

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH  
COUNTY, FLORIDA

THE SCHOOL BOARD OF PALM BEACH COUNTY,  
a political subdivision of the State of Florida,

Plaintiff(s),

v.

CITY OF WEST PALM BEACH,

Defendant(s).

CIVIL DIVISION

CASE NO.

502013CA010144XXXXMB AH

**DEFENDANT, CITY OF WEST PALM BEACH'S MOTION FOR PARTIAL SUMMARY  
JUDGMENT AS TO THE PLAINTIFF, THE SCHOOL BOARD OF PALM BEACH  
COUNTY'S WAIVER OF SOVEREIGN IMMUNITY/RESPONSE AND MEMORANDUM  
OF LAW IN OPPOSITION TO SCHOOL BOARD OF PALM BEACH'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT AS TO THE SAME.**

COMES NOW the Defendant, the CITY OF WEST PALM BEACH (the "City"), by and through its undersigned counsel, and pursuant to Florida Rule of Civil Procedure 1.510, hereby files this Motion for Partial Summary Judgment as to the Plaintiff, the SCHOOL BOARD OF PALM BEACH COUNTY (the "School Board")'s Waiver of Sovereign Immunity (the "City's Motion for Partial Summary Judgment")/Response and Memorandum of Law in Opposition to the School Board's Motion for Partial Summary Judgment as to the Same (the "School Board's Motion for Partial Summary Judgment"), and states:

**Introduction**

This is an action for declaratory relief arising from the School Board's use of the City's stormwater management system coupled with the School Board's desire to not pay for those very services from which it directly benefits. Specifically, the School Board, without dispute, directly benefits and is, hence, a beneficiary; of the City's stormwater management system. The School Board, however, is seeking to skirt its responsibility to pay for those services via the above-captioned declaratory action. In particular, the School Board, via its Motion for Partial Summary

Judgment, is attempting to hide behind the veil of sovereign immunity, requesting that this Court enter a declaratory judgment in which it concludes that the School Board is immune from suit for collection of the utility fees generated from its very use of the City's stormwater management system. In essence, the School Board is seeking special treatment as a sovereign, i.e., it wants to reap the benefits of the City's stormwater management system, but unlike the system's other beneficiaries, it does not want to pay for the services rendered because it is a sovereign.

The Florida Legislature, however, has expressed a clear, specific, and unequivocal intent to waive sovereign immunity for the School Board, avoiding this inequitable result. In particular, under the "Florida Air and Water Pollution Control Act" ("FAWPCA"), the Florida Legislature has authorized the City to create stormwater utilities, § 403.0893(1), Fla. Stat., and to charge stormwater utility fees to the "beneficiaries" of the utility, § 403.031(17), Fla. Stat. The FAWPCA, however, does not define "beneficiary"; hence, the term's plain and ordinary meaning, as discerned through a dictionary, controls and is best indicative of the legislative intent behind the term "beneficiary." That term, as so defined in the dictionary, includes a "person." The term "person" is defined under the FAWPCA to include "the state or any agency or institution thereof," § 403.031(5), Fla. Stat., i.e., the School Board. Thus, as explained further below, because the definition of "beneficiary" includes a "person," with "person" being statutorily defined by the Florida Legislature to include a sovereign like the School Board, the Florida Legislature has expressed a clear, specific, and unequivocal intent to waive sovereign immunity for the School Board regarding the collection of the utility fees charged for the School Board's use of the City's stormwater management system.

What's more, the decisions in *Key West* and *Gainesville III*, as relied upon by the School Board in its Motion, are distinguishable and, hence, inapplicable. In addition, the decision in

*Clearwater*, also relied on by the School Board, should be disregarded, as it is a per curiam affirmance without written opinion and, as such, has zero precedential value.

Therefore, this Court should deny the School Board's Motion for Partial Summary Judgment and grant the City's Motion for Partial Summary Judgment, concluding that the School Board does not enjoy sovereign immunity from suit for the collection of the stormwater utility fees assessed by the City for the School Board's use of the City's stormwater management system.

**Statement of Undisputed Material Facts**

1. The School Board is a corporate body politic organized in accordance with Article IX, Section 4 of the Florida Constitution and section 1001.40, Florida Statutes. Am. Compl. for Declaratory J. & Permanent Injunction (the "Amended Complaint") at ¶ 3, **Exhibit A** hereto.

2. The City is a municipal corporation, organized and existing under the laws of the State of Florida, and located in Palm Beach County, Florida. City's Countercl. For Declaratory & Mandamus Relief at ¶ 4 (the "City's Counterclaim"), **Exhibit B** hereto.

3. The Florida Legislature enacted the FAWPCA with the express legislative and public policy purpose of "conserve[ing] the waters of the state and to protect, maintain, and improve the quality thereof for public water supplies." § 403.021(2), Fla. Stat. In the FAWPCA, Florida Legislature also "declared that the prevention, abatement, and control of the air and waters of this state are affected with a public interest, and the provisions of the [FAWPCA] are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state." § 403.021(5), Fla. Stat.

4. In accordance with the aforementioned legislative and public policy purpose, section 403.0891, Florida Statutes, which is part of the FAWPCA, charges the City with the responsibility to develop and manage stormwater through stormwater management programs, stating: "The department, the water management districts, and local governments shall have the responsibility for

the development of mutually compatible stormwater management programs.” § 403.0891, Fla. Stat. The “department” means “the Department of Environmental Protection,” § 403.031(2), Fla. Stat., and “stormwater management programs” means “the institutional strategy for stormwater management, including urban, agricultural, and other stormwater,” § 403.031(15), Fla. Stat.

5. Section 403.0893, Florida Statutes, provides the City with the mechanism to manage and fund a stormwater management program, mandating the following:

In addition to any other funding mechanism legally available to local government to construct, operate, or maintain stormwater systems, a county or municipality may:

(1) 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 s. 403.0891(3).

§ 403.0893, Fla. Stat.

6. “Stormwater management system” means “a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from the system.” § 403.031(16), Fla. Stat.

7. “Stormwater utility” means “the funding of a stormwater management program by assessing the cost of the program to the *beneficiaries* based on their relative contribution to its need. It is operated as a typical utility which bills services regularly, similar to water and wastewater services.” § 403.031(17), Fla. Stat. (emphasis added).

8. Pursuant to section 403.0893, the City has enacted City Ordinance No. 2611-93, establishing a “Stormwater Utility Code” to construct, reconstruct, improve, and extend the City’s stormwater utility systems and establish rates, fees, and charges for the services and facilities provided by the system. City’s Counterclaim at ¶ 29.



9. Pursuant to section 403.031(17), the City enacted City Ordinance No. 2645-93, implementing a monthly stormwater utility fee for each equivalent residential unit (“ERU”) on a property. City’s Counterclaim at ¶ 30. This ensures that a beneficiary of the stormwater utility system pays their relative contribution to its need of the City’s stormwater utility program. City’s Counterclaim at ¶ 30. Section 90-163 of the City’s Stormwater Utility Code defines an ERU, in part, as the average impervious area of residential developed property per dwelling unit located within the City. City’s Counterclaim at ¶ 30. The ERU applies to both residential and non-residential properties within the City. City’s Counterclaim at ¶ 30.

10. Like water and electric fees, stormwater fees are considered “user fees.” *City of Gainesville v. State* (“*Gainesville II*”), 863 So. 2d 138, 145-46 (Fla. 2003). Like any other user of services, government users are required to pay user fees. *See id.*; *see also City of Gainesville v. State* (“*Gainesville I*”), 778 So. 2d 519, 530 (Fla. 1st DCA 2001). The Second District specifically applied this law to stormwater fees, holding that school boards must pay stormwater user fees. *See City of Clearwater v. Sch. Bd. of Pinellas County*, 905 So. 2d 1051, 1056 (Fla. 2d DCA 2005) (“Because school districts are not exempt from payment of user fees for traditional utility services, the circuit court erred in ruling that the School Board was exempt from paying a user fee imposed by the City for stormwater management services.”).

11. The School Board is a beneficiary of the City’s stormwater management program. Specifically, the City’s stormwater management program directly benefits the following School Board properties:

- a. 816 11th St. # D (Palmview Elementary)
- b. 400 40th St. (Northboro Elementary)
- c. 5115 47th Pl. N (Egret Lake Elementary)
- d. 1800 N Australian Ave. (Roosevelt Middle)

- e. 1725 Echo Lake Dr. (Bak Middle School of the Arts)
- f. 1101 Golf Ave. # C (Westward Elementary)
- g. 3777 N Jog Rd. (Jeaga) (Jeaga Middle)
- h. 1220 L A Kirksey (Roosevelt Elementary)
- i. 7101 S Olive Ave. (South Olive Elementary)
- j. 825 Palmetto St. (Palmetto Elementary)
- k. 3000 Parker Ave. (Belvedere Elementary)
- l. 3630 Parke Ave. (Connistion Community Middle)
- m. 5801 Parker Ave. (Palmetto Elementary)
- n. 6901 Parker Ave. (Forest Hill High School)
- o. 501 S Sapodilla Ave. (Alex W Dreyfoos Jr School of Arts)
- p. 3505 Shenandoah Dr. (Bear Lakes Middle)
- q. 3505 Shiloh Dr. (Palm Beach Lakes High School)
- r. 2222 Spruce Ave. (Pleasant City Elementary)
- s. 1601 N Tamarind Ave. (Palm Beach School Board)
- t. 4111 N Terrace Dr. (Northmore Elementary)

Elizabeth Perez Dep. Tr. at Ex. 2, **Exhibit C** hereto (collectively, the “School Board Properties”).

12. Indeed, since the implementation of the City’s Stormwater Utility Code, until on or about April 2012, the School Board voluntarily paid all amounts the City billed the School Board for the School Board Properties’ relative contribution to its need of the City’s stormwater management program. City’s Counterclaim at ¶ 32; Amended Complaint at Ex. A thereto. Such relative contribution to the School Board’s need was calculated utilizing the City’s ERU calculation. City’s Counterclaim at ¶ 32.

13. Notwithstanding the School Board's continued receipt of the benefits of the City's stormwater management program, the School Board notified the City, on or about May 18, 2012, of its intent to discontinue payment for said stormwater services. Amended Complaint at Ex. A thereto. This was based on the School Board's mere belief that it enjoyed sovereign immunity from liability for municipal stormwater fees. Amended Complaint at Ex. A thereto. The School Board's notification to the City regarding such termination of payment (the "Termination Notice") was as follows:

Enclosed please find a copy of the 3<sup>rd</sup> District Court of Appeal's recent decision in the *City of Key West v. Florida Keys Community College* case, which held that state entities enjoy sovereign immunity from liability for municipal stormwater fees.

Based on information provided by the School District's utilities manager, the City of West Palm Beach has for a period of time been charging the School District stormwater utility fees as a part of its monthly water and sewer utility bill. Consistent with the holding in the *Key West* case, this letter is to notify you that beginning with the invoices paid by the School District on April 27, 2012, the School District has stopped paying the municipal stormwater utility fees and all future payments will deduct any amount reflected on the utility invoice associated with stormwater fees.

Amended Complaint at Ex. A thereto.

14. Hence, as shown in the Termination Notice, the School Board ceased payment not because it discontinued using the City's stormwater management program; but rather, because it believes it could not be held liable for non-payment. Notwithstanding the School Board's nonpayment, it continues to benefit from the City's stormwater management system.

15. Notably, because of the School Board's discontinuation of payment for the stormwater services it receives, the City has been forced to increase rates for other beneficiaries. Specifically, the City has adopted City Resolution 277-16 authorizing a stormwater utility fee rate increase of approximately twenty-four percent, effective October 1, 2017, with annual three percent rate increases beginning October 1, 2018. Donna Levensgood Affidavit at ¶¶ 4-5 (the "Levensgood

Aff.”), **Exhibit D** hereto. However, if the School Board were paying for the stormwater services provided, the rate increase would have only been approximately twenty-one percent followed by the annual three percent rate increases. *Levorgood Aff.* At ¶¶ 6-7. In addition, pursuant to City Resolution 240-93, the City issued bonds to pay for the costs of building and improving the City’s stormwater management system. *Levorgood Aff.* At ¶ 8. As set forth in City Resolution 240-93, the City is bound by its bond covenants to repay its bondholders for this project from the City’s stormwater utility fees. *Levorgood Aff.* At ¶ 8.

16. Further, as provided (and agreed to) in the “Undisputed Material Facts” of the School Board’s Motion for Partial Summary Judgment: “Subsection 90-3(b), City Code, provides City with authority to discontinue water or sewer service ‘from any premises for which the monthly bill for any and all utility service remains unpaid for a period of 30 days after a bill is mailed.’” School Board’s Mot. for P. Summ. J. at ¶ 14. As further provided in that same section: “Subsection 90-3(c), City Code, further provides unpaid stormwater utility fees create a lien on properties served.” School Board’s Mot. for P. Summ. J. at ¶ 14.

17. Because the School Board feared that the City would exercise its agreed-upon right to discontinue services, it filed the above-captioned declaratory action, contending that it was immune from suit, pursuant to the doctrine of sovereign immunity, for the stormwater utility fees it incurred. School Board’s Mot. for P. Summ. J. at ¶ 6. The School Board subsequently amended its Initial Complaint to include a count for declaratory judgment and request that the Court declare that the School Board enjoys sovereign immunity from any suit by the City for unpaid stormwater utility fees. School Board Mot. for P. Summ. J. at ¶ 8. The City counterclaimed for declaratory relief, seeking “judgment declaring whether School Board must pay its relative contribution to its need of City’s stormwater management program.” City’s Counterclaim at ¶ 45. As its First Affirmative Defense in its Answer to the Amended Complaint, the City alleged that the “City has statutory

authority to collect fees from beneficiaries of its stormwater management program pursuant to Fla. Stat. § 403.031(17) and School Board is a beneficiary of City's stormwater management program.”

Answer at First Affirmative Defense at Ex. B hereto.

18. By way of both parties' Motions for Partial Summary Judgment, both parties now seek a declaration from this Court regarding whether sovereign immunity has, in fact, been waived under section 403.031, Florida Statutes.

19. As articulated further in the Memorandum of Law below, because section 403.031's definition of “beneficiary” includes a “person,” with “person” being defined by subsection 403.031(5) to include a sovereign like the School Board, the Florida Legislature has expressed a clear, specific, and unequivocal intent to waive sovereign immunity for the School Board regarding the collection of the utility fees charged for the School Board's use of the City's stormwater management system.

### Memorandum of Law

#### **A. Standard of Review**

Florida Rule of Civil Procedure 1.510(c) provides that final summary judgment “must be rendered immediately if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fla. R. Civ. P. 1.510(c); *see also Volusia County v. Aberdeen at Ormond Beach*, 760 So. 2d 126, 130 (Fla. 2000) (“Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law.”). Summary judgment “is designed to provide trial judges with authority to terminate litigation without the necessity of a full trial if it is apparent that there is no genuine issue of a material fact to be settled” and final judgment is proper as a matter of law. *Jones v. Stoutenburgh*, 91 So. 2d 299, 302 (Fla. 1957). The main objective “is to determine the existence of a material factual issue.” *Id.* If none exists, and if the

moving party is otherwise entitled to judgment as a matter of law, summary judgment is warranted. *See id.*

### **B. Principles of Waiver of Sovereign Immunity and Statutory Construction**

The “Florida Constitution provides that the Legislature can abrogate the state’s sovereign immunity.” *Am. Home Assur. Co. v. Nat’l R. R. Passenger Corp.*, 908 So. 2d 459, 471 (Fla. 2005); *Klonis v. Dep’t of Rev.*, 766 So. 2d 1186, 1189 (Fla. 1st DCA 2000) (“*Unquestionably, the Florida Legislature has the constitutional power to enact laws waiving sovereign immunity.*” (Emphasis added)). Specifically, article X, section 13 of the Florida Constitution states that: “Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.” Hence, even though a sovereign is generally immune from suit, that immunity is waived if the Legislature, by statute, has shown the legislative intent, through a statute’s express language, to waive such immunity. *See, e.g., Maggio v. Fla. DOL & Empl. Sec.*, 899 So. 2d 1074, 1078-79 (Fla. 2005); *Jones v. Brummer*, 766 So. 2d 1107, 1108 (Fla. 3d DCA 2000); *Klonis*, 766 So. 2d at 1189-90. And, “[a]lthough a waiver of sovereign immunity by legislative enactment must be clear, specific, and unequivocal, no particular magic words are required.” *Klonis*, 766 So. 2d at 1190 (citation omitted). All that must be demonstrated is a clear “legislative intent to allow suits against the State of Florida and any of its agencies.” *Id.*

“When construing a statutory provision, legislative intent is the polestar that Guides the Court’s inquiry.” *Maggio*, 899 So. 2d at 1076 (internal quotation marks omitted). “Legislative intent is determined primarily from the language of the statute. Thus, we first look to the language used in the Act.” *Id.* at 1076-77 (citation omitted). In analyzing the wording of a statute, it is presumed that the Florida Legislature stated “what it meant, and meant what it said.” *Klonis*, 766 So. 2d at 1189. “However, when a term is not otherwise defined within a statutory scheme, “[i]t is appropriate to refer to dictionary definitions when construing its meaning.” *E.A.R. v. State*, 4 So.

3d 614, 632 (Fla. 2009) (alterations in original) (quoting *Barco v. Sch. Bd. of Pinellas County*, 975 So. 2d 1116, 1122 (Fla. 2008)); see also *Arnold, Matheny & Eagan, P.A. v. First Am. Holdings, Inc.*, 982 So. 2d 628, 633 (Fla. 2008) (stating that when a term is not otherwise defined in a statute, it must be given its “plain and ordinary meaning,” which courts may discern through reference to dictionary definitions). Further, if the language of a statute is ambiguous and lacks a statutory definition, courts must use the rules of statutory construction to resolve the ambiguity, including resorting to case law or other statutory provisions which define the term. See *Raymond James Fin. Servs., Inc. v. Phillips*, 110 So. 3d 908, 910 (Fla. 2d DCA 2011) *quashed on other grounds in Raymond James Fin. Servs. v. Phillips*, 38 Fla. L. Weekly S325 (Fla. May 16, 2013).

For example, in *Maggio*, the Florida Supreme Court held that the Florida Legislature demonstrated a “clear, specific, and unequivocal intent to waive sovereign immunity” in Florida’s Civil Rights Act (the “Act”). *Maggio*, 899 So. 2d at 1078. The basis for this holding was as follows:

First, *the Florida Civil Rights Act contains a waiver of sovereign immunity independent of the waiver contained in section 768.28. Section 760.10(1)(a), Florida Statutes (2003), provides that it is an unlawful employment practice for an employer to "discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status." Under the Act, the term "employer" is defined to mean "any person employing 15 or more employees . . . and any agent of such person." § 760.02(7), Fla. Stat. (2003) (emphasis added). The Act further defines "person" to include "the state; or any governmental entity or agency." § 760.02(6), Fla. Stat. (2003). The inclusion of the State in the definition of "person" and, hence, "employer" evidences a clear, specific, and unequivocal intent to waive sovereign immunity.*

*Id.* at 1078-79 (emphasis added). The same result was reached by both the First District in *Klonis*, and the Third District in *Brummer*. See *Klonis*, 766 So. 2d at 1190 (Fla. 1st DCA 2000) (stating that “the Florida Legislature intended to waive, and did waive, the State of Florida's sovereign immunity under Chapter 760” by including “the state” and “any governmental entity or agency” in the

definition of “person” under the Act); *Brummer*, 766 So. 2d at 1108 (determining that the Act, by including “the state” and “any governmental entity or agency” in the definition of “person” under the Act, “evidences legislative intent that civil actions . . . under [the Act] be prosecuted against the state”).

Indeed, a sovereign has been held to be a “person” within the contextual meaning of a statute, resulting in waiver of sovereign immunity. For example, in *South Florida Water Management District v. Layton*, 402 So. 2d 597, 598 (Fla. 2d DCA 1981), the Second District “conclude[d] that the legislature intended to include the state and its agencies within the meaning of ‘persons’ as used in section 704.01, [Florida Statutes].” There, “Chapter 704 d[id] not define the word ‘person,’” making no “distinction between ‘persons’ and ‘public bodies,’ ‘bodies politic,’ or ‘political subdivisions.’” *Id.* Because of such lack of distinction, the Second District found “no basis for necessarily assuming the legislature intended one here.” *Id.* Given the statute’s context, the Second District then concluded “that the legislature intended to include the state and its agencies within the meaning of ‘persons’ as used in section 704.01.” *Id.*

In fact, “[f]or purposes of paying its utility bills,” a sovereign has been held to be “a ‘person’ within the meaning of section 180.13(2), Florida Statutes (2008),” *Gaineville I*, 778 So. 2d at 529 n.5, which states:

*The city council, or other legislative body of the municipality, by whatever name known, may establish just and equitable rates or charges to be paid to the municipality for the use of the utility by each person, firm or corporation whose premises are served thereby; and provided further, that if the charges so fixed are not paid when due, such sums may be recovered by the said municipality by suit in a court having jurisdiction of said cause or by discontinuance of service of such utility until delinquent charges for services thereof are paid, . . . .*

(Emphasis added). “*Any other construction of the statute would put municipalities at risk for having to furnish state and federal agencies not just stormwater utility services but all municipal utility services without payment.*” *Id.* (emphasis added). “This construction of the statute finds



support in the opinion in *South Fla. Water Management Dist. v. Layton*, 402 So. 2d 597, 598 (Fla. 2d DCA 1981), where the court said, in addressing a state agency's contention that it was not a 'person' within the meaning of an applicable statute," that the state and its agencies were, indeed, within that statute's definition of a "person." *Id.*

**C. A "Beneficiary" of a "Stormwater Utility" May be Charged a Stormwater Utility Fee**

"Stormwater runoff may cause flooding and threatens water quality in urban areas." *Gainesville II*, 863 So. 2d at 141. "Therefore, stormwater must be collected, conveyed, treated, and disposed of." *Id.* To that end, "Florida law requires local governments to establish stormwater management programs." *Id.* (citing § 163.3202(2)(d), Fla. Stat. and § 403.0891, Fla. Stat.). "To fund such programs, local governments may '[c]reate 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 s. 403.0891(3).'" *Id.* (quoting § 403.0893(1), Fla. Stat.): *see also City of Key West v. Key West Gold Club Homeowners'*, 2017 Fla. App. LEXIS 7804, \*2 (Fla. 3d DCA May 31, 2017) ("The State has authorized municipalities to create stormwater utilities in order to fund stormwater management."). "The purpose of these laws is to control flooding and to prevent pollution—the later being deemed by the Legislature as 'a menace to public health and welfare.'" *Key West Gold Club Homeowners'*, 2017 Fla. App. LEXIS 7804 at \*2 (quoting § 403.021(1), Fla. Stat.). A "stormwater utility" is defined as:

the funding of a stormwater management program by assessing the cost of the program to the *beneficiaries* based on their relative contribution to its need. It is operated as a typical utility which bills services regularly, similar to water and wastewater services.

§ 403.031(17), Fla. Stat. (emphasis added).

"A stormwater utility fee is a special type of user fee. User fees must be voluntary in the sense that a payer must be able to avoid the fee by declining the benefit." *Key West Gold Club*

*Homeowners'*, 2017 Fla. App. LEXIS 7804 at \*9. "The law is well established, however, that a property owner elects to pay a stormwater utility fee when it elects to discharge stormwater rather than retain it." *Id.*; see also *Gainesville II*, 863 So. 2d at 146 ("Properties that are either undeveloped or implement ways to retain all stormwater on site are exempted. Therefore, property owners can avoid the fee either by not developing the property or by implementing a system to retain stormwater on site.").

"They cannot however, elect to discharge stormwater runoff and also refuse to pay for the programs which the legislature has determined are necessary to mitigate the 'flooding, overdrainage, environmental degradation and water pollution' generated by the discharges." *Key West Gold Club Homeowners'*, 2017 Fla. App. LEXIS 7804 at \*10 (quoting § 403.031(16), Fla. Stat.). This is because, "[l]ike similar statutes, the statute at issue [i.e., § 403.031(17)] authorizes stormwater utility fees to be paid based upon a ratepayer's contribution to the need for, *and benefit from*, the stormwater utility." *Id.* at \*10-11 (emphasis added) (citing § 403.031(17)). Indeed, following the enactment of section 403.031(17), "the Florida Supreme Court has held, 'beneficiaries' of a municipal stormwater utility 'can be charged.'" *Id.* at \*11 (quoting *Gainesville II*, 863 So. 2d at 145). Hence, a "beneficiary" of a stormwater management system "can be charged" and is liable for a "utility fee." *Id.* ("To decide if the Association, Gold Course, and Hospital can be charged a utility fee, we must decide if they contribute to the need for and benefit from the stormwater management system established by the stormwater utility.").

For example, in *Key West Gold Club Homeowners'*, 2017 Fla. App. LEXIS 7804 at \*9-16, the Third District held that a city could lawfully charge stormwater utility fees under sections 403.0891(3) and 403.031(17). This was because the undisputed evidence showed that the owners contributed to the need for the stormwater utility by discharging stormwater and that they benefited from the utility's flood control and pollution control measures, which prevented flooding of their

properties and protected the quality of the surrounding water. As part of the reasoning for this conclusion, the Third District articulated the following public policy considerations regarding the assessment of stormwater utility fees:

More importantly, the legislature has enacted a law that authorizes municipalities to fund these stormwater anti-pollution management programs from utility fees charged to landholders whose properties generate stormwater runoff. *See* §§ 403.0891(3), .031(17); Fla. Admin. Code R. 62-40.431(3). Whether or not a court agrees with the legislature's public policy to fund these services through utility fees is of no moment. It is within the province of the legislature to authorize stormwater utility fees to pay for programs necessitated by stormwater runoff.

*Id.* at \*15.

**D. Sovereign Immunity is Waived Because the Definition of a “Beneficiary” Includes a “Person,” Which is Specifically Defined in § 403.031, Florida Statutes to Include “the State or any Agency or Institution Thereof”**

It is undisputed that the School Board directly benefits and is, therefore, a beneficiary of the City’s stormwater management system. As a result, the School Board is assessed a stormwater utility fee. However, at issue is whether the Florida Legislature, by way of section 403.031, expressly waived sovereign immunity for the School Board regarding a suit for collection of those stormwater utility fees. Specifically, whether the School Board is included in the definition of “beneficiaries,” as that term is used, understood, and defined in subsection 403.031(17). If the School Board is included in that definition, sovereign immunity is waived.

This is supported by the decisions in *Maggio*, *Brummer*, and *Klonis*, where it was expressly held that because the sovereign was included in the definition of “person,” it also fell within the definition of “employer,” resulting in an express waiver of sovereign immunity. *See Maggio*, 899 So. 2d at 1078-79; *Klonis*, 766 So. 2d at 1190; *Brummer*, 766 So. 2d at 1108. More specifically, “employer” was defined to mean “person,” and “person,” under the Florida Civil Rights Act, was defined to include “the state; or any government or agency.” *See Maggio*, 899 So. 2d at 1078-79. In *Maggio*, the Florida Supreme Court held that “[t]he inclusion of the State in the definition of

‘person’ and, hence, ‘employer’ evidences a clear, specific, and unequivocal intent to waive sovereign immunity” under the Florida Civil Rights Act. *Id.* at 1079.

Likewise, in this case, the definition of “beneficiary” includes a “person,” and the definition of “person” in section 403.031 includes “the state or any agency or institution thereof,” resulting in a clear, specific, and unequivocal intent to waive sovereign immunity for the collection of stormwater utility fees. In particular, section 403.031—and, hence, the FAWPCA—does not specifically define a “beneficiary.” As a result, in discerning what the Legislature intended “beneficiary” to mean, the Court may turn to the plain and ordinary meaning of that term, as set forth in its dictionary definition. *See E.A.R.*, 4 So. 3d at 632; *Arnold, Matheny & Eagan, P.A.*, 982 So. 2d at 633. That dictionary definition includes “person.” Specifically, Black’s Law Dictionary defines “beneficiary” as: “A *person* who is designated to benefit from an appointment, disposition, or assignment.” *Beneficiary, Black’s Law Dictionary* 149 (7th ed. 1999). “Beneficiary” has also been defined as follows: “a *person* or group that receives benefits, profits, or advantages.” *Beneficiary, Random House Webster’s College Dictionary* 125 (2000 ed.). Hence, in accordance with the dictionary definition of “beneficiary,” that term includes a “person.”

Next, the definition of “person” is specifically defined in section 403.031; hence, that statutory definition controls. *See, e.g., Maggio*, 899 So. 2d at 1076-77; *see also Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000) (“When interpreting a statute and attempting to discern legislative intent, courts must first look at the actual language used in the statute.”). That statutory definition, as provided in subsection 403.031(5), includes a sovereign, like the School Board, as it states:

“Person” means *the state or any agency or institution thereof*, the United States or any agency or institution thereof, or *any municipality, political subdivision*, public or private corporation, individual, partnership, association, or other entity and includes any officer or governing or managing body of the state, the United

States, any agency, any municipality, political subdivision, or public or private corporation.

403.031(5) (emphasis added).

Accordingly, like in *Maggio*, where the definition of “employer” included a “person,” which was statutorily defined to include the sovereign; here, the definition of “beneficiary” includes a “person,” which is statutorily defined to include the sovereign. As a result—as with the Florida Civil Rights Act in *Maggio*—the Florida Legislature, via section 403.031, has expressed a clear, specific, and unequivocal intent to waive sovereign immunity for the collection of stormwater utility fees.

Therefore, this Court should deny the School Board’s Motion for Partial Summary Judgment and grant the City’s Partial Motion for Summary Judgment, concluding that the School Board does not enjoy sovereign immunity from suit for the collection of the stormwater utility fees assessed by the City for the School Board’s use of the City’s stormwater management system.

**E. The Decisions in *Key West* and *Gainesville III* are Distinguishable and, Hence, Inapplicable. In Addition, the Decision in *Clearwater* Should be Disregarded, as It is a Per Curiam Affirmance Without Written Opinion and, as Such, has Zero Precedential Value.**

The School Board relies primarily on the Third District’s decision in *City of Key West v. Florida Keys Community College*, 81 So. 3d 494 (Fla. 3d DCA 2012), for its position that it is not liable for payment of the City’s stormwater utility fees. That decision, however, is distinguishable from this case and, hence, inapplicable. Specifically, in *Key West*, unlike in this case, the sovereign being charged (i.e., the Community College) was not a “beneficiary” of the City of Key West’s stormwater system. More specifically, “[t]he City ha[d] no operational stormwater system on the College’s property, and ha[d] not identified any of the City’s facilities that collect or treat stormwater generated by the College’s property.” *Key West*, 81 So. 3d at 496. In fact, the College property at issue was situated in a way in which stormwater ran off on its own into the Gulf of

Mexico and, hence, was not in need of a stormwater management system. *See id.* By contrast, in this case, it is undisputed that the sovereign entity (i.e., the School Board) is a “beneficiary” of the City’s stormwater system, as over twenty School Board Properties directly benefit therefrom.

The decision in *Key West* is also distinguishable and, hence, not applicable to the facts of this case because nowhere in that decision did the Third District address section 403.031(17), and the definitions of “beneficiary” and “person” found in that statutory subsection. Indeed, the Third District never addressed whether, via those definitions, the Florida Legislature expressed an intent to waive sovereign immunity for a “beneficiary” of a stormwater system. Rather, the Third District examined whether Chapter 403, generally, “exempt” state-owned property from payment of stormwater utility fees. *See id.* at 497 (“The City contends that the College is not protected by sovereign immunity because Chapter 403 does not ‘exempt’ state-owned property from payment of stormwater utility fees.”). The Third District concluded that Chapter 403 did not provide for such an exemption and, as such, sovereign immunity was not waived. *See id.* at 497-98. But again, the Court never decided, as the City requests this Court to decide, whether, via the definitions of “beneficiary” and “person” in section 403.031, the Florida Legislature expressed an intent to waive sovereign immunity.

The School Board also relies on the First District’s decision in *City of Gainesville v. State DOT (“Gainesville III”)*, 920 So. 2d 53 (Fla. 1st DCA 2005). That decision is also inapplicable because, like the Third District in *Key West*, nowhere in that decision did the First District address section 403.031(17) and the definitions of “beneficiary” and “person” found in that statutory subsection. Indeed, like the Third District in *Key West*, the First District in *Gainesville III* never addressed whether, via those definitions, the Florida Legislature expressed an intent to waive sovereign immunity for a “beneficiary” of a stormwater system. In fact, the foundation of legal reasoning in that decision was whether the Florida Legislature waived sovereign immunity in

Chapter 180 of the Florida Statutes. The First District never addressed whether such a waiver existed in subsection 403.031(17).

Accordingly, for these reasons, the Third District's decision in *Key West* and the First District's decision in *Gainesville III* are distinguishable and, hence, inapplicable. As such, they do not control and the Court, in accordance with the analysis provided in this Motion, should hold that there is, in fact, a waiver of sovereign immunity set forth in section 403.031.

In addition, the Court should disregard any reliance by the School Board on the per curiam affirmance without written opinion in *City of Clearwater v. School Board of Pinellas County*, 17 So. 3d 1287 (Fla. 2d DCA 2009), and the reasoning of the lower court in that matter. This is because that decision and the reasoning of the lower tribunal from which arises has zero precedential value. *See Dep't of Legal Affairs v. Dist. Court of Appeal, 5th Dist.*, 434 So. 2d 310, 311 (Fla. 1983). ("The issue is whether a per curiam appellate decision with no written opinion has any precedential value. We hold that it does not."). This includes the reasoning and conclusions of the lower court from which the per curiam decision arises. *See id.* at 312 (stating that "[a] per curiam affirmance without opinion does not bind the appellate court in another case to accept the conclusion of law on which the decision of the lower court was based," and rejecting the proposition that a per curiam without opinion is an approval of the judgment of the lower court (internal quotation marks omitted)). Thus, "because such decisions have no precedential value, a court may take the view that it desires not to consider such cases in any circumstance, and it may properly disregard such a reference in briefs or arguments presented to it." *Id.* at 313. Accordingly, in accordance with the Florida Supreme Court's pronouncement that a per curiam decision without written opinion has no precedential value for it or its lower court's reasoning, this Court should disregard any reference to the decision in *Clearwater*, the lower court's reasoning for that decision, and any arguments in reliance therewith.

WHEREFORE, this Court should enter an Order denying the School Board's Motion for Partial Summary Judgment and granting the City's Motion for Partial Summary Judgment, concluding that the School Board does not enjoy sovereign immunity from suit for the collection of the stormwater utility fees assessed by the City for the School Board's use of the City's stormwater management system; and grant such other relief that it deems just and proper.

CITY OF WEST PALM BEACH  
P. O. Box 3366  
West Palm Beach, FL 33402  
Telephone: (561) 822-1354  
Facsimile: (561) 822-1373

By: /s/ Douglas N. Yeargin  
Douglas N. Yeargin  
Chief Assistant City Attorney  
Fla. Bar No. 777560

By: /s/ Anthony M. Stella  
Anthony M. Stella  
Assistant City Attorney  
Florida Bar No.: 57449

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the above and foregoing was served, via e-service to the parties listed below, this 26th day of July, 2017.

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By: /s/ Anthony M. Stella  
Anthony M. Stella  
Fla. Bar No. 57449

NOT A CERTIFIED COPY

**IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

CASE NO.:502013 CA 010144XXX MB AH

THE SCHOOL BOARD OF PALM BEACH  
COUNTY, a political subdivision of the  
State of Florida,

Plaintiff,

v.

CITY OF WEST PALM BEACH, a Florida  
Municipal Corporation,

Defendant.

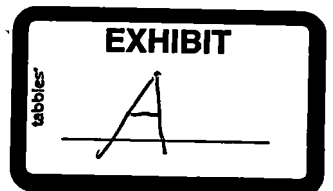
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**AMENDED COMPLAINT FOR DECLARATORY JUDGEMENT  
and PERMANENT INJUNCTION**

Plaintiff, THE SCHOOL BOARD OF PALM BEACH COUNTY, a political subdivision of the State of Florida ("SCHOOL BOARD"), pursuant to Rule 1.190 of the Fla. R. of Civ. P., files this Amended Complaint and sues Defendant, CITY OF WEST PALM BEACH, a Florida municipal corporation ("CITY") and alleges:

**GENERAL ALLEGATIONS**

1. This Court has jurisdiction over this matter pursuant to Article V, Section 5 of the Florida Constitution, Sections 26.012 and 86.011, Fla. Stat.
2. Venue is proper in Palm Beach County, Florida, because both parties primary place of business is within Palm Beach County and the dispute arose in Palm Beach County.



3. SCHOOL BOARD is a corporate body politic organized in accordance with Article IX, Section 4 of the Florida Constitution and §1001.40, Florida Statutes and is authorized to institute this action by section 1001.41(4), Florida Statutes.

4. CITY is a municipal corporation, organized and existing under the laws of the State of Florida, and located in Palm Beach County, Florida.

5. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes.

6. CITY's stormwater utility was established in October 1993 and serves properties located within the corporate limits of the City.<sup>1</sup>

7. CITY's stormwater facilities (the "Stormwater System") consist of a system of canals, storm sewers, flood protection and water control structures that ultimately collect and convey stormwater to the Lake Worth Lagoon.

8. CITY's Stormwater System facilities comprise approximately 14.8 miles of canals, 9,850 manholes and 210 miles of storm sewers, and its operation and maintenance program consists of cleaning and repairing catch basins, manholes, culverts, canals and ditches, as required, and the performance of street sweeping activities. See City of West Palm Beach Resolution No. 92-11 (Apr. 18, 2011).

9. Prior to 1994, funding for the CITY's stormwater management and associated capital improvements was provided through the City's General Fund and Local Option Gas Tax Fund.

---

<sup>1</sup> In 1986, the Florida Legislature enacted Sections 403.081 through 403.0896, Fla. Stat., as part of the Florida Air and Water Pollution Control Act, which mandated that local governments establish stormwater management programs. As a tool for implementing these stormwater programs, the Legislature authorized counties and municipalities to create stormwater utilities and adopt stormwater utility fees in order to sufficiently to plan, construct, operate, and maintain stormwater management systems. Section 403.0893, Fla. Stat.

10. With enactment Ordinance No. 2645-93, CITY implemented a monthly fee for each equivalent stormwater unit (“ESU”) in its stormwater service area.

11. CITY’s stormwater utility fee has been the primary source of funding for the CITY’s stormwater management activities since the creation of the utility.

12. The Stormwater Utility Fund is an enterprise fund of the CITY which accounts for the operations, capital expenditures and revenues of the Stormwater System.

13. CITY’s Utilities Department issues monthly utility bills for stormwater service and the stormwater fee is identified as a separate line item on the monthly utility bill.

14. CITY’s Stormwater System is integrated and interconnected with the regional flood control system that is operated and managed by the South Florida Water Management District (“SFWMD”).<sup>2</sup>

15. The SFWMD’s flood control system handles extreme rainfall in order to prevent flooding.

16. As required by state law and regulations, each of the SCHOOL BOARD’s educational facilities located within the CITY are designed and permitted to the standards of the SFWMD.

17. In 2012 the Third District Court of Appeals ruled that that Florida Keys Community College enjoyed sovereign immunity from paying stormwater fees to the City of Key West because there was no written agreement between the parties to establish that Florida Keys Community College had waived its sovereign immunity. 81 So.3d 494 (2012).

---

<sup>2</sup> One of the largest water control systems in the world, the primary system is operated by the SFWMD and consists of approximately 2,000 miles of canals and 2,800 miles of levees/berms, more than 650 structures and 700 culverts, and nearly 70 pump stations. Excess water from heavy rains is directed through waterways using pump stations and other structures to storage areas or coastal discharge points to relieve flooding. See <http://www.sfwmd.gov/portal/page/portal/levelthree/Drought%20and%20Flood>.

18. There is no written agreement between CITY and SCHOOL BOARD regarding the payment of stormwater utility fees.

19. Prior to the *Key West* ruling, SCHOOL BOARD timely paid its stormwater utility fees; however, following this decision, it notified CITY of its intent to stop paying the monthly fees. Letter from S. Wood to C. McKenna, *Municipal Stormwater Fees* (May 18, 2012), See Exhibit "A".

#### COUNT I – DECLARATORY JUDGMENT

20. The SCHOOL BOARD incorporates by reference paragraphs 1 through 19 of its Amended Complaint claim as if fully set out herein.

21. On or about April 2012, SCHOOL BOARD stopped paying CITY's stormwater utility fee.

22. Despite the fact that there is no written agreement, CITY argues that the SCHOOL BOARD is responsible for payment of the stormwater utility fees pursuant to its Stormwater Ordinance. West Palm Beach, Florida, Code of Ordinances §90.166.

23. While the CITY has withdrawn its original threat to plug the stormwater drainage at the SCHOOL BOARD's schools to prevent the schools from draining into the CITY's Stormwater System, it has threatened to employ other measures authorized by its Code of Ordinances, to force the SCHOOL BOARD to pay.

24. Specifically, CITY asserts that it can discontinue potable water and sewer services to SCHOOL BOARD's schools for non-payment of stormwater utility fees.<sup>3</sup> West Palm Beach,

---

<sup>3</sup> In contrast to the stormwater utility assessments and fees charged by the City, the School Board timely pays all potable water and sewer charges billed by the City for all schools within the City because there is an explicit statutory waiver of sovereign immunity for the same. Hence, there is no dispute regarding the waiver of sovereign immunity for liability to pay these charges.

Florida, Code of Ordinances §90.167 and §90.4. *Also See* billing statements attached as Composite Exhibit “B”.

25. The CITY claims that SCHOOL BOARD has accrued unpaid stormwater charges of approximately one million dollars (\$1,000,000.00) since 2012.

26. In Florida, sovereign immunity is the rule rather than the exception. *Pan-Am Tobacco Corp. v. Department of Corrections.*, 471 So.2d 4, 5 (Fla.1984).

28. Since the SCHOOL BOARD is a governmental entity of the State of Florida, it is entitled to sovereign immunity, absent express waiver.

29. It is well established that only the legislature has authority to enact a general law waiving sovereign immunity and that any waiver must be clear and unequivocal. *Manatee County v. Town of Longboat Key*, 365 So.2d 143, 147 (Fla.1978)

30. While Chapter 403, Florida Statutes establishes public policy concerning environmental control in Florida, and §403.0893, Fla. Stat., provides for state, regional and local stormwater funding and management, it does not contain any language indicating that the legislature intended to waive sovereign immunity for payment of stormwater fees. *City of Key West v. Florida Keys Community College*, 81 So.3d 494, 498 (Fla. 3<sup>rd</sup> DCA 2012).

31. Likewise, Chapter 180, Florida Statutes, does not provide for a waiver of sovereign immunity for payment of stormwater fees and absent a written agreement for payment of stormwater fees, a government entity enjoys sovereign immunity from paying these fees. *Id* at 499 and *City of Gainesville v Florida Department of Transportation*, 920 So.2d 53, 54 (Fla. 1<sup>st</sup> DCA 2006) and *City of Clearwater v. School Board of Pinellas County*, 17 So.3d 1287(Fla. 2<sup>d</sup> DCA 2009).

32. Applying the foregoing principles here, it is clear to see that governmental agencies, like SCHOOL BOARD are immune from payment of stormwater utility fees under Florida law.

33. Nevertheless, a state agency can waive the protections of sovereign immunity when it enters into an express written contract. *City of Fort Lauderdale v Israel*, 40 Fla. L. Weekly D2325 (Fla. 4<sup>th</sup> DCA October 14, 2015) and *Brevard County v Morehead III*, 2012 WL 9239608 (Fla. 5<sup>th</sup> DCA Dec. 18, 2015).

34. Given that there is no written agreement between the CITY and SCHOOL BOARD, the SCHOOL BOARD enjoys sovereign immunity from the payment of the CITY's stormwater utility fees.

35. SCHOOL BOARD contends that it is immune from the payment of CITY's stormwater utility fees under Florida law.

36. SCHOOL BOARD has an actual, present and adverse interest in the subject dispute because the CITY asserts that SCHOOL BOARD is responsible for paying its stormwater utility fees.

37. There is a bona fide, actual, present and practical need for this Court to declare or determine the rights, status, and other equitable and legal relations between SCHOOL BOARD and CITY as to the applicability of sovereign immunity for the payment of CITY's stormwater utility fees.

38. The issuance of a declaratory judgment opining whether SCHOOL BOARD enjoys sovereign immunity from the payment of CITY's stormwater utility fees would be of interest to the parties to this action.

**COUNT II – PERMANENT INJUNCTION**

39. The SCHOOL BOARD incorporates by reference paragraphs 1 through 38 of its Amended Complaint claim as if fully set out herein.

40. The Florida Constitution provides that “The education of children is a fundamental value of the people of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders.” Art. IX, §1(a), Fla. Const.

41. If CITY disconnects, plugs, blocks or otherwise compromises stormwater utility service to the SCHOOL BOARD’s facilities, it is inevitable that the schools will flood and the SCHOOL BOARD would have no choice but to close its schools in the interest of health, safety and welfare of the students, teachers and school staff.

42. Likewise, if CITY disconnects, plugs, blocks or otherwise compromises potable water and/or sewer service to the SCHOOL BOARD’s facilities for non-payment of the subject stormwater fees, the SCHOOL BOARD would have no choice but to close its schools in the interest of health, safety and welfare of the students, teachers and school staff.

43. To be sure, any threat to disconnect, plug, block or otherwise compromise stormwater utility service is tantamount to a violation or a severe undermining of the State’s Constitutional mandate to the SCHOOL BOARD to provide education to the children in Palm Beach County.

44. Public policy considerations require that CITY be permanently enjoined from compromising stormwater utility service to the SCHOOL BOARD.

45. To obtain a permanent injunction the SCHOOL BOARD must establish a clear legal right, an inadequate remedy at law and that irreparable harm will arise absent injunctive



relief. *Liberty Counsel v Fla Bar Bd of Governors*, 12 So.3d 183, 186 (Fla. 2009); *K.W. Brown & Co., v McCutchen*, 819 So.2d 977 (Fla. 4<sup>th</sup> DCA 2002).

46. First, disconnecting, plugging, blocking or otherwise compromising stormwater utility service to the SCHOOL BOARD, without application and approval by the South Florida Water Management District violates §373.413(1), Fla. Stat. (2015).

47. Thus, CITY is prohibited from unilaterally compromising stormwater service to SCHOOL BOARD.

48. Next, any disconnection, plugging, blocking or other compromises to stormwater, potable water and sanitary sewer utility service by CITY for non-payment of the subject stormwater fees is not authorized by CITY's own ordinances or Florida law, Ordinance No. 2645-93, Ordinance 90-4 or §403.0893, Fla. Stat. (2015).

49. As a result, the SCHOOL BOARD has a clear legal right to uninterrupted stormwater, potable water and sanitary sewer utility service by CITY as it relates to the SCHOOL BOARD's non-payment of stormwater utility charges and fees.

