Legal Office Timeline – IIDC

Date	Action	Source
1/27/2014	Notice of abandonment served on EC, giving notice of abandonment of the utility as of 3/28/2014	Letter from Ronald L. Nelson, attorney for IIDC
2/7/2014	EC filed Petition for Appointment of Receiver	2014 CA 000237
2/18/2014	Shade meeting [redacted] -Motion, carried unanimously, approving to direct the ECUA to be receiver for IIDC	[redacted] Minutes, 2/18/14
2/24/2014	Letter from EC to ECUA, notifying them that the BCC voted to have ECUA appointed as receiver	
3/4/2014	Letter from Bradley Odom, attorney with ECUA, stating that their board voted not to accept the BCC's nomination	
3/21/2014	Order appointing EC as receiver	
4/10/2014	Shade meeting [redacted] Minutes of Attorney/Client session: - Board voted unanimously to direct the County Attorney's Office to request the Court to make ECUA a joint receiver Minutes from Special Meeting of the BCC: - Approving Interlocal Agreement between EC and City of Gulf Breeze designating the City as agent of the County to perform operational services related to the water/wastewater utility service - Adopting R2014-27, approving a transfer of $50,000 to cover any IIDC costs not covered by revenues collected. - Adopting R2014-28, imposing a Schedule of Rates and Fees for water/wastewater utility service effective 5/1/14 as part of fulfilling its obligations as Receiver pursuant to §367.165, F.S., and the Order appointing Escambia County as receiver entered on 3/21/14	[redacted] P. 2 See also, Interlocal Agreement, attached
4/22/2014	Motion to Modify Order Appointing Receiver and to Appoint ECUA as Joint Receiver with Petitioner	
4/25/2014	Letter to Sally Bussell Fox, engaging her as our confidential consultant on financial issues concerning IIDC	
8/20/2014	ECUA's response in opposition to being appointed as joint receiver: - ECUA is not a party to this litigation - ECUA not willing nor legally empowered to serve as receiver - ECUA cannot legally expend ratepayers' funds on a private utility	
8/29/2014	EC's Rebuttal to ECUA's Response	

9/8/2014	Letter from Judge – Petition to Modify and Appoint ECUA as Joint Receiver is granted upon the condition that ECUA is joined as a Respondent to the proceeding	Ruling
9/10/2014	EC's Motion to Amend Petition for Appointment of Receiver (to join ECUA as Respondent)	
9/11/2014	Committee of the Whole -JB spoke of letter from Sorrell where ECUA is willing to work with us in setting up an MSBU - ECUA estimated $4-7 million to upgrade - WR: ECUA won't accept the system if it doesn't meet their standards; - Said that we would front the money and it would be paid back by MSBU -GV: if ECUA not willing to do water and sewer, wants to dissolve ECUA and take back water and sewer -JB: said that he would like to continue working with ECUA -WR: asked if we had funds to front money -JB: not yet -WR: let the lawsuit continue, because this is being done in a friendly way -JB: Yes, there is a spirit of cooperation	Video
9/15/2014	Proposed Order Granting Petitioner's Motion	
9/16/2014	Letter from ECUA attorney Odom, notifying that they had many objections to proposed order	
9/16/2014	Email from CP to APR, noting that JB wanted to meet with Sorrell to hash things out without the lawyers	
9/22/2014	Email that Judge wants to know Odom's position on proposed order before she signs it	
9/24/2014	Legal opinion from Sally Fox regarding financial issues	
9/24/2014	Order Granting Petitioner's Motion to Amend Petition	
9/25/2014	BCC meeting: From C/W, was advised by JB that: - He received a letter from ECUA indicating they would be willing to work with county in setting up MSBU - He needs Board direction that Board would fund a study - SB advised that there would be no scenario where rest of taxpayers would be culpable, and that EC would receive full recovery - JB advised that a funding source had not been identified for this project - Board direction: none The Board also ratified amending the Petition to Appoint Receiver, and approved the initiation of dispute resolution procedures provided by Chapter 164.	Minutes pp. 17-19 p. 71
10/6/2014	Letter from CP to Odom: - Clients have discussed the imposition of an MSBU and formulation of an MOU similar to Deerfield Estates - Proposed MOU submitted from Sorrell to JB - CP will hold off serving the amended petition as long as negotiations continue to move forward	
10/8/2014	Letter from Odom to CP: It has no objection to EC abandoning its motion to appoint ECUA as joint receiver in light of the proposed MOU	
10/9/2014	Letter, CP to Odom: County objects to language in MOU that County would be sole receiver;	

	EC has no intention of abandoning the order appointing ECUA as joint receiver	
11/3/2014	Complaint filed, Escambia County v. Kathy Collins, 2014 CA 002103, to set aside transfers and obligations	
1/27/2015	Motion to Extend Time for Service of Summons and Amended Complaint on ECUA (original lawsuit, 2014 CA 000237)	
6/25/2015	Shade meeting: [redacted]	[redacted]
7/7/2015	Shade meeting	
10/28/2015	Kenneth Horne & Assoc. (KHA) issued Final Report estimating the cost for water improvements at 0.59M and sewer improvements at 2.73M. Time for completion: 18-30 months.	
11/30/2015	Motion to Extend Time for Service of Summons and Amended Complaint on ECUA (original lawsuit, 2014 CA 000237)	
2/1/2016	KHA issued a Supplemental Report increasing the cost for sewer improvements to 3.3M	
2/18/2016	DEP Agreement S08787 to provide funding up to a maximum of 1M	
3/31/2016	Motion to Extend Time for Service of Summons and Amended Complaint on ECUA (original lawsuit, 2014 CA 000237)	
6/2/2016	Interlocal Agreement with ECUA relating to the water system improvement project (Funding: Grant State of Florida, Fund 352, Cost Center 110211, Project Number 16 PF 3502). Estimated project cost NTE 600K	
7/28/2016	Motion to Extend Time for Service of Summons and Amended Complaint on ECUA (original lawsuit, 2014 CA 000237)	
8/4/2016	Shade meeting	
12/20/2016	Settlement Agreement signed, Escambia Co. v. Kathy Collins	
1/24/2017	Motion to Extend Time for Service of Summons and Amended Complaint on ECUA (original lawsuit, 2014 CA 000237)	
2/1/2017	Voluntary dismissal, Escambia Co. v. Kathy Collins	
3/2/2017	Ordinance 2017-10 creating the IIDC Sewage System Improvements MSBU	

5/4/2017	BCC approved declaring 21 parcels as surplus and authorized sale by online auction. (Estimated revenue $1,552,000) and authorized obtaining an appraisal of 6 parcels to determine MV	
9/21/2017	Second Amendment to DEP Agreement S08787 to increase funding up to a maximum of 1.5M, revise the scope of work and extend the term until 12/31/21.	
9/21/2017	First Amendment to the Interlocal Agreement with ECUA relating to the potable water system improvement project to increase the project cost to an amount NTE 810K.	
10/19/2017	Motion to Extend Time for Service of Summons and Amended Complaint on ECUA (original lawsuit, 2014 CA 000237)	
2/1/2018	Ordinance 2018-3 to reduce the geographical area of the District to exclude 109 lots that are serviced by a private lift station (492 lots remaining).	
3/1/2018	Water system transferred to ECUA following final completion of the project as of 2/28/18.	
5/17/2018	Interlocal Agreement with ECUA relating to the sanitary sewer system improvement project. (Funds for design and CEI from Fund 352 /LOST III; funds for construction from MSBU; and initial project costs provided through inter-fund loan from LOST to the MSBU fund and reimbursed from assessments.) Estimated cost NTE $4,220,000.	
8/29/2018	Motion to Extend Time for Service of Summons and Amended Complaint on ECUA (original lawsuit, 2014 CA 000237)	
7/18/2019	First Amendment to the Interlocal Agreement with ECUA relating to the sanitary sewer system improvement project to increase the project cost to an amount NTE $5,700,000.	
7/18/2019	BCC approved inter-fund loan from LOST III/Fund 352 to the MSBU assessment program fund in the amount of $5,605,174 for sewage system improvement project to be repaid from MSBU assessments.	

2014 CA 000237 - ESCAMBIA COUNTY FLORIDA A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA vs. INNERARITY ISLAND DEVELOPMENT CORPORATION A FLORIDA CORPORATION

SUMMARY

Judge: DANNHEISSER., THOMAS
Case Type: OTHER CIRCUIT CIVIL POST 2010
Status: OPEN
Case Number: 2014 CA 000237
Uniform Case Number: 172014CA000237XXXXXX
Clerk File Date: 2/7/2014
Status Date: 2/7/2014
SAO Case Number:
Total Fees Due: 0.00
Agency:
Agency Report #:
Custody Location:

PARTIES

TYPE	PARTY NAME	ATTORNEY
PLAINTIFF	ESCAMBIA COUNTY FLORIDA A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA	PEPPLER, CHARLES V (Main Attorney)
DEFENDANT	INNERARITY ISLAND DEVELOPMENT CORPORATION A FLORIDA CORPORATION	
DEFENDANT	ESCAMBIA COUNTY UTILITIES AUTHORITY AN INDEPENDENT SPECIAL DISTRICT	BEASLEY, ROBERT O
DEFENDANT	ESCAMBIA COUNTY UTILITIES AUTHORITY AN INDEPENDENT SPECIAL DISTRICT	PUGH, PHILLIP A
DEFENDANT	ESCAMBIA COUNTY UTILITIES AUTHORITY AN INDEPENDENT SPECIAL DISTRICT	CLARK, DEWITT D

EVENTS

DATE	EVENT	JUDGE	LOCATION	RESULT
No Events on Case				

CASE HISTORY

CASE NUMBER	CHARGE DESCRIPTION	CASE STATUS	DISPOSITION	OUTSTANDING AMOUNT	NEXT EVENT	ALERTS
No Additional Cases						

CASE DOCKETS

IMAGE	DATE	ENTRY
1	12/18/2019	ORDER ON STIPULATION FOR SUBSTITUTION OF COUNSEL FOR DEFENDANT EMERALD COAST UTILITIES AUTHORITY
Request	12/17/2019	STIPULATION FOR SUBSTITUTION OF COUNSEL FOR DEFENDANT EMERALD COAST UTILITIES AUTHORITY
Request	12/10/2019	NOTICE OF APPEARANCE AND DESIGNATION OF EMAIL ADDRESSES FOR EMERALD COAST UTILITIES AUTHORITY
2	4/1/2019	MOTION TO WITHDRAW AS ATTORNEYS
2	2/1/2019	ORDER SETTING CASE MANAGEMENT CONFERENCE
Request	9/17/2018	NINTH ORDER EXTENDING TIME FOR SERVICE OF SUMMONS AND AMENDED COMPLAINT IN RESPONDENT EMERALD COAST UTILITIES AITHORITY
Request	8/29/2018	PETITIONER'S NINTH MOTION TO EXTEND TIME OF SERVICE OF SUMMONS AND AMENDED COMPLAINT ON RESPONDENT EMERALD COAST UTILITIES AUTHORITY
Request	2/21/2018	ORDER APPROVING TRANSFER OF POTABLE WATER SYSTEM ON INNERARITY ISLAND TO EMERALD COAST UTILITIES AUTHORITY
Request	2/9/2018	NOTICE OF HEARING 2/21/2018 AT 12:00 PM CST
Request	2/7/2018	MOTION TO APPROVE TRANSFER OF POTABLE WATER SYSTEM TO EMERALD COAST UTILITIES AUTHORITY
Request	12/1/2017	DEFENDANT, ESCAMBIA COUNTY, FLORIDA'S AMENDED EMAIL DESIGNATION.
Request	10/20/2017	EIGHTH ORDER FOR EXTENSION OF TIME FOR SERVICE OF SUMMONS AND AMENDED COMPLAINT ON RESPONDENT EMERALD COAST UTILITIES AUTHORITY
Request	10/19/2017	PETITIONER'S EIGHTH MOTION TO EXTEND TIME OF SERVICE OF SUMMONS AND AMENDED COMPLAINT ON RESPONDENT EMERALD COAST UTILITIES AUTHORITY
Request	3/10/2017	ORDER GRANTING MOTION TO WITHDRAW
Request	3/8/2017	MOTION TO GRANT WITHDRAWAL OF COUNSEL
Request	1/31/2017	SEVENTH ORDER FOR EXTENSION OF TIME FOR SERVICE OF SUMMONS AND AMENDED COMPLAINT ON RESPONDENT EMERALD COAST UTILITIES AUTHORITY
Request	1/24/2017	PETITIONER'S SEVENTH MOTION TO EXTEND TIME OF SERVICE OF SUMMONS AND AMENDED COMPLAINT ON RESPONDENT EMERALD COAST UTILITIES AUTHORITY
Request	1/13/2017	ORDER APPROVING ACQUISITION OF REAL ESTATE PARCELS BY PETITIONER ESCAMBIA COUNTY FL
Request	12/22/2016	MOTION TO APPROVE ACQUISITION OF REAL ESTATE PARCELS
Request	9/16/2016	EMAIL DESIGNATION.
Request	8/12/2016	SIXTH ORDER EXTENDING TIME FOR SERVICE OF SUMMONS AND AMENDED COMPLAINT ON RESPONDENT EMERALD COAST UTILITIES AUTHORITY
Request	7/28/2016	PETITIONER'S MOTION TO EXTEND TIME OF SERVICE OF SUMMONS AND AMENDED COMPLAINT ON RESPONDENT EMERALD COAST UTILITIES AUTHORITY
Request	4/11/2016	FIFTH ORDER EXTENDING TIME FOR SERVICE OF SUMMONS AND AMENDED COMPLAINT ON RESPONDENT EMERALD COAST UTILITES AUTHORITY

IMAGE	DATE	ENTRY
Request	4/11/2016	CORRESPONDENCE OF ATTY
Request	3/31/2016	PETITIONER'S MOTION FOR EXTENSION OF TIME FOR SERVICE OF SUMMONS AN DAMENDED COMPLAINT ON RESPONDENT, EMERALD COAST UTILITIES AUTHORITY
Request	3/21/2016	EMAIL DESIGNATION.
Request	12/3/2015	FOURTH ORDER EXTENDING TIME FOR SERVICE OF SUMMONS AND AMENDED COMPLAINT ON RESPONDENT, EMERALD COASTUTILITIES AUTHORITY
Request	12/3/2015	CORRESPONDENCE OF ATTY
Request	12/1/2015	PETITIONER, ESCAMBIA COUNTY, FLORIDA'S NOTICE OF SERVICE OF ANSWERS TO DEFENDANT'S FIRST INTERROGATORIES
Request	11/30/2015	PETITIONER'S MOTION TO EXTEND TIME FOR SERVICE OF SUMMONS AND AMENDED COMPLAINT ON RESPONDENT, EMERALD COAST UTILITIES AUTHORITY
Request	9/18/2015	THIRD ORDER EXTENDING TIME FOR SERVICE OF SUMMONS AND AMENDED COMPLAINT ON RESPONDENT, EMERALD COAST
Request	9/18/2015	CORRESPONDENCE FROM BOARD OF COUNTY COMMISSIONERS
Request	8/25/2015	MOTION TO EXTEND TIME FOR SERVICE OF SUMMONS AND AMENDED COMPLAINT ON RESPONDENT, ECUA
Request	5/20/2015	ORDER EXTENDING TIME FOR SERVICES OF SUMMONS AND AMENDED COMPLAINT ON RESPONDENT EMERALD COAST UTILITIES AUTHORITY
Request	5/20/2015	CORRESPONDENCE OF ATTORNEY
Request	4/29/2015	PETITIONER'S MOTION TO EXTEND TIME FOR SERVICE OF SUMMONS AND AMENDED COMPLAINT ON RESPONDENT, EMERALD COAST UTILITIES AUTHORITY
Request	3/10/2015	ORDER EXTENDING TIME FOR SERVICE OF SUMMONS AND AMENDED COMPLAINT ON RESPONDENT EMERALD COAST UTILITIES AUTHORITY
Request	1/27/2015	MOTION TO EXTEND TIME FOR SERVICE OF SUMMONS AND AMENDED COMPLAINT ON RESPONDENT ECUA
Request	12/31/2014	EMAIL DESIGNATION FOR ATTORNEY
Request	12/30/2014	EMAIL DESIGNATION FOR ATTORNEY
Request	12/19/2014	CORRESPONDENCE OF ATTNY
Request	12/12/2014	INNERARITY ISLANDS NOTICE OF SERVICE OF INTERROGATORIES TO PLAINTIFF
Request	12/12/2014	MOTION TO DETERMINE THAT LOTS ARE NOT AN ASSET OF THE UTILITY FILED BY INNERARITY ISLAND
Request	12/12/2014	RESPONSE BY INNERARITY ISLAND TO PLAINTIFF'S MOTION TO DETERMINE LOTS ARE AN ASSET OF THE UTILITY
Request	11/3/2014	PETITIONER'S MOTION TO DETERMINE THAT LOTS ARE AN ASSET OF THE UTILITY
Request	11/3/2014	CLERK'S MEMO
Request	10/31/2014	CORRESPONDENCE OF ATTY TO JUDGE SHACKELFORD
Request	10/6/2014	ECUA'S RESPONSE TO COUNTY'S MOTION TO APPOINT IT AS A JOINT RECEIVER
Request	10/6/2014	CASE LAW
Request	10/6/2014	CASE LAW
Request	10/6/2014	CASE LAW
Request	10/6/2014	CASE LAW
Request	10/6/2014	CASE LAW
Request	10/1/2014	PAYMENT $10.00 RECEIPT #2014093923
Request	10/1/2014	FIRST COLLECTIONS NOTICE SENT
	10/1/2014	ISSUANCE OF SUMMONS ASSESSED $10.00
Request	10/1/2014	SUMMONS ISSUED
Request	9/24/2014	ORDER GRANTING PETITIONER'S MOTION TO AMEND PETITION FOR APPOINTMENT OF RECEIVER PURSUANT TO NOTICE OF ABANDONMENT
Request	9/15/2014	CORRESPONDENCE OF ATTY TO JUDGE
Request	9/15/2014	PROPOSED ORDER GRANTING PETITIONERS MOTION TO AMEND PETITION FOR APPOINTMENT OF RECEIVER PURSUANT TO NOTICE OF ABANDONMENT
Request	9/10/2014	PETITIONER'S MOTION TO AMEND PETITION FOR APPOINTMENT OF RECEIVER PURSUANT TO NOTICE OF ABANDONMENT
Request	9/9/2014	CORRESPONDENCE OF JUDGE SHACKELFORD TO CHARLES PEPPLER AND BRADLEY ODOM
Request	8/29/2014	PETITIONER'S MEMORANDUM OF LAW IN REBUTTAL TO ECUA'S RESPONSE TO COUNTY'S MOTION TO APPOINT ECUA AS JOINT RECEIVER
Request	8/13/2014	NOTICE OF FILING OF DOCUMENTS IN SUPPORT OF PETITIONER'S MOTION TO MODIFY ORDER APPOINTING RECEIVER AND TO APPOINT EMERALD COAST UTILITIES AUTHORITY AS JOINT RECEIVER WITH PETITIONER

IMAGE	DATE	ENTRY
Request	6/10/2014	PETITIONERS FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
Request	5/6/2014	NOTICE OF HEARING
Request	4/22/2014	PETITIONER'S MOTION TO MODIFY ORDER APPOINTING RECEIVER AND TO APPOINT EMERALD COAST UTILITIES AUTHORITY AS JOINT RECEIVER WITH PETITIONER
Request	4/11/2014	ORDER ON PETITIONER'S SECOND MOTION TO EXTEND TIME TO ASSUME OBLIGATION AS RECEIVER
Request	4/11/2014	CORRESPONDENCE OF ATTY TO JUDGE
Request	4/10/2014	PROPOSED ORDER ON PETITIONER'S SECOND MOTION TO EXTEND TIME TO ASSUME OBLIGATION AS RECEIVER
Request	4/10/2014	CORRESPONDENCE OF COUNSEL TO JUDGE
Request	4/10/2014	PETITIONER'S SECOND MOTION TO EXTEND TIME TO ASSUME OBLIGATION AS RECEIVER
Request	4/1/2014	ORDER ON PETITIONER'S MOTION TO EXTEND TIME TO ASSUME OBLIGATION AS RECEIVER
Request	3/31/2014	ORDER ON PETITIONER'S MOTION TO EXTEND TIME TO ASSUME OBLIGATION AS RECEIVER
Request	3/31/2014	CORRESPONDENCE OF ATTY
Request	3/27/2014	PROPOSED ORDER ON PETITIONER'S MOTION TO EXTEND TIME TO ASSUME OBLIGATION AS RECEIVER
Request	3/27/2014	CORRESPONDENCE OF COUNSEL TO JUDGE
Request	3/26/2014	MOTION TO EXTEND TIME TO ASSUME OBLIGATION AS RECEIVER
Request	3/24/2014	PAYMENT $9.00 RECEIPT #2014028585
	3/24/2014	COPIES/CERTIFICATIONS ASSESSED $9.00
Request	3/21/2014	ORDER APPOINTING RECEIVER
Request	2/19/2014	NOTICE OF HEARING
	2/14/2014	DEFENDANT'S ATTORNEY: NELSON, RONALD LAWRENCE ASSIGNED
Request	2/12/2014	ANSWER--INNERARITY ISLAND DEVELOPMENT CORPORATION
Request	2/7/2014	PAYMENT $410.00 RECEIPT #2014011684
Request	2/7/2014	SUMMONS ISSUED
	2/7/2014	ISSUANCE OF SUMMONS ASSESSED $10.00
	2/7/2014	CIRCUIT CIVIL FILING FEE ASSESSED $400.00
	2/7/2014	CPEPPLER@CO.ESCAMBIA.FL.US, KCCHAPPELL@CO.ESCAMBIA.FL.US, KMHILL@MYESCAMBIA.COM, ROBERT@LAWPENSACOLA.COM, ROBSERVICE@LAWPENSACOLA.COM
	2/7/2014	PLAINTIFF'S ATTORNEY: PEPPLER, CHARLES V ASSIGNED
	2/7/2014	JUDGE SHACKELFORD, JAN: ASSIGNED
5	2/7/2014	COMPLAINT/PETITION FILED
Request	2/7/2014	CIVIL COVER SHEET
Request	2/7/2014	COVER SHEET
Request	2/7/2014	CORRESPONDENCE OF COUNSEL TO CLERK
	2/7/2014	CASE FILED 02/07/2014 CASE NUMBER 2014 CA 000237

2014 CA 002103 - ESCAMBIA COUNTY, FLORIDA A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA vs. COLLINS, KATHY F

SUMMARY

Judge: BERGOSH, GARY L | Case Type: BUSINESS TRANSACTIONS | Status: CLOSED
Case Number: 2014 CA 002103 | Uniform Case Number: 172014CA002103XXXXXX
Clerk File Date: 11/3/2014 | Status Date: 2/1/2017
SAO Case Number: | Total Fees Due: 0.00
Agency: | Agency Report #: | Custody Location:

PARTIES

TYPE	PARTY NAME	ATTORNEY
PLAINTIFF	ESCAMBIA COUNTY, FLORIDA A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA	
DEFENDANT	COLLINS, KATHY F	
DEFENDANT	INNERARITY ISLAND DEVELOPMENT CORPORATION A FLORIDA CORPORATION	

EVENTS

DATE	EVENT	JUDGE	LOCATION	RESULT
No Events on Case				

CASE HISTORY

CASE NUMBER	CHARGE DESCRIPTION	CASE STATUS	DISPOSITION	OUTSTANDING AMOUNT	NEXT EVENT	ALERTS
No Additional Cases						

CASE DOCKETS

	DATE	ENTRY
	2/1/2017	CASE CLOSED
Request	2/1/2017	VOLUNTARY DISMISSAL
Request	3/21/2016	EMAIL DESIGNATION.
Request	1/19/2016	EMMANUEL, SHEPPARD AND CONDON PA'S NOTICE OF APPEARANCE FOR ANDREA C LYONS, AS CO-COUNSEL FOR THE PLT AND NOTICE OF DESIGNATION OF EMAIL ADDRESS
Request	12/23/2015	NOTICE OF TAKING DEPOSITION
Request	12/11/2015	PLAINTIFF'S NOTICE OF SERVICE OF ANSWERS TO DEFENDANT'S FIRST INTERROGATORIES
Request	11/19/2015	STIPULATED ORDER EXTENDING TIME FOR RESPONSE TO DEFENDANTS FIRST INTERROGATORIES
Request	11/9/2015	STIPULATION FOR ENTRY OF STIPULATED ORDER TO EXTEND TIME FOR RESPONSE TO DEFENDANTS' FIRST INTERROGATORIES
	10/27/2015	COPIES ASSESSED $2.00
Request	1/12/2015	PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO RESPOND TO DEFENDANTS' FIRST INTERROGATORIES
Request	12/31/2014	EMAIL DESIGNATION FOR ATTORNEY
Request	12/24/2014	PLAINTIFF'S RESPONSE TO DEFENDANTS' AFFIRMATIVE DEFENSES
Request	12/12/2014	DEFENDANT'S NOTICE OF SERVING FIRST INTERROGATORIES
Request	12/12/2014	ANSWER TO COMPLAINT TO SET ASIDE TRANSFERS AND OBLIGATIONS
Request	12/12/2014	EMAIL DESIGNATION FOR ATTORNEY
Request	12/2/2014	ACCEPTANCE OF SERVICE
Request	12/2/2014	ACCEPTANCE OF SERVICE
Request	12/2/2014	ACCEPTANCE OF SERVICE
Request	11/5/2014	SUMMONS ISSUED
Request	11/5/2014	SUMMONS ISSUED
Request	11/5/2014	PAYMENT $420.00 RECEIPT #2014105647
	11/5/2014	ISSUANCE OF SUMMONS ASSESSED $20.00
	11/5/2014	CIRCUIT CIVIL FILING FEE ASSESSED $400.00
	11/5/2014	SFOX@ESCLAW.COM, DSB@ESCLAW.COM, CHOFFMAN@SHELLFLEMING.COM, ASWIFT@SHELLFLEMING.COM, ACL@ESCLAW.COM, LGN@ESCLAW.COM, CPEPPLER@CO.ESCAMBIA.FL.US, KCCHAPPELL@CO.ESCAMBIA.FL.US, BELLIS@CO.ESCAMBIA.FL.US
	11/5/2014	PLAINTIFF'S ATTORNEY: FOX, SALLY B ASSIGNED
	11/5/2014	JUDGE BERGOSH, GARY L: ASSIGNED

	DATE	ENTRY
Request	11/3/2014	SUMMONS
Request	11/3/2014	SUMMONS
Request	11/3/2014	EMAIL DESIGNATION FOR ATTORNEY
Request	11/3/2014	COMPLAINT
Request	11/3/2014	COVERSHEET
	11/3/2014	CASE FILED 11/03/2014 CASE NUMBER 2014 CA 002103

RONALD L. NELSON

ATTORNEY AT LAW

MEMBER OF FLORIDA, GEORGIA AND NEW YORK BARS

517 EAST GOVERNMENT STREET
PENSACOLA, FLORIDA 32502

(850) 434-1700
FAX (850) 432-6800
RLN@NELSONLAWFLORIDA.COM

January 27, 2014

COUNTY ATTORNEYS OFFICE

31 JAN2014

PM03:02

By Hand Delivery
Larry Newsom
Assistant County Administrator
Escambia County
221 Palafox Place, Suite 420
Pensacola, FL 32502

By FedEx
ATTN: Tom Ballinger
Director, Division of Engineering
Public Service Commission
Commission Clerk's Office
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Notice of Abandonment of Water and Wastewater Service

Dear Messrs. Newsom and Ballinger:

This letter is being written on behalf of Innerarity Island Development Corporation, a Florida corporation ("IIDC"). IIDC owns, operates, manages, and controls a utility that provides water and wastewater service to the residents of the property known as Innerarity Island, in Escambia County, Florida (the "Utility").

IIDC is hereby giving notice that IIDC will be abandoning the Utility on March 28, 2014. Please consider this letter to be the 60 days' notice that is required by Florida Statutes Section 367.165.

As is required by Florida Administrative Code Section 25-30.090, we are providing you with the following information:

(a) The Utility's name and address are:

Innerarity Island Development Corporation
1921 Seville Drive
Pensacola, FL 32503

(b) The person to contact regarding this notice, and such person's address and telephone number are:

Ronald L. Nelson, Esq.
517 East Government Street
Pensacola, FL 32502
Telephone Number: (850) 434-1700

(c) The location of the utility's books and records is:

1921 Seville Drive
Pensacola, FL 32503

and

4686 Magnolia Hill Court
Pace, FL 32571

(d) The date of this notice is:

January 27, 2014

(e) The date the utility will be abandoned is:

March 28, 2014

(f) Both the water system and the wastewater system are to be abandoned.

(g) The reason the Utility is to be abandoned is:

The person who owned IIDC for many years and who operated the Utility during such period died on December 25, 2012. Since that time, IIDC has made diligent efforts to find another party that would take over ownership and management of the Utility, but these efforts have been unsuccessful. IIDC wishes to no longer own and manage the Utility.

(h) The status of the Utility with the Florida Department of Environmental Protection regarding outstanding citations or violations is:

There are no outstanding citations or violations of which IIDC is aware.

Thank you very much for your attention to this matter.

Sincerely,

Ronald L. Nelson

RLN/an

cc: Alison Rogers, Escambia County Attorney
Shawn Hamilton, Florida Department of Environmental Protection
Dr. John Lanza, Escambia County Health Department
Kathy F. Collins, Innerarity Island Development Corporation

Filing # 10026970 Electronically Filed 02/07/2014 11:41:38 AM

IN THE CIRCUIT COURT OF
THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

ESCAMBIA COUNTY, FLORIDA, a political subdivision of the State of Florida,

Petitioner,

v.

Case No.

INNERARITY ISLAND DEVELOPMENT CORPORATION, a Florida corporation,

Respondent.
_____/

PETITION FOR APPOINTMENT OF RECEIVER PURSUANT TO NOTICE OF ABANDONMENT

Petitioner, Escambia County, Florida (County), sues Respondent, Innerarity Island Development Corporation (IIDC) and demands the appointment of a receiver pursuant to the Notice of Abandonment served by Respondent, and alleges:

1. This is an action for appointment of a receiver pursuant to a notice of abandonment served by Respondent according to §367.165(1), Fla. Stat. and to allow the receiver to operate the utility and dispose of the property of the utility according to §367.165(2), Fla. Stat.

2. Petitioner is a political subdivision of the State of Florida.

3. Respondent has operated a wastewater and water service utility as alleged in the Notice of Abandonment for numerous years. Due to the recent death of the original owner/incorporator, Respondent has decided to abandon the utility system.

4. On January 27, 2014, Respondent served a notice of abandonment upon Petitioner and the Public Service Commission pursuant to the statutory procedure of

§367.165(1), Fla. Stat., and F.A.C. §25-30.090. Attached to this Petition and incorporated by reference is a copy of the Notice of Abandonment of a Water and Wastewater Service.

5. According to §367.165(2), Fla. Stat., Petitioner is required to petition this court to appoint a receiver which may be the governing body of Escambia County or any other person deemed appropriate. Furthermore, according to §367.165(2), the receiver shall operate the utility from the date of abandonment (March 28, 2014) until such time as the receiver disposes of the property of the utility in a manner designed to continue the efficient and effective operation of utility service.

6. According to the Notice served by Respondent, the utility system shall be abandoned no later than March 28, 2014. Therefore, it is incumbent upon this Court to move expeditiously and to advance this case on the calendar for the appointment of a receiver to carry out the statutory obligations of abandonment.

WHEREFORE, Petitioner requests the following equitable relief:

A. Appoint a receiver according to §367.165(2), Fla. Stat.;

B. Require the receiver to operate the water and wastewater system from the date of abandonment until such time as the receiver disposes of the property of the utility in a manner designed to continue the efficient and effective operation of the utility service;

C Provide for the costs of the receiver to be paid by the customers and users of the waste and wastewater system previously operated by Respondent or to provide for alternative means of compensation of the receiver;

D. Award Petitioner its taxable costs; and

E. Award such other equitable and just relief as the court deems fit and appropriate.

Respectfully submitted,

Alison Rogers, County Attorney
221 Palafox Place, Suite 430
Pensacola, Florida 32502
(850) 595-4970
(850) 595-4979 - Facsimile

By: Charles V. Peppler, Deputy County Attorney
Florida Bar No.: 239739
Attorneys for Plaintiff, Escambia County, FL
cpeppler@co.escambia.fl.us
balarrie@co.escambia.fl.us; kmhill@co.escambia.fl.us

RONALD L. NELSON

ATTORNEY AT LAW

MEMBER OF FLORIDA,
GEORGIA AND NEW YORK BARS

517 EAST GOVERNMENT STREET
PENSACOLA, FLORIDA 32502

(850) 434-1700
FAX (850) 432-8800
RLN@NELSONLAWFLORIDA.COM

January 27, 2014

COUNTY ATTORNEYS OFFICE

31 JAN2014

PM03:02

By Hand Delivery
Larry Newsom
Assistant County Administrator
Escambia County
221 Palafox Place, Suite 420
Pensacola, FL 32502

By FedEx
ATTN: Tom Ballinger
Director, Division of Engineering
Public Service Commission
Commission Clerk's Office
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Notice of Abandonment of Water and Wastewater Service

Dear Messrs. Newsom and Ballinger:

This letter is being written on behalf of Innerarity Island Development Corporation, a Florida corporation ("IIDC"). IIDC owns, operates, manages, and controls a utility that provides water and wastewater service to the residents of the property known as Innerarity Island, in Escambia County, Florida (the "Utility").

