT approves the plans; Ribbeck submits shop drawing for review by the project’s CEI consultant and FDOT’s design consultant; based on these reviews, Gonzalez and Amanda Shotton, who managed project finances for FDOT, would approve the change on behalf of the Department, and WSP, Inc., the CEI consultant firm hired by the City to monitor DMSI’s work and verify compliance with construction plans, would formally “release” the drawings “for construction to complete this project as we agreed.”

Mowry took strong exception to this review procedure and declared that Public Works would not be complying with the FDOT’s standard review and approval process. In an email to Gonzalez that included Carpenter as a recipient, Mowry explained that Ribbeck would be designing the project in small increments and preparing engineering sheets that describe materials for DMSI’s ongoing installation of the trunkline. He wrote, “A true Design-Build is constructed off of shop drawings as have been submitted and we continue to design other components of the project. The laying sheets furnished to FDOT, with the details of the specials, as submitted are what we use for release for fabrication and delivery to the site.” At this point, no Design-Build contract had been awarded and the City was not using the Design-Build delivery. Moreover, the process Mowry described in no way resembled a standard Design-Build process in which the Engineer of Record signs and seals a finished version of the construction plans and a report of technical specifications for the project’s materials before construction begins.

Mowry explained that FDOT would receive a final set of construction plans when the project was finished. He wrote, “We will continue to complete other details of the design and the contractor will start the installation of the piping. The final design drawings will occur as-built at the completion of the work.” Mowry closed with the clarification that implied that more senior FDOT officials had approved of the City’s unusual approach. He wrote, “This is not a standard of FDOT, but this is the method described to FDOT and this is the method the City will follow to complete this project as we agreed. If you have questions, please let us know.”

In the DFA, the City actually agreed to provide FDOT the project’s construction plans, and to allow 14 days for review, and further agreed that “construction shall not commence” until FDOT had approved the project’s construction plans and changes to the project’s design. If the City proceeded with construction based on plans FDOT had not approved, the agreement said FDOT “shall not participate in additional PROJECT costs related to design changes...or related to design errors.”

Fabiana Gonzalez’s response to Mowry, with Carpenter and Ribbeck as recipients, was that “Shop drawings cannot be reviewed... unless plans have been released for construction. However, the City of Miami Beach may proceed with the installation of the pipe at your own risk.”

During a subsequent construction progress meeting January 18, 2017, Mowry announced that he was replicating FDOT's technical review and approval process and would thereafter approve changes in materials and designs. According to the minutes, Mowry said, "Protocol for the project will not follow the typical FDOT procedures. City Engineer will make decisions on issues, with the assistance of the EOR [Engineer of Record] and the CEI. Communication needs to include the City, Engineer of Record and CEI team." Mowry said a Ribbeck subcontractor would be responsible for ensuring FDOT was included on all communication." During the same meeting, he said, "Progress of the project is not meeting the City's expectations – project needs to be accelerated," according to the minutes, and directed DMSI to provide an "aggressive" schedule for completing the drainage system.

On January 26, 2017, Ribbeck submitted signed and sealed plans for construction between 25th Street and 26th Street that included the intersection with Collins Avenue and a half-block north along the state road. FDOT approved the plans for construction the following day, January 27, 2016, completing its review in less than 24 hours. The same day, Mowry and Carpenter attended a meeting of the Mayor's Panel. Mowry used the occasion to describe the difficulties of working with FDOT. Asked by Robins about the status of the Indian Creek project, Mowry said, "I'm telling everybody, they got less than a year from now and I'm told by the summer I just want to be substantially complete. Now I can only push so hard."

"Let us know what you need," Robins said.

"And I may need some help to make things happen," Mowry said. "We're fighting the bureaucracy of FDOT. They don't understand rapid construction and Design-Build. They have already told me they don't review shop drawings without finished drawings. And I said, "You won't see those until the job is finished."

As described below and based on recordings of other meetings of the Mayor's Panel, Mowry served as the primary source of information about the project and the actions of FDOT for the Panel and members of the Commission who attended the board's meetings. When the project was delayed, experienced cost overruns, or ran into other problems, Mowry attributed the problems to FDOT, not to any decision the City had made.

WSP produced minutes of construction progress meetings based on the recordings that were approved by Public Works and FDOT and then circulated to officials in both agencies. These official records provided managers in both agencies a concise means of monitoring the project's status.

During a progress meeting February 1, 2017, Mowry complained that construction was moving too slowly. According to a WSP recording of the meeting, an unidentified representative of DMSI said the company had been installing 72-inch pipe without plans approved by FDOT and asked, "When are (sic) going to have a set of plans? Right now, we're at risk for the pipes." Frances Mitchell, a Ribbeck engineer attending the meeting, said they were waiting for FDOT's approval of shop drawings DMSI had already received.

Addressing Mowry, the DMSI representative said, "I'm assuming you are going to say keep going?" according to the recording. Mowry answered, "Yeah. You're not at risk. I'm at risk. Keep putting it in." Minutes later, Giancarlo Pena, an Engineer in the Public Works Department, cautioned Mowry about the City's obligation to obtain FDOT's approval of changes to construction

plans. Mowry brushed off the warning, telling Pena “We will address that separately later...because we're going to have to build it.”

E. February 2017- Public Works overrides FDOT’s internal control over costs and expenditures.

Under the joint agreement with the City, FDOT agreed to reimburse the City for expenditures for “actual eligible PROJECT costs” for work described in the “Scope of Services” and pre-approved expenditures and prices. The designation of such work and approved expenditures was the basis upon which FDOT had agreed to reimburse 78 percent of the City’s construction costs. Further, the City had agreed that “Expenditures for items added to the Scope of Services in Exhibit “A” shall not be considered... eligible PROJECT costs” unless the City and FDOT had jointly agreed to add the new work to the DFA’s “Scope of Services” by amending the DFA and FDOT approved the expenditures.

The primary function of FDOT’s Project Manager, Amanda Shotton, was to verify that FDOT’s direct reimbursement of 78 percent of the City’s “actual eligible” costs was for work in the DFA “Scope of Services” exhibit that FDOT and the City had agreed would be performed under the DFA. Her review of planned expenditures, invoices, and pay applications from contractors was the primary financial internal control FDOT relied on to avoid paying excessively higher prices for materials and labor, and to verify that the \$20 million in state funds was spent to build the state road and state-owned drainage system and not diverted to pay for materials, or labor for “out-of-scope work,” or work on other City projects. Similarly, Shotton was responsible for verifying that project expenditures that were counted toward the City’s 22 percent share of the project’s cost, or the “maximum limiting amount” of \$5.4 million the City had agreed to contribute, were also spent on completed tasks in the DFA scope of work and not misapplied.

These financial controls were a standard requirement in DFA agreements. But their importance was heightened by the leeway FDOT had allowed the City to use its own contracts and contractors for the design and construction of the drainage portion of the project. Had the City agreed to use a Design-Build contract for the entire project, FDOT would have a finished set of construction plans, technical specifications and detailed cost estimates to negotiate a GMP lump sum price with the general contractor and an ongoing right to approve changes to the project’s design during construction.

FDOT had no contractual relationship with Ribbeck and DMSI for their work on the Indian Creek project and no independent access to review records and documentation for invoices or pay applications they performed. Moreover, the City’s contracts with Ribbeck and DMSI were both open-ended in the sense that neither contract had agreed to provide a lump sum price for the project. This meant that Public Works could direct Ribbeck and DMSI to provide engineering and construction services for tasks that were not part of the DFA Scope of Services (often referred to as “out of scope” work) that were not eligible for reimbursement by state funds and do so without FDOT’s approval.

For work the City directed Ribbeck, DMSI and Shoreline to perform under City contracts, FDOT agreed that the City’s costs for “any work fundamental to this PROJECT,” including seawall construction and drainage construction, could be counted toward the City’s 22% of the City share of the project’s costs, so long as the expenditures complied with the City’s Procurement Ordinance. The City agreed that “Eligible expenditures...incurred under contracts which are not entered into in compliance with the City Code...will not be reimbursed” or counted towards the City’s contribution. Because FDOT was not a party to those contracts and lacked the means or

authority to ensure that Public Works complied with the City's procurement laws, the City agreed that reimbursement of these costs would be approved based on a certification by the City Attorney that Public Works had complied with the City's procurement laws. However, this never happened. Neither the City nor FDOT has any record of the certifications being submitted.

During an interview with the OIG, Shotton said that, in addition to Public Works' continual disregard of its contract commitments related to state funding, when Public Works did submit paperwork or spread sheets, it appeared that Public Works applied few if any financial controls of its own. From the start, she said, Mowry and other Public Works staff claimed that the emergency risk of flooding during King Tides justified their rushed and incomplete approach to financial management. During an interview, Shotton said that Mowry claimed that the King Tide flooding "was an emergency and they believed that they could not wait even a month and... that they wanted to get this project done at all cost. Cost? Actually, forget about cost. It's an emergency."

On March 3, 2017, Mowry sent an email to FDOT Transportation Director Desdunes that proposed having DMSI begin reconstruction of the road – the portion of the project the DFA said would be built under the Design-Build contract. It was the first of several attempts by Mowry to reopen negotiations, persuade the agency to dispense with the requirement to use a Design-Build contract, and allow DMSI to complete the entire project. This time, though, he presented the option as a solution to the design conflict that was caused by aligning trunkline's underground with what he expected to be the state road's crown-of-road elevation of 3.7 NAVD. He wrote:

What I wanted to discuss with you (sic) the benefit of completing the west side of the street as part of the underground work. Both the City and your staff at FDOT have been concerned that when we construct the large 72" pipeline under this west side that temporary reconstruction work will add cost to the project. **We need to cover the pipe with enough ballast to make sure it does not want to float with the high groundwater in this area of the highway. We are recommending that we complete the area of Indian Creek Drive with filling to final elevation and construct the curb, railings, lights, etc. as shown on the two typical cross sections as shown on the attached files.** (Emphasis added.)

Mowry assured Desdunes that, "This will not change our joint funding agreement," and said the new approach will end up "saving time and money in the project." In the same message, he promised that the DCP would "be ready for procurement concurrently or immediately after" DMSI finished the work "to ensure the DB Team kicks in earlier or immediately after..."

On March 6, 2017, Desdunes flatly rejected Mowry's proposal and asked about the Design-Build solicitation. He wrote: "Based on our agreement the additional work needs to be competitively bid. **We agreed to accelerate the drainage work only due to the upcoming King Tide.** This was the hang-up from our previous discussions. How can the City resolve this matter? Can you accelerate DB procurement to avoid a break in construction? Thanks."

F. Mowry pressures contractors to complete work on Collins Avenue in time for Conference of Mayors in June 2017.

The DFA's Scope of Services and budget allowed for raising the state road 6 to 12 inches. Adding an additional foot of elevation was a major design change that would significantly increase the cost and the complexity of the project. While FDOT had not approved this design change, Public Works had decided to proceed with the construction of the higher-level drainage system that

FDOT had not approved. As described below, this decision created a series of design conflicts that resulted in sharp drop-offs in pavement and other potentially unsafe obstructions. In cases where the design conflict posed a significant safety risk or inconvenience to the public, FDOT agreed to allow small sections of the road to be raised to 3.7 NAVD and fully reconstructed.

Mowry directed Ribbeck to design plans and DMSI to perform out-of-scope work that was based on raising the crown-of-road elevation to 3.7 ft. NAVD, a design criterion that also determined the underground elevation of the trunkline. This was consistent with Public Works policy. On March 20, 2017, Carpenter sent an email to Commissioner Kristen Rosen Gonzalez in answer to her request for information about the City's work raising the elevation of roads, including Morales as a recipient. In the message, Carpenter reported that the existing crown-of-road elevation of Indian Creek Drive varied from 1.7 ft. to 3.2 ft. NAVD and that Public Works planned to raise elevation for the state roads to 3.7 NAVD, an increase of between 6 inches to 24 inches. He added, "It is also important to discuss inlet elevations due to the fact that in many cases that is the elevation that most impacts the ability to control water ponding."

The first design conflict occurred in the intersection of Collins Avenue and 26th Street, a section of the project that Public Works had been assigned to complete before a meeting of the U. S. Conference of Mayors in June 2017 to illustrate the City's resiliency efforts. It occurred during a period when Mowry was increasing pressure on DMSI to accelerate work on the drainage system. When DMSI submitted a schedule of work on March 23, 2017, Mowry threatened to have a second contractor join the project: "If this is the best schedule the team can deliver, we need to add to the team. Either DMSI adds or we retain Lanzo under our NJPA contracts to start them at 41st Street and move south to meet DMSI at 32nd Street to complete the project."

During a construction progress meeting March 29, 2017, Mowry said DMSI needed to speed up work so the intersection would be presentable for tours during the Mayor's Conference to showcase the City's efforts to raise the elevation of roads and install a new drainage system. According to the minutes, Mowry said "he wants to make sure the work between 25th Street and 26th Street is complete before the end of June because we are going to have people from all over the country here for the Mayoral Conference...Mayors will be staying in hotels nearby the job...They will be traveling through our construction zone."

During this early construction, Mowry had directed DMSI to raise part of the intersection to 3.7 feet NAVD without FDOT's approval. This work required closing the existing drainage outlets embedded in the old pavement, blocking the neighborhood's stormwater from emptying into the Creek. The abrupt drop-off from the newly raised portion of Collins Avenue to the adjacent section forced the use of a detour for motor vehicles. After creating this condition, Public Works asked FDOT to allow DMSI to fix the problem by raising the elevation of the entire intersection to 3.7 feet NAVD and completing final reconstruction on Collins Avenue. To resolve a potential unsafe obstruction to the flow of traffic along the state road, FDOT reluctantly agreed. This was the first of several design conflicts caused by out-of-scope work Public Works directed DMSI to do based on its plan to raise the elevation of the road to 3.7 feet NAVD.

After FDOT agreed to the solution, Mowry directed raising of the elevation of the west lane of Collins from 26th to 27th and the intersection at 27th Ave and complete final reconstruction of the new pavement. During this period, FDOT staff repeatedly advised Mowry that the Department had not approved the "out-of-scope" work that DMSI was performing under the NJPA based on plans prepared by Ribbeck. In one email an FDOT contractor reported that Public Works advised that "they are getting pressure to accelerate the project and they believe the only way to do so is to construct the entire project under the NJPA contract." During an interview, Shotton said:

The City engineer at the time, Bruce Mowry, he was authorizing the contractor to proceed with work without having the design plans approved...that was a constant problem on that project...I had to raise my hands, say 'I'm not authorized to approve that...a big part of my role was documenting when they were doing things out of sequence. And that happened a lot on that project...it was continual. He kept authorizing them (DMSI) to proceed with work before having approved design plans. That was a constant problem.

Shotton said she began attending Mowry's construction progress meetings because she was responsible for making, and defending, decisions about the expenditure of \$20 million in state funds and the meetings were one of the few ways FDOT could learn of changes to the project's design and she could register a timely objection on behalf of FDOT. She said, "The only thing that I could fall back on was (WSP)...was recording every single one of those meetings...The only thing I had to go back on was, "Hey. I'm not authorizing you to do that work. You know, you're proceeding without approved plans...you might not get paid for it."

G. April 2017-Public Works again asks FDOT to discuss changes to the Design Criteria Package, and the Design-Build procurement process.

On April 26, 2017, The Commission passed two resolutions that furthered the City's still-undisclosed plan of ensuring that FDOT's drainage system would be designed and built to connect to privately-owned stormwater systems. The first of these was a resolution that increased funding for Ribbeck, with Amendment No. 1 to his contract to prepare a set of "Interim" construction plans from 25th to 26th Streets and 26th to 41st Streets, including side streets in the amount of \$949,489.11, bringing the contract total to \$1,357,340.

In addressing the Commission, Carpenter said that this was a continuation of the emergency work on Indian Creek Drive, and that the Resolution would award the Design Criteria Package to Ribbeck Engineering, which was the FDOT Consultant working on the project prior to the City's retention of the firm when it took over the project. He said, "This portion of the work would allow them to continue on a fast track, installing pipes and pump stations structures along Indian Creek, to be ready for the King Tides this year." Carpenter added, "After reviewing different mechanisms to accomplish this, they believe that the most expeditious and efficient way is to use the FDOT's DCP engineer to do the preliminary design drawings that they could build from, while they prepare and put out to bid the DCP.

Given the recent performance of the barrier wall along Indian Creek Drive, using a second public emergency finding to waive F.S. 287.055 for a second non-competitive award to Ribbeck, which more than doubled the original award, prompted debate within the Administration. Former Assistant City Engineer Roger Buell prepared a memorandum that responded to a query from a senior staff member regarding the legality of the resolution in awarding a contract to Ribbeck to serve as the City's DCP engineering consultant. Buell wrote that the City Code contained four references to public emergencies. Three referred to circumstances "affecting life, health, property, or public safety," one to circumstances "affecting the property, public safety and welfare of the citizens and residents of the City." He summarized the Commission's prior use of public emergency findings to award contracts and concluded, "With the above in mind, there does not appear to be a clear definition of what a "public emergency" is in neither the code nor the resolutions. As long as an item is "affecting life, health, property, or public safety it can be declared a public emergency."

The same day, April 26, 2017, Pena emailed FDOT's Desdunes asking for a meeting "to discuss the DCP documents plus other issues regarding the Indian Creek project. We believe it is critical and beneficial to the project to implement some changes which will reduce the time and cost of this project. Could you please let us know the best time for you next week so we can go to FDOT and meet with you."

During a construction progress meeting the same day, when the discussion turned to FDOT's unwillingness to approve design changes to allow road reconstruction, Mowry contended Fabiana Gonzalez was violating a verbal agreement that he said the City had reached with former Secretary Boxold and Desdunes. He wrote: "I'm saying if this is staff at DOT now that is trying to override what was decided at the secretary's level and Harold's level, then we need to have another discussion because it was agreed on." Thereafter, Mowry contended that it made no sense not to complete full reconstruction of Indian Creek Drive, as opposed to placing a temporary layer of pavement over the trunkline and awaiting award of a Design-Build contract.

H. June 2017- Mayors Conference and Cost Overruns.

As the date of the U. S, Conference of Mayors grew closer, Mowry stressed the importance of DMSI finishing work on the Collins Avenue intersection at 26th Street According to the minutes of a progress meeting, Mowry "Reminded everyone of the June 23rd commitment for the Mayoral Convention." He said, "It's my understanding that we have over 40 people working on the project today and I expect to see a lot of productivity until we get done on the 23rd," and added, "We are going to have people from all over the country and starting on the 22nd," and he told the contractors, "Collins Ave. needs to be fully open."

Mowry asked the DMSI representative for an updated construction schedule. The DMSI representative said, "Not yet, but, you know, again, we just got plans," according to a recording of the meeting. This prompted a discussion of the Design-Build project delivery method:

DMSI: "We're getting plans and performing the work the next day, this week."

Mowry: "That's the way it's always done."

DMSI: "So that's Design-Build?"

Mowry: "...They change every day. So don't worry about it...It's a Design-Build...People don't understand what Design-Build means. In the end, you build by whatever the plans are today because they changed from yesterday."

At this point, Public Works had abandoned any pretense of complying with the DFA's commitment to limiting construction to the agreed upon work. FDOT staff had rarely, if ever, had a similar experience with a municipality. "It was unique," Wolfe said in an interview. "Unexpected, the degree to which the City Engineer was working independently of the DFA. It was very frustrating to us." Moreover, FDOT staff found it difficult to perceive any project delivery method at work or any semblance of cost controls.

Shortly before starting the Indian Creek project, FDOT's District 6 staff prepared a pushbutton contract valued at \$232,000 for repairs at the intersection of Collins Avenue and 25th Street. An engineering firm developed a detailed scope of work, tasks, and construction plans and a budget based on the quantity of material, goods, and services required to complete the job, and estimates based on fixed unit prices of qualified contractors. The purpose of this planning and estimating process was to provide FDOT with a reasonably clear means of what the work entailed, the quantity of goods and services that should be needed, how long the work should take and what it

should cost. Thereafter, this baseline of estimates would be used to evaluate the contractors claims as to quantities consumed, work performed, and payment due.

So far as Shotton knew, Public Works “never did that exercise,” and left the job of estimating quantities to DMSI and preparation of cost estimates for the NJPA contract to a Gordian Group representative. Further, when DMSI submitted pay applications, she said the firm “submitted a huge cost matrix” with long lists of the costs and quantities of goods and services, and no indication that Public Works had verified the proposed quantities of material. With the assistance of WSP staff, she reviewed hundreds of individual expenditures and said they discovered that DMSI “had a lot of stuff in there that we did not approve to be paid under DMSI's contract.” She said this resulted in a lengthy negotiation with the City of reconciling what she viewed as overcharges by DMSI and the City, a process she said involved going through “each one of their items one by one and saying, “No, we're not paying for that here. We're not paying for that here, not paying for that here.”

I. July 2017- Boutsis questions \$9 million for DMSI.

During late June, a representative of the Gordian Group sent Public Works an NJPA purchase order for \$9 million in new work for DMSI. Unlike the DFA's Scope of Services exhibit and Ribbeck's Scope of Work statement, the job order contract's scope statement contained no list of required tasks or deliverables.