50. Florida courts have consistently held that interruptions of a utility service, similar to a stormwater utility, are the types of irreparable harm that would render any other remedy at law inadequate and provide the basis for injunctive relief. *City of Gainesville v Gainesville Gas & Electric Power Co.*, 65 Fla. 404 (Fla. 1913) and *Miami Gas Co v Highleyman*, 77 Fla. 523 (Fla 1919).

51. Any plugging or blocking of stormwater drainage outfalls during a period of heavy rainfall will cause flooding of the SCHOOL BOARD's buildings, schools, roadways, parking lots, ball fields and playgrounds.

52. Without a functioning stormwater system during a period of heavy rainfall many of the SCHOOL BOARD's facilities would be forced to close due to the threat to the public's health, safety and welfare.

53. Clearly, the SCHOOL BOARD will suffer irreparable harm should CITY decide to disconnect, plug, block or otherwise compromise the stormwater service.

54. This irreparable harm to the SCHOOL BOARD, its students, teachers and staff cannot be measured or corrected by a future remedy of this honorable Court.

55. Additionally, there is no cause of action or amount of money that can compensate the SCHOOL BOARD for the damage to the public, students, teachers and the SCHOOL BOARD if any of the schools had to be closed due to flooding directly caused by any disconnection, plugging, blocking or otherwise compromising stormwater utility service by the CITY.

**WHEREFORE, SCHOOL BOARD respectfully requests this Court:**

- A. Take jurisdiction over this action for purposes of rendering a declaratory decree;
- B. Having taken jurisdiction, enter judgment in favor of SCHOOL BOARD.
- C. Enter an Order finding that SCHOOL BOARD enjoys sovereign immunity for payment of CITY's past, present and future stormwater utility fees;
- D. Enter an order declaring that CITY is prohibited from initiating or performing any collection activities against the SCHOOL BOARD or any of its educational facilities for non-payment of its stormwater utility fees including, but not limited to disconnection, plugging, blocking or otherwise compromising stormwater utility service; discontinuing, interrupting or disconnecting of potable water and sanitary sewer services to any of the SCHOOL BOARD's facilities.

- E. For any other relief this Court deems provident.
- F. Retain jurisdiction over the Parties and the subject matter to assess reasonable costs to the SCHOOL BOARD that this Court deems just.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail transmission Kimberly Rothenburg, Esq., [krothenburg@wpb.org](mailto:krothenburg@wpb.org); Christopher Van Hall, Esq., [CVanHall@wpb.org](mailto:CVanHall@wpb.org) and Douglas N. Yeargin, Esq., [dyeargin@wpb.org](mailto:dyeargin@wpb.org), at City of West Palm Beach, 401 Clematis Street, West Palm Beach, FL, 33401 and John J. Fumero, Esq., [jfumero@nasonyeager.com](mailto:jfumero@nasonyeager.com), at Nason, Yeager, Gerson, White, Lioce, P.A. 7700 Congress Avenue, Suite 2201, Boca Raton, FL, 33487 this 9<sup>th</sup> day of February, 2016.

THE SCHOOL BOARD OF PALM BEACH  
COUNTY, FLORIDA

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VICE CHAIRMAN

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MONROE BENAIM, M.D.  
KAREN BRILL  
JENNIFER PRIOR BROWN, ESQ.  
CHUCK SHAW

May 18, 2012

Claudia McKenna, Esq., City Attorney  
City of West Palm Beach  
P.O. Box 3366  
West Palm Beach, FL 33402-3366

**SUBJECT: MUNICIPAL STORMWATER FEES**

Dear Ms. McKenna:

Enclosed please find a copy of the 3<sup>rd</sup> District Court of Appeal's recent opinion in the *City of Key West v. Florida Keys Community College* case, which held that state entities enjoy sovereign immunity from liability for municipal stormwater fees.

Based on information provided by the School District's utilities manager, the City of West Palm Beach has for a period of time been charging the School District stormwater utility fees as a part of its monthly water and sewer utility bill. Consistent with the holding in the *Key West* case, this letter is to notify you that beginning with the invoices paid by the School District on April 27, 2012, the School District has stopped paying the municipal stormwater utility fees and all future payments will deduct any amount reflected on the utility invoice associated with stormwater fees.

While we apologize in advance for any inconvenience that the School District's cessation of payment of these fees may cause the City, given the clear holding Court in the *Key West* case and the serious budgetary constraints faced by the School District, we cannot in good conscience continue to pay charges for which the School District has no legal obligation to pay.

We would be happy to discuss this matter with you or your staff in further detail at your convenience.



PALM BEACH COUNTY SCHOOLS - RATED "A" BY THE FLORIDA DEPARTMENT OF EDUCATION --2005-2010  
"HOME OF FLORIDA'S FIRST LEED GOLD CERTIFIED SCHOOL"  
[WWW.PALMBEACHSCHOOLS.ORG](http://WWW.PALMBEACHSCHOOLS.ORG)

The School District of Palm Beach County is an Equal Education Opportunity Provider and Employer

Thank you for your immediate attention to this matter.

Sincerely,

*Sheryl G. Wood*

Sheryl G. Wood  
General Counsel

Enclosure

C: Mike Burke, Chief Operating Officer  
Joseph Sanches, Chief of Support Operations  
Kristin K. Garrison, Director Planning and Real Estate Services  
Lee Kapp, Utilities Manager  
Blair Littlejohn, Senior Counsel

NOT A CERTIFIED COPY

81 So.3d 494, 37 Fla. L. Weekly D178  
(Cite as: 81 So.3d 494)

**H**

District Court of Appeal of Florida,  
Third District.  
CITY OF KEY WEST, Appellant,  
v.  
FLORIDA KEYS COMMUNITY COLLEGE, Ap-  
pellee.

No. 3D11-417.  
Jan. 18, 2012.

Rehearing Denied March 23, 2012.

**Background:** Community college brought action against city for declaration that it enjoyed sovereign immunity with respect to city's stormwater utility fees. The Circuit Court, Monroe County, Mark H. Jones, J., entered summary judgment in favor of college. City appealed.

**Holdings:** The District Court of Appeal, Rothenberg, J., held that:

(1) statute that allowed municipalities to collect charges from person, firm, or corporation served by its public works facilities did not expressly waive college's sovereign immunity from action by city, and (2) college was entitled to a refund of city's stormwater utility fees.

Affirmed.

West Headnotes

**[1] States 360 ↪ 191.6(1)**

360 States  
360VI Actions  
360k191 Liability and Consent of State to Be Sued in General  
360k191.6 Mode and Sufficiency of Consent  
360k191.6(1) k. In general. Most Cited Cases

Any waiver of sovereign immunity must be clear and unequivocal; thus, waiver will not be found as a

product of inference or implication. West's F.S.A. Const. Art. 10, § 13.

**[2] States 360 ↪ 191.7**

360 States  
360VI Actions  
360k191 Liability and Consent of State to Be Sued in General  
360k191.7 k. Construction of grant of consent. Most Cited Cases

Courts must strictly construe any alleged legislative waiver of sovereign immunity. West's F.S.A. Const. Art. 10, § 13.

**[3] States 360 ↪ 191.4(1)**

360 States  
360VI Actions  
360k191 Liability and Consent of State to Be Sued in General  
360k191.4 Necessity of Consent  
360k191.4(1) k. In general. Most Cited Cases

Whereas sovereign immunity is the rule, rather than the exception, the converse is true of an exemption; importantly, while an exemption must be expressly granted, the State enjoys sovereign immunity unless immunity is expressly waived. West's F.S.A. Const. Art. 10, § 13.

**[4] Municipal Corporations 268 ↪ 715**

268 Municipal Corporations  
268XI Use and Regulation of Public Places, Property, and Works  
268XI(B) Sewers, Drains, and Water Courses  
268k715 k. Surface water. Most Cited Cases

Statute that allowed municipalities to collect charges from person, firm, or corporation served by its public works facilities did not expressly waive community college's sovereign immunity with respect to city's stormwater utility fees, where there was no

81 So.3d 494, 37 Fla. L. Weekly D178  
(Cite as: 81 So.3d 494)

mention of stormwater utility services in statute, city expressly enacted its stormwater utility under a different chapter of the statutes than the one in which statute was codified, chapter of statutes in which statute was codified did not expressly waive sovereign immunity, and sovereign immunity had to be expressly waived. West's F.S.A. § 180.13.

**[5] States 360** ↪ 191.1

**360 States**

**360VI Actions**

**360k191** Liability and Consent of State to Be Sued in General

**360k191.1** k. In general. Most Cited Cases

Generally, the doctrine of sovereign immunity may be used as a shield from suit, not as a sword.

**[6] Payment 294** ↪ 87(2)

**294 Payment**

**294V** Recovery of Payments

**294k87** Duress

**294k87(2)** k. What constitutes duress, and character of payment in general. Most Cited Cases

A payment is considered to have been tendered involuntarily if payment is demanded, and the potential consequences of non-payment are sufficiently severe so as to leave little or no choice but to tender payment.

**[7] Municipal Corporations 268** ↪ 715

**268 Municipal Corporations**

**268XI** Use and Regulation of Public Places, Property, and Works

**268XI(B)** Sewers, Drains, and Water Courses

**268k715** k. Surface water. Most Cited Cases

Community college was entitled to a refund of city's stormwater utility fees, from which college had sovereign immunity, where payment was involuntary, city threatened litigation, liens, the discontinuance of utility services, the denial of city permits, and the imposition of a 5%-per-month late fee and attorney fees, which threatened actions would have severely disrupted, if not debilitated, the financial operation of the college.

\*495 Johnson, Anselmo, Murdoch, Burke, Piper & Hochman, P.A., and Michael T. Burke and Christopher J. Stearns, Fort Lauderdale, for appellant.

Barton Smith, P.L., and Barton Smith, Key West, for appellee.

Anne M. Harvey, Tallahassee, for Florida Wildlife Federation, The Environmental Confederation of Southwest Florida and Sierra Club, as Amici Curiae, in support of appellant City of Key West.

Brannon & Humphries, and Steven L. Brannock and Maegen Peek Luka, Tampa, for Florida Stormwater Association, the Florida League of Cities and the City of Gainesville, as Amici Curiae, in support of appellant City of Key West.

Walter Harvey and Susan M. Seigle, Gainesville, for the School Board of Miami-Dade County and the School Board of Alachua County, as Amici Curiae, in support\*496 of Appellee Florida Keys Community College.

Before WELLS, C.J., and CORTIÑAS and ROTHENBERG, JJ.

**ROTHENBERG, J.**

The City of Key West ("the City") appeals the trial court's order granting final summary judgment to Florida Keys Community College ("the College"), in which the trial court: (1) determined that the College enjoys sovereign immunity from the City's imposition<sup>FN1</sup> of stormwater utility fees; and (2) directed the City to refund the stormwater utility fees paid by the College. We affirm.

<sup>FN1</sup>. As a technical matter, we note that the trial court's use of the word "imposition" was ill-advised, as sovereign immunity serves to protect the State from suit for non-payment of the City's stormwater utility fees, rather than the imposition of such fees. However, the City has not objected to the trial court's loose use of language, and, therefore, waives any such argument. We, therefore, interpret the trial court's determination to mean that the College enjoys sovereign immunity from suit for non-payment of the City's stormwater

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utility fees.

In 2001, pursuant to the authority derived from sections 403.0891 and 403.0893, Florida Statutes, the City enacted Ordinance No. 01-06, creating a stormwater utility system, and establishing stormwater utility fees to fund the system. The stormwater utility fees apply to all developed property throughout the City's municipal area, including North Stock Island, where the College's main campus is located.

The City has no operational stormwater system on the College's property, and has not identified any of the City's facilities that collect or treat stormwater generated by the College's property. The College's property is accessed via College Road, which is owned by the City. College Road is elevated, and loops around North Stock Island and, consequently, provides a boundary that keeps stormwater runoff generated on the island within the College Road loop, and directs the runoff generated outside the loop into the Gulf of Mexico.

The College, which is organized and operated under Florida law, collects and treats any stormwater generated on its property with its own stormwater system, operated under a valid permit issued by the South Florida Water Management District. There is no written contract or agreement between the City and the College obligating the College to pay the City's stormwater utility fees. Nonetheless, after establishing the stormwater utility, the City billed the College for stormwater utility services. To date, under threat of enforcement penalties, including litigation, the imposition of attorney's fees for collection, a five percent per month late fee, liens, the discontinuation of utility services, and the denial of City permits, the College has paid \$160,529.60 in stormwater utility fees.

The College filed the action below, seeking, among other things, a declaration that the College enjoys sovereign immunity with respect to the City's stormwater utility fees. During the litigation, the College filed a motion for final summary judgment, which the trial court granted upon determining that the College is protected by sovereign immunity, and ordered the City to refund the \$160,529.60 paid by the College in utility fees. This appeal followed.

On appeal, the City contends that the trial court erred in granting the College's motion for summary

judgment because the State of Florida has waived sovereign immunity with respect to the City's stormwater utility fees. The City also challenges \*497 the trial court's determination that the College is entitled to a refund for the stormwater utility fees it has paid because: (1) sovereign immunity is a "shield" rather than a "sword"; and (2) the College submitted payment for the stormwater utility fees "voluntarily." We entirely agree with the trial court's findings and are unpersuaded by the City's arguments to the contrary.

**THE COLLEGE ENJOYS SOVEREIGN IMMUNITY FROM SUIT FOR NON-PAYMENT OF THE CITY'S STORMWATER UTILITY FEES.**

The City does not dispute that the College is a state entity which, absent waiver, is entitled to sovereign immunity. The City, however, contends that in Chapters 403 and 180, Florida Statutes (2009), the Florida Legislature has waived sovereign immunity with respect to the imposition of stormwater fees. We disagree.

[1][2] "The doctrine of sovereign immunity, which provides that a sovereign cannot be sued without its own permission, ... was a part of the English common law when the State of Florida was founded and has been adopted and codified by the Florida Legislature." *Am. Home Assurance Co. v. Nat'l R.R. Passenger Corp.*, 908 So.2d 459, 471 (Fla.2005) (citing § 2.01, Fla. Stat. (2004)). Despite the doctrine's expansive safeguards, "the Florida Constitution provides that the Legislature can abrogate the state's sovereign immunity." *Id.* (citing Art. X, § 13, Fla. Const.). However, "any waiver of sovereign immunity must be clear and unequivocal," and, therefore, "waiver will not be found as a product of inference or implication." *Am. Home Assurance Co.*, 908 So.2d at 472. As a consequence, Florida courts must "strictly construe" any alleged legislative waiver of sovereign immunity. *Id.* Based on this standard, we conclude that the State of Florida has not waived sovereign immunity with respect to stormwater utility fees.

**Chapter 403 does not waive sovereign immunity with respect to the City's stormwater utility.**

Under the mandate of section 403.0891, Florida Statutes (2009), local governments, including the City, are required to develop stormwater programs that are compatible with those developed by the De-



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partment of Environmental Protection and other local governmental entities. To fulfill this responsibility, the City enacted ordinance No. 01-06, which established a stormwater utility and utility fees, pursuant to the authority granted to the City by section 403.0893, which states, in pertinent part:

In addition to any other funding mechanism legally available to local government to construct, operate, or maintain stormwater systems, a county or municipality may:

(1) 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 s.403.0891(3).[.]

[3] The City contends that the College is not protected by sovereign immunity because Chapter 403 does not "exempt" state-owned property from payment of stormwater utility fees. However, the City confuses waiver of sovereign immunity with exemption. Under Florida law, sovereign immunity is fundamentally different from the protection provided by an exemption. Whereas "sovereign immunity is the rule, rather than the exception," Pan-Am Tobacco Corp. v. Dep't of Corrs., 471 So.2d 4, 5 (Fla. 1984), the converse is true of an exemption. Importantly, while an exemption must be expressly granted, \*498 the State enjoys sovereign immunity unless immunity is expressly waived. Thus, the Legislature's inaction does not constitute a waiver of sovereign immunity. Because Chapter 403, which specifically relates to stormwater utility fees, does not expressly waive sovereign immunity for stormwater utility fees, it is clear that the State has not waived sovereign immunity in Chapter 403.

**Chapter 180 does not waive sovereign immunity with respect to the City's stormwater utility.**

Although the City concedes that its stormwater utility was enacted under Chapter 403, it contends Chapter 180's waiver of sovereign immunity as to certain utilities also applies to the City's stormwater utility. In support of its position, the City relies on section 180.13(2), Florida Statutes (2009), which provides as follows:

The city counsel, or other legislative body of the municipality, by whatever name known, may es-

tablish just and equitable rates or charges to be paid to the municipality for the use of the utility by each person, firm or corporation whose premises are served thereby; and provided further, that if the charges so fixed are not paid when due, such sums may be recovered by the said municipality by suit in a court having jurisdiction of said cause or by discontinuance of service of such utility until delinquent charges for services thereof are paid....

(Emphasis added). Relying on the above contentions, and the fact that the First District in City of Gainesville v. Florida Department of Transportation, 778 So.2d 519, 529 (Fla. 1st DCA 2001) ("Gainesville I") concluded that the word "person" in section 180.13 includes "state agencies," the City argues that section 180.13 authorizes the City to recover the College's unpaid stormwater utility fees "by suit in court" and, therefore, expressly waives sovereign immunity.

[4] We conclude that Chapter 180, and specifically section 180.13, does not apply to stormwater utilities. Chapter 403 and Chapter 180 serve different purposes: while Chapter 403 governs "Pollution Control," Chapter 180 governs "Municipal Public Works." Although these broad subjects are clearly related on certain levels, the statutory provisions of these Chapters are not interchangeable. More importantly, section 180.06, Florida Statutes (2009), which specifically lists the utility services within the ambit of Chapter 180, does not include stormwater utility services.

Any municipality or private company organized for the purposes contained in this chapter, is authorized:

(1) To clean and improve street channels or other bodies of water for sanitary purposes;

(2) To provide means for the regulation of the flow of streams for sanitary purposes;

(3) To provide water and alternative water supplies, including, but not limited to, reclaimed water, and water from aquifer storage and recovery and desalination systems for domestic, municipal or industrial uses;

(4) To provide for the collection and disposal of

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sewage, including wastewater reuse, and other liquid wastes;

(5) To provide for the collection and disposal of garbage;

(6) And incidental to such purposes and to enable the accomplishment of the same, to construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, \*499 purification works, collection systems, treatment and disposal works;

(7) To construct airports, hospitals, jails and golf courses, to maintain, operate and repair the same, and to construct and operate in addition thereto all machinery and equipment;

(8) To construct, operate and maintain gas plants and distribution systems for domestic, municipal and industrial uses; and

(9) To construct such other buildings and facilities as may be required to properly and economically operate and maintain said works necessary for the fulfillment of the purposes of this chapter.

Because: (1) there is no mention of stormwater utility services in this section; (2) the City expressly enacted its stormwater utility under Chapter 403; (3) Chapter 180 does not expressly waive sovereign immunity; and (4) sovereign immunity must be expressly waived, we find that the waiver of sovereign immunity as to certain enumerated utilities in section 180.13 cannot and does not by inference apply to the City's stormwater utility fees. *See also City of Gainesville v. Fla. Dep't of Transp.*, 920 So.2d 53 (Fla. 1st DCA 2006), cert. denied, 935 So.2d 1219 (Fla. 2006) ("Gainesville III") (rejecting a similar argument; finding that "chapter 180 does not provide a waiver of sovereign immunity for utilities authorized pursuant to chapter 403," such as stormwater utilities; and stating, "chapter 180 has a very specific listing of the municipal services included within its scope. One municipal service not included in that list is stormwater runoff. The Legislature, for whatever reason, decided not to include stormwater runoff within the scope of chapter 180.").

Alternatively, the City contends that even if stormwater utility services were not originally included in Chapter 180, the 2006 addition of section 180.03(3) brought stormwater utilities within the purview of Chapter 180, and, therefore, section 180.13's waiver of sovereign immunity now applies to stormwater utility fees. We respectfully disagree.

As part of the 2006 amendment, the addition of section 180.03(3) was presented and adopted as an act "requiring municipalities to conduct certain studies for the construction of a new proposed sewerage system or the extension of an existing sewerage system prior to the adoption of certain resolutions or ordinances." Ch. 2006-252, Laws of Fla. (emphasis added). Specifically, section 180.03(3) mandates that when constructing or extending certain sewerage systems, a study must be conducted that involves "consideration of the local authority's obligations ... for water body cleanup and protection under state or federal programs, including requirements for water bodies listed under s. 303(d) of the Clean Water Act ...." <sup>FN2</sup> (emphasis added).

<sup>FN2</sup>. Section 303(d) of the Clean Water Act is found at 33 U.S.C. § 1313(d) (2000), titled: "Identification of areas with insufficient controls; maximum daily load; certain effluent limitations revision." This section calls on states to identify certain standards relating to water body controls that are "not stringent enough," and to establish new standards. The term "stormwater utility" is not referenced in this section.

In arguing that the addition of this provision places the City's stormwater utility within the ambit of Chapter 180, the City emphasizes the language referring to a local authority's obligations for "water body cleanup and protection." This reference, however, is merely peripheral the provision's primary focus is plainly the construction or extension of a sewerage system, a utility that, unlike the City's stormwater utility, is expressly authorized \*500 under Chapter 180. *See* § 180.06. Further, the only action authorized by section 180.03(3) that is arguably related to the City's stormwater utility is merely the consideration of a local authority's obligations for "water body cleanup and protection," and such consideration is only required as part of a "study" which must be conducted prior to the construction or extension of certain se-

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werage systems.

Thus, unlike section 180.06, which authorizes municipalities and certain private companies to “provide,” “construct,” “clean,” and “improve” the specified utilities enumerated in that section, section 180.03(3) does not authorize any action whatsoever that relates directly to stormwater utilities. Accordingly, this peripheral and indirect reference to a local authority’s obligations “for water body cleanup and protection” cannot be said to bring the City’s stormwater utility within the scope of Chapter 180.

**THE COLLEGE IS ENTITLED TO A REFUND FOR THE STORMWATER UTILITY FEES IT INVOLUNTARILY PAID UNDER PROTEST.**

[5] The City claims the trial court erred by granting the College a full refund of the monies it paid to the City pursuant to the City’s demand for payment of stormwater user fees. The City argues that while the doctrine of sovereign immunity may be used as a “shield from suit,” it may not be used as a sword. While we agree with this general proposition, we conclude it is not applicable here, as the trial court did not rely on the doctrine of sovereign immunity in ordering the refund. Rather, the trial court granted the refund based on its determination that the “College’s payment was made due to a mutual mistake of law or under reservation of the right to seek a refund.”

The City also contends that “under Florida law, if a party pays a fee or tax voluntarily, it may not later seek a refund”; notes that it raised as an affirmative defense that the College paid the stormwater utility fees “voluntarily”; and argues that the College did not overcome that defense because “no evidence was presented in support of the [City’s] motion for summary judgment demonstrating that the fees were not paid voluntarily.” The record, however, does not support this argument, as it clearly reflects that the College paid the fees under threat of the imposition of significant penalties and under protest.

[6] The Florida Supreme Court, in Jefferson County v. Hawkins, 23 Fla. 223, 2 So. 362 (1887), laid the foundation for Florida’s voluntary payment doctrine, stating:

[M]oney voluntarily paid upon claim of right, with full knowledge of all the facts, cannot be recovered back merely because the party, at the time of pay-

ment, was ignorant, or mistook the law, as to his liability.... [T]here must be ... some compulsion or coercion attending its assertion which controls the conduct of the party making the payment. To constitute such compulsion or coercion as will render payment involuntary, there must be some actual or threatened exercise of power possessed, or supposed to be possessed, by the party exacting or receiving the payment over the person or property of the party making the payment, from which the latter has no other means of immediate relief than by advancing the money.

(Emphasis added). A payment is considered to have been tendered “involuntarily” if payment is demanded, and the potential consequences of non-payment are sufficiently severe so as to leave little or no choice but to tender payment. *See, e.g., Seaboard Air Line Ry. Co. v. Allen*, 82 Fla. 191, 89 So. 555, 557 (1921) (determining\*501 that payment tendered in order to avoid seizure of property was involuntary because “the plaintiff was constrained to pay in order to avoid further ills and to continue the operation of its business....”); *N. Miami v. Seaway Corp.*, 151 Fla. 301, 9 So.2d 705, 706 (1942) (holding that “[w]here the levy of an illegal tax may become a cloud upon the title to real estate, payment of the tax to avoid a cloud on the real estate or to avoid the imposition of substantial burdens upon property rights of the owner is not a voluntary payment”); *Broward Cnty. v. Mattel*, 397 So.2d 457, 459–60 (Fla. 4th DCA 1981) (explaining that “[p]ayment of an illegal tax, even without protest, in order to avoid forfeiture of the right to do business is not a voluntary payment”).

Contrary to the City’s position, the record reflects that the College submitted a sworn affidavit executed by Dr. John Kehoe, the College’s Financial Vice President, specifically demonstrating that the fees were not paid voluntarily. In his affidavit, Dr. Kehoe averred that “the College objected to the City’s demand for payment,” but paid the fees after the City “threatened to exercise enforcement measures against the College,” if the College did not pay the stormwater utility fees, “including liens, discontinuance of utility services, a five percent (5%) per month late fee, and the imposition of attorney’s fees for collection.” Dr. Kehoe stated that it was only as a result of this pressure that the College submitted stormwater utility fee payments to the City “under protest and without waiving its objection to the imposition of the storm-

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water usage 'fee.' " Dr. Kehoe's affidavit was unre-  
futed by the City.

[7] Because the threat of litigation, liens, the  
discontinuance of utility services, the denial of city  
permits, and the imposition of a five percent per  
month late fee and attorney's fees was enough to se-  
verely disrupt, if not debilitate, the financial operation  
of this small State institution, we conclude that the  
College's payment of the demanded fees was invo-  
luntary. We, therefore, find no error in the trial court's  
order granting the College a refund of the fees it paid  
pursuant to the City's demand.

Affirmed.

Fla.App. 3 Dist., 2012.  
City of Key West v. Florida Keys Community College  
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END OF DOCUMENT

NOT A CERTIFIED COPY



Public Utilities  
 Customer Service  
 401 Clematis Street  
 PO Box 3506  
 West Palm Beach, FL 33401  
 Tel: 561/822-1300  
 Fax: 561/822-1299

12/23/2015

SCHOOL BOARD OF PALM BEACH COUNTY FL  
 3300 FOREST HILL BLVD C-110  
 WEST PALM BEACH, FL 33406-5813

Subject: Account# [REDACTED]  
 Service Address: 3505 SHENANDOAH DR

**REMINDER LETTER**

Dear Customer:

According to our records, your account is now past due. Payment of your past due amount listed below must be received on or before 01/01/2016 to avoid interruption of service the following workday. If this becomes necessary, additional charges will be added to your bill, as well as requiring full payment of all charges which have been billed. Please disregard this notice if a payment has been made and contact this office to verify receipt of your remittance.

To insure payment is received before the above date, we suggest that payment be made at our office, please do not mail. Please bring this notice to the office with your payment or you may pay via the WEB at www.wpb.org or over the telephone at (561) 822-1300. If you need help paying your City of West Palm Beach utility bill, you may qualify for a program designed to help those in serious need. To find out more about the City of West Palm Beach utility assistance program and see if you qualify, call 561-822-1250 or visit www.wpb.org. For other types of assistance, call the Palm Beach Community Action Agency at 561-355-4289.

To avoid a possible increase in your current deposit or the requirement of a new deposit, all monthly payments must be received by the due date stated on each bill. If there is an active pay arrangement on the account, that amount is not included in this letter and must be paid, in addition, to avoid disconnection.

Sincerely,  
 Customer Service  
 CIR-RISKYREM

Fold and Tear

ACCOUNT NUMBER	[REDACTED]	TOTAL AMOUNT DUE	\$82,654.75
SERVICE ADDRESS	3505 SHENANDOAH DR		
FULL PAYMENT DUE BY 01/01/2016 OR LATE PAYMENT FEE WILL BE CHARGED.			

You must pay in Person at:  
 City of West Palm Beach  
 401 Clematis Street  
 West Palm Beach, FL 33401

PLEASE WRITE IN THE AMOUNT YOU ARE PAYING

Check here if new mailing address

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



The City  
 of  
 West Palm  
 Beach

SCHOOL BOARD OF PALM BEACH COUNTY FL  
 3300 FOREST HILL BLVD C-110  
 WEST PALM BEACH, FL 33406-5813

"The Capital City of the Palm Beaches"



DO NOT WRITE BELOW THIS LINE

101

[REDACTED] 0008265475

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH  
COUNTY, FLORIDA

CIVIL DIVISION  
CASE NO.  
502013CA010144XXXXMB AH

THE SCHOOL BOARD OF PALM BEACH COUNTY,  
a political subdivision of the State of Florida,

Plaintiff/Counter-Defendant

v.

CITY OF WEST PALM BEACH,  
a Florida municipal corporation,

Defendant/Counter-Plaintiff

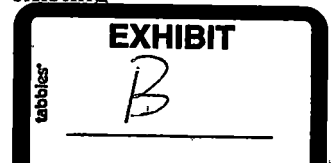
**DEFENDANT/COUNTER-PLAINTIFF, CITY OF WEST PALM BEACH, 'S  
ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED COMPLAINT FOR  
DECLARATORY JUDGEMENT AND PERMANENT INJUNCTION AND  
CITY'S COUNTERCLAIM FOR DECLARATORY AND MANDAMUS RELIEF**

COMES NOW Defendant/Counter-Plaintiff CITY OF WEST PALM BEACH  
("CITY"), by and through undersigned attorney, and sets forth its Answer and  
Affirmative Defenses to Plaintiff/Counter-Defendant THE SCHOOL BOARD OF PALM  
BEACH COUNTY ("SCHOOL BOARD")'s Amended Complaint for Declaratory  
Judgment and Permanent Injunction ("Amended Complaint") and states:

**ANSWER**

All numbered responses below correspond to same-numbered allegation in the Amended  
Complaint.

1. CITY admits this Court has jurisdiction of this action but denies SCHOOL BOARD is entitled to the remedy it seeks.
2. CITY admits that venue is proper in this Court.
3. Admit that SCHOOL BOARD is a corporate body politic organized and existing



under the laws of Florida. City is without sufficient information regarding the remaining allegations in Paragraph 3 and so denies same.

4. Admit.
5. CITY admits this is an action for declaratory relief but denies SCHOOL BOARD's entitlement to such relief.
6. CITY admits its stormwater management program, stormwater management system and stormwater utility, as those terms are defined in Chapter 403, Florida Statutes, serves properties located within CITY limits, but denies all other characterizations in Paragraph 6, including legal conclusions in the footnotes to Paragraph 6.
7. CITY denies the characterizations in Paragraph 7 and asserts that all records, ordinances and resolutions referencing its stormwater management program are the best evidence of what facilities CITY controls and how such facilities operate.
8. CITY denies the characterizations in Paragraph 8 and asserts that the full text of City of West Palm Beach Resolution No. 92-11, and all exhibits thereto, is the best evidence of its contents.
9. CITY denies the characterizations in Paragraph 9 and asserts the financial records for and referencing its stormwater management program and any associated capital improvements are the best source of its funding at any given time. Further, City utilizes a measurement called Equivalent Residential Unit ("ERU"), not Equivalent Stormwater Unit. The ERU applies to both residential and non-residential property within CITY.
10. CITY denies the characterization in Paragraph 10 and asserts the full text of Ordinance No. 2645-93, and all documents referenced therein, are the best

evidence of the contents therein.

11. CITY denies the characterization in Paragraph 11 and asserts the financial records, and other records, for and referencing its stormwater management program activities is the best evidence of its funding.
12. CITY denies the characterization in Paragraph 12 and asserts the Stormwater Utility Fund, and other records pertaining thereto, are the best evidence of the funding for the operations, capital expenditures and revenues contained therein.
13. CITY admits that pursuant to its Stormwater Utility Code, stormwater utility fees are billed on a monthly basis to property owners. All other characterizations in Paragraph 13 are denied and CITY asserts a copy of any given monthly stormwater utility bill is the best evidence of the contents therein.
14. CITY denies the characterization in Paragraph 14, including all footnotes thereto, and asserts any referenced schematics, maps, and records of its stormwater management program or stormwater management system is the best evidence of the relationship between its such stormwater management program or stormwater management system and any system operated and managed by the South Florida Water Management District.
15. CITY is without sufficient knowledge to admit or deny the allegations in Paragraph 15 and so denies same.
16. CITY is without sufficient knowledge to admit or deny the allegations in Paragraph 16 and so denies same.
17. CITY denies the characterization in Paragraph 17 and asserts the full text of the referenced legal opinion is the best evidence of the contents therein.
18. CITY admits it is not currently aware of any written agreement between itself and



SCHOOL BOARD, but denies any other allegations or conclusions intended in Paragraph 18.

19. CITY admits it received the letter attached as Exhibit A to the Complaint, but is without sufficient information to admit or deny the remaining allegations in Paragraph 19 and so denies same.
20. CITY incorporates by reference paragraphs 1 through 19 of this Answer.
21. CITY is without sufficient knowledge to admit or deny the allegations in Paragraph 21 and so denies same.
22. CITY denies the characterization in Paragraph 22 as CITY does not solely rely on its Stormwater Utility Code to assert SCHOOL BOARD owes CITY for SCHOOL BOARD's relative contribution to its need of CITY's stormwater management program.
23. CITY admits that it has no intention to plug the stormwater drain at SCHOOL BOARD properties and further denies that it is threatening SCHOOL BOARD in any way. CITY denies any remaining allegations in Paragraph 23.
24. CITY denies the characterizations of Paragraph 24, including all footnotes, and asserts that the referenced ordinances, Florida Statutes, the Florida Constitution and case law interpreting same, are the best evidence of City's rights regarding remedies for non-payment of stormwater utility fees.
25. CITY denies the characterization of Paragraph 25 and asserts that records of its Public Utilities Department are the best evidence of what SCHOOL BOARD owes City for its relative contribution to its need of CITY's stormwater management program for any given date.
26. CITY denies the characterization of Paragraph 26 and asserts the full text of the

- referenced opinion is the best evidence of the contents therein.
28. Paragraph 28<sup>1</sup> is a legal conclusion that does not require a response; however, Florida Statutes, the Florida Constitution and case law interpreting same are the best evidence of when a governmental entity is entitled to sovereign immunity.
29. CITY denies the characterization of Paragraph 29 and asserts the full text of the referenced opinion is the best evidence of the contents therein.
30. CITY denies the characterization of Paragraph 30 as Fla. Stat. §403.031(17) clearly shows the legislature's intent to waive sovereign immunity for "beneficiaries" of a local government's stormwater management program.
31. CITY denies the characterization of Paragraph 31 and asserts the full text of the referenced opinion, Florida Statutes, the Florida Constitution and case law interpreting same are the best evidence of the contents therein.
32. Paragraph 32 is a legal conclusion that does not require a response; however, Florida Statutes, the Florida Constitution and case law interpreting same are the best evidence of when a governmental entity is immune to payment.
33. CITY denies the characterization of Paragraph 33 and asserts the full text of the referenced opinion is the best evidence of the contents therein.
34. Paragraph 34 is a legal conclusion that does not require a response; however, Florida Statutes, the Florida Constitution and case law interpreting same are the best evidence of when a governmental entity is immune to payment.
35. Paragraph 35 is a legal conclusion that does not require a response; however, Florida Statutes, the Florida Constitution and case law interpreting same are the

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<sup>1</sup> The Amended Complaint does not contain a Paragraph 27 and so City's Answer will likewise omit Paragraph 27.

best evidence of when a governmental entity is immune to payment.

36. CITY admits that it asserts SCHOOL BOARD is responsible for paying its relative contribution to its need of CITY's stormwater management program, but is without sufficient information to admit or deny the remaining allegations in Paragraph 36 and denies same.
37. CITY is without sufficient information to admit or deny the allegations in Paragraph 37 and denies same.
38. CITY admits it has an interest in a declaratory judgment as set forth in its Counterclaim, but denies SCHOOL BOARD's right to a declaratory judgment in their favor.
39. CITY incorporates by reference paragraphs 1 through 38 of its Answer as if fully set forth herein.
40. Paragraph 40 is a legal conclusion that does not require a response; however, the Florida Constitution and case law interpreting same are the best evidence of the contents therein.
41. CITY is without sufficient information to admit or deny the allegations in Paragraph 41 and denies same.
42. CITY is without sufficient information to admit or deny the allegations in Paragraph 42 and denies same.
43. CITY is without sufficient information to admit or deny the allegations in Paragraph 43 and denies same.
44. CITY denies the allegations in Paragraph 44.
45. Paragraph 45 is a legal conclusion that does not require a response; however, the full text of the referenced opinions are the best evidence of the contents therein.

46. CITY denies the allegations in Paragraph 46 of the Complaint.
47. CITY denies the allegations in Paragraph 47 of the Complaint.
48. CITY denies the allegations in Paragraph 48 of the Complaint.
49. CITY denies the allegations in Paragraph 49 of the Complaint.
50. Paragraph 50 is a legal conclusion that does not require a response; however, the full text of the cited opinion is the best evidence of the contents therein.
51. CITY is without sufficient information to admit or deny the allegations in Paragraph 51 and denies same.
52. CITY is without sufficient information to admit or deny the allegations in Paragraph 52 and denies same.
53. CITY denies the allegation in Paragraph 53 of the Complaint.
54. CITY is without sufficient information to admit or deny the allegations in Paragraph 54 and denies same.
55. CITY is without sufficient information to admit or deny the allegations in Paragraph 55 and denies same.

#### **AFFIRMATIVE DEFENSES**

1. As its FIRST AFFIRMATIVE DEFENSE, CITY alleges CITY has statutory authority to collect fees from beneficiaries of its stormwater management program pursuant to Fla. Stat. §403.031(17) and SCHOOL BOARD is a beneficiary of City's stormwater management program.
2. As its SECOND AFFIRMATIVE DEFENSE, CITY alleges there is no threat of irreparable harm where CITY has no intention of "disconnecting, plugging, blocking or compromising" the SCHOOL BOARD's stormwater utility service and there is no dispute, controversy or uncertainty of SCHOOL BOARD's right to unaffected

stormwater utility service that causes this Court to opine on same.

3. As its THIRD AFFIRMATIVE DEFENSE, CITY alleges that pursuant to authority provided to it under Chapter 403, CITY exercises its police power to protect the health safety and welfare of its citizens by operating its stormwater management program for the beneficiaries of such program and may exercise that police power consistent with Florida Constitution Article VII, Section 2(b) and Fla. Stat. §166.021 and Chapter 403.

Respectfully submitted,

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**CITY'S COUNTERCLAIM FOR DECLARATORY AND MANDAMUS RELIEF**

COMES NOW Defendant/Counter-Plaintiff CITY OF WEST PALM BEACH ("CITY"), by and through undersigned attorney, and sets forth its Counterclaim for Declaratory and Mandamus Relief and states:

1. This Court has jurisdiction of this counterclaim pursuant to Art. V, §5 of the Florida Constitution, Sections 26.012 and 86.011, Fla. Stat.
2. Venue is proper in Palm Beach County, Florida, because both parties' primary place of business is within Palm Beach County and the dispute arose in Palm Beach County.
3. Plaintiff/Counter-Defendant THE SCHOOL BOARD OF PALM BEACH COUNTY ("SCHOOL BOARD") is a corporate body politic organized and existing under the laws of Florida.
4. CITY is a municipal corporation, organized and existing under the laws of the State of Florida, and located in Palm Beach County, Florida.
5. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes.
6. CITY is uncertain regarding its rights, obligations or privileges to collect payment from SCHOOL BOARD for SCHOOL BOARD's relative contribution to its need of CITY's Stormwater management program.

**I. FAWPCA**

7. The "Florida Air and Water Pollution Control Act" (Chapter 403.011-0611) (FAWPCA) provides:

"It is declared to be the public policy of this state to conserve the waters of the state and to protect, maintain, and improve the quality thereof for public water supplies, for the propagation of

wildlife and fish and other aquatic life, and for domestic, agricultural, industrial, recreational, and other beneficial uses and to provide that no wastes be discharged into any waters of the state without first being given the degree of treatment necessary to protect the beneficial uses for such water.” 403.021(2)

“It is hereby declared that the prevention, abatement, and control of the pollution of the air and waters of this state are affected with a public interest, and the provisions of this act are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.” 403.021 (5)

6. FAWPCA charges CITY with the responsibility to manage stormwater at Section 403.0891:

“[Department of Environmental Protection (“DEP”)], the water management districts, and local governments shall have the responsibility for the development of mutually compatible stormwater management programs.”

7. Section 403.0893 of FAWPCA gives CITY the mechanism to fund the stormwater management program mandated by Section 403.0891 and states, in part:

In addition to any other funding mechanism legally available to local governments to construct, operate, or maintain stormwater systems, a county or municipality may:

(1) 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 s. 403.0891(3)

8. Section 403.031(15) of FAWPCA defines stormwater management program as the institutional strategy for stormwater management, including urban, agricultural, and other stormwater.

11. Section 403.031(16) of FAWPCA defines stormwater management system as a system which is designed and constructed or implemented to control discharges which

are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from the system.

12. Section 403.031(17) of FAWPCA defines stormwater utility as the funding of a stormwater management program by assessing the cost of the program to the beneficiaries based on their relative contribution to its need. It is operated as a typical utility which bills services regularly, similar to water and wastewater services.

## II. DELEGATION TO DEP

13. Section 403.061(7) of FAWPCA delegates the power and duty to adopt rules to implement the provisions of FAWPCA to DEP.

14. DEP's website<sup>2</sup> describes stormwater discharge, or runoff, as follows:

“Stormwater runoff is generated when precipitation from rain and snowmelt events flow over land or impervious surfaces and does not percolate into the ground. As the runoff flows over the land or impervious surfaces (paved streets, parking lots, and building rooftops), it accumulates debris, chemicals, sediment or other pollutants that could adversely affect water quality if the runoff is discharged untreated...”

15. DEP has promulgated rules to regulate stormwater discharge. *See, e.g.* 62-25 of Florida Administrative Code (“FAC”), titled “Regulation of Stormwater Discharge.”

16. 62-25 .001(1), FAC states.

“The discharge of untreated stormwater may reasonably be expected to be a source of pollution of waters of the state and is, therefore, subject to Department regulation.”

17. 62-25 .001(4), FAC states.

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<sup>2</sup> <http://dep.state.fl.us/water/stormwater/index.htm>



“The Department intends that, to the greatest extent practicable, the provisions of this chapter be delegated to either local governments or water management districts seeking such delegation.”

18. 62-302, FAC (“Surface Water Quality Standards”) states:

“Water quality standards apply equally to and shall be uniformly enforced in both the public and private sector.” (at 62-302.300)

### III. DELEGATION TO SFWMD

19. DEP further delegates power to South Florida Water Management District (“SFWMD”) to regulate water quality impacts of stormwater discharges. *See*, 62-113.100(3)(b)(“Delegations”)

20. SFWMD regulates water quality impact of stormwater discharges, in part, by administering an environmental resource permitting program authorized pursuant to Part IV of Chapter 373, Florida Statutes.

### IV. CITY’S STORMWATER MANAGEMENT PROGRAM

21. In addition to regulating stormwater discharge, DEP also provides the permitting process for a Municipal Separate Storm Sewer Systems (MS4) permit, that authorizes permittees to discharge stormwater into State waters subject to the conditions within the permit. *See*, (61-614.100, FAC)

22. Under 62-624.300 FAC, “Operators of MS4s such as municipalities.... must be covered by a permit under [Chapter 62-624].”

23. CITY is a co-permittee of an MS4 pursuant to Chapter 62-624 FAC, and as authorized under Fla Stat. §403.0885, along with co-permittees Palm Beach County, Florida Department of Transportation and over thirty-five other entities described on Palm Beach County MS4, Permit Number FLS000018-003-MAJOR Facility (the “MS4

Permit”).

24. The MS4 Permit authorizes CITY to discharge stormwater to waters of the State in accordance with approved Stormwater Management Programs, effluent limitations, monitoring requirements, and other provisions of the MS4 Permit.

25. The MS4 Permit also requires, in part, CITY to ensure its flood management projects assess the impacts of water quality of receiving water bodies and meet environmental resource permitting rules of SFWMD for stormwater treatment.

26. Pursuant to 62-624.600 FAC, CITY is required to submit an Annual Report to DEP for each year of coverage under the MS4 Permit, providing an assessment of water quality trends based on data gathered as a result of the monitoring program required in the MS4 Permit.

27. CITY’s October 2014-September 2015 annual report provides a summary of the activities CITY performed in just the last year under its stormwater management program and includes a description of different elements of CITY’s stormwater management system. According to the 2015 Annual Report, CITY’s stormwater management system includes approximately:

- 169 miles of MS4 pipes and culverts, 44 major stormwater outfalls;
- 4,315 inlets/catch basins/grates;
- 7,325 linear feet of exfiltration trench/french drains; and
- multiple retention/detention ponds, swales, canals and pollution control devices.

Activities related to the above stormwater management system includes inspection and maintenance of such system and street sweeping.

28. CITY’s activities under the MS4 Permit, and as outlined in any given year’s

annual report, are an integral part of CITY's overall stormwater management program and is pursuant to CITY's delegated police power under FAWPCA for the health, safety and general welfare of its citizens.

#### V. CITY'S STORMWATER UTILITY

29. Pursuant to FAWPCA Section 403.0893, CITY enacted Ordinance 2611-93 establishing a "Stormwater Utility Code"<sup>3</sup> to construct, reconstruct, improve, and extend CITY's stormwater utility systems and establish rates, fees, and charges for the services and facilities provided by the system.

30. Pursuant to FAWPCA Section 403.031(17) CITY enacted Ordinance No. 2645-93, which implements a monthly stormwater utility fee for each equivalent residential unit ("ERU") on a property, ensuring a beneficiary pays their relative contribution to its need of CITY's stormwater utility program. CITY's Stormwater Utility Code at Section 90-163 defines an ERU, in part, as the average impervious area of residential developed property per dwelling unit located within the city. The ERU applies to both residential and non-residential properties within CITY.

31. CITY's stormwater management program benefits the following SCHOOL BOARD properties located in CITY:

- |    |                             |                                 |
|----|-----------------------------|---------------------------------|
| a. | 816 11 <sup>th</sup> St # D | (Palmview Elementary)           |
| b. | 400 40 <sup>th</sup> St     | (Northboro Elementary)          |
| c. | 5115 47 <sup>th</sup> Pl N  | (Egret Lake Elementary)         |
| d. | 1800 N Australian Ave       | (Roosevelt Middle)              |
| e. | 1725 Echo Lake Dr           | (Bak Middle School of the Arts) |

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<sup>3</sup> The Stormwater Utility Code is currently found at Chapter 90, Article IV, Sec. 90-161 through 90-173 of City of West Palm Beach Code of Ordinances

- f. 1101 Golf Ave # C (Westward Elementary)
- g. 3777 N Jog Rd (Jeaga) (Jeaga Middle)
- h. 1220 L A Kirksey (Roosevelt Elementary)
- i. 7101 S Olive Ave (South Olive Elementary)
- j. 825 Palmetto St (Palmetto Elementary)
- k. 3000 Parker Ave (Belvedere Elementary)
- l. 3630 Parke Ave (Conniston Community Middle)
- m. 5801 Parker Ave (Palmetto Elementary)
- n. 6901 Parker Ave (Forest Hill High School)
- o. 501 S Sapodilla Ave (Alex W Dreyfoos Jr School of Arts)
- p. 3505 Shenandoah Dr (Bear Lakes Middle)
- q. 3505 Shiloh Dr (Palm Beach Lakes High School)
- r. 2222 Spruce Ave (Pleasant City Elementary)
- s. 1601 N Tamarind Ave (Palm Beach School Board)
- t. 4111 N Terrace Dr (Northmore Elementary)

32. At all times material from the implementation of Ordinance 2611-93 until on or about April 2012, SCHOOL BOARD voluntarily paid all amounts CITY billed SCHOOL BOARD for the above properties' relative contribution to its need of CITY's stormwater management program as such relative contribution to its need was calculated utilizing CITY's ERU calculation.

