

*** FILED: MARION COUNTY, FL DAVID R. ELLSPERMANN, CLERK 11/18/2013 15:12:35 ***

IN THE CIRCUIT COURT, OF THE
FIFTH JUDICIAL CIRCUIT, IN AND
FOR MARION COUNTY, FLORIDA

CITY OF OCALA,
a Florida municipal corporation,

Plaintiff,

v.

CASE NO: 2011-3112-CA-G

THE SCHOOL BOARD OF
MARION COUNTY, FLORIDA,
a political subdivision of the State of Florida,

Defendant.

_____ /

SECOND AMENDED COMPLAINT

Plaintiff, the City of Ocala, a Florida municipal corporation (“City”) sues Defendant, The School Board of Marion County, Florida, a political subdivision of the State of Florida (“School Board”) and states:

Count I. Declaratory Decree and Injunctive Relief – Fire User Fees

1. This is a suit for declaratory judgment and supplemental damages exceeding \$15,000, pursuant to sections 86.011-86.111, Florida Statutes.

2. City is a Florida municipal corporation organized under the laws of Florida.

3. School Board is a political subdivision of the State of Florida.

4. In 2006, by lawful ordinance, City imposed on each residential and nonresidential premise located within the city limits a monthly user fee for emergency fire service based on the equitable portion of the cost of providing such services.

5. This fire user fee was codified at sections 30-50 through 30-53 of the City of Ocala Code of Ordinances.

6. This user fee applied to all property owners within City and is intended to supplement fire service to the citizens, businesses and governmental entities requiring fire service within the city limits of City.

7. The fire user fee was imposed pursuant to City's constitutional home rule authority and pursuant to section 166.201, Florida Statutes, authorizing a municipality to raise funds by the imposition of user fees authorized by ordinance which are necessary for the conduct of municipal government.

8. A copy of the current ordinance in its entirety is attached hereto as Exhibit "1".

9. The fire user fee is assessed to property owners within the city limits on a monthly basis as part of the utility bills submitted to City's utility customers.

10. School Board is a property owner within City.

11. School Board is a utility customer of City that receives utility services, including electric service, water and sewer services and stormwater services. School Board has a statutory obligation to provide for these services. Florida Statute, §1001.42(11)(c), states that the School Board must "provide adequately for the proper maintenance and upkeep of school plants, so that students may attend school without sanitary or physical hazards, and provide for the ... utilities necessary for the operation of the schools." Florida Statute §1001.42(12)(i) mandates that the School Board shall "contract for materials, supplies, and services needed for the school district system."

12. School Board has asserted that it was not obligated to pay the fire user fee pursuant to section 1013.371(1)(a), Florida Statutes. That statute reads, in pertinent part:

- (a) Except as otherwise provided in paragraph (b), all public educational and ancillary plants constructed by a board must conform to the Florida Building Code and the Florida Fire Prevention Code, and the plants are exempt from all other state building codes; county, municipal, or other local amendments to the Florida Building Code and local amendments to the Florida Fire Prevention Code; building permits, and assessments of fees for building permits, except as provided in s. 553.80; ordinances; road closures; and impact fees or service availability fees.

13. In addition to the claimed statutory exemption, School Board may claim other legal reasons for not paying the fire user fee.

14. Since January 1, 2007, City has submitted utility bills to School Board, which bills included the ordinance authorized fire user fee.

15. School Board has failed to pay the fire user fee portion of the bill and owes City as of October 13, 2011, \$572,265.70 with interest since January 1, 2007. That amount will increase monthly as long as School Board continues to refuse to pay this legal indebtedness. The actual bills are voluminous and will be provided to Defendant in digital format.

16. School Board has failed to pay the legally imposed fire user fee and continues to refuse to make payment despite demand.

17. City has complied with all conditions precedent to bringing this action against School Board.

18. City is in doubt as to its rights under the Ordinance.

19. Because of School Board's refusal to pay the fire user fee required by the Ordinance, City has retained the services of the undersigned attorneys and is obligated to pay a reasonable fee for their services.