In due course, Public Works prepared a resolution approving the \$9 million. When Boutsis saw a draft and the \$9 million increase for DMSI's NJPA contract, she was alarmed. This would raise to \$12 million the amount awarded to DMSI without competitive bidding and do so using a type of contract intended for projects under \$250,000. On July 17, 2017, she sent Carpenter and Aguila an email that said, "Guys: I think we should meet all together today and bring the FDOT funding agreement to the meeting. I have concerns about using the NJPA (which appears to be intended by CC for small purchases) and to go for such a large amount without a bid..... Is Jimmy aware? Is he recommending this? \$9,000,000 is a lot of work."

The Public Works proposal may not have been unlawful, but given FDOT's reaction to the first \$3 million award and its unwavering commitment to the City's using a competitively bid Design-Build contract to control costs, it was a reckless move. At a minimum, it would dramatically raise the ante on the City's gamble of using a job order contract to continue construction of the drainage system without finished construction plans or a firm estimate of the total cost to complete that work. Additionally, it would render meaningless the original DFA cost estimates that had been calculated based in part on the competitive pricing of a Design-Build contract. More importantly, the job order contract process would be one of the root causes of the project's extremely high costs escalations.

On July 17, 2017, Jay Fink emailed Boksner an explanation of the Public Works Department's rationale for the project. Fink wrote: "In the crafting of the FDOT agreement, it was contemplated that the first phase of the work was to be done through a National Joint Procurement Alliance contract with DMSI named in the agreement as the contractor. When the first contract was authorized by the City Commission, the original estimate was going to be in far excess of the \$3 million originally asked for and was explained to the Commission at the time that this was just to get the project started. Please weigh in as the deadline is approaching and the City Manager has already approved the memo."

The next morning, July 18, 2017, Boutsis sent an email to Fink, Aguila, and Boksner, with copies to Mowry and Denis (“Subject: RE: Indian Creek Gordian Group. RESO”) that asked, “Has FDOT agreed to the method of procurement?” As described elsewhere, FDOT staff in the District 6 office had understood that the City would issue DMSI job order contracts in amounts up to \$250,000 for “emergency” drainage construction and, further, had not approved much of the construction that Public Works planned to have DMSI perform using the new plans Ribbeck had prepared.

On July 19, 2017, City Attorney Aguila directed Assistant City Attorney Rafael Paz to “Please pull Memo on this item,” for further legal review. “If we are comfortable with it, it can go on Supplemental, but I have concerns and need to review.” Aguila sent an email to Morales, Carpenter, Fink and Boutsis, with copies to Boksner and Procurement Director Denis that said, “I understand urgency. I will get on Supplemental JAY: PLS FORWARD COMM MEMO Thanks.”

As a result of the intervention by Aguila, the award of the \$9 million was delayed.

J. July 2017-DMSI stops work; Mowry and DMSI acknowledge \$5 million unfunded.

On July 19, 2017, during a progress meeting, Mowry began by announcing that work on the project was stalled because DMSI had stopped work. DMSI had stopped work because of the unplanned expenses it had incurred to complete work on the intersection at Collins Avenue and 26th Street in time for the Mayor’s Conference. Mowry explained that the work he had directed DMSI to perform had required expenditures the Commission had not approved or funded. “They don’t have a valid contract with the City,” Mowry said, according to a recording of the meeting. He explained that Public Works had attempted to have the Commission approve a new job order contract for DMSI in June, but the City Attorney’s Office had intervened.

Next, Mowry declared that FDOT’s refusal to allow Public Works to have DMSI continue to raise sections of roadway and complete final construction of the state road had put the project’s future in doubt. He said Public Works had been considering its options and, “One of the concepts is to override the DOT’s limitation of us doing the whole road and actually just building it in order to get it back in service. The other option is just shut the whole project down and scrap it...”

During the meeting, a DMSI representative explained that the company had done a “lot of work between 25th and 26th street that actually had to be done prior to June 23rd Mayor’s Convention (sic) was never part of the original \$3 million PO. So DMSI in good faith proceeded with the work, got it completed and done, and then continued north. And it was actually supposed to go to Commission last month and somehow that got to the wayside.” Further, the DMSI representative explained that the firm had decided to “stop the bleeding” and suspend new construction. Breaking down the cost he said, “There’s approximately a million and a half that’s already been performed...with the purchase of new materials, my best guesstimate, rough numbers was between \$4 to \$5 million dollars of exposure.” Mowry said the problem would be resolved at the next Commission meeting. “We have a couple of commissioners who said they’re willing to sponsor the action items to approach. The key issue is that Eric Carpenter hasn’t done his contact to DOT.”

After the meeting, Giancarlo Pena sent Shotton a spreadsheet with cost estimates for the work Public Works proposed to have DMSI perform. As she reviewed proposed expenditures based on DMSI’s fixed unit prices, Shotton saw that the project construction cost had, without her knowledge, exploded. She quickly calculated the project’s total cost had just gone from \$25.4 million to \$33 million. Astonished, she sent Pena a message that said, “In the spreadsheet that you sent to me, you are showing that the cost of the project increased from \$25,408,392.96 to

\$33,141,716.75, which is a difference of \$7,733,323.79. I need for you to list the items and issues that led to that increase in the price...When I added up just the drainage items, I saw that the cost of just the drainage items increased by \$6 million dollars. I have not seen any formal correspondence from the City requesting and justifying additional funds for the drainage work.”

Once again, Public Works was presenting FDOT with a *fait accompli* that was a result of out-of-scope work Mowry directed DMSI to perform. Shotton closed with a request that Pena provide FDOT “a list of all the additional work items that you will be requesting reimbursement from FDOT along with a written justification for the additional work.”

Missing from the exchange of emails between the attorneys and senior staff was an explanation for the “urgency” of awarding DMSI an increase that was triple the size of the first NJPA job order contract.

On July 20, 2017, project manager Fabiana Gonzalez emailed Mowry that FDOT did not approve his plan for reconstruction of pavement to final grade, with a copy to Carpenter. She wrote, “The Department does not approve the reconstruction to final grade of 26 ST and 32 Street,” and added, “The additional work needs to be part of the Design-Build contract as stipulated in the agreement.”

By July 2017, more than eighteen months had passed since Ribbeck had developed conceptual plans for the project, fourteen months since the design engineers had completed a drainage study for the proposed plan, and more than a year since Ribbeck had finished a Design Criteria Package and Request for Proposal for a Design-Build contract. However, consistent with the City's intention to have DMSI complete the project, the City had not completed the final tasks required to issue the RFP and competitively select a Design-Build team.

K. Ribbeck prepares memo for Public Works to justify DMSI completing the project.

On July 24, 2017, Carpenter and Desdunes led a discussion, recorded in the meeting minutes, between Public Works and FDOT staff about options for dealing with the nearly \$8 million cost overrun. Carpenter recommended allowing DMSI to complete the project under an NJPA job order contract. Harold Desdunes countered that the long-delayed Design-Build contract should be awarded, and said he was concerned that the lack of competition would result in inflated costs.

Giancarlo Pena asked Ribbeck to develop a rationale in support of Carpenter's position that DMSI should be able to complete the project. In a memo to Pena, Ribbeck explained that the "Interim Phase has been under construction for almost one year and due to lessons learned during this process as well as to unique conditions and constraints found within this project, **it has been determined that both, drainage and roadway components should be constructed at once by the City's Jog (sic) contract. This will result in benefits in terms of construction cost savings and expediting the project.**" (Emphasis added.) The memo did not explain that the “unique conditions and constraints” were largely the result of unilateral design changes that Ribbeck had incorporated into construction plans FDOT had not approved, and the unfunded and out-of-scope construction Mowry had directed DMSI to perform.

Ribbeck's memo contended that the “DFA's two phase arrangement” would waste money and would require “reconstructing the corridor twice, the first time to existing grade for the Interim Phase and the second time to final grade for the Ultimate Phase. This process requires double expenditures on the roadway reconstruction related cost (pavement, MOT, pavement markings, etc.) which was not previously anticipated in the overall construction cost.” The original DFA

budget for construction included funding for the temporary pavement; it had not included funding for the unfunded costs created by the unilateral changes in scope, including the elevation of sections of Indian Creek Drive to 3.7 feet NAVD.

Further, Ribbeck noted that, "The roadway reconstruction during the Ultimate Phase will follow the same maintenance of traffic scheme, requiring the complete closure of multiple blocks of Indian Creek Drive at a time and detours which impact Indian Creek Drive, Collins Avenue and side-street traffic patterns. This will incur additional inconvenience to adjacent resident and business owners along... Indian Creek Drive, Collins Avenue and side-streets." Again, it was true that the DFA had assumed closure of one lane of the state road until the project was finished; it had not included the added costs and inconvenience to residents of unplanned and unfunded construction that created traffic obstruction on Collins Avenue and the side-streets and installing the 72-inch trunkline at an underground elevation that was aligned with an aboveground center-line road elevation of 3.7 feet NAVD.

In discussing one of the costliest problems Public Works had created, Ribbeck described the foreseeable consequences of the City's decision to hasten DMSI's construction of the drainage system and postpone for nine months the selection of a Design-Build team to synchronize the construction schedules for the drainage and the roadway portions of the project. Ribbeck explained the domino effect of other foreseeable design conflicts that stemmed from the City's decision to begin building the drainage system based on a future centerline road elevation of 3.7 feet NAVD and beginning construction without fully designing the project and producing a finished set of construction plans that FDOT approved. This made it impossible to develop an integrated day-to-day construction schedule that could be used to synchronize the construction of the drainage with the road construction work. A primary purpose of such detailed work plans is to avoid design conflicts and their disruptive impact on the project's schedule and the project's cost.

Additionally, Ribbeck noted that the half-built status of the trunkline, and the failure to fully design the project had created a third unintended, but foreseeable, design conflict that blocked the usual discharge of stormwater collected on City streets. Given the risk that the backup of stormwater would cause new flooding, it was necessary to provide a temporary work-around to prevent flooding. Ribbeck wrote, "The new drainage system under the existing roadway profile prohibits positive roadway drainage. Temporary drainage will be required to sustain the corridor until the Ultimate Phase which will create additional cost...Side-street storm drainpipes need to be connected to the new 72-inch pipe trunkline to maintain positive drainage."

In addition to the risk of flooding, Ribbeck also described potential traffic risks from concrete storm drains built for the elevated road constructed at the end of the project. He wrote, "The new drainage system under the existing roadway profile would result in new drainage structure tops being 2-feet above existing roadway grade, which would fall within the traffic lanes prohibiting traffic flow and will require meandering of traffic. This potentially creates an unsafe environment." What Ribbeck described were the foreseeable consequences of the City's decision to begin construction of a significantly different drainage and roadway construction project, one that was bigger, more complicated, and more costly than the project the City agreed to build in the DFA. Mowry told the OIG that he had anticipated these design conflicts in 2016 during the seven months of negotiations with FDOT.

On July 26, 2017, the Commission finally awarded a second \$9 million job order contract to DMSI. Carpenter told the Commission the funding was for agreed upon work under the Department Funded Agreement and was not related to cost overruns. In the process, he also indicated that

he was aware of additional costs the project was likely to incur and the need to obtain additional funding in the future.

He said: "As you're aware, we've been in front of this commission on a couple of occasions asking for funding to move forward with the Indian Creek Flooding Mitigation Project. When we came back to you last time, the ask was for three million dollars of construction money to start the drainage project. We're here today asking for nine million additional to be able to complete the drainage trunk line and the wet well for the pump station, consistent with the Department Funded Agreement. FDOT, they are paying 80 percent of that cost."

Mayor Levine asked: "It's all part of the plan, Eric, right?"

Carpenter replied, "Everyone's approved this. This is part of the plan...This is still in the agreement with FDOT. And we may have some other discussions later."

Commissioner Arriola asked: "So just real quick, this is not cost overruns or any of that. Is this?"

Carpenter: "This is continuing the project as it was originally proposed, the drainage portion of that project. There will be future discussions that we have to have about possibly renegotiating with the State on some of the items or asking them to come up with additional funding. But, this is not that part of the discussion."

Regarding the \$9 million increase for DMSI, former FDOT District Secretary Wolfe said the City's unilateral award of \$9 million for DMSI's job order contract had the effect of consuming funding that had been allocated for the Design-Build contract. While Morales and Carpenter continued to allude to the City's plan to award a Design-Build contract in the future, Wolfe said such claims were "inconsistent with what ultimately happened, which was 'Let's take nine million out of the design-build and move it up into quick contract.'"

L. Public Works directs Ribbeck to perform out-of-scope engineering services without authorized funding.

From the outset, Mowry expected Ribbeck to prepare construction plans that included work that was not covered by his contract with the City. On August 9, 2017, Ribbeck sent an email to Carpenter and Mowry, noting the extra work and seeking a solution: "We have previously requested an amendment to our executed contract adding scope and additional fee covering the additional cost. However, till today the decision has not been resolved. Working under this condition is hurting our firm and our sub-consultants. We would appreciate your assistance resolving this issue as soon as possible as we cannot continue working beyond scope."

Mowry forwarded the email to Carpenter with a suggestion that he was considering asking Levine to intervene. Mowry wrote, "We discuss (sic) the issue of completing the design by mid-September for Indian Creek Drive. I know that FDOT gave approval but has included additional limitations that you will need to discuss with Harold [Desdunes] to close the approval." Mowry closed with an unsubtle reminder of his communications with Levine. "The Mayor has concerns about the project and is inquiring about our progress. I will need to keep him informed of our position and expected completeness by the time of King Tides."

While Carpenter and Desdunes were negotiating a resolution to the project's financial crisis, and after agreeing to award a contract with competitive bidding, FDOT learned of additional efforts by

Mowry to have DMSI proceed with work the Department had not approved. On August 10, 2017, Desdunes sent Carpenter an email that said, "FDOT has not increased funding and is not responsible for claims if the City moves forward with ITB." This was another instance of Mowry's undercutting the City Administration, by attempting to move forward with construction while Carpenter was still negotiating with FDOT for approval.

M. Mowry proceeds with plans to award DMSI a contract for the entire project.

On September 25, 2017, Gordian Group submitted a third NJPA purchase order for an additional \$12.7 million to finish the project. This was part of the counterproposal that Mowry and Mancini were preparing to complete the project. On Sept. 26, 2017, the Administration notified the Commission that FDOT had agreed with the Public Works plan to dispense with the award of a Design-Build contract for the interim phase of the project. The LTC Morales submitted with the resolution used the arguments Ribbeck had crafted months earlier for Public Works, using much of Ribbeck's original language. Notwithstanding the Administration's actions, Mowry continued to advocate for allowing DMSI to complete the entire project up to 41st Street.

The decision to stop the project, and the complex process of planning to restart construction with a new contract and contractor, began to expose the true cost of the Public Works strategy for expediting construction. Beginning in the last quarter of 2016, Mowry had directed Ribbeck to prepare construction plans in small segments for DMSI and to include in those plans changes that expanded the scope of work to tasks that were important to the City, but tangential to completing the original project and not covered by the joint agreement. As this process continued, the number of tasks done and undone that would require engineering services grew.

On October 5, 2017, Wolfe sent Mowry a letter that said, "We cannot participate in work performed outside the scope or project limits of the agreement in effect at the time work is performed. Any work undertaken prior to written approval of the Department, and/or, prior to an amendment to an existing agreement, is not eligible for reimbursement [see Section 2(d) and Section 3(b)]." This was the risk Mowry assumed on behalf of the City when he authorized the "out-of-scope" by DMSI without FDOT's approval. Wolfe said FDOT was amenable to allow DMSI to complete construction of the drainage system but would require that the roadway section of the project "be procured competitively through a competitively bid ITB contract. We are concerned about the cost estimate increases." Wolfe did not say FDOT would increase state funding for the project, but said, "We need to review itemized cost estimates by phase that substantiates the increase."

On Oct 18, 2017, the Commission approved an additional \$1.2 million for Ribbeck, increasing the contract total to \$2.5 million. To justify this increase, Morales submitted an LTC that said the new funding would pay Ribbeck to produce construction plans for what Public Works was calling an "Ultimate Phase" that would now include designing the long-deferred roadway construction half of the project. Additionally, the LTC suggested Public Works had recognized the need for an integrated approach to the project's redesign, observing that the new work would include analysis of the "seawall plans, drainage analysis and plans" and production of a "Design Variation" memorandum. In less than a month, Public Works concluded that the additional \$1.2 million would not cover all the engineering design work that was required. On October 30, 2017, the Commission approved Amendment No. 3 to Ribbeck's contract, adding another \$339,196 "to identify potential utilities conflicts" and the need for changes in design to the roadway and parking lands, the drainage plan and harmonization plans.

During an October 25, 2017, construction progress meeting Mowry announced that he had directed DMSI to complete final construction of Indian Creek Drive up to 32nd Street, or

approximately half the work that the parties had agreed would be done under a competitively bid Design-Build contract, according to a recording of the proceedings. "So that's where we're going," Mowry said, citing "direction" he said he had received from unnamed City decision-makers. "They said, 'You're going to do whatever's necessary.' ... That's what I'm doing. So that's where we're going." Shotton objected, saying that FDOT had not approved the change and would not reimburse the City's expenses. Mowry replied that the decision was above her pay grade, saying, "The governor's office can fight about who's going to pay."

At a meeting of the Mayor's Panel on October 26, 2017, Mowry reported that DMSI was completing installation of the trunkline to just beyond 32nd Street, but complained that FDOT had not approved his recommendation to allow DMSI to expand the scope of the drainage construction to include installation of pumping equipment in the pump station: "Eric's had meetings and discussions with them and they've been holding pretty hard and stiff on not putting pumps in a pump station structure," Mowry said, according to a recording of the meeting. "Why?" Robins asked. Carpenter responded, "They're concerned about the cost. This was originally anticipated to be a \$25 million project. It's looking like it could come in anywhere between \$33 and \$35 million. And so, they are pushing the competitive procurement. They don't like the NJPA process is what it really comes down to... They are much more traditional. And they want to do things a certain way and it makes them uncomfortable to try things different."

"What does this all mean?" Robins asked.

Mowry's answer outlined a six-month work-stoppage that would leave Indian Creek Drive torn up with traffic snarled, and, after the competitive award of a contract, construction would disrupt traffic during the 2018 Art Basel event. After that, he said, the project "won't be finished until the spring or summer of 2019... because of DOT's delivery mechanism that they're promoting." Mowry closed with the warning that he had been getting complaints from hotels and restaurants "telling me they've lost hundreds of thousand dollars' worth of revenue."

"So, we're going to have a one lane for the next year and a half?" Robins asked.

"Well, two years," Mowry said. "Two years more... yes, because of FDOT not wanting to move ahead on an NJPA."

A member of the panel asked, "So we kind of jumped the gun on this thing. Was there no way that you could anticipate that would happen?"

Mowry deferred to Carpenter to explain why Public Works hastened DMSI's construction of the drainage system under the NJPA contract while postponing for more than a year the competitive procurement process to award a Design-Build contract as agreed in the DFA. "We made a calculated risk out of fear that the 2017 King Tide would cause flooding on Indian Creek Drive," Carpenter said, and he contended that because of DMSI's installation of the trunkline up to 32nd Street, "we were able to keep Indian Creek dry for the most part, even though we're only midway through construction, which was what we were focused on getting done first. That was the biggest emergency."

Carpenter did not mention that the construction of the concrete flood barrier in 2015 had prevented flooding of the state road during the 2016 King Tides, or the risk of new flooding that the project's design conflicts had created. Instead, he characterized the City's contractual commitment to award a Design-Build contract as an option that was subject to negotiation. He said, "Obviously the remainder of the work was always something that we had to negotiate with FDOT, that we do

it in two phases, to get them comfortable to even let us use the NJPA on the first part of it. And we were hoping that they would see the benefit and maybe give us a little more flexibility.”

Commissioner Joy Malakoff asked, “Can we at least open both lanes for the next two years until they start working again? So at least the traffic can go through.”

That was not possible, Carpenter said, “because the 72-inch pipe that we installed requires a certain amount of cover to keep it from floating,” referring to the foreseeable consequence of accelerating installation of the drainage system, postponing the start of road construction that would require closure of one lane in each direction. “We've tried to get DOT to agree to bringing both lanes up,” he said, but the agency had declined and said it would not reimburse the City’s expenditures for unapproved road construction. The City had the option of doing the work anyway and using City funds to cover construction costs.

“How much of a bite would that be?” Malakoff asked.

“We're anticipating that the roadway piece of it is probably between \$6 and \$8 million”.

Based on this discussion, Robins expressed incredulity: “DOT thinks that this is perfectly, okay? Leave that? Leave that street like that for two years?” He described FDOT’s position as “inexcusable” and declared that “We're going to work all angles. We're going to work every single angle possible. We will get this done.”

Three days later, the Commission approved a resolution indicating that the NJPA vs. Design-Build contracting debate had ended with an agreement between the parties to use an alternative contracting and project delivery method known as Design-Bid-Build. Submitted by Public Works, it said, “FDOT and City staff believe that, rather than proceed with a Design-Build construction methodology, the Ultimate Phase work would be better accomplished by first completing the design plans for the Project, and then selecting a contractor, via an Invitation to Bid process, to perform the construction work.”