33. On or about March 18, 2012 SCHOOL BOARD gave notice to CITY that it was no longer going to pay for any of its properties' relative contribution to its need of CITY's stormwater management program based on the decision in *City of Key West v. Florida Keys Community College*, 81 So.3d 494 (3<sup>rd</sup> DCA 2012). Although CITY

continued to bill SCHOOL BOARD for its properties' relative contribution to its need of CITY's stormwater management program, SCHOOL BOARD stopped paying its properties' relative contribution to its need of CITY's stormwater management program on or about April 2012.

34. The *Key West* decision does not apply to the SCHOOL BOARD because the facts of the *Key West* case show *Florida Keys Community College* was not a beneficiary of *Key West*'s stormwater management program.

35. SCHOOL BOARD admits it is a beneficiary of CITY's stormwater management program when it alleges that if CITY were to disconnect SCHOOL BOARD from CITY's stormwater management system then the approximately twenty SCHOOL BOARD properties that CITY continues to service would inevitably flood.

36. CITY relies on the revenues it collects from the beneficiaries of its stormwater management program to continue to execute its police power to prevent, abate and control the pollution of State waters by controlling the flow of stormwater discharge.

**COUNT I: DECLARATORY RELIEF**

37. CITY reincorporates the allegations in Paragraphs 1-36 of its counterclaim as if fully set forth herein.

38. CITY is mandated to operate a stormwater management program pursuant to the terms of FAWPCA, DEP and SFWMD regulations.

39. CITY operates its stormwater management program under the MS4 Permit, including but not limited to all activities and facilities detailed in the annual report for any given year.

40. The Legislature gave CITY the ability to create a stormwater utility to collect fees from beneficiaries of its stormwater management program relative to their contribution to

their need of CITY's stormwater management program.

41. CITY funds its stormwater management program, in part, through its stormwater utility that bills beneficiaries their relative contribution to their need of CITY's program.

42. CITY billed SCHOOL BOARD its relative contribution to its need of CITY's stormwater management program, which amounts SCHOOL BOARD voluntarily paid up until April of 2012.

43. CITY is obligated to continue its stormwater management program under FAWPCA and FAWPCA requires SCHOOL BOARD to pay its relative contribution to its need of CITY's stormwater management program.

44. There is a bona fide, actual, present and practical need for this Court to declare whether CITY has the right to collect payment from SCHOOL BOARD for its relative contribution to its need of CITY's stormwater management program.

45. The issuance of a declaratory judgment declaring whether SCHOOL BOARD must pay its relative contribution to its need of CITY's stormwater management program is in the public interest so that CITY may continue to effectively run its stormwater management program under FAWPCA, and regulations of DEP and SFWMD.

**WHEREFORE**, CITY respectfully asks this Court to:

- a) Take jurisdiction over this action for purposes of rendering a declaratory decree;
- b) Having taken jurisdiction, enter judgment in favor of CITY.
- c) Enter an Order finding that SCHOOL BOARD is a beneficiary of CITY's stormwater management program and must pay for its relative contribution to its need of CITY's stormwater management program pursuant to Fla. stat. §403.031(17);

- d) Find that CITY has suffered damages incidental or supplemental to the subject matter of this action in the amount of all SCHOOL BOARD's unpaid stormwater utility fees from April 2012 to present;
- e) Enter a money judgment in favor of CITY against SCHOOL BOARD for all unpaid stormwater utility fees from April 2012 to present with any lawful and applicable interest;
- f) Award CITY any and all other relief this Court deems necessary.

**COUNT II: MANDAMUS RELIEF**

- 46. CITY realleges and incorporates the allegations in Paragraphs 1-45 of this Counterclaim as if fully set forth herein.
- 47. If this Court finds that SCHOOL BOARD, as a beneficiary of CITY's stormwater management program, must pay for its relative contribution to its need of CITY's stormwater management program from April 2012 to present, CITY would need to collect all unpaid amounts from April 2012 to present.
- 48. If this Court finds SCHOOL BOARD must pay for its relative contribution to its need of CITY's stormwater management program from April 2012 to present, then paying such obligation is simply a ministerial function of SCHOOL BOARD.
- 49. While Fla. Stat. 159.17 gives CITY the right to lien property for nonpayment of its stormwater utility fees, CITY may not foreclose on SCHOOL BOARD property. *See, Blake v. City of Tampa*, 115 Fla. 348 (Fla. 1934).
- 50. Because CITY cannot foreclose SCHOOL BOARD property, it has no other remedy at law than to seek mandamus for payment of past due stormwater utility fees.
- 51. Mandamus is the proper, and indeed only, remedy to enforce a judgment against a government entity. *See, Navarro v. Bouffard*, 522 So.2d 515, 517 (Fla. 4<sup>th</sup> DCA

1998)(citation omitted).

WHEREFORE, if this Court grants the relief CITY seeks in Count I then CITY respectfully asks this Court to:

- a) Issue a writ of mandamus compelling SCHOOL BOARD to pay to CITY all amounts for unpaid stormwater utility fees from April 2012 to the present within 30 days of such order, and;
- b) All other relief this Court deems just and proper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

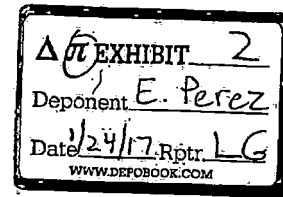
I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served, via electronic mail, this 29<sup>th</sup> day of February, 2016 according to Florida Courts E-Filing Portal guidelines established by the Florida Bar to: [blair.littlejohn@palmbeachschools.org](mailto:blair.littlejohn@palmbeachschools.org), [hollie.hawn@palmbeachschools.org](mailto:hollie.hawn@palmbeachschools.org), [lesline.gregory@palmbeachschools.org](mailto:lesline.gregory@palmbeachschools.org), [dotty.fairbanks@palmbeachschools.org](mailto:dotty.fairbanks@palmbeachschools.org), , Hollie N. Hawn,



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Assistant City Attorney  
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1) Overall functioning of the City Stormwater Management Utility System ("The City System"), including the physical and operational parameters of the City's stormwater management system;

This is a very broad question and the City employs over 50 people that assist with the stormwater system day-to-day. The City's entire watershed is almost 60 square miles total and over 600 subbasins (as defined by the stormwater master plan). The stormwater system is relatively complex because inflow is received into the system from the west and then outfalls exist to the Lake Worth Lagoon (to the east) and the C-17 basin (to the north). The City is also interconnected to the Loxahatchee River Basin (via outflow north of Grassy Waters Preserve). The Loxahatchee Basin is under scrutiny right now as FDEP is developing a Reasonable Assurance Plan. The City has been active in this Loxahatchee River group since this is a significant regulatory development for a watershed that the City is connected to - and significant costs are expected to result for all stakeholders.

It is important to mention that the City operates a structure called Control-5 that regulates flow from the City as it passes into the C-17 basin. This is important to mention because the structure prevents backflow from the C-17 basin and the highly urbanized areas to the north. Essentially, it is preventing flooding to the City from watersheds to the north - an important function and service for the City to provide.

The City's stormwater system is complex hydrologically - with both deranged (bombing range) and riverine (canal) hydrology. The City is also connected to numerous systems that are adjacent and connected to other local governments, FDOT, and special districts, which makes flow patterns more complex and coordination critical. The City is responsible for both flooding and water quality in their watersheds so the services the City provides are holistic and can be broken down into four basic areas: Stormwater permit compliance, O&M (also governed by the stormwater permit), capital improvement projects, and administration of the stormwater program. Administratively, the most critical priority for the City in terms of stormwater management is the preservation of public safety through the prevention of flooding.

It is also important to mention that since the City is in South Florida and is so low from a topographic perspective (with little relief) the City's stormwater system is closely linked to groundwater. One can imagine that since groundwater is close to the surface, impacts to stormwater may also affect groundwater quantity and quality. Furthermore, the City is on a surface water supply so stormwater and the City's potable water system are closely linked. All of these factors create a complex environment and a challenging system for the City to maintain.



**ELIZABETH PEREZ (CORPORATE REPRESENTATIVE)**  
**DEPOSITION PREPARATION**  
**NOTES**  
**LAST UPDATED: JANUARY 23, 2017**

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**2) How and where the School Board properties are served, or otherwise provided drainage or flood protection, by the City system;**

Stormwater services provided by the City go beyond drainage and flood protection although public safety related to flooding is the City's highest priority. The City must ensure the entire scope of services are provided to the entire City. These services generally include services from four primary areas (\*indicates a service provided to all developed properties within the municipal boundaries of West Palm Beach):

**NPDES Compliance (Phase 1 MS4)**

- Annual Reports and Inspection (for MS4 Compliance)
- Permit Activities
  - \*Development Review
  - Roadway Maintenance
  - Flood Control Projects
  - \*Pesticide, Herbicide and Fertilizer Control
  - \*Illicit Connections (Regulation, Detection, Investigation, Enforcement)
  - \*Illicit Discharges (and Illegal Dumping)
  - \*Industrial and High Risk Runoff
  - \*Construction Site Runoff Control
- Inventory of Outfalls and MS4
- Monitoring
  - \*Cross Boundary Discharges/Coordination with Adjacent Systems
  - \*Ambient Water Quality Sampling
  - \*Biological Monitoring
  - \*Discharge Characterization from Land Uses
  - \*BMP Efficiency
  - \*High Risk Industries and Illicit Discharges
  - \*Ensuring positive outfall and water quality during storms
- \*Pollution Load Reduction Analysis
- \*TMDL Compliance

**NPDES MS4 Compliance - Operation & Maintenance Activities**

- Street Sweeping
- \*Inspection (Pre- & Post-Construction; Stormwater Facilities for O&M)
- Cleaning, Restoration and Minor Repair
  - Canal Maintenance
  - Culverts
  - Pipes
  - Ditches and Channels
  - Ponds (Detention and Retention)
  - Swales
  - Weir Operations
  - End-of-Pipe Devices (e.g., Baffle Box, Exfiltration Trench, Swirl Concentrator, etc.)
  - Drainage Inlets
  - Mowing
  - Pump Operation and Maintenance
- Equipment Yards
  - \*Inspection
  - Material Storage Control
  - \*Vehicle/Equipment Repair

**Capital Improvement Program (Flood Control and Water Quality) - (infrastructure generally has a useful life of 50-75 years – at most - so the City must have a program to update the system)**

- \*Major Facility Permitting, Design and Construction
- \*Major Capital Maintenance

**Administration of Stormwater Program**

- \*Administration of Overall Stormwater Management Program
- \*Code Enforcement (Pre-development and Post-Development Maintenance)
- \*Staff Training and Development

**ELIZABETH PEREZ (CORPORATE REPRESENTATIVE)**  
**DEPOSITION PREPARATION**  
**NOTES**  
**LAST UPDATED: JANUARY 23, 2017**

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- \*Public Engagement and Involvement
- \*Inspection (Erosion & Sediment Control During Construction)
- \*Permitting
- \*Engineering
- \*Project Management
- \*Assessment and Inventory of Stormwater Systems
- \*Geographic Information Systems and Mapping
- \*Survey
- \*Basin/Watershed Planning
- \*Flood Mitigation Studies
- \*Floodplain Management/Floodplain Mapping
- \*FEMA Advocacy to Keep Insurance Rates Low and Floodplain Mapping Equitable
- \*Community Rating System Involvement – the City is a rating of 6 – a very high rating, expected to go to a 5 next year (will mean approximately \$8 mill in insurance savings for those that purchase flood insurance throughout the City – and this will grow as flood insurance rates increase in coming years)
- \*TMDL, Pollution Load Reduction Goal (PLRG) Participation and BMAP Activities
- \*Assistance before, during, and after storms to protect public safety and reduce flood risk
- Stormwater Utility Funding and Finance (where applicable)
  - Database Maintenance
  - Adjustments
  - Collections/Billing

**3) The level of service of flood protection or drainage and other related stormwater services provided by the City to properties owned by the School Board within the City System;**

First and foremost, City staff is on call 24 hours a day, 365 days a year to assist all properties within the City should flooding occur. Dispatch and the utilities department are available at a moment's notice to protect and safeguard public safety. This is an important service since City staff are generally the closest and most capable to assist in

the event of flood emergencies. This service is offered to every property within the municipal City limits – regardless of the source of flooding or the outfall for the property.

Flood protection, reduction, and prevention is one of the many services the City provides in terms of stormwater. The City provides an extensive suite of services to all of the properties within the City. Depending on the school's location, it may receive several to all of these services.

Level of service is defined from a technical standpoint and by stormwater experts. There are levels of service for both water quality and quantity – the City has several criteria it follows throughout its system. The school board properties are managed per the usual parameters of level of service – no special consideration is given to any property beyond the parameters laid out in the stormwater ordinance according to land use (for example commercial properties are separated from residential). The stormwater utility is administered according to the founding study in 1993 and the subsequent re-study in 2007.

**4) The process and criteria by which the City determines the amount of stormwater fees for specific properties owned by the School Board within the City system;**

My understanding is that another witness is testifying on the financial details of this topic and I defer to her. Generally speaking, the City conducted a study back in 1993 that established the stormwater utility. The utility was created and is administered in a reasonable manner. The stormwater utility is a dedicated fund that operates under the parameters laid out within that study, the City's stormwater utility ordinance, and subsequent revisions and the 2007 study. The 2007 was conducted with extensive public input. Given my experience, the Utility operates similar to other stormwater utilities throughout the State of Florida and nationally. Given the complexity of the City's system, the 1993 study and subsequent studies have maintained the following three tiers for inclusion in the stormwater utility:

<u>Lowest Tier</u>	<u>Middle Tier</u>	<u>Highest Tier</u>
<ul style="list-style-type: none"> <li>• No street sweeping or O&amp;M in vicinity of property</li> <li>• No direct connection to the City's stormwater system and therefore directly outfalls to another system</li> </ul>	<ul style="list-style-type: none"> <li>• Some street sweeping or O&amp;M from City crews in vicinity to property <u>AND/OR</u></li> <li>• Some direct connectivity to City system</li> </ul>	<ul style="list-style-type: none"> <li>• Majority or all of stormwater outfalls directly to City's system</li> <li>• Street sweeping on majority of adjacent roads</li> </ul>

- One ERU is currently = 2171
- Commercial properties are charged = (square footage impervious/ERU) \*rate
- Rate currently = \$13.17 per ERU (rate reduced based on tier)

5) **The operation and maintenance schedule for the City system.**

The following services are included in the City's O&M program and many details related to various activities are provided in the City's *Stormwater Standard Operating Procedures* (City Utilities Department 2013). It is also noted that many of these procedures are required as part of the City's compliance with their MS4 permit: — copy

- Street Sweeping (a map and detailed schedule is provided) - all City streets are swept once weekly
- Inspection (Pre- & Post-Construction; Stormwater Facilities for O&M)
- Cleaning, Restoration and Minor Repair (all laid out in the City's SOPs)
  - Grate cleaning is the most common activity (daily maintenance)
  - Emergency maintenance is conducted before and after significant storms, or as needed (as reported by staff or residents/business owners)
  - Canal Maintenance - all canals are checked a couple times a week (sedimentation, obstructions, etc.) and are mowed once a month in the dormant/non-growing season and twice a month in growing season. If the City receives a complaint than the area will be moved in response.
  - Culverts
  - Pipes
  - Ditches and Channels
  - Ponds (Detention and Retention)
  - Swales
  - Weir Operations (weirs are checked a couple times a week, some weirs are even checked via boat at this frequency)
  - End-of-Pipe Devices (e.g., Baffle Box, Exfiltration Trench, Swirl Concentrator, etc.) – inspected at least quarterly
  - Exfiltration Systems (inspected and maintained annually)
  - Drainage Inlets

- Mowing
- Pump Operation and Maintenance
- Equipment Yards
  - Inspection
  - Material Storage Control
  - Vehicle/Equipment Repair

Stormwater O&M staff generally use vac trucks and CCTV trucks, in addition to a number of construction vehicles.

6) **The direct and indirect benefits provided to School Board properties provided by the City system;**

The City does not operate the system according to benefits – we view the utility in terms of services provided – necessary services. Many of the services the City provides are necessary because without them, the City could not exist (it would flood). I again refer to the four primary service areas I discussed as part of my previous answers.

7) **The process or criteria by which Exemptions from stormwater fees are determined by the City;**

The City does not provide exemptions from stormwater fees. However, an appeal process is carefully laid out in the City's processes if a property owner feels that a property should be moved to another payment tier within the stormwater utility.

The fee applies to all properties that are developed. It is the City's intent that a property would not be billed ONLY if the property is unaltered from the natural state and includes no improvements. Improvements are defined in the ordinance and generally includes buildings, structures; or other impervious surface.

8) **The process or criteria by which the City has, or may, determine any special burden or benefit of a property within the City System;**

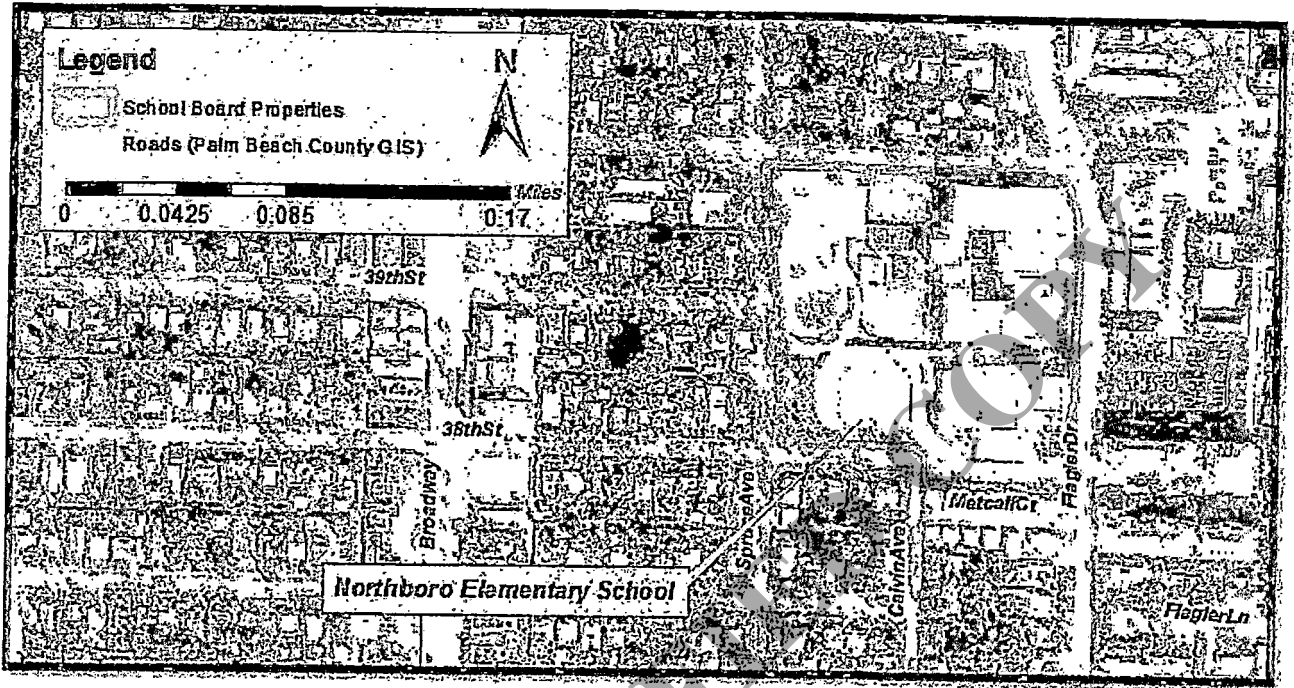
The City does not view the stormwater utility in terms of benefit – it is viewed in terms of necessary services. Burden is translated to these services and properties are billed accordingly through the three payment tiers. This utility structure has been carefully



considered since 1993 and is very much in-line with best practices throughout the stormwater industry. However, in terms of services, the City views all properties as laid out in the stormwater utility ordinance. I believe another witness will testify to the financial details of how properties are billed.

**NOT A CERTIFIED COPY**

## NORTHBORO ELEMENTARY SCHOOL



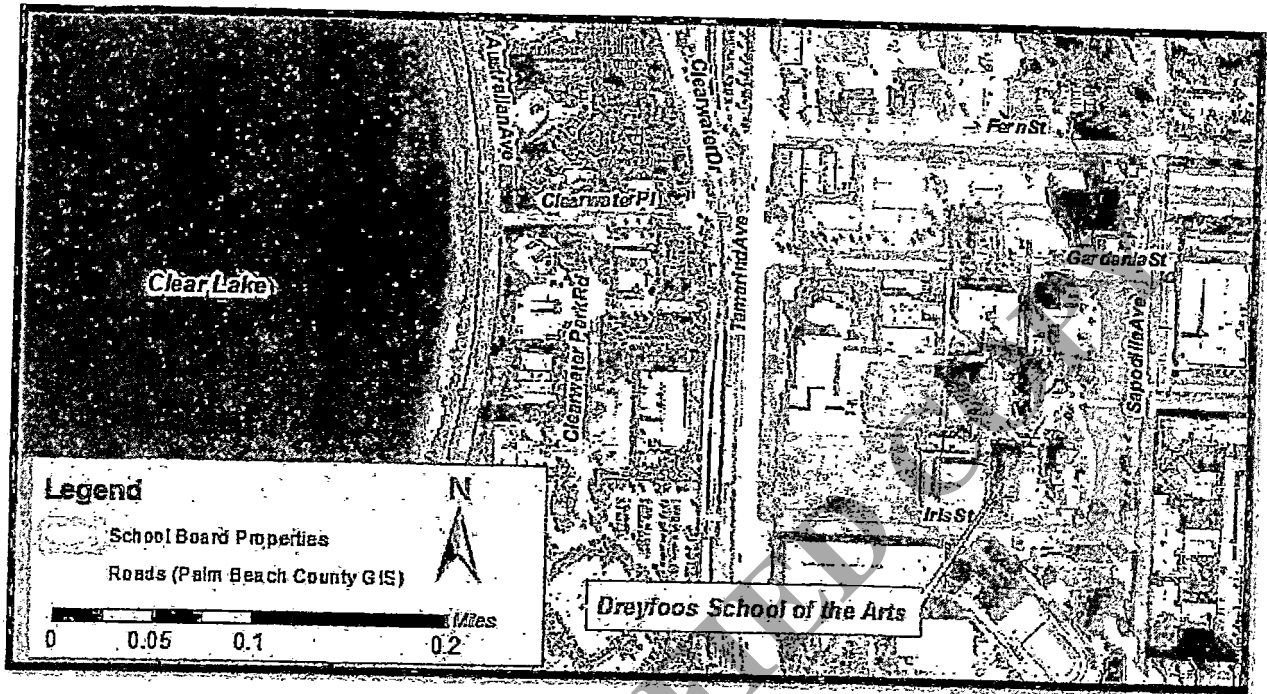
**Address: 400 40<sup>th</sup> St., West Palm Beach, FL 33407**

**Summary of Stormwater Management Onsite: *Exfiltration trench and dry detention areas were constructed during renovations in 2008 (modification to South Florida Water Management District Standard General Permit 50-02775-S).***

**Discharge Point(s) and Receiving Waterbody: *Discharges to City storm sewer for ultimate discharge in Lake Worth Lagoon.***

*All information contained within this exhibit is based on information that was available as part of public records and interpretation by professional engineers employed at Collective Water Resources, LLC.*

## A.W. DREYFOOS SCHOOL OF THE ARTS



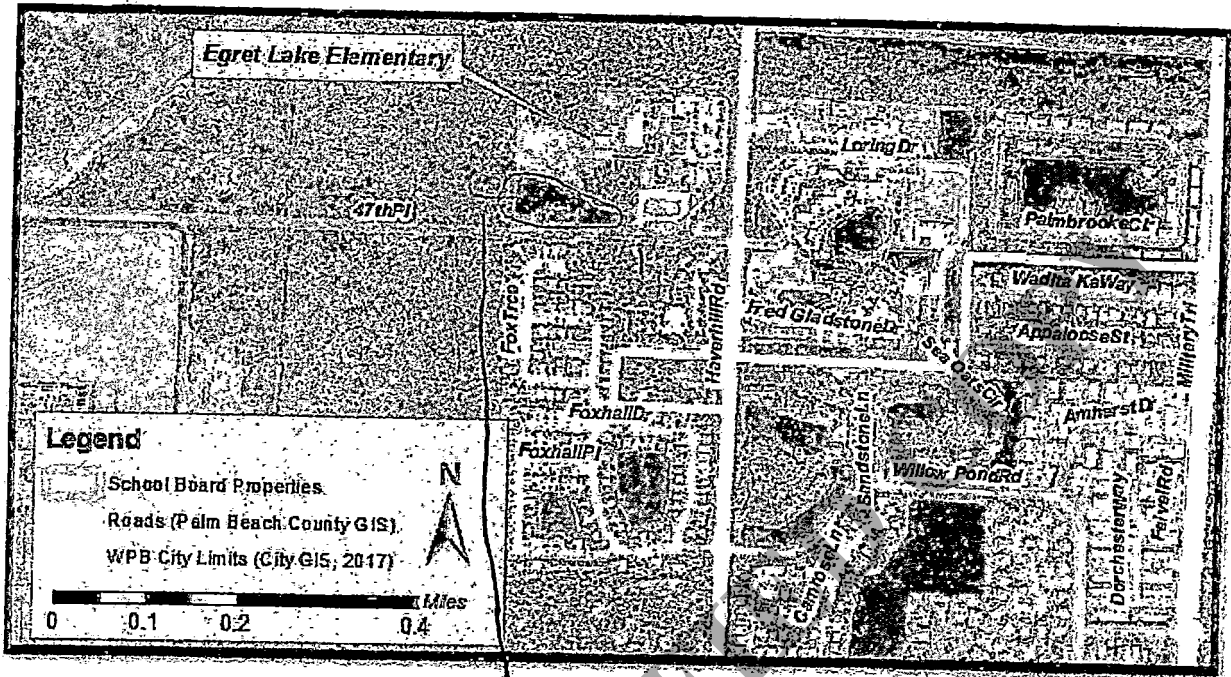
Address: 501 S. Sapodilla Ave., West Palm Beach, FL 33401

Summary of Stormwater Management Onsite: *Historic school retrofitted with onsite dry retention pond. Western drainage basin includes underground detention storage and onsite detention ponds with pipe connection to City's system on Gardenia Street.*

Discharge Point(s) and Receiving Waterbody: *Discharges to City streets within the C-51 Basin and ultimately the Lake Worth Lagoon.*

Full Service

## EGRET LAKE ELEMENTARY SCHOOL



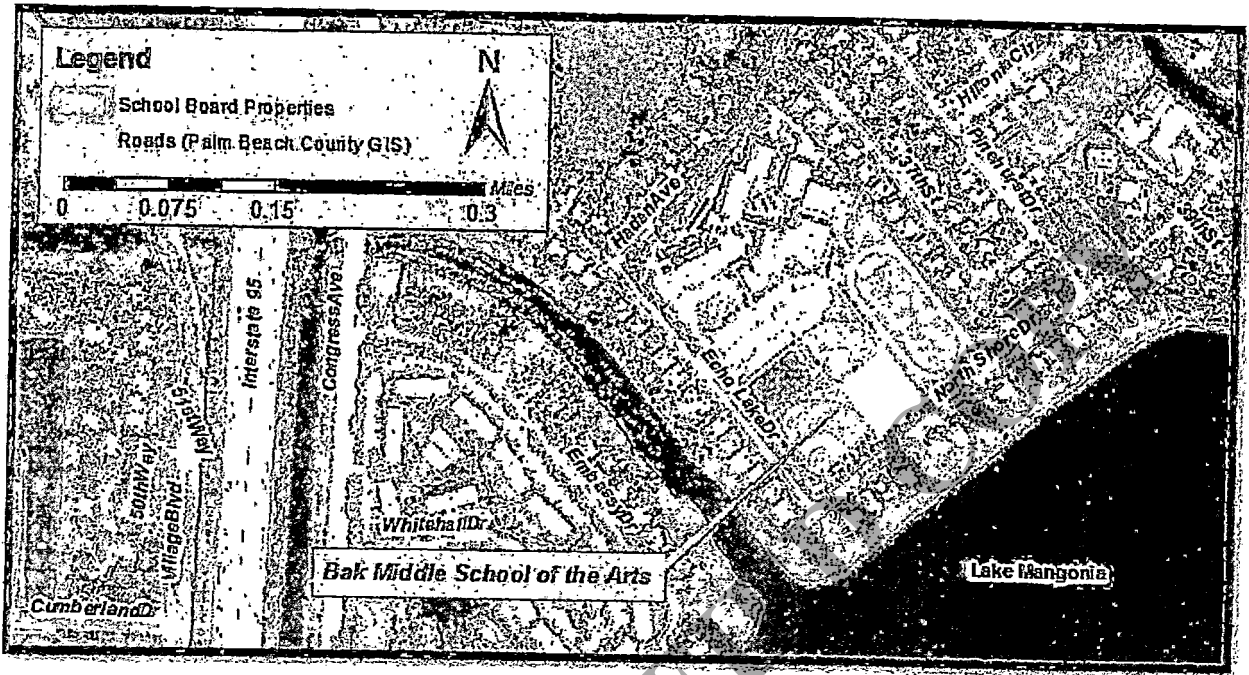
**Address: 5115 47<sup>th</sup> Place N., West Palm Beach, FL 33417**

**Summary of Stormwater Management Onsite: Outfalls to pond onsite. Discharge to private pipe on western edge of Fox Hall Community.**

**Discharge Point(s) and Receiving Waterbody: Onsite detention pond. Property outfalls to offsite dry detention pond on City property to the west of the property. Pond outfalls to a private pipe to west of Fox Hall Development. Connects to storm sewer near Roebuck Road and enters canal near Treatment Plant to west. Ultimately part of the C-17 Basin.**

**Note: Staff from West Palm Beach reports that City provided emergency assistance when private outfall pipe near Ernst Street and Roebuck Road failed.**

## BAK MIDDLE SCHOOL OF THE ARTS



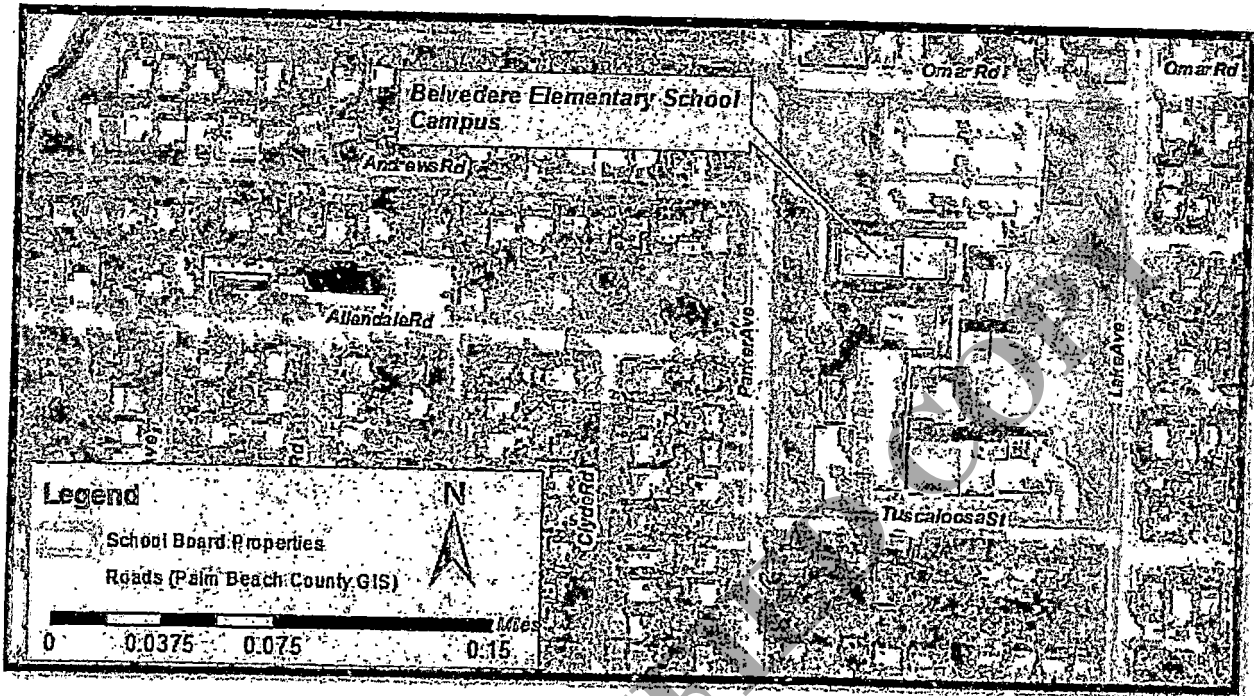
Address: 1725 Echo Lake Dr., West Palm Beach, FL 33407

Summary of Stormwater Management Onsite: *Several onsite detention and retention ponds (modification to South Florida Water Management District Standard General Permit 50-06431-P). Permit indicates primary outfall is sized for 100-year, 3-day storm event.*

Discharge Point(s) and Receiving Waterbody: *L-10 canal for ultimate discharge to C-17 Canal.*

*Not sure adjacent canal.*

## BELVEDERE ELEMENTARY SCHOOL



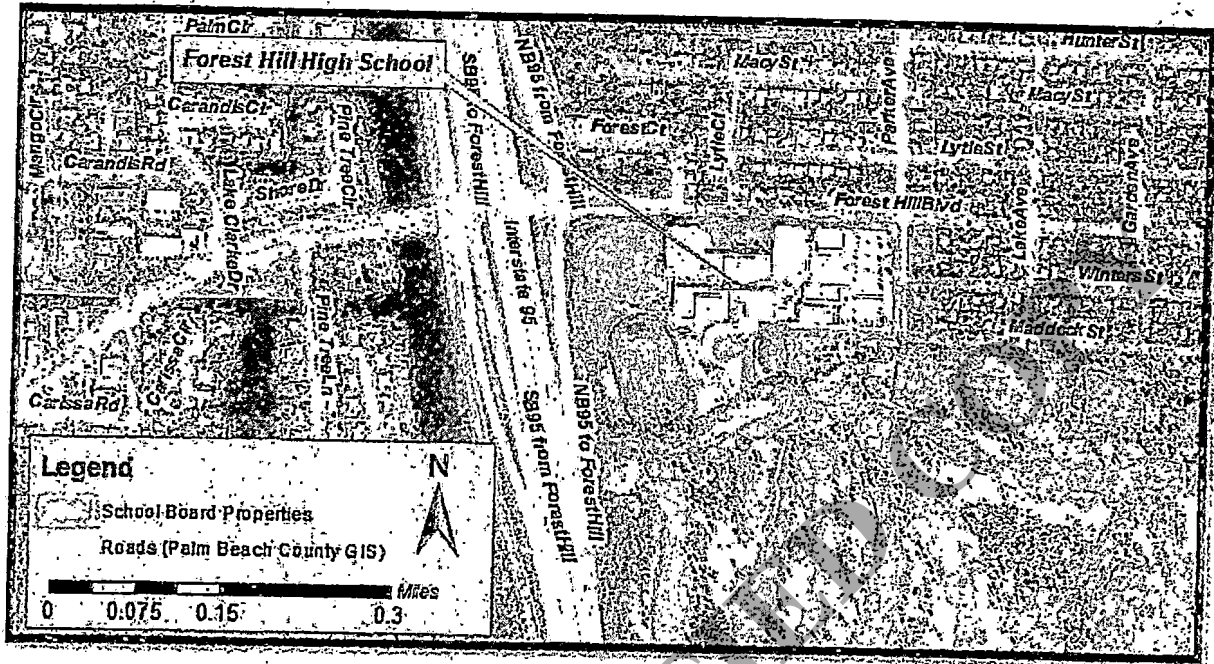
**Address: 3000 Parker Ave., West Palm Beach, FL 33405**

**Summary of Stormwater Management Onsite:** *Several onsite dry retention ponds (South Florida Water Management District Standard General Permit 50-05446-P, 2002).*

**Discharge Point(s) and Receiving Waterbody:** *Discharges to City streets within the C-51 Basin and ultimately the Lake Worth Lagoon.*

*Tier  
Partially  
Usable*

## FOREST HILL HIGH SCHOOL



Address: 6901 Parker Ave., West Palm Beach, FL 33405

Summary of Stormwater Management Onsite: *Significant modifications made in 2002 include the creation of four dry detention areas (per South Florida Water Management District Standard General Permit No. 50-05508-P). According to permit, discharge will occur for all storms larger than and including the 10-year, 3-day storm event (10.7 inches).*

Discharge Point(s) and Receiving Waterbody: *Discharges to C-51 Basin (East) and ultimately the Lake Worth Lagoon.*

*Tier Partial Service*

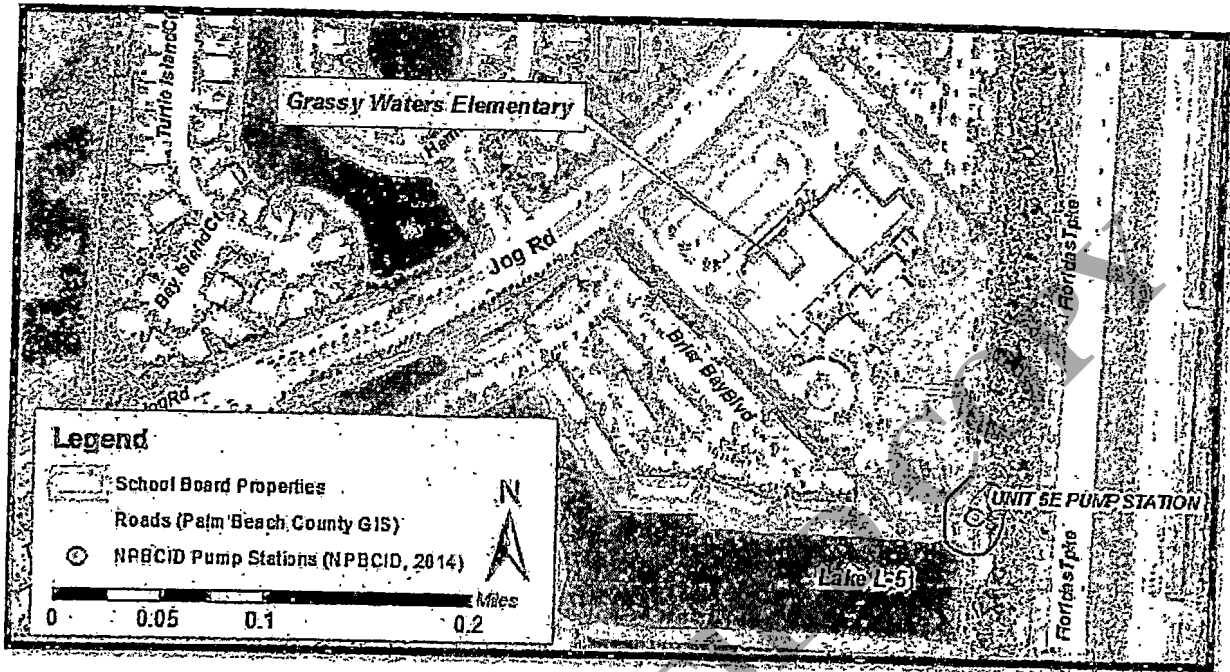
Index	School Name	Service_Level	PCN_Number	Service_Address1
1	Palm Beach Lakes HS	PARTIAL SERVICE	74424301020000880	3505 SHILOH DR
2	Egret Lakes ES	PARTIAL SERVICE	74424311010010020	5115 47TH PL N
3	Bear Lakes MS	PARTIAL SERVICE	74424312030020170	3505 SHENANDOAH DR
4	Jeaga MS	PARTIAL SERVICE	74424315030130000	3777 N JOG RD (JEAGA MIDDLE)
5	Northmore ES	PARTIAL SERVICE	74434304130150010	4111 N TERRACE DR
6	Bak MS	FULL SERVICE	74434305000007020	1725 ECHO LAKE DR
7	Northboro ES	FULL SERVICE	74434309180010000	400 40TH ST
9	Roosevelt MS	FULL SERVICE	74434316000020020	1800 N AUSTRALIAN AVE
10	Roosevelt ES	FULL SERVICE	74434316000020020	1220 L A KIRKSEY ST (ROOSEVELT)
8	Roosevelt Full Service	PARTIAL SERVICE	74434316000020030	1601 N TAMARIND AVE
11	U.B. Kinsey / Palm View ES	FULL SERVICE	74434316010180010	816 11TH ST
12	Westward ES	FULL SERVICE	74434316050530020	1101 GOLF AVE
13	Pleasant City ES	FULL SERVICE	74434316140010160	2222 SPRUCE AVE
14	A.W. Dreyfoos	FULL SERVICE	74434321010330021	501 S SAPODILLA AVE
15	Belvedere ES	PARTIAL SERVICE	74434333070000041	3000 PARKER AVE
16	Conniston MS	FULL SERVICE	74434333070000121	3630 PARKER AVE
17	Palmetto ES (east campus)	PARTIAL SERVICE	74434404000005000	825 PALMETTO ST
18	Palmetto ES (west campus)	PARTIAL SERVICE	74434404000080070	5801 PARKER AVE
19	Forest Hill HS	PARTIAL SERVICE	74434409030000670	6901 PARKER AVE
20	S. Olive ES	PARTIAL SERVICE	74434410000007030	7101 S OLIVE AVE
Total				

**Properties Not Being Billed**

21	Grassy Waters	s/b Partial Service (same development as Jaega MS)	74424315020050000	3550 N. Jog Road
22	High Ridge / Heritage Family Center (billed on Palm Beach County Utility Bill)	Partial Service (on PBC bill)	74434305000080000	4400 N. Australian Ave
23	Indian Ridge	s/b Lowest Level	74424328160030000	1950 Benoist Farm Road
24	Turning Points Academy	s/b Lowest Level	74424328160030000	1955 Golden Lakes Blvd.
25	McKesson Bldg	s/b Lowest Level	7443432900001000	1400 N Florida Mango road



# GRASSY WATERS ELEMENTARY SCHOOL



**Address: 3550 N. Jog Rd., West Palm Beach, FL 33411**

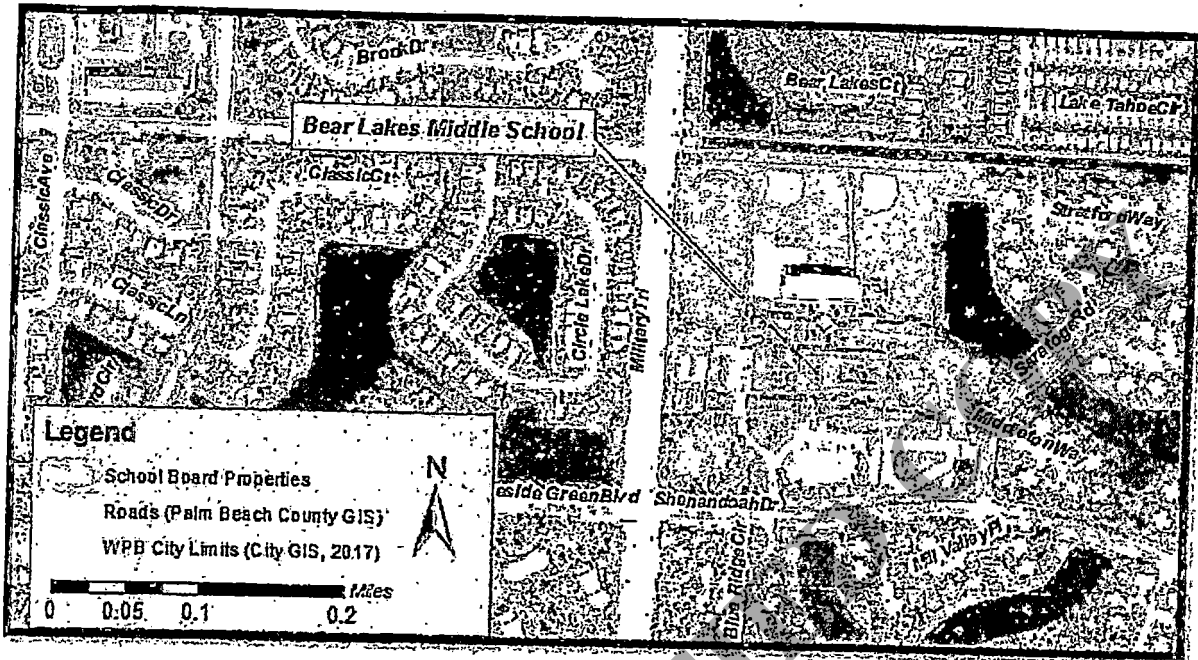
**Summary of Stormwater Management Onsite: Per Standard General Permit No. 50-04120-P-04 (South Florida Water Management District, 2003). Permitted as part of the Hamilton Bay/Briar Bay PUD (Permit Modification 50-04120-P-04).**

**Discharge Point(s) and Receiving Waterbody: Discharges to adjacent detention pond (Lake L-5, part of the master system) which is then managed by the Unit 5E Pump Station.**