20. WHEREFORE, City demands a declaratory decree that School Board is legally obligated to pay the fire user fee imposed by City's fire user fee ordinance, and a supplemental judgment for damages, pre-judgment interest, and the reasonable attorneys' fees and costs incurred for bringing this action.

Count II. Declaratory Decree and Injunctive Relief – Stormwater Fees

21. This is a suit for declaratory judgment and supplemental damages exceeding \$15,000, pursuant to section 86.011-86.111, Florida Statutes.

22. City re-alleges paragraphs 2, 3, 10, and 11 above and incorporates them by reference herein.

23. In 1985, City imposed by lawful ordinance on each residential and nonresidential premise located within the city limits a monthly user fee for stormwater utility services based on the equitable portion of the cost of providing such services.

24. This stormwater utility user fee was codified at sections 70-441 through 70-445 of the City of Ocala Code of Ordinances.

25. This user fee applied to all property owners within City and is intended to aid City's management of potentially destructive stormwater, as well as design, construct, operate, maintain and administer the stormwater collection and treatment system within the city limits of Ocala.

26. The stormwater utility services user fee is imposed pursuant to City's constitutional home rule authority and pursuant to sections 166.201, Florida Statutes, authorizing a municipality to raise funds by the imposition of user fees authorized by ordinance which are necessary for the conduct of municipal government, as well as by

section 403.0893, Florida Statutes, authorizing a municipality to create a stormwater utility and create user fees to plan, construct, operate, and maintain a stormwater utility.

27. A copy of the current ordinance in its entirety is attached hereto as Exhibit "2".

28. The stormwater utility user fee is assessed to property owners within the city limits on a monthly basis as part of the utility bills submitted to City's utility customers.

29. On November 8, 2011, School Board voted to discontinue paying for the stormwater utility services that it receives from City beginning with the billing of November 2011 and to proceed monthly thereafter.

30. Since the implementation of the stormwater utility user fee, City has submitted utility bills to School Board, which bills included the ordinance authorized stormwater utility user fee.

31. School Board has failed to pay the stormwater utility user fee portion of the bill for November and owes City as of December 13, 2011, \$19,000. That amount will increase monthly as long as School Board continues to refuse to pay this legal indebtedness.

32. School Board has failed to pay the legally imposed stormwater utility user fee and continues to refuse to make payment despite demand.

33. City has complied with all conditions precedent to bring this action against School Board.

34. City is in doubt as to its rights under the Ordinance.

35. Because of School Board's refusal to pay the stormwater utility user fee required by the Ordinance, City has retained the services of the undersigned attorneys and is obligated to pay a reasonable fee for their services.

36. WHEREFORE, City demands a declaratory decree that School Board is legally obligated to pay the stormwater utility user fee imposed by City of Ocala stormwater utility ordinance, an injunction requiring School Board to either stop disposing its stormwater runoff through City's stormwater utility system or pay City's reasonable stormwater utility user fees so long as School Board continues to dispose of its stormwater runoff through City's system, and a supplemental judgment for damages, pre-judgment interest, and the reasonable attorneys' fees and costs incurred for bringing this action.

Count III. Mandamus – Stormwater Fees

37. This is an action for the issuance of a writ of mandamus to compel School Board to satisfy stormwater utility service fee liens in excess of \$15,000.

38. City re-alleges paragraphs 2, 3, 10, 11, 23 through 33, and 35 above and incorporates them by reference herein.

39. Stormwater utility services have been furnished and are continuing to be furnished to premises owned by School Board.

40. City is permitted to charge user fees. *See* § 166.201, Fla. Stat. The stormwater utility services fees charged by City are valid user fees, which School Board is not statutorily exempt from paying. *See City of Gainesville v. State*, 863 So. 2d 138, 141 (Fla. 2003); § 403.0893, Fla. Stat.; *City of Clearwater v. Sch. Bd. of Pinellas County*, 905 So. 2d 1051, 1053 (Fla. 2d DCA 2005).