The resolution approved Amendment No. 2 to Ribbeck’s contract, based on a public emergency finding by Morales that cited “drastic” conditions at the job site and “quality of life issues” for residents, but omitted reference to a risk of future flooding of the state road during King Tides. The resolution approved an additional \$1.2 million for Ribbeck to prepare a finished set of construction plans for both the drainage and road construction portions of the project for use in awarding a competitively bid Invitation to Build (ITB) contract to finish the project.

The next morning, the obvious contradiction between the resolution’s description of the agreement Carpenter and Desdunes had reached and the work Mowry had just directed DMSI to do in violation of the City’s contractual commitments in the DFA, prompted Wolfe to send Carpenter an email that restated the agreement and reiterated that FDOT would not reimburse the City for expenditures for unauthorized construction. Wolfe wrote:

I know this is an urgent project and time is critical. Revision of the DFA is critical. It remains that FDOT will not participate in work performed outside of the terms of the DFA. It is apparent that the City is performing such work and is doing so at risk. A future revision of the DFA cannot cover work already performed. At a progress meeting on October 25 Bruce Mowry stated that he intends to raise the intersection of 32nd Street as a work order under the NJPA. FDOT does not authorize that

work. We have seen no plans, estimates or proposed revision to the DFA for that work.”

On December 3, 2017, Wolfe sent his staff an email clarifying that, notwithstanding Mowry’s comments, nothing had changed; that FDOT had agreed to add \$6 million to the project’s budget and to allow DMSI to complete the drainage system and the crown-of-road elevation of 3.7 ft. NAVD. Wolfe concluded that, “Phase 3 must be put out to bid by the City of Miami Beach to perform the roadway reconstruction including raising the profile to final grade.”

N. Indian Creek project costs soar to \$50 million.

Efforts to overturn the agreement reached between the City and FDOT to amend the DFA, increase state funding for the project, and complete construction under a competitively awarded Bid-Build contract, continued. On January 28, 2018, an attorney with the law firm Squire, Patton, Boggs sent an email to Alberto Cardenas, a lobbyist and partner in the same firm, that said he represented the Atlantic Princess condominium at 3120 Collins Avenue and “similarly situated hotels, restaurants and other businesses affected by the Indian Creek Shoreline Improvement and Greenway Project.” The message asked Cardenas’s help in “encouraging the Secretary of FDOT to consider completing this Project pursuant to the NJPA process.”

In due course, Wolfe attended a meeting with Cardenas and FDOT’s chief of staff. In advance, he summarized his strong objections to awarding DMSI the equivalent of a \$15 million, no-bid contract for a road construction project by adding the work to an NJPA job order contract for the unfinished drainage system. Wolfe wrote, “The current project has wasted time and millions of dollars because of redesign during the project,” and described FDOT’s agreement with Public Works for the City to “advertise and award” a contract to complete the project, now labeled “Phase 3,” and to begin construction in the summer of 2018. After the meeting, Wolfe emailed Cardenas a summary of the agreement and suggested he speak with Carpenter.

On March 3, 2018, Carpenter appeared before the Commission’s Finance Committee and informed that the project’s cost had increased by \$10 million, and that he had asked FDOT for an additional \$8 million in state funds. The cost overrun was primarily due to two causes. One cause was the extensive and costly “out-of-scope” construction that Mowry had directed DMSI to perform without FDOT’s approval that had created potentially unsafe design conflicts. The second cause was the unusually high cost of the work that DMSI had performed. Carpenter told the Finance Committee that, “we’ve spent approximately \$15.3 million dollars,” for design and construction of the drainage system “all the way from 25th Street up to 32nd street.” After spending more than half the project’s total budget of \$25.4 million, the City had only completed approximately half of the project.

During the balance of 2018 and the first six months of 2019, Carpenter directed Shoreline to stop work on the seawall. Shoreline complied, leaving behind a half-finished seawall with several sections partially constructed. DMSI continued installing the trunkline and then demobilized, ending its work on the project. Ribbeck completed construction plans for Phase 3, and Public Works and FDOT worked on solicitation documents for a competitive procurement to award a ITB construction contract.

On June 27, 2019, FDOT agreed to execute Amendment No. 1 to the DFA, adding \$5.9 million in state funding to an additional \$1.6 million from the City for a total budget of \$33,036,848. In the process, FDOT agreed to revise the DFA’s Scope of Services to include most of the “out of scope” construction Mowry had directed DMSI to perform. This after-the-fact approval allowed FDOT to

reimburse the City for construction it had performed without FDOT's prior approval. The Procurement Department conducted a competitive solicitation and received bids from only four contractors, one of which was disqualified.

Newly appointed Director of Public Works Roy Coley decided to reject all the bids and start over, based on a comprehensive review of City's solicitation documents and contract terms, and a public meeting with contractors to determine why the City had received so few bids. While this process was underway, Pena emailed City Engineer Nelson Jacome-Perez, who had replaced Mowry, a copy of DMSI's proposal to complete the project under an NJPA contract, and said he recommended that Public Works use that option now to restart construction. Pena wrote, "This price was submitted to FDOT, but it was rejected by FDOT because it was going to be performed through NJPA." This final effort by Public Works to have DMSI complete the project ended on May 24, 2019, when the Procurement Department restarted the competitive solicitation process for the Phase 3 contract.

On September 9, 2019, the Commission authorized Amendment No. 4 to Ribbeck's contract, adding \$383,670 for Ribbeck's helping Public Works to evaluate proposals from bidders and redesigning sections of the project on Collins Avenue. On Oct 3, 2019, the parties agreed to amend the DFA a second time to add more state and City funding to cover the project's still escalating costs. This increased the state share to \$28.2 million and raised the project's total budget to \$37.5 million.

On the same day, following a competitive bidding process, the Commission authorized an award of \$13.6 million to Ric-Man Construction of Florida, Inc. (Ric-Man) to complete the project. Two years had passed since the Commission had approved the resolution that described the agreement between Carpenter and Desdunes that had produced this outcome. Less than half of the drainage, road, and seawall construction was finished. During the interim, Public Works took no steps to integrate the design and construction of the seawall. Management of the stormwater and road construction project was transferred to CIP, where the staff began using CIP's structured process of managing major projects. The seawall part of the Indian Creek project remained with Public Works.

Ric-Man began construction March 2, 2020 and got off to a fast start. On April 14, CIP briefed residents in the area on the status of Phase 3 construction using slides that said Ric-Man had completed about 40 percent of project.

In the months that followed, however, Ric-Man and Ribbeck notified CIP that, in building the pump station, DMSI had departed from the signed-and-sealed plans approved by FDOT, as part of what the firm referred to as a "Cost Savings Initiative". The result was a structure that was at risk of collapsing when all three pumps were put into operation. Additionally, Ric-Man reported the existence of sinkholes along the seawall's unfinished sections and along sections where the panels had not been capped. When Ribbeck verified that the sinkholes constituted an emergency condition, Ribbeck, Ric-Man and Public Works agreed to resurrect FDOT's original plan to install an underground barrier of sheet-pile to protect the state road from collapse along those sections at greatest risk. This required Public Works to seek another permit from DERM. In an OIG interview, Ric-Man General Manager Michael Fischer said, "If this was a Design- Build, I would have brought it to my engineer's attention, and we would have handled it under the Design-Build scenario. But because this is a hard dollar project, my obligation was to bring it to the City."

On June 6, 2020, Ribbeck submitted a cost proposal for Amendment No. 5 to the Agreement in the amount of \$350,270.73, to provide additional engineering services for the Project during

construction. An early priority was designing a way to prevent the pump station's collapse. On January 21, 2021, the Commission approved \$112,364 for Ribbeck to design large underground anchors or tiebacks to address the lack of structural support for the existing pump station structures due to the absence of the seawall at 32nd Street, according to the work-order.

On March 17, 2021, one year after awarding Ric-Man a \$13.6 million contract, the Commission awarded the firm a \$5.8 million change order to install the underground sheet-pile, mitigate other stability issues, and move location of the pump's generator at the request of residents.

These remedial measures were not the only expenditures that increased the project's total costs. There were fees for a private law firm to get the City through a thicket of regulatory issues that delayed approval of a permit to resume construction of the seawall, and more fees for a new engineering consultant, Edward Swakon, to obtain new permits to resume construction of the seawall and installation of the sheet-pile.

The Indian Creek project began in earnest in 2016. As of October 7, 2022, the total budget for the project has increased from the original budget of \$25.4 million to \$50.6 million¹, \$42.7 million of which has been expended. The seawall is still under construction. FDOT's contribution increased from \$20 million to \$28.25 million, and the City's contribution increased from \$5.4 million to \$22.35 million. The original Indian Creek project was presented to the Commission as a project that would be 78% funded by the FDOT and 22% by the City. Today FDOT's contribution has decreased by 22% of the total project cost while the City's contribution has increased by 22%.

Wolfe, who has since retired after 41 years with FDOT, said the Indian Creek project holds lessons for the City and FDOT. "The number one lesson is don't rush the project, plan it out with a reasonable schedule and time, and it'll carry out a lot better." He said, "when a project goes bad," FDOT executives look for lessons about how "we avoid this in the future?" He concluded, "I think there's a lot to be learned from this. DOT got dragged into doing things that we didn't want to do, that we weren't comfortable with doing, just to try and get this project done."

Eric Carpenter acknowledged the same lesson in a statement to the OIG. When reflecting on Mowry's conduct during the course of this project, Mr. Carpenter said:

...there are multiple things that I look back on that if I could do it over again, I would do it differently...the issues around the seawall and building the road up on 25th Street without getting the permission of FDOT...Those are the ones that really stick out to me...Ultimately, Harold [Desdunes] was right while those discussions were going on and that's why I ultimately agreed with him that we were trading speed for a lesser amount of cost control...Bruce was not a big fan of process or...more constraints, more control. And, ultimately, I think that this particular project was the point where he went from being an aggressive project manager to a reckless one."

¹ The increases reflected here have not been adjusted for inflation.

PART VI-OIG'S CONSIDERATION OF RESPONSES TO DRAFT REPORT

On June 13, 2022, the OIG delivered its draft report to affected parties as required by Chapter 2, Article IV, Division 5, Sec.2-256(h) of the City Code. All recipients were provided the opportunity to submit written responses to the OIG's findings before the report was finalized. Some of the responses have been incorporated into the body of this report and all are attached for reference. Two issues in particular are addressed below.

First, the City stated in its response that "the OIG's finding that the construction portion of the project was awarded without competitive bidding or compliance with Florida Statute 287.055, was inaccurate...the NJPA contract utilized was awarded through a public competitive process and utilized by public agencies across the United States." The OIG disagrees. In fact, on multiple occasions as detailed in this report, City staff went before the Commission with a memorandum from the City Manager to waive the competitive bidding process.

The NJPA facilitates a competitive process for a pool of contractors who are available to perform small jobs. DMSI was one of those contractors. The fact that there may have been a competitive process for the purpose of being included in a pool of contractors, eligible to be considered for NJPA contracts to be awarded on a non-competitive basis, is no substitute for the competitive bid process essential to a design-build methodology as had been required by the City's agreement with FDOT.

The Procurement Department's own memo on this issue at the time confirmed that, "This contract may be utilized to procure construction and specific trade services for small projects up to \$250,000 and for emergency projects with higher limits with the written approval of the City Manager." The memo stressed that the job order IQC agreements issued pursuant to an NJPA contract "helps expedite projects by eliminating the need to competitively solicit projects prior to contract, which can often result in a three-to-six-month delay." For example, as the City pointed out in its response to the OIG draft report, the Administration is currently executing a replacement of a sewer force main and competitive bidding has been waived to address this emergency. This contract method, however, was never intended to be utilized for projects of the magnitude (in this case nearly \$50 million) of the City's stormwater drainage project.

The City stated in its response that "Section 287.055, Florida Statutes, does not address the award of construction contracts except for design build contracts which is not the case for this project". The OIG takes issue with this assertion in light of the Department Funded Agreement that specifically said, "For the remainder of the project, the City shall competitively procure a Design-Build maximum bid contract (hereinafter "the Design-Build Contract"), in accordance and compliance with Section 287.055, Florida Statutes." Moreover, the City advised the Commission on June 8, 2016, that the City Manager would procure "emergency design and construction services for the project, via a design-build contract, including authorizing the preparation of a Design Criteria Package (DCP) **which complies with the specifications set forth under F.S. 287.055(2)(i).**" The Letter to Commission used the words "emergency design and construction services" and "via a design-build contract" which referred to the City's established practice of declaring flooding on Indian Creek Drive a public emergency for the purposes of waiving compliance with F.S. 287.055, while feigning compliance with the executed Department Funded Agreement (DFA) between the City and the Florida Department of Transportation.

Repeatedly, the City used its emergency authority to circumvent F.S. 287.055 for the procurement of professional services. The City consistently violated the DFA by using an NJPA contractor to

construct a substantial portion of the project. In fact, as this investigation revealed, the City's own Engineer, Bruce Mowry, told the OIG that he never intended to award a Design-Build contract for the road work because it was not feasible or cost-effective to do so. He did this in direct violation of the DFA and with full knowledge that FDOT's position was unyielding with regard to the requirements for a Design-Build contract for the road construction portion of the project. The City's response that this project was not a design-build project and, therefore, Florida Statute 287.055 was not applicable, is contrary to the evidence produced in this report.

Ultimately, the tactics employed by the City to declare an emergency to waive competitive bidding and circumvent Florida Statute 287.055 had the opposite effect from the intended result. Had the City followed the competitive bidding and Design-Build process detailed in 287.055 at the beginning of the project, which they had agreed to do in the DFA, both of which are designed to prevent cost over-runs and project delays, the project would have been completed much sooner and more cost effectively. In an effort to avoid a lengthy procurement, the City added years to the project, negatively impacted the neighborhood and wasted nearly \$20 million in public funds. The project is still not complete six years later.

Second, the OIG acknowledges inaccuracies in finding number five of its draft report, wherein it was stated that:

The new pumped stormwater drainage system on Indian Creek Drive was built with 45,000 GPM, less than half the total pumping capacity required to provide protection from flooding that meets either the LOS standard in effect in 2016 when the system was designed, or the current LOS standard in effect when construction of the project was restarted in 2019. The configuration of the system's pipes and size of its 72-inch trunkline were based on a drainage area and calculations that did not account for the expected failure of more than 120 gravity wells in the area, including those used by commercial stormwater systems, and did not provide sufficient pollution control capacity to ensure that stormwater from private property along Collins Avenue will meet water quality standards before discharge into Biscayne Bay. Presently, there is no plan by the City or FDOT for a second stormwater drainage project along Collins Avenue.

After reviewing the responses from affected parties, and conducting follow-up interviews with prior witnesses, the OIG has concluded that the drainage system that has been built is consistent with the Level of Service in effect at the time of its design in 2016. It was not until 2019 that AECOM produced its report which concluded that a 120,000 GPM pumping station serving an 80-acre tributary area was recommended for the Indian Creek basin. By the time the report was received, the Indian Creek pump station and half of the drainage trunkline had already been completed. It was too late to implement the AECOM recommendations on an active construction project. In light of the cost over-runs experienced by 2019, and the extent of the completed construction, it would not have been cost effective to stop the project and redesign it with the updated standard. Also, the Indian Creek project was a joint project with the Florida Department of Transportation, and there were restrictions within the joint agreement that prohibited the City from building the larger stormwater system. Obviously, the larger system was not constructed and the City is faced with developing a future complex stormwater drainage project to address the remaining area.

The former City Engineer and others had good intentions to include the entire 80 acres and to increase the size of the pumping station; however, this was based on the incorrect assumption that FDOT would allow private properties to connect to its system. FDOT's response to the draft report stated the following regarding the position taken by the City's consultant, AECOM,

...made assumptions inconsistent with FDOT policy. FDOT follows its own drainage criteria and methodology which accounts for stormwater runoff within the FDOT right-of-way in addition to tributary area from private property that historically drains into our system via roof drains that discharge onto the state roadway and/or surface runoff that is collected by the FDOT drainage system. In the case of the Indian Creek project, private properties within the project limits have their own private wells and do not drain into the FDOT drainage system. Collection of stormwater runoff from these properties would never have been considered in the drainage analysis as FDOT is only responsible for draining its public right-of-way, and the Indian Creek drainage system would NEVER have been designed to accommodate this volume of water.

The original finding placed great emphasis on the anticipated failure of approximately 120 gravity wells in the Indian Creek basin. The OIG acknowledges that should the gravity wells fail, it will not result in a sudden inundation of water. Rather, the likelihood is that the wells will fail slowly over an extended period of time.

Private properties are responsible for the maintenance of the existing wells located within their individual properties and there are engineering solutions available to deal with the issue of the gravity wells failing. The Florida Department of Transportation has stated many times during this investigation that there is a process to request private property connections to the FDOT drainage system, however, connection to their drainage system is seldom granted. Consequently, other options will have to be explored. Nonetheless, rather than leave an issue to private owners that will surely have an impact on the public infrastructure, the City would be wise to formulate a strategy to coordinate a solution with all affected parties.

PART VII-FINDINGS AND RECOMMENDATIONS

FINDINGS:

Between 2015 and the end of 2017, the former Mayor, despite a well-intentioned motive of dealing expeditiously with the City's resiliency challenges, applied ongoing pressure, both personally and through surrogates, on City and contract staff to accelerate construction of the Indian Creek project. Moreover, the establishment of the Mayor's Blue-Ribbon Panel on Sea Level Rise and Flooding vested an advisory board and its chairman with unprecedented authority and control over the City's planning, design, procurement, and construction of complex stormwater drainage projects, outside of the City Manager's administrative structure. The following findings address root causes of the project's extreme cost escalations and expanding scope:

1. The City did not engage in competitive bidding for a Design-Bid-Build or Design-Build project as required by the Department Funded Agreement.
2. The City used Job Order Contracts, which are intended for smaller scale and localized projects, for a major construction project. This contracting method is more expensive because of higher unit costs.

3. The City repeatedly used emergency procurements which were not actual emergencies, but rather inconveniences, to justify its failure to follow the proper procurement process under the DFA.

4. The City knowingly began construction of the seawall, without a permit from the Army Corps of Engineers, and violated the Class I permit DERM issued to build the seawall by disregarding the approved plans and building the seawall more than twelve inches into the Creek.

5. The City poorly managed the project, electing to begin and continue construction before plans had been developed and approved.

As a result of the above, the project was faced with a financial crisis, an \$8 million shortfall, that forced the City and the Florida Department of Transportation to halt construction, bid and award a Design-Bid-Build contract four years after the project's inception. This was a direct result of the absence of effective internal controls. While there is no evidence that fraudulent activities occurred during this project, the City's actions included many of the elements of fraud risk. Consequently, the City became vulnerable as an organization to the possibility of fraud on the project. The Association of Certified Fraud Examiners has identified three elements which threaten an organization: motive or pressure that drives a person to commit fraud, the opportunity to engage in fraudulent conduct, and the ability to rationalize the behavior. All of the findings above that contributed to cost escalations also contributed to the threat of fraud.

This report serves to relate the OIG's observations of the systemic weaknesses and lack of internal controls that led to significant mismanagement in the planning and construction of the City's stormwater drainage system. OIG appreciates that the City has recognized where it needs to improve and acknowledges that it is committed to internal controls and good government practices as evidenced by the recent collaboration with the OIG on the newly implemented policy on internal controls for major construction projects. It is anticipated that this collaboration will continue in the future so that vulnerabilities can be identified and the processes to avoid them are strengthened. There is more to be done in increasing the City's vigilance in the oversight of major resiliency projects critical to its future. It is hoped that this report will provide greater understanding of the potential pitfalls involved in these projects and bolster the City's renewed commitment to adhere to well-established laws, rules, and processes for efficient project management.

RECOMMENDATIONS:

1. Consider amending the City Charter to provide that neither the Mayor nor any individual member of the City Commission or of a City advisory board shall direct the Manager or any employee of the City in an administrative function; that no City employee may respond to any order from the Mayor or individual member of the Commission or of an advisory board; and that the City Manager shall not knowingly permit the Mayor or individual member of the Commission to violate this prohibition. (See Appendix I)
2. Consider amending the City Charter and/or relevant sections of the City Code to further clarify the limited role of all City advisory boards, including those established by the Mayor, providing that members of an advisory board shall not participate in the administration of any City department except in a purely advisory role, nor participate in any way in the negotiation or award of contracts.

