

**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 and Counter-defendant,

Case No. 502013CA010144XXXMB
Division: AH

v.

CITY OF WEST PALM BEACH, a Florida
municipal corporation,

Defendant and Counter-Plaintiff

**SCHOOL BOARD OF PALM BEACH COUNTY'S MOTION FOR
PARTIAL SUMMARY JUDGMENT WITH ATTACHED
MEMORANDUM OF LAW IN SUPPORT**

Plaintiff and Counter-defendant School Board of Palm Beach County moves for partial summary judgment pursuant to rule 1.510, Florida Rules of Civil Procedure.

INTRODUCTION

1. The subject of this matter is a dispute between School Board of Palm Beach County ("School Board") and City of West Palm Beach ("City") regarding School Board's enjoyment of sovereign immunity from suit for unpaid stormwater utility fees authorized by Chapter 403, Florida Statutes. City alleges section 403.013(17), Florida Statutes, evidences the Florida Legislature's intent to waive sovereign immunity for "beneficiaries" of a municipal stormwater program. School Board points out binding case law establishes that Chapter 403, Florida Statutes, does not contain a waiver of sovereign immunity and it (School Board) enjoys sovereign immunity from City's suit for unpaid stormwater fees.

2. In the present case, both parties seek a declaration from this Court regarding sovereign immunity and municipal stormwater utility fees authorized by Chapter 403, Florida

Statutes. School Board has declared a bona fide, actual, present, and practical need to determine its right to enjoy sovereign immunity from City's suit for nonpayment of stormwater utility fees and to avoid City's threats to employ measures authorized by City's code of ordinances to force School Board to pay the fees (Docket No. 35, *Am. Compl.* at 6, ¶ 23, 37). City has alleged a need to determine its entitlement to collect stormwater utility fees from School Board. (Docket No. 39, *Am. Answer* at 17, ¶ 44.)

3. School Board seeks (partial) summary judgment on Count II of its Amended Complaint For Declaratory Judgment And Permanent Injunction ("Amended Complaint"), declaring it enjoys sovereign immunity from City's suit for unpaid stormwater utility fees authorized by Chapter 403, Florida Statutes, in the absence of a written contract between the parties.

4. For reasons set-out herein, there are no disputed issues of material fact, and School Board is entitled to judgment as a matter of law.

PROCEDURAL HISTORY

5. In May 2012, School Board suspended stormwater utility payments to City due to the Third DCA's holding in *Key West v. Florida Keys Community College*, 81 So. 3d 494 (Fla. 3d DCA 2012) *rev. den.* 105 So. 3d 518 (Fla. 2012) (discussed *infra*). In response, City threatened to disconnect School Board's properties in West Palm Beach¹ from City's stormwater system.

6. In June of 2014, School Board filed a Complaint For Temporary And Injunctive Relief ("Initial Complaint") seeking a temporary and permanent injunction prohibiting City from disconnecting the stormwater management systems and drainage features that serve School

¹ For purposes of clarity, all references to the City of West Palm Beach, Florida in this motion are made to "City" and all references to the geographic area of the City are made to "West Palm Beach".

Board's properties in West Palm Beach. (Docket No. 5; *Compl.*) In the Initial Complaint, School Board asserted it enjoyed sovereign immunity as a subdivision of Florida in any suit by City to collect the stormwater utility fees and requested the Court enjoin City from disconnecting School Board's properties in West Palm Beach from City's stormwater system. *Id.*

7. After being served with process, City moved to abate the present case under Chapter 164, Florida Statutes, also known as the Florida Governmental Conflict Resolution Act, which allows feuding government entities to abate matters while they engage in an alternative dispute resolution ("ADR") process pursuant to the chapter. (Docket No. 11, *Mot. Abate.*) The Court abated the matter for several ninety-day periods while the parties engaged in ADR. (Docket No. 11, *Mot. Abate*; Docket No. 13, *Order Grant Mot. Abate*; Docket No. 16, *Mot. Extend Abate*; Docket No. 18, *Order Grant Mot. Abate*; Docket No. 19, *Mot. Extend Abate*; Docket No. 22, *Order Grant Abate.*) The parties also attended private mediation in an attempt to resolve the dispute. (Docket No. 14, *Notice Mediation*; Docket No. 15, *Notice Mediation.*) The parties' attempts to settle this matter through ADR and mediation were unsuccessful.

8. In early 2016, School Board amended its Initial Complaint to include a count for declaratory judgment and requested the Court declare that it (School Board) enjoyed sovereign immunity from any suit by City for unpaid stormwater utility fees in the absence of a written contract. (Docket No. 35, *Am. Compl.*, Feb. 9, 2016.) City answered and counterclaimed for declaratory relief and a writ of mandamus. (Docket No. 39, *Def's. Answer & Countercl.*, Feb. 29, 2016.) City's counterclaim for declaratory relief sought "judgment declaring whether School Board must pay its relative contribution to its need of City's stormwater management program [.]" (*Id.* at 17 ¶45.) City subsequently dismissed Count II, the petition for a writ of mandamus, from its counterclaim. (Docket No. 49, *Notice Dismiss*, Aug. 8, 2016.)

9. In its Answer, City referenced the definition of “stormwater utility” as provided in the Chapter 403, Florida Statutes, as its “statutory authority to collect fees from beneficiaries of its stormwater management program” (Docket No. 39, *Def’s. Answer & Countercl.*, at 7 ¶1), and its police powers as described in Article VII, Section 2(b) of the Florida Constitution and section 166.021, Florida Statutes, (*Id.* at 8 ¶3) as affirmative defenses.

10. School Board answered City’s remaining counterclaim and admitted most of the allegations. (Docket No. 51, *Pf’s. Answer*, Aug. 19, 2016.) As defenses to City’s counterclaim, School Board asserted its sovereign immunity from any suit by City for unpaid stormwater utility fees in the absence of a contract between the parties (*Id.* at 1 ¶1) and binding case law.

UNDISPUTED MATERIAL FACTS

11. In 1986, the Florida Legislature enacted sections 403.081 through 403.0896, Florida Statutes, as part of the Florida Air and Water Pollution Control Act. Section 403.0891, Florida Statutes, required local governments to develop stormwater management programs.

12. In August of 1993, City enacted Ordinance 2611-93 pursuant to section 403.0891, Florida Statutes. (*Pl’s. Ex. A², Ord. 2611-93* at 2.) Ordinance 2611-93 created a “Stormwater Utility Code” that authorized City to construct, improve, and extend its stormwater management system, and establish rates, fees, and charges for the stormwater services provided by City to its residents and businesses. (*Id.*) One month later, in September of 1993, City enacted Ordinance 2645-93, which implemented an annual rate to be charged by the City for each Equivalent Residential Unit (“ERU”) on properties in West Palm Beach. (*Pl’s. Ex. B³, Ord. 2645-93* at 1; *Pl’s. Ex. C⁴, Def’s. Resp. Pl’s. Interrog.* at 4 ¶3.)

² Also available at: Docket No. 75, *Notice Filing Ord. 2611-93*.

³ Also available at: Docket No. 74, *Notice Filing Ord. 2645-93*.

⁴ Also available at: Docket No. 76, *Notice Filing Def’s. Resp. Pl’s. Interrog.*

13. Section 90-163, City Code, defines the stormwater “utility fee” to be “a utility fee authorized by state law and this article which is established to pay operations and maintenance, extension and replacement and debt service.” (*Pl’s. Ex. A* at 6.) The same section of the City Code defines ERU to be “the average impervious area of residential developed property per dwelling unit located within the city[.]” (*Pl’s. Ex. A* at 3.) Stormwater utility fees are imposed on all properties within West Palm Beach, including School Board’s properties. (*Pl’s. Ex. A* at 7; Section 90-166, City Code.)

14. Section 90-167, City Code, requires “the owner, tenant, or occupant of each lot or parcel subject to the [stormwater utility] fee” to pay City’s stormwater utility fee and provides City with authority to discontinue service for the nonpayment of the fees via the provisions of section 90-4, City Code. (*Pl’s. Ex. A* at 9) Subsection 90-3(a), City Code, provides that the monthly bill for utilities services shall include a charge “for water service, sewer service, waste removal and recycling service, as well as other public utility services[.]” 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[.]” Subsection 90-3(c), City Code, further provides unpaid stormwater utility fees create a lien on properties served.

15. There is no written contract or agreement between City and School Board obligating School Board to pay the City’s stormwater utility fees. (*Pl’s. Ex. D*⁵, *Def’s. Resp. Req. Produc.* at 1 ¶3; *Pl’s Ex. E*⁶, *Levengood Dep.* 29:15.)

16. Following the creation of its Stormwater Utility Code, City charged a stormwater

⁵ Also available at: Docket No. 34, *Def’s. Resp. Req. Produc.*

⁶ Also available at: Docket No. 72, *Notice Filing Dep. Levengood.*

utility fee to School Board for each of School Board's properties in West Palm Beach from 1993 until present.

17. In May of 2012, School Board transmitted a letter (Docket No. 5, *Compl. Ex. A*, at 21) to City and stated it would no longer pay stormwater utility fees for its properties in West Palm Beach due to the Third District Court of Appeal's (DCA) decision in *City of Key West v. Florida Keys Community College*, 81 So. 3d 494 (Fla. 3d DCA 2012) *cert. den.* 105 So. 3d 518 (Fla. 2012), discussed *infra*. Eight months later, in November of 2012, City's attorney threatened to "disconnect the schools from the City's stormwater system at the close of the school year in June, 2013" (Docket No. 5, *Compl. Ex. B*, at 23). The present case followed.

MOTION FOR SUMMARY JUDGEMENT AS TO COUNT II

18. Summary judgment may be entered on all or "any part of" a party's claim pursuant to Rule 1.510, Florida Rules of Civil Procedure.

19. School Board presently seeks summary judgment on Count II, Declaratory Judgment, of its Amended Complaint.

20. To prevail on a motion for summary judgment, the moving party must show an absence of any genuine issue of material fact⁷ and entitlement to judgment as a matter of law. *See* Rule 1.510(c), Fla. R. Civ. P. *See also, Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000).

21. Here, the record establishes there are no issues of material fact in the present case related to School Board's claim for declaratory relief. City enacted Ordinance 2611-93 and

⁷ For purposes of a motion for summary judgment, a "material fact" is a fact that is essential to resolution of the legal questions raised in the case. *See Fine Arts Museum Found. v. First Nat'l In Palm Beach*, 663 So. 2d 1179, 1180 (Fla. 4th DCA 1994). A party's disagreement with facts established by competent evidence submitted by the moving party does not create an issue of fact. *Robinson v. Lyola Found. Inc.*, 236 So. 3d 154, 160 (Fla 1st DCA 1970).

established its stormwater utility to fulfill its responsibility under section 403.0891, Florida Statutes. (*Pl's. Ex. A* at 2.) There is no written contract or agreement between City and School Board obligating School Board to pay stormwater utility fees to City. (*Pl's. Ex. D* at 1 ¶3; *Pl's. Ex. E* at 29:15.)

22. The basis of the dispute between the parties is exclusively a legal issue: whether school boards enjoy sovereign immunity from suit for unpaid stormwater utility fees authorized by Chapter 403, Florida Statutes, in the absence of a written contract between the parties.

23. Well established case law holds that School Board enjoys sovereign immunity from suit by City for unpaid stormwater utility fees in the absence of a written contract and neither Chapters 403 nor 180, Florida Statutes, include an express waiver of sovereign immunity for school boards related to stormwater utility fees authorized by Chapter 403, Florida Statutes. *See Key West v. Florida Keys Community College*, 81 So. 3d 494 (Fla. 3d DCA 2012) *rev. den.* 105 So. 3d 518 (Fla. 2012) (holding Chapters 180 and 403, Fla. Stat., do not waive sovereign immunity of state college with respect to municipal stormwater utility); *Clearwater v. School Board of Pinellas County*, 17 So. 3d 1287 (Fla. 3d DCA 2009); *Gainesville v. State Department of Transportation*, 920 So. 3d 53 (Fla. 1st DCA 2005) *rev. den.*, 935 So. 3d 1219 (Fla. 2006) ("*Gainesville III*") (holding Ch. 180, Fla. Stat., does not waive sovereign immunity of FDOT and school board for municipal stormwater utility fees authorized pursuant to Ch. 403, Fla. Stat., and denying city ability to collect fees absent a written contract). *See also, Pardo v. State*, 596 So. 3d 665 (Fla. 1992) (holding in the absence of interdistrict conflict the decisions of the district courts of appeal bind all Florida trial courts).

24. City contends section 403.031(17), Florida Statutes, "shows the legislature's intent to waive sovereign immunity for 'beneficiaries' of a local government's stormwater management

program.” (Docket No. 39, *Am. Answer* at 5, ¶ 30.) This contention ignores *Clearwater*, 17 So. 3d 1287; *Gainesville III*, 920 So. 3d at 54; and *Key West*, 81 So. 3d at 497, which found no waiver of sovereign immunity in Chapter 403, Florida Statutes. As a matter of law, City is not entitled to summary judgment.

25. School Board is entitled to judgment as a matter of law because binding case law confirms Chapter 403, Florida Statutes, does not contain an express waiver of the sovereign immunity of school boards for stormwater utility fees and City may not sue to collect its fees absent a written contract with School Board. *Key West*, 81 So. 3d 494 (Fla. 3rd DCA, 2012) *rev. denied*, 105 So. 3d 518 (Fla. 2012); *Gainesville III*, 920 So. 2d 53 (Fla. 1st DCA 2005) *cert. denied*, 935 So. 2d 1219 (Fla. 2006); *Clearwater*, 17 So. 3d 1287 (Fla. 2d DCA 2009).

WHEREFORE, the School Board requests this Court grant partial final summary judgment in its favor and declare School Board enjoys sovereign immunity from suit by City for stormwater fees that City claims it is owed under Chapter 403, Florida Statutes, and such other relief as the Court deems just and appropriate.

CERTIFICATE OF SERVICE

I HEREBY DECLARE, that on this 6th day of July 2017, a true and correct copy of the foregoing was served via electronic mail to the following: **Douglas Yeargin, Esq.** and **Anthony M. Stella, Esq.**, City of West Palm Beach, City Attorney Office, 401 Clematis Street, 5th Floor, Post Office Box 3366, West Palm Beach, Florida 33402 (tenoree@wpb.org, yeargin@wpb.org, patrickk@wpb.org, astella@wpb.org and svegas-catinella@wpb.org) and **Blair Littlejohn, Esq.** and **Hollie N. Hawn, Esq.**, Assistant General Counsel, School Board of Palm Beach County, Office of the General Counsel, Post Office Box 19239, West Palm Beach, FL 33416-9239 (blair.littlejohn@palmbeachschools.org, hollie.hawn@palmbeachschools.org,

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Respectfully submitted,

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AS TO COUNT II**

Both parties admit the issuance of a declaratory judgment opining whether School Board enjoys sovereign immunity from suit for payment of stormwater utility fees will resolve the present dispute and do not seek the Court's legal advice. School Board seeks the issuance of judgment declaring it (School Board) enjoys sovereign immunity from suit by City for unpaid stormwater utility fees authorized by Chapter 403, Florida Statutes, in the absence of a written contract. (Docket No. 35, *Am. Compl.* at 6 ¶¶34-37.) Further, School Board seeks to avoid City's threats to employ measures authorized by City's Code of Ordinances to force School Board to pay the fees. (*Id.* at 4 ¶23.) City alleges the issuance of a declaratory judgment opining whether School Board must pay its relative contribution to its need of City's stormwater utility program is in the public interest. (Docket No. 39, *Am. Answer* at 17 ¶45.)

School Board's entitlement to judgment is based upon Florida law established in *Key West v. Florida Keys Community College*, 81 So. 3d 494 (Fla. 3d DCA 2012) *rev. den.* 105 So. 3d 518 (Fla. 2012); *Clearwater v. School Board of Pinellas County*, 17 So. 3d 1287 (Fla. 3d DCA 2009); *Gainesville III*, 920 So. 3d 53 (Fla. 1st DCA 2005) *rev. den.*, 935 So. 3d 1219 (Fla. 2006) as it is

applied to the ascertained facts of the present case.

SCHOOL BOARD ENJOYS SOVEREIGN IMMUNITY FROM ANY SUIT BY CITY FOR NON-PAYMENT OF STORMWATER UTILITY FEES FOR ITS PROPERTIES IN WEST PALM BEACH AND CHAPTER 403, FLORIDA STATUTES, DOES NOT WAIVE SCHOOL BOARD'S SOVEREIGN IMMUNITY.

School Board enjoys immunity from suit as a subdivision of Florida.

Florida, its subdivisions, and agencies enjoy absolute sovereign immunity from suit. *See Circuit Court of the Twelfth Judicial Circuit v. Dep't of Natural Resources*, 339 So. 3d 113, 114-15 (Fla. 1996). School Board is a subdivision of Florida established pursuant to section 1001.30, Florida Statutes, and organized under section 4(b), Article IX of the Florida Constitution. School Board's status as a subdivision of the State of Florida is not disputed by City (Docket No. 39, *Answer & Countercl.*, at 1 ¶3) and is not at issue in this matter. The Florida Supreme Court has expressly held that school boards enjoy sovereign immunity. *See Dickinson v. City of Tallahassee*, 325 So. 2d 1 (Fla. 1975) (finding state, counties, and school districts were expressly immune from taxation). Accordingly, as a subdivision of Florida, School Board enjoys absolute sovereign immunity from suit.

Sovereign immunity may only be abrogated by a clear and express waiver by the Florida Legislature or in contract.

The doctrine of sovereign immunity has an expansive breadth in Florida. However, Article X, section 13 of Florida's Constitution provides the Florida Legislature with the power to limit sovereign immunity: "[p]rovision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating". "[W]aiver will not be found as a product of inference or implication" and Florida courts must '*strictly construe*' any legislative waiver of sovereign immunity." (emphasis added) *Am. Home Assurance Co. v. Natl. R.R. Passenger Corp.*, 908 So. 2d 459, 472 (Fla. 2005); *see also Manatee Cty. v. Town of Longboat Key*, 365 So. 2d 143, 147 (Fla. 1978) (stating waiver of sovereign immunity must be "clear and unequivocal" and

“cannot be accomplished by local law”).