NOT A

07/11  
NPB SID

## BEAR LAKES MIDDLE SCHOOL



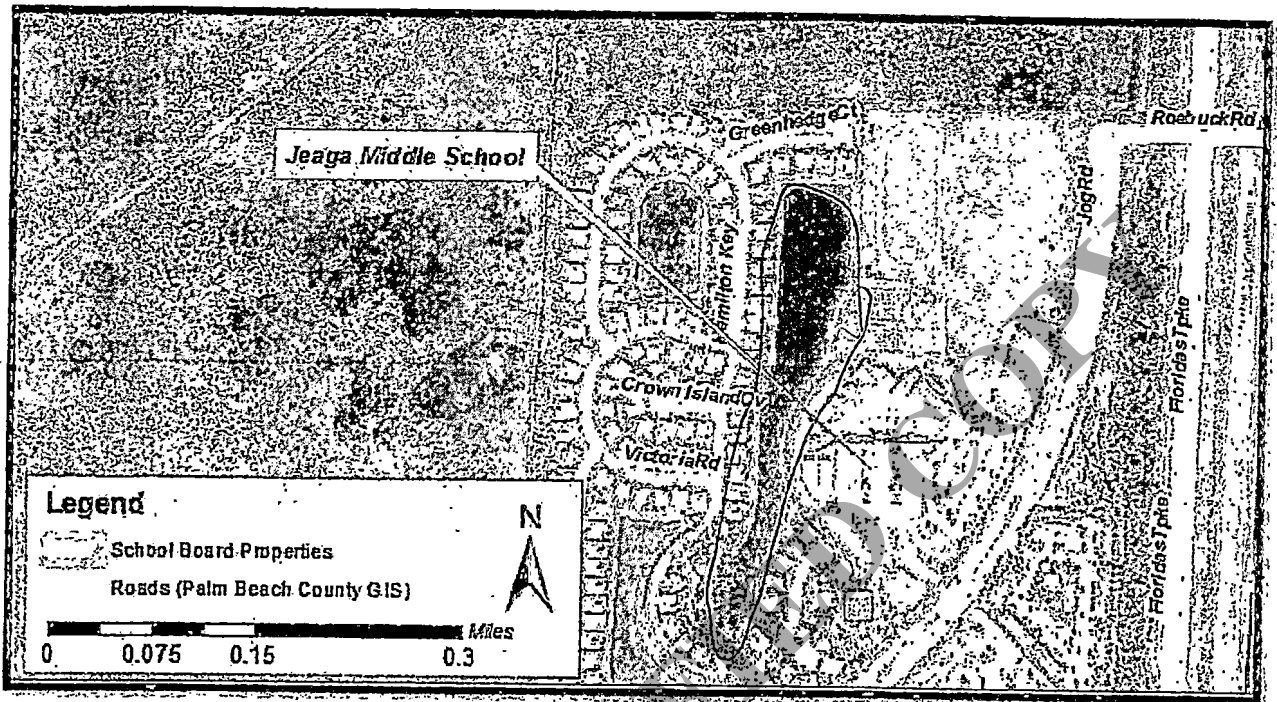
**Address: 3505 Shenandoah Blvd., West Palm Beach, FL 33409**

**Summary of Stormwater Management Onsite: Multiple pipes outfall to pond on northeastern boundary of property. No onsite ponds.**

**Discharge Point(s) and Receiving Waterbody: Discharges to master lake system for Villages of Palm Beach Lakes (Northern Palm Beach County Improvement District). Ultimately part of the C-17 Basin.**

**Note: City maintains stormwater infrastructure and provides street sweeping on Shenandoah Drive and Saratoga Road.**

## JEAGA MIDDLE SCHOOL



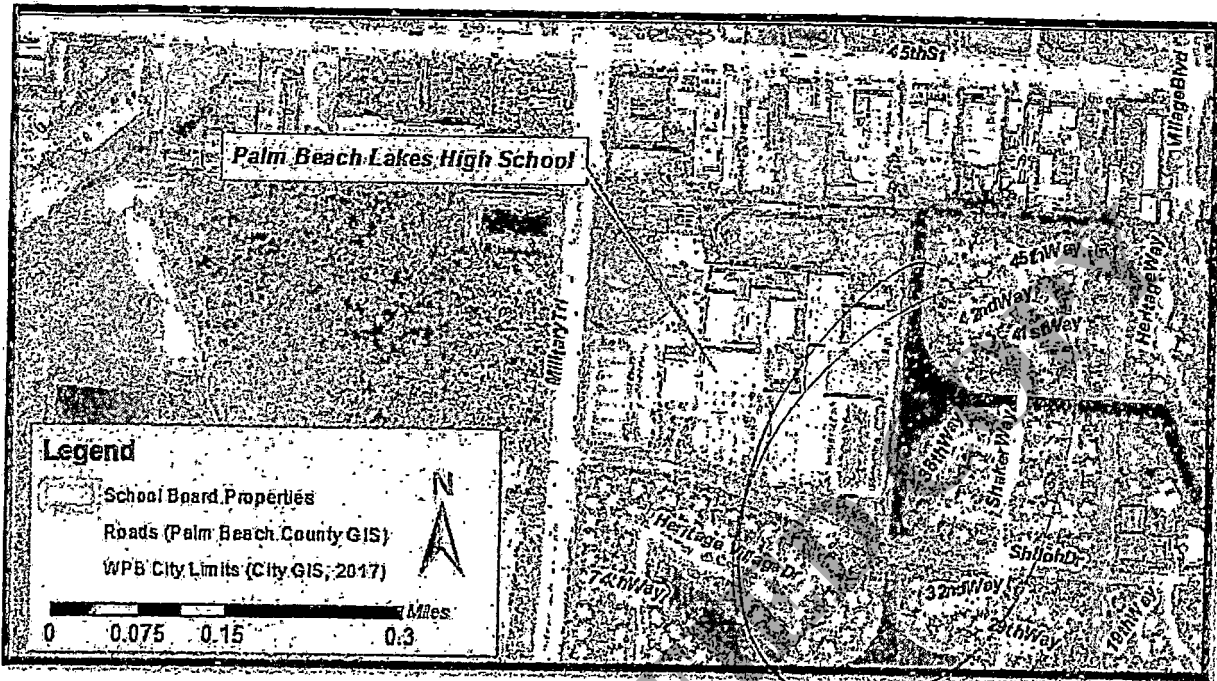
**Address: 3777 N. Jog Rd., West Palm Beach, FL 33411**

**Summary of Stormwater Management Onsite: *Per Individual Environmental Resource Permit No. 50-04120-P-04 (South Florida Water Management District, 2002) Part of the Hamilton Bay/Briar Bay Stormwater management system. Site discharges to wet detention on western edge of property.***

**Discharge Point(s) and Receiving Waterbody: *Discharges to wet detention pond via numerous onsite pipes. Connects downstream to Northern Palm Beach County Improvement District Pump Station 5E and is ultimately part of the C-17 Basin.***

*All information contained within this exhibit is based on information that was available as part of public records and interpretation by professional engineers employed at Collective Water Resources, LLC.*

## PALM BEACH LAKES HIGH SCHOOL



**Address: 3505 Shiloh Dr., West Palm Beach, FL 33407**

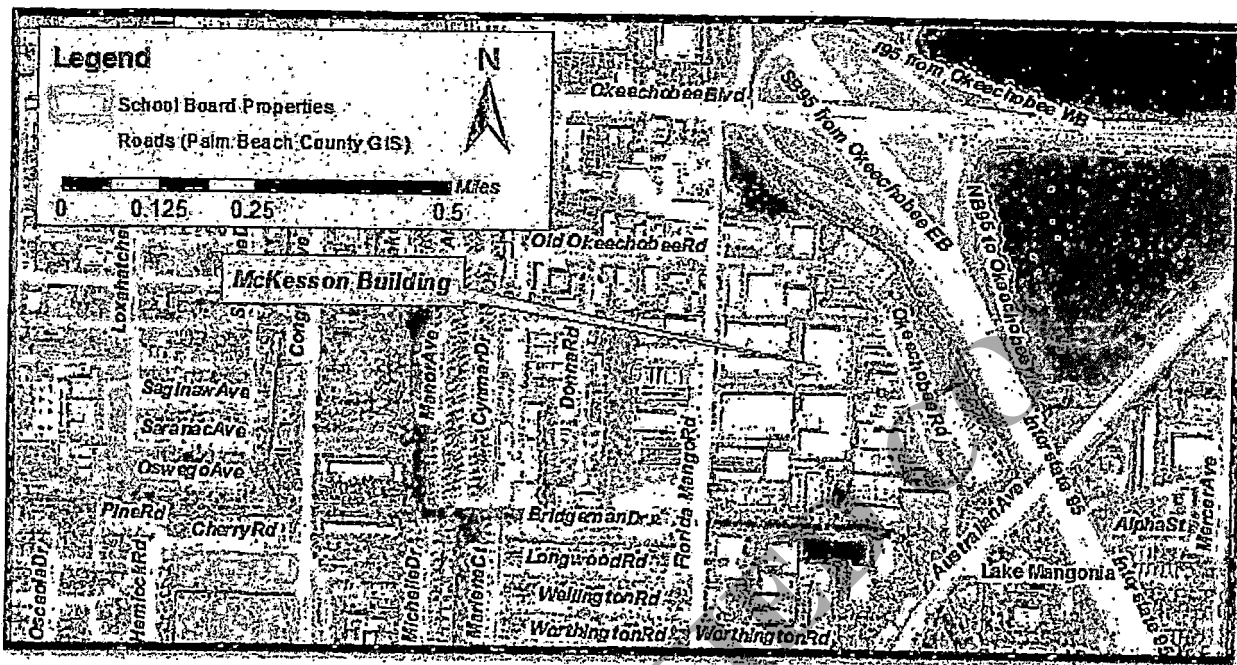
**Summary of Stormwater Management Onsite:** *Multiple pipes outfall to pond and offsite waterbodies to the east of the property.*

**Discharge Point(s) and Receiving Waterbody:** *Ultimately part of the C-17 Basin.*

**NOT A CERTIFICATE**

*O&M doesn't.*

## MCKESSON BUILDING

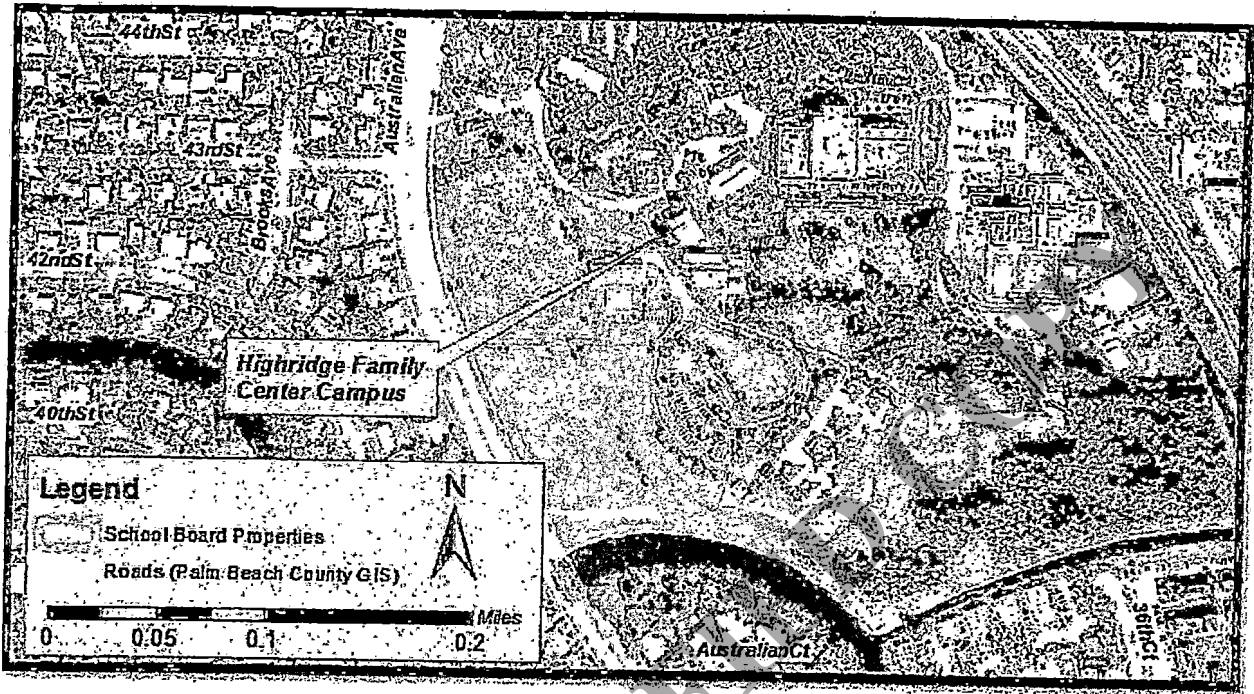


**Address: 1400 N Florida Mango Rd., West Palm Beach, FL 33409**

**Summary of Stormwater Management Onsite:** *Building exists in area that was developed prior to modern stormwater permitting requirements. Some storage exists onsite that outfalls to ditches that connect with wet pond south of property.*

**Discharge Point(s) and Receiving Waterbody:** *Discharges to wet detention one parcel south for discharge into canal to south. Eventual discharge to C-51 canal and Lake Worth Lagoon.*

## HIGHRIDGE FAMILY CENTER



**Address: 4400 N. Australian Ave., West Palm Beach, FL 33407**

**Summary of Stormwater Management Onsite:** Located on County campus, minimal publically-available permit information exists. City GIS indicates site outfalls via overland flow to various onsite facilities.

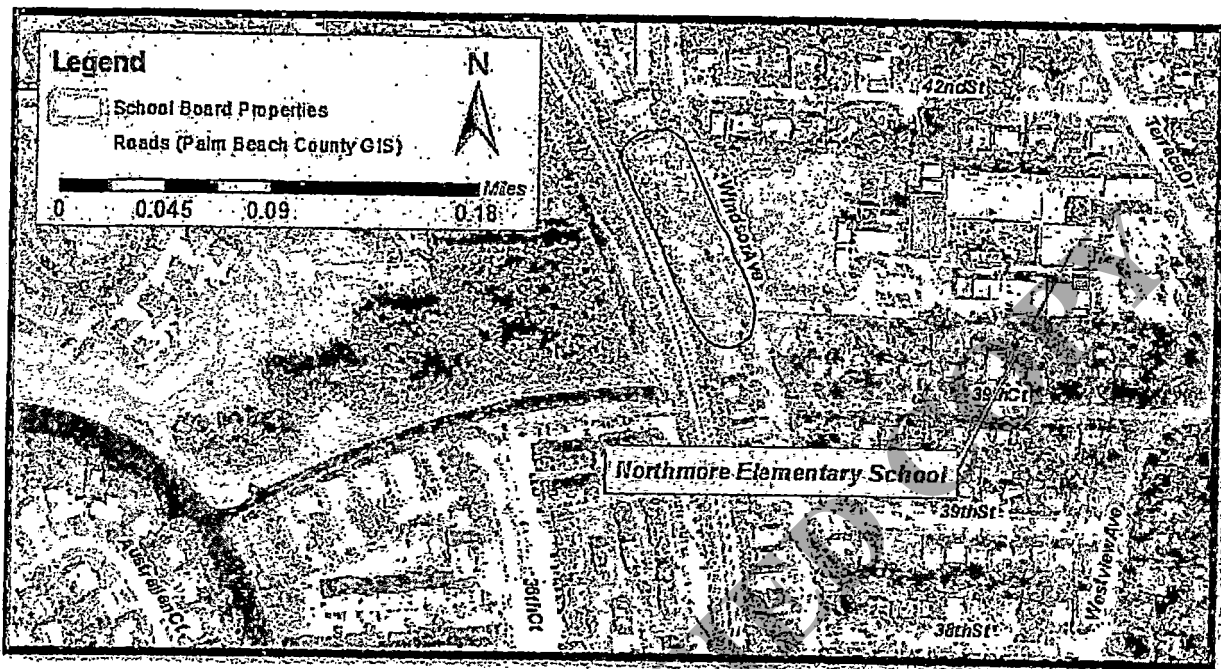
**Discharge Point(s) and Receiving Waterbody:** Outfalls to C-17 basin.

**Note:** Property is billed to Palm Beach County on Utility Bill.

*Palm Beach  
County*

*All information contained within this exhibit is based on information that was available as part of public records and interpretation by professional engineers employed at Collective Water Resources; LLC.*

## NORTHMORE ELEMENTARY SCHOOL



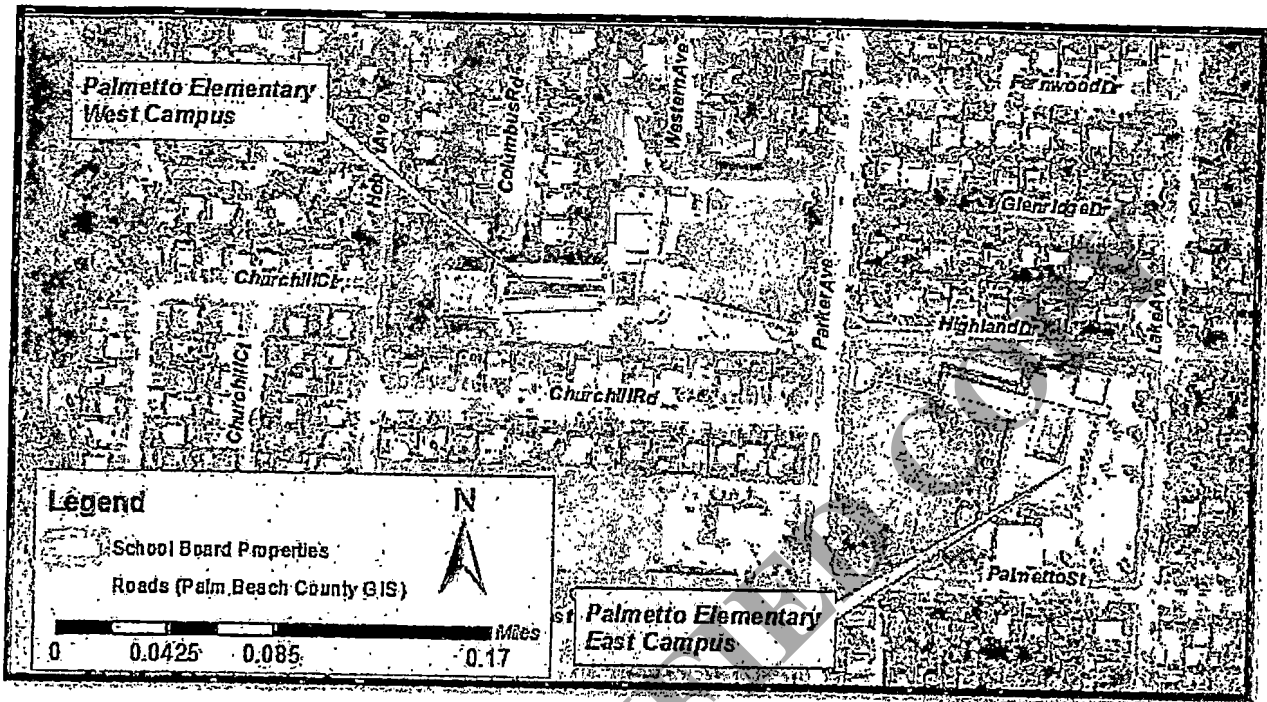
**Address: 4111 N. Terrace Dr., West Palm Beach, FL 33407**

**Summary of Stormwater Management Onsite:** *Significant modifications were made to the campus in 1998, which also prompted the construction of exfiltration trench at three onsite locations and a retention facility in the parcel to the west of Windsor Avenue. Minimal discharge occurs up to and including the 25-year, 3-day storm event (South Florida Water Management District Permit No. 50-04012-P, 1998).*

**Discharge Point(s) and Receiving Waterbody:** *School is located on the coastal ridge with ultimate discharge into C-17 Basin.*



## PALMETTO ELEMENTARY SCHOOL



**Address: 5801 Parker Ave., West Palm Beach, FL 33405**

**Summary of Stormwater Management Onsite:** *Property consists of west and east campus (west and east of Parker Avenue, respectively). Stormwater systems for each campus are managed via separate systems (South Florida Water Management District Permit Modification 50-05097-P, 2001).*

**West Campus:** *Constructed based on previous site conditions (Jewish Community Day School). Exfiltration trench and a retention area was constructed on western edge of property. Bubble-up structures connect with adjacent roadways.*

**East Campus:** *School was re-constructed with exfiltration trench connected to two retention areas. Overflows to adjacent roadways. South Florida Water Management District staff report mentions parking lot drains to City storm sewer on Lake Avenue. Original campus for Palmetto Elementary School.*

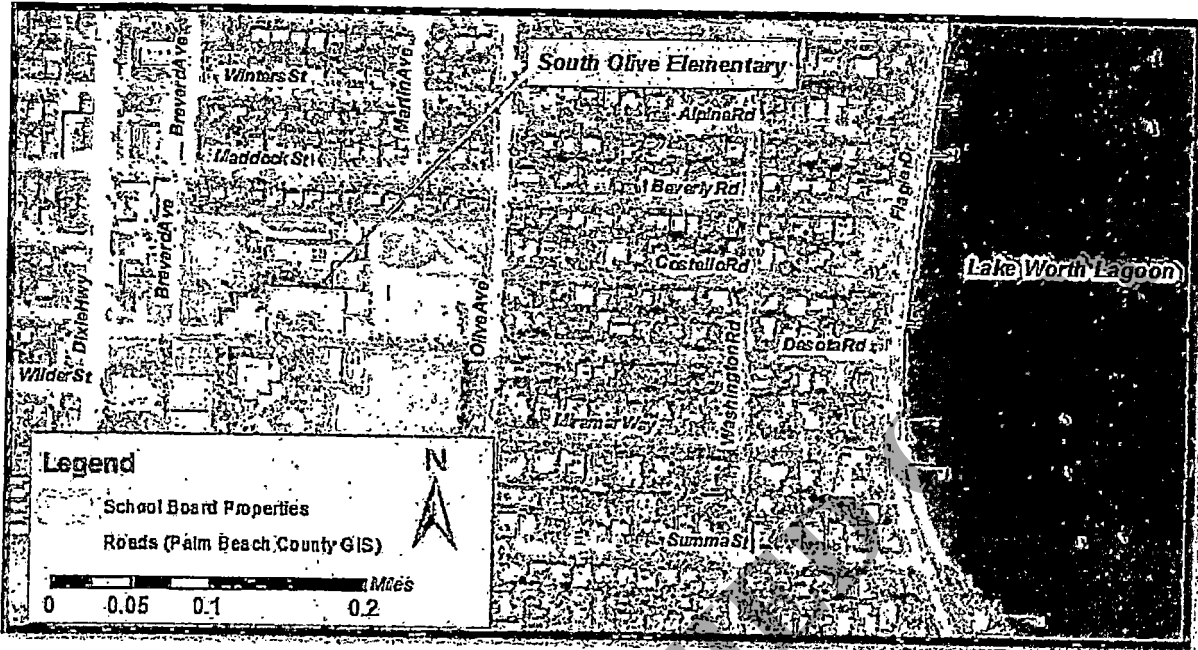
**Discharge Point(s) and Receiving Waterbody:** *Discharges to City streets within the C-51 Basin and ultimately the Lake Worth Lagoon.*

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*All information contained within this exhibit is based on information that was available as part of public records and interpretation by professional engineers employed at Collective Water Resources, LLC.*



## SOUTH OLIVE ELEMENTARY SCHOOL



**Address: 7101 S. Olive Ave., West Palm Beach, FL 33405**

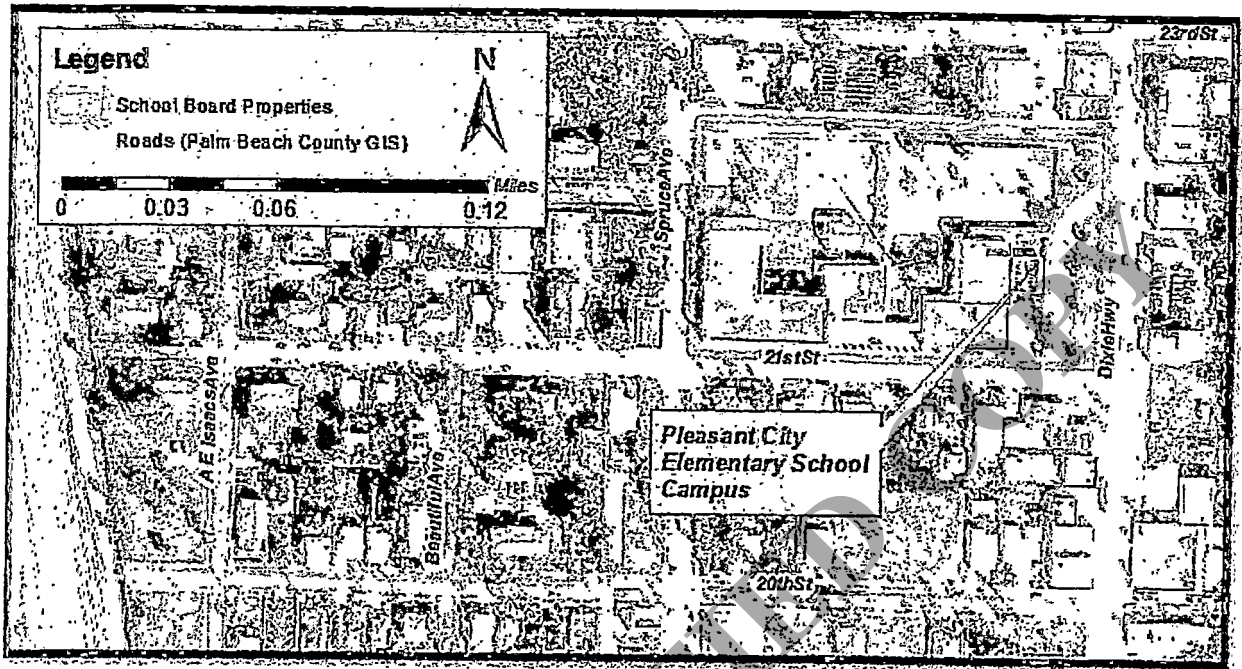
**Current Stormwater Utility Payment Tier: Partial Service Rate (Middle Tier).**

**Summary of Stormwater Management Onsite: *Multiple pipes outfall to various onsite retention areas.***

**Discharge Point(s) and Receiving Waterbody: *Significant onsite retention. Discharges are ultimately routed to the Lake Worth Lagoon during large storm events.***

**Note: *City maintains stormwater infrastructure and provides street sweeping on adjacent City roads.***

## PLEASANT CITY ELEMENTARY SCHOOL



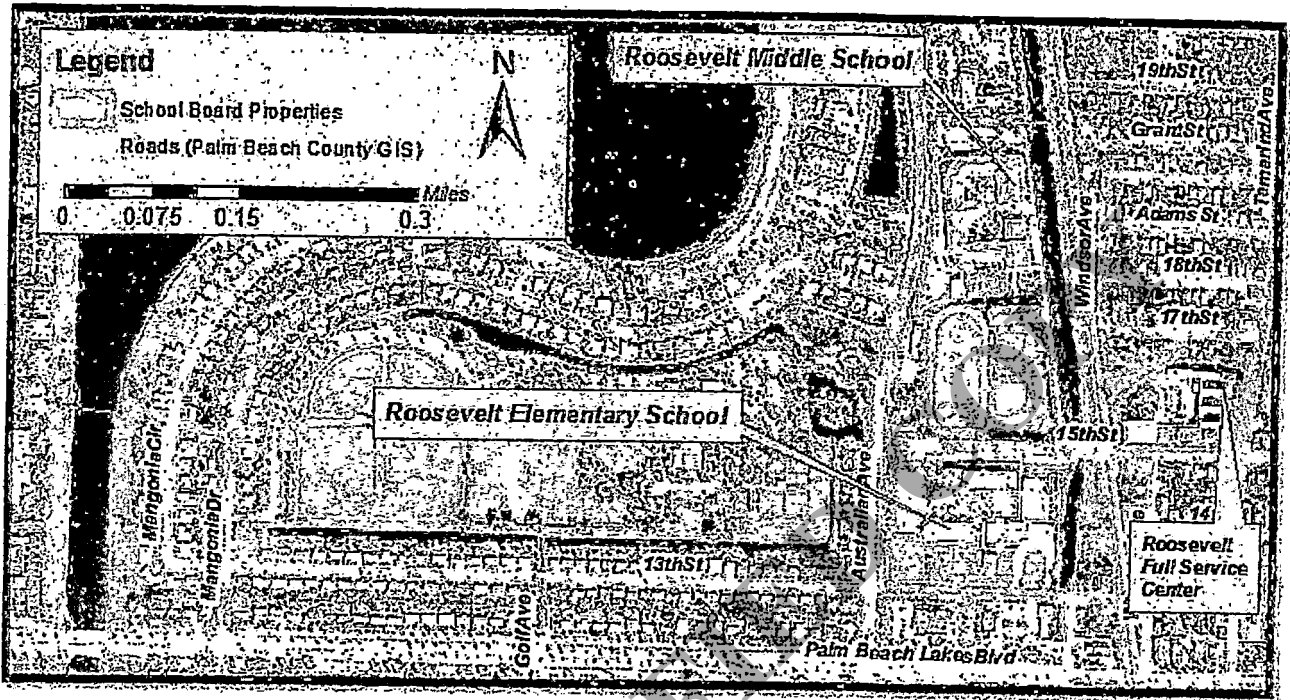
**Address:** 2222 Spruce Ave., West Palm Beach, FL 33407

**Summary of Stormwater Management Onsite:** *Minimal storage provided onsite, supplemented with exfiltration trench.*

**Discharge Point(s) and Receiving Waterbody:** *Discharges to Dixie Highway and ultimately the Lake Worth Lagoon.*

100' s of pipes.

## ROOSEVELT FULL SERVICE CENTER



**Address: 1601 Tamarind Avenue, West Palm Beach, FL 33407**

**Summary of Stormwater Management Onsite:** *City hydrologic data indicates no major storage facilities are provided onsite. Limited publically available documents were located.*

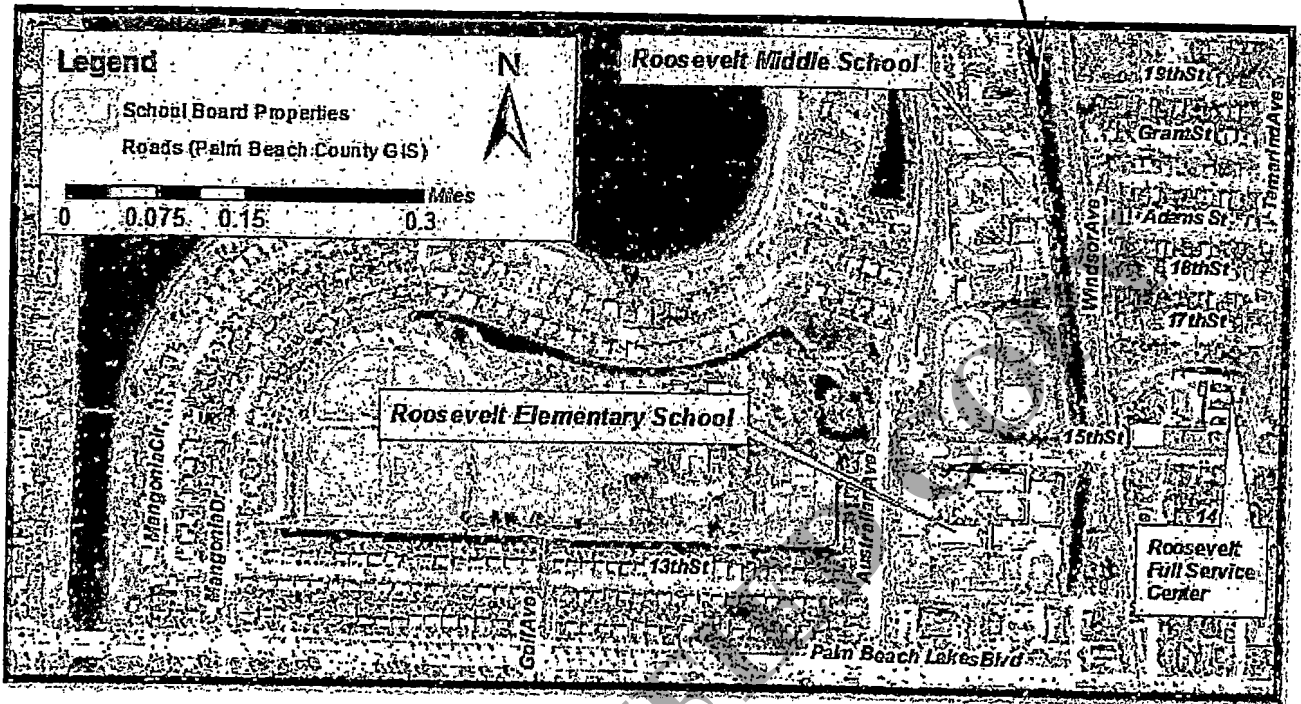
**Discharge Point(s) and Receiving Waterbody:** *Likely discharges to City system and ultimately outfalls to C-17 basin.*

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*All information contained within this exhibit is based on information that was available as part of public records and interpretation by professional engineers employed at Collective Water Resources, LLC.*

# ROOSEVELT ELEMENTARY SCHOOL

*WFB*



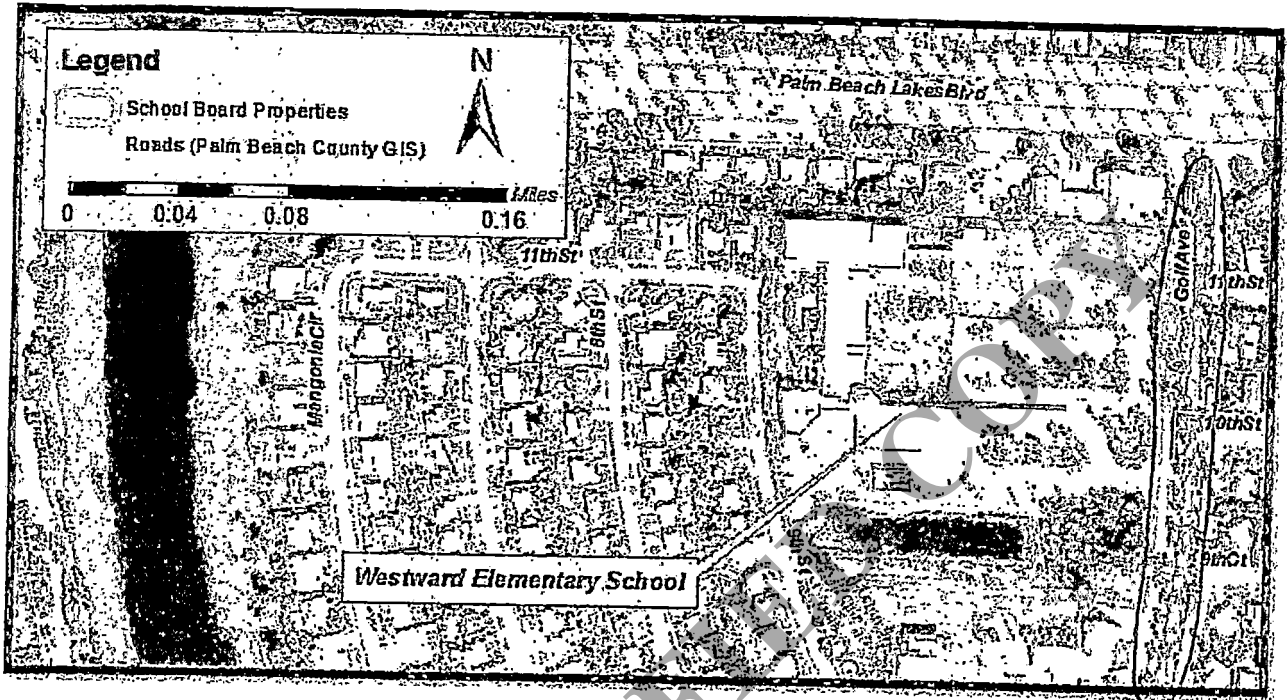
**Address: 1220 15<sup>th</sup> St., West Palm Beach, FL 33401**

**Summary of Stormwater Management Onsite: *Dry detention areas and exfiltration trench were constructed in 2003 (modification to South Florida Water Management District Standard General Permit 50-06000-P).***

**Discharge Point(s) and Receiving Waterbody: *Discharges to West Palm Beach Canal for ultimate discharge in C-17 basin. Discharge occurs at 25-year, 3-day storm event.***

NOT A

## WESTWARD ELEMENTARY SCHOOL



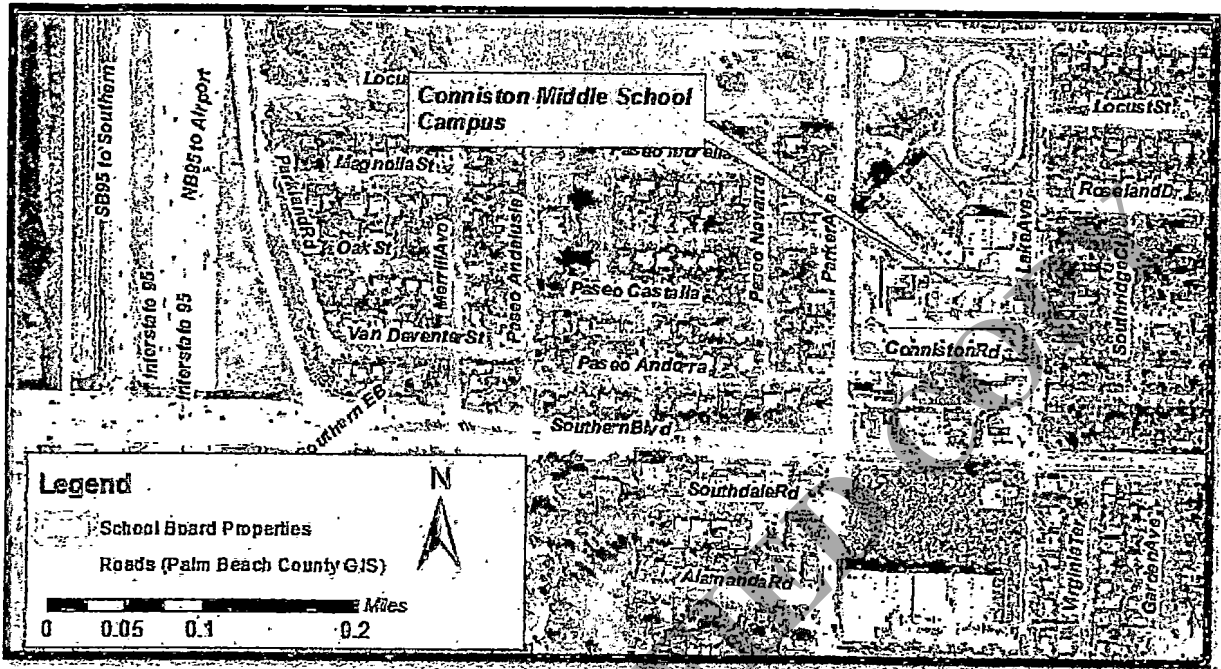
**Address: 1101 Golf Ave., West Palm Beach, FL 33401**

**Summary of Stormwater Management Onsite:** *School was rebuilt in 2007 and a series of dry and wet detention ponds were installed as part of a phased construction program. Minimal discharge occurs up to and including the 25-year, 3-day storm event (South Florida Water Management District Permit No. 50-07818-P).*

**Discharge Point(s) and Receiving Waterbody:** Discharges to City system (Golf Avenue Canal) for ultimate discharge into C-17 Basin.

*All information contained within this exhibit is based on information that was available as part of public records and interpretation by professional engineers employed at Collective Water Resources, LLC.*

## CONNISTON MIDDLE SCHOOL



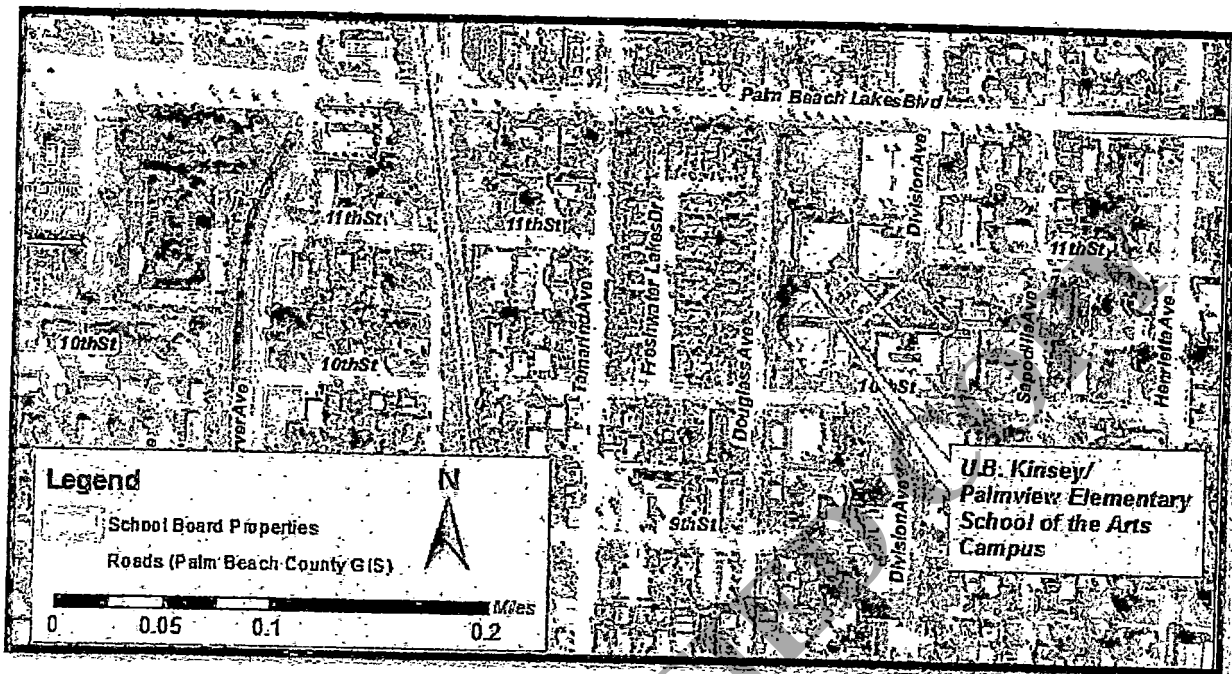
**Address: 3630 Parker Ave., West Palm Beach, FL 33405**

**Summary of Stormwater Management Onsite: *Dry retention ponds with additional perimeter swales. Limited storage provided on recreational facilities (ball fields) (South Florida Water Management District Permit Modification 50-05264, 2002).***

**Discharge Point(s) and Receiving Waterbody: *Discharges to City streets within the C-51 Basin and ultimately the Lake Worth Lagoon. Site was designed for zero discharge up to and including the 25-year, 3-day storm event (13 inches) originally. Ball fields were subsequently retrofitted with underdrain to allow for faster recovery of property after storms. Underdrain outfalls to City's system on Parker Avenue.***

*Underdrain on  
Parker Ave.*

## U.B. KINSEY/PALMVIEW ELEMENTARY SCHOOL OF THE ARTS



Address: 800 11<sup>th</sup> St., West Palm Beach, FL 33401

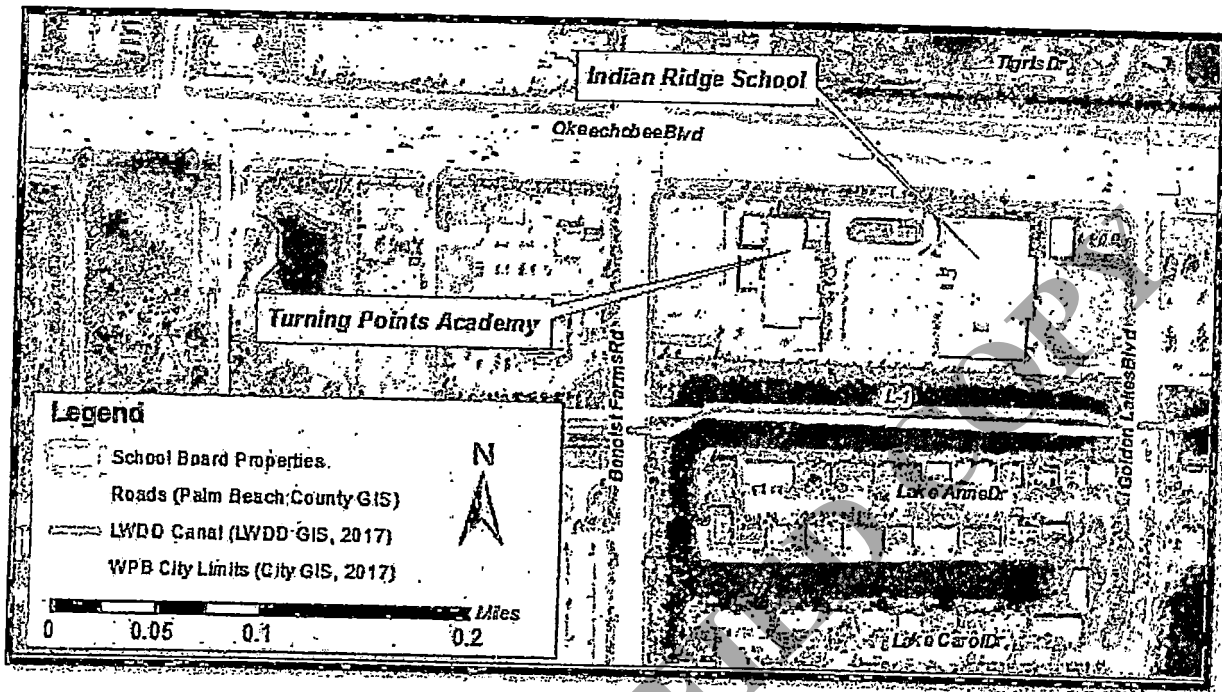
Summary of Stormwater Management Onsite: *Site of historical school was retrofitted according to SFWMD permit (#50-05955-P) with limited dry retention and exfiltration. Flood attenuation is reported below 25-year, 3-day storm event.*

Discharge Point(s) and Receiving Waterbody: *Discharges to City storm sewer and primarily outfalls to the Lake Worth Lagoon. Also potentially included in mapping of C-17 basin.*

Note: *Majority of campus is located on coastal ridge.*

*pipe to pipe  
overland flow*

## TURNING POINTS ACADEMY/INDIAN RIDGE SCHOOL



**Indian Ridge School Address: 1955 Golden Lakes Blvd.**

**Turning Points Academy School Address: 1950 Benoist Farms Rd., West Palm Beach, FL 33411**

**Summary of Stormwater Management Onsite: Per Standard General Permit No. 50-07118-P (South Florida Water Management District, 2005) - Dry detention with 765 LF exfiltration trench. Was constructed on a previously developed site (Charter Hospital).**

**Discharge Point(s) and Receiving Waterbody: Discharges via structures D1-1 (sharp crested weir at 14.85 feet NGVD-29) and D2-1 (triangular orifice at invert 11 feet NGVD-29). Receiving waterbody is the Lake Worth Drainage District L-1 Canal (formerly named Lake Anne), part of the C-51 Basin.**

**Other Relevant Information: Site stormwater controls sized to 10-year, 3-day storm event. Berm overtopping is designed to occur for storms larger than this design storm event.**



IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH  
COUNTY, FLORIDA  
CIVIL DIVISION

THE SCHOOL BOARD OF PALM BEACH COUNTY,  
a political subdivision of the State of Florida,

Plaintiff(s),

v.

CASE NO.

502013CA010144XXXXMB AH

CITY OF WEST PALM BEACH,

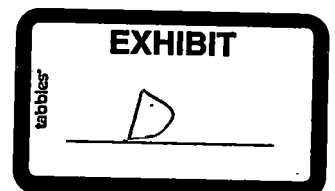
Defendant(s).