41. City is permitted to enforce the receipt and collection of the stormwater utility services fees “in the manner prescribed by ordinance” *See* § 166.201, Fla. Stat. Pursuant to local ordinance, the fees which City charged School Board for stormwater utility services constitute a lien against School Board premises. *See* City Ordinance 70-686(e); *see also Stone v. Town of Mexico Beach*, 348 So. 2d 40, 42 (Fla. 1st DCA 1977) (Municipalities may impose a lien on real property for the failure to pay service charges.). The liens “became effective and binding as such lien from the date upon which the account becomes due, unpaid and in arrears.” *See* City Ordinance 70-686(e).

42. Pursuant to local ordinance, such liens “shall be treated as special assessment liens against the subject real property, and until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved; the maximum rate of interest allowable by law shall accrue to such delinquent accounts.” *See* City Ordinance 70-686(e).

43. The stormwater utility liens are subject to foreclosure pursuant to City Ordinance 70-686(e). Further, the collection and enforcement of payment related to the stormwater utility liens may be accomplished by any method authorized by law. *See* City Ordinance 70-686(e).

44. School Board has a nondiscretionary, ministerial, legal duty to City to pay the stormwater utility services fees charged by City. *See* City Ordinance 70-443.

45. City has a clearly established legal right to have School Board perform this nondiscretionary duty. *See* City Ordinances 70-443; 70-686(e).

46. Pursuant to applicable law, mandamus is available to enforce the stormwater utility liens against School Board. *See Remington Cmty. Dev. Dist. v. Educ. Found. of Osceola, etc.*, 941 So. 2d 15, 18 (Fla. 5th DCA 2006).

47. City is entitled to fees and costs incurred in collecting the past due stormwater utility charges. *See* City Ordinance 70-686(e).

48. City has no other legal method for redressing the wrong or of obtaining the relief to which it is entitled.

49. WHEREFORE, City requests that this Court issue a writ of mandamus compelling School Board to satisfy the stormwater utility service fee liens on its premises, an award of fees and costs pursuant to City Ordinance 70-686(e), and any other relief as this Court deems just and proper.

Count IV. Mandamus – Fire User Fees

50. This is an action for the issuance of a writ of mandamus to compel School Board to satisfy fire user fee liens in excess of \$15,000.

51. City re-alleges paragraphs 2 through 11, 14 through 17, and 19 above and incorporates them by reference herein.

52. Emergency fire services have been furnished and are continuing to be furnished to premises owned by School Board.

53. School Board is authorized to charge School Board user fees for emergency fire services. *See* §166.201, Fla. Stat.; City Ordinance 30-51. Such fees are valid user fees, which School Board is not statutorily exempt from paying.

54. City is permitted to enforce the receipt and collection of the emergency fire user fees “in the manner prescribed by ordinance” *See* § 166.201, Fla. Stat.

Pursuant to local ordinance, the fees which City charged School Board for emergency fire services constitute a lien against School Board premises. *See* City Ordinance 30-53; City Ordinance 70-686; *Stone v. Town of Mexico Beach*, 348 So. 2d 40, 42 (Fla. 1st DCA 1977) (Municipalities may impose a lien on real property for the failure to pay service charges.). The liens "became effective and binding as such lien from the date upon which the account becomes due, unpaid and in arrears." *See* City Ordinance 70-686(e).

55. Pursuant to local ordinance, such liens "shall be treated as special assessment liens against the subject real property, and until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved; the maximum rate of interest allowable by law shall accrue to such delinquent accounts." *See* City Ordinance 70-686(e).

56. The fire user fee liens are subject to foreclosure pursuant to City Ordinance 70-686(e). Further, the collection and enforcement of payment related to the fire user fee liens may be accomplished by any method authorized by law. *See* City Ordinance 70-686(e).

57. School Board has a nondiscretionary, ministerial, legal duty to City to pay the fire user fees charged by City. *See* City Ordinance 30-52 to 30-53; City Ordinance 70-686.

58. City has a clearly established legal right to have School Board perform this nondiscretionary duty. *See* City Ordinance 30-53; City Ordinance 70-686.

59. Pursuant to applicable law, mandamus is available to enforce the fire user fee liens against School Board. *See Remington Cmty. Dev. Dist. v. Educ. Found. of Osceola, etc.*, 941 So. 2d 15, 18 (Fla. 5th DCA 2006).