Just as the absolute sovereign immunity of the State may be waived, so too can the sovereign immunity of State agencies and subdivisions. State agencies and subdivisions enjoy absolute immunity absent a clear, express waiver by the Florida Legislature or constitutional amendment. *See Jackson v. Palm Beach County*, 360 So. 3d 1 (Fla. 4th DCA 1978). In addition to express waiver by the Florida Legislature, the Florida Supreme Court has found an implied waiver of sovereign immunity may exist in contract when both parties intend the contracts to be valid and binding. *County of Brevard v. Miorelli Eng'g*, 703 So. 3d 1049, 1051 (Fla. 1997); *Pan-Am Tobacco Corp. v. Department of Corrections*, 471 So. 3d 4, 5-6 (Fla. 1984.)

The proposition that sovereign immunity may only be waived by express waiver or contract was recently reaffirmed and clarified in *Town of Gulf Stream v. Palm Beach County*, 206 So. 3d 721 (Fla. 4th DCA 2016) (holding sovereign immunity barred Palm Beach County from requiring municipalities to fund program; and the referendum establishing the program was not a contract or waiver). In *Town of Gulf Stream*, City took a position similar to School Board's position in the present case.

There is no written contract or agreement between City and School Board obligating School Board to pay City's stormwater utility fees (*Pl's. Ex. D* at 2 ¶3, Jan. 19, 2016; *Pl's. Ex. E* at 29:15). Accordingly, School Board, as a subdivision of the State, enjoys sovereign immunity from suit absent a clear, express waiver by the Florida Legislature, or a written contract with another party that waives School Board's sovereign immunity.

CASE LAW ESTABLISHES THAT CHAPTER 403, FLORIDA STATUTES, DOES NOT WAIVE SOVEREIGN IMMUNITY WITH RESPECT TO MUNICIPAL STORMWATER UTILITIES.

The Florida Legislature has made no express waiver of School Board's sovereign immunity with respect to municipal stormwater utilities. This issue is well-settled. Case law in three of the

five Florida District Courts of Appeal (DCAs), discussed *infra*, established that Chapter 403, Florida Statutes, does not waive the sovereign immunity enjoyed by school boards with respect to municipal stormwater utility fees.

City of Gainesville v. FDOT (“Gainesville III”): First DCA.

In *City of Gainesville v. State Dep’t of Transp.*, 920 So. 2d 53 (Fla. 1st DCA 2005) *cert. denied*, 935 So. 2d 1219 (Fla. 2006) (“*Gainesville IIP*”), the First DCA considered the third appeal between the City of Gainesville (“Gainesville”), the Florida Department of Transportation (“FDOT”), School Board of Alachua County (“Alachua School Board”), and other state agencies regarding Gainesville’s attempts to collect stormwater utility fees from the state agency parties, including Alachua School Board. Gainesville had adopted a stormwater utility pursuant to section 403.0891, Florida Statutes, and imposed the stormwater utility fee on Alachua School Board and the other state agencies via its (Gainesville’s) ordinance establishing the stormwater utility. Alachua School Board and the other state agency parties refused to pay the fee, and Gainesville filed suit against Alachua School Board and the other state agencies to pay the stormwater utility fee despite the lack of a contract between the parties.⁸ The trial court dismissed, with prejudice, Gainesville’s action to collect stormwater utility fees from Alachua School Board and other state agencies due to the absence of a written contract waiving sovereign immunity and noted a vendor cannot sue the State or any of its agencies absent a written contract. *Gainesville I*, 778 So. 3d at 530.

Gainesville appealed to the First DCA and argued the Florida Legislature had expressly waived the State’s sovereign immunity in Chapter 180, Florida Statutes, and it (Gainesville) did

⁸ The facts of *Gainesville III* are set-out in *City of Gainesville v. State Dep’t of Transp.* 778 So. 3d 519, at 530 (Fla. 1st DCA 2001) (“*Gainesville P*”) (holding local government could establish a user fee to fund stormwater management system and must have a written contract to sue and collect the fee from state agencies and school board.)

not need a contract to collect stormwater utility fees authorized pursuant to Chapter 403, Florida Statutes. *Gainesville III*, 920 So. 2d at 54 (Fla. 1st DCA 2005). FDOT, joined by Alachua School Board and other state agencies, argued that although Chapter 403, Florida Statutes, authorized Gainesville to adopt a stormwater utility fee, Chapter 403, Florida Statutes, did not contain an express waiver of the sovereign immunity. *Id.* The First DCA agreed and found no express waiver of sovereign immunity for the collection of stormwater utility fees in Chapters 180 and 403, Florida Statutes. *Id.* The First DCA explained that “[b]ecause chapter 180 does not provide a waiver of sovereign immunity for utilities authorized pursuant to chapter 403, the parties’ circumstances have not changed” *Id.* Gainesville was denied the ability to sue to collect its stormwater fee absent a written contract with Alachua School Board. *Id.*

Clearwater v. School Board of Pinellas County: Second DCA

In *City of Clearwater v. School Board of Pinellas County*, No. 52199CA007479XXCICI (Fla. 6th Cir. Ct. May 23, 2008) *affirm.* 17 So. 3d 1287 (Fla. 2d DCA 2009), involved a procedurally lengthy dispute between the City of Clearwater (“Clearwater”) and School Board of Pinellas County (“Pinellas School Board”) regarding Clearwater’s collection of stormwater utility fees authorized pursuant to Chapter 403, Florida Statutes, from Pinellas School Board. After the first appeal⁹ and on remand from the Second DCA, the trial court considered whether the statutory construction of sections 403.0891, 403.0893, 163.3202(d), Florida Statutes (2008), authorized Clearwater to collect stormwater utility fees from Pinellas School Board despite no specific waiver of sovereign immunity. *See School Board of Pinellas County, Florida v. City of Clearwater* 52199CA007479XXCICI (Fla. 6th Cir. Ct. May 23, 2008).

In *Clearwater*, trial court found the opinion of *Gainesville III* was controlling on the issues

⁹ *City of Clearwater v. School Bd. of Pinellas County*, 905 So. 3d 1051 (Fla. 2d DCA 2001) (holding school board was not exempt from paying stormwater utility fee and record was insufficient to apply *Tipsy Coach* to the decision of the lower court’s ruling).

of sovereign immunity and stormwater fees and concluded Pinellas School Board enjoyed sovereign immunity from suit for the collection of stormwater utility fees authorized pursuant to Chapter 403, Florida Statutes, absent a written contract between the parties. Order Denying Def's Motion For Final Judgment And Granting Plaintiff's Motion For Summary Judgment, *Id.* Additionally, the *Clearwater* court found no express waiver of sovereign immunity in section 180.06, Florida Statutes. *Id.*

Clearwater appealed the trial court's ruling and the Second DCA issued a per curium affirmance of the lower court's decision, citing *Gainesville III. City of Clearwater v. School Bd. Of Pinellas County*, 17 So. 3d 1287 (Fla. 2d DCA 2009). In *Clearwater*, the Second DCA adopted the First DCA's decision in *Gainesville III*: (i) that school boards enjoy sovereign immunity from a suit by a local government to collect stormwater utility fees authorized by Chapter 403, Florida Statutes, in the absence of a written agreement obligating the school boards to pay a stormwater fee to the local government; and (ii) Chapter 403, Florida Statutes, contains no express waiver of sovereign immunity.

Key West v. Florida Keys Community College: Third DCA.

In *Key West v. Florida Keys Community College*, 81 So. 3d 494 (Fla. 3d DCA, 2012) *rev. denied*. 105 So. 3d 518 (Fla. 2012) the Third DCA reviewed City of Key West's ("Key West") appeal of the trial court's order granting summary judgment for Florida Keys Community College ("College") and finding College enjoyed sovereign immunity from suit by Key West for non-payment of stormwater utility fees adopted pursuant to Chapter 403, Florida Statutes. At the trial level, the court awarded declaratory judgment in favor of College, found College enjoyed sovereign immunity with respect to Key West's stormwater utility fees, and ordered Key West to refund the stormwater utility fees to the College. *Key West*, 81 So. 3d 494 (Fla. 3d DCA, 2012).

Key West appealed the judgment of the trial court and argued the Florida Legislature had

waived the sovereign immunity of College with respect to the imposition of stormwater fees in Chapters 403 and 180, Florida Statutes. *Id.* at 496. In regard to Chapter 403, Florida Statutes, Key West argued College did not enjoy sovereign immunity from suit for collection of stormwater utility fees because Chapter 403, Florida Statutes, did not contain an exemption from payment of fees for state-owned property. *Id.* at 498. Additionally, Key West argued that because the Florida Legislature included state agencies in its definition of “person” at Chapter 180, Florida Statutes, which governs Municipal Public Works, that section 180.13, Florida Statutes, expressly waived sovereign immunity. *Id.* The College maintained it enjoyed sovereign immunity from Key West’s suit for stormwater utility fees authorized by Chapter 403, Florida Statutes. *Id.*

In regard to Chapter 403, Florida Statutes, the Third DCA found Key West confused sovereign immunity with exemption and held “[b]ecause 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.” *Id.* In regard to Chapter 180, the Third DCA found Key West could not apply Chapter 180, which governs Municipal Public Works to Chapter 403, which governs Pollution Control and held “[w]e conclude that Chapter 180, and specifically section 180.13, does not apply to stormwater utilities.” *Id.* Like the Second DCA in *Clearwater* and the First DCA in *Gainesville III*, the Third DCA in *Key West* found: (i) that school boards enjoy sovereign immunity from a suit by a local government to collect stormwater utility fees authorized by Chapter 403, Florida Statutes, in the absence of a written agreement obligating the school boards to pay a stormwater fee to the local government; and (ii) Chapter 403, Florida Statutes, contains no express waiver of sovereign immunity. *Key West* also found no express waiver in Chapter 180, Florida Statutes.

ANALYSIS

Gainesville III, *Clearwater*, and *Key West* all involved a similar fact pattern: (i) a local

government established a stormwater utility and utility fee pursuant to the authority granted to it by section 403.093, Florida Statutes; (ii) the local government imposed and attempted to collect the stormwater utility fee from the school board or state agency despite the absence of a written contract between the parties; (iii) the school board or state agency claimed it enjoyed sovereign immunity from the collection of stormwater utility fees in the absence of a written contract; and (iv) the local government claimed the Florida Legislature waived sovereign immunity in Chapter 403, Florida Statutes. All cases involved a similar conclusion, the school board or state agency was found to enjoy sovereign immunity from the local government's suit for the collection of stormwater utility fees in the absence of a written contract.

In the present case, (i) City established a stormwater utility and utility fee pursuant to the authority granted to it by section 403.093, Florida Statutes; (ii) City imposed and attempted to collect the stormwater utility fee from School Board despite the absence of a written contract between the parties; (iii) School Board has claimed it enjoys sovereign immunity from City's suit for nonpayment of stormwater utility fees due to the absence of a written contract; and (iv) City has claimed the Florida Legislature waived sovereign immunity in a section of Chapter 403, Florida Statutes. The rulings of the First, Second, and Third DCAs in *Gainesville III*, *Clearwater*, and *Key West* establish clear and binding precedent that applies to the present case.

The decisions of the First, Second, and Third DCAs decisions in *Gainesville III*, *Clearwater*, and *Key West* stand for the proposition that school boards and other state agencies enjoy sovereign immunity from a municipality's suit for unpaid stormwater utility fees authorized pursuant to Chapter 403, Florida Statutes, in the absence of a written contract between the parties, and Chapter 403, Florida Statutes, contains no express waiver of sovereign immunity. "The decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by this court. Thus, in the absence of interdistrict conflict, district court decisions bind

all Florida trial courts. (citations omitted)” *Pardo v. State*, 596 So. 3d 665 (Fla. 1992). *Gainesville III*, *Clearwater*, and *Key West* are binding law on all Florida trial courts.

City has attempted to distinguish the case law of *Gainesville III*, *Clearwater*, and *Key West*: by distinguishing the facts of the present case from *Key West*, and by turning the Court’s attention to the definition of “stormwater utility” at section 403.031(17), Florida Statutes. Section 403.031(17), Florida Statutes, provides the definition of “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.

(emphasis added) City points to the use of the term “beneficiaries” in the definition above and alleges the Legislature’s word choice in defining the stormwater utility constitutes a clear and express waiver of sovereign immunity (*Docket No. 39, Answer & Countercl.*, at 5 ¶30.), distinguishes the present case from *Key West* (*Id.* at 15 ¶34, 35.), and establishes statutory authority to collect the fees from School Board (*Id.* at 7 ¶1.) This is false and misleading.

It is uncontroverted that a waiver of sovereign immunity must be unambiguous, clear and unequivocal *Manatee Cnty.*, 365 So. 2d at 147 (Fla. 1978), cannot be found as a product of inference or implication, and the courts must strictly construe any legislative waiver of sovereign immunity *Am. Home Assurance Co.*, 908 So. 2d at 472 (Fla. 2005).

Section 403.031(17), Florida Statutes, provides the definition of a term that is used in Chapter 403, Florida Statutes. City’s allegation that “§403.031(17), Florida Statutes, shows the legislature’s intent to waive sovereign immunity for ‘beneficiaries’ of a local government’s stormwater management program” (*Docket No. 39, Answer Countercl.*, at 5 ¶30) requires the Court to infer that the Legislature, by including the word “beneficiary” in its definition of “stormwater utility” at section 403.031(17), Florida Statutes, intended to waive sovereign

immunity by implication. The express language of the section merely describes a “stormwater utility” as the entity that funds a program that provides a public service. None of the language used to define “stormwater utility” describes the method of collecting costs from beneficiaries or states the costs may be enforced by initiating a suit against the beneficiaries, including the state. The words of section 403.031(17), Florida Statutes, cannot be strictly construed to provide an affirmative waiver of state sovereign immunity. City’s allegation uses a *section* of statute to ignore the decisions of three DCAs interpreting *Chapter 403* to not waive the sovereign immunity of school boards with respect to municipal stormwater utilities and mischaracterizes a statutory definition as an express waiver of sovereign immunity.¹⁰

In *Gainesville III*, Gainesville argued Chapter 180, Florida Statutes, waived sovereign immunity with regard to stormwater utilities created pursuant to Chapter 403. In *Clearwater*, Clearwater argued the Legislature authorized municipalities to collect and utilize stormwater fees pursuant to sections 403.091, 403.0893, and 163.3202, Florida Statutes. In *Key West*, Key West argued the Legislature waived sovereign immunity in Chapters 403 and 180, Florida Statutes. In all cases cited in the previous sentences, the DCAs found no waiver of sovereign immunity in Chapter 403 nor any other chapter of Florida Statutes. City’s contention that section 403.031(17), Florida Statutes, provides an (implied) waiver of sovereign immunity is mistaken and ignores binding case law.

City contends *Key West* does not apply to the present case because a fact of *Key West* is distinguishable the present case (Docket No. 39, *Answer & Countercl.* at 16 ¶34.) In *Key West*, Key West did not have an operational stormwater system on Community College’s property. In the present case, nine of School Board’s properties are connected directly to City’s stormwater

¹⁰ It must be noted that the definition of “stormwater utility” at section 403.031(17), Florida Statutes, has not been revised by the Florida Legislature since the decisions of *Gainesville III*, *Clearwater*, and *Key West*.

management system and eleven properties are indirectly connected. Indeed, in *Key West* 81 So. 3d at 495 (Fla. 3d DCA 2012), the Third DCA noted Key West had no operational stormwater system on the College's property. *Id.*

The lack of an operational stormwater system on College's property was mentioned only once in the opinion at page 495, alongside the facts, and was not essential to the DCA's conclusion. The statement was merely case dicta, which has no precedential value. *See State ex rel. Biscayne Kennel Club v. Board of business Reg. of Dep't of Business Reg.*, 276 So. 2d 823, 826 (Fla. 1973) (stating dicta was not essential to the decision of the court and was without force as precedent.) Further, the case history of *Gainesville III*, indicates Gainesville had an operational stormwater system on FDOT's properties¹¹ and the First DCA's holding still found no express waiver of sovereign immunity in Chapter 403, Florida Statutes.

To the contrary, *Key West* is directly on point with the present case. As discussed in pages 8 and 9 of this Memorandum, *Gainesville III*, *Clearwater*, and *Key West* all involve a fact pattern that is remarkably similar to the matter. Accordingly, the holdings of the three DCAs should apply to this case. Particularly, the Third DCA's holding in *Key West*: that "[b]ecause Chapter 403 should apply to the present case, 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." *Key West*, 81 So. 3d at 498 (Fla. 3d DCA 2012).

City's contention that it has authority to impose a stormwater utility fee pursuant to Chapter 403, Florida Statutes, as a defense to this suit is misplaced. City's authority to impose a stormwater fee is not at dispute in this case. Like the Alachua School Board in *Gainesville III* and the Community College in *Key West*, School Board is not contesting City's authority to impose a

¹¹ [City] filed a complaint seeking a judgment declaring that the stormwater utility charges the City has billed [FDOT] on account of its property at 2006 N.E. Waldo Road were valid utility fees[.]” *Gainesville I*, 778 So. 2d at 519.

stormwater utility fee as a method to fund City's stormwater management system. Rather, School Board's argument is that it enjoys sovereign immunity from City's *suit* for the nonpayment of City's stormwater fees. "Sovereign immunity serves to protect the State from *suit* for non-payment of the City's stormwater fees, rather than the *imposition* of such fees." *Key West* at note 1. "[A]lthough the stormwater fee may be a valid utility fee, consistent with our previous opinion, before the City can collect the fee, it must have a written contract" *Gainesville III*, 920 So. 2d at 54 (citations omitted). A conclusion identical to the holding in *Gainesville III* should be made in this case.

The decisions of the three DCAs discussed and cited in the preceding paragraphs and pages represent the status of the law regarding Florida school boards' enjoyment of sovereign immunity from municipalities' suits for charges related to a municipal stormwater management system adopted pursuant to Chapter 403, Florida Statutes. These decisions bind all Florida trial courts.

CONCLUSION

As a subdivision of Florida, School Board enjoys sovereign immunity unless waived. Sovereign immunity can only be waived by written contract or the clear and express intent of the Florida Legislature. Binding case law establishes the Florida Legislature has made no waiver of School Board's sovereign immunity in Chapter 403, Florida Statutes. City's argument, that any portion of Chapter 403, Florida Statutes, constitutes a waiver of School Board's sovereign immunity from suit for stormwater utility charges, is mistaken and ignores the opinions of three DCAs. There is no dispute regarding the absence of a written contract obligating School Board to pay stormwater utility fees to City. School Board is entitled to judgment as a matter of law as to Count II of the Amended Complaint.