IIDC is hereby giving notice that IIDC will be abandoning the Utility on March 28, 2014. Please consider this letter to be the 60 days' notice that is required by Florida Statutes Section 367.165.

As is required by Florida Administrative Code Section 25-30.090, we are providing you with the following information:

(a) The Utility's name and address are:

Innerarity Island Development Corporation
1921 Seville Drive
Pensacola, FL 32503

(b) The person to contact regarding this notice, and such person's address and telephone number are:

Ronald L. Nelson, Esq.
517 East Government Street
Pensacola, FL 32502
Telephone Number: (850) 434-1700

(c) The location of the utility's books and records is:

1921 Seville Drive
Pensacola, FL 32503

and

4686 Magnolia Hill Court
Pace, FL 32571

(d) The date of this notice is:

January 27, 2014

(e) The date the utility will be abandoned is:

March 28, 2014

(f) Both the water system and the wastewater system are to be abandoned.

(g) The reason the Utility is to be abandoned is:

The person who owned IIDC for many years and who operated the Utility during such period died on December 25, 2012. Since that time, IIDC has made diligent efforts to find another party that would take over ownership and management of the Utility, but these efforts have been unsuccessful. IIDC wishes to no longer own and manage the Utility.

(h) The status of the Utility with the Florida Department of Environmental Protection regarding outstanding citations or violations is:

There are no outstanding citations or violations of which IIDC is aware.

Thank you very much for your attention to this matter.

Sincerely,

Ronald L. Nelson

RLN/an

cc: Alison Rogers, Escambia County Attorney
Shawn Hamilton, Florida Department of Environmental Protection
Dr. John Lanza, Escambia County Health Department
Kathy F. Collins, Innerarity Island Development Corporation

MINUTES OF THE ATTORNEY-CLIENT SESSION
OF THE BOARD OF COUNTY COMMISSIONERS
HELD FEBRUARY 18, 2014
BOARD CHAMBERS, FIRST FLOOR, ERNIE LEE MAGAHA GOVERNMENT BUILDING
221 PALAFOX PLACE, PENSACOLA, FLORIDA
(4:00 p.m. – 4:21 p.m.)

Present: Commissioner Lumon J. May, Chairman, District 3
Commissioner Steven L. Barry, Vice Chairman, District 5
Commissioner Wilson B. Robertson, District 1
Commissioner Grover C. Robinson IV, District 4
Commissioner Gene M. Valentino, District 2
Larry M. Newsom, Interim County Administrator
Alison Rogers, County Attorney
Doris Harris, Deputy Clerk to the Board

AGENDA NUMBER

1. Call to Order

   Chairman May called the Attorney-Client Session to order at 4:00 p.m.

2. Ratification of Scheduling and Advertising of Meeting

   The Board was advised by County Attorney Rogers that the County Attorney requests that the Board ratify the scheduling and advertising of the meeting for February 18, 2014, at 4:00 p.m., pursuant to the recommendation that the Board:

   A. Ratify the scheduling of a private Meeting with the Board's attorneys to discuss pending litigation, in accordance with Section 286.011(8), Florida Statutes, for February 18, 2014, at 4:00 p.m.; and

   B. Ratify the advertising of the public notice printed below in the Pensacola News Journal on Wednesday, February 12, 2014:

(Continued on Page 2)

AGENDA NUMBER – Continued

2. Continued...

B. Continued...

PUBLIC NOTICE

IT IS THE INTENTION of the Board of County Commissioners of Escambia County, Florida, to hold a private meeting with its attorney to discuss pending litigation in the case of *Escambia County, FL v. Innerarity Island Development Corporation* in accordance with Section 286.011(8), Florida Statutes. Such attorney-client session will be held at 4:00 p.m. C.S.T. on Tuesday, February 18, 2014, in the Board Meeting Room, Ernie Lee Magaha Government Building, 221 Palafox Place, First Floor, Pensacola, Florida. Commissioners Wilson B. Robertson, Gene M. Valentino, Lumon J. May, Grover C. Robinson, IV, and Steven L. Barry, Interim County Administrator Larry M. Newsom, County Attorney Alison Rogers, Attorney representing Escambia County Charles V. Peppler, Deputy County Attorney, and a certified court reporter will attend the attorney-client session.

3. Escambia County v. Innerarity Island Development Corporation

The Board:

A. Was advised by County Attorney Rogers that the County Attorney requests that the Board retire to the BCC Conference Room for the Attorney-Client Session regarding the Case of Escambia County, FL v. Innerarity Island Development Corporation, which session was advertised in the Wednesday, February 12, 2014, edition of the Pensacola News Journal *(in a block ad, Legal No. 1619038, and in the Board of County Commissioners – Escambia County, Florida, Meeting Schedule February 17-February 21, 2014 – Legal No. 1619127, on February 15, 2014)*; and

B. Was advised by Chairman May that Commissioners Wilson B. Robertson, Gene M. Valentino, Lumon J. May, Grover C. Robinson IV, and Steven L. Barry, Interim County Administrator Larry M. Newsom, County Attorney Alison Rogers, Attorney representing Escambia County Charles V. Peppler, Deputy County Attorney, and a certified court reporter would attend the Attorney-Client Session.

4:00 P.M. – MEETING RECESSED
4:20 P.M. – MEETING RECONVENED

MINUTES OF THE ATTORNEY-CLIENT SESSION – Continued

AGENDA NUMBER – Continued

3. Continued...

Motion made by Commissioner Valentino, seconded by Commissioner Robertson, and carried unanimously, approving to direct the Emerald Coast Utilities Authority (ECUA) to take over all assets *(and)* to be the receiver under the law, under the designated section of this ruling, pertaining to water and sewer, under Florida Statutes, and that ECUA become designees of the water and sewer system known as the Innerarity Point Development Corporation.

ADJOURNMENT

There being no further business to come before the Board, Chairman May declared the Attorney-Client of the Board of County Commissioners adjourned at 4:21 p.m.

BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA

ATTEST:

By: _____
Lumon J. May, Chairman

Pam Childers
Clerk of the Circuit Court & Comptroller

_____
Deputy Clerk

Approved: March 6, 2014

MINUTES OF THE ATTORNEY-CLIENT SESSION
OF THE BOARD OF COUNTY COMMISSIONERS
HELD FEBRUARY 18, 2014
BOARD CHAMBERS, FIRST FLOOR, ERNIE LEE MAGAHA GOVERNMENT BUILDING
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Present: Commissioner Lumon J. May, Chairman, District 3
Commissioner Steven L. Barry, Vice Chairman, District 5
Commissioner Wilson B. Robertson, District 1
Commissioner Grover C. Robinson IV, District 4
Commissioner Gene M. Valentino, District 2
Larry M. Newsom, Interim County Administrator
Alison Rogers, County Attorney
Doris Harris, Deputy Clerk to the Board

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(Continued on Page 2)

AGENDA NUMBER – Continued

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4:20 P.M. – MEETING RECONVENED

AGENDA NUMBER – Continued

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Motion made by Commissioner Valentino, seconded by Commissioner Robertson, and carried unanimously, approving to direct the Emerald Coast Utilities Authority (ECUA) to take over all assets *(and)* to be the receiver under the law, under the designated section of this ruling, pertaining to water and sewer, under Florida Statutes, and that ECUA become designees of the water and sewer system known as the Innerarity Point Development Corporation.

ADJOURNMENT

There being no further business to come before the Board, Chairman May declared the Attorney-Client of the Board of County Commissioners adjourned at 4:21 p.m.

BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA

ATTEST:

By: _____
Lumon J. May, Chairman

Pam Childers
Clerk of the Circuit Court & Comptroller

_____
Deputy Clerk

Approved: March 6, 2014

ALISON PERDUE ROGERS
County Attorney
Board Certified City, County, and Local Government Law

CHARLES V. PEPPLER
Deputy County Attorney
Board Certified Civil Trial Law

STEPHEN G. WEST
Senior Assistant County Attorney
Board Certified Real Estate Law

RYAN E. ROSS
Assistant County Attorney
Board Certified City, County, and Local Government Law

KRISTIN D. HUAL
Assistant County Attorney

KERRA A. SMITH
Assistant County Attorney

BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA
OFFICE OF THE COUNTY ATTORNEY

221 PALAFOX PLACE, SUITE 430
PENSACOLA, FLORIDA 32502

TELEPHONE: (850) 595-4970
TELEFAX: (850) 595-4979

February 24, 2014

Via E-Mail and Fax

Stephen Sorrell
Executive Director
Emerald Coast Utilities Authority
9255 Sturdevant Street
Pensacola, FL 32514

Re: Innerarity Island Development Corporation

Dear Mr. Sorrell:

The Innerarity Island Development Corporation (IIDC) has filed a notice of abandonment of water and sewer systems pursuant to Section 367.165(1), Florida Statutes. The Notice was served on the County on January 27, 2014, giving the County and IIDC's customers and users sixty days notice that a receiver would be appointed to operate the system and dispose of the property of the utility. The County has no discretion in this matter but is required by statute to bring a petition to appoint a receiver. I am enclosing a copy of the Petition for Appointment of a Receiver with the attached Notice of Abandonment.

At its regularly scheduled meeting on February 18, 2014, the Board of County Commissioners voted to have ECUA appointed as receiver to fulfill the statutory obligations imposed upon a receiver pursuant to Section 367.165(2), Fla. Stat. A hearing has been scheduled for March 21, 2014 at 9:45 a.m. before Judge Jan Shackelford for the purpose of appointing a receiver. I am providing you with a copy of the notice so that you can appear at the hearing or otherwise take appropriate measures to make known to Judge Shackelford whether ECUA would accept an appointment as receiver pursuant to this statute. By copy of this letter I am also providing a copy of the notice of hearing to your counsel, Mr. Odom. If ECUA objects to

being named receiver, then it would be appreciated if ECUA would let Judge Shackelford and the parties know prior to the hearing so the parties can take other steps.

Thank you for your attention to this matter.

Sincerely yours,

Charles V. Peppler
Deputy County Attorney

CVP/el
Enclosures
cc: Bradley Odom, General Counsel
Larry M. Newsom, Interim County Administrator
Ron Nelson, Attorney for IIDC

ODOM & BARLOW, P.A.

ATTORNEYS AT LAW

1800 NORTH "E" STREET

PENSACOLA, FLORIDA 32501

BRADLEY S. ODOM*
RICHARD D. BARLOW
ROBERT W. KIEVIT**
ELLEN D. ODOM**
*Also licensed in Alabama
**Of Counsel

TELEPHONE: (850) 434-3527
FACSIMILE: (850) 434-6380

E-MAIL: email@odombarlow.com

March 4, 2014

COUNTY ATTORNEYS OFFICE
05 MAR2014
PM02:48

Charles V. Peppler, Esq.
Deputy County Attorney
221 Palafox Place, Suite 430
Pensacola, Florida 32502

Re: *Escambia County, Florida v. Innerarity Island Development Corporation*
Case Number: 2014 CA 000237

Dear Mr. Peppler:

I am writing this letter on behalf of the Emerald Coast Utilities Authority (ECUA) in response to your letter to its Executive Director dated February 24, 2014 wherein you indicated that the Board of County Commissioners (BCC) had voted to nominate ECUA to serve as Receiver in the above-referenced matter. As you surely surmised, that request was discussed by the ECUA Board at its meeting on February 27. It voted not to accept the BCC's nomination. Instead, it believes that the Court should appoint a private Receiver who can devote all of its attentions to the needs of that private utility system.

A bit of background appears to be in order. The Innerarity Island Development Corporation was formed on May 1, 1974. The development was thus clearly in existence prior to ECUA's formation in 1981, and it has maintained its status as a private utility continually since that time. ECUA has never had any regulatory authority over that entity. Instead, it would appear that the BCC retained regulatory supervision over it, in conjunction with the Public Service Commission (PSC). Pursuant to its enabling legislation, however, ECUA has no dealings with the PSC.

Apparently, over the years the private water and wastewater system on Innerarity Island has deteriorated to a very poor state. It is ECUA's understanding that it would be a substantial undertaking to address the problems of that private system and bring it up to the appropriate standards. We further believe that doing so would require the investment of significant time and money, and as a public entity ECUA has a surplusage of neither. Instead, it would appear that a private entity able to concentrate its full attention to the challenges associated with this private utility system would be more appropriate than having a public entity serve in that role. This approach would also ensure that Innerarity Island receives all of the attention that it deserves.

We further believe such an approach to be consistent with the Florida Legislature's directives regarding the separation between ECUA and private utilities performing similar roles prior to ECUA's formation.

With that being said, ECUA would be happy to answer questions the ultimately appointed Receiver may have, from time to time. ECUA would also be willing to work with the Receiver, the County, and possibly others in helping develop a long-term plan to elevate the quality of water and sewer facilities on Innerarity Island and bring those facilities up to appropriate standards.

Given its limitations, however, ECUA must decline the BCC's nomination that it serve as the Receiver for this private utility system. In light of the above, as well as the fact that I see no pleading has yet been filed with the Court formally requesting that ECUA serve as the Receiver, please advise as to whether you feel ECUA's presence at the hearing apparently scheduled for March 21, 2014 at 9:45 a.m. is necessary/needed. Thank you.

Sincerely,

Bradley S. Odom

BSO:cab

cc: Ronald L. Nelson
517 East Government Street
Pensacola, Florida 32502

IN THE CIRCUIT COURT OF
THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

ESCAMBIA COUNTY, FLORIDA, a political subdivision of the State of Florida,

Petitioner,

v.

Case No. 2014 CA 000237

INNERARITY ISLAND DEVELOPMENT CORPORATION, a Florida corporation,

Respondent.
_____/

ORDER APPOINTING RECEIVER

THIS MATTER having come before the Court on March 21, 2014 upon the Petition of Escambia County to appoint a Receiver pursuant to a Notice of Abandonment and the Court having heard argument of counsel and being fully advised in the premises, hereby finds:

1. Respondent owns and operates a water and wastewater utility and associated real and personal property constituting a system (hereinafter "System") within the jurisdictional boundaries of Escambia County, Florida. Respondent is a utility as defined by § 367.021(12), Fla. Stat. and owns and operates a system as defined by § 367.021(11), Fla. Stat.

2. Respondent purchases water and wastewater services from Emerald Coast Utilities Authority which is then resold and billed to the customers of System.

3. On or about January 27, 2014, Respondent formally filed a Notice of Abandonment pursuant to § 367.165(1), Fla. Stat. and Escambia County subsequently filed its Petition to Appoint a Receiver (the "Petition") to take possession of and operate

Respondent's System and utility.

ACCORDINGLY, IT IS HEREBY ORDERED AND ADJUDGED:

A. The County's Petition is hereby granted.

B. Appointment of Receiver and Term. Escambia County is hereby appointed as the Receiver for Respondent's System. The term of this receivership shall begin on a date mutually agreeable to the Receiver and Respondent, but no later than March 28, 2014. It shall terminate when the Receiver disposes of the real and personal property of Respondent as provided in § 367.165(2), Fla. Stat., in a manner designed to continue the efficient and effective operation of utility service. In light of Respondent's abandonment of the System, Respondent is not, nor will be, entitled to any benefits or proceeds, specifically including any proceeds from disposition of property or distribution of monies, that result from, or which are associated with, the disposal of all, or a part of, the System by the Receiver. Upon termination of the receivership as provided, the Receiver shall be released from all further obligations to operate and maintain the System.

C. Surrender of Property, Assets, Documents, and Facilities. All real and personal property, assets, documents, and facilities comprising and necessary to the System shall be transferred to the custody and possession of Receiver after entry of this Order. In this respect, Respondent shall: (1) transfer to and produce to the Receiver all customer account records, contracts, agreements, non-privileged correspondence, business records, easements, construction drawings, record drawings, O&M manuals, permits, operating protocol, and any other documents related to the System, to include the real and personal property, assets and liabilities associated therewith in order that the Receiver may then operate and maintain said System, and (2) surrender possession of all

real and personal property comprising the System and owned by Respondent to the custody of Receiver. Upon entry of this Order, Respondent shall transfer and produce all bank accounts, bank account records, customer deposits, cash, and accounts receivable balances to the custody of Receiver, which relate to the subject abandoned property and System. However, the Receiver shall maintain all documents in accordance with its record retention policy and subject to all applicable federal, state or local laws. At Respondent's cost and expense, Respondent may retain, or make arrangements for the duplication of records in the possession of the Receiver to be disposed of. To the extent that the System is sold or otherwise disposed of, the Receiver shall include a provision in the instrument effectuating the transfer for the maintenance of records as provided herein.

D. Receiver's Powers. Once the documents maintained and possessed by Respondent together with the real and personal property owned by Respondent are surrendered and transferred to the custody and possession of Receiver in accordance with Paragraph C above, the Receiver shall send written notice of receipt thereof to this Court and shall continue the lawful operation and maintenance of the utility service to the customers of Respondent. In order to discharge its responsibilities under this Order and by statute, the Receiver shall have the following powers and authority:

(1) To provide and maintain water and wastewater utility service within the designated service area, in compliance with all applicable permits, regulations, local laws, and statutes;

(2) To make extensions, expansions, repairs, replacements, and improvements to the System as appropriate and necessary;

(3) To collect rates, fees and charges, and deposits for all utility service

provided by the System in accordance with all applicable state and local laws;

(4) To increase rates charged to customers served by the System or to impose special assessments in accordance with law upon real property owners benefitted by the System to pay for costs of operation, maintenance and upgrade of the System;

(5) To borrow money and to pledge or encumber the facilities, assets and revenues of the System for the repayment thereof;

(6) To enter into contracts or agreements with any other public agency or private entity providing for or relating to the operation and maintenance of the System or the connection of the customers to any other public or private water and wastewater utility;

(7) To accept any gifts, grants, or contributions in kind in connection with the management, operation, and maintenance of the System;

(8) To retain and pay the fees, costs, and salaries of accountants, architects, engineers, attorneys, employees, or other professional consultants as necessary or desirable in the management, operation, or maintenance of the System and to ensure compliance with all provisions of this Order for the rates, fees and charges authorized under this paragraph;

(9) To pay from the revenues collected from the customers of the System, all necessary and reasonable operating expenses (including the costs and expenses contemplated in this paragraph) in a manner designed to continue the efficient and effective operation of said System. Furthermore, Receiver may expend such reasonable amounts as prudent, necessary, and advisable, in the professional judgment of Receiver, in order to effectuate the efficient and effective operation of the System.

(10) To sue or be sued, to implead or to be impleaded, to complain and defend in any court, and to seek all legal or equitable relief in accordance with applicable state law;

(11) To apply for and obtain any applicable federal, state, and local governmental permits, certificates, licenses, or other approvals in order to operate and maintain the System;

(12) To perform generally any other lawful acts necessary or desirable to carry out the express powers and authority granted and imposed herein.

(13) To seek further instructions and/or guidance from this Court concerning the operation and maintenance of the System during any part of the time frame that the receivership exists.

E. Continuing Jurisdiction. This Court shall retain jurisdiction in this cause to enter such further orders or take any action as it deems appropriate. Nothing in this Order is intended to determine what entity or person may be ultimately and permanently responsible for the operation and maintenance of the System, except as provided in Paragraph B, above. As Receiver did not operate or own a water and wastewater utility or system prior to entry of this Order, it is contemplated that Receiver will be endeavoring to dispose of the System in compliance with statute and in furtherance of its police power. Further, Respondent contends that certain parcels of real property are not part of the System and are not necessary for its effective and efficient operation. Receiver contends that the statutory definition of System set forth in § 367.021(11) provides that real property used or useful in providing service would encompass all real property owned by Respondent. In the event that Receiver and Respondent are not able to reach an

agreement concerning the extent of real property owned by Respondent which should be ultimately disposed of as part of Receiver's obligation under § 367.165(2), Fla. Stat., then the Court retains jurisdiction to make a determination as to the extent of real property either necessary or useful for the efficient and effective operation of the System.

F. Immunity from Liability and Violations. As consideration for Receiver assuming the responsibility for the continued operation and maintenance of the System, the Receiver and its agents and employees are hereby declared to be held harmless and not legally responsible for any or all claims, liability, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including attorneys' fees, that have arisen or may arise out of (or be the result of) the past design, construction, operation, and maintenance of the System. This immunity shall include, but is not limited to: immunity from injury to persons, damage to property or property rights, or violation of any governmental law, rule, regulation or requirement that may arise from the design, construction, operation, or maintenance of the System occurring prior to the effective date of abandonment of March 28, 2014, or during the period of receivership, if such injury, damage or violation is the direct result of design, construction, operation or maintenance of the System occurring prior to the effective date of abandonment of March 28, 2014.

G. Respondent's Liability. Respondent shall remain liable under all applicable laws for any claims, violations, demands, penalties, suits, proceedings, actions or fees occurring on or prior to the effective date of abandonment of March 28, 2014. To the extent that any such claim, violation, demand, penalty, suit, proceeding, action, or fee is presented, Receiver, or its successors or assigns, shall make available to Respondent all documents surrendered pursuant to Paragraph C herein.

H. Receiver's Separation of Funds. Escambia County, as Receiver, is hereby directed by this Court to maintain separate accounts and records for the management of the Respondent's System. Additionally, this Court hereby directs that the revenues from the Respondent's System are not to be considered the revenues of the Receiver, nor are the revenues of the Receiver to be considered those of Respondent.

I. Receiver's Obligations for Operation. The Receiver in this cause is hereby directed to operate the System until disposed of as provided by this Order. The System shall be operated by the Receiver in such a manner so as to provide efficient and effective continuous service to the customers of the System during the term of this receivership and as can be provided from the revenues of the System.

J. Receiver's Accounting to the Court. Upon request and subject to the Florida Public Records Act, Receiver shall submit to the Court and to Respondent financial and operational reports for the System for the duration of its receivership.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida this 21st day of March, 2014.

\S\ JAN SHACKELFORD

Jan Shackelford, Circuit Court Judge

Copies to: Charles V. Peppler, Deputy County Attorney
Ron Nelson, Attorney for Respondent

MINUTES OF THE ATTORNEY-CLIENT SESSION
OF THE BOARD OF COUNTY COMMISSIONERS
HELD APRIL 10, 2014
BOARD CHAMBERS, FIRST FLOOR, ERNIE LEE MAGAHA GOVERNMENT BUILDING
221 PALAFOX PLACE, PENSACOLA, FLORIDA
(10:03 a.m. – 10:36 a.m.)

Present: Commissioner Lumon J. May, Chairman, District 3
Commissioner Steven L. Barry, Vice Chairman, District 5
Commissioner Wilson B. Robertson, District 1
Commissioner Grover C. Robinson IV, District 4
Commissioner Gene M. Valentino, District 2
Honorable Pam Childers, Clerk of the Circuit Court and Comptroller
Larry Newsom, Interim County Administrator
Alison Rogers, County Attorney
Susan Woolf, General Counsel to the Clerk
Lizabeth Carew, Recording Specialist
Judy H. Witterstaeter, Program Coordinator, County Administrator's Office

AGENDA NUMBER

1. Call to Order

County Attorney Rogers called the Attorney-Client Session to order at 10:03 a.m.

2. Escambia County, FL v. Innerarity Island Development Corporation

The Board:

A. Was advised by County Attorney Rogers that she has requested the advice of the Board concerning Escambia County, FL v. Innerarity Island Development Corporation; and

(Continued on Page 2)

AGENDA NUMBER – Continued

2. Continued…

   B. Was advised by Chairman May that Commissioners Wilson B. Robertson, Gene M. Valentino, Lumon J. May, Grover C. Robinson IV, and Steven L. Barry, Interim County Administrator Larry M. Newsom, County Attorney Alison Rogers, and attorney representing Escambia County, Charles V. Peppler, Deputy County Attorney, would attend the Attorney-Client Session.

   For Information: The meeting was advertised in the Saturday, April 5, 2014, edition of the Pensacola News Journal in a block ad, Legal No. 1621813, and in the Board of County Commissioners – Escambia County, Florida, Meeting Schedule April 7-April 11, 2014 – Legal No. 1621817, on April 5, 2014.

10:04 A.M. – MEETING RECESSED
10:34 A.M. – MEETING RECONVENED

Motion made by Commissioner Valentino, seconded by Commissioner Robertson, and carried unanimously, approving to direct the County Attorney's Office to request the Court to make ECUA *(Escambia County Utilities Authority)* a joint receiver in the action of Escambia County *(FL)* v. Innerarity Island Development Corporation, in accordance with the section in question, Section 286.011.

ADJOURNMENT

There being no further business to come before the Board, Chairman May declared the Attorney-Client of the Board of County Commissioners adjourned at 10:36 a.m.

BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA

ATTEST:

By: _____
Lumon J. May, Chairman

Pam Childers
Clerk of the Circuit Court & Comptroller

_____
Deputy Clerk

Approved: April 29, 2014

4/10/2014

lfc

MINUTES OF THE SPECIAL MEETING OF THE BOARD OF COUNTY COMMISSIONERS
HELD APRIL 10, 2014
BOARD CHAMBERS, FIRST FLOOR, ERNIE LEE MAGAHA GOVERNMENT BUILDING
221 PALAFOX PLACE, PENSACOLA, FLORIDA
(10:41 a.m. – 11:54 a.m.)

Present: Commissioner Lumon J. May, Chairman, District 3
Commissioner Steven L. Barry, Vice Chairman, District 5
Commissioner Wilson B. Robertson, District 1
Commissioner Grover C. Robinson IV, District 4
Commissioner Gene M. Valentino, District 2
Honorable Pam Childers, Clerk of the Circuit Court and Comptroller
Larry Newsom, Interim County Administrator
Alison Rogers, County Attorney
Susan Woolf, General Counsel to the Clerk
Lizabeth Carew, Recording Specialist
Judy H. Witterstaeter, Program Coordinator, County Administrator's Office

AGENDA NUMBER

1. Call to Order

Chairman May called the Meeting to order at 10:41 a.m.

2. Invocation

Chairman May advised that Reverend Evon Horton, Pastor, Brownsville Assembly of God, would deliver the Invocation.

3. Pledge of Allegiance to the Flag

Chairman May advised that Commissioner Robinson would lead the Pledge of Allegiance to the Flag.

4. Was the Meeting Properly Advertised?

The Board was advised by Lizabeth Carew, Recording Specialist, Clerk to the Board's Office, that the Meeting was advertised in the Pensacola News Journal on April 5, 2014, in the *Board of County Commissioners – Escambia County, Florida, Meeting Schedule April 7 – April 11, 2014, Legal No. 1621817.*

AGENDA NUMBER – Continued

5. Adoption of the Agenda

Motion made by Commissioner Robinson, seconded by Commissioner Valentino, and carried unanimously, adopting the agenda, as prepared and duly amended.

6. Special Event Permit Application

Motion made by Commissioner Robinson, seconded by Commissioner Robertson, and carried unanimously, approving the "Special Event Permit Application" for a limited waiver of the noise restrictions imposed by the Escambia County Noise Abatement Ordinance, extending the time to include the fireworks display, sponsored by Pensacola Christian College, to be held on the rooftop of the Visual Arts Building, located at 250 Brent Lane, between 11:00 p.m. and 11:20 p.m. on April 25, 2014.

Motion made by Commissioner Robinson, seconded by Commissioner Valentino, approving to agenda to the April 29, 2014, Meeting, William Banks' request for funding, in the amount of $50,000, for the "2014 Gulf Coast Summerfest" event.

7-9. Approval of Three Agenda Items

Motion made by Commissioner Robertson, seconded by Commissioner Valentino, and carried unanimously, approving Agenda Items 7 through 9, as follows *(as amended to approve Item 7 subject to Legal sign-off)*:

7. Approving, and authorizing the Chairman to execute, the Interlocal Agreement between Escambia County and the City of Gulf Breeze concerning the water and wastewater service of the Innerarity Island Development Corporation, subject to Legal sign-off.

8. Adopting the Resolution *(R2014-27)* approving Supplemental Budget Amendment #149, Special Revenue Fund (101), in the amount of $50,000, to recognize a transfer from the General Fund (001) and to appropriate these funds to cover any Innerarity Island Development Corporation (IIDC) costs not covered by revenues collected.

AGENDA NUMBER – Continued

7-9. Approval of Three Agenda Items – Continued

9. Taking the following action concerning Innerarity water and wastewater utility system:

   A. Adopting the Resolution *(R2014-28)* establishing a Schedule of Rates and Fees for the operation of the Innerarity water and wastewater utility system to which Escambia County has been appointed Receiver;

   B. Authorizing the scheduling of a Public Hearing for 5:33 p.m. at the Board's Regular Meeting of April 29, 2014, to allow for public comment on the proposed Schedule of Rates and Fees; and

   C. Authorizing the advertising of a Public Hearing, pursuant to Section 153.11(3)(a), Florida Statutes, in a newspaper published in the County, at least ten days before the Hearing.

10. DJJ Cost Sharing and Repayment

Motion made by Commissioner Robinson, seconded by Commissioner Barry, and carried unanimously, adopting the Resolution *(R2014-29)* supporting Department of Juvenile Justice (DJJ) cost sharing and repayment, and authorizing the Chairman to execute the Resolution.

AGENDA NUMBER – Continued

11. Selection of County Administrator

Motion made Commissioner Robinson, seconded by Commissioner Barry, and carried 3-2, with Commissioner Valentino and Commissioner Robertson voting "no," approving, for whoever is selected as County Administrator, a one-year contract "at the amount budgeted on the item" and, if terminated early, a three-month severance.

Motion made Commissioner Robinson, seconded by Commissioner Barry, and carried unanimously, approving to "move forward with Jack Brown, per those parameters, and that the contract, per the parameters we already set forward, be negotiated between the County Attorney and the Chairman and any individual that we put forward."

Speaker(s):

Larry Aiken
Jay Patel
Jesse Casey

For Information: The Board heard a motion from Commissioner Robertson to drop from further consideration all the candidates from the County Administrator position, and the motion failed 2-3, with Commissioner Robinson, Commissioner Barry, and Commissioner May voting "no."

SUPPLEMENTAL COUNTY ADMINISTRATOR'S REPORT

1. TIGER Grant

Motion made by Commissioner Robinson, seconded by Commissioner Valentino, and carried unanimously, approving, and authorizing the Chairman to sign, a letter in support of the City of Pensacola, who is applying for a TIGER (Transportation Investment Generating Economic Recovery) Grant for the Port of Pensacola; with the expansion of the Panama Canal, a TIGER Grant would allow the City of Pensacola to position the Port of Pensacola to become a major economical player and boost our local economy.

ANNOUNCEMENTS

1. For Information: Commissioner May advised that, when absent, his aide, the County Attorney, the County Administrator, and the "Co-Chair" are aware of his whereabouts.

ADJOURNMENT

There being no further business to come before the Board, Chairman May declared the Special Meeting of the Board of County Commissioners adjourned at 11:54 a.m.

BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA

ATTEST:

By:_____
Lumon J. May, Chairman

Pam Childers
Clerk of the Circuit Court & Comptroller

_____
Deputy Clerk

Approved: April 29, 2014

INTERLOCAL AGREEMENT BETWEEN ESCAMBIA COUNTY, FLORIDA, AND THE CITY OF GULF BREEZE, FLORIDA, REGARDING THE INNERARITY ISLAND DEVELOPMENT CORPORATION.

THIS INTERLOCAL AGREEMENT (Agreement) is made by and between Escambia County, a political subdivision of the State of Florida (County), with administrative offices located at 221 Palafox Place, Pensacola, Florida 32502, and the City of Gulf Breeze, a municipal corporation of the State of Florida (City), with administrative offices located at 1070 Shoreline Drive, Gulf Breeze, Florida 32562.

WITNESSETH

WHEREAS, the County has been appointed as the receiver of a water and wastewater system operated by the Innerarity Island Development Corporation, pursuant to the provisions of Chapter 367, Florida Statutes; and

WHEREAS, the City operates and maintains a water and wastewater system as part of the municipal services that it provides to its residents; and

WHEREAS, the County has requested assistance from the City and the City has agreed to assist the County during the course of its receivership over the water and wastewater system of the Innerarity Island Development Corporation; and

WHEREAS, the County and the City wish to enter into this Agreement to confirm their respective rights and responsibilities and to ensure that the City is properly compensated for the assistance it provides to the County;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES DESCRIBED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. During the term of the County's receivership of the Innerarity Island Development Corporation, the City will provide services for operations, maintenance, meter reading, billing, and collections for the water and wastewater system as described in the schedule of reimbursements attached to this Agreement as Exhibit A.