60. City is entitled to fees and costs incurred in collecting the past due emergency fire services charges. *See City Ordinance 70-686(e)*.

61. City no other legal method for redressing the wrong or of obtaining the relief to which it is entitled.

62. WHEREFORE, City requests that this Court issue a writ of mandamus compelling School Board to satisfy the fire user fee liens on its premises, an award of fees and costs pursuant to City Ordinance 70-686(e), and any other relief as this Court deems just and proper.

Count V. Nuisance

63. City re-alleges paragraphs 2, 3, 10, 11, 23 through 31, and 35 above and incorporates them by reference herein.

64. City owns the stormwater utility system adjacent to or in close proximity to the properties owned by School Board within City.

65. School Board is substantially interfering with City's stormwater utility system without City's permission or pursuant to any agreement with City, by disposing of its stormwater onto City's property and into City's stormwater system without permission and without payment of the utility fee.

66. School Board's actions and/or inactions in continuing to force City to process its stormwater without compensation and without any enforceable agreement between the parties are unreasonable, unwarranted, and/or unlawful.

67. School Board's actions and/or inactions are interfering with City's right to the use and enjoyment of its property, burdening City's stormwater system, and resulting in damages to City.

68. Each of School Board's properties are engaged in separate acts of nuisance by disposing of their stormwater runoff into City's stormwater system, interfering with City's right to the use and enjoyment of its property and the burdening of City's stormwater utility system.

69. City has a clear legal right to be paid for its stormwater utility services, City has no adequate remedy at law, and City will suffer irreparable harm if it does not receive injunctive relief preventing School Board from interfering with City's right to use and enjoy its property.

70. School Board's use of its property results in an improper diversion of surface water onto City's property. Sovereign immunity does not protect School Board's use of its property in this manner. *See Maday's Wholesale Greenhouses, Inc. v. Indigo Group, Inc.*, 692 So. 2d 207, 209 (Fla. 5th DCA 1997)

71. WHEREFORE, because School Board is intentionally and unreasonably invading City's property rights, its actions and/or inactions constitute a "nuisance," and City is entitled to damages, injunctive relief and such other relief as this Court deems just and proper.

Count VI. Trespass

72. City re-alleges paragraphs 2, 3, 10, 11, 23 through 31, and 35 above and incorporates them by reference herein.

73. City owns the stormwater utility system adjacent to or in close proximity to the properties owned by School Board within City. School Board has no lawful ownership rights over City's stormwater management services or system.

74. However, School Board knowingly and intentionally continues to dispose of its stormwater runoff onto City's property and into City's utility system without permission and without any agreement with City, which is causing damages to City.

75. School Board's actions in knowingly utilizing City's stormwater utility services and thereby burdening the system, without paying for these services, is without authorization by City and, in fact, is in defiance of City's requests to either cease utilizing City's stormwater services, or pay for those services accordingly.

76. Each of School Board's properties in the City is committing separate acts of trespass by disposing of its stormwater runoff into City's stormwater utility system.

77. City has provided notice to School Board that its actions and/or inactions in utilizing City's stormwater utility services without paying for those services are unlawful.

78. City has a clear legal right to be paid for its stormwater utility services, City has no adequate remedy at law, and City will suffer irreparable harm if it does not receive injunctive relief.

79. School Board's improper diversion of surface water from its property onto City's property is not protected by sovereign immunity. *See Maday's Wholesale Greenhouses, Inc. v. Indigo Group, Inc.*, 692 So. 2d 207, 209 (Fla. 5th DCA 1997).

80. WHEREFORE, School Board's actions constitute "trespassing" and City is entitled to damages and injunctive relief enjoining School Board's further trespass of City's property and such further relief as this Court deems just and proper.

Count VIII. Violation of State Substantive Due Process Clause

81. This is an action seeking injunctive relief and damages in excess of \$15,000 for School Board's violation of City's right to substantive due process under the Florida Constitution.

82. City re-alleges paragraphs 2, 3, 10, 11, 23 through 33, and 35 above and incorporates them by reference herein.

83. City is a Florida municipal corporation. Pursuant to Article VIII, section 2(b) of the Florida Constitution, City has both corporate and proprietary powers.