WHEREFORE, the School Board requests this Court grant partial final summary judgment in its favor and declare that School Board enjoys sovereign immunity from suit by City stormwater

fees that City claims it is owed under Chapter 403, Florida Statutes, an award of its costs, and such other relief as the Court deems just and appropriate.

CERTIFICATE OF SERVICE

I HEREBY DECLARE, that on this 6th day of July 2017, a true and correct copy of the foregoing was served via electronic mail to the following: **Douglas Yeargin, Esq.** and **Anthony M. Stella, Esq.**, City of West Palm Beach, City Attorney Office, 401 Clematis Street, 5th Floor, Post Office Box 3366, West Palm Beach, Florida 33402 (tenoree@wpb.org, yeargind@wpb.org, patrickk@wpb.org, astella@wpb.org and svegas-catinella@wpb.org) and **Blair Littlejohn, Esq.** and **Hollie N. Hawn, Esq.**, Assistant General Counsel, School Board of Palm Beach County, Office of the General Counsel, Post Office Box 19239, West Palm Beach, FL 33416-9239 (blair.littlejohn@palmbeachschools.org, hollie.hawn@palmbeachschools.org, lesline.gregory@palmbeachschools.org and dotty.fairbankts@palmbeachschools.org).

Respectfully submitted,

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IN THE CIRCUIT COURT OF THE 15TH 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,

CASE NO. 50 2013 CA 010144 MB

Civil Division: AH

v.

CITY OF WEST PALM BEACH, a Florida
municipal corporation,

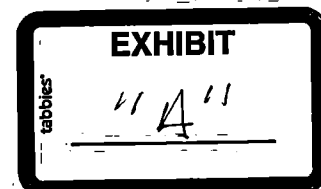
Defendant.

PLAINTIFF'S NOTICE OF FILING WEST PALM BEACH ORDINANCE NO. 2611-93

Plaintiff, The School Board of Palm Beach County, gives notice of filing the attached certified copy of City of West Palm Beach Ordinance Number 2611-93 with the clerk of court.

CERTIFICATE OF SERVICE

I HEREBY DECLARE, that on this 20th day of June 2017, a true and correct copy of the foregoing was served via electronic mail to the following: **Douglas Yeargin, Esq.** and **Anthony M. Stella, Esq.**, City of West Palm Beach, City Attorney Office, 401 Clematis Street, 5th Floor, Post Office Box 3366, West Palm Beach, Florida 33402 (tenoree@wpb.org, yeargin@wpb.org, patrickk@wpb.org, astella@wpb.org and svegas-catinella@wpb.org) and **Hollie N. Hawn, Esq.**, Assistant General Counsel, School Board of Palm Beach County, Office of the General Counsel, Post Office Box 19239, West Palm Beach, FL 33416-9239 (blair.littlejohn@palmbeachschools.org, hollie.hawn@palmbeachschools.org,



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BY: /s/ John K. Rice

JOHN K. "JACK" RICE
FBN: 99624
JOHN J. FUMERO, ESQ.
FBN: 716596

NOT A CERTIFIED COPY

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, CREATING A STORMWATER UTILITY SYSTEM; SPECIFYING THE PURPOSES, RATES, BILLING METHODS AND CONTRIBUTIONS FOR SAID SYSTEM; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE AND A CODIFICATION CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, pursuant to Article VIII, Section 1, Florida Constitution (1968), and Chapter 166, Florida Statutes, as amended, the City Commission of West Palm Beach, Florida, has all powers of local self-government to perform city functions and to render city services in a manner not inconsistent with general or special law, and such power may be exercised by the enactment of city ordinances; and

WHEREAS, the Federal Clean Water Act, 33 U.S.C. 1251 et seq., requires certain political entities such as the City, to implement stormwater management programs within prescribed timeframes; and

WHEREAS, pursuant to the Federal Clean Water Act, 33 U.S.C. 1251 et seq., the United States Environmental Protection Agency has published proposed rules for stormwater outfall permits; and

WHEREAS, the City of West Palm Beach is responsible for the ownership, maintenance and expansion of the existing stormwater system which has been developed over a number of years for the purpose of collecting and disposing of stormwater; and

WHEREAS, the City of West Palm Beach is developing a City-wide Stormwater Management Plan; and

WHEREAS, said plan indicates that the present system is inadequate to control and manage stormwater runoff within the incorporated limits; and

WHEREAS, said plan has additionally concluded that it will be necessary and essential to construct improvements and extensions to the existing system to ensure that the collection and disposal of stormwater within the incorporated city limits adequately protects the health, safety, and welfare of the citizens of the City of West Palm Beach; and

WHEREAS, it is necessary and essential that the City address the various environmental issues that will further burden its

infrastructure requirements; and

WHEREAS, the City is authorized by the Florida Constitution and the provisions of Florida Statutes Chapter 166 and Florida Statute Section 403.0893 to construct, reconstruct, improve, and extend stormwater utility systems and to issue revenue bonds and other debts if needed to finance in whole or in part the cost of such system and to establish just and equitable rates, fees, and charges for the services and facilities provided by the system.

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

SECTION 1: The Code of the City of West Palm Beach, Florida is hereby amended by the creation of a New Chapter 32 thereof to be entitled "STORMWATER UTILITY" to read and provide as follows:

Section 28-1. This Chapter shall be known as the "Stormwater Utility Code" of the City.

Section 28-2. Findings and Determinations

It is hereby found, determined, and declared as follows:

- A. Those elements of the Stormwater Management system which provide for the collection of and disposal of stormwater and regulation of groundwater are of benefit and provide services to all property within the incorporated city limits, including property not presently served by the stormwater elements of the system.
- B. The costs of operating and maintaining the City Stormwater Management System and financing the necessary repairs, replacements, improvements, and extensions thereof should, to the extent practicable, be allocated in relationship to the benefits enjoyed and services received therefrom.

Section 28-3. Definitions

For the purpose of this Ordinance, the following definitions shall apply: words used in the singular shall include the plural, and the plural, the singular; words

used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

Availability Charge means a charge to a developer or individual resident to recover the Debt Service and Extension and Replacement costs paid on a Stormwater Management System facility that had been previously constructed, but which serves such developer or individual resident.

Equivalent Residential Unit or ERU means the Average Impervious Area of Residential Developed Property per Dwelling Unit located within the City and as established by separate Ordinance of the City Commission as provided herein.

ERU Rate means a Utility Fee charged on each ERU as established by Commission Ordinance as provided herein.

Bonds means revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the Cost of Construction.

Cost of Construction means costs reasonably incurred in connection with providing capital improvements to the system or any portion thereof, including but not limited to the costs of (1) acquisition of all property, real or personal, and all interests in connection therewith including all rights-of-way and easements therefor; (2) physical construction, installation and testing, including the costs of labor, services, materials, supplies and utility services used in connection therewith; (3) architectural, engineering, legal and other professional services; (4) insurance premiums taken out and maintained during construction, to the extent not paid for by a contractor for construction and installation; (5) any taxes or other charges which become

due during construction; (6) expenses incurred by the City or on its behalf with its approval in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to construction; (7) principal of and interest of any Bonds; and (8) miscellaneous expenses incidental thereto.

Debt Service means, with respect to any particular Fiscal Year and any particular series of Bonds, an amount equal to the sum of (i) all interest payable on such Bonds during Fiscal Year, plus (ii) any principal installments of such Bonds during such Fiscal year.

Developed Property means real property which has been altered from "natural" state by the addition of any improvements such as a building, structure, or impervious surface. For new construction, property shall be considered developed pursuant to this Ordinance: (a) upon issuance of a certificate of occupancy, or upon completion of construction or final inspection if no such certificate is issued; or (b) if construction is at least 50 percent complete and construction is halted for a period of three (3) months.

Director means the Chief Administrative Officer of the Utility as designated by the Mayor.

District means the Northern Palm Beach County Water Control District.

Dwelling Unit means a single unit or apartment providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

Extension and Replacement means costs of extensions, additions and capital improvements to, or the renewal and replacement of capital assets of, or purchasing and installing new equipment for, the System, or land acquisition for the System and any related costs thereto, or paying extraordinary maintenance and repair, including

the Cost of Construction, or any other expenses which are not costs of Operation and Maintenance or Debt Service.

Fee-in-lieu-of means a charge to a developer or individual resident to recover (1) the Costs of Construction and Debt Service on a new Stormwater Management System facility which serves such developer or individual resident, or (2) the Extension and Replacement cost necessitated by development undertaken by such developer or individual resident.

Fiscal Year means a twelve-month period commencing on the first day of October of any year, or such other twelve-month period adopted as the Fiscal Year of the Utility.

Impervious Area means all areas covered by structures and impervious amenities such as roofed and paved areas, including, but not limited to, areas covered by roofs, roof extensions, patios, porches, driveways, sidewalks, parking areas and athletic courts.

Non-Residential Developed Property means any developed lot or parcel not exclusively residential as defined herein, including hotels or motels zoned commercial, or as determined by City utility records or field inspection.

Operating Budget means the annual Stormwater Management Utility operating budget adopted by the City for the succeeding Fiscal Year.

Operations and Maintenance means the current expenses, paid or accrued, of operation, maintenance and current repair of the System, as calculated in accordance with sound accounting practices, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses, labor, executive compensation, the cost of materials and supplies used for current operations, and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which are such as may reasonably be expected to be incurred in accordance with

sound accounting practices.

Property Appraiser means the Office of the County Property Appraiser.

Revenues mean all rates, fees, assessments, rentals or other charges or other income received by the Utility, in connection with the management and operation of the System, including amounts received from the investment or deposit of moneys in any fund or account and any amounts contributed by the City, all as calculated in accordance with sound accounting practice.

Stormwater Management System or System means the existing stormwater management facilities/structures of the City and all improvements thereto which by this Ordinance are constituted as the property and responsibility of the Utility, to, among other things, conserve water, control discharges necessitated by rainfall events, incorporate methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.

Stormwater Management Utility Board shall mean a board consisting of five members appointed by the Mayor who shall hear appeals of rate adjustments and recommend to the City Commission and Mayor capital projects and budget priorities for the utility.

Undeveloped Property means property which has not been altered by the addition of any improvements such as a building, structure, impervious surface, change of grade, or landscaping.

Undisturbed Parcel means a parcel which has not been altered from its natural state by dredging, filling, removal of trees and vegetation or other activities which have disturbed or altered the topography or soils on property.

Utility Fee means a Utility fee authorized by Florida law and this Ordinance which is established to

pay Operations and Maintenance, Extension and Replacement and Debt Service.

Vacant Improved Property means vacant property which has or is served by any subdivision improvements.

Vacant Improved Single Family Lots mean any individual lot of Vacant Improved Property which is limited by zoning ordinance to single family use.

Stormwater Management Utility or Utility means the utility created by this Ordinance to operate, maintain and improve the system.

Section 28-4. Establishment of Stormwater Management Utility

- A. The Stormwater Management Utility is hereby established by the City Commission to provide for the general welfare of the City and its residents.
- B. The Director shall be the chief staff member of the Utility.

Section 28-5. Operating Budget

The City shall adopt an Operating Budget not later than the first day of each Fiscal Year. The Operating Budget shall set forth for such Fiscal Year the estimated Revenues and the estimated costs for Operations and Maintenance, Extension and Replacement and Debt Service.

Section 28-6. Required Levels of Rates for Utility Fees

The City Commission shall require that adequate Revenues are generated to provide for a balanced Operating Budget by at least annually setting sufficient levels of Utility Fees.

Section 28-7. Imposition of Utility Fees

The Commission hereby authorizes the imposition of Utility Fees on all property within the City.

Section 28-7.1. Rate Schedule

A. Property Classification

For purposes of determining the Utility Fee, all property within the Area of Operation shall be classified, into one of the following classes:

1. Residential Developed Property;
2. Non-Residential Developed Property;
3. Vacant Improved Property;
4. Undeveloped Property; or
5. Undisturbed Parcel.

B. Computation of Utility Fee for Residential Developed Property

The Utility Fee for Residential Developed Property shall be the ERU Rate multiplied by the number of individual Dwelling Units existing on the Property.

C. Computation of Utility Fee for Non-Residential Developed Property

The Utility Fee for Non-Residential Developed Property shall be the ERU Rate multiplied by the numerical factor obtained by dividing the total Impervious Area of a Non-Residential Developed Property by one ERU. The minimum Utility Fee for any Non-Residential Developed Property shall be equal to one ERU Rate.

D. Computation of Utility Fee for Undeveloped Parcels

Undeveloped parcels shall be exempted from the Utility Fee.

E. Computation of Utility Fee for Parcels in the District

The Utility Fee for parcels located within the Northern Palm Beach County Water Control District ("District") Units One (1), Four (4), and Fifteen (15) shall be the Utility Fee for the applicable type of parcel as computed in Section 28-7.1 B. and C multiplied by the quotient obtained by dividing the sum of the City's stormwater budget items applicable to these units by the City's total annual stormwater budget. Separate calculations shall be performed for parcels in the Iron Horse and Ibis Golf & Country Club developments within said District, as they receive fewer City stormwater services than the rest of the District.

Section 28-8. Billing and Payment, Penalties

The Utility fee is to be paid by the owner, tenant, or occupant of each lot or parcel subject to the fee. All properties, except the undisturbed parcels, shall be rendered bills or statements for the use of these services and facilities of the system by the City Utilities Department. The bills or statements shall be payable at the same time and in the same manner and subject to the same discontinuance of service by the City Utility as set forth under the terms and conditions of Section 31-4 of the Code of the City of West Palm Beach.

Section 28-9. Adjustment of Fees

A. Request for adjustment of the Utility Fee shall be submitted to the Director, who is hereby given the authority to develop and administer the procedures and standards for the adjustment of fees as established herein. All requests shall be judged on the basis of the amount of impervious area on the site. No credit shall be given for the installation of facilities required by City or County development codes or State Stormwater Rules. Parcels within the District shall receive an adjustment to their individual user fee that is reflective of the flood control services being provided by the District. The following procedures shall apply to all adjustment requests of the Stormwater Fee:

1. Any owner who has paid his Utility Fees and who believes his Utility Fee to be incorrect may, subject to the limitations set forth in this article, submit an adjustment request to the Director.
2. Adjustment requests for the Utility Fees shall require that the person making the request pay the fee in advance and make the request in writing setting forth in detail the grounds upon which relief is sought.

3. Adjustment requests made during the first calendar year that the Utility Fee is imposed will be reviewed by the Director within a two (2) month period from the date of filing of the adjustment request. Adjustments resulting from such request shall be retroactive to the beginning of billings, but retroactive adjustment shall not exceed one (1) year.
4. The owner requesting the adjustment may be required, at his own cost, to provide supplemental information to the Director including, but not limited to, survey data approved by either a registered professional land surveyor (P.L.S.) and engineering reports approved by a professional engineer (P.E.). Failure to provide such information may result in the denial of the adjustment request.
5. Adjustments to the Utility Fee will be made upon the granting of the adjustment request, in writing, by the Director. Denials of adjustment requests shall be made, in writing, by the Director.

B. Upon receipt of the written denial of the adjustment request, the owner who initially requested the adjustment may, within thirty (30) days of receipt of such denial, appeal to the Stormwater Utility Board for review of the denial.

1. The Stormwater Utility Board shall complete their review within sixty (60) days of receipt of said request for review. The Board's determination on the review shall be in writing and set forth in detail, the reasons for their decision.
2. In reviewing denials of adjustment requests, the Stormwater Utility Board shall apply the following standards and review criteria:

- a. Existing or special characteristics of the site or parcel for which the adjustment request is made will be considered.
- b. The amount of on-site impervious area.
- c. Twenty-five (25) year frequency/twenty-four (24) hour duration Storm Criteria will be the minimum standard recognized by the Director.
- d. Ponds, exfiltration systems or positive drainage facilities must meet applicable City, State, and Federal requirements including ground water protection devices and outfall treatment conveyance systems required by all governing bodies.
- e. Ponds, exfiltration systems or positive drainage facilities must be maintained according to City standards, and must function in accordance with the required City design standards.
- f. Adjustments will not be granted for swimming pools, reflecting pools, existing open ditch systems and swales.

Section 28-10 Capital Contributions

- A. Where the City has constructed or plans to construct stormwater facilities which are proposed to be used by a developer in lieu of a facility usually required to be constructed by a developer, the City may accept a capital contribution from the developer and waive certain construction requirements.
- B. Procedures and standards developed by the City shall define appropriate means by which to optimize the developers capital contributions in the construction or refunding of stormwater systems. These capital contributions shall take the form of Fee-in-lieu-of or Availability Charges. Each situation will be analyzed by the City and a specific written decision

will be developed. The application of each is defined as follows:

1. Fee-in-lieu-of is applied to a site specific negotiated procedure, wherein a development's stormwater contribution (quantity and quality) is assessed its share of the capital needs of the facilities required to serve the development in question. This capital contribution would be used for the construction or refunding of City-owned stormwater facilities. The process does not apply wherein the stormwater facilities are privately held. Each application is evaluated against the City's Master Plan, or where the Master Plan is incomplete, against the cumulative impacts from the development.

2. Availability Charge is administered on a site specific basis identical to the Fee-in-lieu-of procedure noted above. The only difference is that the capital investment advanced by the City in implementing a stormwater facility is now recovered through an availability charge. The capital charge is determined on a pro-rata share of the capacity used by the new applicant as measured by the cumulative impact from the development upon all impacted facilities applied to the present worth of the original capital expenditure. In the case of a developer constructing Stormwater Management Facilities in excess of the site needs, the City may enter an agreement with that developer to rebate Fee-in-lieu-of charges paid to the City by other developers utilizing those facilities over a period of time not exceeding seven (7) years from the date of the agreement.

C. All development subject to the provisions of Section

28-10 shall pay a fee calculated consistent with Section 28-7.1E herein.

Section 28-11. Program Responsibility

It shall be the duty of the Director to administer the Stormwater Management Utility. The Director shall keep an accurate record of all persons using the services and facilities of the Stormwater Management System of the City and to make changes in accordance with the rates and charges established in this Ordinance and accompanying Ordinance.