**AFFIDAVIT OF DONNA LEVENGOOD**

STATE OF FLORIDA                    }SS:  
COUNTY OF PALM BEACH         }

I, DONNA LEVENGOOD, being duly sworn, depose and state the following:

1. I am over 18 and I have personal knowledge of the facts stated in this Affidavit.
2. I am a Fiscal Service Manager of the Public Utilities for the City of West Palm Beach, Florida, and am authorized to make this Affidavit.
3. I am familiar with the books of account and have examined books, ordinances, resolutions, records, systems and documents kept by the City of West Palm Beach concerning the City of West Palm Beach's stormwater utility fees, services, and management system.
4. On August 29, 2016, the City of West Palm Beach passed and adopted City Resolution 277-16, which took effect on October 1, 2016. A copy of that Resolution is attached hereto as **Exhibit A**.



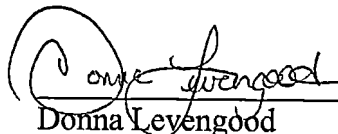
5. City Resolution 277-16 authorized a stormwater utility fee rate increase of approximately twenty-four percent, effective October 1, 2017. This rate increase is to be followed by annual three percent rate increases beginning October 1, 2018.

6. Notwithstanding its continued receipt of stormwater services, the School Board of Palm Beach County (the "School Board") has discontinued payment of the stormwater utility fees for the services from which it benefits.

7. If the School Board were paying the stormwater utility fees for the stormwater services provided, the aforementioned rate increase would have been approximately twenty-one percent, effective October 1, 2017, followed by annual three percent rate increases, beginning October 1, 2018.

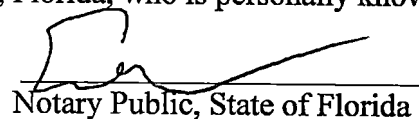
8. In addition, pursuant to City Resolution 240-93, a copy of which is attached hereto as Exhibit B, the City issued bonds to pay for the costs of building the City's stormwater management system. As set forth in City Resolution 240-93, the City is bound by its bond covenants to repay its bondholders for this project from the City's stormwater utility fees.

FURTHER AFFIANT SAYETH NAUGHT.



Donna Levengood  
Fiscal Services Manager  
City of West Palm Beach, Florida

The above Affidavit of Amounts Due and Owing was sworn to (or affirmed) and subscribed before me this 2<sup>nd</sup> of July, 2017, by Donna Levengood, Fiscal Services Manager for the Public Utilities of the City of West Palm Beach, Florida, who is personally known to me.



Notary Public, State of Florida.

My Commission Expires:



Erica Lynne Tenore  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# FF957418  
Expires 4/20/2020

**RESOLUTION NO. 277-16**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, ESTABLISHING STORMWATER MANAGEMENT SERVICE FEES AND CHARGES PURSUANT TO CHAPTER 90, SECTION 90-166 OF THE CODE OF ORDINANCES OF THE CITY OF WEST PALM BEACH; AMENDING AND REPLACING RESOLUTION NO. 328-13; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

\*\*\*\*\*

WHEREAS, Chapter 90, Sections 90-165 and 90-166 of the Code of Ordinances of the City of West Palm Beach, Florida, provide that the City Commission shall set sufficient stormwater utility fees to ensure that adequate revenues are generated to provide a balanced operating budget for the stormwater utility; and

WHEREAS, a stormwater rate study has been conducted by Public Resources Management Group, Inc., which has recommended adjusting fees and charges assessed for specific customer services, in order to recover additional capital, as well as debt service and operating costs associated with providing specific stormwater services.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA that:**

**SECTION 1: Stormwater Management Rates.**

- (a) The monthly Stormwater Management Utility rates shall be as set forth in Section 2 of this Resolution. These rates may be adjusted by the City Commission from time to time.
- (b) Residential developed property (i.e., single family detached, mobile home, apartment, condominium, etc.) shall be charged on the basis of one (1) equivalent residential unit (ERU) per residential parcel.
- (c) Nonresidential developed property (i.e., enterprises, business establishments, buildings or other occupancies not covered under subsection (b)) shall be charged on the basis of equivalent residential units (ERUs). The number of equivalent residential units shall be determined by the total square footage of impervious area of the property divided by two thousand one hundred seventy-one (2,171) square feet (statistically developed for residential developed property in the City of West Palm Beach and established as one ERU). Equivalent residential units will be rounded to the nearest tenth (0.1) of a unit. The number of equivalent residential units shall be multiplied by the appropriate rate established in Section 2.



**RESOLUTION 277-16**

- (d) Parcels that require stormwater services, including stormwater infrastructure and maintenance, stormwater/canal conveyance facilities and street sweeping, shall be charged a stormwater utility fee at Rate Code-A110, as established in Section 2.
- (e) Parcels that require reduced City services including, but not limited to, private developments where a private entity owns and maintains portions of the right-of-way and stormwater infrastructure and where the City provides stormwater conveyance facilities or any other service for certain portions of the private development shall be charged a stormwater utility fee at Rate Code A114, established in Section 2, which is equal to 68% of Rate Code A110.
- (f) Parcels that do not require City services including, but not limited to, private developments where a private entity owns and maintains all rights-of-way and stormwater infrastructure and where none of the private entity stormwater outfalls discharge to a City-maintained stormwater facility shall be charged a stormwater utility fee at Rate Code A112, established in Section 2, which is equal to 37% of Rate Code A110.
- (g) New drainage units or newly annexed parcels into the City corporate limits shall be charged based on services to be provided by the City. The determination as to whether a new parcel falls within the provisions of subsections (d), (e) or (f) of this Resolution shall be made solely by the Director of Public Utilities, or his or her designee.

**SECTION 2: Stormwater Rate Effective October 1, 2016:**

Rate Code-A110:	\$13.17
Rate Code-A114:	\$ 8.97
Rate Code-A112:	\$ 4.91

**SECTION 3:** Resolution No. 328-13 and any and all other ordinances, resolutions or parts thereof in conflict with this Resolution are hereby repealed.

**SECTION 4:** Effective October 1, 2017, the rates and fees adopted in this Resolution will automatically be increased by three percent (3 %) each October 1<sup>st</sup>, without further notice.

**SECTION 5:** This Resolution shall take effect on October 1, 2016.

**PASSED AND ADOPTED THIS 29TH DAY OF AUGUST, 2016.**



**ATTEST:**

X *Hazelline Carson*  
CITY CLERK  
Signed by: Hazelline Carson

**CITY OF WEST PALM BEACH BY  
ITS CITY COMMISSION:**

X *Geraldine Muolo*  
PRESIDING OFFICER  
Signed by: Geraldine Muolo

**APPROVED AS TO FORM AND LEGALITY:**

8/26/2016  
X *Nancy Urcheck*  
CITY ATTORNEY  
Signed by: NUrcheck

RESOLUTION NO. 240-93

OF THE CITY COMMISSION OF THE  
CITY OF WEST PALM BEACH, FLORIDA

Adopted November 29, 1993

Authorizing and Securing

UTILITY SYSTEM REVENUE BONDS

NOT A CERTIFIED COPY

tabbles	EXHIBIT
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RESOLUTION NO. 240-93

A RESOLUTION AUTHORIZING THE ISSUANCE OF NOT EXCEEDING \$67,500,000 UTILITY SYSTEM REVENUE REFUNDING AND IMPROVEMENT BONDS TO BE ISSUED IN ONE OR MORE SERIES, FOR THE PURPOSE OF PAYING AT THEIR MATURITIES AND REDEEMING AT A SELECTED REDEMPTION DATE OR DATES ALL OF THE OUTSTANDING WATER AND SEWER SYSTEMS REVENUE BONDS OF THE CITY OF WEST PALM BEACH, FLORIDA AND FOR PAYING THE COST OF THE 1993 PROJECT (AS HEREINAFTER DEFINED); PROVIDING FOR THE ISSUANCE OF ADDITIONAL UTILITY SYSTEM REVENUE BONDS TO PAY ALL OR PART OF THE COST OF ADDITIONAL IMPROVEMENTS TO THE CITY'S UTILITY SYSTEM AND FOR REFUNDING OUTSTANDING UTILITY SYSTEM REVENUE BONDS; PROVIDING FOR THE INCURRENCE OF OTHER TYPES OF INDEBTEDNESS OF THE CITY FOR THE PURPOSES OF THE UTILITY SYSTEM PAYABLE FROM THE NET REVENUES OF THE UTILITY SYSTEM; PROVIDING FOR THE PAYMENT OF SUCH BONDS, OTHER INDEBTEDNESS AND THE INTEREST THEREON FROM NET REVENUES OF THE CITY'S UTILITY SYSTEM; SETTING FORTH THE RIGHTS AND REMEDIES OF THE HOLDERS OF SUCH BONDS AND OTHER INDEBTEDNESS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of West Palm Beach, a body corporate and politic in Palm Beach County, Florida (the "City"), now owns and operates a utility system, consisting of the Water System (as hereinafter defined), the Sewer System (as hereinafter defined) and the Stormwater Drainage Facilities (as hereinafter defined); and

WHEREAS, under the authority of the Constitution and laws of the State of Florida, including Chapter 166, Florida Statutes, the City Charter, Chapter 65-2381, Laws of Florida, Special Acts of 1965, as amended by the Emergency Ordinance No. 1-78 (the "City Charter") adopted by the City Commission (the "City Commission") of the City on July 3, 1978, the City Commission adopted Resolution No. 108-78 on July 10, 1978 as amended and supplemented (collectively, the "Outstanding Bond Resolution") which authorized the issuance of not exceeding \$15,000,000 Water and Sewer Systems Revenue Bonds (Series A) of the City for the purpose of paying and redeeming the Outstanding Bonds, as that term is defined in the Outstanding Bond Resolution, and paying the cost of certain improvements to the Water and Sewer Systems; and

WHEREAS, the Outstanding Bond Resolution also authorized the issuance of bonds thereunder in addition to the bonds mentioned in the preceding paragraph for the purpose of paying the cost of additional improvements to the Water and Sewer Systems (as defined in the Outstanding Bond Resolution); and

WHEREAS, pursuant to the authority mentioned in the second preamble hereof and the Outstanding Bond Resolution, the city has heretofore issued the following Water and Sewer Systems Revenue Bonds (the outstanding principal amounts of which are herein called the "Outstanding Bonds"):

(i) \$15,000,000 Water and Sewer Systems Revenue Bonds (Series A), dated August 15, 1978 of which \$3,385,000 are presently outstanding; and

(ii) \$8,000,000 Water and Sewer Systems Revenue Bonds, (Series B), dated June 1, 1983, of which \$2,320,000 are presently outstanding.

WHEREAS, under the authority granted by the Constitution and Laws of the State of Florida, including Chapter 166, Florida Statutes and the City Charter, the City is authorized to issue utility system revenue bonds to pay at their respective maturities or redeem at earliest permitted redemption date all of the Outstanding Bonds and to pay the Cost (as hereinafter defined) of Improvements (hereinafter defined) to the Utility System (as hereinafter defined) and to pledge for the payment of such revenue bonds the Net Revenues (as hereinafter defined) of the Utility System; and

WHEREAS, the City has determined that it is in the best interests of the City to pay at their respective maturities and redeem at a selected redemption date or dates all of the Outstanding Bonds for the principal purposes of adopting a new resolution that will better provide for the operational and capital requirements of the Utility System, to include within the Utility System the Stormwater Drainage Facilities and to effect interest cost savings; and

WHEREAS, the City has determined that it is in the best interests of the City to provide for the funding necessary to pay the Cost (as hereinafter defined) of the 1993 Water and Sewer Project (as hereinafter defined) and the 1993 Stormwater Drainage Project (as hereinafter defined) each of which Projects constitutes an Improvement (as hereinafter defined) to the Utility System; and

WHEREAS, the City has determined to issue its Utility System Revenue Refunding and Improvement Bonds, Series 1993 payable solely from and secured by a pledge of the Net Revenues (as hereinafter

defined) of the Utility System, in a principal amount of not exceeding \$67,500,000 to be issued in or more series for the purpose of paying, with other available funds, at their respective maturities and redeeming at a selected redemption date or dates all of the Outstanding Bonds, together with interest on such Outstanding Bonds to their maturity or redemption and any applicable redemption premium and for paying the Cost of the 1993 Water and Sewer Project and the 1993 Stormwater Drainage Project; and

WHEREAS, the City has determined to provide in this Resolution for authorizing the issuance hereafter of other Utility System Revenue Bonds and other forms of indebtedness of the City payable from the Net Revenues of the Utility System under this Resolution for the purpose of paying all or any part of the cost of any improvements, renewals and replacements of the Utility System or any part thereof and such extension and additions thereto as may be necessary or desirable, in the judgment of the City, to keep the same in proper condition for the safe, efficient and economic operation thereof or to refund or refinance all or a portion of the Bonds of any series or other indebtedness of the City incurred with respect to the Utility System then outstanding, and to prescribe the terms and conditions under which such Bonds may be authorized and issued; and

WHEREAS, due to the uncertainty of the municipal bond market and the need to access such market very quickly, the City has determined to delegate to the Mayor of the City the authority to fix the final details of the Series 1993 Bonds, subject to the conditions hereinafter stated; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA:

ARTICLE I.

Definitions.

Section 101. Meaning of Words and Terms. In addition to words and terms elsewhere defined in this Resolution, the following words and terms as used in this Resolution shall have the following meaning, unless some other meaning is plainly intended:

"Accountant" shall mean the independent certified public accountant or firm of independent certified public accountants which shall have a favorable reputation for skill and experience in accounting matters at the time and during the period employed by the City under the provisions of Section 705 of this Resolution to perform and carry out the duties imposed on the Accountant by this Resolution.

"Accreted Value" of a Capital Appreciation Bond shall mean the original principal amount thereof plus interest accrued thereon on the basis of a 360-day year consisting of twelve 30-day months compounded semi-annually on each Interest Payment Date commencing on the Interest Payment Date next succeeding the dated date of such Capital Appreciation Bonds to the date of maturity or redemption prior to maturity of such Capital Appreciation Bonds on the date of determination. The Accreted Value with respect to any date other than an Interest Payment Date is the Accreted Value on the next preceding Interest Payment Date or the dated date of such Capital Appreciation Bonds for the period between such dated date and the initial Interest Payment Date for such Bonds plus the percentage of the Accreted Value on the next succeeding Interest Payment Date derived by dividing the number of days from the next preceding Interest Payment Date or the dated date of such Capital Appreciation Bonds for the period between such dated date and the initial Interest Payment Date for such Bonds to the date of determination by the total number of days from the next succeeding Interest Payment Date or the dated date of such Capital Appreciation Bonds for the period between such dated date and the initial Interest Payment Date for such Bonds to the next succeeding Interest Payment Date.

"Additional Bonds" shall mean the Bonds issued at any time under the provisions of Section 209 of this Resolution.

"Amortization Requirements" shall mean the amounts required to be deposited in the Redemption Account for any Series of Bonds for the purpose of redeeming prior to their maturity and paying at their maturity the Term Bonds of any Series, issued pursuant to this Resolution, the specific amounts and times of such deposits to

be determined by the City Commission in the resolution authorizing the issuance of such Series of Bonds.

"Annual Budget" shall mean the Annual Budget adopted pursuant to Section 503 of this Resolution.

"Annual Loan Payment" shall mean the total amount to be paid by the City pursuant to a State Loan in a State fiscal year representing principal, redemption premium, if any, any deposits required to be made to debt service reserves and administrative expenses of the State required to be paid by the City pursuant to such State Loan.

"Balloon Indebtedness" shall mean the portion of a series of Bonds which is not required by the terms of the Series Resolution pursuant to which such Bonds were issued to be amortized by redemption prior to their maturity, if such portion of the principal amount of such Series constitutes twenty-five per centum (25%) or more of the principal amount of such Series.

"Bond Registrar" shall mean a bank or trust company, either within or without the State of Florida, designated as such by the City Commission, which shall perform such functions as Bond Registrar as are required by Article II of this Resolution.

"Bonds" shall mean collectively the Bonds and other forms of indebtedness issued under the provisions of Article II of this Resolution.

"Bondholders" shall mean the registered owners of the Bonds.

"Bond Service Account" shall mean the Bond Service Account, a special account created and designated by Section 505 of this Resolution.

"Capital Appreciation Bond" shall mean any Bond or Bonds of a Series which are sold at an initial price to the public of less than 97% of the principal amount thereof payable at maturity, but only if such Bond or Bonds are designated as a Capital Appreciation Series or Term Bond pursuant to the Series Resolution providing for the issuance of the Series of Bonds of which such Capital Appreciation Bond or Bonds are to be a part.

"Capital Expenditures" shall mean all expenditures made for extensions, additions, improvements, renewals and replacements (other than ordinary maintenance and repairs) acquired, constructed or installed for the purpose of preserving, extending, increasing or improving the service rendered by the Utility System or for reducing the cost of operation, and shall include the cost of purchasing and installing such equipment and appurtenances as may

be necessary to meet the demands upon the Utility System; Capital Expenditures shall also include the acquisition of such lands and rights-of-way and such engineering, legal and administrative expenses as may be required in connection with the foregoing.

"City" shall mean the City of West Palm Beach, a body corporate and politic in Palm Beach County, Florida.

"City Attorney" shall mean the City Attorney of the City of West Palm Beach or the officer succeeding to his principal functions.

"City Clerk" shall mean the City Clerk of the City of West Palm Beach or the officer succeeding to his principal functions.

"City Commission" shall mean the City Commission of the City of West Palm Beach or the board or body in which the general legislative powers of the City shall be vested.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and any successor Code, together with all applicable regulations, announcements and rulings promulgated thereunder.

"Completion Date" shall mean the date of completion of the acquisition or construction of any Improvements, as the case may be, as such date shall be certified pursuant to the requirements of this Resolution.

"Construction Fund" shall mean the West Palm Beach Utility System Construction Fund, a special fund created and designated by Section 401 of this Resolution.

"Consulting Engineers" shall mean the engineer, engineering firm, qualified rate consultant or firm of qualified rate consultants or corporation at the time employed by the City under the provisions of Section 704 of this Resolution to perform and carry out the duties imposed on the Consulting Engineers by this Resolution; provided, however, the City shall be permitted to retain more than one firm of consulting engineers to carry out the functions of Consulting Engineer hereunder, and in which event, the term "Consulting Engineer" shall mean each of such firms.

"Convertible Bonds" shall mean Bonds issued under this Resolution which are convertible, at the option of the City, into a form of Bonds which are permitted by this Resolution other than the form of such Bonds at the time they were issued.

"Cost", as applied to the 1993 Project or any Improvements, shall embrace the costs of acquisition and construction and all



obligations and expenses and all items of cost which are set forth in Section 403 of this Resolution.

"Credit Facility" shall mean any legal arrangement pursuant to which the entity providing such Facility agrees to make or provide funds to the City to make payment of the purchase price (including principal or principal and interest) of Optional Tender Bonds upon their tender by the Bondholders for purchase; provided that the furnishing of such funds by such entity pursuant to such arrangement shall be required despite material adverse changes (except bankruptcy and a failure to pay Bonds) in the financial condition of the City.

"Current Expenses" shall mean the City's reasonable expenses of maintenance, repair and operation of the Utility System and shall include, without limiting the generality of the foregoing, all ordinary and usual expenses of maintenance and repair, which may include expenses not annually recurring but which are not considered extraordinary in nature, operating expenses from the management and operation of the utility facilities of parties other than the City, all City administrative expenses and any payments to pension or retirement funds properly chargeable to the Utility System, insurance premiums, engineering expenses relating to maintenance, repair and operation, fees and expenses of the Bond Registrar, legal expenses, any taxes which may be lawfully imposed on the Utility System or its income or operations and reserves for such taxes (including specifically the taxes levied by the City pursuant to Section 166.231, Florida Statutes, as amended), annual premiums for bond insurance or insurance assuring availability of the amounts required to be on deposit in the Reserve Account, annual fees for Credit Facilities or Liquidity Facilities, the cost of purchasing water from third parties and the cost of purchasing treatment services for sewerage from third parties (including specifically ECR Operation and Maintenance Payments but excluding ECR Renewal and Replacement Payments and ECR Debt Service Payments, both of which are payable pursuant to Section 511 of this Resolution) and any other expenses required to be paid by the City under the provisions of this Resolution or by law, all to the extent properly attributable as an operating expense of the Utility System in accordance with generally accepted accounting principles employed in the operation of public utility systems similar to the Utility System. Current Expenses shall also include in any Fiscal Year the amount actually deposited to the credit of the Rate Stabilization Account in such Fiscal Year. Current Expenses shall not include (i) any reserves for extraordinary maintenance or repair; (ii) any allowance for depreciation, amortization, depletion or other similar charges; (iii) any deposits or transfers to the credit of the Sinking Fund, the Renewal, Replacement and Improvement Fund or the General Reserve Fund; (iv) payments of expenses which would be considered as an operating expense paid

from funds in the Renewal, Replacement and Improvement Fund or on behalf of third parties for an entitlement for the capacity of water production and treatment facilities and wastewater transmission, treatment and effluent disposal facilities; (v) payments in lieu of taxes which are to be paid pursuant to Section 511 of this Resolution; (iv) payments made on State Loans or other forms of indebtedness on behalf of third parties for an entitlement for capacity of water production and treatment facilities and wastewater transmission, treatment and effluent disposal facilities; or (vii) such miscellaneous deductions as are applicable to prior accounting periods.

"Current Interest Bonds" shall mean Bonds the interest on which is payable to the Bondholder on the Interest Payment Dates with respect thereto and not only at the maturity thereof.

"Defaulted Interest" shall have the meaning attributed to such term in Section 202 of this Resolution.

"Depository" shall mean any bank or trust company duly authorized by law to engage in the banking business and designated by the Finance Director as a depository of moneys under the provisions of this Resolution.

"East Central Regional Wastewater Treatment Facilities" shall mean the 55 million gallon per day wastewater treatment plant and all appurtenances thereto located in the City and owned by the ECR Board on a parcel of land containing approximately 300 acres in Section 11, Township 43 South, Range 42 East, Palm Beach County, Florida.

"ECR Board" shall mean the East Central Regional Wastewater Treatment Facilities Board, created under the laws of the State of Florida by an interlocal agreement as an independent special district of the City, Palm Beach County, the City of Lake Worth, the City of Riviera Beach and the Town of Palm Beach (collectively, the "Participants"), which is the owner of the East Central Regional Wastewater Treatment Facilities.

"ECR Board Operation and Maintenance Payments" shall mean the sum of the payment required to be made by the City monthly to the ECR Board for its share (based upon allocated capacity) of the operation and maintenance expenses of the East Central Wastewater Treatment Facilities which payment requirement is set forth in the Interlocal Agreement, dated as of September 9, 1992, by and among the Participants.

"ECR Board Debt Service Payments" shall mean the sum of the payment required to be made by the City monthly to the ECR Board for its share (based upon allocated capacity) of the principal of,

interest on and the coverage requirement for all indebtedness incurred by the ECR Board for the purpose of improvements to the East Central Wastewater Treatment Facilities which payment requirement is set forth in the Participatory Agreement, dated as of April 20, 1993, by and among the Participants.

"ECR Board Renewal and Replacement Payments" shall mean the sum of the payment required to be made by the City annually to the ECR Board for its share (based upon allocated capacity) of the required renewals, replacements and improvements (not otherwise financed by indebtedness) to the East Central Wastewater Treatment Facilities which payment requirement is set forth in the Interlocal Agreement, dated as of September 9, 1992, by and among the Participants.

"Escrow Agent" shall mean a bank or trust company, either within or without the State of Florida, designated as Escrow Agent in the Escrow Deposit Agreement, and performing such functions as are required by such Agreement. The Escrow Agent shall be selected and appointed by the Mayor pursuant to the Mayor's Certificate.

"Escrow Deposit Agreement" shall mean the Escrow Deposit Agreement, to be dated as of the dated date of the Series 1993 Bonds by and between the City and the Escrow Agent, pursuant to which a portion of the proceeds of the Series 1993 Bonds, together with other available funds of the City, shall be held, invested and applied by the Escrow Agent as provided in this Resolution and the Escrow Deposit Agreement to the payment at their respective maturities and redemption at a selected redemption date or dates of all of the Outstanding Bonds. If it shall be determined by the Mayor pursuant to the Mayor's Certificate that the Outstanding Bonds will be redeemed at the earliest permitted redemption date therefor following the date of delivery of the Series 1993 Bonds, there will be no Escrow Deposit Agreement.

"Finance Director" shall mean the Director of Finance of the City of West Palm Beach or the officer succeeding to his principal functions.

"Financial Statements" shall mean the audited financial statements of the City relating to the Utility System, prepared in accordance with generally accepted accounting principles applicable to utility systems owned by municipalities.

"Fiscal Year" shall mean the period commencing on the first day of October and ending on the last day of September of the following year as the same may be amended from time to time to conform to the fiscal year of the City.

"General Reserve Fund" shall mean the West Palm Beach Utility System General Reserve Fund, a special fund created and designated by Section 505 of this Resolution.

"Government Obligations" shall mean (i) direct obligations of, or obligations the payment of the principal and on which the interest are unconditionally guaranteed by, the United States of America; (ii) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clause (i) of this definition held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor on the underlying obligations described in clause (i) of this definition, and which underlying obligations are not available to satisfy any claim of the custodian or any person claiming through the custodian or to whom the custodian may be obligated; (iii) municipal obligations, the payment of the principal of, interest on and redemption premium, if any which are irrevocably secured by obligations described in clause (i) of this definition and which obligations have been deposited in an escrow account which is irrevocably pledged to the payment of the principal, interest on and redemption premium, if any, on such municipal obligations; (iv) obligations issued by any State of the United States; and (v) municipal obligations the payment of the principal of and interest on which are insured; provided, however, the obligations described in clauses (iv) and (v) of this definition shall also be rated in one of the top two highest rating categories (without regard to any gradation within such category) by both Moody's Investors Service and Standard & Poor's Corporation.

"Impact Fee Fund" shall mean the Impact Fee Fund, a special fund created and designated pursuant to Section 505 of this Resolution.

"Impact Fees" shall mean all nonrefundable (except at the option of the City) capital expansion fees, pollution control fees, capacity charges and other similar fees and charges separately imposed by the City as a nonuser capacity charge for the proportionate share of the cost of expanding, oversizing, separating or constructing Improvements to the Utility System and any investment earnings from the investment of funds on deposit in the Impact Fee Fund.

"Improvements" shall mean such improvements, renewals and replacements of the Utility System or any part thereof and such extensions, betterments and additions thereto as may be necessary or desirable, in the judgment of the City, to keep the same in proper condition for the safe, efficient and economic operation thereof and to integrate into the Utility System any unit or part thereof, and shall include such land, structures and facilities as may be authorized to be acquired or constructed by the City under the provisions of Florida law and such improvements, renewals and replacements of such land, structures and facilities and the

Utility System and such extensions and additions thereto as may be necessary or desirable for continuous and efficient service to the public.

"Interest Payment Dates" shall mean the dates in each year (which may be as frequently as daily) on which the interest on a Series of Bonds is to be paid as determined in the Series Resolution with respect to such Series of Bonds. The Interest Payment Dates with respect to the Series 1993 Bonds shall be determined by the Mayor pursuant to the Mayor's Certificate.

"Interest Rate Swap" shall mean an agreement in writing by and between the City and another entity (the "Swap Partner") pursuant to which (i) the City agrees to pay to the Swap Partner an amount, either at one time or periodically, which may, but is not required to, be determined by reference to the amount of interest payable on all or a portion of a Series of Bonds specified in such agreement in the period specified in such agreement and (ii) the Swap Partner agrees to pay to the City an amount, either at one time or periodically, which may, but is not required to, be determined by reference to the amount of interest payable on all or a portion of a Series of Bonds specified in such agreement in the period specified in such agreement. The term "Interest Rate Swap" shall also include so-called "interest rate cap agreements" and "interest rate floor agreements". Any payments on Interest Rate Swaps (other than termination payments on an Interest Rate Swap) related to Bonds are payable from the Bond Service Account or the General Reserve Fund, at the option of the City, the priority of the payment of such Interest Rate Swap payments to be determined in the Series Resolution for the Series of Bonds to which such Interest Rate Swap relates. All termination payments with respect to any Interest Rate Swap shall be payable solely from moneys from time to time on deposit in the General Reserve Fund. The City shall use its best efforts to obtain a rating from Moody's Investor's Service, Inc. on any Series of Bonds to which an Interest Rate Swap relates.

"Interim Bonds or Notes" shall mean bonds or notes issued by the City with a final maturity not longer than 60 months (or longer period if then so permitted by the provisions of Florida law relating to the issuance of bond anticipation notes by municipalities) in anticipation of the refinancing thereof from all or a portion of the proceeds of a Series of Bonds issued under this Resolution.

"Investment Obligations" shall mean any of the following, to the extent that the same is legal for the investment of public funds under Florida law:

(i) direct general obligations of, or obligations the payment of principal and interest on which are unconditionally guaranteed by, the United States of America;

(ii) obligations issued or guaranteed by any instrumentality or agency of the United States of America, whether now existing or hereafter organized, including but not limited to those of the Federal Financing Bank, the members of the Farm Credit System whether individually or consolidated, Federal Home Loan Banks, the Export-Import Bank, Government National Mortgage Association and the Tennessee Valley Authority;

(iii) evidences of ownership of proportionate interests in future interest or principal payments on specified obligations described in clause (i) of this definition held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor on the underlying obligations described in clause (i) of this definition, and which underlying obligations are not available to satisfy any claim of the custodian or any person claiming through the custodian or to whom the custodian may be obligated;

(iv) bankers acceptances, certificates of deposit or time deposits of any bank, trust company or savings and loan association (including any investment in pools of such bankers acceptances, certificates of deposit or time deposits), which to the extent that such obligations are not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, are collateralized at all times in amounts and by obligations as shall be permitted by Florida law;

(v) municipal obligations, the payment of the principal of, interest on and redemption premium, if any, on which are irrevocably secured by obligations described in clause (i) of this definition and which obligations have been deposited in an escrow account which is irrevocably pledged to the payment of the principal of, interest on and redemption premium, if any, of such municipal obligations;

(vi) obligations issued by any State of the United States, which are rated in one of the top two rating categories (without regard to any gradation within such category) by both Moody's Investors Service and Standard & Poor's Corporation;

(vii) municipal obligations the payment of the principal of and the interest on which are insured, which are rated in one of the top two rating categories (without regard to any gradation within such category) by both Moody's Investors Service and Standard & Poor's Corporation;

(viii) any repurchase, reverse repurchase or investment agreement with any bank or trust company organized under the laws of any state of the United States or any national banking association, insurance company, or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York and a member of the Security Investors Protection Corporation, which agreement is secured by any one or more of the securities described in (i), (ii) or (iii) above provided that the City has a perfected first security interest in the collateral and that the City or its agent has possession of the collateral, and that such collateral is held free and clear of claims by third parties; and

(ix) any other security or investment in which the City is permitted by Florida law to invest its funds.

"Maximum Principal and Interest Requirements" shall mean the maximum amount of Principal and Interest Requirements for any Fiscal Year.

"Mayor" shall mean the Mayor of the City of West Palm Beach or the officer succeeding to the principal executive functions of the Mayor.

"Mayor's Certificate" shall mean the certificate of the Mayor given pursuant to the provisions of Section 208 of this Resolution which delegate to the Mayor the authority to act on behalf of the City to fix certain details and make certain appointments with respect to the Series 1993 Bonds.

"Monthly State Loan Requirement" shall mean the amount payable by the City in each month pursuant to any State Loan.

"Net Revenues" for any particular period shall mean the amount of the excess of the Revenues for such period over the Current Expenses for such period.

"Optional Tender Bonds" shall mean the portion of a Series of Bonds issued under this Resolution, a feature of which is an option on the part of the holders of such Bonds to tender such Bonds to the City or a trustee or other fiduciary for such holders for purchase.

**"Outstanding"** shall mean, when used with respect to the Bonds, all Bonds theretofore delivered except:

(a) Bonds paid or redeemed or delivered to or acquired by the city and cancelled; and

(b) Bonds deemed to have been paid in accordance with Section 307 or Section 1101 of this Resolution.

**"Outstanding Bonds"** shall mean the outstanding principal amounts of Water and Sewer Utility Systems Bonds, Series A and B specified in the fourth preamble of this Resolution.

**"Principal"** or **"principal"** shall mean (i) with respect to Current Interest Bonds, the stated principal amount thereof and (ii) with respect to Capital Appreciation Bonds, the Accreted Value thereof, as of any particular date of determination.

**"Principal and Interest Requirements"** shall mean the respective amounts which are required in each Fiscal Year to provide:

(i) for paying the interest on all Bonds then Outstanding which is payable on each Interest Payment Date in such Fiscal Year, and

(ii) for paying the principal of all Serial Bonds then Outstanding which is payable upon the maturity of Serial Bonds in such Fiscal Year, and

(iii) the Amortization Requirements for the Term Bonds of such Series for such Fiscal Year, and

(iv) the amount, if any, required to be deposited in the General Reserve Fund on account of the Annual Loan Payment in such Fiscal Year.

In determining the amount of the Principal and Interest Requirements for any Fiscal Year, the following rules shall apply:

(a) with respect to Variable Rate Bonds, the interest rate shall be assumed to be the average rate of interest for all Variable Rate Bonds for the prior Fiscal Year or portion thereof or if there were no Variable Rate Bonds Outstanding during such prior Fiscal Year, then the initial rate of interest on such Variable Rate Bonds; "average rate" shall mean the rate determined by dividing the total amount of interest paid on Variable Rate Bonds in any Fiscal Year or portion thereof by the average principal amount of Variable



Rate Bonds Outstanding during such Fiscal Year or portion thereof;

(b) with respect to Interim Bonds or Notes, interest only and not the principal shall be included in Principal and Interest Requirements if the Series of Bonds all or a portion of the proceeds of which are expected to be used to refinance such Interim Bonds or Notes have been duly authorized by the City; provided, however, none of the interest or principal on Interim Bonds or Notes shall be included in Principal and Interest Requirements if the City Commission shall determine in the resolution authorizing the issuance of such Interim Bonds or Notes that such Interim Bonds or Notes shall be Subordinated Indebtedness hereunder;

(c) with respect to Optional Tender Bonds, Principal and Interest Requirements shall not include the principal amount of such Optional Tender Bonds payable upon exercise by the holders thereof of the option to tender such Bonds for purchase to the extent and for so long as a Credit Facility shall be in full force and effect with respect to such Optional Tender Bonds but shall include the regularly scheduled principal payments on such Optional Tender Bonds, either upon payment at maturity or redemption in satisfaction of the Amortization Requirements for such Optional Tender Bonds; provided, however, that during any period of time after the issuer of the Credit Facility has advanced funds thereunder and before such amount is repaid, Principal and Interest Requirements shall include the principal amount so advanced and interest thereon, in accordance with the principal repayment schedule and interest rate or rates specified in the Credit Facility;

(d) if interest on a Series of Bonds is payable from the proceeds of such Bonds or from other amounts set aside irrevocably for such purpose at the time such Bonds are issued, interest on such Series of Bonds shall be included in Principal and Interest Requirements only in proportion to the amount of interest payable in the then current Fiscal Year from amounts other than amounts so funded to pay such interest;

(e) principal on a Series of Bonds may be excluded from Principal and Interest Requirements until the first full Fiscal Year following the Completion Date of any Improvements the construction or acquisition of which was financed with the proceeds of such Series of Bonds, except to the extent that principal of such Series of Bonds is actually payable during the period of such construction or acquisition;

(f) Principal and Interest Requirements shall not include the principal of, redemption premium, if any, and interest on Subordinated Indebtedness;

(g) Principal and Interest Requirements shall not include the principal of, redemption premium, if any, and interest on bonds of the City issued for the purpose of financing the acquisition or construction of Separate Systems;

(h) for purposes of the covenant regarding rates contained in clause (a) of Section 502 of this Resolution only, the City shall be entitled to a credit against the Principal and Interest Requirements for the amount, if any, of Impact Fees on deposit in the Impact Fee Account on the first day of a Fiscal Year which may, under Florida law, be used for payment of principal of, redemption premium, if any, or interest on Bonds and which have been irrevocably budgeted in such Fiscal Year for payment of principal of, redemption premium, if any, or interest on Bonds;

(i) any Bonds the payments by the City of interest on which are fixed, through the use of Interest Rate Swaps, matching inverse cash flows on separate portions of the same Series of Bonds or otherwise, shall be treated as fixed interest rate Bonds for so long as such payment obligation is so fixed;

(j) Principal and Interest Requirements shall apply only to Bonds which are outstanding (as defined in this Resolution); and

(k) with respect to Balloon Indebtedness, there shall be taken into account in each year the amount of principal of such Balloon Indebtedness that would be payable in such period if the principal of such Balloon Indebtedness were amortized from the date of issuance thereof over a period of twenty-five (25) years.

"Public Works Director" shall mean the Director of the Public Works Department of the City from time to time appointed by the City Commission or the official of the City who shall succeed to his principal functions.

"Rate Stabilization Account" shall mean the Rate Stabilization Account, a special account created and designated within the General Reserve Fund pursuant to Section 505 of this Resolution.

"Redemption Account" shall mean the Redemption Account, a special account created and designated by Section 505 of this Resolution.

"Refunding Bonds" shall mean the Bonds issued at any time under the provisions of Section 210 of this Resolution.

"Regular Record Date" shall mean the 15th day (whether or not a business day) of the month preceding any Interest Payment Date (if such Interest Payment Date is the first day of a month) or the first day (whether or not a business day) of the month of any Interest Payment Date (if such Interest Payment Date is the 15th day of a month); provided, however, that a different Regular Record Date may be provided for a Series of Bonds pursuant to the Series Resolution with respect to such Series.

"Renewal, Replacement and Improvement Fund" shall mean the West Palm Beach Utility System Renewal, Replacement and Improvement Fund created and designated by Section 505 of this Resolution.

"Renewal, Replacement and Improvement Fund Requirement" shall mean the amount designated in the Annual Budget as the Renewal, Replacement and Improvement Fund Requirement but in no event less than the total of (i) eight per centum (8%) of the Revenues for the prior Fiscal Year of the Water and Sewer System in the current Fiscal Year and (ii) three per centum (3%) of the Revenues shown on the Annual Budget for the Stormwater Drainage Facilities in the current Fiscal Year, subject in all events to the provisions of Section 505(d) of this Resolution.

"Reserve Account" shall mean the Reserve Account, a special account created and designated by Section 505 of this Resolution, including any subaccounts created therein and any separate Reserve Accounts created as permitted by Section 505 of this Resolution.

"Reserve Account Requirement" shall mean the Maximum Principal and Interest Requirements on account of the Bonds issued under the provisions of Article II of this Resolution in the current or any subsequent Fiscal Year, but excluding any amount described in clause (iv) of the definition of Principal and Interest Requirements in this Article or such lesser amount as shall be required in order for the interest on all or any portion of the Bonds authorized by this Resolution to be excludable from the gross income of the recipients thereof for federal income tax purposes under the Code; provided, however, that (i) the City shall be permitted to provide all or a portion of the Reserve Account Requirement by the execution and delivery of a policy of insurance or letter of credit or other similar arrangement which, after its issuance and delivery, will permit the Finance Director to receive the full amount covered by such arrangement without further conditions, financial or otherwise (a "Reserve Account Guaranty"); provided, however, that the provider of the Reserve Account Guaranty must be a reputable and nationally-recognized bond insurance provider or a bank or other financial institution whose

financial guaranties result in the bond issues of public entities (as of the date such Reserve Account Guaranty is delivered) being rated in one of the two highest full rating categories by Moody's Investors Service and Standard and Poor's Corporation if either or both are then rating the Bonds Outstanding hereunder or the Bonds to be issued hereunder; provided further, however, that nothing herein shall require the City to obtain a rating on any Bonds issued hereunder, (ii) with respect to all or any portion of a Series of Bonds the interest rate on which is not fixed at a single numerical rate, the City shall be permitted to provide for a Reserve Account Requirement which is less than the Maximum Principal and Interest Requirements pursuant to the Series Resolution with respect to such Series or pursuant to the resolution pursuant to which such Series is awarded to the purchaser thereof, and (iii) with respect to a Series of Bonds or portion thereof which is supported by a Credit Facility, the City shall be permitted to provide for a Reserve Account Requirement which is based only on the principal and interest due on the Bonds of such Series and not on the repayment provisions of such Credit Facility.

"Reserve Account Deposit Requirement" means the amount, if any, determined in each Series Resolution, required to be deposited monthly to the credit of the Reserve Account on account of such Series; provided, however,

(i) the Reserve Account Deposit Requirement for any Series shall not be less than one-thirty-sixth ( $1/36$ ) of the Reserve Account Requirement for such Series in each month until the amount on deposit in the Reserve Account shall be equal to the Reserve Account Requirement for such Series;

(ii) in the event any deficiency is created in the Reserve Account for any Series by a withdrawal or otherwise, the Reserve Account Deposit Requirement for any Series shall be increased, beginning in the month following the month in which such deficiency was created, by an amount at least equal to one-twelfth ( $1/12$ ) of the amount of such deficiency; and

(iii) the amount, if any, required by the terms of the documentation governing any Reserve Account Guaranty to be paid to the issuer of the Reserve Account Guaranty to reimburse such issuer for any draws made or funds advanced under such Reserve Account Guaranty.

"Revenue Fund" shall mean the West Palm Beach Utility System Revenue Fund, a special fund created and designated by Section 504 of this Resolution.

"Revenues" shall mean all moneys received by the City in connection with or as a result of its ownership or operation of the Utility System, including the income derived by the City from the sale of water produced, treated or distributed by, or the collection, transmission, treatment or disposal of sewage by the Utility System, the Stormwater Drainage Facilities Revenues, any proceeds of use and occupancy insurance on the Utility System or any part thereof, income from the management of the utility facilities of parties other than the City, income from investments made under this Resolution; provided, however, Revenues shall not include investment income from investments of moneys on deposit in any Rebate Fund created in connection with the Bonds or any Series of Bonds, the Construction Fund, the Impact Fee Account and the State Grant Reserve Account to the extent that earnings on the moneys on deposit in the State Grant Reserve Account are required pursuant to the State of Florida regulations governing such Account to be used for a purpose inconsistent with their use as Revenues or retained in such Account, proceeds of insurance (except use and occupancy insurance) and condemnation awards, proceeds of sales of property constituting a part of the Utility System, special assessments (except special assessments on property specially benefited by Improvements financed with the proceeds of Bonds) and the proceeds of Bonds or other Indebtedness.

"Separate System" shall mean water facilities, sewer facilities or water and sewer facilities, which are not, on the date of adoption of this Resolution, a part of the Utility System and which the City Commission shall determine by resolution to make a Separate System; provided, however, the City Commission shall not adopt a resolution designating facilities as a Separate System unless the requirements therefor as set forth in Section 711 of this Resolution are met at the time of such designation.

"Serial Bonds" shall mean the Bonds of a Series which shall be stated to mature in annual installments and "Term Bonds" shall mean the Bonds of a Series so designated in the Series Resolution for such Bonds.

"Series" shall mean the Bonds delivered at any one time under the provisions of Sections 208, 209 and 210 of this Resolution.

"Series 1993 Bonds" shall mean the Bonds authorized to be issued pursuant to Section 208 of this Resolution.

"Series Resolution" means the resolution of the City Commission that is required by Sections 208, 209 and 210 of this Resolution to be adopted prior to the issuance of any Series of Bonds under this Resolution. The Series Resolution shall (a) determine the details of the Bonds of such Series, including, among other things, the maximum principal amount of such Series, the date

thereof, the method of payment of interest thereon, the maximum maturity thereof, the redemption provisions relating thereto, including the Amortization Requirements for the Term Bonds, if any, and the Bond Registrar therefor, (b) define any improvements to be financed or Bonds or Indebtedness to be refunded with the proceeds of such Series, (c) provide for the application of the proceeds of the Bonds to which such Series Resolution relates, and (d) if permitted pursuant to Section 505 of this Resolution, create a separate Sinking Fund for such Series and determine the method of funding of the Sinking Fund for such Series and such other matters as the City Commission shall determine; provided, however, the City Commission may provide in the Series Resolution that all matters set forth above except the maximum principal amount of any Series and the definition of any Improvement to be financed with the proceeds of such Series and the maximum principal amount of such Series may be determined by the City Commission in the resolution awarding such Series to the purchaser thereof. Anything in this definition hereinabove notwithstanding, the details of the Series 1993 Bonds to be issued pursuant to Section 208 of this Resolution are to be determined by the Mayor pursuant to the Mayor's Certificate as set forth in Section 208 hereof.

"Sewer System" shall mean the existing sewage collection, transmission, treatment and disposal system together with any Improvements thereto, including any new sewer systems owned or leased and operated by the City, any assets, facilities, Improvements or Capital Expenditures (whether or not financed with Bonds) which are designated by the City Commission as a part of the Sewer System and the City's interest, equitable or otherwise, in the sewerage transmission, treatment or disposal facilities of parties other than the City, including the right to capacity in such facilities. The Sewer System shall not include the East Central Regional Wastewater Treatment Facilities.

"Short-Term Indebtedness" means all Indebtedness incurred or assumed by the City, with respect to the Utility System for any of the following:

(i) Payments of principal and interest with respect to money borrowed for an original term, or renewable at the option of the City for a period from the date originally incurred, of one year or less;

(ii) Payments under leases having an original term, or renewable at the option of the lessee for a period from the date originally incurred, of one year or less; and

(iii) Payments under installment purchase contracts having an original term of one year or less.

"Sinking Fund" shall mean the West Palm Beach Utility System Revenue Bonds Interest and Sinking Fund, a special fund created and designated by Section 505 of this Resolution.

"Special Record Date" shall mean a date fixed by the Bond Registrar for the payment of Defaulted Interest pursuant to Section 202 of this Resolution.

"State Loan" shall mean any loan for any of the purposes of the Utility System from the State of Florida or any of the agencies thereof which loan is authorized by the laws of the State of Florida to be made by the State or such agency and to be incurred by the City.

"Stormwater Drainage Facilities" shall mean, generally, the facilities, including but not limited to the canals, storm sewers, holding ponds and other means of conveying stormwater from place to place, owned or leased and operated by the City and any assets, facilities, Improvements or Capital Expenditures (whether or not financed with Bonds) which are designated by the City Commission as a part of the Stormwater Drainage Facilities.

"Stormwater Drainage Facilities Revenues" shall mean (i) all revenues, income, rents and receipts received by or accrued to the City from or attributable to the ownership and operation of the Stormwater Drainage Facilities, including special assessments, fees or assessments based upon usage of or benefit from the Stormwater Drainage Facilities and including all revenues attributable to the Stormwater Drainage Facilities or to the payments of the costs thereof received by the City under any contract for the sale of service from the Stormwater Drainage Facilities or any part thereof or any contractual arrangement with respect to the use of the Stormwater Drainage Facilities or any portion thereof or the services thereof, and (ii) the proceeds of any insurance covering business interruption loss relating to the Stormwater Drainage Facilities, if any.