84. Pursuant to its proprietary and corporate powers, City owns, operates, and maintains the stormwater utility system which is adjacent to School Board's properties.

85. City is entitled to exclude School Board from using its stormwater utility system.

86. The stormwater utility service fees charged by City are user fees. *See City of Gainesville v. State*, 863 So. 2d 138, 145 (Fla. 2003). These user fees are based upon City's proprietary right to permit other entities to use its stormwater utility system. *See State v. City of Port Orange*, 650 So. 2d 1, 3 (Fla. 1994).

87. City may lawfully charge School Board a fee for School Board's use City's stormwater utility system. §166.201, Fla. Stat; §403.0893, Fla. Stat.; *Power Co. v. Bevis*, 289 So. 2d 401, 403 n. 1 (Fla. 1974).

88. Because City is acting in its proprietary corporate capacity in providing stormwater utility services, it is governed by the same laws and may exercise the same rights of a private corporation engaged in a similar undertaking. *See Hamler v. City of Jacksonville*, 97 Fla. 807, 810 (1929).

89. Article I, section 9 of the Florida Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law”

90. By using City’s stormwater utility system without paying the statutorily authorized user fee required for access, School Board has deprived City of a property interest or right without due process of law. *Gulf Power Co. v. Bevis*, 289 So. 2d 401, 403 n. 1 (Fla. 1974). The property interest or right that City asserts here is fundamental and deeply rooted in the history and tradition of this Nation.

91. School Board’s refusal to pay City the stormwater utility fees for use of its stormwater utility system is arbitrary and capricious, irrational, or tainted by improper motive.

92. School Board’s action is illegal and violates City’s constitutional rights. Sovereign immunity has no application in these circumstances. *State Road Dept. of Florida v. Tharp*, 146 Fla. 745 (1941); *Interair Services, Inc. v. Insurance Co. of North America*, 375 So.2d 317 (1979).

93. WHEREFORE, School Board’s actions violate City’s right to substantive due process under the Florida Constitution, and City requests injunctive relief, damages, pre-judgment interest, attorneys’ fees and costs, and such other relief as this Court deems just and proper.

Count VIII. Violation of Federal Substantive Due Process Clause

94. This action seeks injunctive relief and damages in excess of \$15,000 for School Board's violation of City's right to substantive due process under the United States Constitution. This action is brought pursuant to 42 U.S.C. § 1983.

95. City re-alleges paragraphs 2, 3, 10, 11, 23 through 33, and 35 above and incorporates them by reference herein.

96. City is a Florida municipal corporation. Pursuant to Art. VIII, § 2(b), Fla. Const., City has both corporate and proprietary powers.

97. Pursuant to its proprietary and corporate powers, City owns, operates, and maintains the stormwater utility system adjacent to School Board's properties.

98. City is entitled to exclude School Board from using its stormwater utility system.

99. The stormwater utility service fees charged by City are user fees. *See City of Gainesville v. State*, 863 So. 2d 138, 145 (Fla. 2003). These user fees are based upon City's proprietary right to permit other entities to use its stormwater utility system. *See State v. City of Port Orange*, 650 So. 2d 1, 3 (Fla. 1994).

100. City may lawfully charge School Board a fee for School Board's use of City's stormwater utility system. §166.201, Fla. Stat.; §403.0893, Fla. Stat.; *Power Co. v. Bevis*, 289 So. 2d 401, 403 n. 1 (Fla. 1974).

101. Because City is acting in its proprietary corporate capacity in providing stormwater utility services, it is governed by the same laws and may exercise the same rights of a private corporation engaged in a similar undertaking. *See Hamler v. City of Jacksonville*, 97 Fla. 807, 810 (1929).

102. The Fourteenth Amendment of the United States Constitution, section 1, provides: “No State shall ... deprive any person of life, liberty, or property, without due process of law. . . .”

103. By using City’s stormwater utility system without paying the statutorily authorized user fee required for access, School Board deprives City of a property interest without due process of law. *Gulf Power Co. v. Bevis*, 289 So. 2d 401, 403 n. 1 (Fla. 1974).