Section 28-12. Stormwater Utility Trust Funds

There shall be established a Stormwater Utility special account for the deposit of all fees and charges collected by the Stormwater Utility. These funds shall be for the exclusive use of the City's Stormwater Utility, including the following categories:

- A. Administrative Costs associated with the management of the Stormwater Utility.
- B. Planning and Engineering.
- C. Operation and Maintenance of the System.
- D. Funding of pollution abatement devices constructed on stormwater systems discharging to the surface water of the City.
- E. Debt Service financing.

Section 28-12. Stormwater Utility Board

A Stormwater Utility Board is hereby created which shall consist of five (5) members appointed by the Mayor. All members shall be property owners in Palm Beach County and be either residents of the City of West Palm Beach or business owners in the City.

The Board shall meet a minimum of two (2) times per year during April and May to review the next fiscal year's capital projects list and to set budget priorities for the next fiscal year. In addition, the board shall comment on the goals and priorities of the Stormwater Utility on an annual basis and meet as necessary to hear appeals at rates pursuant to Section 28-9 hereof.

Board membership and terms are to be as follows:

<u>Position</u>	<u>Initial Term</u>	<u>Category</u>
1	2 yrs	Civil Engineer
2	2 yrs	Real Estate/Appraisal
3	3 yrs	Finances/Retail
4	3 yrs	Construction (Eng./Contractor/ Developer)
5	3 yrs	At Large (Resident, Lay Person)

All terms after the initial term would be for 3 years.

SECTION 2: All Ordinances or parts of Ordinances insofar as they are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of any conflict.

SECTION 3: In the event that any portion, section, provision, paragraph, sentence or word of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions, sections, provisions, paragraphs, sentences or words of this Ordinance which shall remain in full force and effect.

SECTION 4: Specific authority is hereby granted to codify this ordinance.

SECTION 5: This ordinance shall take effect in accordance with law.

FIRST READING THIS 9th DAY OF August, 1993.

SECOND, FINAL READING IN FULL AND PASSAGE THIS 33rd DAY OF August, 1993.

(CORPORATE SEAL)

CITY OF WEST PALM BEACH
BY ITS CITY COMMISSION

W. M. Graham
PRESIDING OFFICER

ATTEST:

Arnes L. Hayhurst
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: Elizabeth J. McBride

Date: 8-2-93

STATE OF FLORIDA
COUNTY OF PALM BEACH
CITY OF WEST PALM BEACH

This copy is a true copy of the original on file in this office. WITNESS my hand and Official Seal. This 6 day of

April, 20 17
City of West Palm Beach
By: David L. Campbell Clerk

IN THE CIRCUIT COURT OF THE 15TH 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,

CASE NO. 50 2013 CA 010144 MB

Civil Division: AH

v.

CITY OF WEST PALM BEACH, a Florida
municipal corporation,

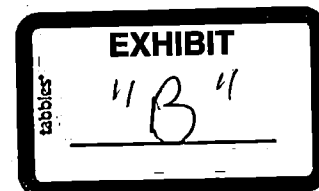
Defendant.

PLAINTIFF'S NOTICE OF FILING WEST PALM BEACH ORDINANCE NO. 2645-93

Plaintiff, The School Board of Palm Beach County, gives notice of filing the attached certified copy of City of West Palm Beach Ordinance Number 2645-93 with the clerk of court.

CERTIFICATE OF SERVICE

I HEREBY DECLARE, that on this 20th day of June 2017, a true and correct copy of the foregoing was served via electronic mail to the following: **Douglas Yeargin, Esq.** and **Anthony M. Stella, Esq.**, Attorneys for City of West Palm Beach, City Attorney Office, 401 Clematis Street, 5th Floor, Post Office Box 3366, West Palm Beach, Florida 33402 (tenoree@wpb.org, yeargin@wpb.org, patrickk@wpb.org, astella@wpb.org and svegas-catinella@wpb.org) and **Hollie N. Hawn, Esq.**, Assistant General Counsel, School Board of Palm Beach County, Office of the General Counsel, Post Office Box 19239, West Palm Beach, FL 33416-9239 (blair.littlejohn@palmbeachschools.org, hollie.hawn@palmbeachschools.org,



lesline.gregory@palmbeachschools.org and dotty.fairbankts@palmbeachschools.org).

NASON, YEAGER, GERSON, WHITE
& LIOCE, P.A.
750 Park of Commerce Boulevard, Suite 210
Boca Raton, Florida 33487
Telephone: (561) 982-7114
Facsimile: (561) 982-7116
Email: jfumero@nasonyeager.com
jrice@nasonyeager.com
Attorneys for Plaintiff

BY: /s/ John K. Rice

JOHN K. "JACK" RICE
FBN: 99624
JOHN J. FUMERO, ESQ.
FBN: 716596

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, ESTABLISHING A RATE SCHEDULE FOR RATES TO BE CHARGED BY THE STORMWATER MANAGEMENT UTILITY SYSTEM; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, Ordinance No. 2611-93 places upon the City Commission the obligation to establish the rates and fees to be charged for the Stormwater Management Utility System; and

WHEREAS, in order to implement the utility system a rate schedule needs to be established.

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

- SECTION 1:**
1. That the annual rate to be charged by the Stormwater Management Utility for each Equivalent Residential Unit (ERU) shall be \$2.50 per ERU per month.
 2. The rates to be charged for residential developed property (i.e., single family detached, mobile home, apartment, condominium, etc.) shall be equal to the rate established in Section 1.
 3. The rates to be charged for non-residential developed property (i.e., enterprises, business establishments, buildings or other occupancies not covered under paragraph 2) shall be the rate established in paragraph 1 multiplied by the number of equivalent residential units. The number of equivalent residential units shall be the total square footage of impervious area of the property divided by 1,573 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).
 4. Parcels within the Northern Palm Beach County Water Control District ("District") units 1, 4 and 15, but outside the Iron Horse and Ibis Golf & Country

Club Developments, shall be charged a stormwater utility fee equal to 0.51 times the rate established in paragraphs 1, 2 and 3. Equivalent residential units will be rounded to the nearest tenth (0.1) of a unit.

5. Parcels within the District which are also within the Iron Horse and Ibis Golf & Country Club developments shall be charged a stormwater utility fee equal to 0.34 times the rate established in paragraphs 1, 2 and 3. Equivalent residential units will be rounded to the nearest tenth (0.1) of a unit.

6. New drainage units or newly annexed parcels into the Corporate limits shall be charged based on services to be provided by the City and shall be calculated at the time of processing for annexation.

SECTION 2: This Ordinance shall become effective in accordance with law and applied to all utility bills rendered after October 1, 1993.

FIRST READING THIS 21 DAY OF September, 1993.
SECOND, FINAL READING IN FULL AND PASSAGE THIS 20 DAY OF September, 1993.

(CORPORATE SEAL)

CITY OF WEST PALM BEACH
BY ITS CITY COMMISSION

ATTEST:

[Signature]
PRESIDING OFFICER

[Signature]
CITY CLERK

APPROVAL AS TO FORM AND
LEGAL SUFFICIENCY

By: [Signature]

Date: 8-31-93

STATE OF FLORIDA
COUNTY OF PALM BEACH
CITY OF WEST PALM BEACH

This copy is a true copy of the original on file in this office, WITNESS my hand and Official Seal. This 6 day of April 2017.
City of West Palm Beach
By [Signature] Deputy Clerk

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

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

CASE NO. 50 2013 CA 010144 MB

Plaintiff,

Civil Division: AH

v.:

CITY OF WEST PALM BEACH, a Florida
municipal corporation,

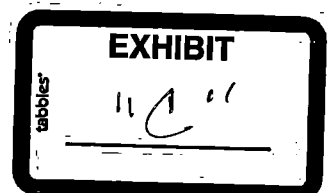
Defendant.

**PLAINTIFF'S NOTICE OF FILING DEFENDANT'S RESPONSE TO
INTERROGATORIES IN SUPPORT OF PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff, The School Board of Palm Beach County, gives notice of filing the attached
Defendant, City of West Palm Beach's Response to Plaintiff's Interrogatories, dated June 20, 2016,
with the clerk of court.

CERTIFICATE OF SERVICE

I HEREBY DECLARE, that on this 20th day of June 2017, a true and correct copy of the
foregoing was served via electronic mail to the following: **Douglas Yeargin, Esq.** and **Anthony
M. Stella, Esq.**, Attorneys for City of West Palm Beach, City Attorney Office, 401 Clematis
Street, 5th Floor, Post Office Box 3366, West Palm Beach, Florida 33402 (tenoree@wpb.org,
yeargin@wpb.org, patrickk@wpb.org, astella@wpb.org and svegas-catinella@wpb.org)
and **Hollie N. Hawn, Esq.**, Assistant General Counsel, School Board of Palm Beach County,
Office of the General Counsel, Post Office Box 19239, West Palm Beach, FL 33416-9239



(blair.littlejohn@palmbeachschools.org,

hollie.hawn@palmbeachschools.org,

lesline.gregory@palmbeachschools.org and dotty.fairbankts@palmbeachschools.org).

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Email: jfumero@nasonyeager.com

jrice@nasonyeager.com

Attorneys for Plaintiff

BY: /s/ John K. Rice

JOHN K. "JACK" RICE

FBN: 99624

JOHN J. FUMERO, ESQ.,

FBN: 716596

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).

**DEFENDANT, CITY OF WEST PALM BEACH'S
RESPONSE TO PLAINTIFF'S INTERROGATORIES**

COMES NOW Defendant, CITY OF WEST PALM BEACH (hereinafter "City"),
by and through its undersigned attorney, and files this response to Plaintiff's
Interrogatories dated June 20, 2016 as follows:

1. What is the name, position and relation to CITY OF WEST PALM BEACH of the person, or any persons, answering this set of interrogatories?

**Answer: Poonam K. Kalkat
401 Clematis Street
P.O. Box 3366
West Palm Beach, FL 33402
Director of Public Utilities**

2. The CITY OF WEST PALM BEACH alleges that the SCHOOL BOARD discharges stormwater into its stormwater system. For each SCHOOL BOARD Property, please state the amount, in gallons per year, of stormwater that is discharged into the CITY OF WEST PALM BEACH's stormwater system:

a. prior to development;

Objection: Calls for expert opinion.

Answer: While it is my understanding that the School Board properties that City bills for stormwater utilities do discharge stormwater into City's stormwater system, at this time City does not know the exact amount of discharge for each property prior to that property being developed.

b. prior to the enactment of the Stormwater Ordinance;

Objection: Calls for expert opinion.

Answer: While it is my understanding that the School Board properties that City bills for stormwater utilities do discharge stormwater into City's stormwater system, at this time City does not know the exact amount of discharge for each property prior to the enactment of City's Stormwater Ordinance.

c. Currently.

Objection: Calls for expert opinion.

Answer: While it is my understanding that the School Board properties that City bills for stormwater utilities do discharge stormwater into City's stormwater system, at this time City does not know the exact amount of discharge for each property currently.

3. For the previous answer, please state the method of calculating the runoff.

Answer: City of West Palm Beach Ordinance No. 2645-93 implements a monthly stormwater utility fee for each equivalent residential unit ("ERU") on a property. 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.

4. CITY OF WEST PALM BEACH alleges that the SCHOOL BOARD creates a burden on the CITY OF WEST PALM BEACH's stormwater system. For each SCHOOL BOARD Property, please state the total cost, per year since the enactment of the CITY OF WEST PALM BEACH's Stormwater Ordinance in 1994, of stormwater infrastructure improvements and maintenance directly attributable to each School Board Property.

Answer: It is my understanding that the billed monthly charges for a particular School Board property, which charge is based on the ERU, would be proportionate to the property's use of City's stormwater management system, which includes stormwater infrastructure improvements and maintenance.

5. For the previous answer, please state the method of calculating the cost.

Answer: It is my understanding that City's Annual Report submitted pursuant to Palm Beach County MS4, Permit Number FLS000018-003-MAJOR Facility captures all activities associated with City's stormwater management system for a given year. City's stormwater utility utilizes the ERU to assess each School

Board properties relative contribution to its need for use of City's stormwater management system.

6. Please state the total amount of stormwater runoff accepted by the CITY OF WEST PALM BEACH, yearly, from all properties within the boundaries of West Palm Beach, since the enactment of its Stormwater Ordinance in 1993.

Objection: Calls for expert opinion.

Answer: At this time City does not know the total amount of stormwater runoff accepted by the City from all properties within the boundaries of West Palm Beach.

7. For the fiscal years 2012, 2013, 2014 and 2015, please state any services provided to agencies of the State of Florida or agencies of the United States of America for which the CITY OF WEST PALM BEACH does not (or cannot) charge and the dollar value of each such service.

Answer: I am not aware of any accounts for any billed agencies of the State of Florida or agencies of the United States of America that refuse to pay any amount for stormwater services, except for the School Board. It is my understanding that the State of Florida takes the position that City cannot charge it for late fees related to services.

8. Most stormwater systems are designed to a standard, usually by referring to a storm event that is expected to recur every period of years (i.e., a 100 year storm event). Please state the design standard for the CITY OF WEST PALM BEACH's stormwater system.

Answer: My understanding is that the standards for City's stormwater management system are contained in its Stormwater Master Plan, a copy of which will be made available.

9. Please provide the street addresses of each of the SCHOOL BOARD's properties within the boundaries of the City of West Palm Beach that, at the present time, do not pay fees for stormwater utilities.

Answer: According to City records, and my understanding, the School Board properties within City boundaries that, at present time, are billed for stormwater services but do not pay fees for stormwater services are

**825 Palmetto St
501 S Sapodilla Ave
2222 Spruce Ave
400 40th St
7101 Olive Ave
4208 N Australian Ave (alternate address may be 4200 N Australian Ave)**

816 11th St #D (alternate address may be 800 11th St)
3777 N Jog Rd
6901 Parker Ave
1220 LA Kirksey St
5801 Parker Ave
4111 N Terrace Dr
1601 N Tamarind Ave
3000 Parker Ave
3505 Shenandoah Dr
3505 Shiloh Dr
1725 Echo Lake Dr
3630 Parker Ave
1101 Golf Ave
5115 47th PI N

It is also my understanding there may be other School Board properties within the City of West Palm Beach that were previously billed for stormwater services that are not currently being billed for stormwater services.

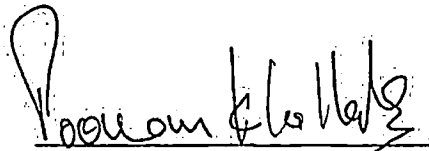
10. Please provide the name of the owner and street address of any property within the City limits that does not pay fees for the stormwater utility, other than those revealed in response to the preceding interrogatory, and specify the reason why no fees are paid for each such property.

Objection: Overbroad as it asks for the identity of, and reason for, any residents of West Palm Beach not paying their stormwater utility bill for a given month.

Answer: My understanding is that any property owner and or resident may or may not choose to pay stormwater utility fees for a given month, but that such property owners and or residents are subject to penalties described in City of West Palm Beach Code of Ordinances Section 90-3 "Discontinuance of utilities services for nonpayment of bill; unpaid utilities charges for service to constitute lien against property served."

I do not know the reason why any property owner and or resident in the City of West Palm Beach may or may not pay stormwater utility fees for a given month.

[SIGNATURE ON NEXT PAGE]



Name: Poonam K. Kalkat
Title: Director of Public Utilities
City of West Palm Beach

STATE OF FLORIDA
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 3 day of AUGUST, 2016, by Poonam Kalkat, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

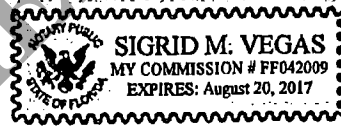
NOTARY PUBLIC:

Signature: _____

Print Name: _____

State of Florida at Large (Seal)

My commission expires:



Signing to Legal Objections Only:

By: CHRISTOPHER VAN HALL

Christopher Van Hall
Assistant City Attorney
Florida Bar No.: 102889

NOT A CERTIFIED COPY

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),

CASE NO.

v..

502013CA010144XXXXMB AH

CITY OF WEST PALM BEACH,

Defendant(s).

**DEFENDANT, CITY OF WEST PALM BEACH'S
RESPONSE TO PLAINTIFF'S SECOND REQUEST TO PRODUCE**

COMES NOW Defendant, CITY OF WEST PALM BEACH (hereinafter "City"),
by and through its undersigned attorney, and files this response to Plaintiff's Second
Request to Produce dated June 20, 2016 as follows:

1. All agreements, contracts, interlocal agreements, memorandums of understanding or any documents entered into with the SCHOOL BAORD regarding the payment of stormwater utility fees to the CITY.

None

2. Any meeting minutes; video or audio of any public or non-public meetings and all documents including, but not limited to, emails, reports or correspondence to or from employees, officials, officers, agents or representatives of CITY that discuss or reference any agreements, contracts, interlocal agreements, memorandums of understanding or any documents entered into with the SCHOOL BOARD for the payment of stormwater utility fees to CITY.

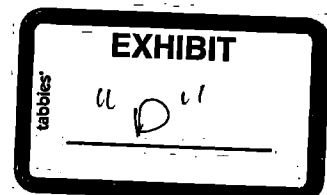
None

3. All documents concerning the calculation of the impervious area on each SCHOOL BOARD's properties upon which the CITY assesses a stormwater fee.

See Response #1 in enclosed CD for possibly responsive documents

4. All documents concerning the calculation of stormwater utility fees for each SCHOOL BOARD Property in 2010 to the present.

See Response #2 in enclosed CD for possibly responsive documents



5. All notes, memoranda, and other documentation provided to members of the CITY Commission from 2010 through the present regarding the dispute between the CITY and the SCHOOL BOARD over the issue of stormwater utility fees.

None

6. All documents establishing the costs of maintaining, improving, and operating the stormwater system of the CITY for the past three calendar years.

See Response #3 in enclosed CD for possibly responsive documents

7. All documents establishing the revenues received by the CITY for stormwater fees for the past three calendar years.

See Response #3 in enclosed CD for possibly responsive documents

8. Any and all documents related to payment of stormwater fees to the CITY for state roadways within the CITY or national roadways within the CITY.

None

9. Any and all documents related to the CITY's treatment stormwater pollutants, and the costs thereof, including but not limited to treatment of nitrogen and phosphorus.

See Response # 6 for possibly responsive documents. City consultants may be in possession of additional responsive documents.