2. The City shall submit to the County a monthly invoice for its services, and the County shall promptly pay the City in accordance with Section 218.74, Florida Statutes. All funds collected by the City from the water and wastewater system shall be remitted directly to the County at the end of each monthly billing cycle without setoff for costs incurred by the City.

3. While providing the services contemplated in this Agreement, the City shall be acting solely as the agent of the County and shall not be deemed an owner or operator of the water and wastewater system. Nothing in this Agreement shall be construed as a

transfer to the City of any asset, obligation, or liability of the water and wastewater system.

4. The County agrees to be responsible for its negligent acts and omissions and those of its employees and agents, including the City while providing the services contemplated in this Agreement, and agrees to be liable for the damages proximately caused by those acts or omissions. However, no provision of this Agreement shall be construed, or is in any way intended to be construed, as a waiver of either party's sovereign immunity beyond the limits established in Section 768.28, Florida Statutes.

5. Either party may terminate this Agreement for cause or convenience upon thirty (30) days written notice to the other. Unless terminated, the Agreement shall continue for the term of the County's receivership.

6. The parties acknowledge that this Agreement and any related financial records, and its reports, plans, correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes.

7. This Agreement shall not be assigned, transferred, or otherwise encumbered, under any circumstances, without prior written consent of the other party.

8. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or Agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity.

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and the parties stipulate that jurisdiction and venue for any dispute arising under this Agreement shall be in the courts of Escambia County, Florida.

10. The parties shall execute and deliver all documents and perform further actions that may be reasonably necessary to effectuate the provisions of this Agreement.

11. The failure of a party to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of any other provision or of any party's right to thereafter enforce the same in accordance with this Agreement.

12. This Agreement shall become effective when filed in the Offices of the Clerk of the Circuit Court of Escambia County and Santa Rosa County, and the County shall be responsible for such filings.

IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be duly executed on this ____ day of _____, 2014.

ESCAMBIA COUNTY, FLORIDA, by and through its duly authorized BOARD OF COUNTY COMMISSIONERS.

By: _____
Lumon J. May, Chairman

ATTEST: Pam Childers
Clerk of the Circuit Court

Date: _____

By: _____
Deputy Clerk

(SEAL)

CITY OF GULF BREEZE, a municipal corporation organized under the laws of the State of Florida

By: _____
Edwin A. Eddy, City Manager

ATTEST: Leslie Guyer
City Clerk

Date: _____

By: _____

(SEAL)

ESCAMBIA COUNTY
CLERK'S ORIGINAL
4/10/2014 #8

Board of County Commissioners
Escambia County
Supplemental Budget Amendment Resolution

Resolution Number
R2014-27

WHEREAS, the following revenues were unanticipated in the adopted budget for Escambia County and the Board of County Commissioners now desires to appropriate said funds within the budget.

WHEREAS, on March 21st th courts filed an order requiring the County to become the receiver for an abandoned water and wastewater utility system and since revenues will not be sufficient to cover the expenses, funds must be transferred to pay the overage.

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Escambia County, Florida, that in accordance with Florida Statutes, Section 129.06 (2d), it does hereby appropriate in the following funds and accounts in the budget of the fiscal year ending September 30, 2014:

Special Revenue Fund	101		
Fund Name	**Fund Number**		
Revenue Title	**Fund Number**	**Account Code**	**Amount**
Transfer from the General Fund	101	381001	$50,000
Total			**$50,000**

Appropriations Title	**Fund Number/Cost Center**	**Account Code/ Project Number**	**Amount**
Aids to Government Agencies	101/1102~~xx~~ 10 BVP	58101	$50,000
Reserves for Operating	001/110201	59805	(50,000)
Transfers	001/110215	59101	50,000
1102xx = IIDC Operating			
Total			**$50,000**

Date: 4/11/2014 Verified By: Dthuss

NOW THEREFORE, be it resolved by the Board of County Commissioners of Escambia County, Florida, that the foregoing Supplemental Budget Amendment be made effective upon adoption of this Resolution.

ATTEST:
Pam Childers
CLERK OF THE CIRCUIT COURT

BOARD OF COUNTY COMMISSIONERS SEAL ESCAMBIA CO., FL

Deputy Clerk

04-10-2014
Adopted

4/2/14
OMB Approved

Supplemental Budget Amendment
#149

BOARD OF COUNTY COMMISSIONERS
OF ESCAMBIA COUNTY, FLORIDA

Lumon J. May, Chairman

Date Executed
April 10, 2014

Entered
BVP
4/14/14

Posted
04/14/2014
nac

ESCAMBIA COUNTY
CLERK'S ORIGINAL
4/10/2014/#9

RESOLUTION R2014-28

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA IMPOSING A SCHEDULE OF RATES AND FEES IN ORDER FOR ESCAMBIA COUNTY TO FULFILL ITS OBLIGATION AS A RECEIVER PURSUANT TO §367.165(2), FLA. STAT.; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to §367.165(2), Fla. Stat., and the Order entered by Hon. Jan Shackelford on March 21, 2014, the Board of County Commissioners has the authority and responsibility to set by resolution rates and fees for water and wastewater utility service; and

WHEREAS, the Board of County Commissioners will be entering into a Memorandum of Understanding with the City of Gulf Breeze for the operation of the Innerarity Water and Wastewater Utility System; and

WHEREAS, the Board of County Commissioners, has now determined that it is necessary and in the best interest of the health, safety and welfare of the public to impose a Schedule of Rates and Fees for water and wastewater service being provided to customers of the Innerarity Water and Wastewater Utility System as provided herein; and

WHEREAS, the Board of County Commissioners further finds that the new Schedule of Rates and Fees for water and wastewater service shall become effective on May 1, 2014.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA:

Section 1. That the foregoing recitals are true and correct and incorporated herein by reference.

Section 2. That the following Schedule of Rates and Fees shall hereby be established as part of Escambia County fulfilling its obligations as Receiver pursuant to §367.165(2), Fla. Stat. and the Order appointing Escambia County as receiver entered on March 21, 2014 by Hon. Jan Shackelford:

Verified By: DHanna
Date: 4/11/2014

SCHEDULE OF RATES AND FEES BEGINNING MAY 1, 2014

A. Residential Water and Wastewater Service

Monthly Bill Base Rate

Meter Size	Water Base Fee	Wastewater Base Fee	Base Fee for Both
3/4"	$11.41	$16.00	$27.41
1"	$20.13	$28.15	$48.28
1 1/2"	$49.67	$64.56	$114.23
2"	$79.72	$102.09	$181.81
3"	$159.33	$200.63	$359.96
4"	$238.94	$296.75	$535.69
6"	$470.67	$572.61	$1,043.28

Per 1000 Gallons Charge	
Water/1000 gallons	**2.90**
Wastewater/1000 gallons	**4.10**

B. Commercial Water and Wastewater Service

Monthly Bill Base Rate

Meter Size	Water Base Fee	Wastewater Base Fee	Base Fee for Both
3/4"	$11.41	$16.00	$27.41
1"	$20.13	$28.15	$48.28
1 1/2"	$49.67	$64.56	$114.23
2"	$79.72	$102.09	$181.81
3"	$159.33	$200.63	$359.96
4"	$238.94	$296.75	$535.69
6"	$470.67	$572.61	$1,043.28

Per 1000 Gallons Charge	
Water/1000 gallons	**2.90**
Wastewater/1000 gallons	**4.10**

C. Other Fees and Charges

$35.00 as deposit for residential water and wastewater service.
$75.00 as deposit for commercial water and wastewater service based on equivalent residential unit..
$25.00 for new service/new account.
$15.00 for added service.
$25.00 for disconnect and reconnect service.
$50.00 for after-hours reconnect
$35.00 payment by check returned for non-sufficient funds (NSF).

D. Miscellaneous

Any other fees and administrative charges as fixed and determined by City of Gulf Breeze as agent for Board of County Commissioners of Escambia County.

Section 3. That the foregoing approved Schedules of Rates and Fees for water and wastewater shall become effective on the 1st day of May, 2014.

Section 4. That the rates and fees provided herein shall be valid for a period of 120 days at which time the Board may adjust upwardly or downwardly as deemed appropriate.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Section 5. This Resolution shall take effect immediately upon adoption by the Board of County Commissioners.

ADOPTED this 10th day of April, 2014.

BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA

By: _____
Lumon J. May, Chairman

ATTEST: PAM CHILDERS
Clerk of the Circuit Court

By: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS ESCAMBIA CO., FL SEAL

This document approved as to form and legal sufficiency.
By _____
Title Deputy County Attorney
Date April 9, 2014

B.C.C. Approved: April 10, 2014

Date Executed
April 10, 2014

IN THE CIRCUIT COURT OF
THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

ESCAMBIA COUNTY, FLORIDA, a political subdivision of the State of Florida,

Petitioner,

v.

Case No. 2014 CA 000237

INNERARITY ISLAND DEVELOPMENT CORPORATION, a Florida corporation,

Respondent.
_____/

PETITIONER'S MOTION TO MODIFY ORDER APPOINTING RECEIVER AND TO APPOINT EMERALD COAST UTILITIES AUTHORITY AS JOINT RECEIVER WITH PETITIONER

Petitioner, Escambia County, Florida (County) moves this court to modify the order appointing County as receiver to include Emerald Coast Utilities Authority (ECUA) as a joint receiver, on the following grounds:

1. This court has reserved continuing jurisdiction to modify or enforce its order appointing Petitioner as receiver, as it deems appropriate. ECUA has previously declined a voluntary appointment as receiver because it contended that the Innerarity water and wastewater system is a private utility system and that ECUA does not have the same taxing power as Petitioner. However, Innerarity has abandoned its system. It would no longer be able to operate a privately owned water or sewer utility which had existed prior to August 1, 1981 under any franchise, permit or other authorization granted by Petitioner. See Ch. 01-324, § 5(3)(e), Laws of Fla.

2. ECUA is given plenary authority over water and wastewater systems by its

enabling act. Ch. 01-324, § 3, Laws of Fla., as amended. Section 3 provides that ECUA will have plenary authority with respect to utility systems within the territorial limits of Escambia County, Florida. The Act reposes in ECUA all powers with respect to water and sewer "which are now, in the future could be, or could have been, but for this act exercised by the City of Pensacola or Escambia County, Florida." Ch. 01-324, § 3, Laws of Fla.

3. This plenary authority over water and sewer is further delineated in Section 5, entitled "Powers." ECUA, in subsection 2, is to have all power and authority previously possessed by County and the City of Pensacola as such powers and authority are related to sewage collection and disposal and water supply. Ch. 01-324, § 5(2), Laws of Fla. Only those privately owned water or sewer utilities operating under the authority of Petitioner prior to August 1, 1981 can continue to operate outside the reach of the Act. Ch. 01-324, § 5(3)(e), Laws of Fla.

4. Respondent has abandoned its private water and wastewater utility system by statute. Therefore, the private water and wastewater system previously operated by Respondent no longer exists. Petitioner has no authority to operate a private water and wastewater system once it has become abandoned as it no longer comes within the grandfather exception contained in § 5(3)(e) (a private system existing prior to August 1, 1981). Nor does Petitioner have the legal authority to operate a public water and wastewater system as that authority resides with ECUA. At the present time, Petitioner is operating the water and wastewater system through an Interlocal Agreement with the City of Gulf Breeze which has the expertise, assets, and personnel to operate a water and wastewater system. Petitioner has no such expertise, assets or

personnel.

5. By granting this motion, Petitioner would be a joint receiver with ECUA and would have the ability to levy a municipal service benefit unit (MSBU) or a special assessment to upgrade the current water and wastewater systems to meet ECUA engineering standards. As envisioned by this motion, ECUA would then be responsible for the expenses of operating the water and wastewater system and would have the right to collect revenues based on a fee schedule set by ECUA to offset expenses and costs until this court ultimately disposes of the system to ECUA. It is further envisioned that County and ECUA would work together in reaching an approved Memorandum of Understanding on upgrades to the abandoned water and wastewater system to meet engineering standards imposed by ECUA which would include the financing of those upgrades by special assessment. The report of Ken Horne, P.E. and Associates, which was commissioned by Respondent prior to its abandonment to determine the costs of upgrades has been provided to the Executive Director of ECUA by Petitioner. Mr. Horne met with engineering staff of ECUA to coordinate the scope of the evaluation.

6. In this way, a joint receivership comports with the enabling act of ECUA and with the equitable powers of this court to ensure that the users of the abandoned Innerarity utility system are provided water and wastewater service in an efficient and effective manner. Petitioner has no legal power to operate a water and wastewater utility system, but it does have the legal authority to partner with ECUA to provide for upgrades of the Innerarity utility system with special assessments levied against affected property owners so that ultimately the system can be permanently operated by and transferred to the ownership of ECUA.

WHEREFORE, Petitioner, requests entry of an Order modifying the order of this court of March 21, 2014 to provide that ECUA would be a joint receiver with Petitioner and ECUA would be responsible for operating and maintaining the system including all attendant costs until such time as the system is disposed of in an efficient and effective manner as required by statute.

Alison Rogers, County Attorney
Escambia County Attorney's Office
221 Palafox Place, Suite 430
Pensacola, Florida 32502
(850) 595-4970
(850) 595-4979 - Facsimile

/s/ Charles V. Peppler
By: Charles V. Peppler, Deputy County Attorney
Florida Bar No.: 239739
Attorneys for Escambia County, FL
cpeppler@co.escambia.fl.us
balarrie@co.escambia.fl.us; kmhill@co.escambia.fl.us

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of April, 2014, a true and correct copy of the foregoing was furnished by E-Service to: Ron Nelson, 517 East Government Street, Pensacola, FL 32502, rln@nelsonlawflorida.com, and Bradley Odom, Odom & Barlow, P.A., 1800 North E Street, Pensacola, FL 32501, email@odombarlow.com.

/s/ Charles V. Peppler
By: Charles V. Peppler, Deputy County Attorney
Florida Bar No.: 239739

ALISON PERDUE ROGERS
County Attorney
Board Certified City, County, and Local Government Law

CHARLES V. PEPPLER
Deputy County Attorney
Board Certified Civil Trial Law

STEPHEN G. WEST
Senior Assistant County Attorney
Board Certified Real Estate Law

RYAN E. ROSS
Assistant County Attorney
Board Certified City, County, and Local Government Law

KRISTIN D. HUAL
Assistant County Attorney

KERRA A. SMITH
Assistant County Attorney

BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA
OFFICE OF THE COUNTY ATTORNEY

221 PALAFOX PLACE, SUITE 430
PENSACOLA, FLORIDA 32502

TELEPHONE: (850) 595-4970
TELEFAX: (850) 595-4979

WORK-PRODUCT PRIVILEGE APPLIES

April 25, 2014

Sally Bussell Fox
Emmanuel, Sheppard & Condon
30 South Spring Street
Pensacola, FL 32502

Re: *Escambia County v. Innerarity Island Development Corporation*
Case No. 2014 CA 000237

Dear Sally:

Thank you for agreeing to be our confidential consultant to give our office your legal opinion on certain financial issues concerning Innerarity Island Development Corporation (IIDC). This will confirm that you will be charging Escambia County $275.00 per hour for your services. The County is interested in receiving answers to the following questions.

1. Does IIDC meet the statutory definition of bankruptcy?

2. Is there any duty on the part of the County as Receiver to proceed with a petition for involuntary bankruptcy should IIDC meet this definition?

3. IIDC borrowed a substantial sum of money in the amount of $750,000 to pay off the expenses incurred in operating the water and wastewater systems in 2013 and to pay for the evaluation performed by Ken Horne, P.E. as to the upgrades needed to bring the water and wastewater systems in a condition where ECUA would accept the system and agree to permanently operate it. Is this mortgage a preferential transfer or a fraudulent conveyance to avoid creditors?

4. Are there any other legal issues that you see from your review of the documents enclosed that the County should be concerned with?

For your review, I am enclosing the following documents:

1. The Petition and Order appointing the County as Receiver.
2. The annual report filed by IIDC with the Public Service Commission for 2013 and 2012. As I mentioned to you earlier, the Public Service Commission has a link on its website for private utility companies and you can obtain later years of annual reports for IIDC from the website.
3. The mortgage given by IIDC to the Estate of Fayette Dennison.
4. The report of Ken Horne & Associates.
5. Letter from Bradley Odom to me declining voluntary appointment of ECUA as Receiver.
6. Copies of emails regarding some of the history of IIDC and how Mr. Dennison as the investor/incorporator was paying for the expenses of the system prior to his death.
7. Analysis by Clerk's Office of revenue and expenses for fiscal years 2010 through 2013.

Once you have had an opportunity to review these documents, please give me a call and we can meet to discuss your findings. I would also invite Alison Rogers, County Attorney to the meeting. If you have any questions or need further information, please feel free to contact me.

Sincerely yours,

Charles V. Peppler
Deputy County Attorney

CVP/el
Enclosures

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

ESCAMBIA COUNTY, FLORIDA, a political subdivision of the State of Florida,

Petitioner,

v. Case No.: 2014 CA 000237

INNERARITY ISLAND DEVELOPMENT CORPORATION, a Florida corporation,

Respondent.
_____/

EMERALD COAST UTILITIES AUTHORITY'S RESPONSE TO COUNTY'S MOTION TO APPOINT IT AS A JOINT RECEIVER

COMES NOW the Emerald Coast Utilities Authority, formerly known as the Escambia County Utilities Authority (hereinafter "ECUA"), a non-party to this proceeding, and hereby makes a limited appearance for the sole purpose of objecting to Petitioner's Motion to Modify Order Appointing Receiver and to Appoint Emerald Coast Utilities Authority as Joint Receiver with Petitioner (hereinafter "County's Motion").

I. Factual Background

The Innerarity Island Development Corporation (hereinafter "IIDC") was formed in 1974 and has operated a private utility for water and wastewater service on Innerarity Island since that time. ECUA was not formed until 1981, see Chapter 1981-376, Laws of Florida, and thus IIDC clearly pre-dated ECUA. In 1983 the Florida Legislature passed a Special Act which clarified Chapter 1981-376, as follows:

> The Legislature finds that there is a need to clarify that Chapter 81-376, Laws of Florida, was intended to grant to the Escambia County Utilities Authority the regulatory authority set forth therein only over those utilities previously owned or operated by political subdivisions, including Escambia County and the City of Pensacola, and is not intended to convey to the Escambia County Utilities Authority any regulatory power or

> authority over those privately owned utilities under the jurisdiction of the Board of County Commissioners of Escambia County on the effective date of said law.

Chapter 83-404, § 1, Laws of Florida. That Act goes on to say that the Board of County Commissioners shall continue to exercise all of the powers, duties, and functions with regard to those privately owned utilities to the same extent as exercised or allowed prior to August 1, 1981. Id.

Thus, regarding private utilities which existed prior to ECUA's formation, like the IIDC, ECUA's enabling legislation is clear: nothing in the ECUA Act affected privately owned water or sewer utilities existing on or before August 1, 1981. Id.; see also Chapter 2001-324, § 5(e), Laws of Florida. Moreover, the ECUA Act provided that the County continued to regulate those private utilities. Id.[1] The Florida Legislature thus very clearly segregated ECUA from various private utilities operating in the County, and other entities were to oversee those private utilities -- not ECUA.

II. Procedural Background

On or about February 7, 2014 the County filed a Petition with this Court seeking that a Receiver be appointed of the water and wastewater systems owned and operated by the IIDC. The Petition was filed pursuant to Section 367.165(2), Florida Statutes, and the County acknowledged in its Petition that it was statutorily empowered to serve as that Receiver. Pursuant to that Petition as well as the applicable statute, on March 21, 2014 this Court entered an Order appointing the County to serve as the Receiver.

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[1]In the ECUA Act, ECUA is referred to as the "authority." Chapter 2001-324, § 1, Laws of Florida. The Board of County Commissioners of Escambia County is referred to as the "Board." Id. at § 4(b). The City Council of the City of Pensacola is referred to as the "Council." Id. at § 5(a)(2).

Not being a party to the case, ECUA was not present at the hearing held immediately before the appointment of the Receiver. (See Tab 1). Prior to that hearing, however, counsel for the County advised the undersigned that he would advise the Court that the ECUA Board had voted to decline serving as the Receiver and implicitly acknowledged that an unwilling party could not be compelled to serve as a Receiver. (See Tab 2). Conversations between the undersigned and counsel for the Respondent, IIDC, similarly disclosed IIDC's recognition that an entity could not be compelled to serve as a Receiver against its will. Although IIDC apparently remains of that position, the County has apparently reversed its position for convenience and now seeks to compel ECUA's service.

Although ostensibly the County offers to serve as a Joint Receiver with ECUA, the County actually seeks an Order from this Court compelling ECUA to "be responsible for operating and maintaining [IIDC's] system[s] including all attendant costs until such time as the system is disposed of .... ." (County's Motion at p. 4). As will be discussed below, this motion by the County demonstrates a misapprehension of the role of a Receiver.

Interestingly, in its motion the County suggests that some agreement could be reached between it and ECUA regarding the system. (County's Motion at p. 3, ¶ 5). Curiously, despite both ECUA's suggested resolution of the matter as well as ECUA's request for clarification as to what the County proposes (see Tabs 3 & 4), the County did not respond until Friday, August 15, 2014 -- instead apparently of the opinion that communication in the courtroom would be preferable to the two entities actually working together. The undersigned submits that such behavior demonstrates the futility

of a Joint Receivership, as the County has proposed, rather than the feasibility of such an arrangement. This is especially so since the County apparently has no difficulty communicating with the City of Gulf Breeze regarding operating IIDC's utilities, but not ECUA. (See County's Motion at p. 2-3, ¶ 4-5).

III. Discussion

It has long been established in this State that the appointment of a Receiver does not affect or determine any rights in the property which is the subject of that Receivership. E.g., Frisbee v. Timanus, 12 Fla. 300 (1868); see also e.g., 44 Fla. Jur. 2d, *Receivers* § 48 (1996). Instead, it has been explained that the purpose of appointing a Receiver is to maintain the status quo and prevent the destruction of the property pending the development of a more permanent solution. See, e.g., Carolina Portland Cement Co. v. Baungartner, 99 Fla. 987, 1005, 108 So. 241, 248 (Fla. 1930). A similar sentiment is embodied within the text of Section 367.165(2), which indicates that the Receiver may operate the utility only until such time as the Receiver disposes of the utility's property in a fashion consistent with the efficient and effective operation of utility service. Clearly, the Legislature envisioned the Receivership's existing as a stop-gap measurement between the abandonment by the prior owner and the transition to another owner or some other scheme.

A. ECUA is not a Party to this Litigation

In the instant case, the County filed suit against the IIDC only. No one filed suit against ECUA, and it is not a party to this case. Moreover, ECUA objects to and does not consent to the Court's exercising jurisdiction over ECUA in this matter, and the Court thus lacks the ability to adjudicate its rights and responsibilities as the County now

requests. See, e.g., Tran v. Fragnoli, 834 So.2d 939 (Fla. 2d DCA 2003) (explaining that courts lack jurisdiction to adjudicate the rights of non-parties and explaining that without jurisdiction courts cannot decide the merits of a motion affecting a non-party); Ostoski v. Cianfrogna, 789 So.2d 529 (Fla. 5th DCA 2001) (explaining that a trial court has no authority to order a non-party to become a party in a case).

In the instant case, ECUA's not being a party in the case is much more than a formality. In fact, it seems to be a calculated scheme on the part of the County to avoid the mandatory dispute resolution procedures embodied in the Florida Governmental Conflict Resolution Act, which is codified in Chapter 164, Florida Statutes. As this Court is well aware, pursuant to that Act local governmental entities such as the County and ECUA are obliged to meet and attempt to resolve conflicts prior to resorting to the courts. See generally Fla. Stat. § 164.1053 & 164.1055. In the instant case, the County has neglected to adhere to the procedural requirements mandated by Chapter 164. It has also refused to even timely respond to ECUA's suggested resolution of the conflict.

Because ECUA is not a party to this action and because the County has not satisfied the requirements in order to make ECUA a party, the County's motion to force ECUA to serve as a Receiver in this cause must fail.

B. ECUA Cannot Serve as a Receiver Over a Private Utility

In the instant case, this Court appointed the County as a Receiver pursuant to Section 367.165, Florida Statutes. Since the passage of that statute, Florida courts have had limited opportunities to construe it. In fact, there appears to be but one reported case substantively interpreting it, namely Department of Environmental Protection v. Landmark Enterprises, Inc., 3 So.3d 434 (Fla. 2d DCA 2009). As the sole reported case

on that statute, it is thus mandatory authority for this Court. See, e.g., State v. Barnum, 921 So.2d 513, 523 (Fla. 2005) ("in the absence of interdistrict conflict, decisions of the district courts represent the law of the state, binding all Florida trial courts").

Construing Section 367.165, the court recognized that the statute placed circuit courts in the unenviable position "of appointing a willing and qualified entity" to assume the task of operating a utility. Id. at 437; see also, e.g., Commodity Futures Trading Comm. v. United Investors Group, Inc., 2005 WL 3747596 (S.D. Fla. 2005) (indicating that a Receiver should be a responsible person willing to serve in that capacity). However, the Court recognized that not just any political subdivision may be appointed as a Receiver. See Landmark Enters., 3 So.3d at 437.

The facts of the Landmark Enters. case are instructive. There were roughly five hundred (500) households in Highlands County which were served by a privately owned wastewater treatment facility that was aging and overwhelmed. The Florida Department of Environmental Protection (DEP) cited it and entered into a consent order with the private utility. The private utility did not comply, and after a series of difficulties it finally abandoned the facility in compliance with the notice requirements embodied in Section 367.165, Florida Statutes. The County in which the wastewater treatment facility was located, Highlands County, then filed a petition with the Circuit Court to appoint DEP as the Receiver of the failing wastewater treatment facility. DEP objected, and the circuit court nevertheless granted the County's petition and appointed DEP as the Receiver. DEP appealed, and the District Court of Appeal held that the circuit court's appointing DEP as Receiver of the failing wastewater treatment plant over its objection was an abuse of discretion. Id.

In reaching this conclusion, the appellate court noted that the Legislature knew how to empower entities to serve as a Receiver,[2] yet it had not listed the act of serving as a Receiver in DEP's grant of powers. The court thus held that without a statutory framework authorizing DEP to act as a Receiver, a circuit court could not order it to perform in that role. The decision of the District Court of Appeal was thus as follows:

> Simply put, the DEP, as a creature of statute, is governed by statute. It can exercise only the powers granted it by the legislature. It is not empowered to act as a receiver for an abandoned wastewater treatment facility, despite its expertise in pollution control. In appointing the DEP as receiver of [the failing facility], the circuit court in effect ordered the DEP to act ultra vires. Accordingly, we must reverse.

Id.

Like DEP, ECUA is a creature of legislative act. Nowhere in the legislative grant of powers did the Legislature authorize ECUA to serve as a Receiver of private utility systems. See Chapter 2001-324, § 5, Laws of Florida. Moreover, the Legislature clearly indicated that ECUA should play no role whatsoever in reference to private utilities existing prior to its formation, as the County retained all powers over those private water and wastewater utilities which existed prior to ECUA's formation. Id. at § 5(e).

In rendering its decision in the Landmark Enters. case, the District Court of Appeal stated the following:

> We are cognizant that this reversal does little to aid the circuit court when it faces again the unenviable task of appointing a willing and

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[2]For instance, in Section 409.994(1), Florida Statutes, the Legislature expressly authorized the Florida Department of Children and Families (DCF) to petition courts to appoint receivers for endangered children. Subsection (2)(c) of that statute went on to provide that employees of DCF could be appointed "to carry out the duties of the receiver" of an endangered child. Nowhere in the ECUA Act is a similar power bestowed upon ECUA. See Chapter 2001-324, § 5(a), Laws of Florida.

> qualified entity to assume the thankless task of operating this problem-ridden facility. While the DEP is not statutorily authorized to act as receiver, it possesses the expertise to assist in resolving the present conundrum ... .

Landmark Enters., 3 So.3d at 437. Nevertheless, the district court recognized that it was not the place of the judiciary to fashion a resolution of the problem but instead was an issue for other branches of government to address. Id.

In the instant case, ECUA is neither qualified nor willing to serve as the Receiver, as is required by the Landmark Enters. case. The Legislature has segregated ECUA from private utility systems which existed prior to its formation and left the County over them. Although the Court may question the wisdom of the Legislature in that regard, it is not its place to second-guess that separation of powers between the two entities. Additionally, the Legislature did not empower ECUA to oversee and govern private utilities which preexisted it. The Legislature also did not give ECUA the power to serve as a Receiver over those utilities. As was recognized by the court in Landmark Enters., ability and expertise is not enough; instead, ECUA must also have the authority. In this case it does not.[3] The County's motion must therefore be denied.

C. Because the County's Motion Seeks to Have ECUA Ultimately own the Utility, ECUA is Disqualified From Serving as a Receiver

Innerarity Island has been served by a private water and wastewater utility system for approximately forty (40) years. Although IIDC has abandoned that system,

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[3]Although ECUA could not act as the Receiver itself, the County, acting as Receiver, could clearly contract with ECUA to operate the systems. See Chapter 2001-324, § 5(a)(8), Laws of Florida. The County has never made that request of ECUA, however.

the future of that system is presently unknown. There are at least two possible outcomes of this private system, possibly more. On the one hand, Innerarity Island, acting through the Receiver, might decide that the system should remain private. A private utility might purchase the system and continue to operate it as a private utility, or a homeowners' association on the Island might be formed and then contract with a third-party to operate the facilities. On the other hand, the private facilities might ultimately be disposed of by being transferred to public ownership. Those are decisions which the Receiver must ultimately make, subsequent to assessing the system, studying its economic feasibility, and conferring with all stakeholders. It is vital that the Receiver be disinterested in charting that future course of action.

After all, the Florida Supreme Court has recognized that a Receiver is a "disinterested person" appointed by a court for the protection of the property that is the subject of a claim. Granada Lakes Villas Condominium Assoc., Inc. v. Metro-Dade Invs. Co., 125 So.3d 756, 758 (Fla. 2013) (quoting *Black's Law Dictionary* 1383 (9th ed. 2009)). In fact, Florida has long recognized that in light of the fact that a Receiver acts as and for the court, the Receiver "should be as unbiased as the court itself." Lehman v. Trust Co. of Am., 57 Fla. 473, 478, 49 So. 502, 503 (1909) (citations omitted). The Florida Supreme Court has also explained that it is error to appoint a Receiver who is not indifferent in the litigation but instead peculiarly interested. Id. 57 Fla. at 479, 49 So. at 503; see also United States v. Sylacauga Properties, Inc., 323 F.2d 487 (5th Cir. 1963) (recognizing that a court should appoint a disinterested person as a Receiver).

In the instant case, the County does not envision (or suggest) ECUA's serving a disinterested role. Instead the County's Motion seeks to have ECUA serve as a Receiver

"so that ultimately the system can be permanently operated and transferred to the ownership of ECUA." (County's Motion at p. 3, ¶ 6). Thus, the County is not asking ECUA to serve as some disinterested entity; instead, it is asking ECUA to serve in a capacity that could be perceived by others as one in which it is acting for its own expansion and thus its own benefit. That is not the appropriate role of a Receiver, who must be disinterested in the outcome.

But the County's motion is infirm on this point for another reason, too. Implicitly, the motion seeks to have this Court compel ECUA to permanently operate and maintain the utilities on Innerarity Island, thus expanding ECUA's service area to that geographic area. With all due respect to this Court, fundamental notions of separation of powers require that decision to be made by a non-judicial branch of government. That is, the Court's job is to interpret the law; it is not to decide what geographical areas another governmental entity should elect to serve -- or not serve.

D. ECUA Cannot Expend Public Funds on a Private Utility System

As is implicitly acknowledged by the County in its motion, Innerarity Island's water and wastewater system is a private utility system which was abandoned by its prior owner but has not yet been disposed of. It is clearly not a public system; instead, it remains a private system -- especially in light of the fact that the appointment of a Receiver does not change title or ownership. See, e.g., Carolina Portland Cement, 99 Fla. at 1005, 108 So. at 248 (explaining that a Receiver is to maintain the status quo); Klack v. Eagles-Reserve Homeowners' Ass'n, Inc., 862 So.2d 947, 953 (Fla. 2d DCA 2004) (explaining that the appointment of a Receiver "is ordinarily a step taken to preserve the status quo"); Murphy v. Murphy, 475 So.2d 1253, 1254 (Fla. 5th DCA 1985)

(Receiver appointed to collect revenues and preserve the status quo); 44 Fla. Jur. 2d, *Receivers* § 48 (appointing a Receiver does not affect rights in the property subject to the Receivership).

It is also clear that Innerarity Island is not part of ECUA's service area, and it is an area which remains regulated by the County as a private utility. In its motion, the County seeks to have this Court compel ECUA to expend its own funds in order to upgrade a private system so that it may ultimately be disposed of. The question thus becomes to what extent ECUA can expend public funds, paid to it by ratepayers located elsewhere, to upgrade a private system outside of its service area. The answer to that is simple: ECUA cannot expend public funds for the benefit of a private system.