104. School Board’s refusal to pay City the stormwater utility fees for use of its stormwater utility system is arbitrary and capricious, irrational, or tainted by improper motive.

105. School Board’s action is illegal and violates City’s constitutional rights. Sovereign immunity has no application in these circumstances. *State Road Dept. of Florida v. Tharp*, 146 Fla. 745 (1941); *Interair Services, Inc. v. Insurance Co. of North America*, 375 So.2d 317 (1979).

106. WHEREFORE, School Board’s actions violate City’s right to substantive due process under the United States Constitution, and City requests injunctive relief, damages, pre-judgment interest, attorneys’ fees and costs, and such other relief as this Court deems just and proper.

Count IX. Unjust Enrichment – Emergency Fire Services

107. This is an action for unjust enrichment in which City seeks a monetary award in excess of \$15,0000 for emergency fire services it has provided to School Board.

108. City re-alleges paragraphs 2 through 11, 14 through 17, and 19 above and incorporates them by reference herein.

109. With School Board's knowledge, City has conferred a benefit on School Board in the form of emergency fire services.

110. School Board has voluntarily accepted and retained the benefit conferred by City.

111. The circumstances are such that it would be inequitable for the defendant to retain the benefit conferred by City without paying the value thereof to City.

112. Sovereign immunity does not apply to shield School Board's inequitable conduct in continuing to take advantage of City services while refusing to make payment.

113. WHEREFORE, CITY is entitled to compensation from School Board for the value of the emergency fire services which City provided to School Board and such other relief as this Court deems just and proper.

Count X. Unjust Enrichment – Stormwater Services

114. This is an action for unjust enrichment in which City is seeking a monetary award in excess of \$15,000 for stormwater utility services it has provided to School Board.

115. City re-alleges paragraphs 2, 3, 10, 11, 23 through 33, and 35 above and incorporates them by reference herein.

116. With School Board's knowledge, City has conferred a benefit on School Board in the form of stormwater utility services.

117. School Board has voluntarily accepted and retained the benefit conferred by City.

118. The circumstances are such that it would be inequitable for the defendant to retain the benefit conferred by City without paying the value thereof to City.

119. Sovereign immunity does not apply to shield School Board's inequitable conduct in continuing to take advantage of City services while refusing to make payment.

120. WHEREFORE, CITY is entitled to compensation from School Board for the value of the stormwater utility services which City provided to School Board and such other relief as this Court deems just and proper.

Count XI. Inverse Condemnation

121. This is an action for inverse condemnation to recover compensation in excess of \$15,000 for School Board's taking of easements on City property for stormwater drainage purposes. This claim is made under Article X, section 6(b) of the Florida Constitution.

122. City re-alleges paragraphs 2, 3, 10, 11, 23 through 33, and 35 above and incorporates them by reference herein.

123. School Board is a governmental entity with the ability to exercise the power of eminent domain. §1013.24, Fla. Stat.

124. School Board is diverting stormwater, for a public purpose, from its properties onto properties owned by City. Rain and, thus, School Board's diversion of stormwater is a condition that is expected to continually re-occur.

125. School Board's diversion of stormwater onto City property constitutes a nuisance or unreasonable interference with City's property rights. School Board's use of City property deprives City of an essential element in its relationship to its land. *See City of Jacksonville v. Schumann*, 199 So. 2d 727, 729 (Fla. 1st DCA 1967).

126. School Board has not compensated City for its use of City property and it refuses to do so. City has not agreed to let School Board divert water onto City

properties without paying required user fees, nor is School Board otherwise entitled to take such action.

127. School Board's diversion of stormwater onto City's property constitutes a physical invasion of City property and the taking of easements on City property.

128. City is entitled to just compensation for such takings.

129. School Board's actions are interfering with City's right to the use and enjoyment of its property, burdening City's stormwater system, and have diminished the value of City property.