10. Any and all documents demonstrating the CITY's funding sources, including but not limited to grants, for treatment of stormwater pollutants for the previous ten (10) years.

See Response #4 in enclosed CD for possibly responsive documents

11. Any and all documents demonstrating the measurement of stormwater pollutants treated by the CITY each year for the previous ten (10) years, including but not limited to the total amounts of nitrogen and phosphorus treated each year.

See Response # 6 for possibly responsive documents. City consultants may be in possession of additional responsive documents.

12. Any and all documents showing the TMDL (total maximum daily load) requirements or limitations for any of the natural waterways within the CITY or used by the CITY's stormwater system.

See Response #5 in enclosed CD for possibly responsive documents

See also, possibly responsive documents, including City's annual reports pursuant to the Palm Beach County MS4 NPDES Program, at <http://www.pbco-npdes.org/annual.asp>

13. Any meeting minutes; video or audio of any public or non-public meetings and all documents including, but not limited to, emails, reports or correspondence to or from employees, officials, officers, agents or representatives of CITY OF WEST PALM BEACH that discuss or reference the payment or non-payment of stormwater utility fees by the SCHOOL BOARD from 2010 to the present.

See Response # 6 for possibly responsive documents.¹²

14. Any meeting minutes; video or audio of any public or non-public meetings and all documents including, but not limited to, emails, reports or correspondence to or from employees, officials, officers, agents or representatives of CITY OF WEST PALM BEACH that discuss or reference discontinuing, interrupting, ending or stopping stormwater utility, potable water or sewer services to SCHOOL BOARD related to its non-payment of stormwater utility fees.

See Response # 6 for possibly responsive documents.

15. Any meeting minutes; video or audio of any public or non-public meetings and all documents including, but not limited to, emails, bills, reports or correspondence to or from employees, officials, officers, agents or representatives of CITY OF WEST PALM BEACH that discuss or reference the amount of accrued unpaid stormwater charges CITY alleges SCHOOL BOARD owes from 2010 to the present.

See Response # 6 for possibly responsive documents.

16. All photographs, charts, diagrams, documents, and other physical evidence that CITY OF WEST PALM BEACH, its agents or employees intend to use at or before trial to support its claims in this lawsuit.

Not known at this time. City will provide Exhibit List consistent with the pretrial order in this case.

CITY OF WEST PALM BEACH
CITY ATTORNEY'S OFFICE
401 Clematis Street, 5th Floor (33401)
P. O. Box 3366
West Palm Beach, FL 33402
Telephone: (561) 822-1375
Facsimile: (561) 822-1373

¹ Response to #13-15 regarding public meetings is based on a search of City Commission meeting minutes from May 18, 2012 to present for terms "school board" "key west" "discontinuing stormwater" "stormwater utility" "unpaid stormwater" "stormwater charges"

² Response to #13-15 regarding emails is based on search of City's stored emails from January 1, 2010 to present for terms "School Board" AND "stormwater " OR "Key West" OR "fees" OR "utility" OR "unpaid" OR "discontinuing" OR "potable water" OR "sewer services" OR "interrupting" or "ending" OR "stopping" OR "nonpayment"

By: CHRISTOPHER VAN HALL

Christopher Van Hall

Assistant City Attorney

Florida Bar No.: 102889

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served, via electronic mail, according to Florida Courts E-Filing Portal guidelines established by the Florida Bar, in August 8, 2016 to: blair.littlejohn@palmbeachschools.org, hollie.hawn@palmbeachschools.org, lesline.gregory@palmbeachschools.org, dotty.fairbanks@palmbeachschools.org; Hollie N. Hawn, Assistant General Counsel, School Board of Palm Beach County, Office of the General Counsel Post Office Box 19239, West Palm Beach, FL 33416-9239, jfumero@fflaw.com, John J. Fumero, Esquire, Sundstrom, Freidman & Fumero, LLP, 7700 Congress Avenue, Suite 2201, Boca Raton, FL 33487; jschneck@fflaw.com, Jed R. Schneck, Esquire, Sundstrom, Friedman & Fumero, LLP, 7700 Congress Avenue, Suite 2201, Boca Raton, FL 33487.

By: CHRISTOPHER VAN HALL

Christopher Van Hall

Assistant City Attorney

Florida Bar No.: 102889

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

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

CASE NO. 50 2013 CA 010144 MB

Plaintiff,

Civil Division: AH

v.

CITY OF WEST PALM BEACH, a Florida
municipal corporation,

Defendant.

PLAINTIFF'S NOTICE OF FILING DEPOSITION OF DONNA LEVENGOOD

Plaintiff, The School Board Of Palm Beach County, gives notice of filing the attached transcript of the February 27, 2017 deposition of Donna Levengood, Corporate Representative of Defendant, City of West Palm Beach, with the clerk of court.

CERTIFICATE OF SERVICE

I HEREBY DECLARE, that on this 15th day of June 2017, a true and correct copy of the foregoing was served via electronic mail to the following: **Douglas Yeargin, Esq.** and **Anthony M. Stella, Esq.**, Attorneys for City of West Palm Beach, City Attorney Office, 401 Clematis Street, 5th Floor, Post Office Box 3366, West Palm Beach, Florida 33402 (tenoree@wpb.org, yeargin@wpb.org, patrickk@wpb.org, astella@wpb.org and svegas-catinella@wpb.org) and **Hollie N. Hawn, Esq.**, Assistant General Counsel, School Board of Palm Beach County, Office of the General Counsel, Post Office Box 19239, West Palm Beach, FL 33416-9239 ([tabbles®

EXHIBIT

" E "

_____](mailto:blair.lit-</p></div><div data-bbox=)

tlejohn@palmbeachschools.org, hollie.hawn@palmbeachschools.org, lesline.gregory@palmbeachschools.org and dotty.fairbankts@palmbeachschools.org).

NASON, YEAGER, GERSON, WHITE
& LIOCE, P.A.
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Telephone: (561) 982-7114
Facsimile: (561) 982-7116
Email: jfumero@nasonyeager.com
jrice@nasonyeager.com
Attorneys for Plaintiff

BY: /s/ John K. Rice

JOHN K. "JACK" RICE, ESQ.
FBN: 99624
JOHN J. FUMERO, ESQ.
FBN: 716596

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

CASE NO. 50 2013 CA 010144 MB

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.

DEPOSITION OF
DONNA LEVENGOOD
Taken on behalf of the Plaintiff

DATE TAKEN: February 27, 2017
TIME: 9:29 a.m. - 12:18 p.m.
PLACE: 401 Clematis Street
West Palm Beach, Florida

Stenographically Reported by:
Lisa Gropper, R.P.R., F.P.R.
Olender Legal Solutions
477 S. Rosemary Avenue - Suite 202
West Palm Beach, Florida 33401
(561) 822-4626

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APPEARANCES

ON BEHALF OF THE PLAINTIFF:

JOHN J. FUMERO, ESQ.
JOHN W. BIZANES, ESQ.
NASON, YEAGER, GERSON, WHITE & LIOCE, P.A.
750 Park of Commerce Boulevard
Suite 210
Boca Raton, Florida 33487
jfumero@nasonyeager.com
jbizanes@nasonyeager.com

HOLLIE N. HAWN, ASSISTANT GENERAL COUNSEL
SCHOOL BOARD OF PALM BEACH COUNTY
OFFICE OF GENERAL COUNSEL
3300 Forest Hill Boulevard
C323
West Palm Beach, Florida 33406
hollie.hawn@palmbeachschools.org

ON BEHALF OF THE DEFENDANT:

CHRISTOPHER VAN HALL, ASSISTANT CITY ATTORNEY
DOUGLAS YEARGIN, ASSISTANT CITY ATTORNEY (as noted)
CITY OF WEST PALM BEACH
CITY ATTORNEY'S OFFICE
401 Clematis Street
5th Floor
P.O. Box 3366
West Palm Beach, Florida 33402
cvanhall@wpb.org
yeargind@wpb.org

ALSO PRESENT: Poonam K. Kalkat (as noted)

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2	Witness	Direct	Cross	Redirect
3	Donna Levengood			
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13	3	Testimony outline	20
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1 THE COURT REPORTER: Do you swear or affirm
2 that the testimony you're about to give will be the
3 truth, the whole truth, and nothing but the truth?

4 THE WITNESS: I do.

5 DIRECT EXAMINATION

6 BY MR. FUMERO:

7 Q Could you please state your name and business
8 address for the record.

9 A Donna Levengood, 401 Clematis Street, West
10 Palm Beach.

11 Q Miss Levengood, have you ever had your
12 deposition taken before?

13 A I have.

14 Q Okay. What matter was that relating to? Was
15 it city-related?

16 A It was.

17 Q What was the nature of that?

18 A A bid protest.

19 Q Okay. So you understand then that in this
20 deposition I'm going to be asking you questions and
21 you're going to be responding to those questions, and
22 if, for whatever reason, my question is unclear, let me
23 know and I'll be happy to rephrase it or restate it.

24 A Will do.

25 Q Okay. And of course, if you need to take a

1 break for whatever reason, just let us know and we'll do
2 so.

3 A Okay.

4 Q Let me first ask you to confirm with me that
5 you did attend the corporate representative deposition
6 for Ms. Elizabeth Perez?

7 A For most of it. Not all of it.

8 Q Okay. For most of it.

9 Are you aware of your role today in the
10 capacity of a city representative? Has that been
11 explained to you?

12 A It has. I do recall that there was a
13 difference of opinion as to what you versus the city
14 deemed a corporate representative.

15 Q Okay. And what's your understanding as we sit
16 here today of a corporate representative?

17 A To answer to the best of my ability the
18 questions that you may have for me today.

19 (Plaintiff's Exhibit 1 was marked for
20 identification.)

21 Q Okay. So the first thing we're going to do is
22 I'm going to -- I've marked as Exhibit 1 your -- I'm
23 going to hand it to you there. That's your -- the
24 Notice of Deposition directed to you. Have you seen
25 this document before?

1 A It looks familiar.

2 Q Okay. Let me turn your attention to Page 2
3 and specifically that language there that's in boldface,
4 Nos. 1 through 6. Take a minute to peruse that, because
5 I'm going to ask you some questions about it.

6 And let me know when you're done perusing that
7 language. I'm going to ask you a few questions.

8 (Poonam Kalkat now present.)

9 A I've read those.

10 Q Okay. What we have here on Page 2 of Exhibit
11 1, Items 1 through 6, were you aware of these subject
12 areas prior to today, that you'd be testifying on these?

13 A Yes.

14 Q And is there any one of these six items here
15 where you believe you're not properly prepared to
16 address, any of these six subject matter areas?

17 A I can only tell you that I'm prepared to the
18 best of my ability.

19 Q For all six?

20 A I've done my best to try to prepare for all
21 six.

22 Q Following on in this, what we've marked as
23 Exhibit 1, is a statement requiring you to bring certain
24 documents. Do you see that?

25 It's also what we've identified as Exhibit A

1 to Exhibit 1 of this deposition.

2 Yes?

3 A Yes.

4 Q And have you brought documents responsive to
5 that request with you today?

6 A Yes, I have.

7 MR. FUMERO: Okay. And I don't know if you
8 want to state -- I know you just indicated to me
9 earlier that you have three studies here that are
10 bound that you have not yet provided us with like a
11 PDF, but every -- is it accurate for me to say that
12 every other responsive document has been produced?

13 MR. VAN HALL: To the best of my knowledge,
14 yeah. Everything that I have gotten, I have
15 forwarded to Tom.

16 A I don't know if I have PDFs of these older
17 documents. I only referred to the '16 study that was
18 completed. But certainly we can get you copies. I'm
19 just not sure that I have PDFs of these two.

20 Q (By Mr. Fumero) That's fine. And just so that
21 we're clear here, I'll be asking you a few questions
22 about these documents, but we're first referring to the
23 City of West Palm Beach Water, Waste Water and
24 Stormwater Rate Study dated October 27, 2016, and
25 Ms. Levensgood, you indicated that you could provide me

1 with a PDF --

2 A Yes.

3 Q -- or electronic of this document?

4 A (Non-verbal response.)

5 Q Thank you. That would be greatly appreciated.

6 The other two documents that I referenced that
7 were not produced in hard copy is the March 2008 City
8 Water, Waste Water and Stormwater Rate and Charge Study,
9 and also the December 16, 2015, City Financial Overview
10 of the Water, Waste Water and Stormwater Systems Report.

11 MR. FUMERO: So, Chris, you said other than
12 these three studies I've just referenced, to the
13 best of your knowledge, the school board has been
14 provided with all of the responsive documents
15 identified in this Notice of Deposition?

16 MR. VAN HALL: Yeah. I would just add, I
17 think the documents here that Miss Levengood
18 prepared for the depo weren't given previously --

19 MR. FUMERO: Okay.

20 MR. VAN HALL: -- because these were her
21 notes.

22 And she handed me these.

23 Are you saying these were or were not?

24 THE WITNESS: I'll be referring to these, and
25 I am not certain whether or not you've received, so

1 I brought them and I want to point them out just in
2 case.

3 MR. VAN HALL: And then we can handle these --

4 THE WITNESS: Right.

5 MR. VAN HALL: -- as is, because --

6 THE WITNESS: Okay.

7 MR. VAN HALL: If I had gotten them before,
8 they were, but I don't know if I listed it in the
9 documents before or not.

10 THE WITNESS: Well, I can tell you that this
11 one was provided. It's a CIP prioritization
12 referred to in Miss Perez' deposition that is part
13 of. So I know for certain that you've seen that.
14 That is for me to refer to.

15 **Q (By Mr. Fumero) Okay. I just want to make**
16 **sure -- so what you were just referring to is a section**
17 **of the City of West Palm Beach Stormwater Master Plan?**

18 A It is.

19 **Q Okay. All right. And what else do you have**
20 **there?**

21 A This is the CIP Plan, as well, that's utilized
22 by the city as of 2016.

23 **Q Okay. Great. Anything else there?**

24 A This is the Municipal Separate Storm Sewer
25 System Permit, FLS 000018-004, issuance date of

1 September 8, 2016.

2 Q Okay. Are you involved with the MS4 permit?

3 A I am not.

4 Q But you just have it here as a reference
5 document?

6 A I do.

7 Q Okay. Anything else?

8 A This is a general list of stormwater
9 activities.

10 Q Okay. For her deposition, you may recall
11 Miss Perez showed up with kind of an outline of her
12 testimony. Do you have any document that's similar?

13 A That is three copies of my notes.

14 MR. FUMERO: She's good. Look at that. Wow.

15 Q So this is three copies.

16 A Maybe four copies.

17 THE WITNESS: Do you have a copy?

18 MR. VAN HALL: No. I'll take one of his.

19 Q Ms. Levensgood, I'm just -- I'm wanting to just
20 go through the documents that you have with you.

21 A Okay.

22 Q So is there anything else?

23 So you've been good enough to hand me a --

24 A I do.

25 Q -- copy of your testimony outline. Okay.

1 A I had provided the financials previously, but
2 I pulled the Renewal and Replacement Improvement Fund
3 485 Reports for the fiscals year ending 2008 through
4 2012 to supplement what was previously provided.

5 **Q Okay. Thank you. Is this a copy I can hold**
6 **onto?**

7 A It is.

8 **Q Thank you.**

9 A You're welcome.

10 **Q All right. Anything else?**

11 A I do. I have a section of the bond
12 resolution, and it states there's no free service.

13 **Q This is the one that says except to the extent**
14 **required by law, Section 712? Is that what you're**
15 **referring to?**

16 A The beginning sentence begins with that.

17 **Q Okay.**

18 A It does.

19 **Q Okay. It says, "Section 712"?**

20 A Yes.

21 **Q Okay.**

22 A Yes.

23 **Q All right. Let's continue on with**
24 **identifying.**

25 A And to facilitate today, I prepared an Excel

12

1 spreadsheet, together with some other city staff, and it
2 is for each school board property.

3 Q So what you just handed me --

4 A It's two-sided.

5 Q Two-sided, two pages, and this spreadsheet you
6 prepared or directed the preparation of?

7 A It's a collaborative effort.

8 Q Who else worked on it?

9 A Stormwater superintendents, customer service
10 supervisors, customer service - I'm not sure of exact
11 titles - from public utilities, engineers.

12 Q Okay. And what was your intended purpose or
13 goal in preparing these spreadsheets?

14 A To facilitate the answers to the questions
15 that you may have for me today.

16 Q Okay. But what are you -- is this --

17 It appears that what it's trying to do is
18 identify school board properties, and there's a -- I
19 guess some sort of narrative that describes water
20 management facilities that are associated with each
21 school board property. Maybe you can just walk me
22 through. So I see here the first column, monthly fee;
23 is that correct?

24 A Can you ask your question again?

25 Q Sure. I'm just trying to understand what you

1 were trying to capture in the preparation of the
2 spreadsheet. It looks like the narrative here is a
3 narrative that's intended to describe any sort of
4 stormwater infrastructure in and around, and identifies
5 school board property; is that correct?

6 A I can tell you that this spreadsheet lists the
7 known school board properties on the city's customer
8 service billing accounts.

9 By school board property, it states the city
10 streets that are maintained by the city, that are owned
11 by the city, that are used to access school board
12 property.

13 The next column with "Information" contains
14 some information from GIS indicating the stormwater
15 infrastructure supporting each of the school board
16 properties that are maintained by the city.

17 The next column is the account ID number.

18 The next column is the school name.

19 The next column is the monthly fee.

20 The next column indicates sweep. That is to
21 say whether or not the city provides street sweeping
22 services for that school board property.

23 The next column is maintenance of
24 infrastructure. That is with regard to stormwater
25 infrastructure by school board property.

1 The next column is take stormwater runoff,
2 whether it be indirectly or indirect -- directly.

3 The next column is ultimate outfall point.

4 The next column is equivalent residential
5 units for each of the school board properties.

6 The next column is current service level.

7 The next column is stormwater unit billing
8 rate.

9 The next column is current monthly stormwater
10 unit fee.

11 The next column is impervious area.

12 And the next column is service address.

13 At the bottom of the third page of the
14 spreadsheet, under the current monthly fee, the first
15 number of \$29,365.94 is the amount of the billing to the
16 school board for school board properties' stormwater
17 fees.

18 The number below that, \$352,391.22, represents
19 the approximate annual amount of stormwater fees for
20 school board properties.