"Subordinated Indebtedness" shall mean bonds, notes or other forms of indebtedness, the payment of the principal or interest or redemption premium on which are payable solely from moneys which may from time to time be on deposit in the General Reserve Fund under this Resolution and which is designated as Subordinated Indebtedness by the City Commission in the resolution authorizing the issuance of such Indebtedness.

"Utilities Director" shall mean the Director of the Utilities Department of the City from time to time appointed by the City Commission or the official of the City who shall succeed to his principal functions.

"Utility System" shall mean: (i) the Water System; (ii) the Sewer System; and (iii) the Stormwater Drainage Facilities.

"Variable Rate Bonds" shall mean any Bonds issued under this Resolution the interest rate on which is not established at the time of issuance at a single numerical rate; provided, however, Bonds which are, by their terms, Variable Rate Bonds but the payment on which by the City is fixed, through the use of Interest Rate Swaps, matching inverse cash flows on separate portions of the same Series of Bonds or otherwise, shall be treated as fixed interest rate Bonds for so long as such payment obligation is so fixed. Variable Rate Bonds shall include fixed rate Bonds, the payment obligations of the City with respect thereto vary over time due to the use of Interest Rate Swaps or otherwise.

"Water System" shall mean the existing water supply, production, distribution and distribution system together with any Improvements thereto, including any new water facilities of the types described above owned or leased and operated by the City, any assets, facilities, or Capital Expenditures (whether or not financed with Bonds) which are designated by the City Commission as a part of the Water System and the City's interest, equitable or otherwise, in the water facilities of parties other than the City, including the right to capacity in such facilities.

"1993 Project" shall mean, collectively, the 1993 Stormwater Drainage Project and the 1993 Water and Sewer Project.

"1993 Stormwater Drainage Project" shall mean the facilities set forth in Exhibit A attached to this Resolution, as the same may be amended as set forth therein.

"1993 Water and Sewer Project" shall mean the facilities set forth in Exhibit B attached to this Resolution, as the same may be amended as set forth therein.

Section 102. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words "Bond", "owner", "holder" and "person" shall include the plural as well as the singular number, the word "person" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof, and the word "holder" or "bondholder" when used herein with respect to Bonds issued hereunder shall mean the holder or registered owner, as the case may be, of Bonds at the time issued and outstanding hereunder.



ARTICLE II.

Form, Execution, Delivery  
and Registration of Bonds.

Section 201. Issuance of Bonds. For the purpose of providing funds for paying all or part of the cost of refunding the Outstanding Bonds, paying the Cost of the 1993 Project and paying the Cost of acquiring or constructing any Improvements, Bonds of the City may be issued under and secured by this Resolution subject to the conditions hereinafter provided in Sections 208 and 209 respectively, of this Article. Bonds of the City may also be issued under and secured by this Resolution, subject to the conditions hereinafter provided in Section 210 of this Article, for the purpose of refunding all or any portion of the Bonds of one or more Series issued by the City under the provisions of this Resolution. The principal of and the interest on all such Bonds shall be payable solely from the special fund hereinafter created and designated "Utility System Revenue Bonds Interest and Sinking Fund" or other separate Sinking Funds created under the provisions of Section 505 of this Resolution, and all of the covenants, agreements and provisions of this Resolution shall be for the benefit and security of all and singular the present and future holders of the Bonds so issued or to be issued, without preference, priority or distinction as to lien or otherwise, except as otherwise hereinafter provided, of any one Bond over any other Bond by reason of priority in the issue, sale or negotiation thereof, otherwise.

Section 202. Details of Bonds. Each Series of Bonds issued hereunder shall be created by a different Series Resolution. The Bonds of each Series issued under the provisions of this Article shall be designated "City of West Palm Beach, Florida Utility System Revenue Bonds, Series \_\_\_\_\_," in each case inserting an identifying Series year, and if more than one Series are issued in a single calendar year, inserting an identifying Series letter in addition to the year. Except as otherwise provided in the Series Resolution relating to a Series of Bonds, the Bonds of any Series are issuable in fully registered form without coupons in denominations (either with respect to original principal amount or principal amount payable at maturity) of \$5,000 or any whole multiple thereof. Bonds shall be numbered consecutively from R-1 upwards. Bonds of each Series shall be dated, shall bear interest until their payment at a rate or rates, including rates which may vary, not exceeding the maximum rate then permitted by law, such interest being payable and such Bonds being subject to redemption prior to their respective maturities, all as provided in the Series Resolution for such Series.

Unless otherwise provided in the Series Resolution pursuant to which each Series of Bonds is issued, each Bond shall bear interest from the Interest Payment Date next preceding the date on which it is authenticated unless it is (a) authenticated upon any interest payment date in which event it shall bear interest from such interest payment date or (b) authenticated before the first interest payment date in which event it shall bear interest from its date; provided, however, that if at the time of authentication of any Bond interest is in default, such Bond shall bear interest from the date to which interest has been paid.

Both the principal of and the interest on the Bonds shall be payable in any coin or currency of the United States of America that is legal tender for the payment of public and private debts on the respective dates of payment thereof.

The principal of such Bonds shall be payable upon the presentation and surrender of such Bonds as the same shall be come due at the principal office of the Bond Registrar; provided, however, that if any Series of Bonds are held pursuant to any "book-entry only" system, the portion of the principal amount of such Bonds which are Term Bonds constituting the Amortization Requirements may be paid to the registered owner by wire or check, with the final payment of such Term Bonds at their maturity being paid only upon presentation of such Term Bonds at the principal office of the Bond Registrar.

Unless otherwise provided in the Series Resolution pursuant to which each Series of Bonds is issued, any interest on any such Bond which is payable, and is punctually paid, or for which payment is duly provided, on any interest payment date shall be paid to the person in whose name the Bond is registered in the registration books provided for in Section 206 of this Resolution (hereinafter, as used in this Section, the "Holder") at the close of business on the Regular Record Date. The Bond Registrar shall pay interest which is payable on the Bonds by check or draft mailed to the persons entitled thereto on the Interest Payment Date; provided, however, the City Commission pursuant to the Series Resolution for a Series may provide for payment of such interest by the Bond Registrar by wire transfer.

Unless otherwise provided in the Series Resolution pursuant to which each Series of Bonds is issued, any interest on any such Bond which is payable, but is not punctually paid, or for which payment is not duly provided, on any interest payment date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date solely by virtue of such Holder having been such Holder; and such Defaulted Interest may be paid by the City, at its election in each case, as provided in Subsection A or B below:

A. The City may elect to make payment of any Defaulted Interest on the Bonds of any Series to the persons in whose names such Bonds are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The City shall notify the Bond Registrar in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be such as will enable the Bond Registrar to comply with the next sentence hereof), and at the same time the City shall deposit or cause to be deposited with the Bond Registrar an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Bond Registrar for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest as in this Subsection provided. Thereupon the Bond Registrar shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Bond Registrar of the notice of the proposed payment. The Bond Registrar shall promptly notify the City of such Special Record Date and, in the name and at the expense of the City, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder at his address as it appears in the registration books provided for in Section 206 of this Resolution not less than 10 days prior to such Special Record Date. The Bond Registrar may, in its discretion, in the name and at the expense of the City, cause a similar notice to be published at least once in a Daily Newspaper of general circulation published in the City, and in a Daily Newspaper of general circulation or in a financial journal published in the Borough of Manhattan, City and State of New York, but such publication shall not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Bonds of such Series are registered on such Special Record Date and shall no longer be payable pursuant to the following Subsection B. The Bond Registrar shall pay such Defaulted Interest which is payable on the Bonds pursuant to this clause A by check or draft mailed to the persons entitled thereto on the date fixed for the payment of such Defaulted Interest pursuant to clause A; provided, however, the City Commission pursuant to the Series Resolution for a Series may provide for payment of such Defaulted Interest by the Bond Registrar by wire transfer.

B. The City may make payment of any Defaulted Interest on the Bonds of any Series in any other lawful manner not inconsistent

with the requirements of any securities exchange on which such Bonds may be listed and upon such notice as may be required by such exchange, if, after notice given by the City to the Bond Registrar of the proposed payment pursuant to this Subsection, such payment shall be deemed practicable by the Bond Registrar.

Subject to the foregoing provisions of this Section, each Bond delivered under this Resolution upon transfer of or in exchange for or in lieu of any other Bond shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond and each such Bond shall bear interest from such date, that neither gain nor loss in interest shall result from such transfer, exchange or substitution.

**Section 203. Execution and Form of Bonds.** The Bonds shall bear the facsimile signature of the Mayor and shall bear the facsimile signature of, the City Clerk, and a facsimile of the official seal of the City shall be imprinted on the Bonds; provided, however, that if required by Florida law at the time of such execution, the Bonds shall be manually executed by the Mayor or his designee. In case any officer whose signature or a facsimile of whose signature shall appear on any Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery and also any Bond may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such Bond shall be the proper officers to execute such Bond although at the date of such Bond such persons may not have been such officers. The Bonds issued under the provisions of this Article, the certificate of authentication, the statement of validation, if applicable, the opinion certification and the form of assignment shall be, respectively, in the following forms with such appropriate variations, omissions and insertions as may be required or permitted by this Resolution or the Series Resolution pursuant to which such Bonds are issued. All Bonds shall be endorsed thereon with such legends or text as may be necessary or appropriate to conform to the applicable rules and regulations of any governmental authority or any securities exchange on which such Bonds may be listed or to any requirements of law with respect thereto.

[Face of Bond]

No. ....

\$ \_\_,000

United States of America  
State of Florida  
City of West Palm Beach

[Title of Series of Bonds, as provided in Section 202]

Maturity Date	Interest Rate	Original Issue Date	Cusip
.....	.....	.....	.....

REGISTERED HOLDER:

PRINCIPAL AMOUNT:

The City of West Palm Beach (herein called the "City"), a municipal corporation of the State of Florida, is justly indebted and for value received hereby promises to pay to the registered holder shown above or registered assigns or legal representative on the date specified above (or earlier as hereinafter referred to), upon the presentation and surrender hereof, at the principal office of \_\_\_\_\_, in the City of \_\_\_\_\_ (the "Bond Registrar"), the principal sum shown above, and to pay to the registered owner hereof, by check or draft mailed to the registered owner at his address as it appears on the bond registration books of the City, or by wire transfer to the registered owner of at least \$1,000,000 principal amount of the Bonds, interest on such principal sum from the date hereof or from \_\_\_\_\_ 1, to \_\_\_\_\_ 1 next preceding the date of authentication to which interest shall have been paid, unless such date of authentication is a \_\_\_\_\_ 1 or \_\_\_\_\_ 1 to which interest shall have been paid, in which case from such date, such interest to the maturity hereof being payable on \_\_\_\_\_ 1 and \_\_\_\_\_ 1 in each year, commencing \_\_\_\_\_ 1, 19\_\_, at the rate per annum specified above, until payment of such principal sum. The interest so payable and punctually paid, or duly provided for, on any interest payment date will be paid to the person in whose name this bond is registered at the close of business on the Regular Record Date for such interest, which shall be the 15th day (whether or not a business day) of the calendar month next preceding such interest payment date. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the registered holder on such Regular Record Date, and may be paid to the person in whose name this bond is registered at the close of business on a Special Record Date for the payment of such defaulted interest to be fixed by the Bond Registrar, notice whereof being given to the holders not less than 10 days

prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the bonds of this series may be listed and upon such notice as may be required by such exchange, or as more fully provided in the Resolution under which this bond is issued hereinafter mentioned. Such payment of interest shall be by check mailed to the holder at his address as it appears on the bond registration books maintained by the Bond Registrar. All such payments shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

This bond shall not be deemed to constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation and the City is not obligated to pay the principal of, the premium, if any, or the interest on this bond except from the special fund hereinafter mentioned, and the faith and credit of the City are not pledged on the payment of the principal of, the premium, if any, or the interest on this bond. The issuance of this bond shall not directly or indirectly or contingently obligate the City to levy or to pledge any taxes whatever therefor or to make any appropriation for the payment of the principal of, the premium, if any, or the interest on this bond except as provided in said Resolution.

ADDITIONAL PROVISIONS OF THIS BOND ARE SET FORTH ON THE REVERSE HEREOF AND SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH HEREIN.

This bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Resolution mentioned hereinafter until this bond shall have been

authenticated by the execution by the Bond Registrar of the certificate of authentication endorsed hereon.

IN WITNESS WHEREOF, said City of West Palm Beach, by resolution duly adopted by its City Commission, has caused this bond to bear the facsimile signatures of its Mayor and its City Clerk and a facsimile of the official seal of the City to be imprinted hereon, all as of the \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
[Facsimile signature]  
Mayor

\_\_\_\_\_  
[Facsimile signature]  
City Clerk

(Seal)

NOT A CERTIFIED COPY

CERTIFICATE OF AUTHENTICATION

This bond is one of the Bonds of the series designated herein and issued under the provisions of the within-mentioned Resolution.

\_\_\_\_\_  
Bond Registrar

By \_\_\_\_\_  
Authorized Signatory

Date of authentication: \_\_\_\_\_

[Reverse Side of Bond]

United States of America  
State of Florida  
City of West Palm Beach

[Title of Series of Bonds, as provided in Section 202]

This bond is one of a series of bonds designated "Utility System Revenue Bonds, Series \_\_\_\_\_" (the "Bonds") and issued by the City of West Palm Beach, Florida (the "City") for the purpose of providing funds, with any other available funds, for \_\_\_\_\_, and this bond is issued under and pursuant to that certain resolution adopted by the City Commission of the City on \_\_\_\_\_, 19\_\_ (the "Bond Resolution") and that certain resolution adopted by the City Commission in furtherance of the Bond Resolution on \_\_\_\_\_, 19\_\_ (the "Series Resolution" and collectively with the Bond Resolution, the "Resolutions").

The bonds of this Series consist of bonds maturing on \_\_\_\_\_ 1 of the years \_\_\_\_\_ to \_\_\_\_\_, inclusive (the "Serial Bonds") and of bonds maturing on \_\_\_\_\_ 1, \_\_\_\_\_ (the "\_\_\_\_\_ Term Bonds"), on \_\_\_\_\_ 1, \_\_\_\_\_ (the "\_\_\_\_\_ Term Bonds") and on \_\_\_\_\_ 1, \_\_\_\_\_ (the "\_\_\_\_\_ Term Bonds"). The \_\_\_\_\_ Term Bonds, the \_\_\_\_\_ Term Bonds and the \_\_\_\_\_ Term Bonds are subject to mandatory redemption at 100% of the principal amount thereof, plus accrued interest, but without premium, on \_\_\_\_\_ 1 of the following years and in the following amounts:

\_\_\_\_\_ Term Bonds      \_\_\_\_\_ Term Bonds      \_\_\_\_\_ Term Bonds

[Here insert Amortization Requirements]



The bonds of this series at the time outstanding which mature after \_\_\_\_\_ 1, 19\_\_ may be redeemed prior to their respective maturities, at the option of the City, from any moneys that may be made available for such purpose, either in whole, on any date not earlier than \_\_\_\_\_ 1, 19\_\_, or in part, in any order of maturity selected by the City, on any interest payment date not earlier than \_\_\_\_\_ 1, 19\_\_, at the redemption prices (expressed as percentages of principal amount to be redeemed) plus accrued interest to the redemption date as follows:

<u>Redemption Dates Inclusive</u>		<u>Redemption Price</u>
_____ 1, 19__	to _____ 31, _____	_____ %
_____ 1, 19__	to _____ 31, _____	_____ %
_____ 1, 19__	to _____ 31, _____	_____ %
_____ 1, 19__	to _____ 31, _____	_____ %
_____ 1, 19__	to _____ 31, _____	_____ %

If less than all of the bonds of any one maturity shall be called for redemption, the particular bonds to be redeemed shall be selected by lot as provided in the Resolutions.

At least thirty (30) days before the redemption date of any bonds to be redeemed, whether such redemption be in whole or in part, the City shall cause a notice of such redemption to be filed with the Bond Registrar, mailed, first class postage prepaid, to all registered owners of bonds to be redeemed in whole or in part at their last addresses appearing upon the registration books of the City as of the date 45 days prior to the date fixed for redemption and published at least once in a newspaper or financial journal published in the Borough of Manhattan, City and State of New York. The failure to mail such notice shall not affect the validity of such redemption. On the date fixed for redemption, notice having been given as aforesaid, the bonds or portions thereof so called for redemption shall be due and payable at the redemption price provided for the redemption of such bonds or portions thereof on such date and, if moneys for payment of such redemption price and the accrued interest are held by the Bond Registrar or an appropriate fiduciary institution acting as escrow agent, as provided in the Resolutions, interest on the bonds or the portions thereof so called for redemption shall cease to accrue. If a portion of this bond shall be called for redemption, a new bond or bonds in principal amount equal to the unredeemed portion hereof will be issued to the registered owner hereof or his legal representative upon the surrender hereof.

The holder of this bond shall have no right to enforce the provisions of the Resolutions, or to institute action to enforce the covenants therein, or to take any action with respect to any

event of default under the Resolutions, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Resolutions.

Modifications or alterations of the Resolutions or of any resolution supplemental thereto may be made only to the extent and in the circumstances permitted by the Resolutions.

The bonds are issuable as fully registered bonds of the denomination of \$5,000 or any whole multiple thereof. At the principal office of the Bond Registrar, in the manner and subject to certain conditions provided in the Resolutions, bonds may be exchanged for an equal aggregate principal amount of bonds of the same maturity, of authorized denominations and bearing interest at the same rate.

The Bond Registrar is required to keep at its principal office the books of the City for the registration of and for the registration of transfers of bonds. The transfer of this bond may be registered only upon such books and as otherwise provided in the Resolutions upon the surrender hereof to the Bond Registrar together with an assignment duly executed by the registered owner hereof or his attorney or legal representative in such form as shall be satisfactory to the Bond Registrar. Upon any such registration of transfer, the Bond Registrar shall deliver in exchange for this bond a new bond or bonds, registered in the name of the transferee, of authorized denominations, in an aggregate principal amount equal to the unredeemed principal amount of this bond, of the same maturity and bearing interest at the same rate.

The Bond Registrar shall not be required to exchange or register any transfer of this bond after this bond has been selected for redemption.

This bond is issued and the Resolutions were adopted under and pursuant to the Charter of the City and the laws of the State of Florida. The Resolutions provide for the creation of a special fund designated "City of West Palm Beach Utility System Revenue Bonds Interest and Sinking Fund", which fund is pledged to and charged with the payment of the principal of, premium, if any, and the interest on all bonds issued and outstanding under the Bond Resolution [the language in the preceding clause will change if a separate Sinking Fund is created for a Series of Bonds pursuant to Section 505 of this Resolution], and the City has covenanted in the Bond Resolution to deposit to the credit of said special fund a sufficient amount of the Net Revenues (as defined in the Bond Resolution) of the City's Utility System (as defined in the Bond Resolution) to provide for the payment of the principal of, premium, if any, and interest on the bonds issued under the

provisions of the Bond Resolution as the same shall become due and to create a reserve for such purpose.

The Utility System consists of the Water System, the Sewer System and the Stormwater Drainage Facilities (as each of said terms is defined in the Resolution) and improvements or additions thereto.

All acts, conditions and things required by the Constitution and laws of the State of Florida, and the ordinances and resolutions of the City to happen, exist and be performed precedent to and in the issuance of this bond have happened, exist and have been performed as so required.

[If the Bonds of a Series have been validated pursuant to Chapter 75, Florida Statutes, such Bonds shall have endorsed thereon a statement in substantially the following form.]

#### STATEMENT OF VALIDATION

This bond is one of a Series of Bonds which were validated by a judgment of the Circuit Court of the Fifteenth Judicial Circuit of Florida in and for Palm Beach County rendered on \_\_\_\_\_, and the time for taking an appeal therefrom has expired without an appeal being taken.

OPINION CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct copy of the legal opinion on the Bonds therein described which was manually signed by \_\_\_\_\_ and was dated as of the date of delivery of and payment for said Bonds.

\_\_\_\_\_  
[Facsimile Signature]  
City Clerk

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to register the transfer of the within bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed:

NOTICE: Signatures must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or a trust company.

Section 204. Authentication of Bonds. Only such of the Bonds as shall have endorsed thereon a certificate of authentication substantially in the form set forth above, duly executed by the Bond Registrar, shall be entitled to any benefit or security under this Resolution. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall

have been duly executed by the Bond Registrar, and such certificate of the Bond Registrar upon any such Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Resolution and the Series Resolution relating to such Bond. The certificate of authentication on any Bond shall be deemed to have been duly executed if signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time.

**Section 205. Exchange of Bonds.** Bonds, upon surrender thereof at the principal corporate trust office of the Bond Registrar, together with an assignment duly executed by the registered owner or his attorney or legal representative in such form as shall be satisfactory to the Bond Registrar, may, at the option of the owner thereof, be exchanged for an equal aggregate principal amount of Bonds of the same Series and maturity, of any denomination or denominations authorized by this Resolution or the Series Resolution relating to such Bonds and bearing interest at the same rate.

The City shall make provision for the exchange of Bonds at the principal corporate trust office of the Bond Registrar.

**Section 206. Negotiability, Registration and Transfer of Bonds.** The Bond Registrar shall keep books for the registration of and for the registration of transfers of Bonds as provided in this Resolution. The transfer of any bond may be registered only upon the books kept by the Bond Registrar for the registration of and registration of transfers of Bonds upon surrender thereof to the Bond Registrar together with an assignment duly executed by the registered owner or his attorney or legal representative in such form as shall be satisfactory to the Bond Registrar. Upon any such registration of transfer the City shall execute and the Bond Registrar shall authenticate and deliver in exchange for such Bond a new Bond or Bonds registered in the name of the transferee, of any denomination or denominations authorized by the Series Resolution relating to such Bonds.

In all cases in which Bonds shall be exchanged, the City shall execute and the Bond Registrar shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provision of this Resolution. All Bonds surrendered in any such exchange or registration of transfer shall forthwith be cancelled by the Bond Registrar. The City or the Bond Registrar may make a charge for every such exchange or registration of transfer of Bonds sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer, but no other charge shall be made to any owner of Bonds for the privilege of exchanging or registering the transfer

of Bonds under the provisions of this Resolution. Neither the City nor the Bond Registrar shall be required to make any such exchange or registration of transfer of Bonds during the fifteen (15) days immediately preceding the date of first publication or mailing of notice of such redemption, or after such Bond or any portion thereof has been selected for redemption.

Section 207. Ownership of Bonds. As to any Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and the interest on any such Bond shall be paid only to or upon the order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond including the premium, if any, and interest thereon to the extent of the sum or sums so paid.

Section 208. Authorization of Series 1993 Bonds. There shall be initially issued in one or more Series from time to time, under and secured by this Resolution, revenue Bonds of the City the initial series of which shall bear the designation "City of West Palm Beach Utility System Revenue Refunding and Improvement Bonds, Series 1993." Subsequent Series of the Bonds authorized by this Section 208 shall bear the designation "City of West Palm Beach, Florida Utility System Revenue Bonds" and the appropriate year of issuance. The Series 1993 Bonds shall be issued in an aggregate principal amount not exceeding Sixty Seven Million Five Hundred Thousand Dollars (\$67,500,000) for the purpose of providing funds, together with other available funds, (a) (i) for paying at their respective maturities, together with interest to accrue to such dates of maturity, all of the Outstanding Bonds or (ii) for redeeming the Outstanding Bonds on the earliest permitted optional redemption date therefor at the redemption price applicable to such date, together with interest to accrue to such redemption date, as shall be determined by the Mayor pursuant to the Mayor's Certificate, (b) paying the Cost (as defined herein) of the 1993 Project, (c) for making a deposit to the credit of the Reserve Account in an amount to be determined pursuant to the Mayor's Certificate, (d) for paying interest on the portion of the Series 1993 Bonds attributable to the 1993 Project in such amount and for such period as shall be determined pursuant to the Mayor's Certificate, and (e) for paying the cost of issuing said Series 1993 Bonds. For convenience of reference, all Bonds authorized by this Section 208 regardless of when issued are herein called the "Series 1993 Bonds."

The Series 1993 Bonds shall be dated, shall be stated to mature (subject to the right of prior redemption as hereinafter set forth) on such date or dates, in such year or years not more than forty (40) years after the date of the Bonds, shall bear interest at such rate or rates payable on such dates, shall have such Bond

Registrar, the Term Bonds of such Series shall have such Amortization Requirements and may be made redeemable at such times and prices (subject to the provisions of Article III of this Resolution), may be in the form of Current Interest Bonds or Capital Appreciation Bonds and the Reserve Account may have such subaccounts, all as may be provided by the Mayor's Certificate.

Each of the Series 1993 Bonds shall be executed substantially in the form and manner hereinabove set forth and shall be deposited with the Bond Registrar for authentication and delivery but prior to or simultaneously with the delivery of the Series 1993 Bonds by the Bond Registrar there shall be filed with the City Clerk the following:

(a) a copy, certified by the City Clerk, of this Resolution;

(b) a copy of the Mayor's Certificate;

(c) an executed counterpart of the Escrow Deposit Agreement;

(d) an opinion of the City Attorney stating that the signer is of the opinion that the issuance of said Bonds has been duly authorized and that all conditions precedent to the delivery of such Bonds have been fulfilled;

(e) if the Mayor shall determine pursuant to the Mayor's Certificate that the Outstanding Bonds are to be paid at their respective maturities, the report of a firm of independent certified public accountants, of favorable national reputation for skill and experience in verifying the mathematical sufficiency and yield calculations in refunding transactions, stating their conclusions with respect to (i) the mathematical computations of the adequacy of the maturing principal of and interest on the investments made with the proceeds of the Series 1993 Bonds and other available moneys pursuant to the Escrow Deposit Agreement for the payment of the principal of and interest on the Outstanding Bonds and (ii) the mathematical computations of the actuarial yield on such investments; and

(f) opinions of Brown & Wood, New York, New York and Mack & Bernstein, P.A., Boca Raton, Florida, to the effect that the interest on the Series 1993 Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

When the documents mentioned in clauses (a) to (f), inclusive, of this Section shall have been filed with the City Clerk and when

the Series 1993 Bonds shall have been executed by the City and authenticated by the Bond Registrar as required by this Resolution, the Bond Registrar shall deliver said Bonds at one time to or upon the order of the purchasers named in the resolution mentioned in clause (b) of this Section, but only upon payment to the Finance Director of the purchase price of said Bonds. The Finance Director shall be entitled to rely upon such resolution as to all matters stated therein.

The proceeds (including accrued interest and any premium) of said Bonds shall be applied by the Finance Director as follows:

(1) the amount received as accrued interest on the Bonds and any premium shall be deposited to the credit of the Bond Service Account;

(2) an amount estimated by the Finance Director to be sufficient for the purpose shall be credited to a special account and applied to the payment of the expenses of issuing the Bonds, including, but not limited to, financial advisory, accounting and legal fees, rating agency fees, printing costs, initial Escrow Agent's and Bond Registrar's fees and expenses, bond insurance premiums, and any other miscellaneous expenses relating to the issuance of the Bonds;

(3) an amount equal to the Reserve Account Requirement for the Series 1993 Bonds shall be deposited to the credit of the Reserve Account;

(4) the amount, if any, determined by the Mayor in the Mayor's Certificate to be applied to the payment of the interest on the portion of the Series 1993 Bonds attributable to the 1993 Project shall be deposited in a special account within the Construction Fund and transferred at the times required to the Interest Account of the Sinking Fund for the payment of such interest;

(5) (i) if the Mayor shall determine pursuant to the Mayor's Certificate that the Outstanding Bonds are to be paid at their respective maturities, the amount, determined by the Finance Director to be sufficient for such purpose, shall be deposited with the Escrow Agent and applied pursuant to the Escrow Deposit Agreement to the payment at maturity and redemption at a selected redemption date or dates of all of the Outstanding Bonds, together with any applicable redemption premium and interest to accrue on such Outstanding Bonds until their payment or redemption (as specified in the Escrow Deposit Agreement) or (ii) if it shall be determined by the Mayor pursuant to the Mayor's Certificate that the Outstanding Bonds are to be redeemed at the earliest permitted optional



redemption date therefor, the amount equal to the redemption price for the Outstanding Bonds plus interest to accrue on such Outstanding Bonds to the redemption date shall be deposited with the paying agent for the Outstanding Bonds;

(6) the amount, determined by the Finance Director to be sufficient for such purpose, shall be deposited to the credit of a special account within the Construction Fund and applied to the payment of the Cost of the 1993 Stormwater Drainage Project; and

(7) the amount, determined by the Finance Director to be sufficient for such purpose, shall be deposited to the credit of a special account (separate from the account mentioned in clause (6) above) within the Construction Fund and applied to the payment of the Cost of the 1993 Water and Sewer Project.

Simultaneously with the delivery of the Bonds, the Finance Director shall transfer moneys in the several funds and accounts under the Outstanding Bond Resolution in such manner as provided in the Mayor's Certificate.

With respect to the Series 1993 Bonds only, the City hereby delegates to the Mayor the authority to determine (i) the dated date, (ii) the principal amount (not to exceed the amount authorized in this Section 208), (iii) the maturity dates and amounts, (iv) the interest rates, (v) the optional redemption features, (vi) the Amortization Requirements for the Term Bonds, if any, (vii) to designate the Bond Registrar and the Escrow Agent, (viii) to award the Series 1993 Bonds to the purchasers thereof, (ix) to determine the disposition of the moneys on deposit in the funds and accounts with respect to the Outstanding Bonds and (x) to take any and all further action as shall be required to carry out the purpose of this Section 208; provided, however, that the Mayor shall not take any action pursuant to this paragraph unless the Mayor shall have received from the City's financial advisors with respect to the Series 1993 Bonds such information as the Mayor shall deem necessary, upon the advice of the City Attorney and Finance Director, in order to demonstrate that (a) the "true or Canadian" interest cost on the Series 1993 Bonds is not greater than 6.00%. All actions of the Mayor taken pursuant to this paragraph shall be evidenced by a certificate to be executed by the Mayor (the "Mayor's Certificate") and filed with the City Clerk. The execution of the Mayor's Certificate by the Mayor shall constitute complete evidence of the actions of the Mayor and additionally shall constitute the action of the City.

The City hereby determines to call for redemption the portion of the Outstanding Bonds which are subject to optional redemption on the earliest optional redemption date for such Outstanding Bonds

and at the redemption price applicable to such optional redemption date in accordance with the Outstanding Bonds Resolution.

**Section 209. Additional Bonds.** In addition to the Bonds authorized under the provisions of Section 208 of this Article, Additional Bonds of the City may be issued under and secured by this Resolution, on a parity as to the pledge of the Net Revenues of the Utility System with the Bonds theretofore issued under and secured by this Resolution and then Outstanding, subject to the conditions hereinafter provided in this Section, from time to time for the purpose of paying all or any part of the Cost of constructing or acquiring any Improvements.

Before any Additional Bonds shall be issued under the provisions of this Section the City Commission shall adopt a resolution authorizing the issuance of such Additional Bonds, fixing the amount and the details thereof, and describing in brief and general terms the Improvements to be constructed or acquired. The Additional Bonds of each Series issued under the provisions of this Section shall be dated, shall be stated to mature (subject to the right of prior redemption as hereinafter set forth) on such date or dates, in such year or years not more than forty (40) years after the date of the Additional Bonds, shall bear interest at such rate or rates, fixed or variable, shall have such Optional Tender features and Credit Facilities, shall have such Bond Registrar, and any Term Bonds of such Series shall have such Amortization Requirements, and may be made redeemable at such times and prices (subject to the provisions of Article III of this Resolution), all as may be provided by the Series Resolution for such Additional Bonds. Such Additional Bonds shall be executed in the form and manner hereinabove set forth, with such changes as may be necessary or appropriate to conform to the provisions of the resolution authorizing the issuance of such Additional Bonds and the Series Resolution therefor, and shall be deposited with the Bond Registrar for authentication and delivery, but before such Additional Bonds shall be delivered by the Bond Registrar, there shall be filed with the City Clerk the following:

(a) a copy, certified by the City Clerk, of the resolution authorizing the issuance of such Additional Bonds;

(b) a copy, certified by the City Clerk, of the Series Resolution for such Series of Additional Bonds;

(c) a copy, certified by the City Clerk, of the resolution adopted by the City Commission awarding such Additional Bonds, specifying the interest rate or rates for such Additional Bonds, or that such Additional Bonds will bear interest at a Variable Rate and directing the delivery of such Additional Bonds to or upon the order of the purchasers

therein named upon payment of the purchase price therein set forth;

(d) (i) a certificate of the Finance Director demonstrating that the principal amount of such Additional Bonds, together with the principal amount of all other Additional Bonds issued pursuant to this clause (d)(i) and then Outstanding does not exceed ten per centum (10%) of the Revenues of the Utility System for the last Fiscal Year for which the financial statements of the Utility System were reported upon by the Accountant; or

(ii)(A) a certificate of the Finance Director demonstrating that the percentage derived by dividing the Net Revenues for any twelve (12) consecutive calendar months within the preceding eighteen (18) consecutive calendar months selected by the Finance Director after consultation with the Public Works Director and the Utilities Director (the "Test Period"), adjusted as hereinafter permitted, by the Maximum Principal and Interest Requirements, including the Principal and Interest Requirements with respect to the Additional Bonds then to be delivered, for any future Fiscal Year is not less than one hundred twenty per centum (120%); and

(ii)(B) a certificate of the Consulting Engineer demonstrating that the percentage derived by dividing the projected Net Revenues for the first full Fiscal Year following the Fiscal Year in which the Completion Date of such Improvements is expected to occur by the Maximum Principal and Interest Requirements, including the Principal and Interest Requirements with respect to the Additional Bonds then to be delivered, for any future Fiscal Year is not less than one hundred twenty per centum (120%);

(e) an opinion of the City Attorney stating that the signer is of the opinion that the issuance of such Additional Bonds has been duly authorized and that all conditions precedent to the delivery of such Additional Bonds have been fulfilled; and

(f) a certificate of the Finance Director to the effect that no event of default, as defined in Section 802 of this Resolution and no event which with the passage of time, the giving of notice or both would become an event of default has occurred within the twelve (12) consecutive calendar months prior to the date of such certificate and is continuing.

In determining whether to execute and deliver either of the certificates mentioned in clauses (d)(i) or (d)(ii)(A) of this Section 209, (I) if the rates and charges for the services and

facilities furnished by the Utility System shall have been revised and such revised rates and charges shall have gone into effect prior to the issuance of such Additional Bonds, the amount of the Revenues or Net Revenues which would have been realized during the Test Period had such revised rates and charges gone into effect on the first day of the Test Period may be used by the Finance Director and (II) if the Improvements to be acquired or constructed include either the acquisition of a new utility system or systems or the extension of the Utility System to a geographical area not previously served, then the amount of Revenues or Net Revenues which would have been realized during the Test Period from the additional customers to be added to the Utility System may be used by the Finance Director.

In determining whether to execute and deliver the certificate required by clause (d)(ii)(B) above, (I) if the rates and charges for the services and facilities furnished by the Utility System shall have been revised and such revised rates and charges shall go into effect prior to or simultaneously with the Completion Date for such Improvements, the Consulting Engineer shall be entitled to assume for the purpose of such certificate the Revenues and Net Revenues which will be realized during the period required to be covered by such certificate, (II) if the Improvements to be acquired or constructed include either the acquisition of a new utility system or systems or the extension of the Utility System to a geographical area not previously served, then the amount of Revenues or Net Revenues which would have been realized during the Fiscal Years required to be considered by the Consulting Engineer from the additional customers to be added to the Utility System may be used by the Consulting Engineer and in all events, the Consulting Engineer shall include in the calculation required by such certificate the Current Expenses associated with the Improvements then being constructed.

When the documents mentioned above in the Section shall have been filed with the City Clerk and when the Additional Bonds described in the resolutions mentioned in clauses (a), (b), and (c) of this Section shall have been executed by the City and authenticated by the Bond Registrar as required by this Resolution, the Bond Registrar shall deliver such Additional Bonds at one time to or upon the order of the purchasers named in the resolution mentioned in said clause (c), but only upon payment to the Finance Director of the purchase price of such Additional Bonds. The Finance Director shall be entitled to rely upon such resolutions as to all matters stated therein.

The proceeds (excluding accrued interest and any premium) of such Additional Bonds shall be paid to the City for deposit with one or more Depositories to the credit of a special account in the Construction Fund appropriately designated and for application to

the payment of the Cost (as defined in Section 403 of this Resolution) of such Improvements, including the amount, if any, determined by the City Commission to be deposited to the credit of the Reserve Account for such Bonds. All of the provisions of Article IV of this Resolution which relate to the Construction Fund shall apply to such Improvements and such special account to the extent that such provisions may be applicable; provided, however, that there may be included in the cost of such Improvements interest accruing on such Additional Bonds prior to and during construction of such Improvements if and to the extent provided in the resolution authorizing the issuance of such Additional Bonds or the Series Resolution with respect thereto. The amount received as accrued interest and any premium on such Bonds shall be deposited to the credit of the Bond Service Account for application to the first interest due on such Bonds.

Section 210. Refunding Bonds. Refunding Bonds may be issued under and secured by this Resolution, subject to the conditions hereinafter provided in this Section, from time to time for the purpose of providing funds for refunding all or any portion of the outstanding Bonds of any one or more Series by payment at maturity or redemption at a selected redemption date or dates or combination of such payment at maturity and redemption, including the payment of any redemption premium thereon and any interest which will accrue on such Bonds to such maturity dates or selected redemption date or dates or combination of maturity and redemption dates and any expenses incurred or to be incurred in connection with such refunding.

Before any Refunding Bonds shall be issued under the provisions of this Section the City Commission shall adopt a resolution authorizing the issuance of such Refunding Bonds, fixing the amount and details thereof, describing the Bonds to be refunded and setting forth the determination of the City Commission that such refunding is in the best interests of the City and the users of the Utility System and stating the reasons for such determination. Such Refunding Bonds shall be dated, shall be stated to mature (subject to the right of prior redemption as hereinafter set forth) on such date or dates, in such year or years not more than forty (40) years after the date of the Refunding Bonds, shall bear interest at such rate or rates, fixed or variable, shall have such Optional Tender features, shall have such Bond Registrar, and any Term Bonds of such Series shall have such Amortization Requirements and may be made redeemable at such times and prices (subject to the provisions of Article III of this Resolution), all as may be provided by the Series Resolution for such Refunding Bonds. Except as to any differences in the maturities thereof or the rate or rates of interest or the provisions for redemption, such Refunding Bonds shall be on a parity as to the pledge of Net Revenues of the Utility System with

and shall be entitled to the same benefits and security under this Resolution as all other Bonds issued under this Resolution. Such Refunding Bonds shall be executed substantially in the form and manner hereinabove set forth with such changes as may be necessary or appropriate to conform to the provisions of the resolution authorizing the issuance of such Refunding Bonds and the Series Resolution therefor, and shall be deposited with the Bond Registrar for authentication and delivery, but prior to or simultaneously with the delivery of such Refunding Bonds by the Bond Registrar, there shall be filed with the City Clerk the following:

(a) a copy, certified by the City Clerk, of the resolution mentioned above authorizing the issuance of such Refunding Bonds;

(b) a copy, certified by the City Clerk, of the Series Resolution with respect to such Refunding Bonds;

(c) a copy, certified by the City Clerk, of the resolution adopted by the City Commission, awarding such Refunding Bonds, specifying the interest rate or rates for such Refunding Bonds, or the initial rate if such Refunding Bonds bear interest at a Variable Rate, determining the disposition of the moneys on deposit in the Sinking Fund on account of the Bonds to be refunded, and directing the delivery of such Refunding Bonds to or upon the order of the purchasers therein named upon payment of the purchase price therein set forth;

(d) an opinion of a nationally recognized firm of attorneys of favorable repute in matters related to tax-exempt municipal bonds, to the effect that upon the issuance of such Refunding Bonds and the application of the proceeds thereof, the Bonds to be refunded will no longer be deemed to be Outstanding under this Resolution;

(e) an opinion of the City Attorney stating that the signer is of the opinion that the issuance of such Refunding Bonds has been duly authorized and that all conditions precedent to the delivery of such Refunding Bonds have been fulfilled; and

(f) such documents as shall be required by the Finance Director to show that provision has been duly made in accordance with the provisions of this Resolution for the payment or redemption or combination of such payment and redemption of all of the Bonds to be refunded.

When the documents mentioned above in this Section shall have been filed with the City Clerk and when the Refunding Bonds

described in the resolutions mentioned in clauses (a), (b) and (c) of this Section shall have been executed by the City and authenticated by the Bond Registrar as required by this Resolution, the Bond Registrar shall deliver such Refunding Bonds at one time to or upon the order of the purchasers named in the resolution mentioned in said clause (b), but only upon payment to the Finance Director of the purchase price of such Refunding Bonds. The Finance Director shall be entitled to rely upon such resolutions as to all matters stated therein.

Simultaneously with the delivery of such Refunding Bonds, the Finance Director shall withdraw, if so provided in the resolution mentioned in clause (c) of this Section 210, from the Sinking Fund an amount equal to the amount on deposit therein on account of the principal of, redemption premium, if any, the interest on and reserves for the Bonds to be refunded, and apply the amount so withdrawn in accordance with the resolution mentioned in clause (c) of this Section 210. The total amount so withdrawn, if so provided in the resolution mentioned in clause (c) of this Section 210, the proceeds of such Refunding Bonds (including accrued interest and any premium) and any other moneys provided for such purpose, shall be applied by the Finance Director as follows:

(1) the accrued interest received as part of the proceeds of such Refunding Bonds shall be deposited to the credit of a special account in the Bond Service Account for application to the first interest due on such Refunding Bonds;

(2) an amount which, together with any income which shall be derived from the investment of such amount pursuant to this clause (2), shall be sufficient to pay the principal of and redemption premium, if any, and the interest on the Bonds to be refunded hereunder, either at maturity or a selected redemption date or dates or combination of such payment and redemption, shall be deposited by the Finance Director to the credit of a special fund, appropriately designated, to be held in trust by a bank or trust company which may include the Bond Registrar, as escrow agent, for the sole and exclusive purpose of paying such principal, redemption premium, if any, and interest; and moneys held for the credit of such fund shall, as nearly as may be practicable and reasonable, be invested and reinvested by such escrow agent at the direction of the Finance Director in Government Obligations which shall mature, or which shall be subject to redemption by the holder thereof at the option of such holder, not later than the respective dates when the moneys held for the credit of such fund will be required for the purposes intended;

(3) such amount shall be applied to, or set aside for the payment of the expenses incident to such refunding as shall be specified in the Series Resolution relating to such Refunding Bonds; and

(4) any balance of such proceeds shall be deposited to the credit of the Revenue Fund.

**Section 211. Other Indebtedness.** In addition to the Bonds authorized pursuant to the provisions of Section 208, 209 and 210 and to the extent permitted by the laws of the State of Florida from time to time in effect, the City may incur other forms of indebtedness related to the Utility System, as follows:

(a) The City may incur Short-Term Indebtedness, payable on a parity as to the pledge of Net Revenues of the Utility System with the Bonds, if immediately after incurrence of such Short-Term Indebtedness the outstanding principal amount of all Short-Term Indebtedness does not exceed ten per centum (10%) of the Revenues of the Utility System as shown on the Annual Budget for the current Fiscal Year; provided, however, that the City shall have no principal amount of such Short-Term Indebtedness outstanding for a period of twenty (20) consecutive calendar days in each twelve-month period beginning on the date of incurrence of such Short-Term Indebtedness.

(b) The City may incur Subordinated Indebtedness without limit as to amount.

(c) The City may issue Convertible Bonds, secured on a parity as to the pledge of Net Revenues of the Utility System with Bonds issued hereunder, provided that such Convertible Bonds are issued under Section 208 of this Resolution or under Section 209 or 210 of this Resolution and such Convertible Bonds comply with the tests of such Sections based upon the form of such Convertible Bonds at the time of their issuance.

(d) The City may issue Optional Tender Bonds, secured on a parity as to the pledge of Net Revenues of the Utility System with Bonds issued hereunder, provided that such Optional Tender Bonds comply with the test for the issuance of Bonds contained in Section 209 or 210 of this Resolution, and so long as (i) such Bonds are the subject of a remarketing agreement between the City or the trustee for such holders and an investment banking firm with experience in marketing tax-exempt securities on a national basis and (ii) there is in effect with respect to such Optional Tender Bonds a Credit Facility, then the provisions with respect to Optional Tender Bonds contained in the definition of Principal and Interest



Requirements shall apply to such Optional Tender Bonds. In demonstrating compliance with the test for the issuance of Additional Bonds contained in Section 209 hereof, the principal requirements for Optional Tender Bonds shall include the regularly scheduled principal payments, either upon payment at maturity or redemption in satisfaction of the Amortization Requirements for such Bonds and shall not include the payment of the purchase price of such Bonds upon their tender for purchase.

(e) The City may issue Variable Rate Bonds upon compliance with the tests for the issuance of Bonds contained in Sections 209 or 210 of this Resolution using for the purpose of demonstrating compliance with such tests the interest rate assumption with respect to Variable Rate Bonds contained in the definition of Principal and Interest Requirements.

(f) The City may enter into Credit Facilities to the extent that the Series of Bonds or portion thereof which is supported by such Credit Facilities are incurred in compliance with the provisions of this Article II.

(g) The City may incur Balloon Indebtedness if the conditions set forth in Section 209 or 210 are met, assuming for the purpose of such tests the amortization assumption set forth in the definition of Principal and Interest Requirements in this Resolution.

(h) Nothing in this Resolution shall prohibit the City from entering into Interest Rate Swaps; provided, however, that nothing herein shall be construed to indicate that Interest Rate Swaps are Indebtedness. The City hereby agrees that it will not execute an Interest Rate Swap unless the Swap Partner on such Interest Rate Swap or the party guaranteeing the payments by such Swap Partner is rated at least "A" by Moody's Investors Service, Inc. if Moody's Investors Service, Inc. then maintains a rating on any Bonds issued and outstanding under this Resolution.

Section 212. Limitation on Indebtedness Incurred without Test. Anything in this Article II to the contrary notwithstanding, at no time shall the principal amount of Bonds and other forms of indebtedness of the City with respect to the Utility System incurred or issued pursuant to clause (d)(i) of Section 209 and clause (a) of Section 211 of this Article exceed ten per centum (10%) of the Revenues of the Utility System for the last Fiscal Year for which the financial statements of the Utility System were examined by the Accountant; provided, however, that if the Principal and Interest Requirements with respect to Additional

Bonds issued pursuant to clause (d)(i) of Section 209 of this Resolution are later taken into consideration in determining compliance with the tests set forth in clause (d)(ii) of said Section 209 only in connection with the issuance of a Series of Additional Bonds, thereafter the City again shall be permitted to issue Additional Bonds pursuant to said clause (d)(i) of Section 209 subject to the limitation set forth therein.