After all, the Florida Supreme Court has explained that the expenditure of public funds on a project "must serve a paramount public purpose and any benefits to a private party must be incidental." State v. Osceola County, 752 So.2d 530, 536 (Fla. 1998). The Supreme Court has further explained that under the paramount public purpose test, if the benefits to a private party are the paramount purpose, then the project will not pass constitutional muster. See, e.g., Orange County Indus. Dev. Auth. v. State, 427 So.2d 174, 179 (Fla. 1983). Additionally, it has been explained that a broad, general public purpose cannot be used to validate a project that is purely a private enterprise. Id. at 179 (citing cases).

In the instant case, the utilities on Innerarity Island remain private. The County's serving as a Receiver does not change that. Moreover, throughout the duration of the Receivership, the utilities will remain privately owned. There is also no certainty that the utilities will one day become public. Thus, the Receivership by definition benefits a

private enterprise, and ECUA cannot use its ratepayers' funds in order to subsidize those private utilities which have been regulated by the County for approximately forty years.

E. The County has the Authority to Serve as a Receiver

In its motion, the County laments that it independently has no legal authority to operate a water and wastewater utility system but states that it could do so if partnered with ECUA. (County's Motion at p. 3, ¶ 6). With all due respect to the County, its authority to presently operate this water and wastewater system is by virtue of this Court's Appointment of Receivership as well as Section 367.165(2). That is, so long as the Court has ordered the County to act as Receiver (pursuant to its having volunteered to have done so), it may so act. It need not partner with anyone. Moreover, just as it has contracted with Gulf Breeze for assistance in this regard[4] (as Receivers normally do), the County could similarly contract with ECUA for assistance.

But what the County truly wants is not someone to contract with. Here, it contracted with Gulf Breeze, even though it could have contracted with ECUA for a lesser fee. The County did not want a contract with ECUA, and in fact never even asked. Instead, what it wants in this case is for ECUA to be responsible for all expenses associated with operating the water and wastewater system which the County has failed to regulate. (County's Motion at p. 3, ¶ 5). It also apparently asks that ECUA levy an MSBU or special assessment. (County's Motion at p. 3, ¶ 5). That is, it wants ECUA to bear all expenses until a long-term solution is developed, while recognizing that the current fee structure would not cover those expenses. With all due respect to the

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[4]E.g., County's Motion at p. 2, ¶ 4.

County, this demonstrates a total misapprehension of a Receiver's role.

The role of a Receiver is not that of a charitable endeavor. Receivers are officers of the Court and they are entitled to reimbursement of all costs expended as well as reasonable compensation for their services. See, e.g., Southeast Bank, N.A. v. Ingrassia, 562 So.2d 718 (Fla. 3d DCA 1990). In fact, it has been recognized that the fees allowed to a Receiver should be sufficient "to induce competent persons to serve as Receiver," while also being as economical as reasonably possible. E.g., Lewis v. Gramil Corp., 94 So.2d 174, 177 (Fla. 1957) (citation omitted); see also 44 Fla. Jur. 2d, *Receivers*, § 90 (1996).

In the instant case the County is apparently attempting to dispense with these requirements and obligate ECUA to operate a private system at a financial loss (and at public expense)[5] while at the same time improving that private system at ECUA's ratepayers' expense.

F. ECUA Does not Need to be a Joint Receiver with the County for it to Work with it on a Long Term Solution

ECUA would further submit that the appointment of ECUA as a Joint Receiver in this instance would not only be illegal, but it is also unnecessary. In its motion, the County complains that it lacks the expertise to operate a water and wastewater system, so it has to contract that out to another entity, namely the City of Gulf Breeze. (County's Motion at p. 2, ¶ 4). It could do the same thing with ECUA, as ECUA clearly has the power to contract. The County, however, has simply not asked -- apparently being of the opinion that discussions are more productive in courtrooms than outside of them.

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[5]See Tab 5.

Admittedly, however, such a contract would appear to be more of an interim solution than a permanent one.

As for the long-term solution, the County states it is interested in reaching a Memorandum of Understanding with ECUA regarding the utilities on Innerarity Island. (County's Motion at p. 3, ¶ 5). What the County fails to mention, however, is that no Receivership is required to do that. In fact, the County and ECUA have in the past entered into such arrangements and successfully not only converted a private system to a public one but also upgraded that private system in the past. Although ECUA has suggested a similar arrangement here (see Tab 3), the County has not responded -- again hoping the Court will force something upon ECUA which is better than it can negotiate.

Interestingly, the County has not stated that it cannot perform the role of a Receiver or that ECUA's participation is required. It also cannot effectively argue that ECUA's participation as a Receiver is required, as the County both volunteered to serve as the Receiver and has developed a plan to do so. Given the fact that the appointment of a Receiver is an extraordinary remedy to be rarely employed, the motion for there to be two Receivers appointed is ludicrous. Barnett Bank of Alachua County, N.A. v. Steinberg, 632 So.2d 233, 234-35 (Fla DCA 1994); see also Edenfield v. Crisp, 186 So.2d 545 (Fla. 2d DCA 1966) (explaining that the power to appoint a Receiver cannot be exercised merely because it will do no harm).

G. The County's Suggestion of a Joint Receivership is Unworkable

The undersigned would further submit that a Joint Receivership such as the County envisions would be wholly untenable and unworkable. Which Receiver would be in charge? Which Receiver would make the decisions? Would the joint Receivers have

to run to this Court every time they had a disagreement?

Here, in addition to petitioning the Court to appoint ECUA as a Joint Receiver, the County also asks the Court to declare that ECUA "would be responsible for operating and maintaining the system including all attendant costs ... ." (County's Motion at p. 4). The County also seeks to have a privately owned system operate at a loss, being subsidized with ECUA's public funds. According to its motion, the County has also predetermined what should happen with the utility system, like being upgraded in accordance with a report prepared by Ken Horne, P.E. & Associates. The County has also predetermined that ECUA must ultimately accept ownership of the private utility. With all due respect to the County, it apparently envisions no decision making role for ECUA -- just operational and fiscal responsibilities. That is not a "joint" relationship; it is a dictatorship.

If the Court were to grant the County's motion, the two Receivers would clearly be at an impasse from the inception. Such an approach is not sustainable, and it is unrealistic to think they could effectively manage the private utility when they are approaching the matter from wholly different positions.

The proposal becomes even more tenable, however, when the Court recognizes that presently the County and ECUA are not communicating, despite ECUA's efforts. Specifically, when ECUA offered to work together with the County to develop a long-term solution to Innerarity Island (see Tab 1), the County said nothing in response. When the Chairman of the ECUA Board contacted the Chairman of the Board of County Commissioners and suggested an agreement like had been done with another private utility (see Tab 3), the County said nothing in response. And when the undersigned

contacted the Deputy County Attorney responsible for this case requesting clarification (see Tab 4), the County's response was to set the motion for hearing rather than have a dialogue. Given this history -- all the while with the County clamoring for ECUA's dissolution in the background -- can the County truly represent to this Court that a Joint Receivership would be functionable? It cannot.

Conclusion

The County's motion to force ECUA to be a "Joint Receiver" must fail -- on legal, factual, and practical grounds. Because ECUA is not a party to this litigation, the Court cannot compel ECUA to serve as a Receiver. Even if this Court were inclined to exercise jurisdiction over ECUA in this matter, however, it could not legally appoint ECUA as a Receiver over a private utility, as it is neither willing nor legally empowered to serve in that capacity. Moreover, given the County's stated plan of action, ECUA would have an interest in the outcome of the Receivership and is thus disqualified from serving in that capacity. Additionally, ECUA cannot legally expend its ratepayers' funds on a private utility system, as the County has asked.

As explained by case law, a Receiver must be willing and able to serve in that role. In its Petition, the County volunteered to serve as the Receiver, thus satisfying the "willing" component. Section 367.165 authorizes the County to serve as the Receiver. It may thus properly serve. And as its actions already indicate, it can contract with others to provide the operational expertise which it lacks. There is thus no need for there to be a Joint Receiver to stand alongside the County.

Moreover, from a practical perspective what the County proposes is unworkable. The County very clearly has its vision of what should happen on Innerarity Island.

When the two entities disagree -- which seems a virtual certainty -- then the Court would necessarily become intertwined in the conflict. A forced partnership between two entities which are not communicating and in which the two separate governmental entities have differing views from the outset is not a recipe for success; it is one for failure.

WHEREFORE, ECUA respectfully requests that the County's motion be denied in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to Charles V. Peppler, Esq., Escambia County Attorney's Office, 221 Palafox Place, Suite 430, Pensacola, Florida 32502, Ron Nelson, Esq., 517 East Government Street, Pensacola, Florida 32502, by hand delivery, on this 20th day of August, 2014.

Bradley S. Odom

IN THE CIRCUIT COURT OF
THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

ESCAMBIA COUNTY, FLORIDA, a political subdivision of the State of Florida,

Petitioner,

CASE NO.: 2014 CA 000237

vs.

INNERARITY ISLAND DEVELOPMENT CORPORATION, a Florida corporation,

Respondent.
_____/

The above-entitled cause came on for hearing before the Honorable Jan Shackelford, Judge of the above-styled Court, in Chambers, M.C. Blanchard Judicial Building, 190 Government Center, Pensacola, Florida, on Wednesday, August 20, 2014, at 9:30 a.m. CST, before Linda V. Crowe, Court Reporter and Notary Public.

APPEARANCES

FOR THE PETITIONER:

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FOR THE RESPONDENT:

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ALSO PRESENT:

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JACK BROWN, COUNTY ADMINISTRATOR
LARRY NEWSOM, ASSISTANT COUNTY ADMINISTRATOR
RICHARD GENTRY, LEGISLATIVE CONSULTANT

P R O C E E D I N G S

THE COURT: On the record. Escambia County versus Innerarity, 14-000237. This is a motion to modify the order appointing receiver and to appoint ECUA.

Mr. Peppler, you're here for the County.

MR. PEPPLER: Correct. And I wanted to introduce Jack Brown, the County Administrator; Larry Newsom, Assistant County Administrator. Richard Gentry is just sitting in. He's our legislative consultant.

MR. GENTRY: Without a tie.

THE COURT: And Mr. Nelson, you're representing Innerarity?

MR. NELSON: Innerarity Island Development Corporation.

THE COURT: Mr. Odom has decided to join us today. Mr. Odom, who are you here --

MR. ODOM: I'm here on behalf of a nonparty, ECUA, because the County invited me to attend and I figured it would be rude not to show up.

THE COURT: So I looked at the motion to modify, but where are we in this?

MR. PEPPLER: Well, Judge, I would like to

give you some legal argument on it. ECUA has been given notice, and I guess they voluntarily appeared to find out what Your Honor would do. I don't know whether Mr. Odom is going to have any argument or not. But I wanted to go over, you know, the statutes. I know it's going to be a little bit tedious, but I think I need to do that to set the record and get the arguments out as to why we ECUA should be a joint receiver with the County.

THE COURT: Let me start with asking Mr. Nelson, are you really arguing anything in this?

MR. NELSON: I'm not, Your Honor. We're here just to answer any questions or help in any way we can.

THE COURT: Mr. Odom, are you prepared to argue something today?

MR. ODOM: I can argue I don't think this Court has jurisdiction, though, over a nonparty to adjudicate any rights involving ECUA.

THE COURT: Okay.

Mr. Peppler, I'm going to let you go

first.

MR. PEPPLER: All right, Judge. And I wanted to hand out to Your Honor the statutes that got us here today.

Do you want a copy, Mr. Odom?

MR. ODOM: Sure.

MR. PEPPLER: Good. And I'll give a copy to Mr. Nelson.

MR. NELSON: Thank you.

MR. PEPPLER: And basically what happened was, as Your Honor knows, Innerarity filed a notice of abandonment. They're a private water system, and Subsection (2) of 367.165 says: After receiving such notice the county or the counties acting jointly shall petition the circuit court where the utility is domiciled to appoint a receiver, which may be the governing body of a political subdivision or any other person deemed appropriate.

And this is where the issue comes as to who is the most appropriate person to be the receiver in this case. Before I get to the argument with regard to the ECUA Enabling Act, I wanted Your Honor to take a look at the genesis of this particular statute which

started under Chapter 80-99.

THE COURT: I'm going to get my glasses.

MR. PEPPLER: Okay.

THE COURT: Okay.

MR. PEPPLER: And it had the previous statute number of 367.191. If you turn to the second page of the handout, you will see that Subsection (2) is worded exactly as the present statute, and this went into effect on June 13, 1980. And the reason that is important is that the enabling act for ECUA went into effect on August the 1st, or at least ECUA came into existence on August the 1st of 1981. So at the time that the legislature passed the initial act for abandonment in June 13th of 1980, it then enacted the ECUA Enabling Act, which basically said ECUA is going to take over the water and waste water systems previously run by the County and the City of Pensacola. They're going to have all the powers that the County and the City had, and transfer assets and powers to ECUA.

Again, I don't want to be tedious, but I guess I'm going to have to be a little bit. I

wanted to go over those particular powers that ECUA was granted. If you look, I've highlighted the sections of the act, which I thought were appropriate, and all the copies have the same highlighting. And the purposes are set forth in Section (3) and it gives them a broad range of powers, and the most important wording, it gives them plenary authority with regard to certain utility systems within the territorial limits of Escambia County, and it names those, water, sewer and other additional utilities as may be designated, not only in the past, but in the future, that could have been exercised by the City or Escambia County.

If you go to Section (5), Powers, that's page three, in furtherance of that authority given to them by the statute; you go to Subsection (2) and it says all power and authority heretofore possessed pursuant to law, ordinance, franchise or otherwise by Escambia County or the City is hereby granted to the authority. That which was granted by law, ordinance, franchise or otherwise goes to ECUA.

And what is also important is Chapter 57-1313, and that particular act is known as the Utility Act of Escambia County, and that was enacted in 1957, obviously. And I want to hand a copy to Your Honor and to counsel. And basically what the legislature did in 1957 is give the Escambia County authority to grant franchises for water systems, if you look at Subsection (1) at the bottom of 1033, and waste water treatment, and at the top of 1034, sewer systems, sewage distribution system and sewage works.

The legislature, in enacting the ECUA Enabling Act, decided that whatever power Escambia County had with regard to water systems and sewer systems was now reposed into ECUA and we have no longer any power to franchise any water systems or sewer systems, and that's solely in the purview of ECUA.

Pages four and five of the act, as printed out, lists all the powers which ECUA has, to obtain loans, to eminent domain with the approval of the County, to lease, to purchase, all the powers that are needed to operate a water and waste water system.

At the bottom of page six is the one caveat that ECUA may or may not argue today. I don't know. But with regard to any privately owned water or sewer utility operating before August 1st, 1981, that is off limits from ECUA's reach of power. And the Innerarity water system was a private water system that was operating prior to August 1st of 1981. However, when they filed their notice of abandonment, the Public Service Commission determined they no longer had the authority to operate and they lost their status as a private water utility system that was in existence prior to August 1st of 1981.

The other portions of the act that I would like to point out to Your Honor is the Section (6), Public Purpose, which says -- that's on page eight -- which says that the legislature finds and declares that the creation of the ECUA in carrying out of its purposes are in all respects for the benefit of the people of this state, Escambia County and the City of Pensacola. So their public purpose isn't just their ratepayers within the unincorporated areas of Escambia County. It includes all

people of the State of Florida and all people of Escambia County.

Section (7) delineates what assets and liabilities were transferred over to, from the City and the County to ECUA, and they got all of our assets for the payment of ten million dollars.

Turning to the last section I would like to point out to Your Honor, and I haven't given you the whole act, I've taken out the sections that I didn't think were pertinent, but Section (19), I think, is pertinent because it says the provisions of this act shall be liberally construed to effectuate the purposes set forth therein.

So not only does ECUA have plenary authority over water and waste water systems, but their enabling act by the decree of the legislature has to be liberally construed so they can effectuate those powers and purposes.

Now, the reason I went through the history of 367.165, 57-1313 and went through all the powers relating to ECUA is that there is a principle of statutory construction that I would like Your Honor to take a look at and

it's set forth in the 1978 Supreme Court case of Oldham v. Rooks, which states that -- and if you turn to page five with the highlighting, if you turn to page five, there's a general presumption that later statutes are passed with the knowledge of previous prior existing laws, and that you construe that each statute would act in concert with the other.

So the statute dealing with abandonment was obviously passed prior to the ECUA Act. In order to make the ECUA Act have any sense in the fact that they have control over all water and sewer, that the abandonment of a private water system would fall into the lap of ECUA as being the one entity in Escambia County that has plenary authority over those particular functions.

The second highlighting says that another rule of construction is that when the legislature makes a complete revision of a subject it serves as an implied repeal of early acts dealing with the same subject.

So my argument, and I assert to Your Honor that by mentioning and decreeing in their act

that they have all powers that used to reside with the County in 57-1313 with regard to franchisement of water and sewer, that the ECUA Act is a repeal of that, that we're left with control over natural gas and electricity as far as franchisement, if we decide to do that, but as far as water and sewer, that is in ECUA's bailiwick.

Again, I don't know how extensive the argument will be by ECUA, but I wanted to bring to your attention one other order -- or two other. This is an order from the PSC relating to Okeechobee County. In Okeechobee County they have a similar system to us in that they have a utility authority called the Okeechobee Utility Authority which handles water and waste water, and there the PSC entered an order determining that the private waste water treatment plant that was operated by Pine Ridge had been abandoned, and noted in the order that Okeechobee Utility Authority had been named as a receiver by the circuit court there in Okeechobee. So there is precedent for a utility authority that has control over water and waste water to be named

as a receiver.

I also want to bring Your Honor to the attention of some authority that could be argued against what the County is proposing, but I wanted to bring it to your attention in the event ECUA decides to participate in oral argument today. But that case is involving a sewer system that was operated by a private system, and there the Court decided, well, the agency that has the most knowledge about the environmental impact of sewer systems was the Florida Department of Environmental Protection. So there the Court appointed FDEP to be the receiver and FDEP appealed that order and said, no, that's not part of our statutory purview to be a receiver for a waste water system.

And the Court there, if you turn to the Second District Court of Appeal, to the highlighted section, made clear in its conclusion that DEP, as a creature of a statute, is governed by statute, it can only exercise the powers granted to it by the legislature. It is not empowered to act as a receiver for an abandoned waste water

treatment facility despite its expertise in pollution control, and let's the ECUA argue that, well, in all of our broad powers you don't see the word receivership, you do see the fact that they have a broad range of powers, that their plenary authority extends over what the County can do with water and waste water, and that because the abandonment statute was enacted ten months before their own enabling statute, you can, as a means of statutory construction, presume that the legislature knew that, and that to make those statutes work in conjunction the logical person that this Court can appoint is ECUA as the joint receiver.

That's basically my argument, that the appropriate person, again, to act as a joint receiver -- we're not saying let us out completely. We're saying that ECUA should work hand in hand with the County in operating the system to a view towards disposing of the system, and the only entity that we can see at this point is that it would be transferred to ECUA; that they take on the responsibility of operating it. And in your lengthy order that

you prepared, starting at page three and four, you list the receiver's powers. And, you know, I did a checklist. I don't know if Your Honor wants to go over that at this point.

But as far as what you say as far as who maintains the waste and water utility service, our position is that ECUA should do that.

To make extensions or expansions and repairs, ECUA would be responsible for that.

To collect fees, ECUA to increase rates.

ECUA to borrow money, to pledge to encumber the facility's asset and revenues, well, that would be a joint function because we have pledged that we will work with the EUCA with respect to levying a MSBU to provide for the upgrades that are necessary, which they think are appropriate for the system.

To enter into contracts or agreements with a public agency or entity, we think that's a joint function.

Number seven, to accept gifts, grants or contributions. Again, that would be a joint function.

Number eight, to retain professionals, including attorneys. Again, that would be a

joint function.

To pay from revenues collected from the customers of the system, all necessary and reasonable operating expenses. Again, that would be an ECUA function.

To sue or be sued, to implead or implead, that would be a joint function.

To apply for -- number eleven, to apply for government permits, certificates, licenses to operate the system, that would be an ECUA function.

Number 12, to perform generally any other lawful acts. That would be a joint function.

And, again, to seek further instructions or guidance from this Court, that would be a joint function.

What I'm proposing, Your Honor, if Your Honor were to grant the motion to modify and make ECUA a joint receiver, is that you put this case on a 90-day case management conference schedule so that the parties would be forced to come before Your Honor to tell Your Honor what the progress is as far as transferring the system to ECUA and to impose a MSBU.

THE COURT: Okay. I want to hear from Mr. Odom and then I'll give you the last word.

Mr. Odom.

MR. ODOM: Thank you, Your Honor. May it please the Court, Bradley Odom here on behalf of ECUA for the purpose of making a limited appearance in order to object to the County's motion. And I would submit to you that this motion must fail on the legal, factual and practical grounds that I would like to generally walk through herein.

Number one, ECUA is not a party to this case. I believe the case law very clearly establishes that courts cannot adjudicate the rights of a nonparty until such time as it's made a party and has the rights of a party. In this case ECUA is at a tremendous disadvantage because of the County's motion in which it's not made a party. I would like to be able to conduct discovery, and subpoena individuals to find out what's going on with the system. I don't even have the order that he's referring to and yet they're trying to judicially compel rights of my client when we're not even sure what's going on. I

couldn't even file a memorandum of law in opposition to their motion because a nonparty can't do that, and we tried electronically to do that and we can't. We would have to submit to the jurisdiction of the court, enter an appearance and then do it, which we don't want to do.

Now, I would further submit that the County has not brought ECUA in as a party for a reason. As this Court is aware, Florida has a governmental conflict resolution act codified in Chapter 164 Florida Statutes, and it says that before governmental entities bring disputes to the courthouse there is an established procedure for them to try to work it out. It involves the meeting of the county administrator, the ECUA executive director, a joint meeting of the elected bodies, it involves mediation, et cetera, because the legislature would prefer that entities work it out before they go to the courthouse to have a court decree what is going to happen.

And here, as I will explain further, ECUA has, you know, quite frankly, assumed, back in February, that the County suggested ECUA serve

as a receiver. The ECUA board voted and said, no, we don't want to do that, don't have the financial resources, the manpower resources, et cetera, to talk about -- to deal with this private system that is ongoing. But we said we'll work with you to try to develop a long term solution with you. Didn't hear anything.

The ECUA board chairman -- that was in -- I'm sorry. The ECUA voted in February. The first week of March Mr. Peppler got a letter to that effect.

The following month, April, the ECUA board chairman wrote the chairman of the Board of County Commissioners that said we have a template for working such situations out, because there is an another situation in which a private subdivision wanted to become public, et cetera, and there is a way that the three entities worked together to work that out.

Instead of a response we got a motion to compel ECUA to be a joint receiver, not let's work on some memorandum of understanding or agreement or some way to try to work it out.

After the motion was filed I wrote a letter to Mr. Peppler and it said, hey, what

do you really envision the parties doing? It's not clear to me. I don't have the order. Maybe -- that's one of the reasons it's not clear to me, but it's not clear to me. The chairman of ECUA wrote the chairman of the Board of County Commissioners suggesting something, and three-and-a-half months went by without a response.

Now, Mr. Peppler did say, hey, I don't know what's envisioned. We've had some flooding. I'm busy. I'll get back with you. I finally got a response Friday to him, which quite frankly I haven't been able to discuss with my elected body since then.

I will tell you that the executive director, when meeting with the County on another matter, brought up this subject and said, hey, I think we can work this out. But nevertheless, haven't got a substantive proposal to try to work it out. And I'll acknowledge that Mr. Peppler responded Friday, and I think it was a couple of steps backward from what the discussions between the head executives were, but I wasn't there for those discussions.

But in this instance what seems to be happening is the County seems to be trying to avoid the way that governmental entities resolve issues through Chapter 164, and instead walk into this courthouse and try to have you compel ECUA to do something that, quite frankly, I don't think you can legally do, but probably what they believe is better than what they can negotiate.

And I would submit to you that this is a motion in which ECUA is saying hey, let's have dialogue and they're saying let's go to the courthouse to have a shotgun marriage. But it's really not even a shotgun marriage because as I look at this motion it seems to be that ECUA should have all responsibilities and the County gets to make all the decisions, which doesn't exactly seem like a marriage. It seems more like a dictatorship, but I'll get to that in a minute.

As a nonparty I don't think you can adjudicate ECUA's rights, and I believe that that is a truism as a matter of law. I do have a memorandum of law if the Court wants to receive it, but I don't want to be subjecting

my client to the jurisdiction of this Court since we're not a party.

THE COURT: I'll take the memo.

MR. ODOM: There's the original. Like I said, I couldn't file it with the clerk.

The second reason that we don't believe that you can compel ECUA to be a receiver has to do with the statute under which you appointed the receiver, and the only substantive case interpreting it, which is the Landmark Enterprises case which the County has referred to.

And I would submit to you, and let's kind of go through the facts and then we'll get to what the Court said in that case. The facts were that there was a failing waste water treatment plant in a county -- and I forget the name of the county. It doesn't really matter. DEP was involved. DEP entered into a consent order. The private utility was unable to comply with the consent order. There was an abandonment issue. The county petitioned for the DEP to serve as the receiver and DEP objected. And over their objection the trial court nevertheless appointed DEP to act as a

receiver. And the appellate court, in the only substantive decision interpreting this, said that that was an abuse of discretion and you can't compel someone to do that.

They said it for a number of reasons. Number one, it said that the DEP is a creature of statute. And if the legislature wants to give someone the power to serve as a receiver, they know how to do it. They've done it in reference to DCF, Department of Children and Families. I've cited that in the memorandum of law. And it said, hey, the Department can petition, employees of the Department can serve as receivers, et cetera. The legislature knows how to make that language and they've done it in the past.

And entities that are not governments of general jurisdiction, but creatures of the legislature, are confined by those powers and if they didn't give them the power to serve as a receiver, it is an ultra vires order of the Court to compel them to serve as a receiver.

But then the Court went on, and it's interesting that it's in the next paragraph after the section highlighted by the County

that it says, the trial Court's obligation is to appoint a willing and qualified receiver. Willing and qualified. That's a two prong case.

It also said that the Court was in an unenviable position of -- and that this statute, perhaps, didn't seem to be the best construed, but that the Court could not appoint someone that wasn't willing and qualified to serve, and the governmental branches needed to figure it out accordingly.

Now, how does that case apply here? If you look in Section (5) of the ECUA Act, which the County has provided to you, it delineates numerous powers that ECUA has, none of which include acting as a receiver.

Also, the ECUA board has voted and said it's not willing to serve as a receiver in this case. And I would submit to you that given the separation of powers between entities, when a governmental entity says we're not able to serve as a receiver, the Court can't, without some basis such as arbitrary and capricious or something, second guess some other entity that's more familiar

with what its manpower resources are and how thinly its monetary issues and manpower issues, et cetera, to take on a failing system that, quite frankly, ECUA thinks will take six, seven, eight million dollars to upgrade.

And so when we apply this Landmark Enterprises case and you recognize the fact that ECUA is neither willing nor able or qualified, because the legislature didn't give us that power, then you can't do it.

I'll tell you I have looked high and low in this state for a single case in which a receiver was appointed over their objection. I couldn't find one. In fact, the only authority I could find indicated that they needed to be willing to so serve. And, quite frankly, the only case substantively interpreting the act we're under says that they have to be willing.

I would submit to you though that the deficiencies in the County's motion do not end there. One of the talismans of a receivership is a receiver must be a disinterested party that doesn't benefit in any way, shape or form from serving as the receiver. A receiver must

be as unbiased as the Court and have no interest in the outcome, whatsoever. That's on page eight to ten of the memo.

In this situation -- and I think there's some confusion as to what Innerarity Island's status is right now. In this situation you have a private system which predated ECUA, which is important for a reason that I'll get to in a minute. And IIDC has filed a notice of abandonment and the County volunteered to serve as that receiver for which it is statutory qualified under the statute that you appointed it to so serve.

There are two possible outcomes from this receivership. One possible outcome is, as the County is suggesting, that ECUA ultimately agree to expand its service area to include it. The other possible outcome is that it remain a private system. The Court hasn't, to my knowledge, had any hearings or made any findings or had any recommendations from the receiver that's been appointed for several months saying that it should become public versus private or whatever. I do not know to what extent that has yet been studied. Do we

have private utilities in this county? Absolutely we do. We need look no further than People's Water, which is a private utility that provides water service throughout the Navy Point general area. Is it possible that a private utility can come in? Yes. Is that something that the receiver has to explore? Yes.

Another possibility is that the residents out at Innerarity Island decide they want to continue to have a private system like they have had for about 40 years out there. They could form a private system and continue to operate it as a private system. Now, if ECUA is involved as a receiver in making that decision, it could not be found to be disinterested in the outcome. People could look at it and say you know what, ECUA is making this recommendation because it stands to benefit somehow, increase geographical territory, increase ratepayers, whatever. But ECUA isn't disinterested and Florida cases very clearly say that it is error for a court to appoint a receiver that has an interest in the outcome.

And so even if you could get past the fact that we're not a party, order us to act and expend our public funds as they're suggesting, ignore the fact that we have to be willing and qualified, that we're legislatively qualified -- not legislatively qualified and not willing -- we would still be disinterested and, therefore, can't do it.

Those are the essential legal points to this, but the other issues remain. These are more factual and legal than merely legal.

THE COURT: I'm going to give you about nine more minutes.

MR. ODOM: Okay. ECUA cannot expend public funds on a private system. This system is currently private and although the County is indicating otherwise, the appointment of a receiver does not change that. In fact, case law is very clear that the County doesn't now own that system. The County is merely acting as an officer of the Court in order to preserve the status quo until that property can be transferred to its, you know, quote unquote, final owner.

It is legally significant that this is

outside ECUA's jurisdiction. Why is that significant? Because although ECUA was formed in 1981, in 1983 the legislature clarified its enabling legislation for ECUA and it said very clearly, and I have quoted it in my memo of law at pages one and two, that ECUA has no powers over any areas that were under private utility control prior to ECUA's formation. The County continues to have power over that area and continues to regulate them. And, quite frankly, they've been regulating them or not regulating them -- it would be nice to know. I'm not a party -- for the past 40 years, and thus contributed to this problem.

But also the system, because it's now in a status quo mode, remains private. Now, the Florida Supreme Court, as I've explained on page eleven of my memo, very clearly says that public funds have to be used for a predominate public purpose, not some general public purpose, but a predominate public purpose. And right now there is no certainty that there will ever be a public purpose out there. It is exclusively a private purpose and remains that way.

I would submit to you that it is similar to or analogous to a situation in which you have a private road. If a subdivision has a private road and ECUA drives down it from time to time in order to pick up garbage and the road becomes in disrepair, ECUA can't go and expend public funds to fix that road because it inures primarily to a private benefit, not to a public benefit. And since there has been no determination as to what the ultimate thing is, I don't believe that ECUA can expend it's public funds and the ratepayer funds for the benefit of a private subdivision, if you will, in this area.

Now, the County has said in their motion that it can't serve as the receiver, and I would submit to you that they're confusing owning a system with operating a system as a receiver, because as 287.165, I believe, the statute under which you appointed -- I'm sorry, 367.165 -- the statute under which you've appointed the receiver, the Court's power is to operate as a stop gap and by virtue of court order they have the power to do it and they also said they were willing to

do it, and the statute lists them as someone who's empowered to do it.

Now, they've said we don't have the expertise to do that. That's why they contracted out with Gulf Breeze. They even say in their motion they contracted out with Gulf Breeze. Now, could they have contracted out with ECUA? They could have. They never asked, curious, because they wanted to file a motion to compel us, as opposed to a contract with us.

Now, I'll tell you that's not terribly dissimilar to whenever a Court appoints a receiver to operate a bar. What does the receiver do? Hires bartenders to pour drinks. The receiver doesn't go out and do that itself. And there are ways in which that can contracted out.

But I'll tell you this. The County is looking for more than that. I think I've got four more minutes.

THE COURT: I'll let you know.

MR. ODOM: If you could give me about a one minute warning.

THE COURT: Sure.

MR. ODOM: The County, as they've said in paragraph five of their motion, wants ECUA to bankroll it and do it at a loss. One of the documents attached to the memorandum is the fact that the County has so far subsidized this system to the tune of 60 some odd thousand dollars in the few months that it's been operating it. It's operating at a loss and so maybe they're suggesting to you that financially, they can't do it. I'll tell you, at least in ECUA's position, I believe case law's position, a court compelling a receiver to operate something at a loss, as they've asked, is contrary to what receivers are supposed to do, because the case law very clearly establishes that receivers are officers of the court to be compensated for their services and not to have to do it at a loss. But yet they're asking you to compel ECUA to do it, operate at a loss and then expend their public funds instead of the County's.