21 The 6,521,466.90 under impervious area
22 represents the total impervious area of school board
23 properties on record at this point in time.

24 **Q I'm sorry, the 6.5?**

25 **A Correct.**

1 Q Okay. So that's square feet?

2 A That's total impervious area, yes.

3 Q And for a non-school board property, do you
4 also keep this information?

5 I mean, what you have here in this
6 spreadsheet, which we're going to go ahead and mark as
7 Exhibit 2 --

8 (Plaintiff's Exhibit 2 was marked for
9 identification.)

10 Q So what I've marked as Exhibit 2 is the
11 spreadsheet you prepared. Is all of the information
12 here on Exhibit 2 with regard to school board
13 properties, is this information also kept for non-school
14 board properties?

15 A If what you're asking is does the city have
16 this information available on all non-school board
17 properties, yes, it does.

18 Q Okay. Yes. And that was my question.

19 So I understand you just took existing
20 information in your system and you organized it in this
21 spreadsheet that we now have marked as Exhibit 2?

22 A As I stated earlier, yes, I did.

23 Q And so you could go on to your system and
24 identify a piece of property within the city's
25 stormwater utility system and, for that piece of

1 **property, I would have an account ID number, correct?**

2 A Correct.

3 **Q And you would be able to determine how much of**
4 **that property is impervious versus pervious?**

5 MR. VAN HALL: Object to form.

6 Go ahead.

7 A We would have on record the impervious area
8 for the purposes of billing.

9 **Q Okay. All right. Let me just do a couple of**
10 **preliminary matters, Miss Levensgood. I just want to go**
11 **over your educational background, just starting with any**
12 **college degree.**

13 A I have a Bachelor of Arts in communications
14 with a minor of Spanish and a Master's of Science in
15 finance.

16 **Q Okay. Do you hold any other degrees or**
17 **certifications that --**

18 A I do. I am a certified public purchasing
19 officer, as well as buyer. The acronyms are CPPO and
20 CPPB.

21 **Q What year did you obtain your bachelor's?**

22 A 1986.

23 **Q And your Master of Science in finance?**

24 A I believe it was '94.

25 **Q And if you could just give me a thumbnail**

1 **sketch of your professional work history since**
2 **graduation.**

3 A I worked for the cruise line four or five
4 years purchasing. I worked for a cruise line assisting
5 the chief financial officer in all aspects of the
6 financial regards to the cruise line. I worked as --
7 miscellaneous jobs up until joining the city in '99. I
8 was the assistant purchasing manager for approximately
9 11 years, a senior fiscal analyst for the finance
10 department budget division for approximately two years,
11 the fiscal services supervisor for public utilities for
12 approximately three years, and I am currently the fiscal
13 services manager for approximately seven months.

14 **Q And, I'm sorry, so within public utilities,**
15 **what was your title again?**

16 A Fiscal services supervisor for three years,
17 approximately.

18 **Q Okay.**

19 A And presently my title is fiscal services
20 manager.

21 **Q Still within public utilities?**

22 A Correct.

23 **Q Okay. And that's been seven months.**

24 **So let's talk about your work responsibilities**
25 **at the city since you've been in public utilities. So**

1 we're going to talk about your role as a fiscal services
2 supervisor and now fiscal services manager.

3 Can you give me a thumbnail sketch of your
4 responsibilities.

5 A Essentially responsible for the financial
6 management of all of the stormwater utility, the water
7 and sewer utility, and the waste water, which we support
8 the East Central Regional Water Reclamation Facility
9 Board. It involves preparing the annual budget,
10 reconciling personnel, preparing monthly financial
11 reports, conducting rate studies, issuing bonds,
12 ensuring debt compliance and bond covenants are met, and
13 working at the direction of the public utilities
14 director to support her in whatever way she may need.

15 Q Okay. Who is the public utilities director?

16 A Poonam Kalkat. Dr. Poonam Kalkat.

17 Q When were you first advised that you would be
18 serving as a corporate representative for the city?

19 A I sincerely do not remember the exact date.

20 Q I don't need an exact. I mean, 2017, 2016?

21 You don't remember what year it was?

22 A It's March essentially. So probably the end
23 of 2016.

24 Q Okay. Did you do anything -- you've outlined
25 your work with respect to the spreadsheet that we've

1 marked at Exhibit 2. Other than that, was there
2 anything else you did in preparation for this
3 deposition, anything substantive?

4 A There was.

5 Q Okay. What was that?

6 A I reviewed the evaluations that were completed
7 on behalf of the city since 1993.

8 (Mr. Yeargin now present.)

9 Q So that we're clear, Miss Levensgood, when you
10 say evaluations, are you referring -- evaluation of
11 rates, the studies?

12 A Studies with regard to the rate methodology
13 for the establishment of the stormwater utility since
14 1993, as well as some of the rate studies. I did not go
15 back and read word for word.

16 Q Okay. Anything else?

17 A As you know, the school board properties and
18 the information supporting the questions that you have
19 asked.

20 Q Okay. Is there anything else you would point
21 out in terms of your preparation?

22 A I can specifically name the documents if you'd
23 like.

24 The September 1998 Rate Study by PRMG; October
25 '99 Stormwater Utility Rate Study Update by PRMG;

1 August 2000 Stormwater Management Utilities Significant
2 Factor Evaluation by CDM with Mock Roos & Associates;
3 October 2003 Rate Study by PRMG, Inc.; February 2007
4 Re-evaluation of Stormwater Utility and Billing
5 Methodology by CDM with JGH Engineering; March 2008 Rate
6 Study by PRMG; December 2010 Financial Overview of the
7 Stormwater System by PRMG; April 2013 Rate Study Draft 1
8 by PRMG; October 2016 Rate Study by PRMG; Ordinances
9 2874-95, 3049-97 --

10 **Q I'm sorry to interrupt. So we can save time,**
11 **you're just reading -- I just realized you're reading**
12 **from the top of Page 2 of your outline?**

13 **A It is -- correct.**

14 **Q Okay.**

15 **A Under Question No. 4.**

16 (Plaintiff's Exhibit 3 was marked for
17 identification.)

18 **Q So let's do this. I went ahead and marked**
19 **what you presented as your testimony outline as Exhibit**
20 **3 to this deposition. So you were just reading from --**
21 **it appears to be a response to Item No. 4, which begins**
22 **at the top of Page 2 of the document we've marked as**
23 **Exhibit 3; is that correct?**

24 **A In answer to your question asking me what I**
25 **read to prepare for today, yes.**

1 Q Yes. Okay. So is there anything not here
2 that's on your document that you would point out?

3 I understand you've read these documents and
4 all the ordinances, but we've marked this as Exhibit 3,
5 so --

6 A Okay.

7 Q -- you can just, as a shorthand, just refer to
8 that.

9 Is there anything else you would point out in
10 terms of preparation?

11 A I read a lot of documents. They're all on the
12 table. So if you'd like me to name each one, I'd be
13 certainly happy to do that.

14 Q Okay. These are documents other than the ones
15 you identified?

16 A Yes.

17 Q Are the city's stormwater utility fees
18 generally based on the amount of impervious area on a
19 piece of property?

20 A That is a piece of it.

21 Q That's one of the factors?

22 A Correct.

23 Q Is the city's rate structure based on or
24 generally referred to as ERUs or equivalent residential
25 units?

1 A That is the basis for determining the amount
2 of impervious area.

3 **Q ERUs?**

4 A Correct.

5 **Q Does the city rate structure use ERUs?**

6 A ERU is the square foot equivalent, and it is
7 multiplied by a rate based on the level of services
8 provided to a property.

9 **Q Miss Levengood, are there federally owned**
10 **properties within the city's stormwater utility where**
11 **you issue a bill?**

12 A Presently, I do not believe that there are.

13 **Q Okay. So let's take the federal courthouse.**

14 A Oh. I apologize. I thought you meant FDOT.

15 **Q No, but we'll get to that. But right now just**
16 **federal. Do you bill these federal entities?**

17 A Yes.

18 **Q Okay.**

19 A My understanding is we do.

20 **Q Okay. And do these -- well, let's take the**
21 **courthouse or US Post Office. Do they pay the**
22 **stormwater fee?**

23 A My understanding is yes, they do.

24 **Q Okay. That's federal courthouse, US Post**
25 **Office. Your understanding is yes?**

1 A Yes.

2 Q Okay. So let's talk about FDOT. That's the
3 Florida Department of Environmental -- Transportation.
4 Do you bill FDOT?

5 A My understanding is there are no accounts for
6 FDOT presently, so --

7 Q So what does that mean, if there's no FDOT
8 account? So you're not billing FDOT presently as a
9 state agency?

10 A That would be a logical conclusion, correct.

11 Q Well, it might be, but I'm asking you. Do you
12 know the answer to the question?

13 A We would not bill somebody that did not have
14 an account, correct.

15 Q And do you know why FDOT does not have an
16 account?

17 A I do not.

18 Q Have you asked anybody? That hasn't raised
19 any questions in your mind as the financial manager?

20 A Perhaps they don't have a need for the
21 service.

22 Q I'm asking you as the corporate rep, as the
23 finance manager for the stormwater utility, do you know
24 why FDOT is not issued a bill or invoice?

25 MR. VAN HALL: Objection to form.

1 A FDOT does not have an account with the city.

2 **Q I understand that.**

3 A I'm not sure what you're asking me then.

4 **Q Do you know whether or not FDOT owns land**
5 **within the city's stormwater utility?**

6 A I am not familiar with FDOT's property
7 holdings within the city.

8 **Q Do you know who would be?**

9 A I could inquire as to who that would be off
10 the top of my head. I'm sure somebody with the city
11 would be able to provide you with that information.

12 **Q Yeah, but I'm asking do you know who would**
13 **be if I asked you right now, who, based on your**
14 **knowledge --**

15 A I think I answered your question. I don't
16 know.

17 **Q Who in the city is responsible for determining**
18 **whether a property owner receives a stormwater bill?**

19 MR. VAN HALL: Object to form.

20 You may answer.

21 A There is a criteria and a process. It is not
22 a person.

23 **Q Okay. What is that criteria and process?**

24 **And if you're going to read, just tell me what**
25 **page and I'll just take a look at it with you.**

1 **You're referring to your outline now?**

2 A Page 2, Question 5 and 6 appear to ask the
3 same question. One of the criteria is a classification
4 of a property.

5 Do you want me to continue?

6 **Q Please.**

7 A Developed residential, non-developed
8 residential, vacant improved, undeveloped, undisturbed.

9 A developed residential would have an ERU
10 equal to one times their rate. A developed
11 nonresidential would have an ERU equal to the impervious
12 area divided by 2,171 square feet times their rate.

13 **Q What's the definition of an undeveloped
14 property?**

15 **And I'm referring to Page 2 of your outline
16 where it says, Item No. 4, "Undeveloped equals exempted
17 from utility fee."**

18 A According to Stormwater Utility Code, Section
19 90-163, definitions, undeveloped property means property
20 which has not been altered by the addition of any
21 improvements such as building, structure, impervious
22 surface, change of grade or landscaping.

23 **Q Great. Thank you.**

24 **Okay. So let's go back to the prior line of
25 questioning. My question is, is there a process or**

1 **criteria for determining whether a particular**
2 **governmental entity is exempt or not from stormwater**
3 **fees?**

4 MR. VAN HALL: Object to form.

5 A Government property is not a classification.
6 The city pays. The city is a government. The city
7 pays, just like any other government should pay.

8 **Q Is that your opinion?**

9 A That is what is stated in here. The city
10 charges itself.

11 **Q When you say in here, what are you referring**
12 **to?**

13 A The Section 712 that I provided to you
14 earlier. "The city shall not render or cause to be
15 rendered any free services of any nature by the
16 facilities of the utility system, nor will any
17 preferential rates be established for users of the same
18 class. The city, including its departments, agencies,
19 instrumentalities, shall avail itself of the facilities
20 of the utility system and the same rates, fees, or
21 charges applicable to other customers receiving like
22 services under similar circumstances shall be charged to
23 the city and any such department, agency or
24 instrumentality. Such charges will be paid as they
25 accrue and the city shall transfer from its appropriate

1 funds sufficient sums to pay such charges. The monies
2 so received shall be deemed to be revenues derived from
3 the operation of the utility system and shall be
4 deposited and accounted for in the same manner as other
5 revenues derived from such operation of the utility
6 system."

7 MR. VAN HALL: Can you just say what you're
8 reading from for the record.

9 THE WITNESS: For the record, this is Section
10 712 of the Bond Resolution 240-93.

11 **Q Are you aware of any properties or parcels**
12 **within the city's stormwater utility that are not**
13 **invoiced on a monthly basis or are otherwise exempted by**
14 **the utility?**

15 A None should be exempted. I am aware of four
16 school board properties currently not being billed.

17 **Q Do you know why they're not being billed?**

18 A I do not.

19 **Q So I want to -- just for the record here, I'm**
20 **referring to your -- I'm calling it your testimony**
21 **outline because it doesn't have a title, but I've marked**
22 **it as Exhibit 3. You know which document I'm referring**
23 **to?**

24 A I do.

25 **Q Since this is going to now essentially**

1 constitute your testimony, I'm going to go through each
2 of these items and see if there's anything you want to
3 add or supplement on what we've marked as Exhibit 3.

4 Okay?

5 MR. VAN HALL: Objection to form.

6 A (Nonverbal response.)

7 Q And you just have to verbalize your response.

8 MR. VAN HALL: Same objection.

9 A I will say that these notes are pieces of
10 information for me to refer to. It may not contain
11 everything that would pertain to the question being
12 asked.

13 Q That's why we're going to go through it, so I
14 give you an opportunity to supplement or amend as you
15 see appropriate.

16 So let's go through -- we're on Exhibit 3. So
17 Item No. 1 entitled "Financial or other costs to operate
18 and maintain the city's system serving the school board
19 properties specifically and the city system overall,"
20 do you see that, No. 1?

21 A I do.

22 Q Is there anything you would add to this, what
23 you have here as your written response?

24 MR. VAN HALL: Object to form.

25 A Presently, the information presented is

1 correct, and again we pointed out that there are four
2 school properties not currently being billed for
3 stormwater services that should be.

4 Q Okay. Then Item No. 2 is asking if you're
5 aware of any formal or informal agreements with other
6 municipalities, governmental entities concerning
7 stormwater fees. Do you see that?

8 A I do.

9 Q And you're not aware of any formal or informal
10 agreements?

11 A None that I'm aware of.

12 Q Are you aware of any formal or informal
13 agreement between the city and the school board
14 regarding stormwater fees?

15 A Regarding fees, no.

16 Q Are you aware of any formal or informal
17 agreement with any governmental entity regarding
18 stormwater fees?

19 I'm talking within the city's stormwater
20 utility.

21 A I did not research that. I would have to look
22 into that. At this point, I don't have any in
23 particular that I would refer to.

24 Q Okay. So if I were to ask you or someone at
25 the stormwater utility, "Do you have an agreement with X

1 governmental entity whereby they agree to pay stormwater
2 fees," who would be the best person to pose that
3 question to within the city's stormwater utility?

4 A I'd be happy to look into that if you would
5 like. I don't have the answer for you today.

6 Q So you don't know who would be the best person
7 to ask, pose that question to?

8 A I don't know who would be able to answer your
9 question and, therefore, would not want to provide a
10 name to you if I don't know whether or not they know.

11 Q Yeah. But that's not my question.

12 A So can you please repeat your question then?

13 Q Sure. Sure.

14 A I'm sorry, I don't understand.

15 Q It's okay. Not a problem.

16 So you've been working in public utilities for
17 around four years or almost four years. So my question
18 is, based on your experience the last four years within
19 public utilities, if I were to ask you which person do
20 you think would be best suited, based on their job
21 responsibilities, based on their job title, which
22 individual would be best suited to answer a question as
23 to whether there are any agreements, documents in
24 writing, between the city and a governmental entity
25 regarding payment of stormwater fees?

1 A I heard you ask a different question the
2 second time.

3 **Q Okay.**

4 A Are you asking with regard to a governmental
5 entity?

6 **Q Yes.**

7 A Okay. I would point to probably the director
8 or the assistant city administrator.

9 **Q And as you sit here today, you have no current**
10 **knowledge as to the existence of any such agreements?**

11 A If what you're asking is with regard to a
12 stormwater fee, no. However, I will say that the city
13 does have executed agreements with the school board with
14 regard to stormwater services and the provision of storm
15 services, so --

16 **Q Is that referenced here in Exhibit 3?**

17 **It seemed like you were going to turn to a**
18 **page. That's why I'm asking.**

19 A Page 5, Question 12.

20 And, again, those weren't questions directed
21 at me. They were questions that you asked of
22 Miss Perez.

23 The city and the school board have an
24 interlocal agreement dated March 8, 1993, as well as
25 there is a permit, 50-03313, summary sheet. The school

1 board entered into an interlocal agreement with the City
2 of West Palm Beach with regard to stormwater discharges
3 from school property from Gaines Park and into Carver
4 Canal.

5 **Q Are you aware of any other agreements**
6 **involving the city and the school board?**

7 A I am not.

8 **Q Are you aware of any other agreements**
9 **involving the city and any other governmental entity?**

10 A There are agreements between the city and
11 other agencies with regard to the stormwater system.

12 It might be easier for me to provide you with
13 this. You're welcome to review.

14 **Q Thank you.**

15 Okay. So, Ms. Levensgood, you referred me to a
16 spreadsheet that's dated January of 2005, and it's in an
17 untitled notebook.

18 I just want to understand how this notebook is
19 organized. Are documents referenced in the spreadsheet
20 what are the three-hole punch documents here, or are
21 these additional documents than the ones referenced in
22 the spreadsheet at the beginning of the notebook? Do
23 you know?

24 A I do. The documents are referenced in the
25 spreadsheet. It is not all inclusive of the documents

1 referenced in the spreadsheet.