130. Sovereign immunity has no application in these circumstances. *State Road Dept. of Florida v. Tharp*, 146 Fla. 745 (1941);

131. WHEREFORE, School Board's actions constitute the taking of easements on City property, and City requests damages, pre-judgment interest, attorneys' fees and costs, and such other relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Defendant's attorneys, Susan Seigle, Esquire, of Dell Graham, P.A., and Beverly A. Morris, Esquire, by E-mail to: sseigle@dellgraham.com; dburch@dellgraham.com; sdanel@dellgraham.com, and beverlymorris@earthlink.net; ; beverlymorrislegalastl@earthlink.net, this 18 day of November, 2013.

GILLIGAN, GOODING & FRANJOLA, P.A.

BY: 

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INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is entered into this 31st day of May 2018, by and between the CITY OF OCALA ("City") and the SCHOOL BOARD OF MARION COUNTY, FLORIDA ("School Board").

WITNESSETH:

WHEREAS, both the City and the School Board are a "Public Agency" having authority under Florida Statute, §163.01, the "Florida Interlocal Cooperation Act of 1969," to enter into Interlocal Agreements; and

WHEREAS, the City and School Board wish to make the most efficient use of their tax payer supplied funding by cooperating with each other on a basis of mutual advantage of their respective communities; and

WHEREAS, the City and the School Board have been litigating the payment of stormwater and fire user fees in Case No. 2011-3112-CA-G in the Circuit Court of the Fifth Judicial Circuit, in and for Marion County, Florida (the "Complaint"); and

WHEREAS, the City claims it is owed approximately \$766,562.74 in unpaid stormwater fees as of April 2018; and

WHEREAS, the School Board disputes it owes those past due stormwater fees; and

WHEREAS, the City of Ocala and the School Board wish to amicably resolve their disputes as to stormwater fees and to agree how stormwater fees will be determined by the City and paid by the School Board in the future; and

NOW THEREFORE, in the consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto agree as follows:

1. **Recitals:** The recitals contained above are true, correct and are incorporated herein by reference.

2. **Term:** This Interlocal Agreement shall remain in effect for five (5) years, and thereafter shall automatically renew on an annual basis until rescinded or terminated by either party. Should the School Board rescind or terminate this Agreement without entering a new agreement for stormwater, the City shall be entitled to bill for stormwater at the then existing rate and the School Board shall be obligated to pay for same until a new agreement is negotiated.

3. **Waiver of Past Fees:** The City as partial consideration for this Agreement waives its claim to the unpaid stormwater indebtedness set forth in the recitals and claimed in the Complaint and agrees to accept the payment of stormwater fees as set forth herein.

4. Payment for future stormwater services: The School Board as partial consideration for its settlement of the City's unpaid stormwater indebtedness claim agrees to pay to the City for stormwater services going forward as follows:

a. Pay to the City pursuant to its current stormwater ordinances and rate resolution a base rate¹ of \$111,847.23 per annum in equal monthly payments equaling \$9,320.60, said payments payable on or before the 15th day of each month, with the first payment due on or before July 15, 2018 and the last payment due on or before October 15, 2018.

b. Pay to the City pursuant to its current stormwater ordinances and rate resolution a base rate of \$121,354.25 per annum in equal monthly payments equaling \$10,112.85, on or before the 15th day of each month, with the first payment due on or before November 15, 2018 and the last payment due on or before October 15, 2019.

c. Pay to the City pursuant to its current stormwater ordinances and rate resolution a base rate of \$131,669.35 per annum in equal monthly payments equaling \$10,972.45, on or before the 15th day of each month, with the first payment due on or before November 15, 2019 and the last payment due on or before October 15, 2020.

d. The City agrees that the base rates set forth herein shall not increase because of future development on current School Board owned properties within the boundary of the current city limits of the City of Ocala, but may be increased consistent with City's stormwater ordinances and rate resolution for new development on future acquired property within the boundary of the current city limits, or within the boundary of the future city limits of the City of Ocala resulting from annexation.

5. Disputes: The City and the School Board shall resolve any and all disputes or disagreements created by this Interlocal Agreement as required by Florida Statute, §164.101 et. seq. the "Florida Governmental Conflict Resolution Act".

6. Dismissal of Stormwater Claims: After execution of this Agreement and receipt of the payment set forth in paragraph four (4) above the City shall cause to be filed with the Court a dismissal with prejudice of its stormwater related claims in the Second Amended Complaint.