I would also submit to you that they are, in essence, trying to force this Court to order ECUA to expand its service area when I

would submit that due to the separation of powers, the ECUA board is the best qualified entity in order to define what areas it is able to serve and should serve, as opposed to this Court. Also, if ECUA is to act as a receiver, because we are under a consent order with DEP, every time there is a problem out there in which there's an overflow -- and there will be because it's a failing system, which is why they abandoned it -- ECUA gets hammered under that consent order, and it gets hit with mandatory fines over a utility that it never regulated, didn't have any power to say boo to, because in 1983 the legislature told them you can't.

Now, one of the fallacies of their motion is that ECUA needs to be a joint receiver in order to work with the County. We've been trying to work with the County. We've solved similar issues in the past with them and have offered to do so here, but yet they won't talk about what can we do, but instead, want you to force us to come into a role in essence with a gun to our head and force us to operate a system at a loss, as opposed to working with

us to formulate a plan.

Lastly, this is a totally unworkable arrangement that they have proposed. My father told me a long time ago if you have two people in charge of something, nobody is in charge. ECUA and the County appear to be looking at this and approaching it very differently. The County has asked you to force ECUA to do it, force them to operate solely at their existing rates, force them to bankroll this, force ECUA to have all the operational responsibility, et cetera, yet they get to call the shots. That's not a joint arrangement. It's a dictatorship.

So in closing I would say we're not a party, not subject to the jurisdiction of the Court, and you can't dictate our rights until such time as we've been brought in, and if we're brought in we'll comply with 164 and actually have parties working together the way the legislature prefers.

Number two, according to the teachings in Landmark, we're not willing and qualified and, therefore, we can't do it.

We have an interest in the matter and,

therefore, are disqualified by that.

The system remains private and we can't expend our public funds on a private system especially since the legislature told us we can't do anything to the private systems that operated prior to our existence. And this system remains private. It is not publicly owned as they have suggested in their motion.

They can do it by the statute. They volunteered to do it, et cetera, and I will tell you ECUA has repeatedly volunteered to work with them and would continue to do so, just not as the receiver. We would be conflicted from it.

And this joint deal in which they tell us what to do and we expend our funds is totally unworkable. It's impractical. It will cause us to have to come to this Court, I fear, many many times. And I'll tell you, to get one hour it took us four months from when they filed the motion. So that doesn't seem to be a tenable sort of relationship.

THE COURT: All right. Thank you. I have to say that it's hard for me to believe, looking at my calendar, that it took four

months to get an hour on this Court's book.

Mr. Nelson, do you want to add anything?

MR. NELSON: No, Your Honor.

THE COURT: All right. Mr. Peppler, you get the last word. Let's talk about how I can even do anything. His argument is he's not a party.

MR. PEPPLER: Judge, the statute, itself, if we're going to read the ordinary and plain meaning of the statute says the County shall petition the circuit court in which the utility is domiciled, to appoint a receiver, which may be the governing body of a political subdivision or any other person deemed appropriate. There's no requirement under the statute that that person be a party. So that argument, I believe, is not meritorious.

Secondly, Mr. Odom, for someone who hasn't read the order, has really caught up to speed on the intricacies of a receivership. So he says that a receiver under this statute must be disinterested. Well, if that were the case, if that was the gloss that Mr. Odom was placing on the statute, then no governing body of a political subdivision could be a

receiver, because most counties operate their own water and sewer systems, not many counties have a separate authority. So that would disqualify the county from ever being a receiver and can't be what the legislature intended.

What Mr. Odom is citing, and I haven't -- because I looked at those same cases with regard to receivership and those are receiverships involving a bankruptcy or a corporation that's insolvent, and in those situations the Court imposes a qualification of disinterest. We're not dealing with that here. We're dealing with two public entities who are commanded by the legislature to deal appropriately and in good faith with the public. So there's no reason that there should be any hesitancy by the Court to appoint ECUA when they have the purposes set forth in their statute as to how they're going to deal with the public and what the legislature has commanded. So, again, that's not a meritorious argument.

He has set forth a lot of facts for a nonparty, or assertions of fact, and I don't

know whether Your Honor is in a position to have a rebuttal to the assertions, but I know that Mr. Brown was furiously writing on my pad that he's the one who approached Mr. Sorrell about entering into an agreement to operate the system, and it wasn't the ECUA that approached the County. And Gulf Breeze volunteered at no cost to the County because we were in such dire straits because we only had 60 days to act. ECUA, as Mr. Odom said, refused to be the receiver even though that's their bailiwick, that's their jurisdictional bailiwick over water and sewer. So we had to step in and we did reach an agreement with Gulf Breeze for a short period of time to be our agent as a receiver.

Another assertion that I can make to the Court is that we have contacted FDEP about whether there would be any actions against us for operating it, and they have told us no, they would understand the situation, that you're operating this on a temporary basis until it can be transferred.

He's made the assertion, Mr. Odom has made the assertion that the private system is

active. Well, that flies in the face of an abandonment. The abandonment says, I give up. I can't operate this system any longer. I'm in over my head. Here, government, you take over. That is inconsistent with this sort of corpse that still has a little bit of life left in it, a zombie like utility, that Mr. Odom says Innerarity is. Innerarity is gone. It's no longer in existence as a private system. It can't revive itself. The only way that this system can be operated is through the ECUA. And if ECUA, again, tagging along with his assertions that ECUA wants to work with the County, and they're afraid that we're going to boss them around, well, then make them the receiver. They can call the shots. If that's what they're worried about, a master servant relationship, make them the master. Let them call the shots and we'll stand back and work with them as far as the upgrades that they feel are appropriate with a MSBU. So, again, if they're worrying about being bossed around, let them call the shots. If they want to be made a party, appoint them the receiver and we'll sue them and we'll make

them a respondent, and we can alleviate that concern on their part that they're not a party.

THE COURT: Let me make a note.

So -- no, he gets the last word. That's the way it works. It's his motion.

Let me ask a question. The last thing you said is if they want to be a party, make them just the sole receiver?

MR. PEPPLER: Correct, Your Honor.

THE COURT: And then you're going to sue them.

MR. PEPPLER: Correct. And we'll go forward with, I guess, the Chapter 164, although there is an exception to that if the County, by three-fourths vote, determines that that act not be complied with, then that's a way to alleviate or not go through the procedures of Chapter 164. Of course, Your Honor can go behind the vote and determine, well, you're just doing it because you don't want to go through 164, but that would be a determination for Your Honor.

THE COURT: Well, what I would like to do is to read over everything, and I will send

out a letter, and I'll include Mr. Odom, of course, although his client is not a party, by Friday week. Does everybody have their phone calendar handy?

MR. ODOM: The 29th, I believe.

THE COURT: By August 29th. Everybody will get a letter. Mr. Peppler, you will probably have to prepare the order no matter what because, again, given your posture in the case. But I will announce my decision.

MR. PEPPLER: Can I have a rebuttal opportunity to his memo?

THE COURT: Okay. When would you like to have to do that?

MR. PEPPLER: Today is the --

THE COURT: And I haven't read his memo, but, of course, I will read it.

MR. ODOM: I couldn't file it prior.

THE COURT: I understand. I understand. I heard you. But I haven't read it obviously either, so I will read it, of course, before I make a decision.

MR. PEPPLER: Could you postpone your ruling a week and I could have it in by the 29th then?

THE COURT: Let me get the calendar. And I do want to say that I am concerned about things that are really factual matters that have been tossed back and forth. I mean, I think Mr. Odom started with it and you felt you had to respond. I really am going to be focusing on the legal aspects of it versus factual assertions made today.

I mean, if nobody is objecting -- I haven't heard Mr. Odom. Mr. Nelson is quiet on the whole thing -- if you wanted to the -- you feel like it would take you until the 29th?

MR. PEPPLER: At least.

THE COURT: Okay. If you have me something by August 29th, then I could make a decision by -- I'm just looking and pondering here for a second. Let's say I could have a decision by September 8th, which is on Monday at five o'clock. I would send out a letter by that time.

MR. ODOM: I didn't catch that.

THE COURT: I'm sorry.

MR. ODOM: I just didn't hear the date.

THE COURT: September 8th at five o'clock,

Monday.

MR. PEPPLER: Thank you, Your Honor.

THE COURT: Okay. Thank you.

MR. ODOM: And I don't know that I can file anything based on what they submit.

THE COURT: Well, normally, I handle the arguments and the paperwork the same way. It's Mr. Peppler's motion. You filed a response. Even though you're not a party I am going to read and consider it just like I'm considering your legal argument. Mr. Peppler gets to have the last word on that on August 29th, so he gets the last word on it. Then I will decide something September 8th by 5:00. And then Mr. Peppler, either way you're probably going to have to prepare the order.

MR. PEPPLER: All right. Thanks.

THE COURT: Okay. Good to see everybody.

MR. PEPPLER: Have good day.

THE COURT: Off the record.

(The proceedings concluded at 10:32 a.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF ESCAMBIA

I, LINDA V. CROWE, Court Reporter and Notary Public at Large in and for the State of Florida, hereby certify that the foregoing Pages 2 through 43 both inclusive, comprise a full, true, and correct transcript of the proceeding; that said proceeding was taken by me stenographically, and transcribed by me as it now appears; that I am not a relative or employee or attorney or counsel of the parties, or relative or employee of such attorney or counsel, nor am I interested in this proceeding or its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on 25th day of August 2014.

/ss_____
LINDA V. CROWE, COURT REPORTER
Notary Public - State of Florida
My Commission No.: EE 860695
My Commission Expires: 02-05-2017

Linda V. Crowe
Notary Public, State of Florida
Commission No. EE 860695
Exp. February 5, 2017

IN THE CIRCUIT COURT OF
THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FL

ESCAMBIA COUNTY, FLORIDA, a political subdivision of the State of Florida,

Petitioner,

v.

Case No. 2014 CA 000237

INNERARITY ISLAND DEVELOPMENT CORPORATION, a Florida corporation,

Respondent.
_____/

PETITIONER'S MEMORANDUM OF LAW IN REBUTTAL TO ECUA'S RESPONSE TO COUNTY'S MOTION TO APPOINT ECUA AS JOINT RECEIVER

Petitioner, Escambia County, Florida (County) submits its Memorandum of Law in rebuttal to Emerald Coast Utilities Authority's (ECUA) response to County's Motion to Appoint ECUA as a Joint Receiver, as follows:

I. DISCUSSION OF FACTS AND PROCEDURE.

County does not disagree with the law cited by ECUA as to the ECUA's powers and authority in relation to privately owned utilities. (Response, p. 1-2)[1]. However, ECUA has only cited a small portion of its powers with respect to

[1] County will cite to ECUA's Response to County's Motion to Appoint ECUA as joint receiver as "Response" followed by page number.

providing water and wastewater treatment services to the general public. Those powers are described in its enabling act in "Section 5. Powers". Ch. 2001-324, Laws of Fla. Under subsection (a)(2), ECUA possesses all power previously possessed pursuant to law, ordinance, franchise or otherwise that County had prior to August 1, 1983, including the County's power over water and wastewater pursuant to Chapter 57-1313, Laws of Florida. Ch. 2001-324, § 5(a)(2), Laws of Fla. ECUA now humbly argues that it has no power to act expressly as a receiver for an abandoned private water utility system by ignoring the following statutorily granted powers:

> No listing of powers included in this act is intended to be exclusive or restrictive. On the contrary, it is intended that the authority [ECUA] should have all implied powers necessary or incidental to carrying out the expressed powers and the expressed purposes for which the authority [ECUA] is created.
>
> * * *
>
> The authority's [ECUA's] power to levy special assessments shall not be deemed to be the power to levy taxes.
>
> Ch. 2001-324, § 5(d), Laws of Fla. (bracketed material added).

Moreover, ECUA has "[a]ll other powers, not expressly prohibited by the United States or Florida Constitutions or by general law, necessary to effectuate and carry out the purposes and intent of this act." Ch. 2001-324, § 5(a)(9), Laws of Fla. Surely, ECUA must understand it has been given the power to act as a receiver for an abandoned private water utility.

Similar to ECUA's statutory scheme, the New Jersey Board of Public Utilities (BPU) was challenged in its decision to revoke the franchise of a privately owned wastewater treatment company (Valley Road Sewerage Company) and to seek the appointment of a receiver to sell it. *State Board of Public Utilities v. Valley Road Sewerage Company,* 712 A.2d 653 (N.J. 1998). Valley Road Sewerage Company (Valley Road) asserted that the BPU lacked authority to revoke its franchise and to appoint a receiver to operate and sell the company. The New Jersey Supreme Court reviewed the statutory scheme empowering the BPU and determined that it had the legal authority to revoke the franchise. The Court held that the appointment of a custodial receiver was "fairly inferable from the expansive powers that the Legislature has granted to the BPU. Those powers include the authority to require compliance with State and local laws . . ." *Valley Road,* 712 A.2d at 659. The court discerned a legislative intent that the BPU had the discretion not only to revoke a franchise, but to seek the appointment of a receiver "when such action is necessary to ensure the continued provision of safe, adequate, and proper utility service." *Id.* (citing case law). A copy of this opinion is attached to this rebuttal as Tab A.

ECUA has been given similar broad power regarding water and wastewater in Escambia County. The Legislature has not only spelled out ECUA's powers, but has given it implied power necessary or incidental to carry out its plenary authority

over water and wastewater treatment. ECUA can take that step, with this court's help, to act as joint receiver and operate the abandoned system for the protection of the general public.

II. RATHER THAN EMBRACE ITS STATUTORY POWERS OVER WATER AND WASTEWATER, ECUA SEEKS INSTEAD TO SHRUG ITS OBLIGATIONS.

A. ECUA has Extensive Power Over Water and Wastewater.

ECUA contends stridently that it should not be a receiver, whether joint as requested by the County, nor the sole receiver, because of its fear of a fractious working relationship with the County and because it is not a party. (Response, p. 4-8). Much of ECUA's argument hinges on its stated unwillingness to serve (Response, Tab 1) and its reliance on *Department of Environmental Protection v. Landmark Enterprises, Inc.*, 3 So. 3d 434 (Fla. 2d DCA 2009). County acknowledges that no other Florida court has interpreted § 367.165(2), Fla. Stat., abandonment and appointment of a receiver, in the same way as the Second District in *Department of Environmental Protection v. Landmark Enterprises, Inc.* County further acknowledges that an opinion from a district court of appeal outside of the First District would be precedential authority to the circuit courts of the First Judicial Circuit, if no First District Court of Appeal opinion is on point. *State v. Bamber*, 592 So. 2d 1129, 1132 (Fla. 2d DCA 1991). However, the portion of the opinion stressed by ECUA (Response, p. 7-8) is *obiter dicta* and provides no

precedential authority for this court. As observed by the First District Court of Appeal in *Doherty v. Brown*, 14 So. 3d 1266, 1267-68 (Fla. 1st DCA 2009), " '[A] purely gratuitous observation or remark made in pronouncing an opinion and which concerns some rule, principle or application of law not necessarily involved in the case or essential to its determination is *obiter dictum*, pure and simple.' " (quoting from *Bunn v. Bunn*, 311 So. 2d 387 (Fla. 4th DCA 1975)). *Landmark Enterprises* stands for the proposition that DEP is not statutorily authorized to act as a receiver and, therefore, cannot act as a receiver for a failed private wastewater treatment facility. The passing remark by the panel that they do not envy the task of the trial judge on remand to find a willing and qualified receiver was a statement not essential to its holding, but one of commiseration. This language is a gratuitous remark or observation and not essential to its holding that DEP has no statutory power to act as a receiver.

This court is not so burdened with an unenviable task. This court has been given a stock of legislative ammunition by Chapter 2001-324, Section 5, Laws of Florida, to shoot down the objections of ECUA to appoint it as a joint receiver with the County or, as implied by ECUA, the sole receiver as it does not foresee a happy working relationship with the County.

B. As ECUA is a Creature of the Legislature and Infused with Broad Power to Protect the Public, It Does Not Stand in the Same Position as a Private Receiver.

ECUA deems itself disqualified from serving as a receiver. (Response, p. 8-10). During oral argument on County's motion, ECUA held out the hope that Respondent may revive itself and begin operation as a private water and wastewater system anew. However, attached to this memorandum is the Administrative Order of the Florida Public Service Commission showing that Respondent no longer has any jurisdictional authority to operate a private water or wastewater system in the State of Florida. (Tab B). The only way that Respondent could revive itself would be to apply again for another initial certificate of authority pursuant to Section 367.045(1), Florida Statutes (2013). Within Section 367.045(1) are stringent requirements to obtain an initial certificate. A utility must provide the Commission with schedules showing rates and classifications and charges for service of every kind that is being proposed, file an application fee, and an affidavit that it has provided notice. § 367.045(1)(a) - (e), Fla. Stat. (2013). Significantly, the private utility must provide information as to the ability of the applicant to provide service in its area of operation and the existence or non-existence of service from other sources within geographical proximity to its proposed service area. § 367.045(1)(b).

Respondent has filed an answer admitting all of the allegations of the County's petition to appoint a receiver because of Respondent's notice of abandonment. Respondent has not moved to amend its answer, nor has it made any statements at oral argument or given any indication that it seeks to apply for an initial certificate with the Public Service Commission to begin again to operate as a private water and wastewater system in Escambia County. Based on Respondent's past performance, it is a pipe dream of ECUA that Respondent will come to life again. Attached to this rebuttal are excerpts from Respondent's annual report filed with the PSC for the year ending December 31, 2013. (See, Tab C). Of particular interest to this Court is Respondent's income statement showing that it has sustained over a $290,000 loss relating to water and wastewater. (Tab C, p. F-3). Respondent is a re-seller of water obtained from ECUA. (Tab C, p. W-7). Further, Respondent purchased wastewater treatment services from ECUA. (Tab C, p. S-5).

Section 367.165(2) does not provide that a receiver is disqualified because it may ultimately be the owner and operator of the private utility system. As cited to this court by both parties and as argued in the hearing on the County's motion, this court is given the discretion to appoint a receiver "which may be the governing body of a political subdivision or any other person deemed appropriate." §367.165(2). There is no expression of legislative intent that the governing body of the political subdivision in which the private utility is domiciled, which acts as

the receiver, must not become the owner and operator of an abandoned water and wastewater treatment system. Nor is there any expression of legislative intent that a person deemed appropriate to act as receiver is disqualified from becoming the ultimate transferee of a water and wastewater treatment system. ECUA's argument is illogical as the very persons or entities qualified to operate and own a water and wastewater treatment facility would be disqualified from ever being a receiver.

If the court needs to keep tabs on ECUA or the County, the order appointing County as receiver requires the County to provide financial and operational reports as requested by the court. County and ECUA are also subject to the Florida Public Records Act. The only statutory authority limiting this court's choice of an appropriate person to act as a receiver is the prohibition contained in Section 660.41(2), Florida Statutes (2013) that a corporation is prohibited from acting as a receiver under appointment of any court in this state. ECUA as joint receiver would be required to provide reports to the court upon request. There is no suggestion that ECUA, a governmental entity created for the public good, would not comport itself in an honorable manner as receiver. As stated in ECUA's enabling act, "[t]he Legislature finds and declares that the creation of the authority and the carrying out of its purposes are **in all respects for the benefit of the people of this state, Escambia County . . . that the authority is performing an essential governmental function. . .** ." Ch. 2001-324, § 6, Laws of Fla. (emphasis

added). To assist ECUA in its mission, the Legislature has deemed that ECUA's enabling act "be liberally construed to effectuate the purposes set forth herein." Ch. 2001-324, § 19, Laws of Fla.

Despite its legislative mandate to serve all the people of Escambia County and enjoy liberal interpretation in carrying out its powers, ECUA argues contradictorily that it cannot expend public funds on a private system[2]. (Response, p. 10-12). As shown in the PSC Administrative Order attached to this motion (Tab B), although Respondent may exist as a corporation, it does not have any legal authority to operate or own a water or wastewater utility in Escambia County and does not intend to. Therefore, there is a paramount public purpose to expend monies to provide services to those who need water and wastewater treatment. ECUA does not argue that County is performing *ultra vires* or acting illegally in expending taxpayer monies to act as receiver.

III. ECUA HAS THE EXPERTISE, PERSONNEL AND EQUIPMENT TO PERFORM AS AN APPROPRIATE PERSON AS JOINT RECEIVER WITH COUNTY.

ECUA misses the main thrust of County's motion. Although ECUA has the power to levy special assessments, it is the County's intent that it would levy an MSBU (Municipal Services Benefit Unit) to have the property owners served by

[2] Enclosed with this month's billing, ECUA has stated in a circular with obvious pride that it has constructed and is operating a new septage treatment facility because "the public's need for proper, lawful and appropriate septage treatment and disposal services were *not being adequately met* by the private sector." (Tab D).

the utility system pay for reasonable upgrades to the system which would ultimately be owned and operated by ECUA. ECUA would not be left holding the bag, as it were, without financial support from the Innerarity Island landowners who would benefit from the upgrades to the water and wastewater system. Attached to this rebuttal is the undersigned's August 15th response to ECUA's April 28, 2014 letter. (Tab E). From this letter, it is clear that County's intent is to work with ECUA to levy an MSBU to fund, over a period of years, the upgrades that can be agreed upon for the Innerarity utility system just as was done for the new lift station at the Deerfield Estates subdivision.

Despite ECUA's protestations to the contrary, ECUA and County have proved that it can work together for a long-term solution. ECUA's Executive Director understands the nature of the working relationship being proposed by County as acknowledged in a letter to the County Administrator dated August 26, 2014. (Tab F). Although Mr. Sorrell does not go so far as to say ECUA would act as joint receiver, he does not disqualify ECUA from acting as joint receiver. ECUA's argument in its Response that a joint receivership would just not work is empty rhetoric and contrary to ECUA's Board Chairman Walker's letter to BCC Chairman May and now Mr. Sorrell's letter that both governmental entities can work together. (Response, p. 14-16, Tab 3, and Rebuttal, Tab F).

There is persuasive precedent for the court to appoint a joint receiver such as

ECUA. In *Orlando Hyatt Associates, Ltd. v. F.D.I.C.*, 629 So. 2d 975 (Fla. 5th DCA 1993), the Fifth District Court of Appeal reviewed the trial court's use of a management company to deposit hotel revenues into an escrow account and then use the money to manage the mortgaged hotel property and disburse the remainder to the lender as a "quasi-receiver." 629 So. 2d at 977. The Court did not reverse this relationship as being contrary to law. In the same way, County is not asking this court to do anything that could be considered *ultra vires* for ECUA or beyond the court's authority under Section 367.165(2). This court would still control the relationship between ECUA and County as joint receivers. A court which appoints a receiver may issue orders as necessary to protect the property and interests of the public. *City of Kissimmee v. Department of Environmental Protection,* 753 So. 2d 770, 772 (Fla. 5th DCA 2000) (citing cases in an abandonment proceeding under Chapter 367 where the City as receiver was ordered by the trial court to raise rates to compensate for loss of rental income). County's counsel has proposed a case management conference to take place every 90 days so that the court can monitor the receivership and resolve any disputes and keep both receivers on track to a transfer of the system to ECUA.

ECUA has argued that County's motion to appoint it as a joint receiver was in essence an "end around" (this being football season) to Chapter 164, the Florida Governmental Conflict Resolution Act. (Response, p. 4-5). Appointment of ECUA

as a receiver would not place ECUA in an adversarial position with the County. County is not seeking any monetary or equitable relief from ECUA at this time. Rather, County is seeking to appoint ECUA as a receiver to live up to its obligations to the people of Escambia County to bring to bear its expertise and statutory powers to operate a water and waste water utility. If this court believes it necessary, it can order as a condition of ECUA being appointed either joint or sole receiver, that ECUA be joined as a respondent in this proceeding. While ECUA acts as receiver or joint receiver, the Florida Governmental Conflict Resolution Act procedures can take place simultaneously[3]. Moreover, Section 367.165(2) does not require that a person being appointed a receiver also be a respondent or petitioner in the abandonment proceedings. To engraft that requirement, this court would severely limit the available pool of receivers as appropriate persons would then require legal representation and be liable for other expenses which they could not easily recoup from rates charged to customers to provide water and wastewater.

CONCLUSION

There is legal authority for this court to appoint ECUA either as a joint receiver with County or as the sole receiver should the court agree with ECUA that

[3] As mentioned to this court previously, the County could by three-fourths vote suspend compliance with Chapter 164 if it finds that there is an immediate danger that the health, safety and welfare of the public requiring immediate action or that significant legal rights will be compromised unless the County acts without resort to the procedures provided in Chapter 164.

it would be unworkable for ECUA to act as joint receiver. In addition, should this court determine that ECUA should be named a respondent as well as being appointed either a joint or sole receiver, the ECUA can be joined as a respondent contemporaneously with its acting as joint or sole receiver. Lastly, the County's purpose behind this motion is for ECUA to own and operate the water and wastewater system and that County and ECUA work on a Memorandum of Understanding such as it did with the Deerfield Estates subdivision and levy an MSBU to finance appropriate upgrades to the utility systems. In the interim, ECUA is the one and only appropriate person to operate the utility system as receiver as called for in its own enabling act.

Alison Rogers, County Attorney
Escambia County Attorney's Office
221 Palafox Place, Suite 430
Pensacola, Florida 32502
(850) 595-4970
(850) 595-4979 - Facsimile

/s/ Charles V. Peppler
By: Charles V. Peppler, Deputy County Attorney
Florida Bar No.: 239739
Attorneys for Escambia County, FL
cpeppler@co.escambia.fl.us
balarrie@co.escambia.fl.us
kmhill@co.escambia.fl.us

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of August, 2014, a true and correct copy of the foregoing was furnished by E-Service to: Ron Nelson, 517 East

Government Street, Pensacola, FL 32502, rln@nelsonlawflorida.com and Bradley Odom, Odom & Barlow, P.A., 1800 North E Street, Pensacola, FL 32501, email@odombarlow.com.

/s/ Charles V. Peppler

By: Charles V. Peppler, Deputy County Attorney
Florida Bar No.: 239739

CIRCUIT COURT
FIRST JUDICIAL CIRCUIT OF FLORIDA

M. BLANCHARD JUDICIAL CENTER
190 GOVERNMENTAL CENTER
PENSACOLA, FLORIDA 32502-5795

TELEPHONE (850) 595-4453
FAX (850) 595-4455

JAN SHACKELFORD
CIRCUIT JUDGE

YVONNE W. BURNETTE
JUDICIAL ASSISTANT

September 8, 2014

DELIVERED BY FACSIMILE ONLY

Charles V. Peppler, Deputy County Attorney
Escambia County Attorney's Office
221 Palafox Place - Suite 430
Pensacola, FL 32502
(850) 595-4979

Bradley S. Odom, Esq.
Odom & Barlow, P.A.
1800 North "E" Street
Pensacola, FL 32501
(850) 434-6380

RE: Escambia County Florida vs. Innerarity Island Development Corp.
Case No. 14-CA-237
Petitioner's Motion to Modify

Gentlemen:

I have considered Petitioner's Motion to Modify Order Appointing Receiver and to Appoint ECUA as Joint Receiver with Petitioner, ECUA's Response to County's motion, Petitioner's Memorandum of Law in Rebuttal, argument of counsel, and applicable case law. The Court finds the argument by the County persuasive. The Court has closely reviewed Department of Environmental Protection v. Landmark Enterprises, Inc., 3 So.3d 434 (Fla. 2d DCA 2009) and finds the holding pertaining to DEP distinguishable from the statutory authority granted by the legislature to ECUA. In addition, this Court considers the language in the opinion regarding a "willing and qualified" receiver to be dicta, and not essential to the holding of the case.

Based upon the foregoing, Petitioner's Motion to Modify and Appoint ECUA as Joint Receiver is granted upon the condition that ECUA is joined as a Resondent to the proceeding. In addition, the County shall schedule case management conferences with the Court every ninety (90) days to monitor the joint receivership and address any issues which might arise.

Mr. Peppler shall prepare the order. Please provide a copy of the proposed order to Mr. Odom and Mr. Nelson to determine if there is any objection. Please do not e-file the order unless it is agreed to by both attorneys. Otherwise, please alert my office there is an objection and ECUA and the County will submit draft orders directly to my office for consideration.

Sincerely,

JAN SHACKELFORD
Circuit Judge

JS/ywb

Copy by facsimile to:

Ron Nelson, Esq.
517 East Government Street
Pensacola, FL 32502
(850) 432-8800

IN THE CIRCUIT COURT OF
THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

ESCAMBIA COUNTY, FLORIDA, a
political subdivision of the State of Florida,

Petitioner,

v.

Case No. 2014 CA 000237

INNERARITY ISLAND DEVELOPMENT
CORPORATION, a Florida corporation,

Respondent.
_____/

PETITIONER'S MOTION TO AMEND PETITION FOR APPOINTMENT OF RECEIVER PURSUANT TO NOTICE OF ABANDONMENT

Petitioner, Escambia County, Florida (County) moves to amend its Petition for Appointment of Receiver Pursuant to Notice of Abandonment for the following reasons:

1. Petitioner's motion to appoint Emerald Coast Utilities Authority (ECUA) as a joint receiver has been granted. As a condition of the appointment of ECUA's joint receiver, the Court has ordered that ECUA be joined as a respondent.

2. This motion is being made to further the substantial rights of the citizens of Escambia County.

3. A copy of the proposed Amended Petition is attached to this motion and incorporated by reference.

WHEREFORE, Petitioner, requests entry of an Order allowing the Amended Petition to be filed and then served on ECUA as a respondent.

Alison Rogers, County Attorney
Escambia County Attorney's Office

221 Palafox Place, Suite 430
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(850) 595-4970
(850) 595-4979 - Facsimile

/s/ Charles V. Peppler
By: Charles V. Peppler, Deputy County Attorney
Florida Bar No.: 239739
Attorneys for Escambia County, FL
cpeppler@co.escambia.fl.us
balarrie@co.escambia.fl.us; kmhill@co.escambia.fl.us

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of September, 2014, a true and correct copy of the foregoing was furnished by E-Service to: Ron Nelson, 517 East Government Street, Pensacola, FL 32502, rln@nelsonlawflorida.com.

/s/ Charles V. Peppler
By: Charles V. Peppler, Deputy County Attorney
Florida Bar No.: 239739

IN THE CIRCUIT COURT OF
THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

ESCAMBIA COUNTY, FLORIDA, a political subdivision of the State of Florida,

Petitioner,

v.

Case No. 2014 CA 000237

INNERARITY ISLAND DEVELOPMENT CORPORATION, a Florida corporation,

Respondent.
_____/

Proposed

ORDER GRANTING PETITIONER'S MOTION TO AMEND PETITION FOR APPOINTMENT OF RECEIVER PURSUANT TO NOTICE OF ABANDONMENT

UPON consideration of Petitioner's (County) Motion to Amend Petition for Appointment of Receiver Pursuant to Notice of Abandonment and the attorneys for the parties in this proceeding having agreed to entry of this order, it is hereby

ORDERED AND ADJUDGED as follows:

1. Escambia County's motion to amend its Petition for Appointment of Receiver Pursuant to Notice of Abandonment is granted.

2. Escambia County's Amended Petition for Appointment of Receiver Pursuant to Notice of Abandonment is deemed filed. Escambia County shall serve the amended petition according to law.

3. The Clerk of the Circuit Court is directed to issue a summons in the name of Emerald Coast Utility Authority to accomplish service.

DONE AND ORDERED in Chambers in Pensacola, Escambia County, Florida, this _____ day of September, 2014.

_____
Jan Shackelford, Circuit Court Judge

Copies furnished to:
Charles V. Peppler, Deputy County Attorney
Ron Nelson, Attorney for Respondent
Clerk of the Circuit Court, Circuit Civil Division

ODOM & BARLOW, P.A.

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September 16, 2014

Charles V. Peppler, Esq.
Escambia County Attorney's Office
221 Palafox Place, Suite 430
Pensacola, Florida 32502

Re: *Escambia County, Florida v. Innerarity Island Development Corp.*

Dear Mr. Peppler:

I am in receipt of your proposed Order in the above-referenced case. I understand that both the County and ECUA are presently working on a resolution of the matter. Nevertheless, I understand the Court's directive regarding the Order must be addressed. With that in mind, I have reviewed your proposed Order.

As you will recall, Judge Shackelford stated that she felt that the issue upon which she was ruling was an issue of law as opposed to fact. Nothing in her letter addressed the subjects covered in paragraphs B, C, and D. I would further submit that nearly all of the issues addressed in paragraph B are inherently factual in nature as opposed to legal.

Regarding paragraph C, the Court did not articulate how the Governmental Conflict Resolution Act would affect the timing, and that Act generally requires a stay.

In reference to paragraph D, there were portions of your motion that are apparently in conflict with the March 21, 2014 Order Appointing Receiver, like in reference to rates.

In her letter ruling, the Court made reference to the Landmark Enterprises case as the basis for her ruling, yet it is not referred to in the proposed Order.

Thus, there are many objections to the proposed Order.

Sincerely,

Bradley S. Odom

Kristine M. Hill

From: Charlie Peppler
Sent: Tuesday, September 16, 2014 2:15 PM
To: Alison A. Perdue
Cc: Beth A. Larrieu
Subject: RE: EC v. Innerarity Island and ECUA

I told him the same thing.