2 **Q Okay. But all of the references to agreements**
3 **are within the spreadsheet, and what exists in the**
4 **notebook are the actual documents or resolutions or**
5 **agreements referenced in the spreadsheet; is that**
6 **correct?**

7 A Again, if what you're asking is are these
8 documents contained and referred to in this Excel
9 spreadsheet --

10 **Q Yes.**

11 A -- then the answer is yes.

12 **Q Okay. Are you aware of the existence of any**
13 **other documents regarding stormwater fees?**

14 **This is, again, in the context of our**
15 **questioning over the last 15-20 minutes about agreements**
16 **between the city and a governmental entity. Is there**
17 **anything in addition to this spreadsheet?**

18 A There's an operations and maintenance
19 agreement between the City of West Palm Beach and the
20 northern Palm Beach County improvement district dated
21 July 31, 1995. There's an interlocal agreement between
22 the City of West Palm Beach and the Northern Palm Beach
23 County Improvement District dated October 16, 2000.
24 There's an agreement between Northern Palm Beach County
25 Improvement District and the school board of Palm Beach

1 County dated July 16, 2003.

2 MR. FUMERO: Okay. So, Chris, I would like to
3 make a copy of the spreadsheet that's in the
4 notebook that Ms. Levengood referenced that, you
5 know, identifies stormwater related agreements.

6 MR. VAN HALL: Yeah. That's fine.

7 MR. FUMERO: So I'm just going to put it on
8 top of the notebook for now so maybe during one of
9 the breaks we can copy it.

10 I'm going to go ahead and identify the
11 spreadsheet.

12 In the upper left-hand corner, it indicates
13 Tuesday, January 11, 2005, 1:35 p.m. We're going
14 to mark that as Exhibit 4.

15 As part of Composite Exhibit 4, I was provided
16 with three other documents. One is an Interlocal
17 Agreement between the City of West Palm Beach and
18 the Northern Palm Beach County Improvement District
19 dated October 16th of 2000 regarding a telemetry
20 station and funding of operation of the telemetry
21 station in an emergency control structure, and the
22 second was an agreement between the Northern Palm
23 Beach County Improvement District and the school
24 board of Palm Beach County regarding the school
25 board being authorized to utilize Northern Palm

1 Beach County Improvement District Water Management
2 facilities for two parcels, and this was a July 16,
3 2003 agreement. The last agreement is an operation
4 and maintenance agreement between the City of West
5 Palm Beach and Northern Palm Beach County
6 Improvement District dated July 31st of 1995, and
7 this agreement has to do with drainage outfalls
8 into the water catchment area.

9 A Would you also like the Interlocal Resolution
10 5893? It's between the city and the school board.

11 **Q Yes, ma'am. I would like any agreements**
12 **involving stormwater, the stormwater utility and/or**
13 **stormwater fees.**

14 A That's the front page of that one.

15 These two I referred to earlier in my
16 testimony. I stated these, and these are the copies.

17 This one is a the permit summary sheet. I
18 don't have a copy of the Interlocal Agreement; however,
19 it clearly states the school board has entered into an
20 interlocal agreement with the City of West Palm Beach to
21 allow the construction of the proposed 1.1-acre lake in
22 Gaines Park, and this is with regard to Roosevelt Middle
23 School.

24 **Q Thank you. It's clear the school board --**

25 **Oh, this is a -- okay. So you just handed me**

1 a South Florida Water Management District permit.

2 A Correct, and it references an interlocal
3 agreement, and again I don't have a copy of the
4 interlocal agreement, but clearly there were
5 considerations given to discharge on to city-owned
6 property for that particular school parcel.

7 Q Yes, ma'am.

8 MR. FUMERO: So this is Permit Modification
9 50-03313-S, as in Sam, and there's a reference in
10 this South Florida Water Management District Permit
11 Modification to the school board entering into an
12 interlocal agreement with the City of West Palm
13 Beach to allow the construction of the proposed
14 1.18-acre lake in Gaines Park.

15 I don't see a date here, but it looks really
16 old. Let's see.

17 We'll look up the permit, but this appears to
18 be from the 1994-1995 timeframe, that is to say the
19 referenced Permit Modification.

20 And then Miss Levensgood also handed me a
21 resolution authorizing entry into an interlocal
22 agreement with the school board of Palm Beach
23 County relating to providing drainage for
24 Elementary School Site E, as in Easter. This reso
25 is dated March 8th of 1993, and attached is the

1 interlocal agreement also dated March 8, 1993
2 between the city and the school board.

3 MR. VAN HALL: Just, all these are going to --
4 I'll make a copy, but all that's going to be
5 Composite 4?

6 MR. FUMERO: 4, yes, sir.

7 MR. VAN HALL: Is that another one?
8 Go ahead.

9 A These -- Ordinance 3929-06 and 3862-05 have to
10 do with annexation of property into the city.

11 Q (By Mr. Fumero) Thank you. Okay.

12 So the ordinance you handed me is for the
13 annexation of approximately -- involuntarily annexation
14 of approximately 26 acres of land generally located on
15 the south side of Okeechobee Boulevard east of its
16 intersection with Benoist Farms Road. Okay.

17 A I believe the -- Ordinance 3929-06 says an
18 application for voluntary annexation has been submitted
19 by the Palm Beach County School Board for approximately
20 15 acres of land.

21 Q Yes.

22 Any other agreements that you've identified
23 involving --

24 A No.

25 Q -- stormwater? Okay.

1 MR. FUMERO: So this is Composite 4. I'm just
2 going to leave it right here.

3 (Plaintiff's Composite Exhibit 4 was marked
4 for identification.)

5 Q Okay. Ms. Levensgood, I'd like to go back to
6 what we marked at Exhibit 3, which is your testimony
7 outline, and continue to walk through this.

8 So we left off on No. 2, talking about formal
9 and informal agreements. With respect to No. 3, you
10 reference an Excel spreadsheet. Do you see that?

11 A Yes.

12 Q Is that the spreadsheet that you provided this
13 morning that we marked as Exhibit 2?

14 A Correct.

15 Q Okay. So the spreadsheet referenced in
16 response to Question No. 3 is the spreadsheet that we
17 marked as Exhibit 2 for purposes of today's deposition;
18 is that correct?

19 A Again, correct.

20 Q I apologize. Sometimes I can be a little
21 duplicative, and I'll try not to.

22 Is there anything else -- in terms of the
23 city's calculation or determination regarding stormwater
24 fees on school board properties, in your preparation for
25 this deposition did you find any independent analysis

1 that existed that looked specifically at school board
2 properties?

3 MR. VAN HALL: Object to form.

4 Go ahead.

5 A I didn't look for that type of information.

6 Q Okay.

7 A That's not to say that it doesn't exist. I do
8 know that they're in the process speaking with the
9 customer service -- I believe the title is
10 superintendent. He's out in the field and sometimes
11 will walk properties to determine areas, but I didn't
12 make any specific inquiries.

13 Q Okay. So now let's talk about the development
14 and adoption of stormwater utility fees.

15 So I have all the information here - we don't
16 need to repeat it - which you've identified in response
17 to Item 4, but what I want to focus in on, what is the
18 latest and greatest study in terms of the development
19 and assessment of stormwater fees in the city? Is that
20 latest and greatest assessment what is codified in the
21 October 27, 2016, City Water, Waste Water and Stormwater
22 Rate Study by Public Resources Management Group?

23 A That is the most recent, yes.

24 Q Miss Levensgood, I think you told me this, but
25 is this the study that you said you could provide as a

1 PDF?

2 A It is.

3 Q Great. And I would appreciate that.

4 A Sure.

5 Q It would save us a lot of time and effort.

6 So has this study been -- I see a letter here
7 where it was presented to the City Commission in October
8 of 2016. Do you see that?

9 A I do.

10 Q I'm sorry, you don't have a copy.

11 Has the City Commission taken any formal
12 action with respect to this rate study?

13 A Resolution 277-16.

14 Q Thank you.

15 So on or about -- well, it says here that this
16 resolution, 277-16, was passed and adopted August 29th
17 of 2016, and is it my understanding then that pursuant
18 to this August 29, 2016, resolution, the rate schedule
19 that was developed and codified in the October 27, 2016,
20 study was somehow incorporated and adopted by the city?
21 What's in this October 2016 study, is that the current
22 fee structure utilized by the city's stormwater utility?

23 A This is a rate study, not the fee structure.

24 Q Okay.

25 A This was the basis for that resolution.

1 **Q** Okay. And just so the record -- when you say
2 **this, you're referring to the October 27, 2016, rate**
3 **study?**

4 **A** Correct. That provided the rates necessary
5 for the stormwater utility that were adopted in
6 Resolution 277-16.

7 **Q** **I see. Thank you.**

8 MR. VAN HALL: When Miss Levensgood -- I'll
9 have her email it to me, the PDF, and then I'll
10 forward it to you guys.

11 MR. FUMERO: Great.

12 MR. VAN HALL: Do you need it today or is this
13 just --

14 MR. FUMERO: No. Anytime this week would be
15 fine.

16 **Q** **(By Mr. Fumero) If I were wanting to glean**
17 **exactly the methodology and basis for the city's**
18 **stormwater utilities current rate and stormwater fee**
19 **structure, would the rate study dated October 27, 2016,**
20 **be my best reference, or are there any other studies or**
21 **reports that reflect what is in place today in the**
22 **city's stormwater utility fee structure?**

23 MR. VAN HALL: Object to form.

24 Go ahead.

25 **A** On Page 2, Question 4, identified are prior

1 studies for rates as well as significant factor
2 evaluations and billing methodologies.

3 So, again, I could read these, but they're in
4 the record, so that's what I would point to.

5 **Q Right. But I was not asking for every rate**
6 **study, but I'm just asking for what represents the rate**
7 **structure in effect today. Are you suggesting that the**
8 **September 1998 rate study or portions of it are still in**
9 **effect?**

10 MR. VAN HALL: Object to form.

11 Go ahead.

12 A Primarily, I would look at the 1993 CDM study
13 previously provided and I would look at the August 2000,
14 specifically August 18, 2000, Stormwater Management
15 Utility Significant Factor Evaluation, as well as the
16 February 2007 Re-evaluation of Stormwater Utility and
17 Billing Methodology by CDM with JGH Engineering.

18 **Q That last one, what was the date of that CDM**
19 **study?**

20 A February 2007. That was marked as Exhibit 8
21 in Ms. Perez' deposition.

22 **Q Yes, ma'am.**

23 **Anything else?**

24 A Not that I'm aware of.

25 **Q In terms of what's underlying the rate**

1 structure in effect today.

2 A Not that I'm aware of.

3 Q Okay. Ms. Levengood, I want to refer you to
4 Page 4 of your deposition outline that we've marked as
5 Exhibit 3 --

6 A Okay.

7 Q -- for this deposition. You have it entitled
8 "Questions from Liz' Deposition". Do you see that?

9 A I do.

10 Q In here you're referring several -- some of
11 the responses referred to a school property's Excel
12 worksheet. Is that the document that we have identified
13 today as Exhibit 2?

14 A You are correct.

15 Q Okay. And this will save us a lot of time.
16 Okay. And you actually reference here on Page 4 the
17 1993 CDM study and the 2000 CDM study and subsequent
18 re-evaluations and rate studies.

19 I have one question. Under this page, what's
20 in Pages 4, 5 and I think possibly -- to the end, you
21 have listed certain questions from Liz' deposition. Do
22 you see that?

23 A I do.

24 Q Okay. And then when you say -- for example,
25 let's take what you've marked as No. 5. You say -- or I

1 don't know -- it says here, "Perhaps I myself am not
2 presently aware. I would refer to the studies conducted
3 on behalf of the city." Do you see that?

4 A I do.

5 Q Is that your statement?

6 A It is.

7 Q So whenever I read a response under this
8 section "Questions from Liz' Deposition", this is you
9 speaking?

10 A It is.

11 Q Oh, you have it right here. So under -- on
12 Page 5 of Exhibit 3 to the deposition, you have -- it
13 says here you have made inquiries as to whether or not
14 there exists any agreements, contracts, MOUs or anything
15 in writing between the city and the school board
16 regarding stormwater management, and you identify those
17 here under Item 12. Do you see that?

18 A Yes. I do want to qualify that -- my answer.
19 When I say yes, is I searched the city's FileNet system
20 to the best of my ability. I did not make any other
21 inquiries.

22 Q Okay. And No. 13, apparently you've done
23 something with respect to whether or not FDOT is billed.
24 It says here there's a November 2008 memo regarding DOT
25 billing. Do you have that?

1 A You have my pile from earlier? It's in here.

2 Q Yeah, it's right here. Okay.

3 A May I?

4 Q Certainly.

5 MR. VAN HALL: While she finds that, I'll go
6 give those -- we'll take a quick two-minute, and
7 I'll give those to get copied?

8 MR. FUMERO: Oh, that would be great. Thanks.

9 (Recess taken.)

10 Q (By Mr. Fumero) Miss Levengood, my
11 recollection is where we last left off is I was making
12 an inquiry as to your response on Item No. 13 of Page 5,
13 what we've marked here as Exhibit 3 for purposes of your
14 deposition. It was an inquiry about your reference here
15 to a November 2008 memo regarding DOT billing. Do you
16 recall that?

17 A I see the questions -- the -- No. 13 listed
18 here. I do.

19 Q No. I was trying to pick up where we left
20 off, that I had asked you about the November 2008 memo,
21 if you had a copy, and you were looking for it.

22 A I have it here. It's dated November 7, 2008.

23 Q Great. Thank you. May I see it?

24 A With regard to No. 13, my notes say there, "My
25 understanding is there presently are no FDOT accounts."

1 **Q Yes.**

2 **A There are no water accounts. However, DOT is**
3 **receiving what is referred to as an owner's bill for**
4 **impervious area for stormwater.**

5 **Q I haven't heard this referenced before.**
6 **What's the difference between an owner's bill and your**
7 **typical stormwater utility bill?**

8 **A My understanding is, because there is no**
9 **water, it receives an owner's bill as opposed to a**
10 **water, waste water, stormwater, sanitation bill.**

11 **Q So DOT receives a bill for stormwater utility**
12 **services?**

13 **A Correct.**

14 **Q So then help me. I just may be not getting**
15 **the point. It says here, "My understanding is presently**
16 **there are no FDOT accounts."**

17 **A And I provided you clarification that the**
18 **billing system, my understanding is there's no account;**
19 **however, they are receiving an owner's bill.**

20 **Q I'm not a financial person, but how do you**
21 **generate a bill if you don't have an account?**

22 **A I can inquire for you if you would like to**
23 **understand the city's process on that, but I can tell**
24 **you they are being -- they are receiving an owner's bill**
25 **for the impervious area for stormwater.**

1 Q Yeah. I mean, respectfully, I do think it is
2 within the purview of this deposition to understand
3 what, if anything, the city's doing regarding
4 governmental accounts, whether it be federal agency, a
5 state agency like FDOT, or a local government type of
6 entity. So who is the right person to talk to about
7 these kind of issues?

8 A Do you have a specific question? I would --

9 Q Yeah, the one here in front of you we've been
10 talking about, DOT.

11 A Since this was not a question posed to me,
12 this was a question that you had indicated you would
13 redirect or speak about today, I don't have any
14 additional information; however, the city would be happy
15 to answer any specific questions you may have, and if
16 you were interested in speaking with somebody else from
17 the city, perhaps the director of utilities could speak
18 to that as well.

19 Q Yes. So you would need to do -- if I wanted
20 to understand how the stormwater utility establishes and
21 I guess somehow categorizes stormwater fees to
22 governmental entities like -- FDOT is just one example,
23 but any governmental entity, any state agency, any
24 federal agency. I would like to get an understanding of
25 how that is handled and how the determination is made,

1 especially when, like as you point out, there is no FDOT
2 account, yet a bill is being generated. You call it an
3 owner's bill. So the owner's bill, just if I were to
4 have you locate an FDOT bill, when you get your hands on
5 this so-called owner's bill, that would only reference
6 the stormwater fee component, not water or waste water
7 service?

8 A My understanding is it contains the stormwater
9 fee. I am not aware of what it also may contain.

10 Q Okay.

11 A And with regard to classification of
12 properties, I will point you back to the ordinance where
13 it speaks to developed residential, non-developed
14 residential, vacant improved, undeveloped and
15 undisturbed parcel. Nowhere is it mentioned whether or
16 not you're a government. The city is a government and
17 the city of West Palm Beach charges itself and pays its
18 bill.

19 Q You said fairly definitively earlier this
20 morning that federal agencies like the post office and
21 the courthouse receive and pay a stormwater fee. Do you
22 recall that?

23 A To my knowledge, they do.

24 Q What did you do to acquire this knowledge?
25 Did you look at accounts in the system?

1 A No, I did not.

2 Q Okay. What did you do?

3 A I am not aware of any -- I didn't look into
4 that. I'm not aware of any that are exempted or not
5 paying other than the school board.

6 Q Is DOT paying?

7 MR. VAN HALL: Object to form.

8 A I think they are stating that they don't.

9 Q Let me ask the question this way: Did you
10 make any inquiry to identify federal, state or other
11 governmental entities that are either not being assessed
12 a fee or are not paying a stormwater fee that's being
13 assessed?

14 A I did not, because that was not a question
15 that was asked.

16 Q I respectfully disagree, but we'll argue that
17 with your attorney.

18 MR. VAN HALL: And let me just clarify,
19 because this might help get us where we need to go
20 faster, because we have two inquiries. One is do
21 we have a formal or informal agreement with the
22 entity, and I think what you're asking --

23 MR. FUMERO: Miss Levengood responded.

24 MR. VAN HALL: No, no. I'm just -- I'm
25 parsing out sort of where my understanding of this

1 is.

2 What you're asking is more, agreements aside,
3 what are people paying. Now, if another entity has
4 made the determination that they don't have to pay
5 stormwater fees, that obviously would not be an
6 agreement or a discussion. That would be their
7 position, which would be outside of her looking --

8 So she's telling you there's no agreement that
9 she's aware of with the entities, and you're asking
10 well, do they pay, and, if not, what is their
11 payment classification, and that's something, I
12 think, that Miss Levengood is saying is a little
13 afield from what she thought she was here to
14 answer.

15 And of course we would be happy to get you a
16 representative, if that's an area you want to know
17 about, is, you know, what other entities have paid,
18 are being billed, but I do think it's starting to
19 get outside, as you're seeing from the answers,
20 outside of, A, what Miss Levengood is prepared to
21 testify to, and, B, what even I thought you were
22 sort of going with the areas of inquiry.

23 MR. FUMERO: Sure. And I think you're making
24 it more complicated. I'm at a very base level
25 trying to determine how and why the stormwater

1 utility is -- its billing practices relative to
2 governmental entities.