3. The City Commission should consider authorizing the City Manager to lead a comprehensive fraud risk assessment by the Directors of Public Works, Procurement, and Capital Improvement Projects of the City's management of major construction projects, using an established fraud risk assessment structure and process. The assessment team should include an independent engineering consultant with knowledge and experience of water, wastewater and stormwater infrastructure. Such a comprehensive risk assessment examining the incentives, pressures and opportunities for fraud will reveal vulnerabilities in current internal controls; strengthen the City's defenses against fraud; increase awareness of fraud risks among City employees; and signal the City Manager's commitment to fraud prevention and good government.
4. Consider amending the City Code to provide for more stringent restrictions on the award of any type of job order contract, including a National Joint Procurement Alliance (NJPA) Indefinite Quantity Contract (IQC) for an amount greater than \$250,000 for a construction-related task based on an emergency finding by the City, as well as the award of separate and sequential \$250,000 job order contracts to a single vendor up to a cumulative total of \$2 million on the same construction project.
5. Consider developing a public outreach plan and communications plan to educate owners of gravity wells and commercial stormwater systems located within the City of Miami Beach of the proper maintenance of such wells and the likelihood that these types of wells have a high possibility of failure as a result of sea level rise.
6. Consider discussions with FDOT and DERM about the options and requirements for allowing the future connection of private and commercial stormwater systems to new drainage projects that are jointly undertaken.

APPENDIX

The Need for a New City Charter Provision

The facts related in this report support a finding that there was an over-reliance on emergency declarations that, combined with the perception of political pressure coming from direct contact between the former mayor and City staff, although well-intentioned and not unlawful in the absence of any Charter or other prohibition, had a negative effect on project decisions made by both City and contract staff. This resulted in costly managerial mistakes on the Indian Creek project.

A declaration of an emergency to emphasize the critical importance of moving ahead with an important City resiliency project in the face of rising sea levels may be appropriate and well within the discretion of its elected officials. It is the opinion of the OIG that it was used excessively during the Indian Creek project.

Such a declaration should always be measured with consideration of the extra costs expected to be incurred, as well as possible delays occasioned by likely process errors which could defeat the purpose of an emergency declaration, as it did in this project. In addition, an unusual amount of direct contact with City staff by an elected official or by that official's surrogates, and a repetitive insistence on speed of construction, without a tempering caution to observe permitting, contractual and funding protocols, can spur staff to unduly amplify the perceived pressure in order to justify inappropriate and wasteful decisions. That is what happened in this project.

The management deficiencies which contributed to this alarming situation have been noted in this report. They have already been addressed to an extent by the current City Administration and the City Commission in the form of a Management Policy for Internal Controls on Major Construction Projects, the product of a collaborative effort between the Administration and the OIG, arising out of the recommendations from the previous Palm/Hibiscus report. However, there remains a concern that an overemphasis on speed over managerial control could easily resurface in the future under different City leadership.

Most elected officials in a Commission/Manager form of municipal government such as that in the City of Miami Beach come to understand the need for a separation between policymaking and administration. However, greater effort needs to be made in the City to ensure that all elected officials are properly informed of the limits of their authority at the outset of their service. Guidance in the form of a Charter provision setting such limits, commonly included in the charters of many cities, but non-existent in the City of Miami Beach, should be a part of that information.

The City is among a minority of municipalities within Miami-Dade County when it comes to charter provisions marking a clear demarcation between policymakers and professional administrators. Only nine of the County's thirty-four municipalities lack such charter provisions. They include Miami Beach, Florida City, Opa-Locka, Miami Shores, Indian Creek Village, North Bay Village, Virginia Gardens, Hialeah Gardens, and Medley. The operational and fiscal complexity of the City of Miami Beach exceeds all others in this list.

A sampling of five local government charter provisions consisting of Miami-Dade County and three of its municipalities as well as the City of Fort Lauderdale, are included below:

1) City of Miami

Miami Charter Section 4(d) includes the following language:

Except for the purpose of inquiry and as may be necessary as provided in section 14, the mayor, the city commission, any committees or members thereof shall deal with the administrative service solely through the city manager, and neither the mayor nor the city commission, nor any committees or members thereof shall give orders to any of the subordinates of the city manager, city attorney, city clerk and independent auditor general, either publicly or privately. Any such dictation, prevention, orders or other interference or violation of this section on the part of the mayor or a member of the city commission or committees shall be deemed to be violation of the Charter, and upon conviction before a court of competent jurisdiction any individual so convicted shall be subject to a fine not exceeding five hundred dollars (\$500.00) or imprisonment for a term of not exceeding sixty days or both, and in the discretion of the court shall forfeit his or her office. Any willful violation of the provisions to this section by the mayor or any city commissioner shall be grounds for his or her removal from office by an action brought in the Circuit Court by the state attorney of this county.

2) City of Fort Lauderdale

Fort Lauderdale Charter Section 3.07 includes the following:

Except for the purpose of inquiry, the commission and its members shall deal with the administrative service solely through the city manager, and neither the commission nor any member thereof shall give orders to any subordinates of the city manager, either publicly or privately.

3) City of Doral

Doral Charter Sections 4.02(c) and 4.02(i) provide as follows:

(c) Except for the purpose of inquiries and investigations made in good faith, the Council or its members shall deal with officers and employees of the City who are subject to the direction and supervision of the Manager solely through the Manager, and neither the Council nor its members shall give orders to any such officer or employee, either publicly or privately. It is the express intent of this Charter that recommendations for improvement in City government operations by individual Members of the Council be made solely to and through the Manager. Members of the Council may discuss with the Manager any matter of City business; however, no individual Member of the Council shall give orders to the Manager.”

“(i) A criminal conviction for willful violation of this Section shall be grounds for removal from office of any Member of the Council.

4) City of Coral Gables

Coral Gables Charter Section 14 includes the following:

Except for the purpose of inquiry, the Commission members shall deal with that portion of the administrative service for which the Manager is responsible solely through the Manager. Neither the Commission, except in open session, nor any member thereof shall give orders to any subordinate of the Manager. Any violation of this section by a member of the Commission shall work a forfeiture of the office of such member.

5) Miami-Dade County (Strong Mayor system)

Miami-Dade County Charter Section 5.09(B) includes the following:

Except as provided elsewhere in this Charter, Commissioners shall not be permitted to give orders, either publicly or privately, to any subordinate of the Mayor.

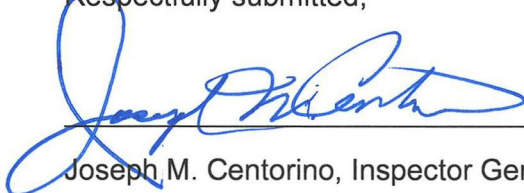
No County employee or official, other than the County Mayor or his or her designee, shall respond to or undertake any action to comply with any request by any Commissioner which violates the provisions of the preceding paragraph. The County Mayor shall not knowingly allow any Commissioner to deal with the administrative services in violation of the provisions of this section.

Many of the municipal charters that include these types of restrictions also include provisions prohibiting Commission or Council members from directing or requesting the appointment or removal from office of any subordinates of the chief administrative officer.


It is notable that the trend within the County's municipal governments is strongly toward the inclusion of charter restrictions like the five listed above. All charters of the nine municipalities most recently incorporated in Miami-Dade County-Key Biscayne, Aventura, Pinecrest, Sunny Isles Beach, Miami Lakes, Palmetto Bay, Miami Gardens, Doral and Cutler Bay-include them.

The severity with which some of these restrictions may be enforced is an indication of their importance to the proper functioning of local government. The fact that these provisions are rarely enforced is an indication that their real purpose lies in deterrence rather than punishment. These provisions exist because experience has shown how well-meaning and honest individuals elected to public office without prior municipal experience, and serving without clear written guidelines, may unknowingly exceed the authority of their offices and interfere with managerial control. The City of Miami Beach would do well to consider adoption of a similar provision in its charter.


Respectfully submitted,




Joseph M. Centorino, Inspector General



Date



Jani Kline Singer, Investigator



Date

Attachments

In Order

Received

ATTACHMENTS

Singer, Jani

From: Centorino, Joseph
Sent: Tuesday, June 14, 2022 4:43 PM
To: Singer, Jani
Subject: FW: Draft Report - OIG No. 21-15 Report on the Indian Creek Project



Joseph M. Centorino

Inspector General

Office of the Inspector General
1130 Washington Ave., 6th Floor
Miami Beach, FL 33139

Tel. 305-673-7020 | Fax: 305-587-2401 | Hotline: 786-897-1111

JosephCentorino@miamibeachfl.gov

www.mbinspectorgeneral.com

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From: Denis, Alex <AlexDenis@miamibeachfl.gov>

Sent: Tuesday, June 14, 2022 4:00 PM

To: Centorino, Joseph <JosephCentorino@miamibeachfl.gov>

Cc: McGee, James <JamesMcGee@miamibeachfl.gov>; Alonso, Elisa <ElisaAlonso@miamibeachfl.gov>; Carpenter, Eric <EricCarpenter@miamibeachfl.gov>; Martinez, David <DavidMartinez@miamibeachfl.gov>; Pena, Giancarlo <GiancarloPena@miamibeachfl.gov>; Taxis, Mark <MarkTaxis@miamibeachfl.gov>; Hudak, Alina <AlinaHudak@miamibeachfl.gov>

Subject: RE: Draft Report - OIG No. 21-15 Report on the Indian Creek Project

Good afternoon, Joe. I have skimmed the report and have the following preliminary comments. If I find others, I will let you know.

Page 5 - By the end of 2013, the City had built new pumping stations in Sunset Harbour and other flood-prone neighborhoods and had others under active construction or moving through the design phase of the procurement process.

Comment. Consider revising. There is no such thing as "the design phase of a procurement process." Perhaps what is meant here is the "procurement process for the design phase of the projects."

Page 7 – The City Administration suspended the use of job order contracts and commissioned the National Institute of Government Procurement (NIGP) to review the City’s procurement ordinance and recommend changes to improve the contracting process for major construction contracts.

Comment. This is written in a manner that can be misinterpreted. The Administration suspended the use of the job order contracting process as a result of the state attorney’s affidavit regarding the Gus Lopez investigation, which was released in November 2012. NIGP was not commissioned until mid-2013 for a review of the procurement code. They were not tasked with “improving the contracting process for major construction projects” or job order contracting. These two statements should not be tied together as if they are related.

Page 8 – The NIGP report did not include the JOC contracts as a type of contract suitable for use in major construction projects, or authorization under the proposed revision to the ordinance. However, as indicated above, it acknowledged the value of JOC agreements for smaller projects and suggested that they be re-authorized separately and limited to small construction projects under \$50,000 and unforeseen emergency repairs.

Comment. The NIGP report does not mention JOC, as they were not commissioned for that level of specificity, nor did they recommend limits to the best of my knowledge.

Page 39 – Mowry’s actions on behalf of Bergeron did not violate laws or city policies that applied at that time to the procurement of multi-million contracts. According to Procurement Director Alex Denis, once the Commission declares a public emergency for the purpose of waiving procurement laws, **any obligation to comply with internal controls or the City procurement process is also waived**. During an OIG interview, Carpenter said Mowry was difficult to manage, and on at least one occasion he verbally reprimanded Mowry for attempting to have one of his decisions changed. “I remember having a conversation with him at some point that I was unhappy that I found out that he was going behind my back...And I made it very clear to him that that was not acceptable.”

Comment. Please restate. At no time have I stated that internal controls are waived simultaneous to a waiver of bid approved by the City Commission. If any statement I have made has been interpreted in this manner, such an interpretation is a misunderstanding. “Waiver of bid” refers to the competitive requirements established in Section 2-366 of the City Code and in no way refers to internal controls. “Internal controls” is a very broad term that may refer to budgets, encumbrance approvals, bonds, insurance, legal/contracting matters, or other aspects of a project unrelated to competitive requirements. Internal controls are a part of every project regardless of whether the contracting method was established with or without competition.

Thank you for the opportunity to comment.
Alex

MIAMIBEACH

Alex Denis, Director

Procurement Department

Tel: 305.673.7490

www.miamibeachfl.gov/city-hall/procurement/



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

Sent: Monday, June 13, 2022 7:30 PM

To: Carpenter, Eric <EricCarpenter@miamibeachfl.gov>; Martinez, David <DavidMartinez@miamibeachfl.gov>; Pena,

Singer, Jani

From: Centorino, Joseph
Sent: Tuesday, June 14, 2022 9:44 AM
To: Singer, Jani
Subject: Ricisak comments on Draft Report - OIG No. 21-15 Report on the Indian Creek Project



Joseph M. Centorino

Inspector General

Office of the Inspector General
1130 Washington Ave., 6th Floor
Miami Beach, FL 33139

Tel. 305-673-7020 | Fax: 305-587-2401 | Hotline: 786-897-1111

JosephCentorino@miamibeachfl.gov

www.mbinspectorgeneral.com

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From: Ricisak, John (RER) <John.Ricisak@miamidade.gov>
Sent: Tuesday, June 14, 2022 9:32 AM
To: Alonso, Elisa <ElisaAlonso@miamibeachfl.gov>
Cc: Centorino, Joseph <JosephCentorino@miamibeachfl.gov>; McGee, James <JamesMcGee@miamibeachfl.gov>
Subject: RE: Draft Report - OIG No. 21-15 Report on the Indian Creek Project

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

Good Morning,

Thank you for providing copies of the draft documents for my review. After a cursory reading of the portions of the draft report that include the issues with which I was involved and am familiar (i.e. re: the seawall construction along Indian Creek), a couple of things stood out for me.

I do recall that subsequent to the initial discovery by DERM of the violations and non-compliance with the project plans and DERM Class I permit, Mr. Mowry made a number of efforts to minimize the extent of the unpermitted work by indicating that the lengths of seawall that did not meet the 12-inch requirement were far less than what DERM had documented. Similar efforts were made by City engineering staff and the City's consultant EAS Engineering after Mr. Mowry was removed from the project; specifically, this involved their assertion that the old seawall was a "gravity wall" ,

the base of which sloped waterward. If it were true, this would reduce the distance between the old and new seawall and thus reduce the amount of seawall that did not meet the 12-inch (or 18-inch) regulatory requirement. Plans were submitted to DERM that depicted such a sloped existing seawall. The problem was that DERM's inspections documented that the face of the old seawall was, in fact, vertical – not sloping – and that there apparently was no footer at the base of the existing seawall as was also claimed. I don't know if this is of any consequence at this late date, and it has been quite some time now since I have had any involvement in this project.

It may not be germane, but the report also does not seem to mention another, separate instance of a COMB seawall project performed by Shoreline Foundation to which unauthorized changes were made in violation of the DERM Class I permit, apparently at the instruction of Mr. Mowry. This was located at Cherokee Avenue and involved SFI constructing a seawall with two large and unauthorized openings in the seawall panels in apparent anticipation of the eventual installation of a stormwater pump that was not approved. The City ultimately corrected the violation by sealing off the openings in coordination with DERM. I am uncertain whether you were ever made aware of this.

Please let me know if you have any questions or if I can be of any assistance.

John

John "Sisyphus" Ricisak, Project Supervisor
Restoration & Enhancement Section
Miami-Dade County Department of Regulatory and Economic Resources
Environmental Resources Management (DERM)
Overtown Transit Village
701 NW 1st Court * 5th floor *
Miami, FL 33136
(305) 372-6581 Phone
(305) 487-2612 Cell (Preferred)
(305) 372-6479 Fax
www.miamidade.gov/environment

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

Sent: Monday, June 13, 2022 7:59 PM

To: Ricisak, John (RER) <john.ricisak@miamidade.gov>

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

Subject: Draft Report - OIG No. 21-15 Report on the Indian Creek Project

EMAIL RECEIVED FROM EXTERNAL SOURCE

Dear Mr. Ricisak,

Please see attached the cover letter and draft report: OIG No. 21-15 Report on the Indian Creek Project for your review and comment.

Thank you!

From: Jeffry Marcus <jeffry.marcus@tylin.com>
Sent: Wednesday, July 13, 2022 4:50 PM
To: Alonso, Elisa <ElisaAlonso@miamibeachfl.gov>
Cc: Centorino, Joseph <JosephCentorino@miamibeachfl.gov>; McGee, James <JamesMcGee@miamibeachfl.gov>
Subject: RE: Draft Report - OIG No. 21-15 Report on the Indian Creek Project

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

Please accept this e-mail as my response to Draft Report OIG No.21-15 Report on the Indian Creek Project:

I agree with statements within the document; however, there are two points that should be clarified. First, once it became known that the seawall was built, in some cases, beyond 12 inches, we immediately began to prepare a package to DERM requesting a variance and the opportunity to have it reviewed as a Standard Application in front of the Miami-Dade Board of County Commissioners. This was done with the knowledge and support of Bruce Mowry. DERM understood that we were preparing the package for submittal to resolve the issue without having to tear out sections of seawall that would have created far more impact. Our authority to represent the City ceased on December 17, 2017 and our involvement ended at that time. Second, the US Army Corps of Engineers Permit Application was submitted at the same time as the SFWMD and DERM applications were submitted in the summer of 2016. However, it sat dormant for over 16 months waiting for NMFS to issue a Biological Opinion based on adjacent critical habitat to Johnson's Seagrass. The application was placed in a long que despite numerous e-mails and calls but NMFS was unresponsive. Ironically, Johnson's Seagrass has since been delisted and no longer has the regulatory control or concern that delayed our USACE Permit indefinitely. We did try to identify the project as an emergency but the Corps did reject our argument. Finally, all mitigation was conducted or in progress as a basis of the local and State permits.

Jeff
Jeffry Marcus, Ph.D.
ENVIRONMENTAL SCIENCES GROUP LEADER
T +1 305.606 5767
M +1 305 528 4761
E jeffry.marcus@tylin.com

TYLin

201 Alhambra Circle Suite 900
Coral Gables, FL 33134, United States

TYLin.com |   

From: Alonso, Elisa <ElisaAlonso@miamibeachfl.gov>
Sent: Tuesday, June 14, 2022 10:06 AM
To: Jeffry Marcus <jeffry.marcus@tylin.com>
Cc: Centorino, Joseph <JosephCentorino@miamibeachfl.gov>; McGee, James <JamesMcGee@miamibeachfl.gov>
Subject: Draft Report - OIG No. 21-15 Report on the Indian Creek Project

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

Dear Mr. Marcus,

Please see attached the cover letter and draft report: OIG No. 21-15 Report on the Indian Creek Project for your review and comment.

Singer, Jani

From: Jeffrey Marcus <jeffry.marcus@tylin.com>
Sent: Tuesday, July 19, 2022 6:14 PM
To: McGee, James
Subject: RE: Draft Report - OIG No. 21-15 Report on the Indian Creek Project

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James,

Good afternoon. Sorry for the delay in my response. I am in Colorado and was whitewater rafting (I survived!). Actually, I am not familiar with a "Permitting Book" or binder as Bruce is describing. I unfortunately have no records or e-mails since I was at Stantec at the time and lost access. However, there were loads of e-mails to NMFS regarding their progress on the Biological Opinion. Also, Kate Davis was involved with the DERM submittals relating to requesting approval to move the new seawall beyond 12 inches in certain locations. I do recall that there was some dispute between DERM and Bruce as to which sections this applied. However, collectively, there was an effort to resolve the issue between DERM and the City by preparing and submitting these modifications. Regarding the mitigation, it was two-fold. In part, the City donated money to DERM. I don't recall the exact amount, but I think it was around \$175,000.00. We also committed to a living mangrove shoreline at Lake Pancoast. Plans were submitted to DERM, SFWMD, and the USACE. My understanding that the project moved forward but I am not certain.

Jeff

Jeffrey Marcus, Ph.D.

ENVIRONMENTAL SCIENCES GROUP LEADER

T +1 305.606 5767

M +1 305 528 4761

E jeffry.marcus@tylin.com

TYLin

201 Alhambra Circle Suite 900
Coral Gables, FL 33134, United States

TYLin.com |   

From: McGee, James <JamesMcGee@miamibeachfl.gov>
Sent: Tuesday, July 19, 2022 12:31 PM
To: Jeffrey Marcus <jeffry.marcus@tylin.com>
Subject: RE: Draft Report - OIG No. 21-15 Report on the Indian Creek Project

Hi Jeff,

Thanks for the response. Bruce Mowry says that you maintained a binder of the documents he called the "Permitting Book" and that information in there will support your claims and his. Do you have a copy? Know where it might be, who might have it?

Thanks

Singer, Jani

From: James Wolfe <wolfejames132@yahoo.com>
Sent: Saturday, July 16, 2022 10:50 AM
To: City of Miami Beach OIG; McGee, James
Cc: Michelle Garrido; Andrea Wolfe
Subject: Report on the Indian Creek Project OIG No. 21-15

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

IG Centorino,

I have reviewed Draft OIG No. 21-15. I have some brief remarks which I will make now prior to my meeting with Jim McGee on Monday. I remind you that I am retired from FDOT, my remarks are my own and have not been reviewed by FDOT.

The report is an exceptional and valuable piece of work.

I am accurately represented in the report. Quotes attributed to me seem correct.

On Pages 91 and 127 it is stated that FDOT uses non-competitive "push-button" projects under \$250,000. My recollection is that the push button projects are advertised and competitively selected by bidding on unit prices. During selection there are no plans. Work orders will be assigned and paid by the bid unit prices. Non-competitive selection at FDOT is very uncommon except for supplemental agreements added to an originally competitive project. Non-competitive new contracts typically involve sole-source qualifications and would likely be much smaller than \$250,000.

The report looks into whether an emergency declaration is warranted to justify non-competitive selection. "It is an emergency" was also cited by several witnesses as a justification to waive other normal requirements and contract provisions. I would have expected some discussion in the report of waiving as little as possible in order to accomplish the emergency project objective. FDOT has occasion to declare emergencies and seeks to use that authority in as limited a way as possible. Two examples are hurricanes and bridge hits.

