




Memorandum



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To: Honorable Carlos A. Gimenez, Mayor, Miami-Dade County
Honorable Esteban L. Bovo, Jr., Chairman, Board of the County Commissioners
and Members, Board of County Commissioners, Miami-Dade County

From: Mary T. Cagle, Inspector General 

Date: February 2, 2017

Subject: **Board of County Commissioners, February 7, 2017, Agenda Item 8(O)(7)**
OIG Review of Amendment No. 2 to the Service Contract between the City of
Hialeah and GS Inima USA Construction Corporation for the Reverse
Osmosis Water Treatment Facility in the City of Hialeah; Ref. IG13-34

As mentioned in the Mayor's Memorandum accompanying the proposed Resolution, the Office of the Inspector General (OIG) has been monitoring the activities and performance under the requirements of the Joint Participation Agreement (JPA) between Miami-Dade County (the County) and the City of Hialeah (City). By way of this memorandum, the OIG provides you with three (3) observations and/or comments regarding Amendment No. 2 to the Service Contract between the City and GS Inima USA Construction Corporation (Inima) for the reverse osmosis water treatment plant (RO Plant) located in Hialeah. They are:

- Based on our review, the settlement amount for claims, counter-claims, contract adjustments, and water appears to be reasonable.
- While the monetary amount is reasonable, the OIG believes that the proposed resolution should reflect a ratification rather than an approval, since the Water and Sewer Department (WASD) has already remitted the County's share of the settlement amount (\$2.1 million) to the City, and the City has already executed the amendment.
- The OIG urges the County and the City to timely conclude negotiations on amendments to the JPA, which includes several of the recommendations offered by the OIG. The amendments would have a positive impact by prospectively protecting County interests for the remainder of this 22-year agreement.

The Settlement - \$4,247,298

The Service Contract between the City and Inima is for Inima to design, build, operate and maintain the RO Plant. The payment amount (\$4,247,298, of which the County is responsible for \$2,123,649) is inclusive of all claims, counter-claims and other

adjustments occurring during the “build” period, in addition to payments for water produced by the RO Plant and distributed into the County and City water systems during this period. This project is still actually in the “build” stage even though it is operating and producing water. The build stage, when completed, will result in the “Acceptance” of Phase 1, but has yet to be achieved due to outstanding punch list and reliability items.

Negotiations for Amendment No. 2 began in 2013 and ended in mid-2016. During that period, the OIG attended all negotiation meetings and reviewed Inima’s initial claim and subsequent revisions.¹ As part of our review, the OIG formally requested that Inima produce all of its documentation in support of its claim (for audit purposes). Inima complied with our request. We also recommended to WASD that it should require the City to request Inima to certify² its claim, since the County is responsible for paying fifty percent of it as required by the JPA. We also recommended that the City use its external auditors for the project to review all documentation supporting the claim. Both recommendations were accepted and implemented by WASD and the City. Ultimately, Inima certified its claim and the external audit was performed, based on the updated documents we requested. The audit review uncovered a calculation error that resulted in a claim reduction of \$349,174.

Following a review of all claims and amounts described both in the Mayor’s Memorandum and its attached Exhibit A (the Hialeah Memorandum), the OIG believes that the final amount is reasonable, as further summarized and illustrated below:

<u>Part I - Claims and Counter Claims</u>	Amount
City Claim	
Failure to achieve Substantial Completion ³	(\$3,290,000)
Failure to achieve Acceptance. ⁴	(735,000)
Energy Recovery Device Settlement	(29,062)
Sub-total City Claim	(\$4,054,062)
Inima Certified Claim	
Uncontrollable Circumstances and other interest	\$4,003,236
Calculation error	(349,174)
Sub-total Inima Claim	\$3,654,062
Sub-Total Part I (DUE TO CITY)	(\$400,000)

¹ On January 24, 2013 Inima submitted a claim to the City for Schedule Relief and Fixed Design-Build Price Adjustment. The main thrust of the claim is the City’s failure to deliver Stage 1 production wells, and the financial impact to Inima associated with its extended daily general condition costs.