From: Alison A. Perdue
Sent: Tuesday, September 16, 2014 2:07 PM
To: Charlie Peppler
Cc: Beth A. Larrieu; Dianne C. Simpson
Subject: RE: EC v. Innerarity Island and ECUA

Good. I encouraged some sort of meeting so the ECUA Board isn't caught off guard by a "lawsuit".

From: Charlie Peppler
Sent: Tuesday, September 16, 2014 12:58 PM
To: Alison A. Perdue
Cc: Beth A. Larrieu
Subject: RE: EC v. Innerarity Island and ECUA

Really, he told me he wants to meet with just Sorrell and try to hash things out without lawyers.

From: Alison A. Perdue
Sent: Tuesday, September 16, 2014 12:53 PM
To: Charlie Peppler
Cc: Beth A. Larrieu; Dianne C. Simpson
Subject: RE: EC v. Innerarity Island and ECUA

Then I say the answer is yes, but I think Jack wants to have a meeting with you, me, Sorrell, Bradley, Jack soon.

From: Charlie Peppler
Sent: Tuesday, September 16, 2014 12:42 PM
To: Alison A. Perdue
Cc: Beth A. Larrieu
Subject: RE: EC v. Innerarity Island and ECUA

Yes, I already have. I explained to him what the legal procedure is with the Local Govt. Dispute Resolution Act and that a proposed order on appointing ECUA the joint receiver had to be reviewed by Odom.

From: Alison A. Perdue
Sent: Tuesday, September 16, 2014 12:22 PM
To: Charlie Peppler
Cc: Alison A. Perdue; Beth A. Larrieu
Subject: Re: EC v. Innerarity Island and ECUA

Jack thought u were mtg with him today?

Sent from my iPhone

On Sep 16, 2014, at 11:42 AM, "Charlie Peppler" <cpeppler@co.escambia.fl.us> wrote:

> What did we decide? That I should do a recommendation ratifying the bringing of an action against ECUA as ruled by Judge Shackelford?

Kristine M. Hill

From: Charlie Peppler
Sent: Monday, September 22, 2014 11:56 AM
To: Beth A. Larrieu
Subject: FW: Msge: Yvonne in Judge Shackelford's Office - IIDC

From: Beth A. Larrieu
Sent: Monday, September 22, 2014 11:56:17 AM
To: Charlie Peppler
Subject: Msge: Yvonne in Judge Shackelford's Office - IIDC
Auto forwarded by a Rule

Re: IIDC proposed Order
Judge wants to know Mr. Odom's position on proposed Order before signing.

EMMANUEL, SHEPPARD & CONDON

ATTORNEYS AT LAW SINCE 1913

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JOHN W. MONROE, JR. •
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T. SHANE ROWE
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ADAM J. WHITE
CECILY M. WELSH
CHARLES P. YOUNG ••

PATRICK G. EMMANUEL, RETIRED
ALAN C. SHEPPARD, 1921 – 2014
A. G. CONDON, JR., 1934 – 2011

• *Board Certified Real Estate Lawyer* •• *Board Certified Construction Lawyer*
••• *Board Certified Civil Trial Lawyer* •••• *Board Certified Labor and Employment Law*

September 24, 2014

WORK PRODUCT PRIVILEGE APPLIES

VIA E-MAIL
Charles V. Peppler
Deputy County Attorney
Office of Escambia County Attorney
221 Palafox Place, Suite 430
Pensacola, FL 32502

Re: Escambia County v. Innerarity Island Development Corporation
Case No. 2014 CA 000237

Dear Charlie:

In my role as confidential legal consultant to Escambia County concerning financial issues of Innerarity Island Development Corporation (hereinafter "IIDC"), I have reviewed the additional documents you provided and various IIDC related records from the Public Service Commission, the Escambia County Tax Appraiser, the Escambia County Official Records and IIDC production. Based on that review and our discussions, I have the following legal opinion:

Question: What actions can the Receiver for IIDC pursue to recover monies to use to pay expenses, creditors and to improve the System so it can be disposed of.

The terms of the Order appointing the County as Receiver defines "System" as the utility and associated real and personal property. "System" is defined in Fla. Stat. § 367.011(11) to mean facilities and land used or useful in providing service and upon a

finding by the commission, may include a combination of functionally related facilities and land. The Receivership under the Order does not terminate until the Receiver disposes of "the real and personal property" of "IIDC". The Order goes onto say that IIDC is not and will not be entitled to any benefits or proceeds from disposition of property or monies associated with the System.

IIDC owns 118 lots in Escambia County having a tax assessed value of $2,027,149.00. The minutes for IIDC indicate that Richard Sherrill appraised the lots for $1.6 million.[1] Although there have been historic bank mortgages on all or a portion of the 118 lots, those were paid off and the lots were free and clear for several years. However, in November 2013, IIDC gave a Mortgage on all 118 lots and arguably the utility itself to The Estate of Dennison to secure an alleged $750,000 line of credit. I discuss below why I believe these lots, the Mortgage and advances made by the Estate prior to and after the Mortgage should be considered by the Receiver as sources to recover monies to assist in getting the System improved so it can be disposed of and to benefit IIDC's creditors.

1. Seek authority from the Court in the Receivership to sell the Lots.

In my opinion the Receiver should seek permission to sell the Lots free of lien and place the proceeds in trust or the Court Registry pending order of the Court on how to disburse the monies generated.

You indicated that the Estate's attorney has argued that the 118 lots are not an asset of the utility (or part of the "System"). I disagree. All 118 lots Mortgaged were owned by IIDC. It appears from a cursory review of the official records that the properties were deeded to IIDC quite some time ago. Historic loans from banks utilizing all or a portion of these properties as collateral were made to IIDC. There are historic minutes documenting authority for the IIDC to take out these loans. These minutes are unclear on exactly what each of the loans was used for. I believe it is fair to presume that IIDC loans were used at least in part to fund the operation, enlargement or improvement of the utility, along with the properties using this utility. Nothing in historic corporate minutes provided to me indicates any split of assets of IIDC. The PSC Reports which I can access dating back to 2000 carry the real properties on the books as an asset. In other words, there is nothing I have access to that indicates that the utility assets are separate and apart from any of the other assets of IIDC. The Mortgage is from IIDC to secure a loan given by the Estate for the System. In my opinion everything owned by IIDC should be included in the System and be used by the Receiver for the benefit of the System. The Legislature made clear in Florida Statutes that those that abandon a utility should be penalized. If a company abandons a utility, it should not be able to pick and choose from the assets and leave the Receiver with a

[1] It is unclear the effective date of that appraisal, but likely the 2013 timeframe

deteriorated utility in dire need of upgrade, but not the rest of the assets of the company. The principal of IIDC was a businessman and aware that he and his prior stockholders could have elected to hold title to these lots in any number of businesses. They did not. They held these lots in IIDC. Any attempt by the Estate to divide the wheat from the chaff, or the lots from the utility in IIDC should fail. At best, I believe the Estate may be entitled to be repaid some portion of its Mortgage debt from the lots' sale proceeds. Since the Estate is owed significantly less than the lots are worth, the rest should go to benefit the System and pay the creditors of IIDC.

2. Set aside/avoid the November 5, 2013 Mortgage from IIDC to the Dennison Estate.

This Mortgage was given by IIDC to the Estate of Dennison pledging what appears to be all of the free and clear assets of IIDC for an alleged $750,000 line of credit. This Mortgage loan was not a traditional mortgage line of credit transaction whereby the loan documents were signed, and thereafter draws made by IIDC on the line. To the contrary, this Mortgage loan was comprised by approximately 68 different checks issued by the Estate from January, 2013 to March, 2014 to third parties and to IIDC. It was only after approximately 11 months of checks being issued by the Estate that these checks (and subsequent checks) were documented in the form of a line of credit Mortgage loan. In fact in May, 2013, $70,000 of these monies from the Estate were initially documented by an unsecured Promissory Note from IIDC to the Estate.

I set forth more detail about these checks to assist you. Between January 2013 and March 2014 the Estate issued 68 checks it asserts benefitted IIDC or the System. Of these 68 checks, 47 of those checks were payable to third parties and totaled $278,787.13. Of the checks totaling $278,787.13, $258,165.53 were issued prior to the Mortgage (November 5, 2013). Although many of these third party checks appear to have been issued to pay creditors of IIDC for the System, some checks issued by the Estate may not have been properly characterized as debts of IIDC. Those will be discussed below.

Of the 68 checks, the Estate issued 21 checks directly payable to IIDC totaling $396,805.37, of which $359,925.37 were after November 5, 2013 (the date of the Mortgage). So prior to the November 5, 2013 Mortgage, the Estate was issuing checks directly to third parties, which checks were added together and characterized in November as part of a line of credit loan owing by IIDC secured by the assets of IIDC

The Mortgage and Note are for $750,000. The 68 checks issued by the Estate either to third parties or to IIDC based on what I have total $675,592.50. So the entire $750,000 does not appear to be owing.

The reason this information is important is that the Receiver has the right in the current action to not only seek to sell the lots, but can also request the Court to set aside the Mortgage. The cause of action to set aside the Mortgage is under the Fraudulent Transfer Act. Fla. Stat. § 726.105 applies to *existing and future* creditors and provides that a *transfer made or an obligation incurred* by a debtor is fraudulent as to a creditor, whether the creditor's claim arose *before or after* the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with "actual intent" to hinder, delay or defraud any creditor of the debtor; **or**

(2). without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

> (i) was engaged or was about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
>
> (ii) intended to incur or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

In determining "actual intent", consideration is given to many factors enumerated by statute, including, *whether*:

(1) the transfer or obligation was to an insider,
(2) the debtor retained possession or control of the property transferred,
(3) before the transfer occurred the debtor had been sued or threatened with suit,
(4) the transfer was of substantially all of the debtor's assets,
(5) the value received by the debtor was reasonably equivalent value to the asset transferred or the obligation incurred, and
(6) the debtor was insolvent or became insolvent shortly after the transfer.

Enhancing § 726.105 is Fla. Stat. § 726.106, which applies to *existing creditors* (as opposed to existing and future). Section 726.106 provides that a transfer made or obligation incurred by debtor is presumed fraudulent (without need to prove actual intent) as to a creditor whose claim arose before the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at the time or became insolvent as a result of the transfer or obligation. There is a presumption that a transfer is fraudulent as to an existing creditor if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time and the insider had reasonable cause to believe the debtor was insolvent.

An antecedent debt is an obligation which was in existence prior to the time the Note and Mortgage were delivered. If the monies advanced by the Estate are in fact a debt, a significant portion of those monies had already been advanced prior to the November 2013 Mortgage being put in place. Therefore at least a portion of the monies secured by the Mortgage were in the nature of an antecedent debt.

This Mortgage was given in November, 2013. It was in January 2014 (approximately 2 months later) that IIDC served the Notice of Abandonment on the County and PSC. It was clear prior to January 2014 and was certainly clear in November, 2013 that the utility was in deep financial trouble. The Mortgage was given to an insider, the Estate of Dennison. The Mortgage provided the Estate (an insider) a lien on substantially all the assets of IIDC. The Mortgage of 118 lots was not reasonably equivalent value for a $750,000 line of credit. Although prior to the Mortgage, IIDC owned 118 lots free and clear, those were not liquid. IIDC was in essence insolvent and was rendered practically insolvent by the Mortgage. IIDC had been operating at a loss. It did not appear to earn sufficient monies to pay its regular bills. The Mortgage was given after much of the monies had been advanced (in other words on account of an antecedent debt). Clearly the Estate knew that this loan could not be repaid and that other creditors and ongoing bills could not be paid, that the System needed upgrading and that this Mortgage and an abandonment of the System would cause a great burden on IIDC, the County, ECUA, the utility's customers and IIDC's creditors.

I am unable to tell from the records produced by IIDC thus far if there were any "existing creditors" that are still owed money. If there were existing creditors, then the § 726.106 presumption can be utilized. If not, then §726.105 can be used because there are and will be future creditors. As we discussed, I recommend you contact the Estate's attorney and determine if there are any creditors owed money by IIDC (other than the Estate). If so, obtain details about who those creditors are, how much they are owed, for how long they have been owed and for what they are owed. Also, verify if any further advances under the line of credit have been made since the Receivership went into effect.

I want to briefly discuss whether the County is a "creditor". The County is the Receiver. The Receiver has a duty to continue the efficient and effective operation of utility service and dispose of the real and personal property of IIDC. IIDC per the Court's Order is not entitled to any benefits or proceeds from the disposal of the System. The Receiver is incurring expense in performing its duties as Receiver and I assume in the operation of the utility and in its efforts to dispose of the real and personal property of IIDC. So I believe the County is a creditor and the County has the right to bring this action.

3. Seek Re-Payment from Ms. Collins and to the Estate in Whole or Part of Monies Received from IIDC.

As I mentioned above, 68 checks from the Estate were issued. Some of these checks were issued directly to IIDC. IIDC then utilized some of the monies to pay Ms. Collins and the Estate. The following checks were issued from IIDC that likely exceeded what should have been done. Remember the source of these funds were from the Estate.

Payee	Amount	Date	Memo Notation on Check
Kathy Collins	$42,027.50	11-19-13	Salary
Kathy Collins	$4,002.75	11-29-13	November salary
Kathy Collins	$4,002.75	12-13-13	December salary
Kathy Collins	$4,002.75	1-27-14	January salary
Kathy Collins	$4,002.75	2-24-14	February salary
Kathy Collins	$4,002.75	3-19-14	March salary
Estate of Dennison	$16,090.16	12-31-13	interest
Estate of Dennison	$70,000.00	12-09-13	loan repayment PR fee
Estate of Dennison	$11,859.00	12-9-13	loan repayment/ legal fees
Estate of Dennison	$10,845.86	3-20-14	interest on mortgage

So you have IIDC allegedly borrowing money from the Estate and using it to pay Ms. Collins, who is a beneficiary of the Estate, and to pay back the Estate plus interest. Ms. Collins is the Personal Representative of the Estate and as such she is administering Estate assets, which include the IIDC stock belonging to her deceased father. Although I do not dispute that Ms. Collins did work relating to IIDC, whether that should have been compensated by the Estate in her role as Personal Representative or by IIDC is in question. I take the position that the Estate should pay her for her time, not IIDC. For sake of argument though, if it was appropriate for IIDC to borrow money from the Estate to turn around and pay Ms. Collins a salary, then the question becomes is the amount she received from IIDC for that salary appropriate? Historically her father never received anything approaching that from IIDC that I can see. Also, why would the Estate loan money to IIDC and IIDC borrow it, just to turn around and pay salary to Ms. Collins and pay interest and some principal back to the Estate, especially considering the System was being abandoned.

If the Receiver seeks to set aside the Mortgage it should consider adding in a request seeking a return of these monies.

4. Apply for Authority When Appropriate on How Monies Generated Should be Utilized, including Possibly Challenging the Characterization of some or all of the 68 Checks as a Loan

If the Receiver is successful in generating monies from the sale of the Lots or other assets of IIDC, the question becomes who is entitled to receive those monies and for what purpose. Monies received should go to creditors of IIDC in a fair priority fashion and for the benefit of the System. The Receiver as a creditor is entitled to be compensated for its services and expenses. The Receiver should have priority because without the Receiver's efforts the utility would have failed and no monies would be available to disburse. Further since the Receiver's obligation is to dispose of real and personal property of IIDC, it is appropriate for the Receiver to apply to the Court for authority to use monies or assets to improve the System and to be reimbursed for those improvements that had to be funded prior to receiving any monies. All of this should be prior to any monies going to pay the Mortgage loan since the Court Order already ordered that IIDC will not be entitled to any benefits or proceeds from disposition of property or monies associated with the System. Since the Estate is the sole stockholder of IIDC to do otherwise runs contrary to the Order's intent and to the intent of Florida Statutes.

Assuming there are monies to disburse over and above the monies for the Receiver and needed to dispose of the System, consideration should be given to including a request to the Court to examine the characterization of all or a portion of the monies given by the Estate to third parties and to IIDC. The Estate issued 68 checks totaling $675,592.50 either to third parties or to IIDC. In analyzing each of these 68 checks it appears that some are contributions to capital that would have been required of the shareholder. It appears that others may have been obligations of the Estate and not payments that benefitted the System/IIDC. If the Court agrees, the Receiver can request the Court reduce the loan amount sought by the Estate.[2]

To assist in that analysis, I have set forth charts that summarize some of the larger of the 68 checks. Where I can read the Memo on the check I note it. Where I cannot read the Memo, if I can determine the purpose of the check I note it. To clarify, I am not suggesting the third party recipients of the monies be challenged (other than Ms. Collins and the Estate). I am suggesting that the Receiver look at whether these

[2] Avoiding the Mortgage will not eliminate the debt, it just eliminates the lien. The debt owing by IIDC to the Estate must still be dealt with assuming there are assets to disburse. Also, even if the Mortgage is not avoided, the Receiver can still take steps to reduce the debt by challenging the characterization of all or a portion of the 68 checks. Again assuming there are monies, this will increase the monies that can be disbursed for the benefit of the System and other creditors.

payments were more properly a contribution to capital, and whether they benefitted the System/IIDC, or not. If not, the debt claimed to be owed to the Estate by IIDC should be reduced by the amount of re-characterized capital contribution and should be reduced by monies that did not benefit the System/IIDC.

For example, below is a chart that shows some payments direct from IIDC that jump out at me. I do not dispute that Saltmarsh did work, but was that work for the Estate or for IIDC? The minutes reflect that Saltmarsh in May 2013 was being consulted about the Estate Tax Return and tax matters affecting the Estate related to the sale of IIDC's assets. Should the assets of IIDC be used to pay what more properly should be a debt of the Estate. Another example is the payment to the Clerk of Court for the Mortgage recording, documentary stamps and intangible tax and Shell Fleming for preparing the Mortgage documents It is standard for a borrower to pay these, but if the loan characterization itself is in issue, IIDC's responsibility to repay that charge becomes in issue.

Saltmarsh, Cleveland & Gund	$5,775.00	6-27-13	invoice
Saltmarsh Cleveland & Gund	$9,770.00	2-18-14	invoice
Clerk of Court	$4,245.50	11-5-13	Recording Fee, Doc. Stamps & Intangible Tax on Mortgage
Shell, Fleming, Davis	$1,500.00	11-5-13	Closing Fee for Mortgage

In the chart above, I set forth payments direct from IIDC. Below are some of the larger payments directly from the Estate that are included in the calculation of the total debt claimed to be owed by IIDC to the Estate. Again, I am not suggesting that the recipients be challenged. I am suggesting that these payments should not be included in the loan because: a. some may have really been for the benefit of the Estate, like the Saltmarsh payment, or b. because the payments were direct from the Estate prior to the Mortgage or any Note being executed and were not loans, but contributions to capital. There are many more pre- Mortgage checks direct from the Estate that are smaller that I did not list, but the same rationale applies to them.

Payee	Amount	Date	Memo Notation on Check
Southern Utility Co. Inc.	$70,329.38	1-23-13	11-21-13/1-9-13 Invoice
Innerarity Island Association, Inc.	$6,880.00	1-23-13	86 lots Innerarity Island
Technologies for Tomorrow	$1,405.64	2-4-13	??
Dennison & Associates, P.A.	$3,720.00	3-3-13	Innerarity Island Development
Kenneth Horne & Assoc., Inc.	$6,200.00	3-15-13	IIDC
Florida Public Service Commission	$1,971.00	3-26-13	2012 Innerarity Island Development
Florida Public Service Commission	$2,165.08	3-26-13	2012 Innerarity Island
Merrill Parker Shaw, Inc.	$48,150.00	7-25-13	invoice
Kenneth Horne & Associates	$4,910.00	8-12-13	invoice
Kenneth Horne & Associates	$8,938.75	8-13-13	invoice
Kenneth Horne & Associates	$5,367.50	9-5-13	invoice
SBP	$57,600.00	9-26-13	Invoice IIDC
Saltmarsh, Cleveland & Gund	$20,621.50	4-17-14	?

5. Filing a Claim in the Dennison Estate Probate

The Receiver should consider if it should file a claim against the Dennison Estate. I do not know what assets the Estate has, but arguably the Estate owes back to IIDC the monies IIDC paid to the Estate. Also, if the County has determined that IIDC did not properly run the utility in terms of maintenance and compliance, then there may be a further claim against the Estate since it appears that at the time of his death Mr. Dennison may have been the sole shareholder of IIDC. After all the utility was abandoned to the County in a condition that will not even allow it to be disposed of without significant expense.

General Information

The minutes of IIDC indicate various things that may be of interest to the Receiver. These include:

a. February 28, 2013 Minutes - David Allen wants to purchase 2 lots to build a home.

b. March, 2013 Minutes - Jayne Ward, a realtor, had one or more parties interested in making an offer to purchase some or all of the lots.

c. April 2013 Minutes - Discussions regarding the sale of the lots have occurred with John Carr. It was pointed out that Ms. Ward does not have listing agreement on lots. Discussion occurred about a line of credit being taken out by IIDC secured by the IIDC's real property, but it does not mention from whom, an amount or what was next.

d. May, 31, 2013 Minutes - Discussions occurred on pros and cons of IIDC selling the real property in 2013 in relation to offset of taxable gain from the sale and valuation of assets as it pertains to the value of IIDC stock for the Federal Estate Tax Return. The minutes reflect that Ms. Collins as President of IIDC executed an unsecured Promissory Note for $70,000 for a loan from the Estate to pay Southern Utilities for work and maintenance to the System.

e. June 30, 2013 - Discussions about turnover of utility to ECUA.

f. August 31, 2013 Minutes - Discussions that there was a estimate of $2M to $2.5M to bring IIDC's System up to ECUA standards, compared to Richard Sherrill's appraisal of the lots at $1.6M. Discussion occurred of what steps needed to be taken next in view of that, including the discontinuation of the utility.

g. September 30, 2013 - Discussions about the possibility of discontinuation of the utility and process to do so. Moving forward with a line of credit from the Estate to pay IIDC's financial obligations and the pledge of IIDC's real properties as collateral was authorized.

h. October 31, 2013 Minutes - Jayne Ward (realtor) has unnamed buyer for all IIDC's real properties that wants seller financing. IIDC rejected seller financing. Discussions occurred about listing the properties for sale possibly with a realtor.

i. November 5, 2013 Minutes - Authorize line of credit Mortgage for $750,000 from IIDC to the Estate.

j. February 28, 2014 Minutes - Discussions about Jayne Ward's comments about selling the real property.

k. March 31, 2014 - Discussions about how the appointment of a Receiver will effect IIDC Operations, contacting persons to market IIDC lands once a Receiver is appointed and the total amount loaned to date from the Estate used by IIDC to finance its operations. Aaron Hunter with ReMax Orange Beach Realty called indicating he has an unnamed investor interested in purchasing all property in bulk sale and inquiring if lots were for sale

l. April 30, 2014 - Jayne Ward contacted Ms. Collins to advise that there are persons interested in purchasing the land.

Conclusion.

To conclude, I recommend the Receiver consider:

1. Seeking authority from the Court in the Receivership to sell the lots.

2. Seeking to Set aside/avoid the November 5, 2013 Mortgage from IIDC to the Dennison Estate.

3. Seeking re-payment from Ms. Collins and the Estate in whole or part.

4. Apply for authority when appropriate on how monies generated should be utilized, including challenging the characterization of all or a portion of the 68 checks as a loan.

5. Filing a claim in the Dennison Estate Probate.

Recommended Settlement Proposal

Since costs and time will be incurred in pursuing each of these and as always involving any governmental unit there are political ramifications, I suggest settlement discussions with the Estate. The structure of the settlement can include:

1. List the 118 lots for sale with a good realtor and agree upon the terms of the listing agreement and if the lots will be sold in whole or piecemeal.

2. Agree upon the process to handle any offers to purchase.

3. Negotiate that the net lot sale proceeds be used first to repay the Receiver for its expenses and bringing the System up to par so it can be disposed of. If there are insufficient funds for that purpose, then carve out in lieu of litigation a specific sum to be paid to the Estate for the monies paid by the Estate that provided a benefit to the System.

4. The sale of the Lots will be free and clear of the Mortgage and the Estate will execute releases either at closing or now.

5. Any remaining monies should go to pay other creditors or per Court order.

There is statute of limitation under the Fraudulent Transfer Act of <u>one</u> year. The Mortgage is November 5, 2013. A fraudulent transfer proceeding needs to be brought prior one year from that date.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Sally B. Fox

SBF:tep

Filing # 18253124 Electronically Filed 09/15/2014 05:15:05 PM

IN THE CIRCUIT COURT OF
THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

ESCAMBIA COUNTY, FLORIDA, a political subdivision of the State of Florida,

Petitioner,

v.

Case No. 2014 CA 000237

INNERARITY ISLAND DEVELOPMENT CORPORATION, a Florida corporation,

Respondent.
_____/

ORDER GRANTING PETITIONER'S MOTION TO AMEND PETITION FOR APPOINTMENT OF RECEIVER PURSUANT TO NOTICE OF ABANDONMENT

UPON consideration of Petitioner's (County) Motion to Amend Petition for Appointment of Receiver Pursuant to Notice of Abandonment and the attorneys for the parties in this proceeding having agreed to entry of this order, it is hereby

ORDERED AND ADJUDGED as follows:

1. Escambia County's motion to amend its Petition for Appointment of Receiver Pursuant to Notice of Abandonment is granted.

2. Escambia County's Amended Petition for Appointment of Receiver Pursuant to Notice of Abandonment is deemed filed. Escambia County shall serve the amended petition according to law.

3. The Clerk of the Circuit Court is directed to issue a summons in the name of Emerald Coast Utility Authority to accomplish service.

DONE AND ORDERED in Chambers in Pensacola, Escambia County, Florida, this 24th day of September, 2014.

Jan Shackelford, Circuit Court Judge

Copies furnished to:
Charles V. Peppler, Deputy County Attorney
Ron Nelson, Attorney for Respondent
Clerk of the Circuit Court, Circuit Civil Division
Served 10/1/2014

CLERK OF COURTS & COMPTROLLER'S REPORT – Continued

I. CONSENT AGENDA – Continued

1-4. Approval of Various Consent Agenda Items – Continued

4. Continued...

D. Report of the September 11, 2014, C/W Workshop – Continued

AGENDA NUMBER – Continued

6. Continued...

A. Continued....

(6) Heard comments from Commissioner Robinson concerning cost savings in operations that the County would benefit from building a new facility; and

B. Board Direction – None.

(COMMISSIONER VALENTINO WAS ABSENT DURING DISCUSSION OF THIS ITEM)

7. Innerarity Island Utilities

A. Board Discussion – The C/W discussed the Innerarity Island Utilities, and the C/W:

(1) Was advised by County Administrator Brown that:

(a) A letter was received by the County from Emerald Coast Utilities Authority (ECUA) indicating that ECUA would be willing to work with the County in setting up an MSBU (Municipal Services Benefit Unit) regarding the utilities on Innerarity Island; and

(b) Board direction is required to authorize a study, to be performed by ECUA, that the County would fund; and

(Continued on Page 18)

CLERK OF COURTS & COMPTROLLER'S REPORT – Continued

I. CONSENT AGENDA – Continued

1-4. Approval of Various Consent Agenda Items – Continued

4. Continued…

D. Report of the September 11, 2014, C/W Workshop – Continued

AGENDA NUMBER – Continued

7. Continued…

A. Continued…

(1) Continued…

(c) It would cost between $4 and $7 million to upgrade the utilities system on the Island;

(2) Heard comments from Commissioner Valentino, who expressed his concerns regarding the costs associated with this project and advised that he would like to see ECUA become more elastic in the future in accepting several sub-standard "situations";

(3) Heard comments from Commissioner Robertson and Commissioner Robinson in support of establishing an MSBU to pay for the improvements;

(4) Was advised by Commissioner Barry that there is no scenario where the remainder of the taxpayers would be culpable in any degree; therefore, for his support, on any level, there must be an understanding that the County will receive a full recovery to the remainder of the taxpayers; and

(Continued on Page 19)

CLERK OF COURTS & COMPTROLLER'S REPORT – Continued

I. CONSENT AGENDA – Continued

1-4. Approval of Various Consent Agenda Items – Continued

4. Continued...

D. Report of the September 11, 2014, C/W Workshop – Continued

AGENDA NUMBER – Continued

7. Continued...

A. Continued...

(5) Upon inquiry from Commissioner Robertson, was advised by County Administrator Brown that a funding source has not been identified for this project; and

B. Board Direction – None.

ITEMS ADDED TO THE AGENDA DURING THE MEETING

1. For Information: The C/W viewed and discussed a PowerPoint Presentation, which was also provided in hard copy, entitled *Gulf Coast African American Chamber of Commerce*, presented by Nicole Dixie, Executive Director, Gulf Coast African American Chamber of Commerce.

(COMMISSIONER VALENTINO WAS ABSENT DURING THIS PRESENTATION)

AGENDA NUMBER – Continued

8. Adjourn

Chairman May declared the C/W Workshop adjourned at 11:25 a.m.

COUNTY ATTORNEY'S REPORT – Continued

I. FOR ACTION – Continued

1-8. Approval of Various For Action Items – Continued

5. Taking the following action concerning Escambia County v. Innerarity Island Development Corporation (Case No. 2014 CA 000237):

   A. Ratifying amending the Petition to Appoint Receiver, pursuant to the Notice of Abandonment to name Emerald Coast Utilities Authority as an additional respondent; and

   B. Approving the initiation of dispute resolution procedures provided by Chapter 164, Florida Statutes, the Local Government Conflict Resolution Act.

6. Taking the following action concerning authorization for the County Attorney's Office to voluntarily dismiss the Circuit Court action against property located at 1999 Massachusetts Avenue (Sean's Outpost, Inc.):

   A. Authorizing the County Attorney's Office to voluntarily dismiss, without prejudice, the Circuit Court action seeking injunctive relief against the owners of 1999 Massachusetts Avenue for continued violations of the Escambia County Code of Ordinances and the Escambia County Land Development Code; and

   B. Authorizing the County Attorney's Office leave to re-file the above-referenced action in the future, without further Board action, if legally appropriate.

7. Authorizing the County Attorney to file suit, if necessary, in the appropriate court of jurisdiction, and otherwise pursue any and all legal and equitable remedies necessary to retrieve the rider contact information database from Pensacola Bay Transportation.

8. Adopting the Resolution *(R2014-112)* authorizing the maintenance of two abandoned cemeteries, in accordance with 497.284, Florida Statutes, to provide for the expenditure of County funds and resources for maintenance of the Mt. Zion Historical Cemetery and the Magnolia Cemetery.

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County Attorney
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CHARLES V. PEPPLER
Deputy County Attorney
Board Certified Civil Trial Law

STEPHEN G. WEST
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Board Certified Real Estate Law

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Assistant County Attorney

KERRA A. SMITH
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October 6, 2014

Via E-Mail & U.S. Mail

Bradley Odom
Odom & Barlow, P.A.
1800 North "E" Street
Pensacola, FL 32501

Re: *Escambia County, Florida v. Innerarity Island Development Corporation*
Case No. 2014 CA 000237

Dear Mr. Odom:

It appears that your objections to my proposed order for joint receivership have been overtaken by events. From word that I have received from Jack Brown, County Administrator, it appears our clients have discussed the imposition of an MSBU and the formulation of an MOU similar to the lift station for Deerfield Estates Subdivision. A proposed MOU has been submitted to Mr. Brown by Mr. Sorrell. Assuming the Board of County Commissioners approves an MOU and an MSBU and your client votes to accept ownership of Innerarity water and wastewater utility system, there would be no need to enter the order for a joint receivership. To that end, I would like to inform Judge Shackelford that our clients are in the midst of negotiations and that the above order may not be necessary.

Please let me know whether you are in agreement to notifying Judge Shackelford as to the status of the Order approving joint receivership. I am enclosing a copy of the Order granting the County's motion to amend the petition to name ECUA as a respondent. I will hold off serving the amended petition on ECUA as long as negotiations continue to move forward. You and your client should be aware that the County is looking into pursuing Innerarity Island Development Corporation for equitable relief in vacating the mortgage which was placed on the vacant real property owned by IIDC prior to serving the notice of abandonment. The County will be retaining special counsel to vacate the mortgage and transfer the vacant real property to the County to defray the costs of upgrades to the utility system which may lower the amount of the MSBU to be levied.

I look forward to hearing from you on these issues as soon as practicable.

