**MODEL LANGUAGE**

**CONSENT ORDER**

**IN-KIND PARAGRAPHS**

***[If an In-kind project is to be part of the requirements of a Consent order, please use the following model language]***

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

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

[***If an In-kind project is to be allowed to offset stipulated penalties as part of the requirements of a Consent order, please ALSO use the following model language]***

In lieu of making cash payment of the amount required under paragraph \_\_\_ (stipulated penalties) above, the Department, at its discretion, may allow Respondent to off-set this amount by implementing an in-kind project, which must be approved by the Department. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility improvement project. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the portion of the stipulated penalty amount for which the approved project off-sets. The Respondent shall request consideration of applying stipulated penalties toward an in-kind project within 15 days of notification by the Department that stipulated penalties are being assessed under paragraph \_\_\_. If acceptable, the Respondent shall comply with all the requirements and timeframes in Consent Order Exhibit A, entitled In-Kind Projects. If not acceptable, the Respondent will pay the stipulated penalties within 30 days of receipt of the Department’s notification that applying the stipulated penalties to an in-kind project is not acceptable. Notwithstanding the election to implement an in-kind project, payment of the remaining $\_\_\_\_\_\_ in costs must be paid within 30 days of the effective date of the Consent Order.

***[If an In-kind project is to be part of the requirements of a Consent order and the consent order involves sanitary sewer overflows, please insert the following model language in the Consent Order]***

In the event that Respondent elects to off-set civil penalties including stipulated penalties by implementing an in-kind penalty project which is approved by the Department, during the period that this Order remains in effect or during the effective date of any Department issued Permit to Respondent whichever is longer (Prohibited Transfer Duration), Respondent shall not transfer or use funds obtained by the Respondent from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System (hereinafter, Prohibited Transfer). Respondent shall annually certify to the Department using the Annual Certification Form located on Exhibit B to this Order that no Prohibited Transfer has occurred. In the event of any Prohibited Transfer, the In-Kind project option shall be forfeited, and entire civil penalty shall immediately become due and owing to the Department irrespective of any expenditures by the Respondent in furtherance of the In-Kind project.

Exhibit \_\_

**In-Kind Projects**

REQUIRED FOR CONSENT ORDERS RELATED TO SSOs ONLY

I. **Introduction**

**Proposal**

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

**Proposal Certification Form**

b. The proposal shall also include a Certification by notarized affidavit from a senior management official for \_\_\_\_\_\_\_\_\_\_ (insert name of Respondent) who shall testify as follows:

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

A. I am a person with management responsibilities for \_\_\_\_\_\_\_\_\_\_\_ (print or type name of Respondent) budget and finances. During the eighteenth month period prior to the effective date of Consent Order OGC Case No.: \_\_\_\_\_\_\_ there has not been any transfer or use of funds obtained by the \_\_\_\_\_\_\_\_\_\_ (print or type name of Respondent) from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System.

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

Sworn to and subscribed before me, by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ by

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Personally, known or by Production of the following Identification \_\_\_\_\_\_\_\_\_

Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires:

Commission/Serial No.:

**Annual Certification Form**

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

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

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

Sworn to and subscribed before me, by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ by

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Personally, known or by Production of the following Identification \_\_\_\_\_\_\_\_\_

Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires:

Commission/Serial No.:

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

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

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

f. Within 180 days of obtaining Department approval for the in-kind proposal or in accordance with the approved schedule submitted pursuant to paragraph 2(a) above, Respondent shall complete the entire in-kind project.

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

h. In the event, Respondent fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project or otherwise fails to comply with any provision of this paragraph, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalties shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the $\_\_\_\_\_\_\_\_\_\_ penalty, no additional penalties shall be assessed under paragraph 4 for failure to complete the requirement of this paragraph.

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

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