Section 213. Temporary Bonds. Until the definitive Bonds of any Series are ready for delivery, there may be executed by the City and authenticated by the Bond Registrar, and the Finance Director may deliver, in lieu of definitive Bonds and subject to the same limitations and conditions except as to identifying numbers, temporary printed, engraved, lithographed or typewritten Bonds in the denomination of Five Thousand Dollars (\$5,000) or any whole multiple thereof, substantially of the tenor hereinabove set forth, in fully registered form without coupons, and with appropriate omissions, insertions and variations as may be required. The City shall cause the definitive Bonds to be prepared and to be executed, endorsed and delivered to the Bond Registrar, and the Bond Registrar, upon presentation to him of any temporary Bond shall cancel the same and authenticate and deliver, in exchange therefor, at the place designated by the holder, without expense to the holder, a definitive Bond or Bonds of the same Series and in the same aggregate principal amount, maturing on the same date and bearing interest at the same rate as the temporary Bond surrendered. Until so exchanged, the temporary Bonds shall in all respects, including the privilege of registration and registration of transfer is so provided, be entitled to the same benefit of this Resolution as the definitive Bonds to be issued and authenticated hereunder, and interest on such temporary Bonds, when payable, shall be paid on presentation of such temporary Bonds and notation of such payment shall be endorsed thereon.

Section 214. Mutilated, Destroyed or Lost Bonds. In case any Bonds secured hereby shall become mutilated or be destroyed or lost, the City may cause to be executed, and the Bond Registrar may deliver, a new Bond of like date, number and tenor in exchange and substitution for and upon the cancellation of such mutilated Bond or in lieu of and in substitution for such Bond destroyed or lost, upon the holder's paying the reasonable expenses and charges of the City and the Bond Registrar in connection therewith and, in the case of a Bond destroyed or lost, his filing with the Bond Registrar evidence satisfactory to the Bond Registrar that such Bond was destroyed or lost, and of this ownership thereof, and furnishing the City and the Bond Registrar with indemnity satisfactory to each of them.

### ARTICLE III.

#### Redemption of Bonds.

Section 301. Redemption Generally. The Bonds of each Series issued under the provisions of this Resolution shall be subject to redemption, either in whole or in part and at such times and prices, as may be provided by the Series Resolution relating to such Series.

Section 302. Selection of Bonds for Redemption or Purchase. The Finance Director shall, in accordance with the terms and provisions of the Bonds and of this Resolution and the Series Resolution relating to any Bonds to be redeemed, select the Bonds or portions thereof to be purchased or redeemed in such manner as the Finance Director shall determine, including delegation of such function to the Bond Registrar, in which event the method of selection shall be as selected by the Bond Registrar. The Finance Director shall promptly notify in writing the Bond Registrar of the numbers of the Bonds so selected for redemption and in making such selection, each Bond of each Series of Bonds shall be treated as representing that number of Bonds of the lowest authorized denomination of that Series as is obtained by dividing the principal amount of such Bond by such denomination. There shall be no restriction on the number of days prior to the date fixed for redemption when the Finance Director or the Bond Registrar shall select the Bonds to be redeemed.

Section 303. Redemption Notice. At least thirty (30) days before the redemption date, a notice of any such redemption, either in whole or in part, signed by the Finance Director, (a) shall be filed with the Bond Registrar and (b) shall be mailed, first class mail, postage prepaid, to all registered owners of Bonds to be redeemed at their addresses as they appear on the registration books hereinabove provided for. To supplement such notice to the registered owners, the notice of redemption may also be mailed by overnight mail to at least two national depositories and one national wire service used to distribute information relating to municipal bonds, at least thirty-five (35) days prior to the redemption date. Failure to mail any redemption notice to any Bondholder or any depositories and wire services described in this Section 303, or any defect in any notice so mailed, shall not affect the validity of the proceedings for the redemption of the Bonds of any other Holders. Each such notice shall set forth the date fixed for redemption, the redemption price to be paid and, if less than all of the Bonds of a Series then outstanding shall be called for redemption, the numbers of such Bonds. Each notice of redemption mailed to a registered owner of a Bond to be redeemed shall, if less than the entire principal amount thereof is to be

redeemed, also state the principal amount thereof to be redeemed and that such Bond must be surrendered to the Bond Registrar in exchange for the payment of the principal amount thereof to be redeemed and the issuance of a new Bond or Bonds equalling in principal amount that portion of the principal sum not to be redeemed of the bonds to be surrendered, as provided in Section 302 hereof.

In the event that the City shall be required to give a redemption notice where the funds to accomplish such redemption are being provided by the issuance of Refunding Bonds within ninety (90) days of the date fixed for such redemption, the redemption notice may state that the redemption is conditioned upon the issuance of such Refunding Bonds and that the failure to issue such Refunding Bonds on or prior to the date fixed for redemption will cause cancellation of such redemption.

**Section 304. Partial Redemption of Bonds.** In the event that only part of the principal sum of any Bond shall be called for redemption or prepaid, payment of the amount to be redeemed or prepaid shall be made only upon surrender of such Bond to the Bond Registrar. Upon surrender of such Bond, the Bond Registrar shall execute and deliver to the registered owner thereof at the principal office of the Bond Registrar, new duly executed Bonds of authorized principal sums equal in aggregate principal amount to, and of the same maturity and interest rate as, the unredeemed portion of the Bond surrendered.

**Section 305. Effect of Calling for Redemption.** On the date so designated for redemption, notice having been published and filed in the manner and under the conditions hereinabove provided, the Bonds so called for redemption shall become and be due and payable at the redemption price provided for redemption of such Bonds on such date, and, moneys for payment of the redemption price being held in separate accounts by the Finance Director or by the Bond Registrar in trust for the holders of the Bonds to be redeemed, all as provided in this Resolution, interest on the Bonds so called for redemption shall cease to accrue, such Bonds shall cease to be entitled to any lien, benefit or security under this Resolution, and the holders or registered owners of such Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

**Section 306. Cancellation of Bonds.** All Bonds paid, redeemed or purchased, either at or before maturity, shall be delivered to the Bond Registrar when such payment, redemption or purchase is made and such Bonds shall, except as provided by Section 304 hereof, thereupon be cancelled. The Bond Registrar shall certify to the City the details of all Bonds so cancelled. All Bonds cancelled under any of the provisions of this Resolution either

shall be delivered to the City or destroyed by the Bond Registrar, as the City directs. Upon destruction of any Bonds, the Bond Registrar shall execute a certificate in duplicate, describing the Bonds so destroyed, and one executed certificate shall be filed with the City and the other executed certificate shall be retained by the Bond Registrar.

**Section 307. Bonds Called for Redemption or Defeased Not Outstanding.** If (a) (1) Bonds shall have been duly called for redemption under the provisions of this Article or (2) irrevocable instructions have been given by the City to the Bond Registrar or to a bank, trust company or other appropriate fiduciary institution acting as escrow agent (the "escrow agent") to (i) call Bonds for redemption under the provisions of this Article, (ii) pay Bonds at their maturity or maturities or (iii) both call Bonds for redemption under the provisions of this Article and pay Bonds at their maturity or maturities in any combination (the Bonds described in clauses (a)(1) and (a)(2) are herein collectively called the "Bonds to be Paid"), and (b) cash or Sufficient Government Obligations are held in separate accounts by the Bond Registrar or escrow agent solely for the holders of the Bonds to be Paid, then the Bonds to be Paid shall not be deemed to be outstanding under the provisions of this Resolution and shall cease to be entitled to any benefit or security under this Resolution other than to receive payment of principal of, redemption premium, if any, and interest from such moneys. Bonds to be redeemed or refunded, as set forth in this Section 307 shall be selected in the same manner as for the selection of Bonds to be redeemed as set forth in Section 302 hereof.

For purposes of this Section 307, "Sufficient Government Obligations" shall mean Government Obligations which are in such principal amounts, bear interest at such rate or rates and mature (without option of prior redemption) on such date or dates so that the proceeds to be received upon payment of such Government Obligations at their maturity and the interest to be received thereon will provide sufficient amounts in cash on the dates required to pay the principal of and redemption premium, if any, and the interest on the Bonds to be Paid to the dates of their payment or redemption.

**ARTICLE IV.**

**Construction Fund.**

**Section 401. Construction Fund.** A special fund is hereby created and designated "Utility System Construction Fund" (herein sometimes called the "Construction Fund") which shall be held by the City. With respect to the Series 1993 Bonds, there are hereby created within the Construction Fund two accounts designated the "1993 Water and Sewer Project Account" and the "1993 Stormwater Drainage Project Account."

The moneys in the Construction Fund derived from the proceeds of the Series 1993 Bonds, and if Additional Bonds are issued hereunder for the purpose of acquiring or constructing any Improvements, the moneys derived from the proceeds of such Additional Bonds, shall be held in trust and applied to the payment of the Cost of the 1993 Project (in the case of the Series 1993 Bonds) and of such Improvements (in the case of such Additional Bonds) and, pending such application, shall be subject to a lien and charge in favor of the holders of the Series of Bonds issued under this Resolution the proceeds of which were deposited to the credit of the Construction Fund and for the further security of such holders until paid out as herein provided.

If the City shall issue Additional Bonds pursuant to Section 209 of this Resolution for the purpose of payment of the Cost of Improvements, the City shall create a special account within the Construction Fund, entitled "Series ... Construction Account", to which shall be deposited the amount provided from such Series of Additional Bonds for construction of Improvements.

**Section 402. Payments from Construction Fund.** Payment of the Cost of the 1993 Project or any Improvements shall be made from the special accounts within the Construction Fund as herein provided. All such payments shall be subject to the provisions and restrictions set forth in this Article, and the City covenants that it will not cause or permit to be paid from the Construction Fund any sums except in accordance with such provisions and restrictions. Moneys in the Construction Fund shall be disbursed by check, voucher, order draft, certificate or warrant signed by the Finance Director or by any one or more officers or employees of the City designated by resolution of the City Commission, from time to time, for such purpose or if the Finance Director shall so elect, by wire transfer; provided, however, the Finance Director shall not pay any items of Cost of the 1993 Project unless such items shall have first been approved by the Utilities Director, in the case of the 1993 Water and Sewer Project, and the Public Works Director, in the case of the 1993 Stormwater Drainage Project.

**Section 403. Cost of the 1993 Project and Improvements. For the purposes of this Article, the Cost of the 1993 Project and any Improvements to be constructed or acquired shall include, without intending thereby to limit or to restrict or to extend any proper definition of such Cost under the provisions of this Resolution, the following:**

**(a) obligations incurred for labor and materials and to contractors, builders and materialman in connection with the construction of enlargements, improvements and extensions, for machinery and equipment, and for the restoration of property damaged or destroyed in connection with such construction;**

**(b) interest accruing upon any Bonds or upon any other Indebtedness of the City incurred to finance the 1993 Project or Improvements or fees or premiums for the provision of Credit Facilities or Interest Rate Swaps (excluding termination fees with respect to Interest Rate Swaps) accruing with respect to such prior to the commencement of and during construction or for any additional period as may be authorized by law if so provided, and subject to any limitation, in the Series Resolution providing for the issuance of such Bonds;**

**(c) the cost of acquiring any waterworks or sewer system now serving any portion of the City and territory adjacent thereto, or any part of such system, either within or without or party within and party without the corporate limits of the City;**

**(d) the cost of acquiring by purchase, if such purchase shall be deemed expedient, and the amount of any award or final judgment in any proceeding to acquire by condemnation, such land, property rights, rights-of-way, franchises, easements, and other interests in lands as may be deemed necessary or convenient in connection with such construction or with the operation of the Utility System, and the amount of any damages incident thereto;**

**(e) expenses of administration properly chargeable to such construction or acquisition, legal, architectural engineering expenses and fees, cost of audit and of preparing and issuing the Bonds, fees and expenses of consultants, financing charges, taxes or other governmental charges lawfully assessed during construction, premiums on insurance in connection with construction, deposits to the Reserve Account, premiums for bond insurance, interest rate insurance or insurance assuring availability of the amounts required to be on deposit in the Reserve Accounts, initial set-up fees and annual fees for letters of credit, lines of credit, standby bond purchase agreements or other similar credit enhancement**

or liquidity enhancement devices and tender agent fees and fees payable for remarketing Bonds during the period of construction of the 1993 Project or any Improvements for which Bonds supported by such devices were issued and all other items of expense not elsewhere in this Section specified, incident to the financing, construction or acquisition of the 1993 Project or any Improvements and the placing of the same in operation; and

(f) any obligation or expense heretofore or hereafter incurred by the City for any of the foregoing purposes, including the cost of materials, supplies or equipment furnished by the City in connection with the construction of the 1993 Project or any Improvements and paid for by the City out of funds other than moneys in the Construction Fund.

Section 404. Title to Properties Acquired. The City further covenants that the 1993 Project and any Improvements will be constructed on or under land which is owned or can be acquired by the City in fee simple or over or under which the City shall be acquired or can acquire either by long term lease or by perpetual easements for the purposes of the Utility System, free from all liens, encumbrances and defects of title which have a materially adverse effect upon the City's right to use such lands or properties for the purposes intended or which have been adequately guarded against by a bond or other form of indemnity, or lands, including public streets and highways, the right to use and occupy which for such purposes shall be vested in the City by law or by valid rights of way, easements, franchises or licenses.

Section 405. Disposition of Construction Fund Balance. When the construction of the 1993 Project or any Improvements for which a Series of Additional Bonds were issued shall have been completed, which fact shall be evidenced to the Finance Director by a certificate stating the date of such completion, signed by the Utilities Director (in the case of the 1993 Water and Sewer Project or any future Improvement to the Water or Sewer System) and by the Public Works Director (in the case of the 1993 Stormwater Drainage Project or any future Improvement to the Stormwater Drainage Facilities) and approved by the Consulting Engineers, the balance in the Construction Fund not reserved by the City for the payment of any remaining part of the Cost of the 1993 Project or such Improvements shall be transferred by the Finance Director, in the discretion of the City, (a) to the credit of the Renewal, Replacement and Improvement Fund, (b) to the credit of the Sinking Fund for the payment of principal of the Bonds of such Series, (c) to the extent that such funds are not exhausted by the deposit mentioned in clause (b), to the Sinking Fund for payment of all or any part of the next installment of interest due on the Bonds, or (d) retained in the Construction Fund and used to pay the Cost of



a different Improvement or Improvements which have been approved by the City Commission. Anything hereinabove to the contrary notwithstanding, no portion of the proceeds of the Series 1993 Bonds deposited to the credit of the Construction Fund shall be applied, as excess to the requirements for the 1993 Project, until both the 1993 Water and Sewer Project and the 1993 Stormwater Drainage Project are certified as complete in the manner set forth herein.

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ARTICLE V.

Revenues and Funds.

Section 501. [This Section reserved.]

Section 502. Rate Covenant. The City further covenants that it will fix, charge and collect reasonable rates and charges for the use of the services and facilities furnished by the Utility System and that from time to time, and as often as it shall appear necessary, it will adjust such rates and charges by increasing or decreasing the same or any selected categories of rates and charges so that the Net Revenues, together with (I) any funds shown on the Annual Budget to be transferred in such Fiscal Year to the Sinking Fund for the purpose of paying the principal of or interest on Bonds, as permitted by Section 511(c) of this Resolution and (II) any amount of Impact Fees which, pursuant to the provisions of Section 513 of this Resolution may be transferred in such Fiscal Year to the Sinking Fund for the purpose of paying the principal of or interest on Bonds, will be sufficient to provide an amount in each Fiscal Year at least equal to the greater of (a) one hundred twenty per centum (120%) of the Maximum Principal and Interest Requirements for any future Fiscal Year or (b) one hundred per centum (100%) of all amounts required to be deposited to the Funds and Accounts pursuant to clauses (a), (b), (c), (d) and (e) of Section 505 of this Resolution for the then current Fiscal Year; provided, however, that (I) in determining the amount required to be deposited pursuant to clauses (a) and (b) of Section 505, the amount, if any, of Impact Fees on deposit in the Impact Fee Fund on the first day of a Fiscal Year which may, under Florida law, be used for payment of principal of, redemption premium, if any, and interest on Bonds and which have been irrevocably budgeted in such Fiscal Year for payment of such principal of, redemption premium, if any, or interest on Bonds may be deducted from the amounts required to be deposited pursuant to clauses (a) and (b) as appropriate and (II) in determining the amount required to be deposited pursuant to clause (e) of Section 505, only such amounts as the City is required by law or contract to pay out from such Fund shall be counted. In setting its rates and charges pursuant to this Section 502, the City shall be permitted to assume that not more than the balance in the Rate Stabilization Account as of the last day of the preceding Fiscal Year will be transferred as set forth above.

If in any Fiscal Year the Net Revenues shall be less than the amount required under the preceding paragraph of this Section, within 30 days of the receipt of the audit report for such Fiscal Year, the City shall employ the Consulting Engineer or the Accountant to review and analyze the financial status of the

Utility System, and the administration and operations of the Utility System, to inspect the Utility System and to submit, within 60 days thereafter, a written report to the City recommending revisions of the rates, fees and charges of the Utility System and the methods of operation of the Utility System that will result in producing the amount so required in the following Fiscal Year. Promptly upon its receipt of such recommendations, the City shall transmit copies thereof to the City Clerk and shall revise its rates, fees and charges, or alter its methods of operation and take such other action as shall conform with such recommendations.

If the City shall fail to comply with the recommendations of the Consulting Engineer or the Accountant, the registered owners of not less than ten per centum (10%) in principal amount of all Bonds then Outstanding may institute and prosecute an action or proceeding in any court or before any board or commission having jurisdiction to compel the City to comply with the recommendations and the requirements of the preceding paragraph of this Section.

If the City shall comply with all recommendations of the Consulting Engineer or the Accountant in respect to its rates, fees, charges and methods of operation, the failure of Net Revenues to meet the requirements of the first paragraph of this Section shall not constitute an Event of Default so long as the Revenues of the City are sufficient to pay in cash the current expenses of the City and to pay the Principal and Interest Requirements on all Outstanding Bonds and other indebtedness of the City with respect to the Utility System for such Fiscal Year.

Section 503. Annual Budget. The City covenants that not later than forty-five days before the end of each Fiscal Year it will prepare a preliminary budget covering Revenues, Current Expenses, Capital Expenditures and all deposits to Funds and Accounts required by Section 505 of this Resolution for the ensuing Fiscal Year. Copies of each such preliminary budget shall be filed with the City Clerk.

The City further covenants that on or before the first day of each Fiscal Year it will finally adopt the budget covering the above items for such Fiscal Year (herein sometimes called the "Annual Budget"). Copies of the Annual Budget shall be filed with the City Clerk and mailed by the City to all Bondholders who shall have filed their names and addresses with the City Clerk for such purpose.

If for any reason the City shall not have adopted the Annual Budget before the first day of any Fiscal Year, the Annual Budget for the preceding Fiscal Year shall, until the adoption of the Annual Budget, be deemed to be in force and shall be treated as the Annual Budget under the provisions of this Article.

The City may at any time adopt an amended or supplemental Annual Budget for the remainder of the then current Fiscal Year, and the Annual Budget so amended or supplemented shall be treated as the Annual Budget under the provisions of this Article. There shall be no limitation on the nature or amount covered by any such amendment to the Annual Budget.

The City further covenants that the amount expended for Current Expenses in any Fiscal Year will not exceed the reasonable and necessary amount thereof, and that it will not expend any amount for maintenance, repair and operation of the Utility System in excess of the total amount provided for Current Expenses in the Annual Budget. Nothing in this Section contained shall limit the amount which the may expend for Current Expenses in any Fiscal Year provided any amounts expended therefor in excess of the total amount provided in the Annual Budget shall be received by the City from some source other than the Revenues of the Utility System and the City shall not make any reimbursement therefor from such Revenues.

Section 504. Revenue Fund. A special fund is hereby created and designated the "West Palm Beach Utility System Revenue Fund" (herein called the "Revenue Fund"). Except as provided in Article VI of this Resolution with respect to investment income on certain Funds and Accounts, the City covenants that all Revenues will be collected by the City and deposited as received with a Depository or Depositaries to the credit of the Revenue Fund. All moneys in the Revenue Fund shall be held by the City in trust and applied as provided in this Article. If required by the laws or regulations of the United States, the State of Florida or other governmental or regulatory body having jurisdiction or if the City deems it advisable to do so, the City shall be permitted to create a separate Revenue Fund for the purpose of accounting for the Stormwater Drainage Revenues.

Section 505. Sinking and Other Funds. A special fund is hereby created and designated "West Palm Beach Utility System Revenue Bonds Interest and Sinking Fund" (herein sometimes called the "Sinking Fund"). There are hereby created in the Sinking Fund three separate accounts designated "Bond Service Account", "Redemption Account" and "Reserve Account", respectively. Three additional special funds are hereby created and designated "West Palm Beach Utility System Renewal, Replacement and Improvement Fund" (herein sometimes called the "Renewal, Replacement and Improvement Fund"), "West Palm Beach Utility System General Reserve Fund" (herein called the "General Reserve Fund") and "West Palm Beach Utility System Impact Fee Fund". There is hereby created in the General Reserve Fund a special account designated "Rate Stabilization Account".

If required by the terms of any Series of Additional Bonds or Refunding Bonds issued pursuant to Section 209 or 210 of this Resolution, the City hereby covenants to establish and maintain, pursuant to the Series Resolution with respect to such Additional Bonds and Refunding Bonds, a separate Sinking Fund to provide for payment of the principal of, redemption premium, if any and interest on such Series of Bonds and to provide a reserve for such payment or to provide within the Accounts in the Sinking Fund separate subaccounts as required by the terms of such Bonds. If any separate Sinking Funds or separate subaccounts within the Accounts in the Sinking Fund are created pursuant to this paragraph, such Sinking Funds or separate subaccounts shall be funded in the manner and at the times required by such award resolution or Series Resolution, as the case may be, and shall be held by the Finance Director separate and apart from the Sinking Funds with respect to any other Series of Bonds issued under this Resolution, and shall be held solely for the benefit and security of the Series of Bonds with respect to which such separate Sinking Fund or separate subaccounts were created. Each such separate Sinking Fund or separate subaccounts with respect to a Series shall be designated "Series \_\_\_\_\_ Sinking Fund" or "Series \_\_\_\_\_ Subaccount", as the case may be (inserting an identifying Series year, and if more than one Series is to be issued in a single calendar year, an identifying Series letter). The Reserve Account Requirement for such Series of Bonds shall be maintained such that it will not cause any existing rating on any Bonds or Series of Bonds Outstanding hereunder to be lowered, suspended or withdrawn.

The moneys in each of said Funds and Accounts shall be held in trust and applied as hereinafter provided with regard to each such Fund and Account and, pending such application, shall be subject to a lien and charge in favor of the holders of the Bonds issued and Outstanding under this Resolution and for the further security of such holders until paid out or transferred as herein provided.

The Finance Director shall, on or before the 20th day of the month next succeeding the month in which Bonds are issued under the provisions of Section 208 of this Resolution and not later than the 20th day of each month thereafter, withdraw the balance remaining in the Revenue Fund, less an amount (to be held for the payment of Current Expenses) equal to the amount shown by the Annual Budget to be necessary for Current Expenses during the next ensuing two (2) months, and deposit the sum so withdrawn to the credit of the following Accounts or Funds in the following order:

- (a) To the credit of the Bond Service Account, an amount equal to one-sixth (1/6) of the amount of interest payable on the Bonds of each Series on the next succeeding Interest Payment Date and an amount equal to one-twelfth (1/12) or, if principal is payable semi-annually, one-sixth (1/6) of the

next maturing installment of principal on all Serial Bonds then Outstanding; provided, however, that in each month intervening between the date of delivery of Bonds pursuant to Section 208, 209 or 210 of this Resolution (beginning with the month following the month in which such delivery takes place) and the next succeeding Interest Payment Date and the next succeeding principal payment date, respectively, the amount specified in this subparagraph shall be that amount which when multiplied by the number of monthly deposits to the credit of the Bond Service Account required to be made during such respective periods as provided above will equal the amounts required (in addition to any amounts received as accrued interest or capitalized interest from the proceeds of such Bonds) for such next succeeding interest payment and next maturing installment of principal, respectively.

(b) To the credit of the Redemption Account, an amount equal to one-twelfth (1/12) or, if any Bonds are required to be retired semi-annually in satisfaction of the Amortization Requirements therefor, one-sixth (1/6) of the principal amount of Term Bonds of each Series then Outstanding required to be retired, in satisfaction of the Amortization Requirements, if any, for such Fiscal Year, plus the premiums, if any, on the principal amount of Term Bonds which would be payable in such Fiscal Year if such principal amount of Term Bonds were to be redeemed prior to their respective maturities from moneys held for the credit of the Sinking Fund.

(c) To the credit of the Reserve Account, such amount, if any, of any balance remaining after making the deposits under clauses (a) and (b) above (or the entire balance if less than the required amount) as may be required to make the amount deposited to the credit of the Reserve Account in such month equal to the Reserve Account Deposit Requirement, if any, for such month.

(d) To the credit of the Renewal, Replacement and Improvement Fund, such amount, if any, of any balance remaining after making the deposits under clauses (a), (b) and (c) above (or the entire balance if less than the required amount) as may be required to make the amount deposited in such month to the credit of the Renewal, Replacement and Improvement Fund equal to one-twelfth of the Renewal, Replacement and Improvement Fund Requirement; provided, however, that no deposit to the Renewal, Replacement and Improvement Fund shall be required in any month in which the unappropriated on deposit to the credit of said Fund is at least equal to an amount, which shall be at least equal to the Renewal, Replacement and Improvement Fund Requirement, recommended by the Consulting Engineer for each Fiscal Year.

If the City shall receive from the State of Florida a grant the proceeds of which are to be used for paying a portion of the Cost of any Improvements and the conditions for the receipt of such grant include the creation and funding of a reserve account (the "State of Florida Grant Reserve Account"), the City shall create the State of Florida Grant Reserve Account within the Renewal, Replacement and Improvement Fund. From moneys remaining after all deposits required by clauses (a), (b) and (c) above have been made, the City shall be required to fund the State of Florida Grant Reserve Account in the amounts required by the State of Florida as a condition to the receipt of such grant.

If, pursuant to the preceding paragraph hereof, the City is required to create and fund the State of Florida Grant Reserve Account, the City shall also be required to determine, as a part of the Annual Budget, the portion of the Renewal, Replacement and Improvement Fund Requirement attributable to the Sewer System (the "Sewer System Renewal and Replacement and Improvement Requirement"). To the extent that the City is required to deposit amounts to the credit of the State of Florida Grant Reserve Account and to the extent that moneys in the State of Florida Grant Reserve Account are permitted, pursuant to the regulations governing such Account and interpretations of such regulations by the appropriate agencies of the State of Florida, to be used for items which would qualify for expenditure of funds on deposit in the Renewal, Replacement and Improvement Fund and such moneys have actually been budgeted by the City in such Fiscal Year for such purpose, the City shall not be required to deposit amounts to the Renewal, Replacement and Improvement Fund on account of the Sewer System Renewal, Replacement and Improvement Fund Requirement. In all events and notwithstanding such credit, the City shall be required to deposit to the credit of the Renewal, Replacement and Improvement Fund amounts required to fund the balance of the Renewal, Replacement and Improvement Fund Requirement.

If the amount of the required deposits to the credit of the State of Florida Grant Reserve Account and to the credit of the Renewal, Replacement and Improvement Fund Requirement on account of the balance of the Renewal, Replacement and Improvement Fund Requirement exceed the amounts required to be deposited to the credit of the Renewal, Replacement and Improvement Fund pursuant to the first paragraph of this clause (d), the amounts required by said first paragraph shall be increased to cover such deposits.

(e) To the credit of the General Reserve Fund, the balance, if any, remaining after making the deposits under clauses (a), (b), (c) and (d) above.

If the amount deposited in any month to the credit of any of the Accounts or Funds shall be less than the amount required to be deposited under the foregoing provisions of this Section, the requirement therefor shall nevertheless be cumulative and the amount of any deficiency in any month shall be added to the amount otherwise required to be deposited in each month thereafter until such time as all such deficiencies have been made up.

The amount of Impact Fees, if any, received by the City shall be deposited directly to the credit of the Impact Fee Fund.

Section 506. Payment of Current Expenses. The Current Expenses shall be paid from the Revenue Fund as the same become due and payable. Payments from the Revenue Fund shall be made in accordance with procedures established by the City from time to time, the Annual Budget and the covenants in Section 503 of this Article.

Section 507. Application of Moneys in Bond Service Account. The Finance Director shall on the business day immediately preceding each Interest Payment Date, withdraw from the Bond Service Account, and deposit in trust with the Bond Registrar to enable the Bond Registrar to remit by mail to each registered owner of Bonds the amounts required for paying the interest on such Bonds as much interest becomes due and payable. The Bond Registrar shall be permitted to transfer by wire to owners of at least \$1,000,000 principal amount of the Bonds the amounts required for paying the interest on such Bonds as such interest becomes due and payable. If provided in the Series Resolution with respect to any Series of Bonds which are to be held under "full book-entry system," the Bond Registrar shall be permitted to pay to the holders entitled thereto by wire transfer the portion of the principal amount of such Bonds which are Term Bonds required to be redeemed in satisfaction of the Amortization Requirements, but the final payment of such Term Bonds at maturity shall be made only upon presentation of such Bonds at the principal office of the Bond Registrar. The Finance Director shall on the business day immediately preceding a date on which principal is due on Serial Bonds withdraw from the Bond Service Account and deposit in trust with the Bond Registrar the amounts required for paying the principal of all Serial Bonds as such principal becomes due and payable. The Finance Director, in his discretion, may make the deposits required in this Section with the Bond Registrar by wire transfer. If the City Commission shall determine in the Series Resolution pursuant to which a Series of Bonds is issued that payments (other than termination payments) with respect to an Interest Rate Swap relating to such Series shall



be paid from the Bond Service Account, moneys in the Bonds Service Account shall be permitted to be expended for such payments.

**Section 508. Application of Moneys in Redemption Account.** Moneys held for the credit of the Redemption Account shall be applied to the retirement of the Bonds issued under the provisions of this Resolution as follows:

(a) Subject to the provisions of paragraph (c) of this Section, the Finance Director shall endeavor to purchase any Bonds secured hereby and then Outstanding, whether or not such Bonds shall then be subject to redemption, on the most advantageous terms obtainable with reasonable diligence, such price not to exceed the principal of such Bonds plus the amount of the redemption premium, if any, which might on the next redemption date be paid to the holders of such Bonds under the provisions of Article III of this Resolution if such Bonds should be called for redemption on such date from moneys in the Sinking Fund. The Finance Director shall pay the interest accrued on such Bonds to date of settlement therefor from the Bond Service Account and the purchase price from the Redemption Account, but no such purchase shall be made by the Finance Director within the period of forty-five (45) days next preceding any interest payment date on which such Bonds are subject to call for redemption under the provisions of this Resolution, except from moneys other than moneys set aside or deposited for the redemption of Bonds.

(b) Subject to the provisions of Article III of this Resolution and paragraph (c) of this Section, the Finance Director may call for redemption on each Interest Payment Date on which Bonds are subject to redemption such amount of such Bonds as, with the redemption premium, if any, will exhaust the moneys which will be held for the credit of the Redemption Account on said Interest Payment Date as nearly as may be; provided, however, that no less than Fifty Thousand Dollars (\$50,000) principal amount of Bonds shall be called for redemption at any one time unless a lesser amount shall be required to satisfy the Amortization Requirement for any Fiscal Year. Such redemption shall be made pursuant to provisions of Article III of this Resolution. The Finance Director shall during the period of five (5) business days prior to the Redemption Date withdraw from the Bond Service Account and the Redemption Account and set aside in separate accounts or deposit with the Bond Registrar the respective amounts required for paying the interest on, and the principal and redemption premium of, the Bonds so called for redemption.

(c) Moneys held by the Finance Director in the Redemption Account shall be applied by the Finance Director

each Fiscal Year to the retirement of Bonds of each Series then Outstanding in the following order:

**First:** the Term Bonds of each such Series to the extent to the Amortization Requirement, if any, for such Bond Year for such Term Bonds, plus the applicable premium, if any, and any deficiency in any preceding Fiscal Years in the purchase or redemption of such Term Bonds under the provisions of this subdivision and, if the amount available in such Fiscal Year shall not be sufficient therefor, then in proportion to the Amortization Requirement, if any, for such Fiscal Year for the Term Bonds of each such Series then Outstanding, plus the applicable premium, if any, and any such deficiency;

**Second:** Term Bonds of each Series, if any, in proportion (as nearly as practicable) to the aggregate principal amount of the Bonds of each such Series originally issued; and

**Third:** after the retirement of all Term Bonds, if any, Serial Bonds issued under the provisions of this Resolution in the inverse order of their maturities and, to the extent that Serial Bonds of different Series mature on the same date, in proportion (as nearly as practicable) to the principal amount of Bonds of each Series maturing on such date.

Upon the retirement of any Bonds by purchase or redemption the Finance Director shall file with the City Clerk a statement briefly describing such Bonds and setting forth the date of their purchase or redemption, the amount of the purchase price or the redemption price of such Bonds and the amount paid as interest thereon. The expenses in connection with the purchase or redemption of any Bonds shall be paid by the City from the Revenue Fund.

**Section 509. Application of Moneys in Reserve Account.** Moneys held for the credit of the Reserve Account shall first be used for the purpose of paying the interest on and the principal of the Bonds whenever and to the extent that the moneys held for the credit of the Bond Service Account shall be insufficient for such purpose and thereafter for the purpose of making deposits to the credit of the Redemption Account pursuant to the requirements of clause (b) of Section 505 of this Resolution whenever and to the extent that withdrawals from the Revenue Fund are insufficient for such purposes. If at any time the moneys held for the credit of the Reserve Account shall exceed the Reserve Account Requirement, such excess shall be withdrawn by the Finance Director and deposited to the credit of the Revenue Fund; provided, however, the

City Commission pursuant to the resolution awarding any Series of Bonds hereunder to the original purchasers thereof, may provide for a different disposition of any such excesses which relate to such Series of Bonds but only for one or more purposes of the Utility System.

In the event that all or a portion of the Reserve Account Requirement for any Series shall provided by a Reserve Account Guaranty, the Finance Director shall do all things necessary to receive in a timely fashion from the provider of such Reserve Account Guaranty amounts required to be expended pursuant to this Section.

Section 510. Application of Moneys in Renewal, Replacement and Improvement Fund. Except as hereinafter provided in this Section, or except in case of an emergency caused by some extraordinary occurrence, so characterized in a certificate signed by the Consulting Engineers and filed with the Finance Director, and an insufficiency of moneys held for the credit of the Revenue Fund to meet such emergency, moneys held for the credit of the Renewal, Replacement and Improvement Fund shall be disbursed only for the purpose of paying the cost of unusual or extraordinary maintenance or repairs, the cost of renewals and replacements, the cost of acquiring, installing or replacing equipment, the cost of Improvements and engineering expenses related to the foregoing and the cost of providing a local share of moneys required to entitle to the City to receive Federal or State grants or to participate in Federal or State assistance programs related to the Utility System.

Payments from the Renewal, Replacement and Improvement Fund, except the withdrawal which the Finance Director is authorized to make as hereinafter provided in this Section, shall be made in accordance with the provisions of Section 402 of this Resolution for payments from the Construction Fund to the extent that such provisions may be applicable.

If at any time the moneys held for the credit of the Bond Service Account and the Reserve Account shall be insufficient for the purpose of paying the interest on the principal of the Bonds as such interest and principal become due and payable, then the Finance Director shall withdraw from any moneys held for the credit of the Renewal Replacement and Improvement Fund deposit to the credit of the Bond Service Account an amount sufficient to make up any such deficiency. If at any time the Net Revenues and the moneys held for the credit of the Reserve Account shall be insufficient for making the deposits to the credit of the Redemption Account required by clause (b) of Section 505 of this Article, then the Finance Director shall withdraw from any moneys held for the credit of the Renewal, Replacement and Improvement Fund and deposit to the credit of the Redemption Account an amount

sufficient to make up any such deficiency; provided, however, that no such transfer shall be made unless the moneys then held for the credit of the Bond Service Account are at least equal to the maximum requirement therefor under clause (a) of said Section 505. Any moneys so withdrawn from the Renewal, Replacement and Improvement Fund and deposited to the credit of the Bond Service Account or the Redemption Account shall be restored from available moneys in the Revenue Fund, subject to the same conditions as are prescribed for deposits to the credit of the Renewal, Replacement and Improvement Fund under the provisions of Section 505 of this Article.

Anything in this Section 510 to the contrary notwithstanding, moneys on deposit to the credit of the State of Florida Grant Reserve Account, if the same is created, shall be used only for the purposes permitted by the regulations of the State of Florida governing such Account.

Section 511. Application of Moneys in General Reserve Fund.

(a) Moneys held for the credit of the General Reserve Fund shall be applied for the following purposes in the following order of priority:

(i) to make up deficiencies in any of the Accounts and Funds created by this Resolution;

(ii) to make the ECR Board Renewal and Replacement Payments and the ECR Board Debt Service Payments;

(iii) pro rata, (A) to pay the principal of, redemption premium, if any, and interest on any Subordinated Indebtedness, (B) to pay the amounts required to satisfy the Monthly State Loan Requirement with respect to any State Loan; and (C) if the City Commission shall determine in the Series Resolution pursuant to which a Series of Bonds is issued that payments (other than termination payments) with respect to an Interest Rate Swap relating to such Series shall be paid from the General Reserve Fund, to pay payments (other than termination payments) with respect to Interest Rate Swaps and in all events to pay termination payments with respect to Interest Rate Swaps;

(iv) after making the payments, if any, required by clauses (i), (ii) and (iii), any balance remaining may be applied by the City for any one or more of the following purposes and any combination thereof, (A) to pay the Cost of Improvements, (B) to purchase or redeem Bonds, (C) to pay the Cost of any item qualifying as an authorized expenditure from the Renewal, Replacement and Improvement Fund, (D) to make any payments to the City in lieu of taxes but only in accordance with the City's

Payment In Lieu of Taxes Policy Ordinance (as hereinafter defined) and (E) to make deposits to the Rate Stabilization Account.

(b) Except for taxes permitted to be paid as a Current Expense of the Utility System, the City shall not withdraw moneys on deposit to the credit of the General Reserve Fund as payments in lieu of taxes for use for purposes of the City other than the Utility System except in accordance with a formula or methodology which shall be embodied in an ordinance duly adopted by the City Commission after a publically-noticed public hearing thereon (the "Payment In Lieu of Taxes Ordinance"). The Payment In Lieu of Taxes Ordinance from time to time in effect may be amended by the City Commission in the same manner as its was originally adopted.

(c) Moneys, if any, on deposit to the credit of the Rate Stabilization Account may be transferred to the Sinking Fund for the purpose of paying the principal of or interest on any Bonds. There shall be no limit on the amount which may be so transferred from the Rate Stabilization Account in any Fiscal Year.

Section 512. Application of Moneys in Sinking Fund. Subject to the terms and conditions set forth in this Resolution, moneys held for the credit of the Sinking fund shall be held in trust and disbursed by the Finance Director for (a) the payment of interest on the Bonds issued hereunder as such interest becomes due and payable, or (b) the payment of the principal of such Bonds at their maturities, or (c) the payment of the purchase or redemption price of such Bonds before their maturity and such moneys are hereby pledged to and charged with the payments mentioned in this Section.

Section 513. Application of Moneys in the Impact Fee Fund. Moneys, if any, on deposit to the credit of the Impact Fee Fund may be applied by the City for any purpose permitted by the laws of the State of Florida.

Section 514. Money Held in Trust. All moneys which the Finance Director shall have withdrawn from the Sinking Fund or shall have received from any other source and deposited with the Bond Registrar, for the purpose of paying any of the Bonds hereby secured, either at the maturity thereof or upon call for redemption, or for the purpose of paying any interest on any of the Bonds hereby secured, shall be held in trust for the respective holders of such Bonds. But any moneys which shall be so set aside or deposited by the Finance Director and which shall remain unclaimed by the holders of such Bonds or of such coupons for the period of six (6) years after the date on which such bonds or the interest thereon shall have become due and payable shall upon request in writing be paid to the City or to such officer, board or body as may then be entitled by law to receive the same, and thereafter the holders of such Bonds or coupons shall look only to

the City or to such officer, board or body, as the case may be, for the payment and then only to the extent of the amounts so received without any interest thereon, and the Bond Registrar shall have no responsibility with respect to such moneys.

Section 515. Cancellation of Bonds. All Bonds, paid, redeemed or purchased, either at or before maturity shall be cancelled upon the payment, redemption or purchase of such Bonds and shall be delivered to the Finance Director when such payment, redemption or purchase is made. All Bonds cancelled under any of the provisions of this Resolution shall be destroyed by the Finance Director, who shall execute a certificate in duplicate describing the Bonds so destroyed, and one executed certificate shall be filed with the City Clerk and the other executed certificate shall be retained by the Finance Director.

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**ARTICLE VI.**

**Depositaries of Moneys, Security for Deposits  
and Investment of Funds.**

**Section 601. Security for Deposits.** All moneys received by the City under the provisions of this Resolution shall be held either by the Finance Director in accordance herewith or shall be deposited with a Depositary or Depositaries, shall be held in trust, shall be applied only in accordance with the provisions of this Resolution and shall not be subject to lien or attachment by any creditor of the City.

All moneys held by the Finance Director or deposited with any Depositary hereunder in excess of the amount guaranteed by the Federal Deposit Insurance Corporation or other Federal agency shall be continuously secured for the benefit of the City and the holders of the Bonds, either (a) by lodging with a bank or trust company approved by the City as custodian, or, if then permitted by law, by setting aside under control of the trust department of the bank holding such deposit as collateral security, Investment Obligations, or, with the approval of the Finance Director, other marketable securities eligible as security for the deposit of trust funds under applicable regulations of the Comptroller of the Currency of the United States or applicable State of Florida laws or regulations, having a market value (exclusive of accrued interest) not less than the amount of such deposit, or, if the furnishing of security as provided in (a) of this Section is not permitted by applicable law, (b) in such other manner as may then be required or permitted by applicable State of Florida or Federal laws or regulations regarding the security for, or granting a preference in the case of, the deposit of trust funds; provided, however, that it shall not be necessary for the Bond Registrar to give security for the deposits of any moneys with them for the payment of the principal of or the redemption premium or the interest on any Bonds issued hereunder, or for the Finance Director to give security for any moneys which shall be represented by obligations purchased under the provisions of this Article as an investment of such moneys.

All moneys held by the Finance Director and deposited with each Depositary shall be credited to the particular Fund or Account to which such moneys belong.

**Section 602. Investment of Moneys.** Moneys held for the credit of the Construction Fund, the Revenue Fund, the Bond Service Account, the Redemption Account, the Reserve Account, the Renewal, Replacement and Improvement Fund, the General Reserve Fund and the Impact Fee Fund shall, as nearly as may be practicable, be continuously invested and reinvested by the Finance Director in

Investment Obligations which shall mature, or which shall be subject to redemption by the holder thereof at the option of such holder, not later than the respective dates when moneys held for the credit of said Funds and Accounts will be required for the purposes intended; provided, however, that amounts on deposit in the Reserve Account shall be invested in Investment Obligations which mature not later than the final maturity date of any Bonds Outstanding under this Resolution.

Investment Obligations so purchased as an investment of moneys in any such Fund or Account shall be deemed at all times to be part of such Fund or Account. The interest accruing thereon and any profit realized from such investment shall be credited to such Fund or Account and any loss resulting from such investment shall be charged to such Fund or Account.

Investment earnings on moneys on deposit to the credit of the following Funds and Accounts shall be applied as follows:

(a) Investment earnings or moneys on deposit to the credit of the Bond Service Account and the Redemption Account may, at the option of the City be retained in said Accounts if the amounts then to credit of said Accounts are less than the amounts required for paying interest on the Bonds on the next Interest Payment Date and principal of Serial bonds or the Amortization Requirements for Term Bonds when due, and to the extent that earnings are so retained, the City shall receive a credit against the amounts required to be deposited to said Accounts pursuant to Section 505 of this Resolution or the City may withdraw such earnings and deposit them to the credit of the Revenue Fund.

(b) Investment earnings on moneys on deposit in the Reserve Account shall be retained in said Account at any time that the amounts on deposit to the credit of said Account are less than the Reserve Account Requirement for all Series of Bond Outstanding, or if moneys on deposit therein are sufficient for such purpose, then such earnings shall be withdrawn and deposit to the credit of the Revenue Fund.

(c) Investment earnings on moneys on deposit to the credit of the Renewal, Replacement and Improvement Fund may, at the option of the City, be retained in said Fund or withdrawn and deposited to the credit of the Revenue Fund; provided, however, investment earnings on any moneys on deposit to the credit of the State of Florida Grant Reserve Fund shall be applied in accordance with regulations of the State of Florida governing said Account.



(d) Investment earnings on moneys on deposit to the credit of the General Reserve Fund may, at the option of the City be retained in said fund or withdrawn and deposited to the credit of the Revenue Fund; provided, however, any earnings on moneys in the General Reserve Fund with respect to the Monthly State Loan Requirement shall be applied in accordance with the requirements of said State Loan and any investment earnings on moneys held for the credit of the General Reserve Fund for the purpose of payment of the principal of, redemption premium, if any and interest on Subordinated Indebtedness shall be applied in accordance with the documents governing such Subordinated Indebtedness.

(e) Investment earnings on moneys on deposit to the credit of the Construction Fund shall be retained in said Fund and applied for the purpose of constructing or acquiring the 1993 Project or any Improvements.

(f) Investment earnings on moneys on deposit to the credit of the Impact Fee Fund shall be retained in said Fund and applied in the same manner and under the same conditions and restrictions as set forth in Section 513 of this Resolution.

Anything in this paragraph to the contrary notwithstanding, no transfer of investment earnings to the Revenue Fund as permitted herein shall affect the definition of Revenues contained in this Resolution.

The Finance Director shall sell or present for payment or redemption any Investment Obligations so acquired whenever it shall be necessary so to do in order to provide moneys to meet any payment from such Fund or Account. Neither the Finance Director nor any agent thereof shall be liable or responsible for any loss resulting from any investment.

Section 603. Valuation of Investment Obligations. In computing the amount in any Fund created pursuant to the provisions of this Resolution, obligations purchased as an invested of moneys therein shall be valued at par if purchased at par or at amortized value if purchased at other than par, plus, in each case, accrued interest. Amortized value, when used with respect to an obligation purchased at a premium above or a discount below par, means the value as of any given time obtained by dividing the total premium or discount at which such obligation was purchased by the number of days remained to maturity on such obligation at the date of such purchase and by multiplying the amount thus calculated by the number of days having passed since such purchase; and (1) in the case of an obligation purchased at a premium by deducting the product thus obtained from the purchase price, and (2) in the case

of an obligation purchased at a discount by adding the product thus obtained to the purchase price. Valuation on any particular date shall include the amount of interest then earned or accrued to such date on any moneys or investments in such Fund. The computation of the amount on deposit in or credited to the Funds created under this Resolution and the valuation of the investments of such amount shall be performed by the Finance Director on the last day of each Fiscal Year, and such computation and valuation shall not be required to be performed at other times.