In the case of hurricanes unexpected emergency services may be required. This would include debris removal. An accurate example would be that District 6 FDOT needing such services would call six known qualified firms, solicit unit prices and award one or more contracts by low bid within 24 hours. This process waived certain features of a normal selection but remained competitive. Anticipating that this type of emergency would happen again FDOT instituted a process of "pre-event" contracts. These are competitively selected according to all procurement rules in advance of hurricane season, yielding a list that can be used in the event of an emergency.

Another common emergency is structural damage due to a bridge hit, over height loads striking and damaging overhead bridge beams. A typical approach to this would be to call three known qualified firms, request proposals and competitively select.

In both of these examples there is an intent to minimize the rule waivers in an emergency to the absolute minimum required to address the emergency. Emergency declaration should not be seen as a blanket waiver but as opening the door to justify why a particular rule should be waived.

Best regards,

Jim Wolfe

Singer, Jani

From: Ricardo Salazar <ricksalaz.3151@gmail.com>
Sent: Wednesday, July 20, 2022 3:03 PM
To: McGee, James
Subject: Re: Draft Report - OIG No. 21-15 Report on the Indian Creek Project

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

Good afternoon McGee,

I am providing you a response that I consider is important in short. As the FDOT District Six Drainage Engineer until October 2018 and worked for the Department for almost 30 years. I have never designed, and/or authorized any design of a State roadway facility with a drainage system that takes in consideration adjacent drainage from properties adjacent to the State right-of-way, unless grandfathered.

All State roadway drainage systems design shall adhere to the the Florida Statutes Chapter 14-86.

In reference to the 100,000 GPM pump station to handle the entire Indian Creek island, it was never never contemplated/ or considered.

My direction to the consultant was to adhere to CHapter 14-86. Project drainage boundaries were set accounting for Indian Creek Drive and Collins Avenue right of way, local streets right of way plus a 20-foot setback outside the right of way, as typically done as common practices in drainage designs to account for private property drainage area contributing to the State roadway.

Sincerely,

Ricardo F. Salazar Jr.
Previous District Six Drainage Engineer
Until October 2018

On Tue, Jul 19, 2022 at 8:08 AM McGee, James <JamesMcGee@miamibeachfl.gov> wrote:

Mr. Salazar,

Good morning. We are in the process of revising the summary of facts, preliminary findings, and recommendations in the Comment Draft Report OIG-21-15 "Indian Creek Project."

As the Inspector General explained in his cover letter with the draft sent to you on June 13, 2022, the City of Miami Beach Code Section 2-256(h) provides that affected persons or entities referenced in the report have thirty (30) working days to submit a written explanation or rebuttal that will be attached as an exhibit to the final report. The comment period ends at the close of business on July 26, 2022.

We recognize that not everyone who takes exception to some aspect of the report is inclined to submit a written response for publication with the final report. The purpose of this email is to let you know that you can use a less formal means to alert us to any aspect of the draft that you believe contains errors, omits material facts, or fails to provide sufficient context. If you have such concerns, large or small, I urge you to contact me as soon as possible so they can be addressed.

You can send me your comments by email. We can speak by phone. If you want to expand upon or clarify comments during a recorded interview, I'm happy to schedule another meeting via Teams or Zoom for that purpose. We carefully consider all responses, written or otherwise, and are eager to correct any misapprehensions.

And, to those of you who have taken the time to share your reactions to the draft and have thereby helped us improve the report's accuracy, fairness, and value to the City Commission and residents of Miami Beach, thank you.

Best regards,

Jim

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

Sent: Monday, June 13, 2022 8:01 PM

To: ricksalaz3151@gmail.com

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

Subject: Draft Report - OIG No. 21-15 Report on the Indian Creek Project

Dear Mr. Salazar,

Please see attached the cover letter and draft report: OIG No. 21-15 Report on the Indian Creek Project for your review and comment.

Thank you!

Singer, Jani

From: Bruce Mowry <bmowry@att.net>
Sent: Tuesday, July 19, 2022 10:46 PM
To: McGee, James
Attachments: 20150928 AlGore and Climate Change and Indian Creek.pdf

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Jim,
I read about 50 pages of the draft report and it was interesting reading on how this appears to be a report about me and not Indian Creek Drive project. The issue of calling an emergency for the City was taken when we were building a pump station at 17th Street and West Avenue on Collins Canal. The sea wall adjacent to the project was in poor condition and Bergeron said that it may fail during the construction of the pump station. So we went to DERM to request a permit to construct this small section of wall (I believe it was less than 50 feet long.) and DERM staff told me that if the wall was potentially going to fail, that they could issue approval as an emergency. So I told them that this was the case and they immediately issued the permit. I told Eric about the action as soon as I got back to the office and he said he would have to tell the City Manager because only the City Manager or the Commission could declare an emergency. He told me never to do it again and that is the reason the City Manager made this statement. It was only limited to this small section of wall and it allowed the proceed without delaying the necessary pump station to reduce flooding at this location. All projects that I managed that were considered emergencies were declared by the City Commission.

The issue of me going behind Eric's back was also taken out of context. I had developed an organization chart of existing and requested staff position to execute the work by my team to reduce flooding. I had shared it with Eric months earlier and he would not go to the City Manager to request creating the additional positions. During a Blue Ribbon Committee meeting, a Commissioner was discussing our projects and she asked me what I would need to better execute the necessary projects to reduce flooding. I always carried the organization chart that I had shared with Eric and placed it on the table in front of her. She looked at it and asked me to select a couple of key positions from the chart and I told her of two positions that I thought were critical and why. She turned to Eric and Scott and said we should fill these positions. Eric was forced to then move ahead with these new positions. Immediately after the meeting, Eric took me to his office and said that I had went behind his back and I told him that I had not. I asked him what I should have said to the Commissioner when she asked me a direct question and I was not going to lie to her. These positions were filled soon after this meeting.

Neither of these examples were directly connected to Indian Creek Drive project, but they are great reading if you want to document my actions while I was with the City. The discussion I had with the City Manager about elevating the City Engineer position was the time that he had come to my office to ask that I not leave the City when Mayor Levine was leaving. I told him that Eric requested and had elevated the pay scale for the position of Assistant Public Works Director, but the City Engineer position still reported to the Assistant Public Works Director. I told him that the city engineer position should be a Chief Engineer similar to the head of the Building Department.

Thanks,
I will try to read more of the report on Bruce Mowry as an employee of the City of Miami Beach, if I get some private time in the next few days. If the first 50 pages are similar to the rest of the report, I sure I will have comments.

Bruce A. Mowry

40 Foxcroft Run

Ormond Beach, FL 32174

email: bmowry@att.net

cell: (386) 262-4943

On Tuesday, July 19, 2022 at 01:39:58 PM EDT, McGee, James <jamesmcgee@miamibeachfl.gov> wrote:



F. James McGee

Special Agent

City of Miami Beach

OFFICE OF INSPECTOR GENERAL

1130 Washington Avenue, 6th Floor

Miami Beach, FL 33139

Tel: 305-673-7000 ext. 26651 | Fax: 305-587-2401

Hotline: 786-897-1111

jamesmcgee@miamibeachfl.gov

Singer, Jani

From: Bruce Mowry <bmowry@att.net>
Sent: Thursday, July 21, 2022 10:54 PM
To: McGee, James
Subject: Re: Re:

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Jim,

I took some time today and read the report through page 134. I made comments on the report to this point. When I got to pages 133 and 134 I am having problem remembering these details. I remember a conference call with Wolfe and others that the Mayor and Eric participated, but I do not remember actually ever meeting him face to face. I know that I did direct the work between 26th and 27th Streets on Indian Creek Drive to be completed in a different sequence then FDOT wanted that resulted in a significant savings in cost. I talked it over with Eric and he did not approve of my action, he said we should have done it the way FDOT wanted and not to worry about the cost of the work. I was actually up in Orlando in a meeting, when Eric called me about this issue.

I will have to sleep on this and see if I remember these meetings with Wolfe and Mike Dew. Was this meeting with Mike Dew in the FDOT Region IV offices?

It is interesting how FDOT talks about delivering projects cost effectively. I know when FDOT did the Alton Road project between 5th and 19th Streets in Miami Beach it did not go as smoothly as they say. The bid the project and Bergeron was low bidder at around 20 million and when they finished the project without any additional project area it ended at 32 million. It was a standard design bid build project. This is one of the projects that we review for cost comparison and the project would have been delivered at a lower total cost using the NJPA that we used on Indian Creek Drive. Also, Amanda from FDOT was also on the Alton Road Project.

I also saw where FDOT questioned me on why 32nd Street intersection on Indian Creek Road was being raise. Look at the design of the pollution control structures and a car would have to jump over the structures. The only way we could keep Indian Creek Drive open was to raise it at this location during the drainage phase of work under the NJPA.

We can discuss the report anytime after Saturday. I will finish my review tomorrow and I have commitments for most of the day on Friday and Saturday.

Thanks,
Bruce

Bruce A. Mowry

40 Foxcroft Run

Ormond Beach, FL 32174

email: bmowry@att.net

cell: (386) 262-4943

On Thursday, July 21, 2022 at 08:43:31 AM EDT, McGee, James <jamesmcgee@miamibeachfl.gov> wrote:

Good decision. I believe I have most of the relevant records. While they'll be available when we talk, let me know if you want to review anything in advance and I send it along.

From: Bruce Mowry <bmowry@att.net>
Sent: Wednesday, July 20, 2022 7:01 PM
To: McGee, James <JamesMcGee@miamibeachfl.gov>
Subject: Re:

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Jim,

I agree. I will take time to read the report and schedule a time with you.

One point that always comes up, how could a City Engineer that actually is several steps down in the organization chart have the ability to do all the things that they say I did? What does this say about the executive management team of the City while I was there.

The emails concerning the flooding on Indian Creek Drive and I referenced Assistant City Manager Joe, the city manager told me that he had assigned Joe to work on the sea wall properties along Indian Creek. When I talked to Joe about the properties, he said he had no interest in working with the owners. It fell on me to take the lead.

Remember the city staff thought I had worked previously with the City of Doral, when I came to work at the City. This was because the City Manager had come from Doral and two of his assistant city managers, plus Eric in public works and the Director of Parks (and maybe others) all were from Doral and worked with the City Manager.

Thanks,

Bruce

Bruce A. Mowry

40 Foxcroft Run

Ormond Beach, FL 32174

email: bmowry@att.net

Singer, Jani

From: Bruce Mowry <bmowry@att.net>
Sent: Tuesday, July 26, 2022 10:33 PM
To: McGee, James
Subject: Re: Further responses from FDOT

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

Jim,
Thank you for sharing the responses from FDOT. I have read them and really did not get a lot out of the responses. As we discussed, FDOT had major input to Ribbeck during the design phase and refused to allow the required capacity for the project. The project was limited to what capacity FDOT would allow. If you travel down any part of Collins in the City during a rainfall event, you will observe major runoff from the private properties on to the State Highway system. They did not provide any documentation to the City during this project that showed that these private properties were not discharging into Collins or Indian Creek Drive. Prior to the sea wall improvement along Indian Creek, high tides flooded portions of both Indian Creek Drive and Collins Avenue and FDOT drainage systems failed.

Thanks,
Bruce

Bruce A. Mowry

40 Foxcroft Run

Ormond Beach, FL 32174

email: bmowry@att.net

cell: (386) 262-4943

On Tuesday, July 26, 2022 at 05:30:59 PM EDT, McGee, James <jamesmcgee@miamibeachfl.gov> wrote:



F. James McGee

Special Agent

City of Miami Beach

OFFICE OF INSPECTOR GENERAL

1130 Washington Avenue, 6th Floor

Miami Beach, FL 33139

Tel: 305-673-7000 ext. 26651 | Fax: 305-587-2401

Hotline: 786-897-1111

jamesmcgee@miamibeachfl.gov

Subject: Bruce Mowry's Supplemental Comments – City of Miami Beach Office of the Inspector General Draft Report No. 21-15 (Indian Creek Project, June 13, 2022)

Thank you for sending me the City of Miami Beach Inspector General Draft Report regarding the Indian Creek Project, dated June 13, 2022. I have reviewed the Draft Report (Report) and believe the Report is well written. However, I would like to provide comments below on the contents of the Report.

The Indian Creek Project (Project) held weekly progress meetings in the City of Miami Beach Public Works Conference room and agendas and minutes were distributed for each meeting. The Project team including FDOT, a contracted inspector, the contractors for the drainage and seawalls, the City of Miami Beach Environmental staff, an environmental consultant, a design consultant and Public Works staff were usually in attendance. A Project notebook containing all permit application and status of permits was maintained by the environmental consultant and the book was held by the City of Miami Beach Environmental staff.

The Report had multiple references where it correctly shows that I directed the work on the Indian Creek Project, but it did not show that the decisions and direction on how the work would proceed actually came after long discussions with the City Manager's Executive Management team, the Mayor, the City Manager, the City Attorney's Office, the Mayor's Blue Ribbon Panel on Flooding and Sea Level Rise, direction from the City of Miami Beach Commission, and continuous interaction and meetings with Management and Staff of the Florida Department of Transportation (FDOT). I believe the Report fails to define these actions.

Actions taken on the Indian Creek Project were openly discussed and included participation of the City of Miami Beach staff (City) and FDOT staff in these decisions as well. The contractors, the regulators, FDOT, and City staff were pushed to keep this Project on schedule. This was noted in one of the meetings with the City Manager that I said that I could move faster, but I was not sure the City could move faster. The Report says that I directed out of scope work to be completed, but after I left the City, FDOT paid for this work. The question as to why the City did not invoice FDOT on a monthly reimbursement was because the

FDOT staff would not agree to what an invoice should include per our signed agreement.

If you look back at the time this Project was being planned, the City had contacted FDOT and they shared drainage work that they were planning for their highway sections in this part of the City of Miami Beach. After reviewing their planned work and in consultation with their consultant Ribbeck Engineering, FDOT staff and the City's drainage consultant AECOM, the City concluded that their proposed work would not achieve the objective to improve drainage to a level of service that the City of Miami Beach required. At that time, FDOT did not have a schedule or budget to execute their work on Indian Creek Drive.

The Mayor scheduled a meeting in Tallahassee with the Secretary of Transportation's Office and asked Scott Robins (Chairman of the Mayor's Blue Ribbon Panel on Flooding and Sea Level Rise), Eric Carpenter (City of Miami Beach Public Works Director) and Bruce Mowry (City of Miami Beach City Engineer) to attend with the consent of the City Manager. We prepared a presentation on the flooding problems on Indian Creek Drive that included an aerial video of recent flooding on Indian Creek Drive that Ribbeck Engineering gave us permission to use as part of our presentation to the Secretary of Transportation and his staff.

The Secretary of Transportation (Secretary) appeared to be surprised that this type of flooding was occurring to the level that traffic on Indian Creek Drive would be not be allowed on the highway and that water would flood into private and commercial properties in this area. The Secretary expressed that work would have to be performed along Indian Creek Drive as quickly as possible to correct these drainage deficiencies. The Secretary also was aware that FDOT had not budgeted for the necessary drainage work for this Project. It was proposed to FDOT that the City of Miami Beach could take the lead, contract and administer the work on an accelerated schedule using contracting methods of the City. The City had already demonstrated their ability to perform accelerated work adjacent to Alton Road during FDOT reconstruction between 5th and 19th Streets to help FDOT address the flooding on Alton Road. The Secretary agreed to this arrangement and said he would allocate the appropriate funding from FDOT and that FDOT staff would assist in reviewing the Project administered by the City.

This is the direction that was given by the Secretary and the City moved forward to execute the Project under this understanding.

During the development of an agreement between the City of Miami Beach and FDOT Region 6 office, the City Attorney's office took the lead of negotiating the document along with input from the City Manager's Office and Public Works. Region 6 added significant requirements to the agreement that would make it difficult for the City to move the Project ahead as was agreed with the Secretary of Transportation. The City Attorney's office recommended that the City should accept the agreement as proposed by FDOT to get the document signed and then negotiate the necessary changes on a signed agreement. This would allow the work to get started immediately to meet the schedule. This approach caused problems that resulted in delays in construction and reductions in the necessary capacity of the drainage system. The final Project that FDOT would agree on, actually gave less than half the necessary capacity required to provide proper drainage of this area of the City. Efforts by the City Management to overcome these restrictions were not successful.

The City started the Project from the intersection of 25th Street and Collins Avenue because flooding was occurring at this location and the City had control of the seawall for the entire section between 25th and 26th Streets along Collins Avenue. The City had also obtained a million dollar grant to assist to construct this seawall section from another source. Drainage systems were designed with FDOT assistance, with a discharge point at 25th Street with a properly sized pollution control device to allow drainage during construction of the southern portion of this Project. FDOT had previously designed a small drainage improvement project at 26th Street and that design was incorporated into the City Project. All necessary permits were applied for this work and permits were obtained to complete this work up to 26th Street.

As the Project proceeded north from 26th Street intersection up Indian Creek Drive, all permits for properties controlled by the City were applied to all agencies, but due to the length of the work from 26th Street to 41st Street permits were taking a much longer time to process. At this time the City Commission gave this Project "emergency status" due to the extreme flooding that was occurring and all the agencies were notified of this change and construction moved ahead

under these provisions. The agencies allowed for work to progress while they were reviewing the permit applications under emergency status. DERM did give approval for removal of all mangroves from 26th Street to 41st Street after the City paid the required mitigation cost. The mitigation cost paid to DERM was used to protect trees in a mitigation bank of mangroves in Dade County. Removal was allowed on each section of the Project as the City obtained approval of properties that were not already under the control of the City. The City Attorney's office assisted in obtaining agreements with the landowners along Indian Creek Drive.

The City did have one property where mangroves were removed by mistake before approval from the landowner was obtained between 26th Street and 27th Street for about a 200 foot section. The City had the surveyor mark the limits of this 200 foot section of mangroves not to be removed. The subcontractor that was hired to cut these mangroves did not understand the survey markings and cut the entire section. These trees had been mitigated, but were not approved by DERM because a permit application could not be submitted for the property.

Construction of the seawall from 26th Street to 27th Street on Indian Creek was where long sections of the seawall had structurally failed and fallen into Indian Creek years ago. The regulatory agencies had assisted the City to do a benthic (biological) survey of the shoreline on Indian Creek within the Project limits and did not find significant growths of sea grass or critical habitat. The agencies inspected our work to remove large concrete foundations from the Creek and placing of the seawall was an arbitrary alignment due to the condition of the seawalls along Indian Creek. These large concrete foundations were the size of a car and sometimes required a second crane on the shoreline to assist the crane on the barge to remove them from the Creek. DERM allowed this work to proceed as described.

As the work on the Project continued north, mangroves were removed as the seawall was constructed. The design of the seawall showed a substantially straight wall that was submitted for permit approval from 27th Street all the way to 32nd Street on Indian Creek. When the mangroves north of 29th Street were removed, a variation in the alignment was found in the existing seawall for a short distance. The regulatory agencies did not note this variation before construction began and the seawall contractor was instructed to continue the straight seawall

as designed and submitted with permit application. This was not inconsistent with the way it worked with the regulatory agency staff for the work at 27th Street with the large removals of concrete structures from the bottom of Indian Creek.

This Project was moving forward under an emergency status as determined by the City Commission and directed the work to continue to be completed as quickly as possible. The City Management and Environmental staffs were aware of activities without final permits. I met with the Assistant City Manager in charge of the environmental permitting staff each month and she would meet with DERM on a monthly schedule to discuss issues in the City. One day, Eric Carpenter, stopped in the hall in the Public Works Department and asked me about the status of obtaining the Corp of Engineers permit. I told him that the City was still operating under the emergency status without the permit to allow for the work to proceed. Eric Carpenter was familiar with the Project as can be seen in the many interactions he had requesting funding and approval for the Project and the work amendments to the contract of the design consultant and contractor for continuation of construction of the drainage and street sections. These are all documented in the minutes of the many meetings in the City.

After most of the seawalls up to 32nd Street had been placed and many months after the City had notified the Corp of Engineers that the City was preceding under an emergency status direction of the City Commission, the Corp of Engineers told the City that they did not accept our emergency status. This was because they described emergency only when a seawall had structurally failed and needed replacement. The City's emergency status included both walls that had structurally failed and those sections with low elevations that were not able to prevent flooding due to high tides.

For the question as to who gave the direction to complete work to 32nd Street, this is documented in a meeting with the Mayor and the City Manager that gave direction to complete the work before I directed the consultant and contractors to complete their work. These are not tasks that were initiated as the Report infers without proper direction from the City Manager. This needs to be clearly stated within the report.