3 Apparently, we've been able to glean that DOT
4 receives something called an owner's bill, and I'm
5 about to read this memo, so there would be some
6 other issues. Now, I've asked the question from
7 the onset to does she have any knowledge of billing
8 practices with respect to federal agencies, other
9 state agencies other than FDOT. I'm trying to
10 understand what that is.

11 And so what I've heard is there's been no
12 inquiry as to whether any particular state agencies
13 other than FDOT are assessed a bill, and if they
14 are assessed a bill, whether they're paying the
15 bill or not.

16 **Q (By Mr. Fumero) And Miss Levengood, correct me**
17 **if I'm wrong, but I asked about the post office, the**
18 **federal district courthouse, and I thought you answered**
19 **fairly definitively that, yes, they receive a bill and,**
20 **yes, they pay their bill, but now what I'm hearing is**
21 **you did not actually make an inquiry to determine if the**
22 **federal government is being billed and, if so, is it**
23 **paying that stormwater bill.**

24 A You asked me a different question initially.
25 At least that was -- I had a different understanding of

1 what you're now asking me.

2 If you're asking me did I make a specific
3 inquiry, no. I would have to basis or reason to for
4 today. If you are asking me to be prepared to speak to
5 that, I can certainly do so, but today I am not as I was
6 not aware that that was going to be questions that I was
7 told I needed to answer.

8 **Q And so I want to be clear. So what was the**
9 **question you thought you were answering this morning**
10 **relative to the courthouse and the post office?**

11 A It was a very general question.

12 **Q Yes.**

13 A Are other governments paying stormwater bills.

14 **Q Right.**

15 A And the answer was, to my knowledge, yes.

16 **Q But if I asked you specifically about the**
17 **courthouse or the post office, do you know whether or**
18 **not they're being assessed and, if so, whether they're**
19 **paying the assessment?**

20 A I have not specifically looked at their
21 payment record.

22 **Q So the question about how is DOT receiving a**
23 **so-called owner's bill when there are presently no open**
24 **FDOT accounts, is that something also you're not**
25 **prepared to address today?**

1 A When you say how, what do you mean?

2 Q It's pretty basic. Like if you don't have an
3 account open for an entity, I don't understand how you
4 can send a bill to an entity. Mechanically, I don't
5 understand how that works.

6 A What I do know is that they are being charged
7 for their stormwater portion for their impervious area
8 on what the city refers to as an owner's bill. The
9 account that I referred to as the FDOT not presently
10 having with the city was with regard to water.

11 Q Potable water and waste water?

12 A Correct.

13 Q Are you aware of any other governmental entity
14 receiving an owner's bill?

15 A I haven't made inquiry. I am not aware.

16 Q Did you make -- and this is the last one I'm
17 going to ask you for, but what we're going to mark as
18 Exhibit 5 is the package that you handed me. It's a
19 November 7, 2008 memo from Marsha Gates, customer
20 service supervisor, to David Hanks, then director of
21 public utilities.

22 In preparation for this deposition, or just
23 based on your day-to-day duties, have you made any
24 inquiry as to the current status of how the FDOT is
25 being billed or if they're being billed?

1 A I have not.

2 MR. FUMERO: So we're going to make a copy of
3 this and mark it as Exhibit 5. It's the FDOT --
4 (Plaintiff's Exhibit 5 was marked for
5 identification.)

6 MR. FUMERO: Okay. I had a folder. Can I see
7 that blue folder?

8 MR. VAN HALL: (Handing.)

9 Q (By Mr. Fumero) Do you know whether Palm Beach
10 County is assessed a stormwater fee, Palm Beach County,
11 the governmental entity?

12 A They are, and to my knowledge they pay.

13 Q I'm going to hand you an email and ask you to
14 take a minute. It's an October 22, 2007, email
15 regarding proposed stormwater rates.

16 Have you ever seen this email before?

17 A Yes.

18 Q Which of the rate studies precipitated this
19 email, do you know?

20 A May I take a minute to refamiliarize myself
21 with this?

22 Q Absolutely.

23 I think it's the February 2007 Re-evaluation
24 for Stormwater Utility and Billing Methodology by CDM,
25 but I just need to corroborate that.

1 A Can you repeat your question for me?

2 Q Sure. I asked what rate study precipitated
3 this email, if you knew.

4 A I don't know. You could make inference and go
5 back and try to back into what they are referring to,
6 but I don't know.

7 Q That's fair enough.

8 There's a statement at the very beginning and
9 later on -- actually throughout this, about the proposal
10 recommending changing the billing tiers from three to
11 eight. Do you see that?

12 A Yes.

13 Q Do you recall there being consideration of
14 changing billing tiers from three to eight?

15 A I was not with the utility at that time.

16 Q As far as I know, there remains three tiers.
17 Is that correct?

18 A Yes.

19 Q Are you aware of any proposal to change the
20 number of tiers from three to four or five or greater?

21 A Could you be more specific with your question?

22 Q No.

23 A You said am I aware of any proposal. In the
24 past? In the future?

25 Q No, no.

1 A Presently?

2 Q I'm sorry. You're right. Present proposal,
3 something that may have been raised by the October 2016
4 rate study. Are you aware of any ongoing consideration
5 by the city of changing the three-tier system?

6 A Presently --

7 Q Presently.

8 A -- no. That's not to say that in the future
9 the city wouldn't reevaluate, just as we have in the
10 past.

11 Q Of course.

12 MR. VAN HALL: Is that an exhibit?

13 MR. FUMERO: No.

14 MR. VAN HALL: I didn't know if you wanted to
15 make it one.

16 MR. FUMERO: No. I wasn't going to mark it.
17 She really didn't have anything to say about it.

18 MR. VAN HALL: Okay. Just -- did we say --
19 identify what it was just for the record? The
20 email from Richard Williams, October 27, 2007, at
21 8:05 a.m. to Ken Rearden, copy Randy Sherman,
22 subject re. proposed stormwater rates.

23 MR. FUMERO: Yeah, I didn't, since she
24 doesn't -- really can't add anything --

25 MR. VAN HALL: No. That's fine. I just

1 wanted to make sure it was somehow referenced.

2 Q (By Mr. Fumero) So you started four -- so you
3 were not here for the 2007 CDM re-evaluation?

4 A Correct.

5 Q In your role as the financial services
6 manager, or previously as a financial services
7 supervisor, did you have --

8 A Fiscal, fiscal services.

9 Q I'm sorry.

10 A That's okay.

11 Q What did I say?

12 A Just for the record, to clarify.
13 Fiscal services, not financial services.

14 Q I said financial.

15 A That's okay.

16 Q I apologize. Yes, fiscal.

17 So as the fiscal services supervisor and now
18 as the fiscal services manager, what was your role, your
19 job responsibilities, with respect to the October 2016
20 rate study, or did you have any formal role in the
21 development of this study or consideration of this 2016
22 rate study?

23 A The city contracted with public resources
24 management group as the expert to conduct the stormwater
25 and the water, waste water rate study. I worked with

1 PRMG to provide information as needed, as did our MIS
2 department that provide customer data. PRMG is the
3 author of that document.

4 Q Yes, they are. So your role then was to
5 provide data to PRMG in the preparation of the 2016 rate
6 study?

7 A To support the study. Yes, we do provide the
8 data that they need to conduct the study.

9 Q There's a reference here, and I'll find it in
10 a minute --

11 Oh. In many of the studies, the pre-2016
12 studies, there was reference to ERUs. We talked about
13 that earlier. Do you recall that?

14 A I do.

15 Q Now, in the October 2016 rate study, there's a
16 reference to ESUs, equivalent stormwater units. Are you
17 familiar with ESUs?

18 A I am aware that they exist, yes.

19 Q Okay. So you couldn't provide any insight as
20 to what, if any, difference there is between an ERU and
21 an ESU?

22 MR. VAN HALL: Object to form.

23 Go ahead.

24 A Are you pointing to something specific in the
25 rate study?

1 **Q** **No. Do you know the difference, if any,**
2 **between an ERU and an ESU, as the fiscal services**
3 **manager?**

4 MR. VAN HALL: Object to form, but go ahead.

5 **A** **I'm familiar with the ERU, which is what the**
6 **city uses.**

7 **Q** **Are you familiar with the concept of a level**
8 **of service of flood protection or drainage?**

9 **A** **That's not my area of expertise.**

10 **Q** **Since this is our only copy, I'll share this**
11 **with you. I'm looking at Table 21, and I'll just have**
12 **you take a look at that, and specifically there's a**
13 **notation there for school board properties. And so my**
14 **question is, do you know the rationale for specifically**
15 **identifying school board properties in this study or in**
16 **this table?**

17 **A** **My understanding of the rationale was, in order**
18 **to project rates sufficient to provide for the financial**
19 **soundness of the stormwater utility, also understanding**
20 **that the schools are refusing to pay their proportionate**
21 **share of stormwater fees, we did not include the**
22 **schools' annual revenues or what should be paid as**
23 **annual revenues in the calculation and determination of**
24 **rates.**

25 **Q** **Okay. Was that done for any other class of**

1 **properties or state or federal or other governmental**
2 **agencies other than the school board?**

3 MR. VAN HALL: Object to form.

4 Go ahead.

5 A A factor for uncollectible accounts was made
6 in general, as it would be for any company billing you
7 don't collect one hundred percent of. So there is a
8 process that we include that for lien writeoffs.

9 Q The question was, are you aware of any other
10 class of properties or any other
11 governmental-entity-owned properties that were
12 specifically parceled out in this rate study?

13 MR. VAN HALL: Object to form.

14 Go ahead.

15 A Other than what I mentioned with regard to the
16 factor, no, I am not.

17 Q Okay. I'm going to hand you another email.
18 It's dated May 24th of 2012 from David Hanks to Claudia
19 McKenna with an attached spreadsheet. I'm going to ask
20 you if you've ever seen this before.

21 A It doesn't look familiar to me.

22 Q Under the -- with the existing MIS system that
23 the city utilizes, would it be relatively easy to print
24 accounts that are currently billed stormwater fees and
25 not water or waste water fees, like the owner's --

1 **What is that called, owner's bill?**

2 A I could make that inquiry for you.

3 MR. VAN HALL: Let me just object to the form.

4 Go ahead.

5 **Q So you don't know?**

6 A That is not an area that I presently work in,
7 so I do not, but I'd be happy to find out if you would
8 like.

9 **Q Well, how were you able to prepare that**
10 **spreadsheet that we identified as Exhibit 2? Didn't you**
11 **use the -- how were you able to identify the school**
12 **board properties?**

13 A I'm hearing you ask a different question. You
14 asked only about only properties with stormwater bills.

15 **Q No.**

16 A Perhaps you could restate that for me then.

17 **Q Yeah. So I asked you a question about the**
18 **capability of the system to print out certain categories**
19 **of properties, and I gave the example of properties that**
20 **are only billed stormwater fees. Do you recall that**
21 **question?**

22 A Yes.

23 **Q Okay. And so you said you didn't know the**
24 **capabilities of the system.**

25 A What I said was I am not working in that area.

1 I can ask if they can run a report for only properties
2 receiving owner's bill for stormwater only was my answer
3 to your question.

4 Q Right.

5 A If you're asking a different question, please
6 let me know.

7 Q Sure. And so I simply asked you, didn't you
8 run a report to create Exhibit 2?

9 A I did not myself run a report. No, I did not.

10 Q Okay. You directed someone to?

11 A I did not direct somebody to.

12 Q Okay. Well, then we have to go back in the
13 transcript, because you previously testified --

14 A What I said was I worked together with people
15 who provided the information. I did not give a specific
16 directive. There's a difference.

17 Q Okay. So this -- whatever -- however you want
18 to characterize it, this cooperative effort that led to
19 the creation of this spreadsheet in Exhibit 2, did you
20 not have to run a report to identify school board
21 properties?

22 MR. VAN HALL: Object to form.

23 Go ahead.

24 A Customer service billing staff generated the
25 data.

1 Q What did you ask them to do to create Exhibit
2 2?

3 A Again, I didn't ask them to. There was an
4 Excel spreadsheet that I used that contained the
5 information.

6 Q Okay. And the Excel spreadsheet, did it just
7 have identified school board properties.

8 A (Handing.)

9 Q So you've handed me another spreadsheet-like
10 format. So is this something that you were -- this
11 information here, the school board parcels, were you
12 provided with this spreadsheet?

13 A Correct.

14 Q So you don't know how it was put together
15 or --

16 A I understand it to be generated by customer
17 service staff out of the CC&B system.

18 Q And what's CC&B?

19 A It's an acronym for the billing system.

20 Q What does it stand for?

21 A I'm not familiar with the acronym.

22 Q All right. Thank you.

23 May I see that one more time. I just want to
24 see if this is the same.

25 A (Handing.)

1 MR. FUMERO: Okay. I think I'm almost done.
2 If we can just take a five-minute break so I can
3 confer with my colleagues here --

4 MR. VAN HALL: Oh, yeah.

5 MR. FUMERO: -- that would help move things
6 along.

7 (Recess taken.)

8 MR. FUMERO: The school board is done with
9 Ms. Levengood's deposition, and I will discuss with
10 counsel for the city off the record some issues the
11 city has with inquiries regarding the stormwater
12 fee billing practices regarding governmental
13 entities, and I think there is a way which we can
14 address that issue without the need for another
15 deposition, and it could be done as a discovery
16 request or public records request, just identify if
17 there are accounts, or we can --

18 MR. VAN HALL: Yeah.

19 MR. FUMERO: Palm Beach County --

20 MR. VAN HALL: I think the first Request to
21 Produce that the school board initially did had
22 those accounts. They asked for the accounts of
23 government entities in the city.

24 MR. FUMERO: Yes.

25 MR. VAN HALL: So I can get you updated, and

1 then whatever you needed to know from there. I
2 mean, we're agreeable.

3 MR. FUMERO: Because I haven't seen any --
4 what essentially would be like a report using the
5 utility system to print out account records that
6 show do you have an account for Palm Beach County,
7 as an example, or, you know, 298 Drainage
8 District's federal and state agencies, so -- but I
9 think we can deal with that --

10 MR. VAN HALL: Yeah, I agree.

11 MR. FUMERO: -- Chris, to make it some simple
12 discovery requests.

13 MR. VAN HALL: Okay.

14 MR. FUMERO: So, with that, I'll have you --

15 CROSS-EXAMINATION

16 BY MR. VAN HALL:

17 Q I just wanted to go back to -- it was the 2016
18 rate study. Do we have that? And I just wanted to
19 clarify for the record some of the questions about the
20 fact that the school board -- I think you were
21 testifying, I think - correct me if I'm wrong - that
22 they were specifically itemized as lost revenue. Can
23 you clarify why the school board was specifically
24 identified in the stormwater rate study?

25 A Yes. Given the large impervious area, in

1 totality, of school board properties, the school board
2 revenue is significant in terms of its percent of total
3 revenues collected by the stormwater utility. There is
4 no other significant user of the stormwater utility
5 stating refusal to pay their fees.

6 **Q Okay. So the reason that you put it there, if**
7 **I'm understanding you, is because it's a significant**
8 **revenue source and you have certainty that you're not**
9 **getting that revenue source because they stated they**
10 **would not pay?**

11 MR. FUMERO: Objection, form.

12 A The school board has refused to pay. The city
13 cannot -- the city needs to ensure that it has revenues
14 sufficient to ensure the financial soundness of the
15 utility, and that is why the school board's revenue was
16 not included, because they are telling us they are not
17 going to pay their share of the stormwater utility
18 system bill.

19 **Q Okay. And I just wanted to make that**
20 **clarification.**

21 MR. VAN HALL: No further questions.

22 REDIRECT EXAMINATION

23 BY MR. FUMERO:

24 **Q I just have one.**

25 **Miss Levengood, you just indicated to your**

1 counsel the school board's position or refusal not to
2 pay stormwater fees. Do you recall that?

3 A The refusal to pay the stormwater fee --

4 Q Right.

5 A -- correct.

6 Q And did you make any inquiry as to whether or
7 not any other federal, state or other governmental
8 entity does not or refuses to pay stormwater fees?

9 A I am not aware of any other significant
10 stormwater user refusing to pay.

11 Q Right. But I didn't ask you if you were
12 aware. I asked you if you made a reasonable inquiry to
13 determine if there were any governmental accounts in
14 existence where the governmental entity is refusing to
15 pay. Did you make any inquiry into that?

16 MR. VAN HALL: Objection to form.

17 Go ahead.

18 A Public resources management group received the
19 customer billing data, as I indicated earlier, from the
20 CC&B, which I now understand means customer care and
21 billing system, as provided by MIS, and when they look
22 at that data they determine billed versus collected and
23 they can see the numbers and, therefore, make that
24 calculation and determination when conducting the rate
25 study. I myself did not do that. That was done by

1 PRMG.

2 Q Okay. So, in preparation for today's
3 deposition, you made no specific inquiry as to the
4 status of federal or state or other governmental entity
5 accounts, stormwater payment accounts?

6 MR. VAN HALL: Objection to form.

7 Go ahead.

8 A I would say correct. My focus was on the
9 school board, which is why we're here today.

10 MR. FUMERO: Thank you.

11 THE WITNESS: Certainly. Thank you.

12 MR. VAN HALL: Is that it?

13 MR. FUMERO: That's it.

14 MR. VAN HALL: Read or waive?

15 The deposition, do you want to --

16 THE WITNESS: Read, please.

17 THE COURT REPORTER: Ordering?

18 MR. FUMERO: Yes, please.

19 THE COURT REPORTER: Copy?

20 MR. VAN HALL: Yes, please.

21 (Deposition concluded at 12:18 p.m.)

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ERRATA-SIGNATURE PAGE
SCHOOL BOARD OF PALM BEACH COUNTY
VS.
CITY OF WEST PALM BEACH
Case No. 50 2013 CA 010144 MB
DEPOSITION TAKEN FEBRUARY 27, 2017

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Under penalties of perjury, I declare that I have read the foregoing transcript and that the facts stated in it are true.

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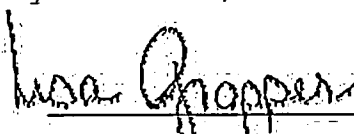
CERTIFICATE OF REPORTER

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

I, LISA GROPPER, Registered Professional Reporter, Florida Professional Reporter, do hereby certify that I was authorized to and did stenographically report the deposition of DONNA LEVENGOOD; that a review of the transcript was requested; and that the foregoing transcript is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 4th day of March, 2017.



Lisa Gropper, R.P.R., F.P.R.