Sincerely yours,

Charles V. Peppler
Deputy County Attorney

CVP/el
Enclosure
cc: Jack Brown, County Administrator (w/o enclosure)

ODOM & BARLOW, P.A.
ATTORNEYS AT LAW
1800 NORTH "E" STREET
PENSACOLA, FLORIDA 32501

BRADLEY S. ODOM*
RICHARD D. BARLOW
ROBERT W. KIEVIT**
ELLEN D. ODOM**
*Also licensed in Alabama
**Of Counsel

October 8, 2014

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E-MAIL: email@odombarlow.com

Charles V. Peppler, Esq.
Escambia County Attorney's Office
221 Palafox Place, Suite 430
Pensacola, Florida 32502

Re: *Escambia County, Florida v. Innerarity Island Development Corp.*

Dear Mr. Peppler:

I am in receipt of your letter dated October 6, 2014 regarding the above-referenced matter. As you will recall, in that letter you inquired whether I had any objection to your notifying Judge Shackelford that the County is contemplating abandoning its motion to appoint ECUA as a joint receiver in light of the proposed Memorandum of Understanding between the County and ECUA. I have no objection to such a representation to the Court.

Sincerely,

Bradley S. Odom

BSO:cab

ALISON PERDUE ROGERS
County Attorney
Board Certified City, County, and Local Government Law

CHARLES V. PEPPLER
Deputy County Attorney
Board Certified Civil Trial Law

STEPHEN G. WEST
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BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA
OFFICE OF THE COUNTY ATTORNEY

221 PALAFOX PLACE, SUITE 430
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TELEPHONE: (850) 595-4970
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October 9, 2014

Via E-Mail

Bradley Odom
Odom & Barlow, P.A.
1800 North "E" Street
Pensacola, FL 32501

Re: *Escambia County, Florida v. Innerarity Island Development Corporation*
Case No. 2014 CA 000237

Dear Mr. Odom:

You have misread my letter of October 6, 2014. At the time that I wrote that letter I had not reviewed your proposed Memorandum of Understanding and did not realize that you had drafted language that the County would be sole receiver. The County objects to such language in the Memorandum of Understanding. The County has no intention of abandoning the order that has appointed ECUA as joint receiver.

Again, I request your cooperation in notifying Judge Shackelford that the parties are in negotiations and that a resolution may be forthcoming as to why a proposed order has been delayed. Please let me know whether I can submit such a letter to Judge Shackelford.

Sincerely yours,

Charles V. Peppler
Deputy County Attorney

CVP/el
cc: Jack Brown, County Administrator

Filing # 20126523 Electronically Filed 11/03/2014 02:47:32 PM

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

ESCAMBIA COUNTY, FLORIDA,
a political subdivision of the State of Florida,

Plaintiff,

v. Case No.: _____

KATHY F. COLLINS, INDIVIDUALLY AND
AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF FAYETTE DENNISON;
AND INNERARITY ISLAND
DEVELOPMENT CORPORATION,
a Florida Corporation,

Defendants.
_____/

COMPLAINT TO SET ASIDE TRANSFERS AND OBLIGATIONS

Plaintiff, Escambia County, Florida (County), in its role as joint receiver sues Kathy F. Collins, Individually and as Personal Representative of the Estate of Fayette Dennison, and Innerarity Island Development Corporation, a Florida Corporation, to set aside and avoid certain transfers and obligations, and alleges:

General Allegations

1. The Estate of Fayette Dennison probate is pending in the Escambia County Circuit Court, Case No. 2013 CP 000025 (hereinafter "The Estate").

2. Kathy F. Collins is the Personal Representative of the Estate and a daughter of the deceased, Fayette Dennison.

3. Kathy F. Collins is the President, Secretary and Treasurer of Innerarity Island Development Corporation.

4. Innerarity Island Development Corporation (hereinafter "IIDC") is a Florida Corporation with its principal place of business in Escambia County, Florida.

5. The Estate of Fayette Dennison is the sole owner and shareholder of IIDC.

6. IIDC owned and operated a water and wastewater utility and associated real and personal property constituting a system (hereinafter "Utility").

7. IIDC served Notice of Abandonment of the Utility upon the County and the Public Service Commission on or about January 27, 2014.

8. As required by Florida Statutes, the County petitioned the Court to appoint a receiver for the Utility in Escambia County Circuit Court, Case No. 2014 CA 000237.

9. The Court granted that petition and appointed the County as receiver for the Utility by Order entered on March 21, 2014. Attached as **Exhibit "A"** is a true copy of that Order. A subsequent motion by County to appoint Emerald Coast Utilities Authority as joint receiver was granted on September 8, 2014.

10. County's duties pursuant to the Court Order and under Florida Statutes include duties to operate the Utility, make repairs, replacements and improvements to the Utility and to dispose of the real and personal property of IIDC.

11. The County's duties also include accumulating and disposing of the assets of IIDC, and disposing them in a manner that generates monies to be used to repair, upgrade and operate the Utility for the benefit of IIDC's creditors and the Utility.

12. The Utility is in need of upgrade and repairs.

13. In order for the Utility to be disposed of and brought into compliance with current operating standards, it will cost an estimated $3.7 million to $7.0 million dollars.

14. IIDC owns real property in Escambia County, Florida, consisting of 118 lots (hereinafter "Lots").

15. These Lots have an approximate tax assessed value of $2,027,149.00.

16. These Lots are assets of and property of IIDC that the County can use to generate monies to be used to maintain, repair, upgrade and operate the Utility.

17. Certain transfers were made by IIDC and obligations incurred by IIDC, which County seeks to avoid so that the assets generated from that avoidance can be used to maintain, repair, upgrade and operate the Utility.

18. The Order appointing County as receiver provides that IIDC is not and will not be entitled to any benefits or proceeds from the disposition of property or monies associated with the Utility.

19. County as receiver has the right to bring suit and to seek all legal and equitable relief.

20. County is a Creditor of IIDC.

21. This Court has jurisdiction over these matters.

22. County is entitled to relief under Fla. Stat. § 726.108.

23. County is entitled to the recovery of fees and costs in bringing these actions.

COUNT I – AS TO MORTGAGE

24. This is an action for equitable and other relief pursuant to the Uniform Fraudulent Transfer Act, Fla. Stat. § 726.101, et seq. as it relates to a Mortgage described below.

25. County re-alleges paragraphs one (1) through twenty-three (23) as if more fully set forth herein.

26. The Lots were free and clear of any lien for years up and until November 5, 2013.

27. On November 5, 2013, IIDC gave a Mortgage and Security Agreement to Kathy F. Collins, Personal Representative of the Estate of Fayette Dennison (hereinafter "Estate") for the face amount of $750,000.00 purportedly to secure advances that had been previously made and that were subsequently made by the Estate allegedly to and/or for IIDC. Attached as **Exhibit "B"** is a copy of this Mortgage. The Mortgage has attached to it the legal descriptions of the Lots.

28. The advances made by the Estate which are purportedly secured by the Mortgage total approximately $675,592.50.

29. This purported loan intended to be secured by the Mortgage was represented by a Line of Credit Promissory Note (hereinafter "Note") and Loan Agreement, both dated November 5, 2013 (cumulatively referred to as "Loan"). A copy of the Note and Loan Agreement are attached as **Exhibits "C" and "D"** respectively.

30. This Loan was not a traditional line of credit transaction whereby the loan documents were signed, and thereafter draws made by IIDC on the line of credit.

31. This Loan was comprised by approximately 68 different checks issued by the Estate from January, 2013 to March, 2014 to third parties and to IIDC.

32. It was only after approximately 11 months of checks being issued by the Estate that these checks (and subsequent checks) were documented in the form of the line of credit Loan and the Loan secured by a Mortgage.

33. Of the 68 checks issued by the Estate between January 2013 to March 2014, 47 of those checks were payable to third parties and totaled $278,787.13. Of the checks totaling $278,787.13, $258,165.53 were issued prior to the Mortgage (November 5, 2013).

34. Of the 68 checks, the Estate issued only 21 checks directly payable to IIDC totaling $396,805.37, of which $359,925.37 were after November 5, 2013 (the date of the Mortgage).

35. Prior to the November 5, 2013 Mortgage, the Estate was issuing checks directly to third parties, which checks were added together and characterized in November 2013 as part of a line of credit Loan owing by IIDC secured by the assets (the Lots) of IIDC.

36. The Mortgage was a transfer made by IIDC and obligation incurred by IIDC, which County seeks to avoid.

37. This Mortgage was fraudulent as to creditors.

38. This Mortgage was made by IIDC:

(a) With actual intent to hinder, delay, or defraud a creditor of IIDC; or

(b) Without receiving a reasonably equivalent value in exchange for the transfers or obligations.

39. This Mortgage was given to an insider.

40. This Mortgage pledged the Lots which were substantially all IIDC's assets,

41. This Mortgage was made when IIDC was insolvent or IIDC became insolvent shortly after the Mortgage.

42. This Mortgage was made shortly before and/or shortly after a substantial debt was incurred.

43. This Mortgage transferred to the Estate, an insider, essentially all assets of IIDC.

44. It was clear at the time of the Mortgage and well prior thereto, that IIDC was engaged or was about to engage in a business or a transaction for which the remaining assets of IIDC were unreasonably small in relation to the business or transaction; and that IIDC incurred, or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due.

45. This Mortgage was given for antecedent debt.

46. The insider Estate had reasonable cause to believe that IIDC was insolvent.

WHEREFORE, Plaintiff requests this Court avoid the Mortgage and that the Court award to Plaintiff costs and reasonable attorneys fees and such other relief as just and appropriate.

COUNT II – AS TO MONIES PAID TO THE ESTATE AND MS. COLLINS

47. This is an action for equitable and other relief pursuant to the Uniform Fraudulent Transfer Act, Fla. Stat. § 726.101, et seq. as it relates to certain transfers and obligations described below, seeking to avoid and set aside certain transfers and, for turnover of assets.

48. County re-alleges paragraphs one (1) through twenty-three (23) as if more fully set forth herein.

49. On November 5, 2013, IIDC gave a Mortgage and Security Agreement to Kathy F. Collins, Personal Representative of the Estate of Fayette Dennison (hereinafter "Estate") for the face amount of $750,000.00 purportedly to secure advances that had been previously made and that were subsequently made by the Estate allegedly to and/or for IIDC. Attached as **Exhibit "B"** is a copy of this Mortgage. The Mortgage has attached to it the legal descriptions of the Lots.

50. The advances made by the Estate which are purportedly secured by the Mortgage total approximately $675,592.50.

51. This purported loan intended to be secured by the Mortgage was represented by a Line of Credit Promissory Note (hereinafter "Note") and Loan Agreement, both dated November 5, 2013 (cumulatively referred to as "Loan"). A copy of the Note and Loan Agreement are attached as **Exhibits "C" and "D"** respectively.

52. This Loan was not a traditional line of credit transaction whereby the loan documents were signed, and thereafter draws made by IIDC on the line of credit.

53. This Loan was comprised by approximately 68 different checks issued by the Estate from January, 2013 to March, 2014 to third parties and to IIDC.

54. Of the 68 checks issued by the Estate between January 2013 to March 2014, 47 of those checks were payable to third parties and totaled $278,787.13. Of the checks totaling $278,787.13, $258,165.53 were issued prior to the Mortgage (November 5, 2013).

55. Of the 68 checks, the Estate issued only 21 checks directly payable to IIDC totaling $396,805.37, of which $359,925.37 were after November 5, 2013 (the date of the Mortgage).

56. Of the 21 checks the Estate issued payable directly to IIDC, IIDC turned around and used some of these monies to pay the Estate plus interest and to pay Ms. Collins a salary.

57. The following checks were issued by the Estate to Ms. Collins or the Estate:

Payee	**Amount**	**Date**	**Memo Notation on Check**
Kathy Collins	$42,027.50	11-19-13	Salary
Kathy Collins	$4,002.75	11-29-13	November salary
Kathy Collins	$4,002.75	12-13-13	December salary
Kathy Collins	$4,002.75	1-27-14	January salary
Kathy Collins	$4,002.75	2-24-14	February salary
Kathy Collins	$4,002.75	3-19-14	March salary
Estate of Dennison	$16,090.16	12-31-13	interest
Estate of Dennison	$70,000.00	12-09-13	loan repayment PR fee
Estate of Dennison	$11,859.00	12-9-13	loan repayment/ legal fees
Estate of Dennison	$10,845.86	3-20-14	interest on mortgage

58. The payments from IIDC to Ms. Collins were transfers that are fraudulent.

59. The payments from IIDC to the Estate were transfers that are fraudulent.

60. Ms. Collins as Personal Representative of the Estate is responsible for administering Estate assets.

61. The Estate assets include the IIDC stock belonging to her deceased father.

62. Any services performed by Ms. Collins were in her role as either a Personal Representative of the Estate or as beneficiary of the Estate.

63. Ms. Collins should not have been compensated in the form of salary by IIDC.

64. To the extent that Ms. Collins was entitled to any compensation it would have been from the Estate directly.

65. Even if it was appropriate for Ms. Collins to receive some monies from IIDC in the form of salary, the amount received well exceeded a reasonable salary.

66. The Estate as the sole shareholder of IIDC should not have been repaid any monies.

67. County is seeking herein to avoid and set aside the transfers of these payments from IIDC to the Estate and to Ms. Collins.

68. These transfers were fraudulent as to creditors.

69. These transfers was made by IIDC:

(a) With actual intent to hinder, delay, or defraud a creditor of IIDC; or

(b) Without receiving a reasonably equivalent value in exchange for the transfers.

70. These transfers were given to the Estate and to Ms. Dennison, both of whom are insiders.

71. These transfers were substantial assets of IIDC, and these transfers to the Estate and Ms. Collins, along with the Mortgage on the Lots transferred to the Estate

and Ms. Collins, both insiders, and other transfers described herein, were essentially all assets of IIDC.

72. These transfers were made when IIDC was insolvent or IIDC became insolvent shortly thereafter.

73. At the time these transfers were made, the Estate and Ms. Collins had reasonable cause to believe that IIDC was insolvent or would become insolvent shortly thereafter.

74. These transfers were made shortly before and shortly after a substantial debt was incurred.

75. It was clear at the time of these transfers and well prior thereto, that IIDC was engaged or was about to engage in a business or a transaction for which the remaining assets of the IIDC were unreasonably small in relation to the business or transaction; and that IIDC incurred, or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

76. To the extent that these transfers were given for a debt of IIDC, it was antecedent debt.

WHEREFORE, Plaintiff request this Court avoid and set aside these transfers, directing that the Estate and Ms. Collins turnover and return these monies to IIDC forthwith, and that the Court award to Plaintiff costs and reasonable attorneys fees and such other relief as just and appropriate.

COUNT III – AS TO THE CHARACTERIZATION OF MONIES AS A DEBT OF IIDC

77. This is an action for equitable and other relief pursuant to the Uniform Fraudulent Transfer Act, Fla. Stat. § 726.101, et seq. as it relates to the characterization of monies as debt of IIDC.

78. County re-alleges paragraphs one (1) through twenty-three (23) as if more fully set forth herein.

79. On November 5, 2013, IIDC gave a Mortgage and Security Agreement to Kathy F. Collins, Personal Representative of the Estate of Fayette Dennison (hereinafter "Estate") for the face amount of $750,000.00 purportedly to secure advances that had been previously made and that were subsequently made by the Estate allegedly to and/or for IIDC. Attached as **Exhibit "B"** is a copy of this Mortgage. The Mortgage has attached to it the legal descriptions of the Lots.

80. The advances made by the Estate which are purportedly secured by the Mortgage total approximately $675,592.50.

81. This purported loan intended to be secured by the Mortgage was represented by a Line of Credit Promissory Note (hereinafter "Note") and Loan Agreement, both dated November 5, 2013 (cumulatively referred to as "Loan"). A copy of the Note and Loan Agreement are attached as **Exhibits "C" and "D"** respectively.

82. The Estate of Dennison claims to be owed monies by IIDC as evidenced by **Exhibits "C"** and **"D"** Loan and **Exhibit "B"** Mortgage all dated November 5, 2013.

83. The **Exhibit "D"** Loan Agreement has attached to it marked as Exhibit A, a list of checks totaling $376,149.70 that were issued by the Estate to the various

parties indicated thereon dating from January 24, 2013 through September 26, 2013, all prior to the November 5, 2013 Loan and Mortgage.

84. Subsequent to those checks described, the Estate issued additional checks to IIDC and third parties that were added on by the Estate to the debt represented by the Loan and Mortgage.

85. Between January 2013 and March 2014 the Estate issued 68 checks that IIDC agreed to pay back to the Estate.

86. Of these 68 checks, 47 of those checks were payable to third parties and totaled $278,787.13. Of the checks totaling $278,787.13, $258,165.53 were issued prior to the Mortgage (November 5, 2013).

87. The Estate as the sole shareholder of IIDC has obligations to contribute capital in order for the Utility to continue to operate.

88. All monies advanced by the Estate that were for the benefit of IIDC should be characterized as a capital contribution and not as a loan.

89. In the chart below are examples of some payments directly from the Estate that are included in the calculation of loan claimed to be owed by IIDC to the Estate under the Loan. These should have been capital contributions.

Payee	**Amount**	**Date**	**Memo Notation on Check**
Southern Utility Co. Inc.	$70,329.38	1-23-13	11-21-13/1-9-13 Invoice
Innerarity Island Association, Inc.	$6,880.00	1-23-13	86 lots Innerarity Island
Technologies for Tomorrow	$1,405.64	2-4-13	??
Dennison & Associates, P.A.	$3,720.00	3-3-13	Innerarity Island Development
Kenneth Horne &	$6,200.00	3-15-13	IIDC

Assoc., Inc.			
Florida Public Service Commission	$1,971.00	3-26-13	2012 Innerarity Island Development
Florida Public Service Commission	$2,165.08	3-26-13	2012 Innerarity Island
Merrill Parker Shaw, Inc.	$48,150.00	7-25-13	invoice
Kenneth Horne & Associates	$4,910.00	8-12-13	invoice
Kenneth Horne & Associates	$8,938.75	8-13-13	invoice
Kenneth Horne & Associates	$5,367.50	9-5-13	invoice
SBP	$57,600.00	9-26-13	Invoice IIDC
Saltmarsh, Cleveland & Gund	$20,621.50	4-17-14	?

90. Some of the checks issued by the IIDC and some of the checks issued by the Estate were used to pay debts of the Estate, and therefore should not be considered as part of any debt owing by IIDC to the Estate. These include the Saltmarsh, Cleaveland & Gund payment above.

91. Below is a chart that shows examples of payments direct from IIDC that were not for debts of IIDC or that benefitted the Utility, but instead were obligations of the Estate.

Saltmarsh, Cleveland & Gund	$5,775.00	6-27-13	invoice
Saltmarsh Cleveland & Gund	$9,770.00	2-18-14	invoice
Clerk of Court	$4,245.50	11-5-13	Recording Fee, Doc. Stamps & Intangible Tax on Mortgage

Shell, Fleming, Davis	$1,500.00	11-5-13	Closing Fee for Mortgage

92. Historical records reflect that Saltmarsh, Cleaveland & Gund in May 2013 was being consulted about the Estate Tax Return and tax matters affecting the Estate. The assets of IIDC should not have been used to pay what more properly should be a debt of the Estate.

93. IIDC assets should not have been used to pay the Clerk of Court for the Mortgage recording, documentary stamps and intangible tax and Shell, Fleming for preparing the Mortgage because the monies given by the Estate should not have been characterized as a loan.

94. The characterization of these and other payments from IIDC and the Estate to third parties as a loan owing by IIDC to the Estate are fraudulent.

95. County is seeking to avoid these obligations from IIDC to the Estate.

96. These obligations were fraudulent as to creditors.

97. These obligations were made by IIDC:

(a) With actual intent to hinder, delay, or defraud a creditor of IIDC; or

(b) Without receiving a reasonably equivalent value in exchange for the transfers.

98. These monies were treated as loan obligations owing by IIDC to the Estate, who is an insider.

99. These monies were treated as loan obligations which used substantial assets of IIDC that should have been used for the benefit of IIDC's creditors and the Utility.

100. These obligations were made when IIDC was insolvent or IIDC became insolvent shortly thereafter and the Estate had reasonable cause to believe that IIDC was insolvent

101. These obligations were either direct obligations of the Estate, or were capital contribution obligations of the Estate to IIDC, and therefore less than reasonably equivalent value was given in exchange for the obligations.

102. These obligations were made shortly before and/or shortly after a substantial debt was incurred.

103. These obligations to the Estate, along with the Mortgage on the Lots transferred to the Estate, and the payments to the insiders, the Estate and Ms. Collins, set forth above, were essentially all assets of IIDC.

104. It was clear at the time of these obligations and well prior thereto, that IIDC was engaged or was about to engage in a business or a transaction for which the remaining assets of the IIDC were unreasonably small in relation to the business or transaction; and that IIDC incurred, or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due.

105. To the extent that these obligations constituted a loan owing by IIDC to the Estate, it was antecedent debt.

106. IIDC had creditors whose claims arose before the transfers were made or the obligations were incurred.

WHEREFORE, Plaintiff request this Court determine that all or a portion of the debt alleged to be owed by the Estate from IIDC is not debt of IIDC, or alternatively that all or a portion of that alleged debt be characterized as capital contribution, and that the

Court award to Plaintiff costs and reasonable attorneys fees and such other relief as just and appropriate.

Respectfully submitted,

/s Sally Bussell Fox
Sally Bussell Fox
Florida Bar No. 379360
Emmanuel, Sheppard & Condon
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cpeppler@co.escambia.fl.us
Co-Counsel for Plaintiff

MINUTES OF THE ATTORNEY-CLIENT SESSION OF THE BOARD OF COUNTY COMMISSIONERS
HELD JULY 7, 2015
BOARD CHAMBERS, FIRST FLOOR, ERNIE LEE MAGAHA GOVERNMENT BUILDING
221 PALAFOX PLACE, PENSACOLA, FLORIDA
(3:32 p.m. – 4:11 p.m.)

Present: Commissioner Steven L. Barry, Chairman, District 5
Commissioner Grover C. Robinson IV, Vice Chairman, District 4
Commissioner Lumon J. May, District 3
Commissioner Wilson B. Robertson, District 1
Commissioner Douglas B. Underhill, District 2
Jack R. Brown, County Administrator
Alison Rogers, County Attorney
Lizabeth Carew, Administrative Specialist, Clerk and Comptroller's Office
Kimberly McCord, Office Assistant III, Clerk and Comptroller's Office
Judy H. Witterstaeter, Program Coordinator, County Administrator's Office

AGENDA NUMBER

1. Call to Order

Chairman Barry called the Attorney-Client Session to order at 3:32 p.m.

2. Escambia County v. Innerarity Island Development Authority and ECUA and Escambia County v. Innerarity Island Development Authority and Kathy Collins

County Attorney Rogers requested that the Board retire to the BCC Conference Room for the Attorney/Client Session on July 7, 2015, at 3:30 p.m., to discuss pending litigation in the Cases of Escambia County v. Innerarity Island Development Authority and ECUA, Case No. 2014 CA 000237, and Escambia County v. Innerarity Island Development Authority and Kathy Collins, Case No. 2014 CA 002103, on Tuesday, July 7, 2015, at 3:30 p.m., which session was advertised in the Sunday, June 28, 2015, edition of the Pensacola News Journal.

3:33 P.M. – MEETING RECESSED
4:10 P.M. – MEETING RECONVENED

Motion made by Commissioner Underhill, seconded by Commissioner Robinson, and carried 5-0, directing the County Attorney and outside counsel to continue to negotiate, in accordance with the instructions given during the shade meeting.

ADJOURNMENT

There being no further business to come before the Board, Chairman Barry declared the Attorney-Client Session of the Board of County Commissioners adjourned at 4:11 p.m.

BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA

ATTEST:

By:_____
Steven Barry, Chairman

Pam Childers
Clerk of the Circuit Court & Comptroller

_____
Deputy Clerk

Approved: July 23, 2015

DEP AGREEMENT NO. S0878

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESTORATION ASSISTANCE
GRANT AGREEMENT
PURSUANT TO LINE ITEM 1662A OF THE FY15-16 GENERAL APPROPRIATIONS ACT

THIS AGREEMENT is entered into between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, whose address is 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000 (hereinafter referred to as the "Department") and ESCAMBIA COUNTY, whose address is 221 Palafox Place, Suite 420, Pensacola, Florida 32502 (hereinafter referred to as "Grantee"), a local government, to provide financial assistance for the Escambia County Innerarity Water and Sewer Upgrade project. Collectively, the Department and the Grantee shall be referred to as "Parties" or individually as a "Party".

In consideration of the mutual benefits to be derived herefrom, the Department and the Grantee do hereby agree as follows:

1. **TERMS OF AGREEMENT:**

The Grantee does hereby agree to perform in accordance with the terms and conditions set forth in this Agreement, **Attachment A, Grant Work Plan**, and all attachments and exhibits named herein which are attached hereto and incorporated by reference. For purposes of this Agreement, the terms "Grantee" and "Recipient" are used interchangeably.

2. **PERIOD OF AGREEMENT:**

This Agreement shall begin upon execution by both parties and shall remain in effect until June 30, 2018, inclusive. The Grantee shall be eligible for reimbursement for work performed on or after July 1, 2015 through the expiration date of this Agreement. This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.

3. **FUNDING/CONSIDERATION/INVOICING:**

A. As consideration for the satisfactory completion of services rendered by the Grantee under the terms of this Agreement, the Department shall pay the Grantee on a cost reimbursement basis up to a maximum of $1,000,000. It is understood that any additional funds necessary for the completion of this project are the responsibility of the Grantee. The parties hereto understand and agree that this Agreement does not require a match on the part of the Grantee.

B. Prior written approval from the Department's Grant Manager shall be required for changes to this Agreement. Changes to approved budget categories within a single deliverable that are less than 10% of the total approved deliverable budget amount will require a formal Change Order to the Agreement. Changes that are 10% or greater of the total approved deliverable budget amount, or changes that transfer funds from one deliverable to another deliverable, or changes that increase or decrease the project's total funding amount will require a formal Amendment to the Agreement.

C. The Grantee shall be reimbursed on a cost reimbursement basis for all eligible project costs upon the completion, submittal and approval of each deliverable identified in **Attachment A,** in accordance with the schedule therein. Reimbursement shall be requested utilizing **Attachment B, Payment Request Summary Form.** To be eligible for reimbursement, costs must be in compliance with laws, rules and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: http://www.myfloridacfo.com/aadir/reference_guide/. All invoices for amounts due under this Agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. A final payment request should be submitted to the Department no later than sixty (60) calendar days following the completion date of the Agreement, to assure the availability of funds for payment. All work performed pursuant to **Attachment A** must be performed on or before the completion date of the Agreement, and the subsequent sixty-day period merely allows the Grantee to finalize invoices and backup documentation to support the final payment request.

D. The State Chief Financial Officer requires detailed supporting documentation of all costs under a cost reimbursement agreement. The Grantee shall comply with the minimum requirements set forth in **Attachment C, Contract Payment Requirements.** The Payment Request Summary Form shall be accompanied by supporting documentation and other requirements as follows for each deliverable:

i. Contractual (Subcontractors) – Reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from the Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the project. All multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If the Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, the Grantee shall be required to reimburse such funds to the Department within thirty (30) calendar days of written notification. Interest on the excessive charges shall be calculated based on the prevailing rate used by the State Board of Administration. For fixed-price (vendor) subcontracts, the following provisions shall apply:

a. The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment A. Invoices submitted to the Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (i.e., Invitation to Bid or Request for Proposals) resulting in the fixed-price subcontract.

b. The Grantee may request approval from the Department to award a fixed-price subcontract resulting from procurement methods other than those identified in the paragraph above. In this instance, the Grantee shall request the advance written approval from the Department's Grant Manager of the fixed price negotiated by the Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of the Department Grant Manager's approval of the fixed-price amount, the Grantee may proceed in finalizing the fixed-price subcontract.

c. All subcontracts are subject to the provisions of paragraph 12 and any other appropriate provisions of this Agreement which affect subcontracting activities.

E. In addition to the invoicing requirements contained in paragraphs 3.C. and D. above, the Department will periodically request proof of a transaction (invoice, payroll register, etc.) to evaluate the appropriateness of costs to the Agreement pursuant to State and Federal guidelines (including cost allocation guidelines), as appropriate. This information, when requested, must be provided within thirty (30) calendar days of such request. The Grantee may also be required to submit a cost allocation plan to the Department in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). State guidelines for allowable costs can be found in the Department of Financial Services' Reference Guide for State Expenditures at http://www.myfloridacfo.com/aadir/reference_guide/.

F. i. The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, the Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.

ii. If the Department finds that these funds have been commingled, the Department shall have the right to demand a refund, either in whole or in

part, of the funds provided to the Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from the Department shall refund, and shall forthwith pay to the Department, the amount of money demanded by the Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from the Department by the Grantee to the date repayment is made by the Grantee to the Department.

iii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by the Department, from another source(s), the Grantee shall reimburse the Department for all recovered funds originally provided under this Agreement. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the payment(s) are recovered by the Grantee to the date repayment is made to the Department by the Grantee.

4. ANNUAL APPROPRIATION:

The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. The parties hereto understand that this Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and payment associated therewith may be rescinded with proper notice at the discretion of the Department if Legislative appropriations are reduced or eliminated.

5. REPORTS:

A. The Grantee shall utilize **Attachment D, Progress Report Form,** to describe the work performed during the reporting period, problems encountered, problem resolution, schedule updates and proposed work for the next reporting period. Quarterly reports shall be submitted to the Department's Grant Manager no later than twenty (20) calendar days following the completion of the quarterly reporting period. It is hereby understood and agreed by the parties that the term "quarterly" shall reflect the calendar quarters ending March 31, June 30, September 30 and December 31. The Department's Grant Manager shall have thirty (30) calendar days to review the required reports and deliverables submitted by the Grantee.

B. As stated in the letter dated July 17, 2015 from the Office of the Governor, the Grantee will identify the return on investment for this project and provide quarterly updates to the Governor's Office of Policy and Budget.

6. RETAINAGE:

Retainage is not required under this Agreement.

7. INDEMNIFICATION:

Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract or this Agreement.

8. DEFAULT/TERMINATION/FORCE MAJEURE:

A. The Department may terminate this Agreement at any time if any warranty or representation made by Grantee in this Agreement or in its application for funding shall at any time be false or misleading in any respect, or in the event of the failure of the Grantee to fulfill any of its obligations under this Agreement. Prior to termination, the Department shall provide thirty (30) calendar days written notice of its intent to terminate and shall provide the Grantee an opportunity to consult with the Department regarding the reason(s) for termination.

B. The Department may terminate this Agreement for convenience by providing the Grantee with thirty (30) calendar day's written notice. If the Department terminates the Agreement for convenience, the Department shall notify the Grantee of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated. If the Agreement is terminated before performance is completed, the Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated.

C. Records made or received in conjunction with this Agreement are public records. This Agreement may be unilaterally canceled by the Department for unlawful refusal by the Grantee to allow public access to all documents, papers, letters, or other material made or received by the Grantee in conjunction with this Agreement and subject to disclosure under Chapter 119, Florida Statutes (F.S.), and Section 24(a), Article I, Florida Constitution.

D. If a force majeure occurs that causes delays or the reasonable likelihood of delay in the fulfillment of the requirements of this Agreement, the Grantee shall promptly notify the Department orally. Within seven (7) calendar days, the Grantee shall notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to minimize the delay and the Grantee's intended timetable for implementation of such measures. If the parties agree that the delay or anticipated delay was caused, or will be caused by a force majeure, the Department may, at its discretion, extend the time for performance under this Agreement for a period of time equal to the delay resulting from the force majeure upon execution of an amendment to this Agreement. Such agreement shall be confirmed by letter from the Department accepting, or if necessary, modifying the

extension. A force majeure shall be an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, lightning, fire, flood, explosion, failure to receive timely necessary third party approvals through no fault of the Grantee, and any other cause, whether of the kind specifically enumerated herein or otherwise, that is not reasonably within the control of the Grantee and/or the Department. The Grantee is responsible for the performance of all services issued under this Agreement. Failure to perform by the Grantee's consultant(s) or subcontractor(s) shall not constitute a force majeure event.

9. REMEDIES/FINANCIAL CONSEQUENCES:

No payment will be made for deliverables deemed unsatisfactory by the Department. In the event that a deliverable is deemed unsatisfactory by the Department, the Grantee shall re-perform the services needed for submittal of a satisfactory deliverable, at no additional cost to the Department, within ten (10) calendar days of being notified of the unsatisfactory deliverable. If a satisfactory deliverable is not submitted within the specified timeframe, the Department may, in its sole discretion, either: 1) terminate this Agreement for failure to perform, or 2) the Department Grant Manager may, by letter specifying the failure of performance under this Agreement, request that a proposed Corrective Action Plan (CAP) be submitted by the Grantee to the Department. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.

A. A CAP shall be submitted within ten (10) calendar days of the date of the letter request from the Department. The CAP shall be sent to the Department Grant Manager for review and approval. Within ten (10) calendar days of receipt of a CAP, the Department shall notify the Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, the Grantee shall have ten (10) calendar days from receipt of the Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain the Department approval of a CAP as specified above shall result in the Department's termination of this Agreement for cause as authorized in this Agreement.

B. Upon the Department's notice of acceptance of a proposed CAP, the Grantee shall have ten (10) calendar days to commence implementation of the accepted plan. Acceptance of the proposed CAP by the Department does not relieve the Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, the Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by the Department or steps taken by the Grantee shall preclude the Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to the Department as requested by the Department Grant Manager.

C. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by the Department may result in termination of the Agreement.

The remedies set forth above are not exclusive and the Department reserves the right to exercise other remedies in addition to or in lieu of those set forth above, as permitted by the Agreement.

10. RECORD KEEPING/AUDIT:

A. The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event any work is subcontracted, the Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes.

B. The Grantee understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the Department's Inspector General in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its subcontracts issued under this Grant, if any, impose this requirement, in writing, on its subcontractors.

11. SPECIAL AUDIT REQUIREMENTS:

A. In addition to the requirements of the preceding paragraph, the Grantee shall comply with the applicable provisions contained in **Attachment E, Special Audit Requirements**, attached hereto and made a part hereof. **Exhibit 1** to **Attachment E** summarizes the funding sources supporting the Agreement for purposes of assisting the Grantee in complying with the requirements of **Attachment E**. A revised copy of **Exhibit 1** must be provided to the Grantee for each amendment which authorizes a funding increase or decrease. If the Grantee fails to receive a revised copy of **Exhibit 1**, the Grantee shall notify the Department's Grant Manager to request a copy of the updated information.

B. The Grantee is hereby advised that the Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. The Grantee shall consider the type of financial assistance (federal and/or state) identified in **Attachment E, Exhibit 1** when making its determination. For federal financial assistance, the Grantee shall utilize the guidance provided under OMB Circular A-133, Subpart B, Section ___.210 for determining whether the relationship represents that of a subrecipient or vendor. For state financial assistance, the Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs. Vendor Determination" (form number

DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website:

https://apps.fldfs.com/fsaa

The Grantee should confer with its chief financial officer, audit director or contact the Department for assistance with questions pertaining to the applicability of these requirements.

12. SUBCONTRACTS:

A. The Grantee may subcontract work under this Agreement without the prior written consent of the Department's Grant Manager except for certain fixed-price subcontracts pursuant to paragraph 3.D. of this Agreement, which require prior approval. The Grantee shall submit a copy of the executed subcontract to the Department prior to submitting any invoices for subcontracted work. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement. The Grantee agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the Grantee that the Department shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

B. The Department of Environmental Protection supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State of Florida. A list of minority owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.

13. PROHIBITED LOCAL GOVERNMENT CONSTRUCTION PREFERENCES:

A. Pursuant to Section 255.0991, F.S., for a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds which have been appropriated at the time of the competitive solicitation, a state, college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:

i. The contractor's maintaining an office or place of business within a particular local jurisdiction; or

ii. The contractor's hiring employees or subcontractors from within a particular local jurisdiction; or

iii. The contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

B. For any competitive solicitation that meets the criteria in Paragraph A., a state college, county, municipality, school district, or other political subdivision of the state *shall disclose in the solicitation document* that any applicable local ordinance or regulation does not include any preference that is prohibited by Paragraph A.

14. LOBBYING PROHIBITION:

In accordance with Section 216.347, F.S., the Grantee is hereby prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency. Further, in accordance with Section 11.062, F.S., no state funds, exclusive of salaries, travel expenses, and per diem, appropriated to, or otherwise available for use by, any executive, judicial, or quasi-judicial department shall be used by any state employee or other person for lobbying purposes.

15. COMPLIANCE WITH LAW:

The Grantee shall comply with all applicable federal, state and local rules and regulations in providing services to the Department under this Agreement. The Grantee acknowledges that this requirement includes, but is not limited to, compliance with all applicable federal, state and local health and safety rules and regulations. The Grantee further agrees to include this provision in all subcontracts issued as a result of this Agreement.

16. NOTICE:

All notices and written communication between the parties shall be sent by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient.

17. CONTACTS:

The Department's Grant Manager (which may also be referred to as the Department's Project Manager) for this Agreement is identified below:

Mahnaz Massoudi	
Florida Department of Environmental Protection	
Division of Water Restoration Assistance	
3900 Commonwealth Blvd., MS#3505	
Tallahassee, Florida 32399	
Telephone No.:	850-245-2960
E-mail Address:	Mahnaz.Massoudi@dep.state.fl.us

The Grantee's Grant Manager for this Agreement is identified below:

Jack Brown	
Escambia County	
221 Palafox Place, Suite 420	
Pensacola, Florida 32502	
Telephone No.:	850-595-4947
E-mail Address:	Jack_Brown@myescambia.com

18. INSURANCE:

To the extent required by law, the Grantee will secure and maintain insurance coverages in the amounts and categories specified below, during the life of this Agreement. The Grantee shall provide documentation of any private insurance or self-insurance, as may be applicable to governmental entities, to the Department's Grant Manager *prior to* performance of any work pursuant to this Agreement.

A. The Grantee shall secure and maintain Workers' Compensation Insurance for all of its employees connected with the work of this project and, in case any work is subcontracted, the Grantee shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of its employees unless such employees are covered by the protection afforded by the Grantee. Any self-insurance program or insurance coverage shall comply fully with the Florida Workers' Compensation law. In case any class of employees engaged in hazardous work under this Agreement is not protected under Workers' Compensation statutes, the Grantee shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of its employees not otherwise protected.

B. The Grantee shall secure and maintain, and ensure that any of its subcontractors similarly secure and maintain, Commercial General Liability insurance including bodily injury and property damage. The minimum limits of liability shall be $200,000 each individual's claim and $300,000 each occurrence. This insurance will provide coverage for all claims that may arise from the services and/or operations completed under this Agreement, whether such services and/or operations are by the Grantee or any of its subcontractors. Such insurance shall include the State of Florida, the Department, and the State of Florida Board of Trustees of the Internal Improvement Trust Fund, as Additional Insureds for the entire length of the Agreement.

C. The Grantee shall secure and maintain, and ensure that any of its subcontractors similarly secure and maintain, Commercial Automobile Liability insurance for all claims which may arise from the services and/or operations under this Agreement, whether such services and/or operations are by the Grantee or any of its subcontractors. Such insurance shall include the State of Florida, the Department,

and the State of Florida Board of Trustees of the Internal Improvement Trust Fund, as Additional Insureds for the entire length of the Agreement. The minimum limits of liability shall be as follows:

$300,000	Automobile Liability Combined Single Limit for Company-Owned Vehicles, if applicable
$300,000	Hired and Non-owned Automobile Liability Coverage

D. If any work proceeds over or adjacent to water, the Grantee shall secure and maintain, as applicable, any other type of required insurance, including but not limited to Jones Act, Longshoreman's and Harbormaster's, or the inclusion of any applicable rider to worker's compensation insurance, and any necessary watercraft insurance, with limits of not less than $300,000 each. In addition, the Grantee shall include these requirements in any sub grant or subcontract issued for the performance of the work specified in **Attachment A, Grant Work Plan.** Questions concerning required coverage should be directed to the U.S. Department of Labor (http://www.dol.gov/owcp/dlhwc/lscontac.htm) or to the parties' insurance carriers.

E. All insurance policies shall be with insurers licensed or eligible to do business in the State of Florida. The Grantee's current certificate of insurance shall contain a provision that the insurance will not be canceled for any reason except after thirty (30) calendar days' written notice (with the exception of non-payment of premium which requires a 10-calendar-day notice) to the Department's Procurement Administrator. In addition, the Grantee shall include these requirements in any sub grant or subcontract issued for the performance of the work specified in **Attachment A, Grant Work Plan.**

F. If the Grantee is a Florida governmental entity that is self-funded for liability insurance, this paragraph 18.F. supersedes 18.A. through E., above.

Grantee warrants and represents that it is self-funded for liability insurance, appropriate and allowable under Florida law, and that such self-insurance offers protection applicable to the Grantee's officers, employees, servants and agents while acting within the scope of their employment with the Grantee.

19. **CONFLICT OF INTEREST:**

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

20. **EQUIPMENT:**

Reimbursement for equipment purchases costing $1,000 or more is not authorized under the terms and conditions of this Agreement.

21. **CHANGE ORDERS:**

The Department may at any time, by written Change Order, make any change in the Grant Manager information, task timelines within the current authorized Agreement period, or make changes that are less than 10% of the total approved deliverable budget (per Paragraph 3). All Change Orders are subject to the mutual agreement of both parties as evidenced in writing. Any change which causes an increase or decrease in the Agreement amount, expiration date of the Agreement, or deliverable costs that are equal to or greater than 10% of the total approved deliverable budget (per Paragraph 3), shall require formal Amendment to this Agreement.

22. **UNAUTHORIZED EMPLOYMENT:**

The employment of unauthorized aliens by any Grantee/subcontractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.

23. **RESERVED:**

24. **DISCRIMINATION:**

A. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.

B. An entity or affiliate who has been placed on the discriminatory vendor list pursuant to section 287.134, F.S., may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

25. **LAND ACQUISITION:**

Land acquisition is not authorized under the terms of this Agreement.

26. PHYSICAL ACCESS AND INSPECTION:

As applicable, Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, including by any of the following methods:

A. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents; and

B. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and

C. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.

27. EXECUTION IN COUNTERPARTS:

This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

28. SEVERABILITY CLAUSE:

This Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Any action hereon or in connection herewith shall be brought in Leon County, Florida.

29. ENTIRE AGREEMENT:

This Agreement represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Agreement, unless otherwise provided herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed, the day and year last written below.

ESCAMBIA COUNTY

By:_____
Chairman* **Grover C. Robinson, IV**

Date:_____

FEID No.:59-6000598

ATTEST: PAM CHILDERS
CLERK OF THE CIRCUIT COURT
BY:_____
DEPUTY CLERK

Approved as to form and legal sufficiency.
By/Title: _____
Date: 2/9/16

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By:_____
Secretary or Designee

Date:_____

_____
Mahanaz Massoudi, DEP Grant Manager

By:_____
DEP QC Reviewer

*For Agreements with governmental boards/commissions: If someone other than the Chairman signs this Agreement, a resolution, statement or other document authorizing that person to sign the Agreement on behalf of the Grantee must accompany the Agreement.

List of attachments/exhibits included as part of this Agreement:

Specify Type	Letter/ Number	Description (include number of pages)
Attachment	A	Grant Work Plan (4 Pages)
Attachment	B	Payment Request Summary Form (3 Pages)
Attachment	C	Contract Payment Requirements (1 Page)
Attachment	D	Progress Report Form (1 Page)
Attachment	E	Special Audit Requirements (5 Pages)

ATTACHMENT A
GRANT WORK PLAN

PROJECT TITLE: Escambia County Innerarity Water and Sewer Upgrade

PROJECT AUTHORITY: Escambia County (Grantee) received funding from the Florida Legislature in the amount of $1,000,000 through Specific Appropriation Line Item No. 1662A, Fiscal Year (FY) 2015 – 2016, General Appropriations Act. The Grantee received this funding for the purpose of evaluating the current water and wastewater system and design upgrades. Monitoring and auditing guidelines, as related to the Florida Single Audit Act, are specified in the Florida Catalog of State Financial Assistance (CSFA), No. 37.039.

PROJECT LOCATION: The Project will be located on Innerarity Island in Escambia County, Florida. See Figures 1 and 2 for a location map and site plan.

PROJECT BACKGROUND: The Innerarity Island Development Corporation (IIDC) provided water and wastewater service to the residents of Innerarity Island in southwestern Escambia County. IIDC purchased water from the Emerald Coast Utilities Authority (ECUA) and resold it to the residents. Wastewater is currently collected in a gravity sewer system and conveyed via a system of lift stations and force mains to ECUA lift station No. 380. Wastewater is metered at the discharge of the lift station before leaving the island. The wastewater is metered and billed independently of the potable water. Water and sewer services provided in the past by IIDC were subject to regulation by the Public Service Commission of the State of Florida.

On January 27, 2014, the Innerarity Island Development Corporation formally filed a note of abandonment pursuant to Florida Statute 367.165(1), and on March 21, 2014 the First Judicial Circuit Court ordered the Grantee to become the receiver of this now abandoned water and wastewater utility system. However, not only is long term ownership and maintenance outside of the capabilities of the County, the County also has no statutory authority to own and operate a water and wastewater system due to the Enabling Act of the ECUA. An agreement in principal has been reached between ECUA and Escambia County regarding future ownership and maintenance of the Innerarity Island Development Corporation's utilities, as well as options for financing mechanisms allowing ECUA to complete design and construction, as necessary, to bring the existing utility systems into compliance with current FDEP and ECUA standards.

The proposed project will facilitate the transfer of ownership and maintenance of the systems to ECUA. This transition is critical so that an entity with adequate resources can accept the long term requirements that come with utility ownership. This is a necessity for the residents served by this system.

PROJECT DESCRIPTION: The Grantee will evaluate the current water and wastewater system formerly owned by the IIDC and design the upgrades for the water and wastewater system infrastructure to meet the standards required by ECUA for a publicly owned and maintained water and wastewater utility system.

Water system improvements may consist of: a) relatively minor main relocations to remove encroachments of the water facilities from private properties or alternatively to relocations, easements could be secured with the assistance of the Innerarity Island Homeowners Association (II HOA) to negate the need for the relocations; b) installation of system isolation valves; c) fire hydrant additions; d) modification of dead end water lines to provide either flush valves or circulation loops; e) water service renewals to remove polybutylene tubing and replace meters with ECUA standard meters; and f) upgrade approximately 3,000 linear feet of existing 4-inch water main on North Shore Drive to 6-inch.

Sanitary sewer system improvements will consist primarily of the construction of a low pressure sewer system to replace all gravity collection on the island leaving only the relatively new gravity collection in the Russell Bayou development in service. The existing gravity sewer collection system was found to be prone to excessively heavy infiltration/inflow and to have many line segments laid at insufficient slope. Full replacement of the gravity sewer system was eliminated from consideration due to excessive cost.

TASKS and DELIVERABLES:

Task 1: Design and Permitting
Task Description: The Grantee will procure professional engineering services in accordance with state law. The Grantee will complete the evaluation and design of upgrades to the water and wastewater system infrastructure and obtain all necessary permits for construction of the project. The Grantee will submit documentation of preconstruction activities, as described below.

Deliverable 1a: An electronic copy of the draft design at 30% completion submitted to the Department's Grant Manager for review prior to submittal of the draft design at 60% completion.
Performance Standard: The Department's Grant Manager will review the draft design at 30% completion to verify that it meets the specifications in the Grant Work Plan and this task description, and provide any comments to the Grantee for incorporation. Upon review and written acceptance of this submittal by the Department's Grant Manager, the Grantee may proceed with the payment request submittal for costs associated with this design document.

Deliverable 1b: An electronic copy of the draft design at 60% completion submitted to the Department's Grant Manager for review prior to submittal of the final design.
Performance Standard: The Department's Grant Manager will review the draft design at 60% completion to verify that it meets the specifications in the Grant Work Plan and this task description, and provide any comments to the Grantee for incorporation. Upon review and written acceptance of this submittal by the Department's Grant Manager, the Grantee may proceed with the payment request submittal for costs associated with this design document.

Deliverable 1c: An electronic copy of the final design, including professional certification as applicable. Upon request, the Grantee will provide a paper copy of the final design submittal.
Performance Standard: The Department's Grant Manager will review the final design to verify that it meets the specifications in the Grant Work Plan and this task description, and provide any comments to the Grantee for incorporation. Upon review and written acceptance of this submittal

by the Department's Grant Manager, the Grantee may proceed with the payment request submittal for costs associated with this design document.

Deliverable 1d: A list of all required permits identifying issue dates and issuing authorities submitted to the Department's Grant Manager. Upon request, the Grantee will provide copies of obtained permits or permit related correspondence or documentation.
Performance Standard: The Department's Grant Manager will review the list of all issued permits to verify that it meets the specifications in the Grant Work Plan and this task description, and provide any comments to the Grantee for incorporation. Upon review and written acceptance of the list of all issued permits by the Department's Grant Manager, the Grantee may proceed with payment request submittal for costs associated with permitting.

PROJECT TIMELINE: The tasks must be completed by the end of each task timeline and all deliverables must be received by the designated due date.

Task/ Deliverable No.	Task or Deliverable Title	Task Start Date	Task End Date	Deliverable Due Date/ Frequency
1	Design and Permitting	7/1/2015	6/30/2018	
1a	30% Design			1/3/2018
1b	60% Design			3/31/2018
1c	Final Design			4/30/2018
1d	Permits			4/30/2018

BUDGET DETAIL BY TASK:

Task No.	Budget Category	Budget Amount
1	Contractual Services	$1,000,000
	Total for Task:	**$1,000,000**

PROJECT BUDGET SUMMARY: Cost reimbursable grant funding must not exceed the category totals for the project as indicated below.

Category Totals	Grant Funding, Not to Exceed, $1,000,000
Contractual Services Total	$1,000,000
Total:	**$1,000,000**

Figure 1

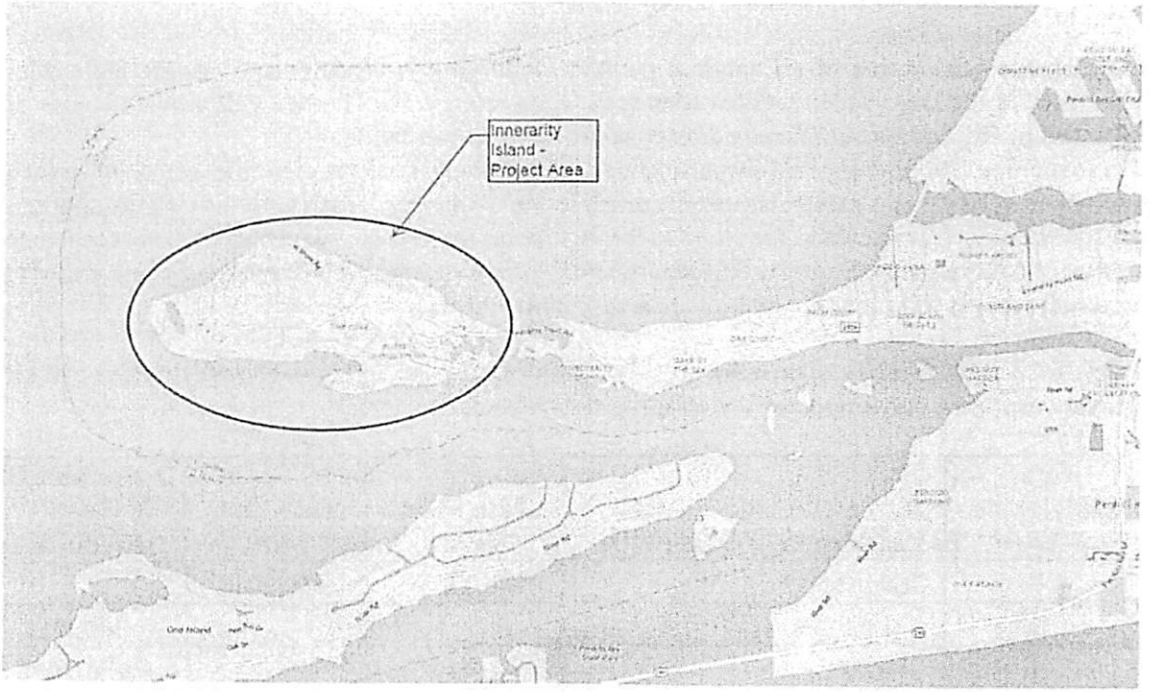
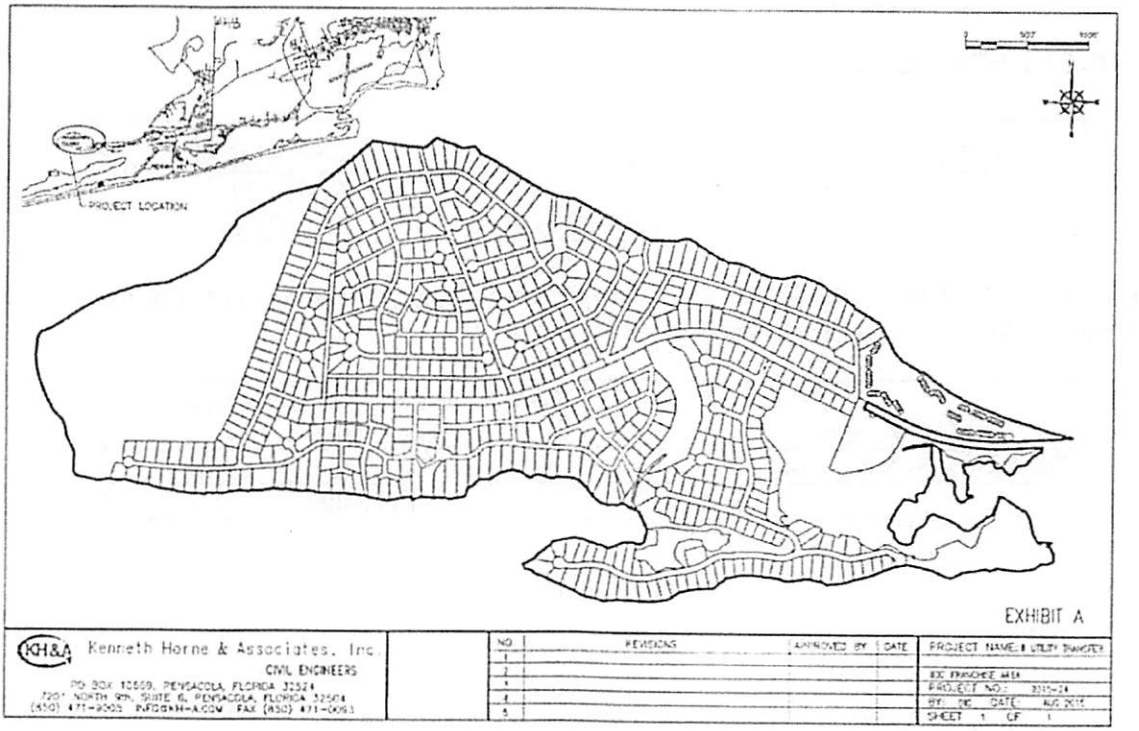


Figure 2



ATTACHMENT B
PAYMENT REQUEST SUMMARY FORM

DEP Agreement No.: _____ Agreement Effective Dates: _____

Grantee: _____ Grantee's Grant Manager: _____

Mailing Address: _____

Payment Request No. _____ Date of Payment Request: _____

Performance Period (*Start date – End date*): _____

Task/Deliverable No(s). _____ Task/Deliverable Amount Requested: $_____

GRANT EXPENDITURES SUMMARY SECTION

_____
[Effective Date of Grant through End-of-Grant Period]

CATEGORY OF EXPENDITURE	AMOUNT OF THIS REQUEST	TOTAL CUMULATIVE PAYMENT REQUESTS	MATCHING FUNDS FOR THIS REQUEST	TOTAL CUMULATIVE MATCHING FUNDS
Salaries/Wages	SN/A	SN/A	SN/A	SN/A
Overhead/Indirect/G&A Costs	SN/A	SN/A	SN/A	SN/A
Fringe Benefits	SN/A	SN/A	SN/A	SN/A
Indirect Cost	SN/A	SN/A	SN/A	SN/A
Contractual (Subcontractors)	S	S	SN/A	SN/A
Travel (if authorized)	SN/A	SN/A	SN/A	SN/A
Equipment Purchases (if authorized)	SN/A	SN/A	SN/A	SN/A
Rental/Lease of Equipment	SN/A	SN/A	SN/A	SN/A
Other Expenses	SN/A	SN/A	SN/A	SN/A
Land (if authorized)	SN/A	SN/A	SN/A	SN/A
TOTAL AMOUNT	S	S	SN/A	SN/A
TOTAL TASK/DELIVERABLE BUDGET AMOUNT	S		SN/A	
Less Total Cumulative Payment Requests of:	S		SN/A	
TOTAL REMAINING IN TASK	S		SN/A	

GRANTEE CERTIFICATION

Complete Grantee's Certification of Payment Request on Page 2 to certify that the amount being requested for reimbursement above was for items that were charged to and utilized only for the above cited grant activities.

Grantee's Certification of Payment Request

I, _____ ,

(Print name of Grantee's Grant Manager designated in the Agreement)

on behalf of _____, do hereby certify that:

(Print name of Grantee/Recipient)

- ☑ The disbursement amount requested is for allowable costs for the project described in Attachment A of the Agreement.
- ☑ All costs included in the amount requested have been satisfactorily purchased, performed, received, and applied toward completing the project; such costs are documented by invoices or other appropriate documentation as required in the Agreement.
- ☑ The Grantee has paid such costs under the terms and provisions of contracts relating directly to the project; and the Grantee is not in default of any terms or provisions of the contracts.

Check all that apply:

- ☐ All permits and approvals required for the construction, which is underway, have been obtained.
- ☐ Construction up to the point of this disbursement is in compliance with the construction plans and permits.
- ☐ The Grantee's Grant Manager relied on certifications from the following professionals that provided services for this project during the time period covered by this Certification of Payment Request, and such certifications are included:

Professional Service Provider (Name / License No.)	Period of Service (mm/dd/yy – mm/dd/yy)

_____	_____
Grantee's Grant Manager's Signature	Grantee's Fiscal Agent
_____	_____
Print Name	Print Name
_____	_____
Telephone Number	Telephone Number

INSTRUCTIONS FOR COMPLETING PAYMENT REQUEST SUMMARY FORM

DEP AGREEMENT NO.: This is the number on your grant agreement.
AGREEMENT EFFECTIVE DATES: Enter agreement execution date through end date.
GRANTEE: Enter the name of the grantee's agency.
GRANTEE'S GRANT MANAGER: This should be the person identified as grant manager in the grant Agreement.
MAILING ADDRESS: Enter the address that you want the state warrant sent.
PAYMENT REQUEST NO.: This is the number of your payment request, not the quarter number.
DATE OF PAYMENT REQUEST: This is the date you are submitting the request.
PERFORMANCE PERIOD: This is the beginning and ending date of the performance period for the task/deliverable that the request is for (this must be within the timeline shown for the task/deliverable in the Agreement).
TASK/DELIVERABLE NO.: This is the number of the task/deliverable that you are requesting payment for and/or claiming match for (must agree with the current Grant Work Plan).
TASK/DELIVERABLE AMOUNT REQUESTED: This should match the amount on the "*TOTAL TASK/DELIVERABLE BUDGET AMOUNT*" line for the "*AMOUNT OF THIS REQUEST*" column.

GRANT EXPENDITURES SUMMARY SECTION:

"AMOUNT OF THIS REQUEST" COLUMN: Enter the amount that was expended for this task during the period for which you are requesting reimbursement for this task. This must agree with the currently approved budget in the current Grant Work Plan of your grant Agreement. Do not claim expenses in a budget category that does not have an approved budget. Do not claim items that are not specifically identified in the current Grant Work Plan. Enter the column total on the "*TOTAL AMOUNT*" line. Enter the amount of the task on the "*TOTAL TASK BUDGET AMOUNT*" line. Enter the total cumulative amount of this request and all previous payments on the "*LESS TOTAL CUMULATIVE PAYMENT REQUESTS OF*" line. Deduct the "*LESS TOTAL CUMULATIVE PAYMENT REQUESTS OF*" from the "*TOTAL TASK BUDGET AMOUNT*" for the amount to enter on the "*TOTAL REMAINING IN TASK*" line.

"TOTAL CUMULATIVE PAYMENT REQUESTS" COLUMN: Enter the cumulative amounts that have been requested to date for reimbursement by budget category. The final request should show the total of all requests; first through the final request (this amount cannot exceed the approved budget amount for that budget category for the task you are reporting on). Enter the column total on the "*TOTALS*" line. **Do not enter anything in the shaded areas.**

"MATCHING FUNDS" COLUMN: Enter the amount to be claimed as match for the performance period for the task you are reporting on. This needs to be shown under specific budget categories according to the currently approved Grant Work Plan. Enter the total on the "*TOTAL AMOUNT*" line for this column. Enter the match budget amount on the "*TOTAL TASK BUDGET AMOUNT*" line for this column. Enter the total cumulative amount of this and any previous match claimed on the "*LESS TOTAL CUMULATIVE PAYMENTS OF*" line for this column. Deduct the "*LESS TOTAL CUMULATIVE PAYMENTS OF*" from the "*TOTAL TASK BUDGET AMOUNT*" for the amount to enter on the "*TOTAL REMAINING IN TASK*" line.

"TOTAL CUMULATIVE MATCHING FUNDS" COLUMN: Enter the cumulative amount you have claimed to date for match by budget category for the task. Put the total of all on the line titled "*TOTALS.*" The final report should show the total of all claims, first claim through the final claim, etc. **Do not enter anything in the shaded areas.**

GRANTEE'S CERTIFICATION: Check all boxes that apply. Identify any licensed professional service providers that certified work or services completed during the period included in the request for payment. **Must be signed by both the Grantee's Grant Manager as identified in the grant agreement and the Grantee's Fiscal Agent.**

NOTES:
If claiming reimbursement for travel, you must include copies of receipts and a copy of the travel reimbursement form approved by the Department of Financial Services, Chief Financial Officer.

Documentation for match claims must meet the same requirements as those expenditures for reimbursement.

ATTACHMENT C

Contract Payment Requirements
Florida Department of Financial Services, Reference Guide for State Expenditures
Cost Reimbursement Contracts

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation must be provided for each amount for which reimbursement is being claimed indicating that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved contract budget should be reimbursed.

Listed below are examples of the types of documentation representing the minimum requirements:

(1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.

(2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

(3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.

(4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.

(5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.

(6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

Contracts between state agencies, and or contracts between universities may submit alternative documentation to substantiate the reimbursement request that may be in the form of FLAIR reports or other detailed reports.

The Florida Department of Financial Services, online Reference Guide for State Expenditures can be found at this web address: http://www.fldfs.com/aadir/reference_guide.htm

ATTACHMENT D

PROGRESS REPORT FORM

DEP Agreement No.:			
Grantee Name:			
Grantee Address:			
Grantee's Grant Manager:		**Telephone No.:**	
Reporting Period:			
Project Number and Title:			

Provide the following information for all tasks and deliverables identified in the Grant Work Plan: a summary of project accomplishments for the reporting period; a comparison of actual accomplishments to goals for the period; if goals were not met, provide reasons why; provide an update on the estimated time for completion of the task and an explanation for any anticipated delays and identify by task.
NOTE: Use as many pages as necessary to cover all tasks in the Grant Work Plan.

The following format should be followed:
Task 1:
Progress for this reporting period:
Identify any delays or problems encountered:

This report is submitted in accordance with the reporting requirements of DEP Agreement No. S0854 and accurately reflects the activities associated with the project.

Signature of Grantee's Grant Manager

Date

ATTACHMENT E

SPECIAL AUDIT REQUIREMENTS

The administration of resources awarded by the Department of Environmental Protection *(which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the contract/agreement)* to the recipient *(which may be referred to as the "Contractor", Grantee" or other name in the contract/agreement)* may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.

1. In the event that the recipient expends $500,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the Department of Environmental Protection. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part.

2. In connection with the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

3. If the recipient expends less than $500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the recipient expends less than $500,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than Federal entities).

4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at http://12.46.245.173/cfda/cfda.html.

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2)(m), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of $500,000 in any fiscal year of such recipient, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this Attachment indicates state financial assistance awarded through the Department of Environmental Protection by this Agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the recipient expends less than $500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than $500,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at https://apps.fldfs.com/fsaa for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at http://www.leg.state.fl.us/Welcome/index.cfm, State of Florida's website at http://www.myflorida.com/, Department of Financial Services' Website at http://www.fldfs.com/ and the Auditor General's Website at http://www.state.fl.us/audgen.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by PART I of this Attachment shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following:

A. The Department of Environmental Protection at one of the following addresses:

By Mail:
Audit Director
Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:
FDEPSingleAudit@dep.state.fl.us

B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at http://harvester.census.gov/fac/

C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

2. Pursuant to Section .320(f), OMB Circular A-133, as revised, the recipient shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department of Environmental Protection at one the following addresses:

By Mail:
Audit Director
Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:
FDEPSingleAudit@dep.state.fl.us

3. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

A. The Department of Environmental Protection at one of the following addresses:

By Mail:
Audit Director
Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:
FDEPSingleAudit@dep.state.fl.us

B. The Auditor General's Office at the following address:

State of Florida Auditor General
Room 401, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

4. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:
FDEPSingleAudit@dep.state.fl.us

5. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

6. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with OMB Circular A-133, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of 5 years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of 3 years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

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EXHIBIT – 1

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program Number	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program Number	Funding Source	State Fiscal Year	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
Original Agreement	General Revenue Fund, Line Item 1662A	2015-2016	37.039	Statewide Surface Water Restoration And Wastewater Projects	$1,000,000.00	140047

Total Award	$1,000,000.00	

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [http://12.46.245.173/cfda/cfda.html] and/or the Florida Catalog of State Financial Assistance (CSFA) [https://apps.fldfs.com/fsaa/searchCatalog.aspx]. The services/purposes for which the funds are to be used are included in the Contract scope of services/work. Any match required by the recipient is clearly indicated in the Contract.