There is some discussion concerning work on Indian Creek Drive between 27th Street and 28th Street. I had multiple meetings with the businesses in this location

and their business had been impacted significantly during the work on the drainage and pavement in this area. FDOT wanted to design and construct a section of Indian Creek Drive from 27th to 28th Streets that would impact the east side of Indian Creek and remove the sidewalks as an interim. They proposed to reinstall the sidewalk in a later phase of the Project over a year later. I told them that the City could build the west side of Indian Creek and allow the existing sidewalks and parking to remain at this time and then in the next phase complete the east side of Indian Creek Drive. Construction on the west side was completed that resulted in a lower Project cost and minimized the impact to businesses at this location. FDOT's proposal would have been temporary work without a sidewalk in this initial phase and would require the east side of Indian Creek Drive to be reconstructed in the second phase. Eric Carpenter got a call from FDOT and he told me I should have just constructed it like FDOT proposed, because FDOT was paying for the most of the Project. I asked him what about the impact to the businesses and he could not answer.

As stated in my comments above, directions regarding the Indian Creek Project were not solely from me, but from the City of Miami Beach Commission as well. The crown of road at a minimum elevation of 3.7 feet NAVD, provide for connection of private and commercial properties to the drainage system, building on an accelerated schedule under an "emergency status" status, and storm event criteria to be used on projects in the City were from the City of Miami Beach Commission. These were City of Miami Beach Commission Policies giving directions for the Indian Creek Project as reference material for this Report should indicate.

Comments by Bruce Mowry, July 29, 2022

Singer, Jani

From: Ricardo Salazar <ricksalaz.3151@gmail.com>
Sent: Tuesday, July 26, 2022 1:57 PM
To: McGee, James
Subject: Re: FW: Draft Report - OIG No. 21-15 Report on the Indian Creek Project

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

Mr. McGee,

These are my responses as follow:

Thank you for the thoughtful and clear response. I believe you as when you write that you have never considered "adjacent drainage from properties adjacent to the State right-of-way, unless grandfathered." And I have the greatest respect for your knowledge of state drainage facilities and applicable law and discussed this with Carlos Ribbeck who agrees with you.

But respectfully, your answer begs several questions based on the attachments. I hope you can help us with the following questions, which are numbered. Page numbers for documents in the Binder are in the upper right-hand corner.

Page 1 in the Binder is an FDOT re-evaluation of drainage options for the Indian Creek Basin that you emailed to Bruce Mowry on Dec. 15, 2015

1. Why wasn't the Collins Avenue segment with a 10,000 GPM pump station and 48-inch trunk line (framed in blue) included as part of the Indian Creek project?

Ricardo: This cost re-evaluation table was just an exercise which took place right after the Indian Creek DFS was submitted. This was part of a construction cost re-evaluation exercise of an **assumed construction scenario** to split-up the drainage and provide separate drainage systems for Indian Creek Drive and Collins Avenue strictly for cost comparison purposes. As indicated in the table it was found to be more cost efficient to maintain Indian Creek Drive and Collins Avenue drainage together and drained by one system (\$25.2M) instead of two separate ones (\$31.5M).

Page 2 is an excerpt from a recent interview with former District 6 Secretary James Wolfe where he says FDOT could not pay for additional pumping capacity for the 32nd St. station and that the City should have provided funding for more pumping. I'm familiar with Chapter 14-86, but understand the District Drainage Engineer is authorized to make exceptions. Mowry said he asked that the pump station be built with room to allow the installation of additional pump units in the future.

2. Would FDOT have agreed to allow the City to pay for the cost of additional pumping capacity?

Ricardo: I cannot speak for FDOT because my position as a District Drainage Engineer does not allow me to make decisions about fund allocations or budgetary amount decisions on projects.

If it were my decision, I wouldn't mind being included as part of the design if the City of Miami Beach brought it up to come with additional funds to increase the pump's capacity.

I do not agree with Mr. James Wolfe statement where he says that the District Drainage Engineer is authorized to make **exceptions**. I am not authorized to override the Chapter 14-86, these are Florida Statutes and any deviation from the statutes have serious legal implications. The only time that any property outside the State right of way **is exempted** from Chapter 14-86 rule is by grandfathered rights, meaning when there is already an existing drainage connection from the private property into the FDOT system. ***As an example, "a private property is exempted if drainage has always discharged storm water runoff into the State road system. But as soon as an improvement to that property occurs, Chapter 14-86 rule enters into effect"***. If the District Drainage Engineer allows or authorizes to not follow Chapter 14-86, automatically the Department (FDOT) will be setting precedence and/or creating a possible domino effect State-wide for other developers/developments to be exempted in the future. This would have triggered a very complex scenario to the Department in terms of legal, permitting, environmental, liability and cost-funding implications.

3. Did Mowry's proposal come to your attention? If so, why did FDOT agree to build a larger pump station?

Ricardo: The FDOT decided to build the pump station as per recommendations from the FDOT drainage feasibility study (DFS) prepared by Ribbeck Engineering. The feasibility study adjusted the contributing areas within the State right of way and the 20-foot set back into private properties taken in consideration as part of contributing areas to the State roadway and all side streets connected from Collins Avenue collecting water towards Indian Creek Road.

Page 5 contains the second page of a letter Ribbeck sent to DERM. The highlighted sections explain the limitation of the drainage system along Collins Avenue, and the new system's limited capacity for water quality treatment. His statements appear to describe the consequences of not including a trunk line and more capacity in the new system.

4. How should we interpret the highlighted sections?

Ricardo: The City of Miami Beach handled all environmental permits and therefore I am not familiar with the permitting aspect of the project. I do not have an answer to this question. ***I left the Department (FDOT) in October 2018, and I did not get involved in this project after I was gone.***

Why wasn't the need to treat water from Collins Avenue included in the Indian Creek system?

Ricardo: The City of Miami Beach handled all environmental permits and therefore I am not familiar with the permitting aspect of the project. I do not have an answer to this question. ***I left the Department (FDOT) in October 2018, and I did not get involved in this project after I was gone.***

6. What is the future solution to the issues Ribbeck describes?

Ricardo: The city of Miami Beach handled all environmental permits and therefore *I am not familiar with the permitting aspect of the project. I do not have an answer to this question. I left the Department (FDOT) in October 2018, and I did not get involved in this project after I was gone.*

Pages 10 through 18 contain your original submission of a 100,000 GPM system, which includes Ribbeck conceptual plans. Pages 18 to 23 are engineering sheets for the four-pump, 100,000 GPM system,

7. I understand that FDOT ultimately decided not to build the 100,000 GPM system. But respectfully, to my layman's eyes, Ribbeck Engineering preparation of the feasibility study, conceptual drawings, and engineering sheets for a 100,000 GPM strikes me as evidence that the system was considered at some point. How do you think we should reconcile those documents with your statement that: "In reference to the 100,000 GPM pump station to handle the entire Indian Creek island, it was never contemplated/ or considered?" What am I missing

Ricardo: I believe the best way to explain it is that the feasibility study included a conceptual evaluation of two hydraulically similar alternatives, both alternatives achieving similar flood protection level of service and both alternatives evaluated as per Chapter 14-86 Florida Statutes. At that point there was no design involved. The multiple pump stations alternative adding to 100,000 GPM was discarded due to lack of right of way and higher cost involved. **The one pump station alternative with 45,000 GPM with a 72" trunk-line** was selected as the preferred alternative in compliance with Chapter 14-86 Florida Statutes, FDOT approved and adopted this recommendation from the feasibility study prepared by Ribbeck Engineering. That is what was agreed between both FDOT and City of Miami Beach and this is how we moved ahead into **the later final design process.**

Mr. McGee, I tried to respond to your questions to the best of my knowledge and recollection. This project kept on going even after I left the Department, still environmental issues were pending and **HDR Engineering** was retained by the FDOT as the FDOT Owner's Representative for reviewing, coordinating all work effort and design process to be followed.

Sincerely,

Ricardo F. Salazar Jr.

Previous District Six Drainage Engineer
Until October 2018

On Thu, Jul 21, 2022 at 4:06 PM McGee, James <JamesMcGee@miamibeachfl.gov> wrote:

Mr. Salazar,

I very much appreciate your willingness to do this. Anything that helps improve the accuracy of the report is welcome.

From: Ricardo Salazar <ricksalaz.3151@gmail.com>

Sent: Thursday, July 21, 2022 2:40 PM

To: McGee, James <JamesMcGee@miamibeachfl.gov>

Subject: Re: FW: Draft Report - OIG No. 21-15 Report on the Indian Creek Project

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Thanks Mr. McGee,

I am working in the responses to your concerns and gathering more information as part of your concern.

Sincerely,

Ricardo F Salazar Jr

Former District Six Drainage Engineer

Until October 2018

On Thu, Jul 21, 2022 at 9:00 AM McGee, James <JamesMcGee@miamibeachfl.gov> wrote:

Good morning Mr. Salazar,

I noticed several typos and scrivener errors in this message that may be confusing. They are revised below.

Jim

Singer, Jani

From: Garrido, Michelle <Michelle.Garrido@dot.state.fl.us>
Sent: Tuesday, July 26, 2022 4:29 PM
To: McGee, James
Cc: Trujillo, Alicia; Hechavarria, Lena
Subject: FDOT's comments to City of Miami Beach OIG Draft Report No. 21-15 Re. Indian Creek Interview Indian Creek Drive drainage issues and FDOT; City of Miami Beach Office of Inspector General Draft Report OIG 21-15, pending questions, additional public record request
Attachments:

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Jim,

Below you will find FDOT's comments to the OIG Draft Report No. 21-15 concerning the Indian Creek Project, specifically relating to Finding #5 on page 174 of the draft report:

As a general note, it is important to appreciate that pursuant to Section 403.0891, Florida Statutes, local governments shall have the responsibility for the development of stormwater management programs. Moreover, pursuant to Section 403.0893, municipalities may create one or more stormwater utilities and adopt stormwater utility fees sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to Section 403.0891, Florida Statutes. Therefore, it is the responsibility of the City of Miami Beach, and not FDOT, to collect and manage its stormwater.

In fact, on September 11, 1996, the City of Miami Beach Commission approved Ordinance 96-3051 providing for the creation of city-wide stormwater utility and establishment of stormwater utility service charge in order to plan, construct, operate, and maintain the stormwater management system as required by Florida Statutes, which has been codified in Chapter 110, Article III of the City of Miami Beach Code of Ordinances (https://library.municode.com/fl/miami_beach/codes/code_of_ordinances?nodeId=SPAGEOR_CH110UT_ARTIII_STUT).

Prior to commencement of the Indian Creek project, FDOT conducted a feasibility study in 2015 which selected Alternative 1 as the most feasible alternative, based on hydraulic analysis, constructability, and cost effectiveness, among other considerations. This alternative included a new stormwater drainage system on Indian Creek Drive including a new pump station with a 45,000 GPM capacity. The project began construction in 2016, about 3 years before AECOM was hired to complete a conceptual drainage study for the City of Miami Beach. By the time the AECOM study was completed, it was too late to implement recommendations on the already active construction project.

More importantly, the City's consultant, AECOM's report made assumptions inconsistent with FDOT policy. FDOT follows its own drainage design criteria and methodology which accounts only for the stormwater runoff within the FDOT right-of-way in addition to tributary area from private property that historically drains into our system via roof drains that discharge onto the state roadway and/or surface runoff that is collected by the FDOT drainage system. In the case of the Indian Creek project, private properties within the project limits have their own private wells and do not drain into the FDOT drainage system. Collection of stormwater runoff from these properties would never have been considered in the drainage analysis as FDOT is only responsible for draining its public right-of-way, and the Indian Creek drainage system would never have been designed to accommodate this volume of water. The recently completed Indian Creek project accounts for an area that includes a

contributing area including 20' of private property which satisfies FDOT drainage design criteria and methodology in Miami-Dade County.

Given that FDOT is draining the State Road, which is all that FDOT is required to do, FDOT is not responsible for a second stormwater drainage project, or any follow up drainage projects. Lastly, the recommendations under Finding #5 on page 175 pertaining to FDOT go against FDOT criteria requiring it to only drain its right-of-way.

Also, below in red please find District 6 Drainage Engineer, Nathaniel Pulido's responses to your written questions from your emails dated July 12, 2022 and July 15, 2022 (attached):

- **Drainage area & design criteria:** In 2014 the City adopted, as an unofficial design criteria, the requirement that new drainage systems include 100% of all landlocked and 50% of waterfront lots. This unofficial criteria was first used in the Design Criteria Package (DCP) that the City prepared in October 2014 for construction of a pumped stormwater system on Palm and Hibiscus Island. This unofficial design criteria was implicit in the Greenway Plan's 50-acre drainage area. Subsequently, the City adopted the design criteria as official policy; it was subsequently incorporated into the City's current Public Works Manual. Additionally, the City adopted a policy that new drainage system would be designed to allow the connection of privately-owned drainage systems. FDOT design largely limits a new system's drainage area to publicly owned roads and right-of-ways. **Correct. FDOT's design only accounts for areas within FDOT's right-of-way as well as areas that have historically flowed into FDOT's right-of-way.** The present system meets FDOT design criteria for a 36-acre drainage area. The City's design criteria apparently conflicts with FDOT's design criteria.
- **Drainage system's storage and pumping capacity:** The new drainage system has less than half the pumping capacity that AECOM recommended to meet the City's LOS design criteria for both public and most private property in the Basin. **Correct, because the City's design criteria were to include private property, which is not what FDOT does. FDOT does not include private property.** The Engineer of Record's 2019 correspondence with DERM (and witness interviews) described the limited capacity of the existing drainage system along Collins Avenue. It also indicated that the new drainage system was not designed with sufficient pollution control capacity (e.g. Eco-Vault units) to meet water quality standards if the assumptions by AECOM and the City prove valid. The current FDOT map of existing and proposed pumping stations, and the City's current 10-year plan for building new pumping stations do not appear to account for this section of Collins Avenue. **Do not have personal knowledge about this.** In a June 2019 Drainage Study for the Indian Creek Basin (also based on the City design criteria), AECOM recommended a drainage system with a 96-inch trunkline and total pumping capacity of 119,000 GPM to meet a 10-year Level of Service for the 80-acre Basin. What are the near-term options for handling a significant increase in the volume of stormwater discharged from the private property along Collins Avenue? **FDOT does not handle discharge from private property.** What is FDOT's present or future plan for improving the drainage system along Collins Avenue from 25th St to 41st St.? **[FDOT objects to this question as it goes beyond the scope of things that occurred in the past relating to the Indian Creek Project.]**
- **Private stormwater connections:** In 2014, the City concluded that sea-level rise and rising groundwater levels will cause gravity-based wells and drainage mechanisms to fail and cease to be a viable part of the drainage systems. As a result, the City also concluded that most commercial stormwater systems that rely on gravity wells would eventually be connected to a public drainage system. In the case of the Palm and Hibiscus project, the City directed the design-build team to build connections for private-side yards, an option that was not available during the Indian Creek project. During the Indian Creek project, at least one exhibit in the Binder supports the conclusion that the City informed FDOT staff of its desire to allow such connections to the state-owned system on Indian Creek Drive. However, the Engineer of Record stated that the City never informed him that it planned to that this step, or had made this assumption. In 2017, the City passed a resolution that required that future drainage systems be designed to allow private drainage connections. Did the City notify FDOT staff that it planned to allow commercial stormwater systems to connect to the system in the future? **Do not have personal knowledge about this.** Was FDOT aware of the City's assumptions and unofficial design criteria? **Do not have personal knowledge about this.** The City's policy appears to conflict with FDOT

policy. However, because the State's legal interest takes priority, the ultimate decision to allow such connections rests with the District Drainage engineer, who is authorized to grant connection permits on a case-by-case basis. How will such decisions be made? [FDOT objects to this question as it goes beyond the scope of things that occurred in the past relating to the Indian Creek Project.] What factors will FDOT staff consider in making such decisions? [FDOT objects to this question as it goes beyond the scope of things that occurred in the past relating to the Indian Creek Project.]

Issue No. 3. Storage and pumping capacity of the project's stormwater system and the 2016 decision by the City and FDOT not to include additional drainage and water quality treatment capacity for Collins Avenue between 25th St and 41st St.

Q. 4. On or about Dec. 15, 2015, former District Six Drainage Engineer Ricardo A. Salazar emailed Mowry an FDOT "Preliminary Construction Cost Re-Evaluation" that included an option labeled "Collins Avenue-Handle Only FDOT Drainage." The evaluation described a proposed system consisting of a 48-inch trunk line along 4,300 feet of Collins Ave. and a 10,000 GPM pumping station with an estimated cost of \$11.2 million. **(Ex. 3)** In correspondence dated Nov. 22, 2019 responding to comments by the Miami-Dade Division of Environmental Resources Management (DERM), Carlos Ribbeck, P.E., the project Engineer of Record, wrote the following: (1) "The City will not allow private properties (sic) connections to the roadway system and (2) Ribbeck wrote, "We have analyzed all possibilities to increase the treatment areas for Collins Avenue (the main contributor) and have encountered severe limitations." The drainage system along Collins Avenue is antiquated. The vast majority of the pipes varies from 10 inches to 24 inches, and to compound this limitation the streets elevations are at and below King's tide level. Setting pollution control structures along Collins Avenue will further affect the flood protection level along this street.) **(Ex. 4)**

- a) Why did FDOT staff develop the "Preliminary Construction Cost Re-Evaluation" with a pumped drainage system for Collins Ave and portion of the proposed drainage improvements not included in the project? **I do not know the reason why FDOT developed this. I wasn't around when this occurred.**
- b) Why did the City and FDOT build a pumped stormwater for the project that was not designed with sufficient total pumping capacity and sufficient water quality treatment capacity to serve a drainage area that included 100% of all landlocked private lots and 50% of all waterfront lots? **FDOT designs drainage systems, including pump stations, to handle the stormwater runoff that is within State right-of-way, and also for areas that have historically flowed into FDOT right-of-way. FDOT does not allow for private property connections, thus, private property runoff is not accounted for in the design of FDOT drainage systems, including pump station.**
- c) What are FDOT's plans for installing a pumped stormwater system for Collins Avenue between 25th St. and 41st St. and providing additional quality treatment capacity for stormwater that flow from private property into the project's drainage system? **[FDOT objects to this question as it goes beyond the scope of things that occurred in the past relating to the Indian Creek Project.]**
- d) Regarding Ribbeck's assertion at (1) that the City will not allow the connection of privately-owned drainage system to the state-owned system (a) did the City inform FDOT that it assumed FDOT will ultimately allow the connection of commercial stormwater systems to the state-owned drainage system in the future; and (b) will FDOT allow such connections in the Indian Creek Basin? **I am not aware of any documents showing that the City informed FDOT stating that FDOT will allow commercial storm water systems to connect to FDOT drainage systems. FDOT will not allow private property connections to the FDOT drainage system.**
- e) Regarding Ribbeck's statement at (2) about the antiquated capacity of the drainage facilities and "severe limitations" for water quality treatment on Collins Ave. between 25th St. and 41st St., does FDOT have a plan for improving the drainage system along this section of the state road and addressing these limitations? **[FDOT**

objects to this question as it goes beyond the scope of things that occurred in the past relating to the Indian Creek Project.]

Michelle Garrido

Senior Attorney

Office of the General Counsel

Florida Department of Transportation – District 6

1000 N.W. 111th Avenue, Office 6136

Miami, Florida 33172

(305) 470-5203

Michelle.Garrido@dot.state.fl.us



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COFFEY | BURLINGTON

ATTORNEYS AT LAW

August 5, 2022

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

KENDALL COFFEY

kcoffey@coffeyburlington.com

2601 South Bayshore Drive, Penthouse
Miami, Florida 33133
T.305-858-2900 F.305-858-5261
www.coffeyburlington.com

RE: Report on Indian Creek / Project OIG No. 21-15

Dear Jim:

We thank you for the opportunity to respond to the draft report of the Inspector General (“IG”). We certainly appreciate the very skillful drafting as well as the amount of time that went into this effort. With request to substance though, we believe there are specific concerns with the draft report that we discuss in the paragraphs that follow.

We respectfully submit that the starting point of this process should have been a deep and thoughtful appreciation of the magnitude of the problem of flooding and sea rise that was being confronted. We observed no findings in your report concerning the gravity of the flooding and the nature of the emergency. Nor was there recognition that this was a hurricane evacuation route in an area that is very obviously at risk for tropical storms and hurricanes. As we believe the IG report should have emphasized, flooding not only paralyzes traffic and damages property, it presents life-safety issues for a community. While perhaps less important, also ignored was the fact that flooding had become a national embarrassment for a city whose economic vitality is driven by a spectacular brand developed over the decades for tourism and investment.

This urgency was properly expressed by City leaders, and even national leaders were aware of the issues. For example, former Vice President Al Gore, the world’s leading advocate concerning climate change, observed on national television that he saw fish swimming on the street when he toured the Indian Creek Drive flooding. Several photographs from that visit are attached. As a result of these concerns, there were multiple emergency declarations by city officials which unflinchingly had the support of, among many others, including then City Manager Jimmy Morales. Alarming reports arise weekly, sometimes daily, on the flooding from the leading authorities such as the National Ocean and Atmospheric Administration, “Coastal Flooding on the Rise as Sea Levels Climb, Scientists Say, *Wall Street Journal* (Aug. 2, 2022). Because the IG draft report opted to criticize the remedies without evidencing a meaningful grasp of the problem, it is not anchored upon a realistic foundation.