² Code of Miami-Dade County, Sec. 21-255 False Claims Ordinance

³ See the City of Hialeah Memorandum, which is attached to the instant agenda item as Exhibit A (or handwritten page 3), identifying the City’s claim as “liquidated damages” (329 days for October 26, 2013 to September 19, 2014 at \$10,000 per day).

⁴ This amount is based on 98 days, from February 1, 2015 to May 9, 2015, at \$7,500 per day.

Part II - Other Amounts Due to City

Unilateral change, chemical costs, electricity, punch list, etc.	(\$406,073)
Sub-Total Part II (DUE TO CITY)	(\$406,073)

Part III - Amounts Due to Inima for Water⁵

Water - Nov. 14, 2013 to May 10, 2015	\$1,162,215
Water – May 11, 2015 to May 31, 2016	2,987,860
Electrical reimbursements to May 31, 2016	903,296
Sub-Total Part III (DUE TO INIMA)	\$5,053,371
Total Due to Inima	\$4,247,298⁶

The dollar value for the water produced and consumed by the County and City is \$5,053,371 (Sub-Total Part III). The capital reimbursements of \$806,073 (Sub-Total Parts I & II) due to the City were credited against the amount for water, thus leaving a net amount of \$4,247,298. This amount has already been paid to Inima by the City and the County.⁷ The OIG recommends that WASD’s payment of \$2,123,649 is accurately reflected between its operating funds and capital funds.⁸

Furthermore, as mentioned in the Mayor’s Memorandum, regarding County staff meeting with City staff “to discuss adjusting the County’s level of participation regarding claims due to the City’s delay performing work on the supply well,”⁹ the OIG recommends that any additional amounts due to the County from the City be credited to the capital fund and not the operating fund. The OIG will continue to monitor negotiations, especially as it relates to the finalization of this monetary value.

Ratification

The County’s approval of this amendment is long overdue—it has taken years to negotiate. Amendment No. 2 was approved by the Hialeah City Council in July 2016 and awaited concurrent approval by the County. However, in order to ensure continued operation of the RO Plant and to safeguard the asset, the Mayor of Hialeah executed the Amendment in October 2016 and payment was made by the County and City to Inima. Thus, the OIG believes that the action requested of the BCC should be a ratification of Amendment No. 2, since it was already executed by Hialeah and full payment has been made by both the City and the County.

⁵ Beginning Nov. 14, 2013, the RO Plant has been producing and delivering 7.5 millions of gallons per day of drinking water into the County and City water distribution systems.
⁶ Inima issued a General Release, dated October 21, 2016, to the City reflecting a final payment in full for performance of the City’s monetary obligation under Amendment No. 2
⁷ The County’s portion has already been remitted to the City, in the Fall of 2016, pursuant to the terms of the JPA.
⁸ Payment for water produced by the RO Plant is an operating expense. Payment for the design/build portions are capital expenses.
⁹ See Footnote 1

Recommended Amendments to the Joint Participation Agreement (JPA)

Lastly, as also mentioned in the Mayor's Memorandum, the OIG has discussed, and WASD has accepted, other OIG recommendations for amendments to the JPA that we believe are vital to protecting the County's interests. The recommended amendments to the JPA are:

- **The JPA provides for a scheduled expansion of the RO Plant.** The OIG recommends that the JPA be amended to require mutual agreement between the County and the City before any further expansion for either Phase II or Phase III.
- **The JPA requires the County to contribute the balance of its \$80 million share following the completion of Phase I.** The OIG recommends that the JPA be amended so that the County is only required to contribute additional amounts necessary following mutual agreement for expansion.
- **The JPA currently states that the land on which the RO Plant is located is owned by the City.** The OIG recommends that the JPA be amended to reflect that the land is owned equally by the County and City.

Negotiations on these recommendations began more than two years ago, thus the OIG urges both parties to conclude negotiations on a timely basis and seek respective legislative approvals.

cc: Hon. Carlos Hernandez, Mayor, City of Hialeah
Abigail Price-Williams, County Attorney
Lester Sola, Director, Water & Sewer Department
Cathy Jackson, Director, Audit and Management Services Department
Neil R. Singh, Interim Commission Auditor
Armando Vidal, P.E., Director, City of Hialeah Public Works