**Section 604. Accounting for Funds.** For the purposes of this Resolution, each Fund created hereunder shall be a series of self-balancing accounts within the book of accounts of the Utility System and shall connote a segregation of accounts, which will support special purposes disclosure reports, not to be construed as a separate set of books of accounts.

**Section 605. Covenant as to Arbitrage and Private Activity Bond Status.** The City covenants and agrees to the following tax matters with respect to Bonds with respect to which the City shall have received an opinion of bond counsel that interest on such Bonds is not includable in the gross income of the Bondholder thereof for federal income tax purposes:

(a) So long as the Bonds remain Outstanding, the moneys on deposit in any Fund or Account maintained in connection with the Bonds, whether or not such moneys were derived from proceeds of the sale of the Bonds or any other sources, will not be used in any manner that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code or bonds not described under Section 103(a) of the Code and the applicable regulations promulgated from time to time thereunder or applicable thereto. In furtherance of this covenant, the City agrees to comply with the Letter of Instructions as to Rebate attached to the Certificate of Arbitrage delivered by the City on the date of issuance of each Series of Bonds, as such letter may be amended from time to time.

(b) The proceeds of the Bonds or portion thereof will not be used in a manner that would cause the Bonds to be "private activity bonds" within the meaning of Section 141(a) of the Code unless at the time of the issuance of such private activity bonds there shall be delivered to the City an opinion of bond counsel to the effect that (i) the interest on such private activity bonds will not be includable in the gross income of the recipients thereof and (ii) that the issuance of such private activity bonds will not impair the federal income tax status of any other Bonds then Outstanding under this Resolution. In furtherance of this covenant, the City

covenants that it shall not use or permit the use of any portion of the proceeds of the Bonds or portion of any facility financed with the proceeds of the Bonds in an amount in excess of five percent (5%) of the net proceeds of the Bonds for any private business use by a person or entity other than a state or local governmental unit except as provided above. Nothing in this Resolution, however, shall prohibit the City from issuing Bonds, the interest on which is included in federal income taxation (the "taxable Bonds") as long as the City receives an opinion from bond counsel on the date of issuance of such taxable Bonds, to the effect that the issuance of the taxable Bonds will not adversely affect the exclusion of federal tax status of any other Bonds then Outstanding under this Resolution.

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**ARTICLE VII.**

**Particular Covenants.**

**Section 701. Payment of Principal, Interest and Premium.** The City covenants that it will promptly pay the principal of and the interest on each and every Bond and all other Indebtedness issued under the provisions of this Resolution at the places, on the dates and in the manner specified herein and in said Bonds and Indebtedness and any premium required for the retirement of said Bonds and Indebtedness by purchase or redemption, according to the true intent and meaning thereof. Such principal, interest and premium will be payable solely from the Net Revenues and said Net Revenues are hereby pledged to the payment thereof in the manner and to the extent hereinabove particularly specified.

Bonds and other Indebtedness issued under the provisions of this Resolution shall not be deemed to constitute a debt of the City or a pledge of the faith and credit of the City, but such Bonds and other Indebtedness shall be payable solely from the fund provided therefor from Net Revenues. The issuance of the Bonds and other Indebtedness shall not directly or indirectly or contingently obligate the City to levy or to pledge any form of taxation whatever therefor, nor shall any such Bonds and other Indebtedness constitute a charge, lien or encumbrance, legal or equitable, upon any property of the City.

**Section 702. Construction of 1993 Project and Improvements; Operation of Utility System.** The City further covenants that it will construct the 1993 Project and all Improvements for the construction or acquisition of which Bonds or other Indebtedness shall be issued under the provisions of this Resolution, or for which moneys repayable from the proceeds of Bonds or other Indebtedness issued under the provisions of this Resolution shall have been advanced to the City, in accordance with plans theretofore approved by the Consulting Engineers and that upon the completion of such Improvements it will operate and maintain the same as a part of the Utility System. The City further covenants that any contract with any person for the construction of all or a portion of any Improvements shall provide for such performance and payment bonds or security in lieu thereof and for such retainages as shall be in compliance with the laws of the State of Florida and the normally established practices of the City from time to time in effect.

The City further covenants that it will establish and enforce reasonable rules and regulations governing the use of the Utility System and the operations thereof, that all compensation, salaries, fees and wages paid by it in connection with the maintenance, repair and operation of the Utility System will be reasonable, that

no more persons will be employed by it than are necessary, that it will operate the Utility System in an efficient and economical manner, that it will at all times maintain the Utility System in good repair and in sound operating condition and will make all necessary repairs, renewals and replacements, and that it will comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to the Utility System.

Section 703. Covenants Against Encumbrances. The City further covenants that, from the Revenues, it will pay all municipal or governmental charges lawfully levied or assessed upon the Utility System or any part thereof or upon any Revenues when the same shall become due, that it will duly observe and comply with all valid requirements of any municipal or governmental authority relative to the Utility System, that it will not create or suffer to be created any lien or charge upon the Utility System or any part thereof or upon the Net Revenues ranking equally with or prior to the Bonds, and that, out of the Revenues, it will pay or cause to be discharged, within sixty (60) days after the same shall accrue, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the Utility System or any part thereof or the Revenues; provided, however, that nothing contained in this Section shall require the City to pay or cause to be discharged, or make provision for, any such lien or charge so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings.

Section 704. Employment of Consulting Engineers. The City covenants and agrees that so long as any Bonds are outstanding under this Resolution, it will employ an independent engineer or engineering firm or corporation having a favorable reputation for skill and experience in the construction and operation of water-works and sewer systems. The City shall be permitted to retain more than one such firm to carry out the functions of the Consulting Engineer hereunder, and if so retained, each of such firms shall be the Consulting Engineer hereunder. Except for any fees and expenses incurred under the provisions of Section 403 of this Resolution, the cost of employing Consulting Engineers shall be treated as a part of the cost of operation and maintenance of the Utility System.

It shall be the duty of the Consulting Engineers to prepare and file with the City on or before the first day of August, 1996 and the first day of August of each third year thereafter a report setting forth their recommendations as to any necessary or advisable revisions of rates and charges and such other advice and recommendations as they may deem desirable or which the City may request.

The City further covenants that the Consulting Engineers shall at all times have free access to all properties of the Utility System and every part thereof for the purposes of inspection and examination and that its books, records and accounts may be examined by the Consulting Engineers at all reasonable times.

Section 705. Employment of Accountant. The City covenants and agrees that it will for the purpose of performing and carrying out the duties imposed on the Accountant by this Resolution employ an independent certified public accountant or firm of independent certified public accountants of suitable experience and responsibility.

Section 706. Insurance. The City covenants that it will at all times carry insurance, in a responsible insurance company or companies authorized and qualified under the laws of the State of Florida to assume the risk thereof, covering such properties belonging to the Utility System as are customarily insured, and against loss or damage from such causes as are customarily insured against, by companies engaged in similar business.

All such policies shall be for the benefit of the City, shall be made payable to the City and shall be deposited with the Finance Director, and the Finance Director shall have the sole right to receive and proceeds of such policies and to collection and receipt for claims thereunder. The proceeds of any and all such insurance shall be deposited by the Finance Director in the name of the City in a Depositary.

The City covenants that, immediately after any loss or damage to any properties of the Utility System resulting from any cause, whether or not such loss or damage shall be covered by insurance, it will cause its engineers to prepare plans and specifications for repairing, replacing or reconstructing (either in accordance with the original or a different design) the damaged or destroyed property, and that it will forthwith commence and diligently prosecute the repair, replacement or reconstruction of the damaged or destroyed property unless it shall determine that the repair, replacement or reconstruction of such property is not essential to the efficient or economic operation of the Utility System. In the event that the City shall determine that the repair or replacement of such damaged or destroyed property is not essential to the efficient or economic operation of the Utility System, the proceeds as of such insurance received by the City, at the option of the City, shall be deposited to the credit of either the Redemption Account or the Renewal, Replacement and Improvement Fund.

The proceeds of all insurance referred to in this Section shall be available for and shall, to the extent necessary, be applied to the repair, replacement or reconstruction of the damaged

or destroyed property, and shall be paid out in the manner hereinabove provided for payments from the Construction Fund. If such proceeds are more than sufficient for such purpose, the balance remaining shall be deposited to the credit of the Renewal, Replacement and Improvement Fund. If such proceeds shall be insufficient for such purpose, the deficiency may be supplied out of any moneys in the Renewal, Replacement and Improvement Fund.

All insurance policies shall be open to the inspection of the Bondholders and their representatives at all reasonable times. The Finance Director is hereby authorized in the name of the City to demand, collect, sue and receipt for the insurance money which may become due and payable under any policies payable to it. Any appraisalment or adjustment of any loss of damage and any settlement or payment of indemnity therefor which may be agreed upon between the City and any insurer shall be evidenced to the Finance Director by a certificate signed by the officer of officers of the City responsible for managing the Utility System.

Notwithstanding the foregoing provisions of this Section, the City may institute self-insurance programs with regard to such risks as shall be consistent with the practices of municipally-owned utilities operating in a manner similar to the Utility System. The City hereby covenants that any self-insurance funds it determines to maintain with respect to the Utility System shall be "sufficient", as hereinafter defined. A self-insurance fund shall be sufficient for the purposes of this Resolution only if: (i) there shall be filed at least annually with the City Clerk a report of an independent insurance consultant or consulting actuary (the "Insurance Consultant") in which report the Insurance Consultant shall set forth (a) a description of the self-insurance fund or funds maintained by the City with respect to the Utility System and the risks insured against by such fund or funds; (b) the amount on deposit to the credit of such fund or funds at the time of such report; and (c) a recommendation of the amount required to be deposited to the credit of such fund or funds in the ensuing twelve months in order for such fund or funds to be "actuarially sound"; and (ii) the City shall deposit to the credit of such fund or funds the amount recommended in the report of the Insurance Consultant during such twelve-month period.

Section 707. Use of Revenues. The City covenants and agrees that, so long as any of the Bonds secured hereby shall be outstanding, none of the Revenues will be used for any purpose other than as provided in this Resolution, and that no contract or contracts will be entered into or any action taken by which the rights of holders of the Bonds might be impaired or diminished.

Section 708. Records, Accounts and Audits. The City covenants that it will keep the funds and accounts of the Utility

System separate from all other funds and accounts of the City or any of its departments, and that it will keep accurate records and accounts of all items of costs and of all expenditures relating to the Utility System and of the Revenues collected and the application of such Revenues, and of the number of the users of the Utility System in each classification.

The City further covenants that at least quarterly during each Fiscal Year it will cause to be filed with the City Clerk copies of any revisions of the utility during the preceding three-month period and a report, signed by the Finance Director, setting forth in respect of the preceding three-month period:

(a) a separate income and expense statement for the Utility System showing the Net Revenues, and

(b) a balance sheet as of the end of such three-month period.

The City further covenants that within six months after the close of each Fiscal Year it will cause an audit to be made of its books and accounts pertaining to the Utility System by the Accountant. Within a reasonable time thereafter reports of each such audit shall be filed with the City Commission and the Finance Director, and copies of such report shall be mailed to Standard & Poor's Corporation, Moody's Investors Service, any insurance company which then maintains a policy of bond insurance with respect to any Bonds and to any Bondholder who shall have filed his name and address with the City Clerk for such purpose. Each such audit report shall set forth in respect of said Fiscal Year the same matters as are hereinabove required for the quarterly reports and an opinion of the Accountant (which may be contained in a separate letter) that no default on the part of the City of any covenant in this Resolution has been disclosed by reason of such audit. Such quarterly reports and audit reports shall be open to the inspection of all interested persons.

The City further covenants that it will cause any additional reports or audits relating to the Utility System to be made as required by law or by any applicable rules or regulations of any governmental authority or of any securities exchange on which the Bonds may be listed or traded. The cost of such audits shall be treated as a part of the cost of operation.

**Section 709. Mandatory Connections.** Except as provided in the following sentence, the City will, to the full extent permitted by law, require all lands, buildings and structures within the City's service area, fronting or abutting on the lines of the Utility System, or any part thereof, or which can use the facilities of the Utility System to connect with and use such



facilities within ninety (90) days after notification that service is available. From and after the date set forth in the Stormwater Drainage Resolution, the City will, to the full extent permitted by law, assess and collect fees, assessments and revenues from all properties and owners thereof which, in the judgment of the City, are benefited by the Stormwater Drainage Facilities.

Except as provided in Section 711 hereof and to the extent permitted by law, the City will not grant a franchise to any person for the operation of a water and sewer system or a water system or a sewer system which would be in competition with the Utility System so long as any Bonds are Outstanding under this Resolution.

**Section 710. Supervisory Personnel.** The City in operating the Utility System will employ or designate one or more of its qualified employees as manager who has demonstrated ability and experience in operating similar facilities, and will require all employees who may have possession of money derived from the operation of the Utility System to be covered by a fidelity bond, written by a responsible indemnity company in amounts fully adequate to protect the City from loss.

**Section 711. Separate Systems.** The City Commission may by resolution determine to own and operate Separate Systems; provided, however, that prior to the adoption of any such resolution designating any facilities as a Separate System, there shall be delivered to the City Clerk a certificate of the Finance Director containing the determination that the ownership and operation of such Separate System will not have a material adverse impact on the Net Revenues of the Utility System and stating the reasons for such determination.

The City may incur Indebtedness to acquire or improve Separate Systems without compliance with any test or limit contained in the Resolution so long as such Indebtedness is payable solely from the revenues or Net Revenues generated by such Separate System and the holders of such Indebtedness have no recourse and are in no way payable from the Revenues or Net Revenues of the Utility System. The revenues, current expenses and debt service associated with such Separate System and any Indebtedness of the City incurred therefor shall not be included in Revenues, Current Expenses and Principal and Interest Requirements, each as defined in this Resolution.

Any such Separate System may be consolidated with the Utility System upon demonstration of compliance with the tests for the incurrence of Additional Bonds contained in clause (d)(ii) of Section 209 of this Resolution. In determining compliance with the test mentioned above, the revenues and current expenses of such Separate System shall be included in the Revenues and Current

Expense of the Utility System and the debt service on any Indebtedness payable from revenues of such Separate Systems shall be included in Principal and Interest Requirements. Prior to any such consolidation, compliance with the tests set forth in clause (d)(ii) of Section 209 shall be demonstrated regardless of whether there shall be any Indebtedness outstanding with respect to such Separate System.

Section 712. No Free Service. Except to the extent required by law or in accordance with a policy adopted by the City Commission, the City will not render or cause to be rendered any free services of any nature by the facilities of the Utility System nor will any preferential rates be established for users of the same class; the City including its departments, agencies and instrumentalities, shall avail itself of the facilities of the Utility System, and the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged to the City and any such department, agency or instrumentality. Such charges will be paid as they accrue, and the City shall transfer from its appropriate funds sufficient sums to pay such charges. The moneys so received shall be deemed to be Revenues derived from the operation of the Utility System, and shall be deposited and accounted for in the same manner as other Revenues derived from such operation of the Utility System.

Section 713. Failure to Pay for Services. To the extent permitted by law, upon failure of any user to pay for services rendered within sixty (60) days, the City shall shut off the connection of such user to the Utility System and shall not furnish him or permit him to receive further service until all obligations owed by him to the City on account of services shall have been paid in full. This covenant shall not, however, prevent the City from causing any connection to be shut off sooner if permitted by law.

Section 714. Enforcement of Collections. The City will diligently enforce and collect the rates, fees and other charges for the services of the Utility System; will take all steps, actions and proceedings for the enforcement and collections of such rates, fees and charges as shall become delinquent to the full extent permitted or authorized by law; and will maintain accurate records with respect thereto. All such rates, fees, charges and revenues herein pledged shall, as collected be held in trust to be applied as provided in this Resolution and not otherwise.

Section 715. Sale, Lease or Other Disposition of the Utility System. Except as provided in this Section, the City shall not sell or otherwise dispose of all or any part of the Utility System.

(a) To the extent permitted by law the City may, without restrictions, in any Fiscal Year sell, lease or otherwise

dispose of assets forming a part of the Utility System, the aggregate value of which in each such Fiscal Year does not exceed one half of one per centum (1/2 of 1%) of the book value of the net property, plant and equipment of the Utility System as shown on the audited financial statements of the Utility System for the latest Fiscal Year for which such audited statements are available. The proceeds of a sale pursuant to this clause (a) shall be deposited to the credit of the Renewal, Replacement and Improvement Fund and any rental income received by the City from a lease of such property shall be deposited to the credit of the Revenue Fund.

(b) To the extent permitted by law the City may in any Fiscal Year sell, lease or otherwise dispose of assets forming a part of the Utility System in excess of the amount set forth in clause (a) of this Section, if, before any such transfer, there is delivered to the City Clerk a report of the Consulting Engineer demonstrating that the sale, lease or other disposition of such property will not have an adverse impact on the Net Revenues and stating his reasons therefor. In determining whether to render such report, the Consulting Engineer shall consider the uses to be made of any proceeds of a sale and the rental income to be received with respect to any lease thereof. The proceeds of a sale pursuant to this clause (b) shall be deposited to the credit of the Renewal, Replacement and Improvement Fund and any rental income received by the City from a lease of such property shall be deposited to the credit of the Revenue Fund.

(c) To the extent permitted by law, the City may lease the entire Utility System, if there shall be delivered to the City Clerk, the following:

(1) a report of the Consulting Engineer setting forth (i) that the proposed lessee of the Utility System is a financially responsible lessee with substantial experience in the operation and management of utilities of the general type and size of the Utility System, (ii) the Net Revenues of the Utility System for the five (5) complete Fiscal Years following the date on which such lease is to be effective are forecast to be sufficient to pay to the City the rent provided by such lease and to make all necessary repairs, improvements and replacements to maintain the Utility System in the condition it was prior to such lease; and

(2) a certificate of the Finance Director to the effect that the lease shall provide (i) for rent payments for the Utility System sufficient to make all payments of the Principal and Interest Requirements for all Bonds issued and which will remain Outstanding following such lease and all

other obligations of the City which were payable from Net Revenues of the Utility System prior to such lease, including the excess coverage of Maximum Principal and Interest Requirements required by Section 502 of this Resolution, (ii) operational covenants binding on the lessee similar to those covenants contained in this Resolution and any Series Resolution and (iii) for immediate dispossession of such lessee without resort to legal process in the event of a default under the lease; and

(3) an opinion of Bond Counsel to the effect that the lease of the Utility System will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on any Bonds issued under this Resolution.

(d) To the extent permitted by law, the City may sell the entire Utility System, if, upon the application of the proceeds of any such sale as hereinafter required, there shall be no Bonds deemed to be outstanding under the provisions of this Resolution and the City shall have paid or made full provision for the payment of all other obligations of the City payable from the Revenues of the Utility System, including but not limited to, Current Expenses then due and payable or to become due and payable, all other Indebtedness payable in any way from the Revenues of the Utility System and all obligations to the State of Florida for State Loans, the State of Florida Grant Reserve Account or otherwise and all fees then due and owing or to become due in the future with respect to Credit Facilities. The proceeds of any sale permitted by this clause (d) shall be applied first to the payment or provision for payment of the obligations, including the Bonds, set forth above, and only after all such obligations shall have been paid or full provision for their payment been made, shall the City apply any of such proceeds to any other lawful purpose of the City. In addition, no such sale shall be consummated nor shall the proceeds of any such sale be applied unless prior to such consummation or application, there shall be delivered an opinion of bond counsel of favorable national reputation for skill in matters relating to tax-exempt municipal bonds to the effect that such sale and the application of the proceeds as required herein will have no adverse impact on the exclusion from gross income for federal income tax purposes of the interest on the Bonds, any other Indebtedness of the City payable from the Revenues of the Utility System which at the time of its incurrence was exempt from such taxation or any bonds of the State of Florida issued to fund State Loans.

**ARTICLE VIII.**

**Remedies.**

**Section 801. Extension of Interest Payment.** In case the time for the payment of any interest on any Bond shall be extended, whether or not such extension be by or with the consent of the City, such interest so extended shall not be entitled in case of default hereunder to the benefit or security of this Resolution except subject to the prior payment in full of the principal of all Bonds then Outstanding and of all interest the time for the payment of which shall not have been extended.

**Section 802. Events of Default.** Each of the following events is hereby declared an "Event of Default":

(a) payment of the principal and of the redemption premium, if any, of any of the Bonds shall not be made when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise; or

(b) payment of any installment of interest on any of the Bonds shall not be made when the same shall become due and payable; or

(c) the City shall for any reason be rendered financially incapable of fulfilling its obligations hereunder; or

(d) any substantial part of the Utility System necessary for its effective operation shall be destroyed or damaged and shall not be properly repaired, replaced or reconstructed; or

(e) final judgment for the payment of money shall be rendered against the City as a result of the ownership, control or operation of the Utility System and any such judgment shall not be discharged within sixty (60) days from the entry thereof or an appeal shall not be taken therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, in such manner as to stay the execution of or levy under such judgment, order, decree or process or the enforcement thereof; or

(f) the City admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors or consents to the appointment of a receiver or trustee for itself or for the whole or any part of the Utility

System or a receiver or trustee for such purpose is appointed without the consent of the City; or

(g) The City or the Utility System is adjudged insolvent by a court of competent jurisdiction, or it be adjudged a bankrupt on a petition in bankruptcy filed against the City, or an order, judgment or decree be entered by any court of competent jurisdiction appointing, without the consent of the City, a receiver or trustee of the City or of the whole or any part of its property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or

(h) the City shall file a petition or answer seeking reorganization or any arrangement under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof; or

(i) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or the Utility System or of the whole or any substantial part of its property, and such custody or control shall not be terminated within ninety (90) days from the date of assumption of such custody or control; or

(j) the City shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Resolution on the part of the City to be performed and such default shall continue for thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the City by the holders of not less than ten per centum (10%) in aggregate principal amount of the Bonds and other Indebtedness then Outstanding; provided, however, if the default specified in this clause (j) shall be of a type which cannot be remedied within thirty (30) days, it shall not constitute an event of default if the City shall begin to remedy such default within such thirty-day period;

provided, however, that any default on an Interest Rate Swap by the City shall not, in and of itself, constitute a default on the Bonds.

**Section 803. Acceleration of Maturities.** Upon the happening and continuance of any Event of Default specified in clauses (a) through (j) of Section 802 of this Article, then and in every such case the holders of not less than a majority in aggregate principal

amount of the Bonds then Outstanding may, by a notice in writing to the City, declare the principal of all of the Bonds then Outstanding (if not then due and payable) to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable, anything contained in the Bonds or in this Resolution to the contrary notwithstanding; provided, however, that if at any time after the principal of the Bonds shall have been so declared to be due and payable, and before the entry of final judgment of decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Resolution, moneys shall have accumulated in the Sinking Fund sufficient to pay the principal of all matured Bonds and all arrears of interest, if any, upon all Bonds then Outstanding (except the principal of any Bonds not then due except by virtue of such declaration and the interest accrued on such Bonds since the last Interest Payment Date), and all amounts then payable by the City hereunder shall have been paid or a sum sufficient to pay the same shall have been deposited by the Finance Director or with the Bond Registrar, and every other default in the observance or performance of any covenant, condition, agreement or provision contained in the Bonds or in this Resolution (other than a default in the payment of the principal of such Bonds then due only because of a declaration under this Section) shall have been remedied, then and in every such case the holders of not less than a majority in aggregate principal amount of the Bonds not then due except by virtue of such declaration and then Outstanding may, by written notice to the City, rescind and annul such declaration and its consequences, but no such rescission or annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

**Section 804. Enforcement of Remedies.** Upon the happening and continuance of any Event of Default specified in Section 802 of this Article, then and in every such case the holders of not less than ten per centum (10%) in aggregate principal amount of the Bonds then Outstanding hereunder may proceed to protect and enforce the rights of the Bondholders under Florida law, or under this Resolution by such suits, actions or special proceedings in equity or at law, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as such Bondholder shall deem most effectual to protect and enforce such rights.

**Section 805. Pro Rata Application of Funds.** Anything in this Resolution to the contrary notwithstanding, if at any time the money in the Sinking Fund shall not be sufficient to pay the principal of or the interest on the Bonds as the same become due and payable (either by their terms or by acceleration of maturities under the provisions of Section 803 of this Article), such moneys,

together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this Article or otherwise, shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become due and payable or shall have been declared due and payable, all such moneys shall be applied:

First: to the payment of the persons entitled thereto of all installments of interest then due and payable, in the order in which such installments become due and payable, and, if the amount available shall not be sufficient to pay in full, any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds;

Second: to the payment of the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which sufficient moneys are held pursuant to the provisions of this Resolution), in the order of their due dates, with interest upon such Bonds at the respective rates specified therein from the respective dates upon which they became due, and, if the amount available shall not be sufficient to pay in full the principal of Bonds due on any particular date, together with such interest, then to the payment first of such interest, ratably according to the amount of such interest due on such date, and then to the payment of such principal, ratably according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds; and

Third: to the payment of the interest on and the principal of the Bonds, to the purchase and retirement of Bonds and to the redemption of Bonds, all in accordance with the provisions of Article V of this Resolution.

(b) If the principal of all the Bonds shall have become due and payable or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal or of any installment of interest



over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

(c) If the principal of all the Bonds shall have been declared due and payable and if such declaration shall thereafter have been rescinded and annulled under the provisions of Section 803 of this Article, then, subject to the provisions of paragraph (b) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys remaining in and thereafter accruing to the Sinking Fund shall be applied in accordance with the provisions of paragraph (a) of this Section.

The provisions of this Section are in all respects subject to the provisions of Section 801 of this Article.

Whenever moneys are to be applied by the City pursuant to the provisions of this Section, such moneys shall be applied by the City at such times, and from time to time, as the Finance Director in his sole discretion shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future; the deposit of such moneys with the Bond Registrar, or otherwise setting aside such moneys, in trust for the proper purpose, shall constitute proper application by the City; and the City shall incur no liability whatsoever to any Bondholder or to any other person for any delay in applying any such funds, so long as the City acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of this Resolution as may be applicable at the time of application. Whenever the Finance Director shall exercise such discretion in applying such funds, he shall fix the date upon which such application is to be made and upon such date interest on the amount of principal to be paid on such date shall cease to accrue. The Finance Director shall give such notice as he may deem appropriate and as otherwise required herein of the fixing of any such date, and shall not be required to make payment to the holder of any unpaid Bond until such Bond shall be surrendered to him for appropriate endorsement.

**Section 806. Effect of Discontinuance of Proceedings.** In case any proceeding taken by any Bondholder on account of any default shall have been discontinued or abandoned for any reason, then and in every such case the City and the Bondholder shall be restored to their former positions and rights hereunder, respec-

tively, and all rights and remedies of the Bondholders shall continue as though no such proceeding had been taken.

Section 807. Restrictions on Individual Bondholder Actions. No holder or holders of any of the Bonds hereby secured shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Resolution, or to enforce any right hereunder except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the benefit of all holders of such Bonds.

Section 808. No Remedy Exclusive. No remedy herein conferred upon the Bondholders is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

Section 809. Delay Not a Waiver. No delay or omission of any Bondholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Article to the Bondholder may be exercised from time to time and as often as may be deemed expedient.

Section 810. Right to Enforce Payment of Bonds. Nothing in this Article shall affect or impair the right of any Bondholder to enforce the payment of the principal of and interest on his Bond, or the obligation of the City to pay the principal of and interest on each Bond to the holder thereof at the time and place in said Bond expressed.

**ARTICLE IX.**

**Execution of Instruments by Bondholders  
and Proof of Ownership of Bonds.**

**Section 901. Execution of Instruments by Bondholders and Proof of Ownership of Bonds.** Any request, direction, consent or other instrument in writing required or permitted by this Resolution to be signed or executed by Bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondholders or their attorneys or legal representatives. Proof of the execution of any such instrument and of the ownership of Bonds shall be sufficient for any purpose of this Resolution and shall be conclusive in favor of the City with regard to any action taken by it under such instrument if made in the following manner:

(a) The fact and date of the execution by any person of any such instrument may be proved by the verification of any officer in any jurisdiction who, by the laws thereof, has power to take affidavits within such jurisdiction, to the effect that such instrument was subscribed and sworn to before him, or by an affidavit of a witness to such execution. Where such execution is on behalf of a person other than an individual such verification or affidavit shall also constitute sufficient proof of the authority of the signer thereof.

(b) The fact of the ownership of Bonds shall be proved by the registration books required to be maintained pursuant to Article II of this Resolution.

Nothing contained in this Article shall be construed as limiting the Finance Director to such proof, it being intended that the Finance Director may accept any other evidence of the matters herein stated which it may deem sufficient. Any request or consent of the holder of any Bond shall bind every future holder of the same Bond in respect of anything done by the City in pursuance of such request or consent.

Notwithstanding any of the foregoing provisions of this Section, the Finance Director shall not be required to recognize any person as a holder of any Bond or to take any action at his request unless such Bond shall be deposited with him.

**ARTICLE X.**

**Supplemental Resolutions.**

**Section 1001. Supplemental Resolution without Bondholders' Consent.** The City Commission may, from time to time and at any time adopt such resolutions supplemental hereto as shall not be inconsistent with the terms and provisions hereof (which supplemental resolution shall thereafter form a part hereof):

(a) to cure any ambiguity or formal defect or omission or to correct any inconsistent provisions in this Resolution or in any supplemental resolution, or

(b) to grant to or confer upon the Bondholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Bondholders, or

(c) to add to the conditions, limitation and restrictions on the issuance of Bonds under the provision of this Resolution other conditions, limitations and restrictions thereafter to be observed, or

(d) to add to the covenants and agreements of the City in this Resolution other covenants and agreement thereafter to be observed by the City or to surrender any right or power herein reserved to or conferred upon the City, or

(e) to permit the issuance of Bonds in coupon form, if as a condition precedent to the adoption of such supplemental resolution, there shall be delivered to the City an opinion of Bond Counsel to the effect that the issuance of Bonds in coupon or bearer form are then permitted by law to be issued and that the interest on such Bonds would be exempt from Federal income taxation, or

(f) to permit the City to issue Bonds the interest on which is not exempt from Federal income taxation, or

(g) to qualify the Bonds or any of them for registration under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or

(h) to qualify this Resolution as an "indenture" under the Trust Indenture Act of 1939, as amended, or

(i) to create additional Sinking Funds for Series of Additional Bonds as permitted by Section 505 hereof, or

Any insurance company which has issued its policy of bond insurance insuring the payment of the principal of and interest on any bonds shall, so long as such company is not then in default in the performance of its obligations under such insurance policy, be deemed to be the holder of the Bonds covered by such insurance policy within the meaning and for the purposes of this Section 1002. The consent of the holders of any series of Additional Bonds

Article.

Supplemental Resolution with Bondholders' Consent. Subject to the terms and provisions contained in this Section, and not otherwise, the holders of not less than fifty-one per centum (51%) in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, anything contained in this Resolution to the contract notwithstanding, to consent to and approve the adoption of such resolution or resolutions supplemental hereto as shall be deemed necessary or desirable by the city for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Resolution or in any supplemental resolution; provided, however, that nothing herein contained shall permit, or be construed as permitting, (a) an extension of the maturity of the principal of or the interest on any bond issued hereunder, or (b) a reduction in the principal amount of any bond or redemption premium or the rate of interest hereon, or (c) the creation of a lien upon or a pledge of Revenues other than the lien and pledge created by this Resolution, or (d) a preference or priority of any bond or bonds over any other bond of Bonds, or (e) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental resolution. Nothing herein contained, however, shall be construed as making necessary the approval by Bondholders of the adoption of any supplemental resolution as authorized in Section 1001 of this

Not more than thirty (30) days following the adoption of any supplemental resolution for any of the purposes of this Section, the city clerk shall cause a notice of the proposed adoption of such supplemental resolution to be mailed, postage prepaid, the owners of the Bonds as shown on the registration books maintained by the Bond Registrar. Such notice shall briefly set forth the nature of the proposed supplemental resolution and shall state that copies thereof are on file at the office of the city clerk for inspection by all Bondholders. The failure to mail such notice shall not affect the validity of said supplemental resolution.

- (j) to permit Bonds to be issued in denominations smaller than \$5,000, or
- (k) to permit Bonds to be issued in Book Entry form without physical bonds.

to be issued hereunder shall be deemed given if the underwriters or initial purchasers for resale consent in writing to such supplemental resolution and the nature of the amendment effected by such supplemental resolution is disclosed in the official statement or other offering document pursuant to which such Series of Additions Bonds is offered and sold to the public.

If at any time the City shall determine that it is necessary or desirable to adopt any supplemental resolution for any of the purposes of this Section, the City Clerk shall cause notice of the proposed adoption of such supplemental resolution to be mailed, postage prepaid, to all registered owners of Bonds then Outstanding at their addresses as they appear on the registration books. Such notice shall briefly set forth the nature of the proposed supplemental resolution and shall state that the copies thereof are on file at the office of the City Clerk for inspection by all Bondholders.

Whenever, at the time within one year after the date of mailing of such notice, the City shall deliver to the Finance Director an instrument or instruments in writing purporting to be executed by the holders of not less than fifty-one per centum (51%) in aggregate principal amount of the Bond then Outstanding, which instrument or instruments shall refer to the proposed supplemental resolution described in such notice and shall specifically consent to an approve the adoption thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the City Commission may adopt such supplemental resolution in substantially such form, without liability or responsibility to any holder of any Bond, whether or not such holder shall have consented thereto.

If the holders of not less than fifty-one per centum (51%) in aggregate principal amount of the Bonds then Outstanding at the time of the adoption of such supplemental resolution shall have consented to and approved the adoption thereof as herein provided, no holder of any Bond shall have any right to object to the adoption of such supplemental resolution, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the City Commission from adopting the same or from taking any action pursuant to the provisions thereof.

Upon the adoption of any supplemental resolution pursuant to the provisions of this Section, this Resolution shall be and be deemed to be modified and amended in accordance therewith, and the respective right, duties and obligations under this Resolution of the City and all holders of Bonds then Outstanding shall thereafter

be determined, exercised and enforced in all respects under the provisions of this Resolution as so modified and amended.

Section 1003. Supplemental Resolutions Part of Resolution. Any supplemental resolution adopted in accordance with the provisions of this Article and approved as to legality by the City Attorney shall thereafter form a party of this Resolution, and all of the terms and conditions contained in any such supplemental resolution as to any provision authorized to be contained therein shall be and shall be deemed to be part of the terms and conditions of this Resolution for any and all purposes. In case of the adoption and approval of any supplemental resolution, express reference may be made thereof in the text of any Bonds issued thereafter, if deemed necessary or desirable by the City.

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## ARTICLE XI.

### Defeasance.

**Section 1101. Cessation of Interest of Bondholders.** If, (a) when the Bonds secured hereby shall have become due and payable in accordance with their terms or (b) shall have been duly called for redemption or (c) irrevocable instructions to call the Bonds for redemption or to pay the Bonds at their respective maturities or combination of such payment and redemption shall have been given by the City, the whole amount of the principal and the interest and premium, if any, so due and payable upon all of the Bonds then Outstanding shall be paid or sufficient moneys, or Government Obligations the principal of and the interest (which with respect to any Variable Rate Bonds shall be assumed to be the maximum interest rate permitted under the documents governing such Variable Rate Bonds) on which when due will provide sufficient moneys, shall be held by the Bond Registrar or other bank, trust company or other appropriate financial institution, acting as escrow agent, for such purpose under the provisions of this Resolution, and provision shall also be made for paying all other sums payable hereunder by the City, then and in that case the right, title and interest of the holders of the Bonds secured hereby in the Net Revenues, Funds and Accounts mentioned in this Resolution shall thereupon cease, determine and become void, the City shall have no obligation with respect to such Bonds except for the payment of the principal of, redemption premium, if any, and interest thereon solely from the moneys or Government Obligations deposited pursuant to this Section, and the City Commission in such case, shall repeal and cancel this Resolution and may apply any surplus in any account in the Sinking Fund and all balances remaining in any other Funds or Accounts other than moneys held for the redemption or payment of Bonds or the interest thereon to any lawful purpose of the City as the City Commission shall determine; otherwise this Resolution shall be, continue and remain in full force and effect; provided, however, that in the event Government Obligations shall be deposited with and held by the Bond Registrar or other bank, trust company or other appropriate financial institution, acting as escrow agent, as hereinabove provided, and in addition to the requirements set forth in Article III of this Resolution, the Finance Director shall within thirty (30) days after such Government Obligations shall have been deposited with the Bond Registrar or other bank, trust company or other appropriate financial institution, acting as escrow agent, cause a notice signed by the Finance Director to be published once in a Daily Newspaper of general circulation published in the City of West Palm Beach, and in a Daily Newspaper of general circulation or a financial journal published in the Borough of Manhattan, City and State of New York, setting forth (a) the date, if any, designated for the redemption of the Bonds or if a portion of the outstanding



Bonds are not being redeemed prior to their maturities or mandatory redemption dates, a statement to the effect that such Bonds are being paid at maturity and any Term Bonds are being redeemed in amounts and at times which will satisfy the Amortization Requirements therefor, (b) a description of the Government Obligations so held by the Bond Registrar or other bank, trust company or other appropriate financial institution, acting as escrow agent, and (c) that this Resolution has been repealed and cancelled in accordance with the provisions of this Section.

With respect to Variable Rate Bonds or Optional Tender Bonds, prior to the release of this Resolution, there shall be filed with the City Clerk, the following: (i) a resolution, adopted by the City Commission, determining (which determination may be based upon opinions of bond counsel or investment bankers) that the rights of the owners of such Variable Rate Bonds or Optional Tender Bonds to receive payment of interest at the Variable Rate as provided in the documents pursuant to which such Bonds were issued and the right to receive payment of the purchase price of such Bonds upon tender for purchase, as provided in the documents pursuant to which such Bonds were issued, either pursuant to a Credit Facility provided therefor or otherwise will not be materially adversely impaired by the release of this Resolution pursuant to this Article XI; (ii) a resolution, adopted by the City Commission, which may be the same resolution specified in clause (i) above, specifying the uses to which any Current Excess Interest Earnings (as hereinafter defined) shall be either Improvements or Capital Expenditures, as defined in this Resolution, for the Utility System or Current Expenses of the Utility System to the extent that expenditure of such sums for such purpose reduces the required Revenues, or, if the City no longer owns the Utility System, the capital expenditures for other lawful purposes of the City, in each event, such uses shall be for facilities the construction or acquisition of which would, but for the receipt of such Current Excess Interest Earnings, have been constructed or acquired using proceeds of unissued Bonds or other bonds of the City or paid from future revenues of the City; and (iii) there shall have been furnished to the Finance Director, as a condition of the release of this Resolution, an opinion of Bond Counsel to the effect that such release will not have an adverse effect on the Federal income tax exemption of interest on any of such Bonds as are then exempt from such taxation.

For the purposes of this Section, "Current Excess Interest Earnings" shall mean for each period for which interest is received by the escrow agent on the Government Obligations held in escrow for the holders of the outstanding Bonds, the excess, if any, of interest received on such Government Obligations over the amount of interest paid on the Variable Rate Bonds in such period. The agreement pursuant to which such Government Obligations are held by the escrow agent shall provide for withdrawal of such Current

Excess Interest Earnings when received by the escrow agent and payment of such sums to the City for expenditure in the manner provided in the resolution mentioned in clause (ii) of the preceding paragraph; provided, however, to the extent that such Current Excess Interest Earnings are derived from Government Obligations described in clause (iii) of the definition of Government Obligations, this paragraph shall not apply.

All moneys and obligations held by the Bond Registrar or other bank, trust company or other appropriate financial institution, acting as escrow agent, pursuant to this Section shall be held in trust and the principal of and interest on said obligations when received, and said moneys, applied to the payment, when due, of the principal of, and the interest and the premium, if any, on the Bonds payable therefrom.

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**ARTICLE XII.**

**Miscellaneous Provisions.**

**Section 1201. Effect of Covenants.** All covenants, stipulations, obligations and agreements of the City contained in this Resolution shall be deemed to be covenants, stipulations, obligations and agreements of the City and of the City Commission and of each department and Agency of the City to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall bind or inure to the benefit of the successor or successors thereof from time to time and any officer, board, body or commission to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the City or upon the City Commission by the provisions of this Resolution shall be exercised or performed by the City Commission, or by such other officers, board, body or commission as may be required by law to exercise such powers or to perform such duties.

No covenant, stipulation, obligation or agreement herein contained shall be deemed to be a covenant, stipulation, obligation or agreement of any member, agent or employee of the City Commission in his individual capacity, and neither the members of the City Commission nor any official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

**Section 1202. Manner of Giving Notice.** Any notice, demand, direction, request or other instrument authorized or required by this Resolution to be given to or filed with the City or the City Commission shall be deemed to have been sufficiently given or filed for all purposes of this Resolution if and when sent by registered mail, return receipt requested:

to the City, if addressed to the Mayor of the City of West Palm Beach, Florida, City Hall, West Palm Beach, Florida 33401;

to the City Commission, if addressed to the Mayor of the City of West Palm Beach, Florida, City Hall, West Palm Beach, Florida 33401.

All documents received by the Finance Director and the City Clerk under the provisions of this Resolution shall be retained in their possession, subject at all reasonable times to the inspection

of the City, any Bondholder, and the agents and representatives thereof.

Section 1203. Successorship of Bond Registrar. Any bank or trust company with or into which the Bond Registrar may be merged or consolidated, or to which the assets and business of such Bond Registrar may be sold, shall be deemed the successor of such Bond Registrar for the purposes of this Resolution. If the position of the Bond Registrar shall become vacant for any reason, the City Commission shall, within thirty (30) days thereafter, appoint a bank or trust company located in the same City, as Bond Registrar to fill such vacancy. The City shall have the right at any time to remove the Bond Registrar and to appoint a successor Bond Registrar; provided, however, that no such removal and appointment shall cause a delay in the payment of principal of, redemption premium, if any, or interest on any Bond Outstanding under this Resolution.

Section 1204. Successorship of City Officers. In the event that the offices of Mayor, Finance Director, City Clerk or City Attorney shall be abolished or any two or more of such offices shall be merged or consolidated, or in the event of a vacancy in any such office by reason of death, resignation, removal from office or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the City or otherwise, all powers conferred and all obligations and duties imposed upon such officer shall be performed by the officer succeeding to the principal functions thereof or by the officer upon whom such powers, obligations and duties shall be imposed by law.

Section 1205. Insured Bonds. If any Bonds of any Series issued and outstanding under this Resolution shall be insured pursuant to the terms of a municipal bond insurance policy (a "Policy") issued by an insurance company (an "Insurer"), then, so long as the Insurer is not then in default under the terms of its Policy, the Insurer shall be deemed to be the owner of the Bonds to which such Policy relates for the purposes of giving consents and the directing of remedies upon the occurrence of an Event of Default. Any notice required to be delivered to any owner of any Bond shall also be delivered to the Insurer which has insured such Bond.

Section 1206. Inconsistent Resolutions. All resolutions and parts thereof which are inconsistent with any of the provisions of this Resolution are hereby declared to be inapplicable to the provisions of this Resolution.

Section 1207. Further Acts. The officers and agents of the City are hereby authorized and directed to do all the acts and

things required of them by the Bonds and this Resolution, for the full, punctual and complete performance of all of the terms, covenants, provisions and agreements contained in the Bonds and this Resolution.

Section 1208. Headings Not Part of Resolution. Any headings preceding the texts of the several Articles and Sections hereof and any table of contents, marginal notes or footnotes appended to copies hereof shall be solely for convenience of reference, and shall not constitute a part of this Resolution, nor shall they affect its meaning, construction or effect.

Section 1209. City and Bondholders Alone Have Rights under Resolution. Except as herein otherwise expressly provided, nothing in this Resolution, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the City and the holders of the Bonds issued under and secured by this Resolution, any right, remedy or claim, legal or equitable, under or by reason of the Resolution or any provisions hereof, this Resolution and all its provisions being intended to be and being for the sole and exclusive benefit of the City and the holders from time to time of the Bonds issued hereunder.

Section 1210. Severability. In case any one or more of the provisions of this Resolution or of any Bonds issued hereunder shall for any reason be held to be illegal or invalid such illegality or invalidity shall not affect any other provision of this Resolution or of any of the Bonds, but this Resolution and the Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained therein. The Bonds are issued and this Resolution is adopted with the intent that the laws of the State of Florida shall govern their construction.

Section 1211. Effective Date. This Resolution shall take effect immediately upon its adoption.

ADOPTED by the City Commission of the City of West Palm Beach,  
Florida this 29 day of Nov., 1993.

Ray M. Brakan  
Mayor

ATTEST:

Agnes E. Hayhurst  
City Clerk

(SEAL)

This Resolution prepared by  
Brown & Wood, New York, New York.

R. J. J.  
Partner

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**EXHIBIT A**

**Description of 1993 Stormwater Drainage Project**

Subject to the final paragraph of this Exhibit A, the 1993 Stormwater Drainage Project shall consist of the following:

(i) various stormwater drainage projects in the downtown area of the City;

(ii) construction of the Gulf/Carver culverts and pump station;

(iii) North Dixie Highway, Spruce Avenue, Monceaux Road, Monroe Drive and 54th Street pipe replacement;

(iv) stub canal Southern Boulevard to Palm Beach;

(v) stub canal for North Belvedere Road;

(vi) 9th Street storm sewer replacement;

(vii) stormwater drainage improvements for Rosemary Avenue and West Railroad Avenue; and

(viii) stormwater drainage improvements for Tamarind Avenue and Douglas Avenue.

By resolution adopted by the City Commission, any of the above projects may be changed to new projects or the distribution of the proceeds of the Series 1993 Bonds among such projects may be changed, if the City Commission finds that such changes are in the best interests of the Stormwater Drainage Facilities.

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**EXHIBIT B**

**Description of 1993 Water and Sewer Project**

Subject to the final paragraph of this Exhibit B, the 1993 Water and Sewer Project shall consist of the following:

**Water System**

- (i) land acquisition for catchment area;
- (ii) aquifer storage and recovery wells;
- (iii) catchment area improvements;
- (iv) chemical buildings, sludge dewatering, high service pumping, filter rehabilitation, backwash recovery and plant site improvements for the water treatment plant;
- (v) subaqueous crossing;
- (vi) mains for Georgia Avenue and 2nd Street;
- (vii) looping for Okeechobee Boulevard and State Road 7;
- (viii) repump station improvements;
- (ix) distribution system looping and reinforcement; and
- (x) replacement of substandard mains.

**Sewer System**

- (i) various sewer line rehabilitation and replacements;
- (ii) various force main improvements; and
- (iii) construction, improvement and rehabilitation of lift stations.

By resolution adopted by the City Commission, any of the above projects may be changed to new projects or the distribution of the proceeds of the Series 1993 Bonds among such projects may be changed, if the City Commission finds that such changes are in the best interests of the Water and Sewer Systems.