By contrast, we note the more balanced perspective provided by the Urban Land Institute which issued a Final Report on Miami Beach's Resiliency Effort. That report acknowledged that in a fast-moving process, there can be a need for more community input and greater transparency. Nevertheless, in words that are authoritative and objective, it states "In short, the City acted with courage to fix sunny-day and stormwater flooding." The report further stated, "The City of Miami Beach has shown an impressive commitment in the last few years to address these flooding vulnerabilities, including identifying the funding for and beginning execution of a projected \$600 million stormwater management program, sourcing financing independently of federal and state funds."

As the Urban Land Institute explicitly acknowledged, there was a "Get it done" theme in order to communicate a well-justified sense of urgency as well as a need to get results. But no one said, "Get it done," by breaking the rules or by taking improper short cuts. The IG report, on the other hand, manifests an apparent discomfort with strong leadership and an evident preference for more protracted processes. Yet in expressing that preference, there was no analysis of how much delay would have potentially been added. Nor did the Report speak to what the consequences of extensive delay would have been to the safety, quality of life and economic realities for the many residents harmed by flooding. Discarding an existing, vetted contractor in favor of a competitive bidding process could easily add years to the multiple steps required even before taking into account the prospect of bid challenges. Urgent circumstances like these are precisely why the law allows for sole source procurement.

We further submit that the draft fundamentally misportrays the respective roles of concerned citizens, an elected Mayor and the function of the City Manager. Concerned citizens have an essential role in speaking to their community's serious problems; their participation should be appreciated rather than denigrated. Elected mayors have every right to encourage priorities even as they rely on staff professionals.

Moreover, the thesis that then City Manager Jimmy Morales was a marginalized bit player is absurd. In fact, it is a disservice to a highly distinguished public servant that ignores not only his outstanding credentials but his unflinching adherence to public duties. The IG report implies that Mr. Morales stood by helplessly and, in effect, in dereliction of his public responsibilities by allowing the circumstances you articulate to overwhelm the process. As the IG should know, however, Mr. Morales is one of the most respected public servants in Florida. As you presumably also know, following his distinguished service with the City, Mr. Morales was appointed by the Mayor of Miami-Dade County to serve as the Chief Operations Officer for Miami-Dade County with its \$9.3 billion budget. Even so, the report suggests that despite his outstanding abilities, his central position and his extensive administrative powers with the City, he allowed the public good to be sacrificed during his watch because he surrendered his responsibilities to others. The

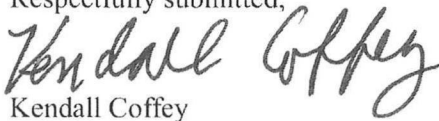
apparent thesis for this abdication is that one of the seven elected officials he worked with advocated for a “Get it done” approach to an obviously serious and ongoing flooding crisis. Mr. Morales supported the declarations of emergency – not because a mayor wanted to “Get it done,” but because the City confronted a serious problem. Indeed, in 2019, Miami Beach, as well as the City of Miami, issued declarations of climate emergency that further underscore the gravity of the concerns.

In fact, former Manager Morales has confirmed in writing that there was “no complaint or allegation from any City employees during my tenure as City Manager that you or any Commissioner exercised any improper pressure or influence with respect to the City’s resilience and stormwater program.... We were tasked to address those issues and took that responsibility seriously.” (Jimmy Morales email to Philip Levine, Jan. 22, 2021). Similarly, then City Attorney Raul Aguila confirmed that he received no complaints from staff or outside agencies that Levine was “ever undue influencing or pressuring City staff...” (Raul Aguila email to Philip Levine, Jan. 22, 2021). Those emails are attached.

We believe a more balanced approach would confirm that while then-Mayor Levine consistently emphasized a sense of urgency – that was entirely justified – there was no undue pressure or influence. The staff, including the City Manager, recognized these conditions as an emergency and responded in good faith in order to protect the safety and well-being of the City and its residents. Those extraordinary efforts deserve appreciation and recognition rather than a report that may ultimately discourage both resourceful staff efforts and energetic citizen participation with respect to critical issues in the future.

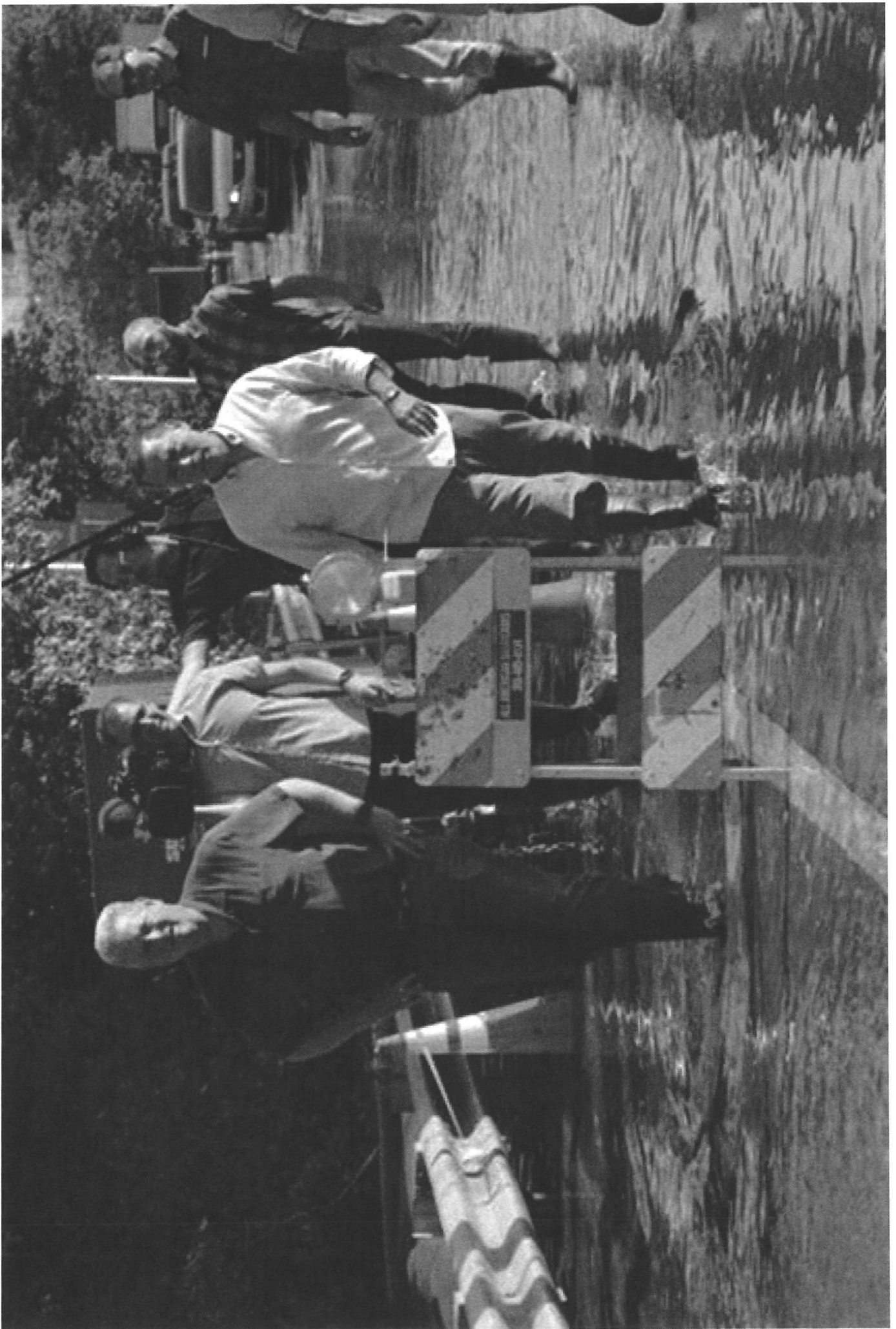
Climate change continues to be an extremely serious challenge for our community and, indeed, to the entire planet. In fashioning solutions, we hope that future leaders will seek to get it done rather than become enmeshed in unnecessary processes that do not acknowledge the existential threat confronting our world.

Respectfully submitted,


Kendall Coffey

cc: Honorable Joseph M. Centorino
Inspector General
City of Miami Beach







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

Philip

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

Have a great weekend.

Jimmy

Sent from my iPhone

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

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

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

Subject: Undue influence

Mayor:

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

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

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

Best,

Raul Aguila
City Attorney
Interim City Manager

Sent from my iPhone

City of Miami Beach Office of the Inspector General (OIG)
Indian Creek Project OIG Draft Report
Ribbeck's Clarifications and Comments
Date: 7/29/2022
Prepared by: Carlos Ribbeck, P.E.

Item 1.

D. Public Works begins negotiations with FDOT to build a drainage system based on the system designed by AECOM for the Greenway plan; City Attorney expresses concerns about use of emergency waivers for award of no-bid contract.

Within five days, the FDOT made a decision to begin designing the project. On June 17, 2015, FDOT awarded Ribbeck Engineering, Inc. a \$1.2 million contract to prepare a feasibility study and conceptual plans for construction of a stormwater drainage system in the state right-of-way along Indian Creek Drive. (Page 43)

***Clarification:** On September 30, 2015 - Task Order #4 is assigned to Ribbeck Engineering (REI) as part of FDOT Drainage Districtwide Contract C9K43 to conduct a Drainage Feasibility Study (DFS) for Indian Creek Drive. The consultant service fee was for \$70, 553.48.*

Corrected

Item 2.

E. FDOT produces conceptual plans for building a stormwater system without replacing the seawall; offers City the option of installing 100,000 GPM pumping capacity.

“Between May and October 2015, Ribbeck and his staff designed a four-station drainage system with a total pumping capacity of 100,000 GPM that was sized to handle stormwater from Indian Creek Drive, Collins Avenue, and connecting cross streets from West 24th Terrace to West 41st Street.”

See below.

The initial proposal Ribbeck developed for FDOT consisted of a 100,000 GPM system with four pumping stations along Indian Creek Drive was sized based on a 25-acre drainage area that was limited to state-owned and city-owned roads and right-of-ways.

By mid-October Mowry knew the particulars of the drainage system Ribbeck had designed, with sufficient detail about the components to ask Bergeron's staff to prepare a preliminary construction budget. Page 45-46

How was Mowry able to send the specs for that station to Bergeron

Clarification: Ribbeck Engineering began work upon FDOT task work order execution in September and not in May 2015. Statement regarding Ribbeck designed a four-station drainage system based on the green way concept during this time is misleading. As written in these sections, the report implies that by Mid-October REI had provided a final design in nature.

In early October 2015, during the very preliminary stages of the DFS, REI prepared a summary of our anticipated approach to the DFS. The information included the issue, the City's proposal for the Greenway Study and REI's evaluation of the reports shortcomings, the FDOT proposal and scope of work, including adherence to FDOT Chapter 14-86, and a preliminary construction cost. This information was submitted to FDOT.

Will revise for clarity, but please provide October 2015 "summary of our anticipated approach"

"Summary of anticipated approach" documentation is included for your reference. Refer to FDOT proposal and scope of work section

The project background exhibits included a preliminary drainage map and four (4) pump station layout schematics. It is important to emphasize that at this very initial stage of the DFS preparation a very preliminary pump capacity analysis had been conducted with the main purpose of sizing the pump house . The preliminary drainage map boundaries were established from the very beginning based on FDOT and local street right of way plus a 20-foot setback outside the right of way. The computed project total drainage area was 36-acres and not 24 as stated.

Revised for clarity. But please explain why the map shows a drainage area of 24 acres if the 36 acre drainage area was established from the "very beginning?" In a subsequent submission to DERM, the drainage study said the drainage area was increased to 36 acres by adding a 20-foot setbacks. That implies a decision to change.

Please refer to drainage map included with "Summary of anticipated approach" documentation. Drainage areas in cyan, yellow, green and red add to a total of 36-acres. Furthermore, drainage areas if DFS add up to 36-acres. There was no decision to change. The design was established based on 36-acres from its initial inception. The 24-acres you are referring under DRER response letter is the total area including FDOT and City of Miami right of way plus the private areas being harmonized. Pollution control structures were sized to treat 36-acres watershed.

The initial 4 pump station layout schematics show the pump stations located within the travel lane as an option to address right of way limitations between the roadway and seawall. The pumps were arbitrarily labeled to have a 25,000-GPM capacity as an initial starting point and following a conservative approach for purposes of scoping and construction cost estimate. This 25,000 GPM capacity per pump station was not

optimized, meaning some of them could have been slightly less in capacity. At this initial stage in the feasibility study preparation we were more concerned to determine if the pump stations layout would fit within the right of way (strip of land public right of way between roadway and seawall) and what impacts to expect with underground utilities.

This comment explains why the initial four-station map was produced. But that does not mean the concept was never considered. There were reasons why the stations were moved from the road with hatches to the right-of-way. It got that. Mowry and others said the original location would create a safety and maintenance challenges. So they were moved to the right-of-way. Agree. It was proposed as a conceptual alternative but later deemed not feasible during the drainage feasibility study. Keep in mind that any conceptual pump station arrangement during the conceptual design process was always based on 36-acres.

We need to clarify that the total 100,000 GPM pump capacity has nothing to do with the Greenway Study pump capacity evaluation. Our initial evaluation was based on different drainage contributing areas and different drainage design criteria than the one used for the Greenway Study.

Revised for clarify. But again, the difference in the size of your drainage area and AECOM's is noted in the text. Will revised to say that Ribbeck was required to work within the right-of-way. But candidly, the comment about the Greenway study sounds overly defensive, as if you think we were suggesting that you didn't do your own work. We don't say or imply that. What we say is that the Greenway plan was FDOT's starting point, and yours. See Salazar's emails in September. He told Mowry he had reviewed the report and had work under way related to it. And he sent you the Greenway plan in September. You decided the Greenway plan was a not feasible, and prepared your own design based on FDOT requirements.

With all due respect it is not my intention to sound overly defensive in terms of the Greenway Study. What I believe is out of context is McGowan's opinion in page 123 of the OIG draft, which states that the pump station at 32nd St. was undersized and it was a design error. We designed our system based on FDOT design criteria and guidelines and as originally agreed with the City of Miami Beach. There was no design error involved whatsoever. I believe McGowan's statement is subjective, out of any technical validity and misleading and as such it should be removed out of the OIG report.

Four days later, on October 20, 2015, Carpenter and Mowry met with FDOT staff in Miami for a presentation of the feasibility study, concept plans and cost estimates Ribbeck had developed based on the AECOM Greenway plan. According to FDOT minutes of the meeting, Ribbeck proposed a drainage system with a pumping capacity of 100,000 GPM, with either one large pump station or four 25,000 GPM smaller stations (See Figure #7 below)." Page 47.

Clarification: Please provide meeting minutes for this meeting to determine terminology. As written in the Draft OIG report it states a presentation of the feasibility study. Feasibility study was not developed by this point. The alternatives were not fully developed and were anticipated.

There was a meeting Oct. 20, 2015. Are you suggesting Ribbeck did not attend? FDOT's minutes show that they discussed your initial evaluation of the Greenway plan and the concepts you had developed with four pumping stations in the roadway. Desdunes said he considered the use of hatches for pumping stations under roads a viable option. I take it you don't want to call that initial assessment a DFS. Further, we noted that your designs evolved based on responses from the City (see discussion about the City providing information on available right-of-way.) Will clarify that "Feasibility study" was not finished or in final form by October.

Please send me what you had developed and given to FDOT on or before Oct. 20, 2015. e.g the preliminary material you had prepared for FDOT at that point. And the final, finished Feasibility Study.

As per my recollection of events neither I nor Francis assisted to this meeting. What we had developed on or before October 20, 2015 is all included under the "Summary of anticipated approach" documentation. This project information documentation was prepared as per request from FDOT Directors Gus Pego and Harold Desduns to brief up at the time the FDOT State Secretary Jim Boxold.

Report states it was based on the AECOM Greenway plan. The greenway plans report was reviewed but found to have several design and permitting flaws in relation to the Indian Creek Project. Understood, with revise for clarity e.g. note "based" on Greenway plan. But view as distinction without a difference. See Comment re: overly defensive. Not intend to imply anything akin to plagiarism. Okey.

The concept omitted the side-streets and private properties contributing drainage areas to the east of Collins Avenue. It also showed the proposed trunk-line and pump stations built within Indian Creek Waters/Submerged State Lands which would have required filling portions of the Creek (page 25 of 60, figure 2.3.1). This activity would have been difficult, if not impossible, to permit by USACE, FDEP, SFWMD and/or DRER.

Carpenter and Mowry knew that FDOT had made the Indian Creek project a priority and were refining the conceptual plans Ribbeck had prepared based on comments from the City. Page 48

The next day, (*November 12*) Carpenter and Mowry met a second time with FDOT staff. By then, Ribbeck had revised the plan based on comments from Mowry.

Based on Mowry's suggestions, Ribbeck shifted the location of the four pumping stations from the west lane of Indian Creek Drive to the right-of-way, and included a second option with a single large pump station. Page 49

Clarification: *Not accurate. What's not accurate? That FDOT met with Carpenter and Mowry on Nov. 12? That the plans were revised?*

The four pump stations option was never coordinated with Bruce in any aspect.

What's "corrodated" mean in this context? How does that differ from you and FDOT receiving the City's input and revising the concept plans based on the City's view?

All coordination between Mowry and Ribbeck during the DFS preparation was in reference to the single 45,000 GPM pump station layout (email 11/23/2015 from Ribbeck to Mowry). At this stage Ribbeck was developing the DFS and all alternatives.

So your saying Ribbeck developed the four-pump alternative, but that you only discussed the single pump option with Mowry, correct? How is it that Mowry knew about the four pump option? And told us the City objected because of the maintenance and safety issues. As it had done earlier in the Alton Road project?
The Drainage Feasibility Study conceptual design process was coordinated with Bruce Mowry on several occasions, both the single pump station and the 4-pump station alternatives, including the selection of the single pump station alternative over the 4-pump station alternative.

In proposing construction of a 100,000 GPM system, FDOT was offering to join the City in building a drainage system that was sized with more storage and pumping capacity that FDOT needed to meet drainage requirements.

Clarification: *Conceptual plans prepared under DFS were for the one pump station 45,000 GPM alternative. The 100,000 GPM pumping capacity (4 pump station option) was presented as conceptual alternative in the DFS but it was deemed not feasible due to the lack of right of way for construction.*

Understood. But what exactly accurate here? Again, Ribbeck prepared the concept map with four stations and 100,000 GPM. Ribbeck included the four station (on right-of-way) as a feasible alternative in the drainage study. For reasons of greater cost and technical difficulty and need to acquire private land, it came in second. Are you say that a 100,000 GPM station did not provide more capacity than FDOT required?

Ribbeck developed both concept alternatives, but deemed the 4-pump station alternative as unfeasible mainly due to the lack of right of way. The 4-pump station concept was initially conceived to be located within the roadway. During the conceptual design process the 4-pump station alternative layout arrangement was further developed and the findings were it did not fit within the roadway and seawall strip of land (it would have encroached within Indian Creek waters). Therefore it was deemed not feasible.

Item 3.

FDOT and Ribbeck continued to refine options for the City to consider that did not include construction of a seawall or a significant increase in total cost. Ribbeck's preliminary cost estimates for FDOT suggested a budget that fell millions short of the

earlier \$34 million estimate in the Greenway Plan. Page 50

Clarification: The greenway estimate includes significant cost outside of this scope. Ribbeck was not tasked with costing out all cost for a greenway. The REI cost estimates included cost for the drainage system and incidentals.

Understood. Will revise for clarity, but what's inaccurate? The point of this sentence to indicate the City's different and larger view of the project's scope. Carpenter was using the \$34 million estimate at this point, apparently because the City always intended for the seawall to be included. And the work the City pushed FDOT to include eventually pushed the budget beyond this goal. The point is, at this juncture, the City wanted more funding for a reason. Moreover, from the outset Ribbeck was also in charge of the subcontractor that provided drawings for the seawall. I understand why your number was lower?

Besides the difference in scope between the Greenway Study and the FDOT DFS, each study used a different source of pay items unit cost. The City would use the Jog contract which is significantly higher in cost than the FDOT Historical Unit Cost database. Therefore, comparing one cost with the other one can not be correlative.

During November, Ribbeck revised the earlier design by removing the hatch-covered pumping stations from the road to the right-of-way. Additionally, he refined a design for a system with a single pump station located at 32nd St. with pumping capacity of 40,395 GPM, (later increased to 45,000 GPM and a 72-inch trunkline). Mowry sent a Bergeron official details about the single station system and asked for a cost estimate to build it.

Clarification: The 4-pump stations 100,000 GPM alternative could never be relocated into right of way because there was not enough right of way (between roadway and creek strip of land) to allow relocation. This was mainly the reason why this alternative was discarded and the one pump station alternative at 32nd Street 40,395 GPM was further refined.

Understood. But what is accurate in this paragraph. Again, though, I'm not understanding your suggestion that the four pump alternative was only a rough sketch or spitball concept that was never seriously considered. The facts suggest otherwise. Ribbeck created the original conceptual drawing shown in the report. Then revised that four-pump concept by moving the stations from the road to the right-of-way. Then included it as alternative in the drainage study. If locating the stations in the road initially "could never" work, why did you prepare the initial conceptual drawings and keep including the option as an alternative.