7. Entire Understanding: This agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations (if any) made by and between the parties.

8. Amendments: The provisions of this agreement may not be amended, supplemented, waived, or changed orally but only by a writing making specific reference to this agreement signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought.

¹ City has informed School Board that a pre-existing rate resolution passed by City Council pursuant to its stormwater ordinances currently in effect whereby an 8.5% annual increase is being imposed on all stormwater customers for every year through 2020.

9. **Enforcement:** All of the terms and provisions of this agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, heirs, estates, successors and permitted assigns.

10. **Notices:** All notices, requests, consents and other communications required or permitted under this agreement shall be in writing (including taxed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, faxed, or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed to:

Marion County School Board
512 S.E. 3rd Street
P.O. Box 670
Ocala, Florida 34478-0670
Fax Number: (352) 620-7735

City of Ocala
110 SE Watula Avenue
Ocala, Florida 34471
Fax Number: (352) 629-8391

or to such other addresses as any party may designate by notice complying with the terms of this section. Each such notice shall be deemed delivered:

- (a) On the date delivered if by personal delivery,
- (b) On the date faxed it by fax, and
- (c) On the date upon which the Return Receipt is signed or delivery is refused or the notice is designated by the postal authorities as not delivered, as the case may be, if mailed.

12. **Governing Laws:** This agreement and all transactions contemplated by this agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to principles of conflicts of laws.

13. **Attorney's Fees:** If any legal action or other proceeding, including arbitration, is brought for the enforcement of this contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable as court costs, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

14. **Counterparts:** This agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. **Survival of Covenant:** All covenants, agreements, representations and warranties

15. **Survival of Covenant:** All covenants, agreements, representations and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this agreement and the consummation of the transactions contemplated hereby.

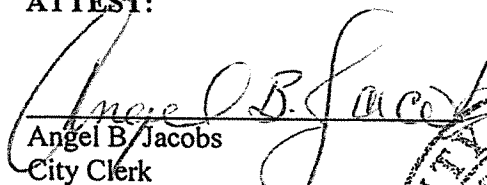
16. **Remedies:** No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

17. **Severability Clause:** Provisions contained in this agreement which are contrary to, prohibited by or invalid under applicable laws or regulations shall be deemed omitted from this document and shall not invalidate the remaining provisions thereof.

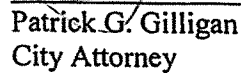
18. **Waiver:** A failure to assert any rights or remedies available to a party under the terms of this agreement, or a waiver of the right to remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under this agreement, unless such waiver of such right or remedy is contained in a writing signed by the party alleged to have waived his other rights or remedies.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date mentioned above.

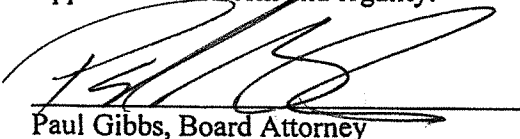
ATTEST:


Angel B. Jacobs
City Clerk

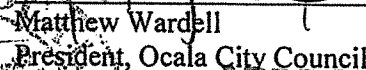
Approved as to form and legality


Patrick G. Gilligan
City Attorney

Approved as to form and legality:


Paul Gibbs, Board Attorney

City of Ocala, a Florida municipal corporation


Matthew Wardell
President, Ocala City Council

APPROVED

MAY 22

SCHOOL BOARD OF
MARION COUNTY, FLORIDA

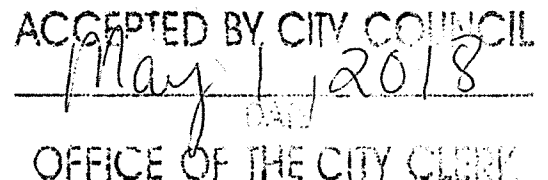
School Board of Marion County, Florida

By: 
E. Elizabeth McCall, Chair

APPROVED

MAY 22 2018

SCHOOL BOARD OF
MARION COUNTY, FLORIDA

ACCEPTED BY CITY COUNCIL

MAY 1, 2018
OFFICE OF THE CITY CLERK