The four pump station alternative concept was initially evaluated as part of the FDOT DFS. However, it is when the four pump station alternative concept layout arrangement is conceived as part of the DFS, is that we find out there is no right of way between the roadway and seawall to accommodate these pump station. Like I said before I would have required to encroach into creek waters. As a

result, this alternative was discarded and the single pump station at 32nd Street was selected as the preferred alternatives among other factors.

Item 4.

Pages 121 thru 122 state that based on a paragraph provided from the DRER Class II permit resubmittal RAI response letter in late 2019 “Ribbeck acknowledge that the new drainage system had not been built with sufficient pollution control capacity to meet water quality standards”.

*Clarification: This statement is not true and/or accurate. The paragraph is an excerpt of a more detailed answer to the letter provided to DRER. **Please send me this more detailed answer, but what’s the difference?** The 3 pollution control structures were designed to handle water quality control to public right of way including Indian Creek Drive, Collins Avenue and local streets plus additional harmonized private properties impacted by Indian Creek Drive profile raise. They were not supposed to include and treat all private properties. **“Increase the treatment area for Collins Avenue”** meant increasing the treatment areas on Collins Avenue by including the private properties adjacent to Collins Avenue which is what the question from DRER was.*

What’s not true? I believe this conflates two different types of private property. You’re reference to “all private properties” refers to private property in 20-foot setback, Correct? I’m referring here to all private property in 100 percent of all landlocked lots, and 50 percent of water front lots. Please send other document

The capacity of the FDOT system was sized based on a drainage area that consisted of 24 acres of state-owned and city-owned roads and right-of-ways. This was less than half of the Greenway Plan's 50-acre drainage area and resulted in a system with less than half of that Plan's total pumping capacity of 97,000 GPM, as recommended by AECOM..

Clarification: The capacity of the FDOT system was sized based on 36-acres of state-owned and city-owned right of way plus 20-foot setback into private properties. DFS was tasked to conduct a drainage evaluation in conformance to Florida Statue Chapter 14-86 and FDOT design guideline and not to follow the Greenway Plan.

He claimed believed that Ribbeck was attempting to serve project owners- -FDOT and the City—that had different priorities. He said, "Ribbeck was playing that deal. And as I told you, I was upset at Ribbeck... that it [the pumping capacity] didn't meet the (sic) additional flows that I wanted to get out of it. And I said, that's not what we asked for."

Clarification: By Florida Statues, Ribbeck was subject to conduct an FDOT roadway facility drainage system design based on FDOT drainage design criteria and regulations.

MIAMI BEACH

MEMORANDUM

TO: Joseph M. Centorino, Inspector General
FROM: Alina T. Hudak, City Manager
DATE: November 15, 2022

SUBJECT: Response to the Final Report of Indian Creek Project, OIG No. 21-15

The purpose of this Memorandum is to provide the administration's feedback to the final revised report findings of the Indian Creek Project, OIG No. 21-15. In accordance with Section 2-256(h) of the city's code, the Office of the Inspector General (OIG) provided my administration an opportunity to respond to the draft report. We appreciate the OIG's collaboration in finalizing this report and incorporating our previous responses (attached for reference). The Administration, CIP, Procurement and Public Works departments have taken aggressive steps to improve project definition, scope, solicitation, oversight and delivery. We have instituted a new policy on internal controls on construction projects, in collaboration with the OIG.

Administration Responses to Findings and Recommendations:

The section below provides Administration comments and responses to the findings in the Indian Creek Project OIG Report No. 21-15.

***OIG Finding #1:** The City did not engage in competitive bidding for a Design-Bid-Build or Design-Build project as required by the Department Funded Agreement.*

Response to Finding #1: Given the circumstances during the emergency period, outside of a Job Order Contract (JOC), neither formal competitive bidding nor a waiver of the competitive requirements were viable in addressing the emergency need. Formal competitive bidding would have significantly delayed the response to the project; and a waiver of the competitive requirements lacks the transparency and pre-established pricing of the JOC process which heightens project risks as the government agency must enter into a contract without transparent pricing data. Using JOC to address the Indian Creek Drive emergency declaration was supported by available best practices at the time.

***OIG Finding #2:** The City used Job Order Contracts, which are intended for smaller scale and localized projects, for a major construction project. This contracting method is more expensive because of higher unit cost.*

Response to Finding #2: There is no evidence in the report for this finding. The use of

MIAMI BEACH

JOC is an effective methodology for completing emergency projects. JOC allows agencies, engineers and contractors to rely on independently verified pricing, which fosters collaboration and transparency and minimizes risks.

OIG Finding #3: The City repeatedly used emergency procurements which were not actual emergencies, but rather inconveniences, to justify its failure to follow the proper procurement process under the DFA.

Response to Finding #3: The city used then and currently uses now the emergency procurement provisions of the City Code and State Statutes for true emergencies that impact the health, safety and welfare of residents and visitors.

OIG Finding #4: The City knowingly began construction of the seawall, without a permit from the Army Corps of Engineers, and violated the Class I permit DERM issued to build the seawall by disregarding the approved plans and building the seawall more than twelve inches into the Creek.

Response to Finding #4: The current administration has taken meaningful and concrete steps to shore up city processes, including the establishment of new positions within the Engineering Division of the Public Works Department that add an additional layer of oversight and control. This prevents projects from moving to the construction phase prior to the issuance of all permits.

OIG Finding #5: The City poorly managed the project, electing to begin and continue construction before plans had been developed and approved.

Responses to Finding #5: No comment.

The administration appreciates the OIG's collaboration in finalizing the report and incorporating our responses. As stated in the report, there was no evidence of fraud detected at any point in the Indian Creek project. My administration is committed to further reducing any fraud risk wherever possible, without limiting our ability to respond to pressing needs. We welcome collaborative efforts with the Office of Inspector General to further improve our capital improvement program. We appreciate the OIG's observations shared in the report and look forward to continuing our commitment to good governance.

Attachment

MIAMI BEACH

MEMORANDUM

TO: Joseph M. Centorino, Inspector General
FROM: Alina T. Hudak, City Manager
DATE: September 2, 2022
SUBJECT: **Responses to the DRAFT Review of Indian Creek Project, OIG No. 21-15**

DocuSigned by:
Alina Hudak
7AE29EF3401349E...

Introduction

In 2016 the City Commission ratified Resolution No. 2016-29332, approving and authorizing the City to negotiate and enter into an agreement with the Florida Department of transportation (FDOT) to share the cost of infrastructure improvements along Indian Creek Drive, from 26th to 41st Streets. The Department Funded Agreement (DFA) was executed later that same year. The project was divided into three main components: Roadway and Drainage Improvements (inclusive of new lighting, signalization, and a stormwater Pump Station), Landscaping, and Seawall. The roadway and drainage improvements were further subdivided into three phases, with the final Phase III currently in construction close-out. The Seawall component is under construction, and the Landscaping component is planned to start construction soon.

While the project subject of this review and investigation predates my administration, I asked a team of our current leadership to review the findings. Additionally, this Administration, CIP, Procurement and Public Works departments have taken aggressive steps to improve project definition, scope, solicitation, oversight, and delivery. We have instituted the newly implemented policy on internal controls on construction projects, in collaboration with the Office of Inspector General. This memorandum provides the Administration feedback to the DRAFT Review of Indian Creek Project OIG Report No. 21-15.

Administration Responses to Findings and Recommendations:

The section below provides Administration comments and responses to each of the five findings and recommendations listed in Part VI of the DRAFT Review of Indian Creek Project OIG Report No. 21-15.

OIG Finding #1:

Between 2015 and the end of 2017, the former Mayor, despite well-intentioned motive of dealing expeditiously with the City's resiliency challenges, applied inappropriate pressure, both personally and through surrogates, on City and contract staff to accelerate construction of the Indian Creek project. That sustained pressure and the actions taken by the City in reaction to it, were the root causes of the project's design flaws, cost overruns and schedule delays. These actions undermined the authority of the former City Manager to function effectively as head of the administrative branch of City government with respect to Public Works and the Indian Creek project.

MIAMI BEACH

Recommendation:

Amend the City Charter to provide that neither the Mayor nor any individual member of the City Commission or of a City advisory board shall direct the Manager or any employee of the City in an administrative function; no City employee may respond to any order from the Mayor or individual member of the Commission or of an advisory board; and the City Manager shall not knowingly permit the Mayor or individual member of the Commission to violate this prohibition. (See Appendix I)

Response to Recommendation #1: No comment.

OIG Finding #2:

The establishment of the Mayor's Blue Ribbon Panel on Sea Level Rise and Flooding vested the advisory board and its chairman with inappropriate authority and control over the City's planning, design, procurement, and construction of complex stormwater drainage projects, outside of the City Manager's administrative structure. This resulted in the exercise by City advisory personnel of undue influence over decision-making by Public Works and imprudent and uncontrolled acceleration of the Indian Creek project.

Recommendation: Amend the City Charter and/or relevant sections of the City Code to further clarify the limited role of all City advisory boards, including those established by the Mayor, providing that members of an advisory board shall not participate in the administration of any City department except in a purely advisory role, nor participate in any way in the negotiation or award of contracts.

Response to Recommendation #2: No comment.

OIG Finding #3:

The evidence in this investigation, including the financial crisis that forced the City and FDOT to halt construction and restart the project with an increase of \$8 million in funding, supports a conclusion that there is a heightened risk of fraud in the City's management of major construction projects. Although the City's recent adoption of a Management Policy for Major Construction Projects, jointly recommended by the Administration and the OIG, addresses some of these risks, more needs to be done. Attributing this project's troubled history to individuals deemed responsible does not provide the City with a basis upon which to avoid these problems in the future. What occurred during the Indian Creek project could happen again if strengthened internal controls and other preventative actions are not implemented.

Recommendation:

The City Commission should direct the City Manager to lead a comprehensive fraud risk assessment by the Directors of Public Works, Procurement, and Capital Improvement Projects of the City's management of major construction projects, using an established fraud risk assessment structure and process. The assessment team should include an independent engineering consultant with knowledge and experience of water, wastewater and stormwater infrastructure. Such a comprehensive risk assessment examining the incentives, pressures and opportunities for fraud will reveal vulnerabilities in current internal controls; strengthen the City's defenses against fraud; increase awareness of fraud risks among City employees and signal the City Manager's commitment to fraud prevention and good government.

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Response to Finding and Recommendation #3: This section mentions “fraud,” “fraud risk” and “heightened risk of fraud” a total of seven times within two short paragraphs. However, despite an extensive multi-year investigation, no actual evidence of fraud is identified in the report. The use of the term “fraud,” therefore, may be misinterpreted as scandalous and sensationalistic language not founded on evidence and should be removed.

Nonetheless, the Administration is committed to internal controls and good government as evidenced by its collaboration with the Office of Inspector General on the newly implemented policy on internal controls on construction projects. The Administration will continue to be open to collaborating with the Office of Inspector General on other policies that address real issues; however, the continued insinuations, without evidence, of fraud is unproductive.

This Administration carefully evaluates all relevant factors, including value added, with the implementation of any project or program. In order to best serve the City and its residents, it is requested that any future recommendations also consider, prior to publication, the fiscal impacts and value added of the actions proposed. We want to work together to arrive at recommendations that are beneficial.

OIG Finding #4:

The lawful use of the City Manager’s emergency waiver authority for the sole purpose of awarding a major construction contract without competitive bidding or compliance with F.S. 287.055 caused the City to assume an unacceptably high level of legal, financial and organizational risk.

Recommendations:

1) Amend the City Code to prohibit the issuance of a public emergency finding to waive competitive bidding and compliance with F.S. 287.055 for the purpose of awarding a Design-Build contract or any major construction contracts with a value over \$5 million.

2) Amend the City Code to prohibit the award of any type of job order contract, including a National Joint Procurement Alliance (NJPA) Indefinite Quantity Contract (IQC) for an amount greater than \$250,000 for a construction-related task based on an emergency finding by the City, as well as the award of separate and sequential \$250,000 job order contracts to a single vendor up to a cumulative total of \$2 million on the same construction project.

Response to Finding and Recommendation #4:

The statement in this finding that the construction portion of the project was awarded “without competitive bidding or compliance with Section 287.055, Florida Statutes” is inaccurate. First, the NJPA contract utilized was awarded through a public competitive process and utilized by public agencies across the United States. Second, Section 287.055, Florida Statutes, does not address the award of construction contracts except for design build contracts which is not the case for this project.

The Administration believes that placing an arbitrary limit of \$5M on addressing emergency projects will limit the city’s ability to respond timely to emergency situations. It is impossible to predetermine the true value of any emergency and, while emergency projects above \$5M are not commonplace, they do occur, especially given the City’s aging infrastructure. For example, the Administration is currently

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executing emergency replacement of a sewer force main for which the cost is above the arbitrary recommended limit of \$5 M.

Placing an arbitrary limit on the award of projects through any methodology limits the Administration's ability to effectively and efficiently address the needs of the City. We would propose that the administration continue to pursue competitively sought contracts.

OIG Finding #5:

The new pumped stormwater drainage system on Indian Creek Drive was built with 45,000 GPM, less than half the total pumping capacity required to provide protection from flooding that meets either the LOS standard in effect in 2016 when the system was designed, or the current LOS standard in effect when construction of the project was restarted in 2019. The configuration of the system's pipes and size of its 72-inch trunkline were based on a drainage area and calculations that did not account for the expected failure of more than 120 gravity wells in the area, including those used by commercial stormwater systems, and did not provide sufficient pollution control capacity to ensure that stormwater from private property along Collins Avenue will meet water quality standards before discharge into Biscayne Bay. Presently, there is no plan by the City or FDOT for a second stormwater drainage project along Collins Avenue.

Recommendations:

1) Direct the City Manager and Director of Public Works to assess short-term and long-term options for providing the drainage capacity that the June 2019 Indian Creek Basin Study by AECOM said was required to meet the City's current LOS standard based on a 10-year design storm with 8.754 inches of rain. While the cost of implementing that study's recommendation of installing a 96-inch trunkline and total pumping capacity of 119,000 GPM may be prohibitive at present, elicit from AECOM drainage engineers other short-term alternatives for providing additional drainage capacity. Initiate discussions with FDOT about the state's plans to build a new drainage system to service Collins Avenue between 25th St. and 41st St.

2) Develop a public outreach plan and communications plan to educate owners of gravity wells and commercial stormwater systems in the Indian Creek Basin of the likelihood that wells will fail as a result of sea level rise and establish a voluntary system of reporting the condition of wells to Public Works. Stress the need for owners of wells and commercial stormwater systems to assess the condition and performance of wells to develop a reasonable estimate of when they are likely to fail, and to report this information Public Works. Direct Public Works to develop an inventory of wells commercial stormwater systems in the area, using public records and interviews of owners. Develop a mandatory inspection program in the event voluntary reporting is ineffective. Use lessons learned from the Indian Creek area to extend the outreach programs to other flood-prone areas. Begin discussions with FDOT and DERM about the options and requirements for allowing the future connection of commercial stormwater systems to the new drainage.

Responses to Finding and Recommendation #5:

"The new pumped stormwater drainage system on Indian Creek Drive was built with 45,000 GPM, less than half the total pumping capacity required to provide protection from flooding that meets either the

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LOS standard in effect in 2016 when the system was designed, or the current LOS standard in effect when construction of the project was restarted in 2019" "The configuration of the system's pipes and size of its 72-inch trunkline were based on a drainage area and calculations that did not account for the expected failure of more than 120 gravity wells in the area, including those used by commercial stormwater systems, and did not provide sufficient pollution control capacity to ensure that stormwater from private property along Collins Avenue will meet water quality standards before discharge into Biscayne Bay."

The Public Works Department disagrees with this statement. The basis of design used for the Indian Creek pump station was documented in the following reports:

- October 26, 2016, *Indian Creek Drainage Report*, by AECOM, which considered a 5-year, 24-hour design storm, equivalent to 7.5 inches of rainfall. This report proposed a 40,000 GPM pump station serving tributary area of 80 acres (Right of Way plus private property area for water quantity, but right of way area only for water quality analysis).
- October 2016 *Drainage Report*, by Ribbeck Engineering Inc. (EOR), which considered a 10-year, 24-hour storm event (FDOT requirement) at the time of the design. This report proposed a 44,000 GPM pump station serving a tributary area of 36 acres (Right of Way plus 20 feet within private properties for water quantity analysis, but right of way area only for water quality analysis). This design report was consistent with FDOT standards and permit conditions.

The Administration believes that these two drainage reports complied with LOS standards in place at the time of the initiation of the design. If the City were to stop and re-design projects each time a standard is updated, no project would ever be constructed. To that end, the following should be considered:

- On October 18, 2017, the City Commission adopted a new resolution updating the design storm criteria from a 5-Year/24-Hour event to a 10-Year/24-Hour event; by this time the drainage design was completed, and construction of the drainage system was underway which included the construction of pump station structures.
- On June 2019, AECOM provided a new drainage report for Indian Creek Parkway Basin, which considered a 10-year, 24-hour storm event of 8.75 inches of rainfall. This analysis was done as part of a city-wide study, which concluded in the 2019 Stormwater Facilities Plan. This report proposed a 120,000 GPM pump station serving tributary area of approximately 80 acres. The recommended pump station was to include an additional pump for redundancy in the event that one (1) of the six (6) pumps becomes inoperable. By the time this report was received, the Indian creek pump station structures and half of the drainage trunkline was already completed.
- Private properties are responsible for the maintenance of all existing wells located within their property. Gravity and pressurized injection wells can be used to comply with Water Quality and/or Water Quantity requirements. In the case of Water Quality requirements, each property owner is responsible to comply. Furthermore, in some cases these private properties use the wells to discharge underground water pumped from low elevation areas, such as garages. As per our latest operating permit conditions for all City pump stations, discharge of underground water into the bay will be a violation.
- The Roadway of Indian Creek Drive from 26th to 41st St. was reconstructed and elevated to the minimum crown of road elevation of 3.7 Ft (NAVD). The city-owned cross streets were only

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partially reconstructed to create a transition area. Collins Ave., from 26th to 41st Street was not improved at all and needs to be reconstructed as part of a future project.

“Direct the City Manager and Director of Public Works to assess short-term and long-term options for providing the drainage capacity that the June 2019 Indian Creek Basin Study by AECOM said was required to meet the City’s current LOS standard based on a 10-year design storm with 8.754 inches of rain. While the cost of implementing that study’s recommendation of installing a 96-inch trunkline and total pumping capacity of 119,000 GPM may be prohibitive at present, elicit from AECOM drainage engineers other short-term alternatives for providing additional drainage capacity. Initiate discussions with FDOT about the state’s plans to build a new drainage system to service Collins Avenue between 25th St. and 41st St.”

Based on AECOM’s 2019 report and City Commission’s adoption of the 10-year/24-hour storm event level of service, the City is moving forward incorporating this level of service standard into all future drainage projects.

Furthermore, the City is negotiating a task to update its Stormwater Master Plan, which will result in city-wide prioritized recommendations to further upgrade the drainage systems according to the most recently adopted 10-year storm level of service. The new Master Plan will include recommendations for future upgrades as needed to meet the adopted level of service for Indian Creek Parkway.

“Develop a public outreach plan and communications plan to educate owners of gravity wells and commercial stormwater systems in the Indian Creek Basin of the likelihood that wells will fail as a result of sea level rise and establish a voluntary system of reporting the condition of wells to Public Works. Stress the need for owners of wells and commercial stormwater systems to assess the condition and performance of wells to develop a reasonable estimate of when they are likely to fail, and to report this information Public Works. Direct Public Works to develop an inventory of wells commercial stormwater systems in the area, using public records and interviews of owners. Develop a mandatory inspection program in the event voluntary reporting is ineffective. Use lessons learned from the Indian Creek area to extend the outreach programs to other flood-prone areas. Begin discussions with FDOT and DERM about the options and requirements for allowing the future connection of commercial stormwater systems to the new drainage.”

These recommendations are baseless. The Public Works Department strongly disagrees with these recommendations, due to the following reasons:

- The Florida Department of Environmental Protection (FDEP) oversees and regulates the locations of active and previously active regulated Underground Injection Control (UIC) Class V Non-ASR Wells. Therefore, these are already regulated and outside of the Public Works Department jurisdiction and ability to implement any reporting/inspection program. In addition, FDEP has an existing interactive map that can be used by property owners or government agencies to identify the location of said wells.
- The City is in constant communication with FDOT and DERM regarding future upcoming drainage projects.

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- FDOT and DERM have existing established processes for any private property that would like to connect to their system regardless of property being Residential or Commercial: Class II Permit (DERM) and Drainage Connection Permit (FDOT).

Conclusion

The Administration acknowledges the DRAFT Review of Indian Creek Project OIG Report No. 21-15; and while we take issue with some of the findings and recommendations as described in prior sections of this memorandum, the Administration is absolutely committed to good government with controls and oversight.

I remain committed to a collaborative effort to improve the capital improvement program. I also want to continue to work together to improve the procurement vehicles and oversight the city employees to accomplish capital projects.

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JG

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